



FEDERAL REGISTER

VOLUME 20 1934 NUMBER 169
 OF THE UNITED STATES

Washington, Tuesday, August 30, 1955

TITLE 3—THE PRESIDENT

PROCLAMATION 3110

VETERANS DAY, 1955

BY THE PRESIDENT OF THE UNITED STATES
OF AMERICA
A PROCLAMATION

WHEREAS it is altogether fitting that a grateful nation should set aside one day each year to pay special homage to the veterans who have fought so valiantly in all of its wars to preserve our heritage of freedom; and

WHEREAS the Congress passed a concurrent resolution on June 4, 1926 (44 Stat. 1982) calling for the observance of November 11, the anniversary of the ending of hostilities in World War I, with appropriate ceremonies, and later provided in an act approved May 13, 1938 (52 Stat. 351) that November 11 should be a legal holiday and should be known as Armistice Day and

WHEREAS the Congress by an act approved June 1, 1954 (68 Stat. 168) expanded the significance of that holiday by changing its name to Veterans Day

NOW THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby call upon all of our citizens to observe Friday, November 11, 1955, as Veterans Day—a day of commemoration of those who sacrificed to preserve our Nation and of rededication to the task of achieving an enduring peace.

I also direct the appropriate officials of the Government to arrange for the display of the flag of the United States on all public buildings on Veterans Day.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 25th day of August, in the year of our Lord nineteen hundred and [SEAL] fifty-five, and of the Independence of the United States of America the one hundred and eightieth.

DWIGHT D. EISENHOWER

By the President:

LOY W. HENDERSON,
Acting Secretary of State.

[F. R. Doc. 55-7061; Filed, Aug. 26, 1955; 2:18 p. m.]

TITLE 7—AGRICULTURE

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

PART 958—IRISH POTATOES GROWN IN COLORADO

APPROVAL 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 August 4, 1955 (20 F. R. 5597). 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. 3, established pursuant to said marketing agreement and order, it is hereby found and determined that:

§ 958.219 *Expenses and rate of assessment.* (a) The reasonable expenses that are likely to be incurred by the area committee for Area No. 3, established pursuant to Marketing Agreement No. 97 and Order No. 58, to enable such committee to perform its functions pursuant to the provisions of the aforesaid marketing agreement and order, during the fiscal period ending May 31, 1956, will amount to \$2,660.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 97 and Order No. 58, shall be \$0.00095 per hundredweight 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 25th day of August 1955, to become effective

(Continued on p. 6311)

CONTENTS

THE PRESIDENT

	Page
Proclamation	
Veterans Day, 1955	6309

EXECUTIVE AGENCIES

Agricultural Marketing Service	
Proposed rule making:	
Lemons grown in California; correction	6340
Milk in central Arizona; handling of	6340
Rules and regulations:	
Potatoes, Irish, grown in Colorado; approval of expenses and rate of assessment	6309
Agriculture Department	
<i>See Agricultural Marketing Service.</i>	
Atomic Energy Commission	
Notices:	
Dittenheimer, Manuel; notice of application	6360
Civil Aeronautics Administration	
Rules and regulations:	
Standard instrument approach procedures; alterations	6312
Commerce Department	
<i>See Civil Aeronautics Administration; Maritime Administration.</i>	
Customs Bureau	
Rules and regulations:	
Vessels in foreign and domestic trades; foreign clearances	6317
Defense Department	
Notices:	
Secretary of Army delegation of authority with respect to St. Lawrence Seaway Power Project or Navigation Project	6361
Defense Mobilization Office	
Rules and regulations:	
Materials and facilities; policy on control of by use of priorities and allocation authority under disaster conditions	6339
Federal Power Commission	
Notices:	
Hearings, etc.	
Algonquin Gas Transmission Co. and Tennessee Gas Transmission Co.	6361
Big Run Oil and Gas Co. et al.	6362
	6309



Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for \$1.50 per month or \$15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

CFR SUPPLEMENTS
(For use during 1955)

The following Supplements are now available:

- Title 32: Parts 400-699 (\$5.75)
Parts 800-1099 (\$5.00)
Part 1100 to end (\$4.50)
- Title 43 (Revised, 1954) (\$6.00)

Previously announced: Title 3, 1954 Supp. (\$1.75); Titles 4-5 (\$0.70); Title 6 (\$2.00); Title 7: Parts 1-209 (\$0.60); Parts 210-899 (\$2.50); Part 900 to end (\$2.25); Title 8 (\$0.45); Title 9 (\$0.65); Titles 10-13 (\$0.50); Title 14: Parts 1-399 (\$2.25); Part 400 to end (\$0.65); Title 15 (\$1.25); Title 16 (\$1.25); Title 17 (\$0.55); Title 18 (\$0.50); Title 19 (\$0.40); Title 20 (\$0.75); Title 21 (\$1.75); Titles 22-23 (\$0.75); Title 24 (\$0.75); Title 25 (\$0.50); Title 26 (1954) (\$2.50); Title 26: Parts 1-79 (\$0.35); Parts 80-169 (\$0.50); Parts 170-182 (\$0.50); Parts 183-299 (\$0.30); Part 300 to end and Title 27 (\$1.25); Titles 28-29 (\$1.25); Titles 30-31 (\$1.25); Title 32: Parts 1-399 (\$4.50); Parts 700-799 (\$3.75); Title 32A, Revised December 31, 1954 (\$1.50); Title 33 (\$1.50); Titles 35-37 (\$0.75); Title 38 (\$2.00); Title 39 (\$0.75); Titles 40-42 (\$0.50); Titles 44-45 (\$0.75); Title 46: Parts 1-145 (\$0.40); Part 146 to end (\$1.25); Titles 47-48 (\$1.25); Title 49: Parts 1-70 (\$0.60); Parts 71-90 (\$0.75); Parts 91-164 (\$0.50); Part 165 to end (\$0.60); Title 50 (\$0.55)

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

CONTENTS—Continued

Federal Power Commission—Continued	Page
Notices—Continued	
Hearings, etc.—Continued	
Champlin Refining Co. et al.	6362
Colorado Oil and Gas Corp. et al.	6361
Haught Oil & Gas Co. and Fluharty-Riddle Oil & Gas Co.	6363
James, T. L., and Co., Inc., et al.	6362
Lowe, Grover, et al.	6362
Olin Gas Transmission Corp.—Orange Grove Oil & Gas Co. and H. J. Mosser	6361
M & D Oil Co. et al.	6362
McAlester Fuel Co.	6363
Nye, Clark E., et al.	6362
Rowland Oil Co.	6363
Texas Co.	6362

Food and Drug Administration

Proposed rule making:	
Parathion; filing of petition for extension of tolerance for residues	6357
Rules and regulations:	
Antibiotic and antibiotic-containing drugs, certain; tests and methods of assay, certification, miscellaneous amendments	6311

Health, Education, and Welfare Department

See Food and Drug Administration.

Internal Revenue Service

Rules and regulations:	
Income tax; taxable years beginning after Dec. 31, 1953	6317

Interior Department

See Land Management Bureau.

Justice Department

Notices:	
Executive Assistant to Attorney General; designation as representative of Attorney General to accept service of summons or other process in certain cases	6361

Land Management Bureau

Notices:	
California, opening of lands to mineral location, entry and patent	6360
Rules and regulations:	
Public land orders:	
California	6340
Washington	6339

Maritime Administration

Notices:	
California Ports/Far East; essentiality and United States flag service requirements of Trade Route No. 29: conclusions and determinations	6361

CONTENTS—Continued

Securities and Exchange Commission	Page
Notices:	
Hearings, etc.	
Delaware Power & Light Co.	6363
Paul Smith's College of Arts and Sciences	6304
Proposed rule making:	
Solicitation of proxies	6357

Treasury Department
See Customs Bureau; Internal Revenue Service.

CODIFICATION GUIDE

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

Title 3	Page
Chapter I (Proclamations)	
3110	6309
Chapter II (Executive orders)	
Sept. 26, 1911 (revoked by PLO 1210)	6340
Dec. 11, 1912 (revoked in part by PLO 1210)	6340
June 8, 1926 (revoked in part by PLO 1210)	6340
3747 (revoked by PLO 1209)	6339
4203 (see PLO 1210)	6340
Title 7	
Chapter IX.	
Part 953 (proposed)	6340
Part 958	6309
Part 1004 (proposed)	6340
Title 14	
Chapter II.	
Part 609	6312
Title 17	
Chapter II.	
Part 240 (proposed)	6357
Title 19	
Chapter I:	
Part 4	6317
Title 21	
Chapter I.	
Part 120 (proposed)	6357
Part 141c	6311
Part 141e	6311
Part 146	6311
Part 146c	6311
Part 146e	6311
Title 26 (1939)	
Chapter I.	
Part 24 (see T. 26 (1954) § 1.1502-0)	
Title 26 (1954)	
Chapter I.	
Part 1	6317
Title 32A	
Chapter I (ODM)	
DMO VII-3, Supp. 1	6339
Title 43	
Chapter I:	
Appendix (Public land orders)	
1209	6339
1210	6340

30 days after publication in the FEDERAL REGISTER.

[SEAL] ROY W LENNARTSON,
Deputy Administrator

[F. R. Doc. 55-7016; Filed, Aug. 29, 1955;
8:49 a. m.]

TITLE 21—FOOD AND DRUGS

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

PART 141c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 141e—BACITRACIN AND BACITRACIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

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

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

PART 146e—CERTIFICATION OF BACITRACIN AND BACITRACIN-CONTAINING DRUGS

MISCELLANEOUS AMENDMENTS

By virtue of the authority vested in the Secretary of Health, Education, and Welfare by the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended by 61 Stat. 11, 63 Stat. 409, 67 Stat. 389, sec. 701, 52 Stat. 1055, 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (20 F. R. 1936) the regulations for tests and methods of assay and certification of antibiotic and antibiotic-containing drugs (21 CFR, 1954 Supp., Parts 141c, 141e, 146, 146c, 146e) are amended as indicated below.

1. Part 141c is amended by adding the following new section:

§ 141c.227 *Chlortetracycline spray dressing (chlortetracycline hydrochloride spray dressing)*—(a) *Potency.* Spray the entire contents of the well shaken sample into a large tared beaker. Place in a vacuum desiccator, evacuate, and allow to stand at room temperature for 16 to 18 hours. After the gas has volatilized, accurately weigh the beaker and contents and determine the weight of the ointment ejected when used as directed in its labeling. Remove a representative quantity (usually 1 gram) of the ointment from the beaker, accurately determine its weight, and place in a separatory funnel containing approximately 50 milliliters of peroxide-free ether. Proceed as directed in § 141c.202 (a). The content of the immediate container is satisfactory if it contains not less than 85 percent of the number of grams of ointment that it is represented to contain. The potency of the ointment is satisfactory if it contains not less than 85 percent of the number of milligrams of chlortetracycline hydrochloride per gram that it is represented to contain.

(b) *Sterility.* Using an amount of spray (usually 5 to 8 seconds) equivalent to approximately 40 milligrams of chlortetracycline from each container tested, proceed as directed in § 141a.2 of this chapter, except that neither penicillinase nor the control tube is used in the test for bacteria.

(c) *Moisture.* Proceed as directed in § 141a.8 (b) of this chapter.

2. In § 141e.403, the section title and the last sentence of paragraph (a) are amended to read as follows:

§ 141e.403 *Bacitracin tablets; zinc bacitracin tablets*—(a) *Potency.* * * * The content of bacitracin or zinc bacitracin is satisfactory if it contains not less than 85 percent of the number of units per tablet that it is represented to contain.

3. In § 141e.410, the section title and paragraph (a) (1) (i) are amended to read as follows:

§ 141e.410 *Bacitracin-neomycin tablets; zinc bacitracin-neomycin tablets*—(a) *Tablets*—(1) *Potency*—(i) *Bacitracin or zinc bacitracin content.* Proceed as directed in § 141e.403 (a). Its content of bacitracin or zinc bacitracin is satisfactory if it contains not less than 85 percent of the number of units per tablet that it is represented to contain.

4. Section 146.27 *Antibiotics for fish diseases*, is amended by inserting the word "tetracycline" and a comma following the word "chlortetracycline."

5. Part 146c is amended by adding the following new section:

§ 146c.227 *Chlortetracycline spray dressing (chlortetracycline hydrochloride spray dressing)*—(a) *Standards of identity, strength, quality, and purity.* Chlortetracycline spray dressing is chlortetracycline hydrochloride ointment and one or more suitable and harmless inert gases. It is sterile. The chlortetracycline hydrochloride ointment used conforms to the standards prescribed for chlortetracycline hydrochloride ointment by § 146c.202 (a) except that its potency is not less than 20 milligrams per gram. Each other substance used, if its name is recognized in the U. S. P. or N. F., conforms to the standards prescribed therefor by such official compendium.

(b) *Packaging.* In all cases the immediate container shall be a tight container as defined by the U. S. P. and shall be of such composition as will not cause any change in the strength, quality, or purity of the contents beyond any limit therefor in applicable standards, except that minor changes so caused that are normal and unavoidable in good packaging, storage, and distribution practice shall be disregarded. Each such container shall contain not less than 30 grams of ointment and shall contain one or more suitable and harmless inert gases.

(c) *Labeling.* Each package shall bear on its label or labeling, as hereinafter indicated, the following:

(1) On the outside wrapper or container and the immediate container:

(i) The batch mark.

(ii) The number of milligrams of chlortetracycline per gram of the chlortetracycline ointment and the number of grams of chlortetracycline ointment that shall be ejected when used as directed in the labeling.

(iii) The statement "Expiration date _____," the blank being filled in with the date that is 24 months after the month during which the batch was certified: *Provided, however,* That such expiration date may be omitted from the immediate container if such immediate container is packaged in an individual wrapper or container.

(2) On the outside wrapper or container:

(i) The statement "Caution: Federal law prohibits dispensing without prescription," unless it is packaged for dispensing and it is intended solely for veterinary use and is conspicuously so labeled.

(ii) If it is packaged for dispensing and it is intended for use by man, a reference specifically identifying a readily available medical publication containing information (including contraindications and possible sensitization) adequate for the use of such drug by practitioners licensed by law to administer it; or a reference to a brochure or other printed matter containing such information and a statement that such brochure or other printed matter will be sent on request: *Provided, however* That this reference may be omitted if the information is contained in a circular or other labeling within or attached to the package.

(3) On the circular or other labeling within or attached to the package, if it is packaged for dispensing and it is intended solely for veterinary use and is conspicuously so labeled, adequate directions and warnings for the veterinary use of such drug by the laity.

(d) *Request for certification; samples.*

(1) In addition to complying with the requirements of § 146.2 of this chapter, a person who requests certification of a batch shall submit with his request a statement showing the batch mark, the number of packages of each size in such batch, the batch mark; and (unless it was previously submitted) the date on which the latest assay of the chlortetracycline used in making the batch was completed, the quantity of each ingredient used in making such batch, the date on which the latest assay of the drug comprising such batch was completed, and that each ingredient used in making the batch conforms to the requirements prescribed therefor by this section.

(2) Except as otherwise provided by subparagraph (4) of this paragraph, such person shall submit in connection with his request results of the tests and assays listed after each of the following, made by him on an accurately representative sample of:

(1) The batch: Average potency per gram, sterility, and moisture.

(ii) The chlortetracycline used in making the batch: Potency, toxicity, moisture, pH, and crystallinity.

(3) Except as otherwise provided by subparagraph (4) of this paragraph, such person shall submit in connection

with his request, in the quantities herein-after indicated, accurately representative samples of the following:

(i) The batch:

(a) For all tests except sterility: 1 immediate container for each 5,000 immediate containers in the batch, but in no case less than 5 or more than 12 immediate containers.

(b) For sterility testing: 10 immediate containers.

Such samples shall be collected by taking single immediate containers at such intervals throughout the entire time of packaging the batch that the quantities packaged during the intervals are approximately equal.

(ii) The chlortetracycline used in making the batch: 5 packages, each containing approximately equal portions of not less than 60 milligrams, packaged in accordance with the requirements of § 146c.201 (b)

(iii) In case of an initial request for certification, each other ingredient used in making the batch: 1 package of each component of the ointment base, each containing approximately 200 grams.

(4) No result referred to in subparagraph (2) (ii) of this paragraph, and no sample referred to in subparagraph (3) (ii) of this paragraph, is required if such result or sample has been previously submitted.

(e) Fees. The fee for the services rendered with respect to each batch under the regulations in this part shall be:

(1) \$5.00 for each package in the samples submitted in accordance with paragraph (d) (3) (i) (a), (ii) and (iii) of this section.

(2) If the Commissioner considers that investigations, other than examination of such immediate containers, are necessary to determine whether or not such batch complies with the requirements of § 146.3 of this chapter for the issuance of a certificate, the cost of such investigations.

The fee prescribed by subparagraph (1) of this paragraph shall accompany the request for certification unless such fee is covered by an advance deposit maintained in accordance with § 146.8 (d) of this chapter.

6. Section 146e.403 is amended in the following respects:

a. The section title and paragraph (a) are amended to read as follows:

§ 146e.403 *Bacitracin tablets, zinc bacitracin tablets; bacitracin suppositories, zinc bacitracin suppositories (if they are represented for vaginal use) bacitracin implantation pellets, zinc bacitracin implantation pellets (if they are represented for use by implanting under the skin of animals)*—(a) Standards of identity, strength, quality, and purity. Bacitracin tablets and zinc bacitracin tablets are tablets composed of bacitracin or zinc bacitracin, with or without the addition of one or more suitable and harmless buffer substances, diluents, binders, lubricants, colorings, and flavorings. The potency of each tablet is not less than 1,000 units nor more than 10,000 units. Its moisture content is not more than 5 percent. Unless it is rep-

resented to be used for inhalation therapy, the bacitracin used conforms to the requirements of § 146e.401 (a) except subparagraphs (1) (2), and (4) of that paragraph, but in no case is its potency less than 30 units per milligram. If it is represented to be used for inhalation therapy the bacitracin used conforms to the requirements of § 146e.401 (a) except subparagraphs (2) and (4) of that paragraph. The zinc bacitracin used conforms to the requirements of § 146e.418 (a). Each other substance used, if its name is recognized in the U. S. P. or N. F., conforms to the standards prescribed therefor by such official compendium.

b. Paragraph (b) *Packaging* is amended by deleting the word "bacitracin" from the first sentence.

c. Paragraph (c) *Labeling* is amended by deleting the words "of bacitracin tablets" from the introduction to the paragraph.

d. Paragraph (c) (1) (iv) is amended by deleting the word "bacitracin"

e. In paragraph (d) *Requests for certification* * * * subparagraph (1) is amended by deleting the words "of bacitracin tablets" and changing the words "bacitracin used" to read "bacitracin or zinc bacitracin used"

f. Paragraph (d) (2) (ii) is changed to read as follows:

(ii) The bacitracin or zinc bacitracin used in making the batch; potency, toxicity, moisture, pH, and zinc content, if it is zinc bacitracin.

g. Paragraph (d) (3) is amended by renumbering subdivision (iii) as (iv) and inserting the following new subdivision (iii) between subdivisions (ii) and renumbered subdivision (iv)

(iii) The zinc bacitracin used in making the batch; 5 packages, each containing approximately equal portions of not less than 1.0 gram, packaged in accordance with the requirements of § 146e.418 (b)

h. Paragraph (d) (4) is amended by changing the reference "(3) (ii)" to read "(3) (ii) or (iii)"

1. Paragraph (e) *Fees* is amended by deleting the words "of bacitracin tablets" from the introduction to the paragraph.

j. Paragraph (e) (1) is amended by changing the reference "(d) (3) (ii) and (iii)" to read "(d) (3) (ii), (iii) and (iv)"

7. Section 146e.410 (a) is amended as follows:

a. The section title and the introduction to the paragraph are changed to read:

§ 146e.410 *Bacitracin-neomycin tablets; zinc bacitracin-neomycin tablets.* (a) Bacitracin-neomycin tablets and zinc bacitracin-neomycin tablets conform to all requirements and are subject to all procedures prescribed by § 146e.403 for bacitracin tablets and zinc bacitracin tablets, except that:

b. Paragraph (a) (1) is amended by changing the word "bacitracin" to read "bacitracin or zinc bacitracin."

c. Paragraph (a) (3) is revised to read as follows:

(3) In lieu of the labeling prescribed for bacitracin tablets and zinc bacitracin tablets by § 146e.403 (c) (1) (ii), each package shall bear on the outside wrapper or container and the immediate container the number of units of bacitracin or zinc bacitracin and the number of milligrams of neomycin in each tablet of the batch.

d. Paragraph (a) (4) is amended by changing the word "bacitracin" to read "bacitracin or zinc bacitracin"

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

I further find that the antibiotic drug tetracycline, when used for fish diseases, need not comply with the requirements of sections 502 (1) and 507 of the Federal Food, Drug, and Cosmetic Act in order to insure its safety and efficacy for the purpose indicated.

This order shall become effective upon publication in the FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

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

Dated: August 22, 1955.

[SEAL]

JOHN L. HARVEY,
Acting Commissioner
of Food and Drugs.

[F. R. Doc. 55-7028; Filed, Aug. 29, 1955; 8:50 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 158]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedure alterations appearing hereinafter are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

Part 609 is amended as follows:

NOTE: Where the general classification (LFE, VAR, ADF, ILS, GOA, or VOR), location, and procedure number (if any) of any procedure in the amendments which follow, are identical with an existing procedure, that procedure is to be substituted for the existing one, as of the effective date given, to the extent that it differs from the existing procedure; where a procedure is canceled, the existing procedure is revoked; new procedures are to be placed in appropriate alphabetical sequence within the section amended.

1 The low frequency range procedures prescribed in § 609 6 are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. If a VOR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility; class and identification; procedure No; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft)	Procedure turn (—) side of final approach course (inbound, outbound); limiting altitudes; limiting distances	Minimum altitude over facility on final approach course (ft)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified or if landing not accomplished
							Condition	Typo aircraft	Typo aircraft	
1	2	3	4	5	6	7	8	9	10	11
OKLAHOMA CITY, OKLA Will Rogers, 1,233' SBRAZ-OKCO, Procedure No. 1 Amendment 6. Effective September 24, 1955. Supersedes Amendment 5 dated May 6, 1954. Major changes: Add radar procedure authority. Limit procedure turn distance. Delete alternate missed approach procedure	Mustang FM (final) Bethany Intersection Oklahoma City VOR	075-8 0 180-8 0 102-8 0	1,900 2,600 2,400	S side of course; 250° outbound, 075° inbound, 2,400' within 10 miles	1,900	078-1 6	T-dn C-dn	2 engines or less 300-1 400-1	300-1 200-1	Within 1.6 miles climb to 2,700 on E course of OKCO LFR within 2.5 miles. 300-1 required for takeoff runways 8-29
	Radar transition altitudes within 25 nautical miles, radius of Oklahoma City L/M/F range and VOR ranges: NE quadrant 2,800' SE quadrant 2,500' SW quadrant 2,500' NW quadrant 2,800'						A-dn	All aircraft. 600-2		

2 The automatic direction finding procedures prescribed in § 609 8 are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. If an ADF instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility; class and identification; procedure No; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft)	Procedure turn (—) side of final approach course (inbound, outbound); limiting altitudes; limiting distances	Minimum altitude over facility on final approach course (ft)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Typo aircraft	Typo aircraft	
1	2	3	4	5	6	7	8	9	10	11
OKLAHOMA CITY, OKLA Will Rogers, 1,233' Tulane AIRV-TVO Procedure No. 2. Amendment 3. Effective September 24, 1955. Supersedes Amendment 2, May 6, 1954. Major changes: Add radar procedure authority. Limit procedure turn distance. Delete alternate missed approach procedure	Oklahoma City LFR Oklahoma City VOR Oklahoma City LOM Bethany Intersection (final) Mustang FM	015-5 0 003-10 0 320-11 0 152-3 0 052-12 0	2,600 2,500 2,500 2,600 2,500	W side of course; 250° outbound, 152° inbound, 2,500' within 10 miles. Beyond 10 miles not authorized	2,600	170-1 0	T-dn C-dn S-dn 17	2 engines or less 300-1 400-1 400-1	300-1 200-1 400-1	Within 4.6 miles climb to 2,400 on course of LFR within 2.5 miles. 300-1 required for takeoff on runways 8 23.
	Radar transition altitudes within 25 nautical miles radius of Oklahoma City L/M/F range and VOR ranges: NE quadrant 3,800' SE quadrant 2,700' SW quadrant 2,800' NW quadrant 2,800'						A-dn	All aircraft. 300-2		

3 The very high frequency omnirange procedures prescribed in § 609 9 (a) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet. MSL. Ceilings are in feet above airport elevation. If a VOR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility; class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft)	Course and distance, facility to airport	Ceiling and visibility minimums		If visual contact not established at authorized landing minimums after passing fix ceiling within distance specified or if landing not accomplished	
							Condition	Type aircraft		
1	2	3	4	5	6	7	8	9	10	11
BALTIMORE, MD. Friendship International 140' Procedure No. 1. Effective date, June 15, 1951 Amendment "Original"										
HOUSTON, WASH Beverly 14' BVOR DTV BJ HQM Procedure No 1 Original Effective: Sept 24 1955										
OKLAHOMA CITY, OKLA Will Rogers 1,233' BVOR-OKO Procedure No 1 Amendment 1. Effective September 24, 1955. Supersedes Amendment original, dated March 8, 1954. Major changes: Add radar vector authority. Limit procedure turn distance. Raise procedure turn altitude.	Oklahoma City LFR	232-8 0	2 400	E side of course: 158° outbound 338° inbound. 2 000' within 10 miles	1 200	037-9 7	T-dn C-d C-n A-dn More than 2 engines T-dn C-d C-n A-dn	2 engines or less 300-1 300-1 300-2 300-2 300-2 300-1 1/2 300-2 300-2	300-1 300-1 300-2 300-2	Within 9.7 miles, climb to 3 500' on course 043° within 2.5 miles CAUTION: 500' MINS N and NE of airport
SAN JOSE, CALIF San Jose, 62' BVOR-SFO. Procedure No. 1 Amendment No. 2. Effective: September 24, 1955 Supersedes Amendment No 1 dated December 17, 1954. Major changes: Add transition from mission intersection; require shuttle descent to 2,000'; limit procedure turn distance to 5 miles; revise missed approach procedure; minor changes to final approach track and procedure turn altitude	Oakland LFR San Francisco LFR San Francisco LOM Moffett LFR Evergreen FMHW Saratoga Intersection. Mission Intersection.	134-27 0 107-23 0 110-20 0 052-3 0 280-11 0 021-18 0 183-5 0	3, 000 2, 000 2 000 1, 700 1, 700 4, 500 3, 000	N side of course: 295° outbound 115° inbound. 1,600' within 5 miles. Not authorized beyond 5 miles. See mandatory note	1 100	115-3 9	T-dn C-dn A-dn More than 2 engines T-dn C-dn A-dn	2 engines or less 300-1 300-1 300-2 300-1 1/2 300-2	300-1 300-1 300-2 300-1 1/2 300-2	Within 3.9 miles turn right and proceed to the SFO VOR climbing to 2,000' on radial 133° (300 inbound), then hold SE of SFO VOR in a 1 minute left turn pattern on radial 115° at 2,000' MANDATORY NOTE: All aircraft over the SFO VOR approaching San Jose Airport must descend to 2,000' in a 1 minute left turn holding pattern on SFO radial 115° before continuing with approach. Procedure turn not authorized beyond 5 miles due to possible conflict with SFO LOM holding pattern.

PROCEDURE CANCELED, EFFECTIVE DATE: AUGUST 24, 1955. (PROCEDURE UNUSABLE DUE TO ERECTION OF TELEVISION AND RADIO ANTENNAE NEAR THE CITY OF BALTIMORE AND THE LIMITED DISTANCE BETWEEN THE FACILITY AND THE AIRPORT)

TITLE 19—CUSTOMS DUTIES

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

[T. D. 53876]

**PART 4—VESSELS IN FOREIGN AND
DOMESTIC TRADES**

FOREIGN CLEARANCES

A recent employee suggestion recommended that the Bureau eliminate the requirement now contained in § 4.68 (b) of the Customs Regulations that a list be submitted showing the name and nationality of each member of the crew before final clearance of a foreign vessel shall be granted. In view of the changes in the international situation which have occurred since the date of adoption of that requirement, the suggestion has been approved, and § 4.68 of the Customs Regulations is further amended by deleting paragraph (b) and redesignating paragraph (c) as paragraph (b)

(R. S. 161, sec. 2; 23 Stat. 118, as amended; 5 U. S. C. 22, 46 U. S. C. 2)

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

Approved: August 23, 1955.

DAVID W. KENDALL,
Acting Secretary of the Treasury.

[F. R. Doc. 55-6999; Filed, Aug. 29, 1955; 8:46 a. m.]

**TITLE 26—INTERNAL REVENUE,
1954**

**Chapter I—Internal Revenue Service,
Department of the Treasury**

Subchapter A—Income Tax
[T. D. 6140]

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

Regulations under subchapter A of chapter 6 relating to returns and payment of tax (consolidated returns) and subchapter B, related rules, of the Internal Revenue Code of 1954.

- Sec.
- 1.1501 Statutory provisions; privilege to file consolidated returns.
- 1.1501-1 Privilege to file consolidated returns.
- 1.1502 Statutory provisions; regulations.
- 1.1502-0 Introductory.
- 1.1502-1 Privilege of making consolidated returns.
- 1.1502-2 Definitions.
- 1.1502-3 Applicability of other provisions of law.

ADMINISTRATIVE PROVISIONS

- 1.1502-10 Exercise of privilege.
- 1.1502-11 Consolidated returns for subsequent years.
- 1.1502-12 Making consolidated return and filing other forms.
- 1.1502-13 Change in affiliated group during taxable year.
- 1.1502-14 Accounting period of an affiliated group.
- 1.1502-15 Liability for tax.
- 1.1502-16 Common parent corporation agent for subsidiaries.
- 1.1502-17 Waivers.
- 1.1502-18 Failure to comply with regulations.
- 1.1502-19 Tentative carryback adjustments.

**COMPUTATION OF TAX, RECOGNITION OF GAIN OR
LOSS, AND BASIS**

- Sec.
- 1.1502-30 Computation of tax.
- 1.1502-31 Basis of tax computation.
- 1.1502-32 Method of computation of income for period of less than 12 months.
- 1.1502-33 Gain or loss from sale of stock, or bonds or other obligations.
- 1.1502-34 Sale of stock; basis for determining gain or loss.
- 1.1502-35 Sale of bonds or other obligations; basis for determining gain or loss.
- 1.1502-36 Limitation on allowable losses on sale of stock, or bonds, or other obligations.
- 1.1502-37 Liquidations; recognition of gain or loss.
- 1.1502-38 Basis of property.
- 1.1502-39 Inventories.
- 1.1502-40 Bad debts.
- 1.1502-41 Sale and retirement by corporation of its bonds.
- 1.1502-42 Capital loss limitations and carry-over.
- 1.1502-43 Credit for foreign taxes.
- 1.1502-44 Methods of accounting.
- 1.1502-45 Mine exploration expenditures.
- 1.1502-46 Depreciation.
- 1.1502-47 Election to deduct accrued taxes.
- 1.1502-48 Liability for tax under section 631.
- 1.1502-49 Additions to tax for failure to pay estimated tax.
- 1.1502-50 Gain on sale of bonds and other evidences of indebtedness.
- 1.1503 Statutory provisions; computation and payment of tax.
- 1.1503-1 Computation and payment of tax.
- 1.1504 Statutory provisions; definitions.
- 1.1504-1 Definitions.
- 1.1505 Statutory provisions; cross references.
- 1.1551 Statutory provisions; disallowance of surtax exemption and accumulated earnings credit.
- 1.1551-1 Disallowance of surtax exemption and accumulated earnings credit.
- 1.1552 Statutory provisions; earnings and profits.
- 1.1552-1 Earnings and profits.

AUTHORITY: §§ 1.1501 to 1.1505 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply sec. 1502; 68A Stat. 367; §§ 1.1551 and 1.1551-1 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805; §§ 1.1552 and 1.1552-1 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply sec. 1552, 68A Stat. 371; 26 U. S. C. 7805.

On July 2, 1955, notice of proposed rule making regarding the regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, except where otherwise provided, under chapter 6 (relating to consolidated returns) of the Internal Revenue Code of 1954 was published in the FEDERAL REGISTER (20 F. R. 4719). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted:

§ 1.1501 Statutory provisions; privilege to file consolidated returns.

SEC. 1501. Privilege to file consolidated returns. An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members

of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

§ 1.1501-1 Privilege to file consolidated returns. For regulations relating to the privilege of filing consolidated returns, see § 1.1502-0 and following. For convenience, the several sections of the regulations under section 1502 have to the extent practicable, been given numbers corresponding, respectively, to the section numbers of prior consolidated returns regulations but preceded by the code number 1.1502.

§ 1.1502 Statutory provisions; regulations.

SEC. 1502. Regulations. The Secretary or his delegate shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

§ 1.1502-0 Introductory. The regulations prescribed under section 1502 of the Internal Revenue Code of 1954 are applicable in the case of all corporations (with certain statutory exceptions) to taxable years beginning after December 31, 1953, and ending after August 16, 1954, and with respect to such taxable years, the regulations under section 1502 supersede 26 CFR Part 24 (Regulations 129) Any provision of the regulations under such section, the applicability of which is stated in terms of a specific date (occurring after December 31, 1953) or in terms of taxable years ending after a specific date (occurring after December 31, 1953) shall apply to taxable years ending after such specific date. Each such provision shall in the case of a taxable year subject to 26 CFR Part 24 (Regulations 129) be deemed included in 26 CFR Part 24 (Regulations 129) but shall be applicable only to taxable years ending after such specific date. The provisions of 26 CFR Part 24 (Regulations 129) superseded by provisions of the regulations under section 1502, the applicability of which is stated in terms of a specific date (occurring after December 31, 1953) shall be deemed to be included in the regulations under such section but shall be applicable only to the period prior to the taking effect of the corresponding provision of the regulations under such section.

§ 1.1502-1 Privilege of making consolidated returns. (a) Section 1501 gives to the corporations of an affiliated group the privilege of making a consolidated income tax return for the taxable year in lieu of separate returns. This privilege is given, however, upon the condition that all corporations which have

been members of the affiliated group at any time during the taxable year for which the return is made consent to the regulations under section 1502 applicable to such taxable year and any amendments thereof duly prescribed prior to the last day prescribed by law for the filing of the return; and the making of the consolidated return is considered as such consent.

(b) With respect to a taxable year to which 26 CFR Part 24 (Regulations 129) as amended by the regulations under section 1502 is applicable, the regulations to which consent is made are those in 26 CFR Part 24 (Regulations 129) as amended, and as further amended by the regulations under such section. With respect to a taxable year to which the regulations under section 1502 are applicable, the regulations to which consent is made are the regulations under such section as changed to the extent that portions of 26 CFR Part 24 (Regulations 129) are applicable. For example, in the case of a fiscal year ending October 31, 1954, the Internal Revenue Code of 1939 and 26 CFR Part 24 (Regulations 129) are applicable to a consolidated return filed for such year. In such case, if the first distribution in pursuance of a plan of complete liquidation of a member of the affiliated group occurs on or after June 22, 1954, § 1.1502-38 is applicable in lieu of 26 CFR 24.38. On the other hand, if such a distribution occurs before June 22, 1954, 26 CFR 24.38 is applicable. Similarly in the case of a return filed for the calendar year 1954, the Internal Revenue Code of 1954 and the regulations under section 1502 are applicable. In such case, if the first distribution in pursuance of a plan of complete liquidation of a member of the affiliated group occurs prior to June 22, 1954, 26 CFR 24.38 is applicable in lieu of § 1.1502-38. If such distribution occurs on or after June 22, 1954, § 1.1502-38 is applicable.

(c) The last day prescribed by law for the filing of the return includes the last day of the period of any extension of time granted by the Commissioner.

(d) The tax liability of the members of the affiliated group for the taxable year involved will be determined in accordance with the provisions of the regulations to which consent is given and without regard to any changes of the rules therein prescribed made subsequent to the last day prescribed by law for the filing of the return for such year.

§ 1.1502-2 *Definitions*—(a) *Code*. The term "Code" means the Internal Revenue Code of 1954 and the sections of statutory law referred to in the regulations under section 1502 unless otherwise stated, are sections of that Code.

(b) *Affiliated group*. (1) The term "affiliated group" is defined in section 1504 and includes the common parent corporation and every other corporation for the period during which such corporation is a member of the affiliated group within the meaning of such section. It does not include any corporation which is not an "includible corporation" as defined by section 1504 (b). An includible corporation is defined by such section to mean any corporation, except—

(i) A corporation exempt under section 501 from the taxes imposed by subtitle A,

(ii) An insurance company subject to taxation under section 802 or 821 (except as provided in section 1504 (c))

(iii) A foreign corporation (except as provided in section 1504 (d))

(iv) A corporation entitled to the benefits of section 931 by reason of receiving a large percentage of its income from sources within possessions of the United States;

(v) A corporation organized under the China Trade Act, 1922;

(vi) A regulated investment company subject to tax under subchapter M of chapter 1, and

(vii) An unincorporated business enterprise subject to tax as a corporation under section 1361.

The consolidated income tax return must include every includible corporation which, under the provisions of section 1504, is a member of the affiliated group. No corporation which is connected by stock ownership with an affiliated group of includible corporations through a nonincludible corporation may be included in the consolidated return of such group. In no case may a consolidated return be filed by subsidiary corporations as an affiliated group unless the common parent corporation through which the subsidiaries are connected is a member of the group. For instance, there will not be recognized as an affiliated group two domestic industrial corporations, the common parent corporation of which is a regulated investment company subject to tax under subchapter M of chapter 1.

(2) An insurance company subject to tax under section 831 is an includible corporation and may be included in an affiliated group, together with corporations other than insurance companies taxable under section 802 or 821. Insurance companies subject to tax under section 802 or 821 are not includible corporations under section 1504 (b). Under section 1504 (c) however, a domestic insurance company taxable under section 802 may be included in an affiliated group comprised solely of other domestic insurance companies taxable under section 802; it may not be included in an affiliated group with other corporations. An affiliated group of domestic insurance companies taxable under section 802 may not include a domestic insurance company taxable under section 821 or 831.

(3) In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of Canada or of Mexico and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for income tax purposes as a domestic corporation. The option to treat such foreign corporation as a domestic corporation so that it may be included in a consolidated return must be exercised at the time of making the consolidated return, and cannot be exer-

cised at any time thereafter. If the election is exercised to treat such foreign corporation as a domestic corporation, it must be included in the consolidated return of the affiliated group of which it is a member for each consecutive year thereafter for which such group makes or is required to make a consolidated return.

(4) An affiliated group of corporations, within the meaning of section 1504 of the Code, is formed at the time that the common parent corporation, which is an includible corporation, becomes the owner directly of stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of nonvoting stock (not including nonvoting stock which is limited and preferred as to dividends) of another includible corporation; a corporation becomes a member of such an affiliated group at the time that one or more members of such group become the owners directly of stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock (not including nonvoting stock which is limited and preferred as to dividends) and a corporation ceases to be a member of such an affiliated group at the time that the members of such group cease to own directly stock possessing at least 80 percent of the voting power of all classes of its stock, or at least 80 percent of each class of its nonvoting stock (not including nonvoting stock which is limited and preferred as to dividends)

(c) *Consolidated return period*. The term "consolidated return period" means the taxable year 1929, or any subsequent taxable year, for which a consolidated return is made or is required, income tax return, excess profits tax return, or both, including the period during which a subsidiary corporation is engaged in distributing its assets in liquidation.

(d) *Subsidiary*. The term "subsidiary" means a corporation (other than the common parent corporation) which is a member of the affiliated group during any part of the consolidated return period.

(e) *Tax*. The term "tax" means any tax imposed by chapter 1 of subtitle A, and includes any interest, penalty, additional amount, or addition to the tax, payable in respect thereof.

(f) *Terms defined in Internal Revenue Code*. Terms which are defined in the Code shall, when used in the regulations under section 1502 have the meaning assigned to them by the Code, unless specifically otherwise defined.

(g) *Regulated public utility*. (1) The term "regulated public utility" means a corporation described in section 1503 (c). It includes a corporation (i) whose operations are an integral part of the furnishing or sale of a product or service described in such section by an interconnected and coordinated public utility system or systems and (ii) whose rates for furnishing products or services to the system or systems are established or approved by a regulatory body described in section 1503 (c) (1); For the purpose of determining whether

or not 80 percent of the gross income of the corporation is from the furnishing or sale of such product or service, income received in consideration for the product or service described shall include only income received directly therefrom and income from the furnishing or sale of byproducts and residual products which are directly necessary and incidental to the furnishing of such product or service. In determining under (i) whether the operations of a particular corporation constitute an integral part of the "furnishing or sale" of a product or service described in section 1503 (c) the income of a corporation shall be deemed to be from such source only to the extent that it is in consideration for necessary processing of either the product described in section 1503 (c) or the essential facilities used in making available to customers such product or service.

§ 1.1502-3 *Applicability of other provisions of law.* Any matter in the determination of which the provisions of the regulations under section 1502 are not applicable shall be determined in accordance with the provisions of the Code or other law applicable thereto.

ADMINISTRATIVE PROVISIONS

§ 1.1502-10 *Exercise of privilege—*

(a) *When privilege must be exercised.* The privilege of making a consolidated return under section 1502 for any taxable year of an affiliated group must be exercised at the time of making the return of the common parent corporation for such year. For this purpose, the return is considered as made on the due date of such return (including any extensions of time granted by the Commissioner) regardless of the actual previous date of filing. Under no circumstances can such privilege be exercised at any time thereafter. The filing of separate returns for a taxable year does not constitute an election binding upon the corporation in subsequent years. If the privilege is exercised at the time of making the return, separate returns cannot thereafter be made for such year. (See, however, § 1.1502-18, relating to failure to comply with the regulations under section 1502.)

(b) *Effect of tentative returns.* In no case will the privilege under paragraph (a) of this section be considered as exercised at the time of making a so-called "tentative return" (made, for example, in order to obtain an extension of time for making the return required by law) However, if any such tentative return is made upon the basis of a consolidated return or a separate return, the return required by law must be made upon the same basis, unless upon the making of the return required by law (either a separate return or a consolidated return, as the case may be) the payments therefore made and to be made are adjusted in a manner satisfactory to the Commissioner.

(c) *Estimated tax.* (1) Except as provided in subparagraph (2) of this paragraph, the provisions of section 6016 (relating to declarations of estimated tax by corporations) and section 6154 (relating to payments of estimated tax by

corporations) shall be applicable to the several members of an affiliated group in the same manner and to the same extent as in the case of corporations filing separate returns, whether or not such affiliated group files a consolidated return. The declaration of estimated tax shall be filed and payments shall be made to the director for the district prescribed for the filing of a separate income tax return in the case of each member of the group required to file a declaration of estimated tax. If a consolidated return is filed, the amounts of any payments made with respect to the consolidated return period shall be credited against the tax liability of the affiliated group with respect to the consolidated return period.

(2) If the affiliated group intends to file a consolidated return for the taxable year, the common parent corporation may file a declaration of estimated tax for the group. In such case, all of the several members of the affiliated group shall be treated for the purpose of applying the provisions of sections 6016 and 6154 as a single corporation. Where such a declaration is filed, each subsidiary shall notify the director for the district prescribed for the filing of a separate income tax return by such subsidiary that its estimate is included in the declaration made by the common parent corporation. If the affiliated group does not file a consolidated return for the year for which such a declaration is filed, the payments made with respect to such declaration shall be apportioned among the several members of the group in the manner designated by the common parent corporation for the purpose of determining any addition to the tax provided by section 6655.

(3) In any case in which an affiliated group has made payments with respect to a declaration made on a group basis and such group does not file a consolidated return for the taxable year, the payments made thereon shall be applied against the tax liability of the members of the group in a manner satisfactory to the Commissioner.

(4) See § 1.1502-15 (relating to liability for tax) and § 1.1502-49 (relating to additions to tax for failure to pay estimated tax)

§ 1.1502-11 *Consolidated returns for subsequent years—*(a) *Consolidated returns required for subsequent years.* If a consolidated return is made under section 1502 for any taxable year, a consolidated return must be made for each subsequent taxable year during which the affiliated group remains in existence unless (1) a corporation (other than a corporation created or organized, directly or indirectly, by a member of the group) has become a member of the group during such subsequent taxable year, or (2) subsequent to the exercise of the election to make consolidated returns, subtitle A of the Code to the extent applicable to corporations, or the regulations under section 1502 which have been consented to, have been amended and any such amendment is of a character which makes substantially less advantageous to affiliated groups as a class the continued filing of

consolidated returns, regardless of the effective date of such amendment, or (3) the Commissioner, prior to the time of making the return, upon application made by the common parent corporation and for good cause shown, grants permission to change. For the purpose of subparagraph (2) of this paragraph, the expiration of a provision shall be considered as an amendment to the Code made on the date of such expiration.

(b) *Effect of separate returns when consolidated return is required.* If the making of a consolidated return is required for any taxable year, the tax liability of the members of the affiliated group shall be computed in the same manner as if a consolidated return had been made, even though separate returns are made; amounts assessed upon the basis of separate returns shall be considered as having been assessed upon the basis of a consolidated return; and amounts paid upon the basis of separate returns shall be considered as having been paid by the common parent corporation. In such cases the making of separate returns shall not be considered as the making of a return for the purpose of computing any period of limitation or any deficiency. If a consolidated return for such taxable year is thereafter made, such return shall, for the purpose of computing periods of limitation and any deficiency, be considered as the return for such year.

(c) *When affiliated group remains in existence.* For the purpose of the regulations under section 1502, an affiliated group shall be considered as remaining in existence if the common parent corporation remains as a common parent and at least one subsidiary remains affiliated with it, whether or not such subsidiary was a member of the group at the time the group was formed and whether or not one or more corporations have become subsidiaries or have ceased to be subsidiaries at any time after the group was formed.

(d) *When affiliated group terminates.* For the purpose of the regulations under section 1502, an affiliated group shall be considered as terminated if the common parent corporation ceases to be the common parent or if there is no subsidiary affiliated with it.

§ 1.1502-12 *Making consolidated return and filing other forms—*(a) *Consolidated return made by common parent corporation.* A consolidated return shall be made on Form 1120 by the common parent corporation for the affiliated group. Such return shall be filed at the time and in the office of the director of internal revenue for the district prescribed for the filing of a separate return by such common parent corporation.

(b) *Authorizations and consents.* Each subsidiary must prepare duplicate originals of Form 1122, consenting to the regulations under section 1502 and authorizing the common parent corporation to make a consolidated return on its behalf for the taxable year and authorizing the common parent (or, in the event of its failure, the Commissioner or the district director) to make a consolidated return on its behalf (as long as it remains a member of the affiliated

group) for each year thereafter for which, under § 1.1502-11 (a) the making of a consolidated return is required. One of such forms, as prepared by each subsidiary shall be attached to the consolidated return, as a part thereof; and the other shall be filed, at or before the time the consolidated return is filed, in the office of the director for the district prescribed for the filing of a separate return by such subsidiary. No such consent can be withdrawn or revoked at any time after the consolidated return is filed.

(c) *Affiliations schedule filed by common parent corporation.* The common parent corporation shall prepare Form 851 (Affiliations Schedule) which shall be attached to and made a part of the consolidated return.

(d) *Persons qualified to execute returns and forms.* Each return or form required to be made or prepared by a corporation must be executed by the person authorized under section 6062 to execute returns of separate corporations. In cases where receivers or trustees in bankruptcy are operating the property or business of corporations, each return or form required to be made or prepared by such corporation must be executed by the receiver or trustee, as the case may be, pursuant to an order or instructions of the court, and be accompanied by a copy of such order or instructions.

(e) *Signatures in case subsidiary has left affiliated group.* Since Form 1122 is required even though, during the taxable year of the common parent corporation, the subsidiary (because of a dissolution or sale of stock, or otherwise) has ceased to be a member of the affiliated group, it may be advisable for the common parent to obtain the proper signatures to the form prior to the time the subsidiary ceases to be a member of the group.

§ 1.1502-13 *Change in affiliated group during taxable year*¹—(a) *General rule.* Except as hereinafter provided, a consolidated return must include the income of the common parent corporation and of each subsidiary for the entire taxable year of the affiliated group.

(b) *Formation of affiliated group after beginning of year.* If an affiliated group is formed after the beginning of the taxable year of the corporation which becomes the common parent corporation, the consolidated return must include the income of the common parent for its entire taxable year (excluding any portion of such year during which its income is included in the consolidated return of another affiliated group) and the income of each subsidiary from the time it became a member of the affiliated group.

(c) *Complete termination of affiliated group prior to close of taxable year.* If an affiliated group is terminated prior to the close of the taxable year of the group, the consolidated return must include the income of the common parent corporation for its entire taxable year (excluding any portion of such year during

which its income is included in the consolidated return of another affiliated group) and of each subsidiary for the period prior to the termination. (See paragraphs (c) and (d) of § 1.1502-11 in determining whether the group has terminated.)

(d) *Addition to affiliated group of a subsidiary during year.* If a corporation becomes a member of the affiliated group during the taxable year of the group, the consolidated return must include its income from the time when it became a member of the group.

(e) *Elimination from affiliated group of a subsidiary during year.* If a subsidiary ceases to be a member of the affiliated group during the taxable year of the group, the consolidated return must include its income for the period during which it was a member of the group.

(f) *Period of 30 days or less may be disregarded.* A subsidiary may at its option be considered as having been a member of the affiliated group during the entire taxable year of the group (or during the entire period of the existence of the subsidiary, whichever is shorter) if the period during which it was not a member of such group does not exceed 30 days. If a corporation has been a member of the affiliated group for a period of less than 31 days during the taxable year of the group, it may at its option be considered as not having been a member of the group during the taxable year. An option under this paragraph must be exercised at the time the consolidated return is made.

(g) *Separate returns for periods not included in consolidated return.* If a corporation, during its taxable year (determined without regard to the affiliation) becomes a member of an affiliated group, its income for the portion of such taxable year not included in the consolidated return of such group must be included in a separate return (or, if a member of another affiliated group which makes a consolidated return for such period, then in such consolidated return) If a corporation ceases to be a member of the affiliated group during the taxable year of the group, its income for the period after the time when it ceased to be a member of the group must be included in a separate return (or, if it becomes a member of another affiliated group which makes a consolidated return for such period, then in such consolidated return)

(h) *Time for making separate returns for periods not included in consolidated return.* If a corporation, during its taxable year (determined without regard to the affiliation) becomes a member of an affiliated group, the separate return required for the portion of such taxable year during which it was not a member of the group must be made on or before the 15th day of the third month following the close of its taxable year (determined without regard to the affiliation) For example, Corporation P reporting its income on a calendar year basis, acquires on January 1, 1954, all the stock of Corporation S, which reports its income on a fiscal year basis ending March 31. P and S elect to make a consolidated return for the calendar year 1954. The separate return of S for the taxable

period April 1, 1953, to December 31, 1953, should be made on or before June 15, 1954.

§ 1.1502-14 *Accounting period of an affiliated group.* (a) The taxable year of an affiliated group which makes a consolidated return shall be the same as the taxable year of the common parent corporation; and, upon having elected to file a consolidated return, each subsidiary corporation shall, not later than the close of the first consolidated taxable year ending thereafter, adopt an annual accounting period, fiscal year or calendar year as the case may be, in conformity with that of the common parent.

(b) If a change of accounting period is necessary in order to conform the accounting periods of the common parent and of its subsidiaries, Form 1128 shall be submitted at or before the time of filing the consolidated return for the taxable year in which the subsidiary has first adopted the parent corporation's annual accounting period.

(c) With respect to computations for years involved in the change to the consolidated basis, see § 1.1502-32.

§ 1.1502-15 *Liability for tax*—(a) *Several liability of members of affiliated group.* Except as provided in paragraphs (b) and (c) of this section, the common parent corporation and each subsidiary, a member of the affiliated group during any part of a consolidated return period, shall be severally liable for the tax (including any deficiency in respect thereof) computed as provided in § 1.1502-30, and for any addition to the tax computed as provided in § 1.1502-49 for underpayment of estimated tax for the consolidated return period.

(b) *Liability of a corporation in bankruptcy or receivership.* If, at the time of filing a consolidated return, one or more, but not all, of the members of the affiliated group are in bankruptcy under the laws of the United States or in receivership in any court of the United States or of any State, Territory, or the District of Columbia, then the liability under paragraph (a) of this section of each such member of the group with respect to the period covered by such return shall not exceed such portion of the consolidated tax liability for such period as the several corporations included in the consolidated return may, subject to the approval of the Commissioner, agree upon, or, in the absence of such an agreement, an amount equal to its liability for such year computed as if a separate return had been filed.

(c) *Liability of subsidiary after withdrawal.* If a subsidiary has ceased to be a member of the affiliated group, its liability under paragraph (a) of this section shall remain unchanged, except that if such cessation occurred prior to the date upon which any deficiency is assessed and resulted from a bona fide sale of stock for fair value, the Commissioner may, if he believes that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former subsidiary in an amount not exceeding the portion thereof allocable to it upon the bases of income used in the computations, re-

¹This section has no bearing upon the question whether a consolidated return may or must be made, but relates only to the effect of changes in the affiliated group during the taxable year.

spectively, of the normal tax, the surtax, and any other tax imposed by chapter 1 of subtitle A included in such deficiency.

(d) *Effect of intercompany agreements.* Any agreement entered into by one or more members of the affiliated group with any other members of such group or with any other person shall in no case have the effect of reducing the liability prescribed under this section.

(e) *Liability of transferee not affected.* This section shall not be considered as extinguishing or diminishing any liability, at law or in equity, of a transferee of property of a taxpayer, including any liability under any provision of law, State or Federal, relating to liabilities pursuant to corporate dissolution or transfer or distribution of assets, whether or not in connection with a merger or consolidation.

§ 1.1502-16 *Common parent corporation agent for subsidiaries*—(a) *Scope of agency of common parent corporation.* Except as provided in paragraphs (b) and (c) of this section—The common parent corporation shall be for all purposes (other than the making of the subsidiary consent required by § 1.1502-12 (b)) in respect of the tax for the taxable year for which a consolidated return is made or is required, the sole agent, duly authorized to act in its own name in all matters relating to such tax, for each corporation which during any part of such year was a member of the affiliated group. The corporations, other than the common parent, shall not have authority to act for or to represent themselves in any such matter. For example, all correspondence will be carried on directly with the common parent; notices of deficiencies will be mailed only to the common parent, and the mailing to the common parent shall be considered as a mailing to each such corporation; notice and demand for payment of taxes will be given only to the common parent, and such notice and demand shall be considered as a notice and demand to each such corporation; the common parent will file petitions and conduct proceedings before The Tax Court of the United States, and any such petition shall be considered as having also been filed by each such corporation; the common parent will file claims for refund or credit; refunds will be made directly to and in the name of the common parent and will discharge any liability of the Government in respect thereof to any such corporation; and the common parent in its name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given or executed by each such corporation. Notwithstanding the provisions of this paragraph, however, any notice of deficiency, in respect of the tax for a consolidated return period, will name each corporation which was a member of the affiliated group during any part of such period, and any assessment (whether of the original tax or of a deficiency) will

be made in the name of each such corporation (but a failure to include the name of any such corporation will not affect the validity of the notice of deficiency or the assessment as to the other corporations) any notice and demand for payment will name each corporation which was a member of the affiliated group during any part of such period (but a failure to include the name of any such corporation will not affect the validity of the notice and demand as to the other corporations) and any levy (or warrant or notice in respect thereof), any notice of a lien, or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which such collection is to be made. The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. Notwithstanding the provisions of this paragraph, the Commissioner may, if he deems it advisable, deal directly with any member of the group in respect of its liability, in which event such member shall have full authority to act for itself.

(b) *Effect of withdrawal of subsidiary.* For the purpose of the assertion, assessment, and collection of any deficiency, and of a credit or refund of any amount paid by a former subsidiary as a deficiency determined under § 1.1502-15 (c), but for no other purpose, the agency of the common parent corporation in respect of any subsidiary which has ceased to be a member of the affiliated group shall be terminated upon the expiration of 30 days (or prior thereto if the Commissioner consents) from the date upon which such subsidiary files written notice with the Commissioner that it has ceased to be a member of the affiliated group and that it is terminating such agency. For example, if a subsidiary has ceased to be a member of the group (and if the 30-day period has expired) prior to the mailing of a notice of deficiency to the common parent, a separate notice of deficiency will be mailed in due course to the subsidiary in respect of its deficiency if it becomes necessary to enforce its liability.

(c) *Effect of dissolution of common parent corporation.* If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the Commissioner of such fact and designate, subject to the approval of the Commissioner, another member of the affiliated group to act as agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If the notice thus required is not given by the common parent, the remaining members of the group may, subject to the approval of the Commissioner, designate another member of the group to act as such agent, and notice of such designation shall be given to the Commissioner. Until a notice in writing designating a new agent has been received by the Commissioner, any notice of deficiency or

other communication mailed to the common parent shall be considered as having been properly mailed to the agent of the group; or, if the Commissioner has reason to believe that the existence of the common parent has terminated, he may, if he deems it advisable, deal directly with any member of the group in respect of its liability.

§ 1.1502-17 *Waivers*—(a) *Effect of waiver given by common parent corporation.* Any consent given by the common parent corporation (or by an agent in accordance with paragraph (c) of § 1.1502-16) extending the time within which an assessment may be made or levy or proceeding in court begun, in respect of the tax for a consolidated return period, shall be applicable (1) to each corporation which was a member of the affiliated group during any part of such period (whether or not any such corporation has ceased to be a member of the group) and (2) to each corporation the income of which was included in the consolidated return, or which filed Form 1122, for such period, even though it is subsequently determined that such corporation was not a member of the group.

(b) *Acceptance of waivers from common parent corporation and alleged subsidiary.* In no case will a separate waiver be accepted from a corporation the income of which was included in the consolidated return (for example, a corporation which the Commissioner determines was not a member of the affiliated group) or which filed Form 1122, unless a waiver is also obtained from the common parent, or unless the Commissioner is dealing directly with such corporation to enforce its liability.

§ 1.1502-18 *Failure to comply with regulations*—(a) *Exclusion of a subsidiary from consolidated return.* If there has been a failure to include in the consolidated return the income of any subsidiary, or a failure to file any of the forms required by these regulations, notice thereof shall be given the common parent corporation by the Commissioner, and the tax liability of each member of the affiliated group shall be determined on the basis of separate returns unless such income is included or such forms are filed within the period prescribed in such notice, or any extension thereof, or unless under § 1.1502-11 a consolidated return is required for such year.

(b) *Common parent corporation incorrectly designated in consolidated return.* If a consolidated return includes a corporation as the common parent and such corporation was not (under the provisions of section 1502), the common parent, the tax liability of each corporation included in the return will be computed in the same manner as if separate returns had been made, unless, upon application, the Commissioner approves the making of a consolidated return, or unless under § 1.1502-11 a consolidated return is required for such year.

(c) *Inclusion of one or more subsidiaries not members of affiliated group.* If a consolidated return includes a corporation as a subsidiary and such corporation was not a member of the affiliated

group during the consolidated return period, the tax liability of such corporation will be determined upon the basis of a separate return (but see paragraph (a) of this section) and the consolidated return shall be considered as including only the corporations which were members of the group during such period. If the consolidated return includes two or more corporations which are not members of the group but which constitute a separate affiliated group, the tax liability of the corporations constituting the separate group will be computed in the same manner as if separate returns had been made by such corporations, unless the Commissioner, upon application, approves the making of a consolidated return for the separate group, or unless under § 1.1502-11 a consolidated return is required for the separate group.

(d) *Effect of authorization and consent filed pursuant to notice.* If Form 1122 is filed by any corporation, pursuant to a notice under paragraph (a) of this section, such corporation shall be considered for all purposes as having joined in the making of the consolidated return.

(e) *Allocation of payments in the event of change by one or more corporations to separate returns.* In any case in which amounts have been assessed and paid upon the basis of a consolidated return and the tax liability of one or more of the corporations included in the consolidated return is to be computed in the same manner as if separate returns had been made, the amounts so paid shall be allocated between the affiliated group composed of the corporations properly included in the consolidated return and each of the corporations the tax liability of which is to be computed on a separate basis, in such manner as the corporations included in the consolidated return may, subject to the approval of the Commissioner, agree upon, or, in the absence of an agreement, upon the bases used in the respective computations of the normal tax, the surtax and any other tax imposed by chapter 1 of subtitle A, as shown upon the consolidated return.

§ 1.1502-19 *Tentative carryback adjustments—(a) Groups with constant membership; consolidated returns only.* In the case of an affiliated group the membership of which remains unchanged and for which consolidated returns are made or are required for the taxable years involved, any statement filed under section 6164 of the Code with respect to an expected carryback and any application for a tentative carryback adjustment filed under section 6411 shall be filed by the common parent corporation and shall disclose all material facts and circumstances relating to the group as a whole. Such statement or application shall be filed on the appropriate form prescribed for such purpose, Form 1138 or Form 1139, as the case may be. Any refunds allowable under any such application will be made directly to and in the name of the common parent. The making of any such refund will discharge any liability of the Government in respect thereof to the several affiliated corporations. The common

parent corporation and its several subsidiaries shall be severally liable for any amounts assessed pursuant to section 6213 (b) (2) together with any interest or penalty assessed in connection therewith.

(b) *Groups with changing membership; cases involving a separate return period.* (1) The membership of an affiliated group may change during a taxable year for which a net operating loss arises, or in the preceding taxable year affected by such net loss. Or an affiliated group making a consolidated return for the year of such net loss may have made separate returns for the preceding year or a group making separate returns for the year of the net loss may have made a consolidated return for the preceding year. In any such case, the statement provided for in section 6164 of the Code and the application for the tentative carryback adjustment provided for in section 6411 shall be a joint statement or application concurred in and executed by each corporation which was a member of the group at any time during either of the taxable years involved in the deferment or adjustment sought. The time for the payment of taxes shall be extended under section 6164 and the adjustment provided for in section 6411 shall be made only in accordance with an agreement of the several corporations involved to be made a part of such statement or application. Any refund allowable under any such application with respect to a consolidated return period will be made directly to and in the name of the common parent corporation, and the making of any such refund will discharge any liability of the Government in respect thereof to the several affiliated corporations. The common parent corporation and its several subsidiaries shall be severally liable for any amounts assessed pursuant to section 6213 (b) (2) together with any interest or penalty assessed in connection therewith.

(2) In the absence of an agreement between the several corporations, or in the event of their failure to set forth the provisions of such an agreement as a part of their statement or application, no extension of time for the payment of any tax under the provisions of section 6164 shall be granted, and no tentative adjustment shall be made under section 6411.

(3) Notwithstanding any agreement between the several affiliated corporations, no tentative adjustment shall be made with respect to either a consolidated or a separate return period in disregard of the several liability of the several corporations with respect to any taxable year for which a consolidated return was made or was required.

COMPUTATION OF TAX, RECOGNITION OF GAIN OR LOSS, AND BASIS

§ 1.1502-30 *Computation of tax—(a) General rule.* In the case of an affiliated group which makes, or is required to make, a consolidated return for any taxable year, the tax liability of each corporation for the period during such year that it was a member of such group shall be computed, subject to the provisions

of paragraph (b), upon the consolidated taxable income and the consolidated taxable income plus the aggregate of the deductions of the several affiliated corporations allowable under section 242, or, in the case of the taxes imposed by section 531, section 541 (except as provided in paragraph (b) (4) of this section), and section 802, upon the consolidated accumulated taxable income, the consolidated undistributed personal holding company income, the consolidated life insurance company taxable income, the consolidated life insurance company taxable income plus the aggregate of the deductions of the several affiliated corporations allowable under section 242, or the consolidated 1954 life insurance company taxable income, as the case may be, determined in each case in accordance with the regulations under section 1502. In the case of an affiliated group realizing long-term capital gains and computing its tax under the alternative tax provisions of section 1201, the tax shall be computed with reference to the consolidated taxable income, and the excess of the consolidated net long-term capital gain over the consolidated net short-term capital loss. The tax imposed under section 11 (c) or section 831 shall be increased for any taxable year for which an affiliated group makes or is required to make a consolidated return by 2 percent of the consolidated taxable income (computed without regard to the deduction, if any, provided in section 242 for partially tax-exempt interest)

(b) *Special rules.* The general rule prescribed in paragraph (a) of this section is subject to the following special rules:

(1) *In the case of Western Hemisphere trade corporations and regulated public utilities.* If the affiliated group filing a consolidated return includes a Western Hemisphere trade corporation, as defined in section 921, or a regulated public utility as defined in section 1503 and § 1.1502-2 (g), the increase of 2 percent provided in section 1503 (a) in the corporation surtax rate shall be applied only on that portion of the consolidated taxable income attributable to the members of the group other than the Western Hemisphere trade corporation or the regulated public utility without any increase with respect to any partially tax-exempt interest of such Western Hemisphere trade corporation or such regulated public utility.

(2) *In case of mutual savings banks conducting life insurance business.* If the parent corporation of an affiliated group is a mutual savings bank which, if a separate return were filed, would be subject to the alternative tax of section 594 (a) (relating to a mutual savings bank conducting a life insurance business) the provisions of section 594 (a) shall apply to such group and the alternative tax of such group under section 594 (a) shall be computed with reference to the consolidated taxable income of the group attributable to such parent corporation determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, and with ref-

erence to the income of such life insurance department determined under the provisions of section 594 (a) (2) and § 1.1502-31 (b)

(3) *Changes in methods of accounting.* In any case in which a member of the affiliated group changes its method of accounting, if the year of the change is a year for which a consolidated return is filed (or is required to be filed) and if the requirements of section 481 (b) are met, then the tax under chapter 1 attributable to the increase in consolidated taxable income required by § 1.1502-44 (c) shall not be greater than the tax under chapter 1 (or the corresponding provisions of prior law) which would result if the provisions of section 481 (b) were applied to the corporation required to make the change in accounting method, but with the taxes for any year determined on the basis of the regulations under section 1502 (or prior consolidated returns regulations) if the income of such corporation was included in a consolidated return for such year, or on the basis of a separate return, if the income of such corporation was reported in a separate return for such year.

(4) *Personal holding companies.* In the case of an affiliated group which makes or is required to make a consolidated return for any taxable year, the tax liability of each corporation for the period during such year that it was a member of such group shall not be computed in the case of the tax imposed by section 541 upon the consolidated undistributed personal holding company income if—

(i) The affiliated group is an ineligible affiliated group as defined in section 542 (b) (2)

(ii) The affiliated group includes as a member (including the common parent corporation) an excluded corporation within the meaning of section 542 (c)

(iii) The consolidated personal holding company income is less than 80 percent of the consolidated section 542 gross income, or

(iv) At no time during the last half of the taxable year more than 50 percent in value of the outstanding stock of the parent corporation was owned directly or indirectly by or for not more than 5 individuals within the meaning of section 542 (a) (2)

If the tax liability of each corporation under section 541 is not computed upon the consolidated undistributed personal holding company income solely by reason of the application of (iii) or (iv) of this subparagraph (or both) no member of the affiliated group shall be subject to the tax under section 541 for such year or part thereof that it was a member of the affiliated group. If the tax liability of each corporation under section 541 is not computed upon the consolidated undistributed personal holding company income by reason of the application of (i) or (ii) of this subparagraph (whether or not (iii) or (iv) of this subparagraph, or both, are applicable) then such liability shall be computed by reference to the tax liability of the several members of the affiliated group which are personal holding companies within the meaning

of section 542 (a) in the same manner as if such corporations had filed separate returns except that § 1.1502-31 (b) (1) (i) shall be applicable (except with respect to dividends received from other members of the group) in the computation of gross income, personal holding company income, and undistributed personal holding company income, and section 562 (d) shall be applicable in the computation of dividends paid.

§ 1.1502-31 *Bases of tax computation.* In the case of an affiliated group of corporations which makes, or is required to make a consolidated return for any taxable year, and except as otherwise provided in the regulations under section 1502, the tax liability determined under § 1.1502-30 shall be determined subject to the definitions and rules of computation set forth in paragraphs (a) and (b) of this section.

(a) *Definitions—* (1) *Consolidated taxable income.* The consolidated taxable income shall be the combined taxable income of the several affiliated corporations—

(i) Minus the sum of—

(a) Any consolidated net operating loss deduction,

(b) Any consolidated section 1231 net loss, relating to net losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 1231,

(c) Any consolidated charitable contribution deduction, but not in excess of 5 percent of the consolidated taxable income computed without regard to such consolidated charitable contribution deduction, any deductions under Part VIII (except section 248) of subchapter B, any consolidated net operating loss carry-backs, and any deduction under section 922 (special deduction for Western Hemisphere trade corporations),

(d) Any consolidated dividends received deduction.

(e) Any consolidated section 922 deduction,

(f) Any consolidated section 175 deduction, but not in excess of 25 percent of the consolidated section 175 gross income, and

(g) Any consolidated section 247 deduction,

(ii) Plus any consolidated net capital gain, or

(iii) Minus, in the case of an affiliated group including as members one or more corporations subject to the tax imposed by section 831, the combined additional capital loss deductions of such corporations authorized by section 832 (c) (5) (but in an amount not in excess of the consolidated net capital loss)

(2) *Consolidated net operating loss deduction.* The consolidated net operating loss deduction shall be an amount equal to the aggregate of the consolidated net operating loss carry-overs and of the consolidated net operating loss carry-backs to the taxable year.

(3) *Consolidated net operating loss carry-overs.* The consolidated net operating loss carry-overs to the taxable year shall consist of

(i) The consolidated net operating losses, if any, for the five preceding taxable years (not including as a fifth pre-

ceding taxable year any taxable year beginning prior to 1950, unless such preceding taxable year began in 1949 and ended in 1950, and unless all members of the group for such preceding taxable year commenced business in 1949; and in such case the amount of the consolidated net operating loss for such fifth year shall not be treated as a carry-over except to the extent that such consolidated net operating loss is allocable to 1950) to the extent that the consolidated net operating loss for any such preceding taxable year was not attributable to a corporation making a separate return or joining in a consolidated return filed by another affiliated group for the taxable year and was not absorbed as a carry-over or carry-back for preceding or intervening taxable years.

and, with respect to a net operating loss sustained by a corporation in a taxable year for which a separate return was filed, or for which such corporation joined in a consolidated return filed by another affiliated group, but subject to the limitations prescribed in paragraph (b) (3) of this section—

(ii) The amount of the net operating losses, if any, of such corporation for the five preceding taxable years (not including as a fifth preceding taxable year any taxable year beginning prior to 1950 unless such preceding taxable year began in 1949 and ended in 1950, and unless such corporation commenced business in 1949) to the extent that the net operating loss for any such preceding taxable year was not absorbed as a carryover or carryback for preceding or intervening taxable years.

See, however, paragraph (b) (21) of this section in any case in which a member of the group is an acquiring corporation in a transaction described in section 381 (a) or any member of the group is subject to the limitations provided in section 382.

(4) *Consolidated net operating loss carrybacks.* The consolidated net operating loss carrybacks to the taxable year shall consist of—

(i) The amount of the consolidated net operating loss, if any, for the first succeeding taxable year (to the extent not attributable to a corporation making a separate return or joining in a consolidated return filed by another affiliated group for the taxable year) reduced to the extent absorbed as a carry-back, consolidated or separate, as the case may be, for the first preceding taxable year;

(ii) The amount of the consolidated net operating loss, if any, for the second succeeding taxable year to the extent not attributable to those corporations making separate returns in the taxable year;

and, with respect to a net operating loss sustained by a corporation which, for either of the two succeeding taxable years, files a separate return or joins in a consolidated return filed by another affiliated group, but subject to the limitations prescribed in paragraph (b) (3) of this section,

(iii) The amount of the net operating loss, if any, sustained by such corpora-

tion for the first succeeding taxable year reduced to the extent absorbed by such corporation for the first preceding taxable year or, if the income of such corporation is included in the consolidated return for the first preceding taxable year, reduced to the extent absorbed by such consolidated return; and

(iv) The amount of the net operating loss, if any, sustained by such corporation for the second succeeding taxable year.

See, however, paragraph (b) (21) of this section in any case in which a member of the group is an acquiring corporation in a transaction described in section 381 (a) or any member of the group is subject to the limitations provided in section 382.

(5) *Consolidated net operating loss.* The consolidated net operating loss shall be an amount equal to the excess of the sum of—

(i) The combined net operating losses of the several affiliated corporations having net operating losses,

(ii) The consolidated section 175 deduction,

(iii) The consolidated section 1231 net loss, and

(iv) The aggregate of the deductions of the several affiliated corporations under sections 243, 244, and 245 (computed without regard to the limitation contained in section 246 (b)) and under section 247 (computed without regard to the limitation of (a) (1) (B) of such section),

over the sum of—

(v) The combined taxable income of the several affiliated corporations having taxable income, computed without regard to any deductions under section 242 (relating to partially tax-exempt interest), and

(vi) The consolidated net capital gain.

(6) *Consolidated section 1231 net loss.* The consolidated section 1231 net loss shall be the excess of the aggregate of the recognized losses of the character described in section 1231 sustained by the several affiliated corporations over the aggregate of the recognized gains of the character described in section 1231 realized by the several affiliated corporations.

(7) *Consolidated charitable contribution deduction.* The consolidated charitable contribution deduction shall be the aggregate of the amount of the deductions of the several affiliated corporations allowable under section 170 for the taxable year (determined without regard to the 5 percent limitation of section 170 (b) (2)) and an amount equal to the aggregate of the consolidated charitable contribution carry-overs to the taxable year.

(8) *Consolidated charitable contribution carry-overs.* The consolidated charitable contribution carry-overs to the taxable year shall consist of—

(i) The excess, if any, of the amount of the consolidated charitable contribution deduction (computed without regard to any charitable contribution carry-overs) for the two preceding taxable years over the limitation of subparagraph (1) (i) (c) of this paragraph for such years to the extent that the

consolidated charitable contribution deduction for any such preceding taxable year was not attributable to a corporation making a separate return, or joining in a consolidated return filed by another affiliated group, for the taxable year and was not absorbed as a carry-over by the consolidated or separate net income or taxable income for the separate net income or taxable income for the intervening taxable year

and, with respect to any excess of charitable contributions over the applicable 5 percent limitation of a corporation in a taxable year for which a separate return was filed or for which such corporation joined in a consolidated return filed by another affiliated group—

(ii) The amount of such excesses of such corporation for the two preceding taxable years to the extent that such excess for the second preceding taxable year was not absorbed as a carry-over by consolidated or separate net income or taxable income for the first preceding taxable year.

(9) *Consolidated net capital gain.* The consolidated net capital gain shall be the excess of the sum of—

(i) The aggregate of the capital gains of the several affiliated corporations, and

(ii) The consolidated section 1231 net gain, over the sum of—

(iii) The aggregate of the capital losses of such corporations, and

(iv) The aggregate of the consolidated net capital loss carry-overs to the taxable year.

(10) *Consolidated section 1231 net gain.* The consolidated section 1231 net gain shall be the excess of the aggregate of the recognized gains of the character described in section 1231 realized by the several affiliated corporations over the aggregate of the recognized losses of the character described in section 1231 sustained by the several affiliated corporations.

(11) *Consolidated net capital loss carry-over.* The consolidated net capital loss carry-overs to the taxable year shall consist of—

(i) The consolidated net capital losses, if any, for the 5 preceding taxable years to the extent that such losses were not attributable to a corporation making a separate return, or joining in a consolidated return filed by another affiliated group, for the taxable year, and were not absorbed by net capital gains for intervening taxable years pursuant to the provisions of section 1212 or corresponding provisions of prior law, consolidated or separate, as the case may be,

and, with respect to net capital losses sustained by a corporation for taxable years for which separate returns were filed, or for which such corporation joined in a consolidated return filed by another affiliated group—

(ii) The net capital losses, if any, sustained by such corporation for its 5 preceding taxable years to the extent that such losses were not absorbed by the net capital gains of such corporation (or, if the income of such corporation was included in a consolidated return, by the consolidated net capital gain) for inter-

vening taxable years pursuant to the provisions of section 1212 or corresponding provisions of prior law.

(12) *Consolidated net capital loss.* The consolidated net capital loss shall be the excess of the aggregate of the capital losses of the several affiliated corporations over the sum of—

(i) The aggregate of the capital gains of such corporations, and

(ii) The consolidated section 1231 net gain,

reduced, in the case of an affiliated group including as members one or more corporations subject to the tax imposed by section 831, but only for the purpose of net capital loss carry-over computations, by whichever of the following amounts is the lesser,

(iii) The combined additional capital loss deductions of such corporations authorized by section 832 (c) (5) or

(iv) The consolidated taxable income computed without regard to capital gains and losses and without regard to any deduction for partially tax exempt interest provided by section 242.

(13) *Consolidated dividends received deduction.* The consolidated dividends received deduction shall be the aggregate of the deductions of the several affiliated corporations allowable under sections 243, 244, and 245 (computed without regard to the limitation of section 246 (b)) but in an amount not greater than 85 percent of the consolidated taxable income computed without regard to the consolidated net operating loss deduction, the consolidated section 247 deduction, and without regard to any consolidated dividends received deduction. The limitation of the previous sentence shall not apply for any taxable year for which there is a consolidated net operating loss.

(14) *Consolidated section 247 deduction.* The consolidated section 247 deduction, relating to dividends paid by public utilities on preferred stock, shall be an amount computed as follows:

(i) First, determine the amount which is the lesser of—

(a) The aggregate of the dividends paid by members of the affiliated group which are public utilities within the meaning of section 247 (b) (1) on preferred stock within the meaning of section 247 (b) (2), or

(b) The portion of the consolidated taxable income for the taxable year attributable to such members computed without regard to the consolidated section 247 deduction.

(ii) Then multiply the amount determined under subdivision (i) of this subparagraph by the fraction specified in section 247 (a) (2)

(15) *Consolidated section 922 deduction.* The consolidated section 922 deduction, relating to Western Hemisphere trade corporations, shall be that portion of the consolidated taxable income attributable to those members of the affiliated group which are Western Hemisphere trade corporations (computed without regard to the consolidated section 922 deduction) multiplied by the fraction specified in section 922 (2)

(16) *Consolidated net long-term capital gain.* The consolidated net long-

term capital gain shall be the excess of the sum of—

(i) The aggregate of the long-term capital gains of the several affiliated corporations, and

(ii) The consolidated section 1231 net gain,

over

(iii) The aggregate of the long-term capital losses of such corporations.

(17) *Consolidated net short-term capital loss.* The consolidated net short-term capital loss shall be the sum of—

(i) The aggregate of the short-term capital losses of the several affiliated corporations, and

(ii) The consolidated net capital loss carryovers,

minus

(iii) The aggregate of the short-term capital gains of such corporations.

(18) *Consolidated accumulated taxable income.* The consolidated accumulated taxable income shall be the consolidated taxable income computed without regard to any capital loss carry-over, without regard to any charitable contribution deduction under section 170, without regard to any net operating loss deduction, and without regard to any deduction under part VIII (except section 248) of subchapter B of chapter 1, minus the sum of—

(i) The combined Federal income and excess profits taxes (other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939, for taxable years beginning after December 31, 1940) and income, war-profits and excess-profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 164 (b) (6)) accrued during the taxable year by the several affiliated corporations, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(ii) The consolidated charitable contribution deduction computed without regard to the limitation in section 170 (b) (2) except that there shall not be included in the consolidated charitable contribution carry-over any amount which has previously been used in the determination of consolidated accumulated taxable income or separate accumulated taxable income.

(iii) The excess of the sum of the capital losses of the several affiliated corporations (computed without regard to any capital loss carry-over) over the sum of the capital gains of such corporations,

(iv) The excess of the consolidated net long-term capital gain over the consolidated net short-term capital loss (computed without regard to any capital loss carry-over) minus the taxes imposed by subtitle A attributable to such excess.

(v) In the case of an affiliated group including one or more holding company affiliates of a bank, as defined in section 2 of the Banking Act of 1933, the consolidated section 601 deduction, relating to earnings or profits devoted to the acquisition of readily marketable assets, other than bank stock,

(vi) The consolidated accumulated earnings credit, and

(vii) The consolidated section 561 dividends paid deduction.

(19) *Consolidated accumulated earnings credit.* The consolidated accumulated earnings credit shall be—

(i) In the case of an affiliated group which is not a mere holding or investment group, an amount equal to such part of the aggregate of the earnings and profits for the taxable year of the several members of the group as are retained for the reasonable needs of the business of the group, minus the deduction allowed by subparagraph (18) (iv) of this paragraph, but not less than the amount (if any) by which \$60,000 exceeds the aggregate of the accumulated earnings and profits of the several members of the group at the close of the preceding taxable year, or

(ii) In the case of an affiliated group which is a mere holding or investment group, the amount (if any) by which \$60,000 exceeds the aggregate of the accumulated earnings and profits of the several members of the group at the close of the preceding taxable year.

For the purpose of (i) of this subparagraph, the amount of the earnings and profits for the taxable year of the several members of the group which are retained is the amount by which the aggregate of the earnings and profits of the several members of the group for the taxable year exceed the consolidated section 561 dividends paid deduction for such year. For the purpose of the preceding sentence and (ii) of this subparagraph, the accumulated earnings and profits of the several members of the group at the close of the preceding taxable year shall be reduced by the dividends paid to other than members of the group under section 563 (a) (relating to dividends paid after the close of the taxable year) which are considered as paid during such taxable year.

(20) *Consolidated section 561 dividend paid deduction.* The consolidated section 561 dividends paid deduction shall be the sum of—

(i) The aggregate of the deductions allowable to the several members of the group with respect to dividends under section 561 (a) (1) and (2) determined without regard to any deductions attributable to payments made or considered to be made of dividends to other members of the group, and

(ii) In case the affiliated group is subject to tax on its consolidated undistributed personal holding company income, the consolidated dividend carry-over.

(21) *Consolidated section 542 gross income.* The consolidated section 542 gross income shall be the combined gross income of the several members of the affiliated group computed without regard to any gross income from other members of the group and by including only the excess of the gains of the several members of the group over the losses of the several members of the group from transactions in stocks or securities as described in section 543 (a) (2) and by including only the excess of the gains of the several members of the group over

the losses of the several members of the group with respect to commodity transactions as described in section 543 (a) (3).

(22) *Consolidated personal holding company income.* The consolidated personal holding company income shall be that part of the consolidated section 542 gross income from the sources described in section 543.

(23) *Consolidated undistributed personal holding company income.* The consolidated undistributed personal holding company income shall be the consolidated taxable income computed without regard to any deductions under part VIII (except section 248) of subchapter B of chapter 1, without regard to any charitable contribution deduction under section 170, without regard to any net operating loss deduction, and without regard to deductions disallowed by section 545 (b) (8) minus the sum of—

(i) The combined Federal income and excess profits taxes (other than the excess-profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940) and income, war-profits and excess-profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 164 (b) (6)) accrued during the taxable year by the several affiliated corporations but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law;

(ii) In lieu of the deduction provided by subparagraph (1) (i) (c) of this paragraph, the consolidated charitable contribution deduction limited as provided in section 170 (b) (1) (A) and (B) except that the 10 and 20 percent limitations therein shall be applied with respect to the consolidated adjusted gross income; and except that there shall not be included in the consolidated charitable contribution carry-over any amount which has been previously used in the determination of consolidated undistributed personal holding company income or separate undistributed personal holding company income.

(iii) The amount of the consolidated net operating loss for the preceding taxable year to the extent not attributable to corporations making a separate return, or joining in a consolidated return filed by another affiliated group for the taxable year, and, with respect to a corporation which filed a separate return or joined in a consolidated return filed by another affiliated group for the preceding taxable year, the net operating loss of such corporation for such preceding taxable year, but not in excess of the portion of the consolidated personal holding company income attributable to such corporation for the taxable year.

(iv) The excess of the consolidated net long-term capital gain for the taxable year over the consolidated net short-term capital loss for such year minus the taxes imposed by subtitle A attributable to such excess;

(v) The aggregate amount subject to the provisions of section 545 (b) (7)

used or irrevocably set aside by the several affiliated corporations to pay or retire indebtedness incurred prior to January 1, 1934, not including such portion of any such indebtedness as was owned on January 1, 1934, or at any time thereafter, directly or indirectly by another member of the group.

(vi) The sum of the amounts deductible by the several members of the affiliated group allowable under section 545 (b) (9) but there shall be added to the consolidated taxable income any amount required to be included in taxable income under such section;

(vii) The consolidated section 561 dividends paid deduction, and

(viii) In the case of an affiliated group including one or more holding company affiliates of a bank, as defined in section 2 of the Banking Act of 1933, the consolidated section 601 deduction, relating to earnings or profits devoted to the acquisition of readily marketable assets, other than bank stock.

(24) *Consolidated adjusted gross income.* The consolidated adjusted gross income shall be the consolidated taxable income computed without regard to any charitable contributions deductions, any deductions under part VIII (except section 248) any net operating loss carryback to the taxable year, any deductions under section 922, and without deduction of the amount disallowed by section 545 (b) (8)

(25) *Consolidated deficiency dividends deduction.* The consolidated deficiency dividends deduction shall be the aggregate of the amounts determined as provided in section 547 with respect to dividends distributed by the several members of the affiliated group pursuant to a determination of liability for personal holding company tax described in section 547, with respect to the consolidated undistributed personal holding company income of the affiliated group for the taxable year of the group computed without regard to any dividends distributed to members of the affiliated group.

(26) *Consolidated dividend carryover.* The consolidated dividend carryover to the taxable year shall be the sum of—

(i) The excess of—

(a) The consolidated section 561 dividends paid deduction for the first preceding taxable year, determined without regard to any consolidated dividend carryover, over

(b) The consolidated undistributed personal holding company income for such year, determined without regard to any dividends paid deduction and dividend carryover,

to the extent that such deduction and such income are not attributable to a corporation making a separate return, or joining in a consolidated return filed by another affiliated group, for the taxable year.

(ii) The amount of the consolidated section 561 dividends paid deduction (determined as provided in subdivision (i) (a) of this subparagraph) for the second preceding taxable year reduced by the consolidated undistributed personal holding company income for such year (determined as provided in subdivi-

sion (i) (b) of this subparagraph) and further reduced by the amount of the consolidated undistributed personal holding company income for the first preceding taxable year determined without regard to any dividend carryover from the second preceding taxable year to the extent that any such consolidated section 561 dividends paid deduction and any such consolidated undistributed personal holding company income are not attributable to a corporation making a separate return, or joining in a consolidated return filed by another affiliated group for the taxable year,

and, with respect to taxable years for which a member of the affiliated group filed a separate return or for which such member joined in a consolidated return filed by another affiliated group—

(iii) The excess of the deduction allowable to such corporation under section 561 for dividends paid for the first preceding taxable year (determined without regard to any dividend carryover) over the taxable income of such corporation for such year computed with the adjustments provided in section 545 (or if its income was included in the consolidated return of another affiliated group, that portion of the excess of the consolidated section 561 dividends paid deductions (determined as provided in subdivision (1) (a) of this subparagraph) for the first preceding taxable year, over the consolidated undistributed personal holding company income (determined as provided in subdivision (i) (b) of this subparagraph) for such year attributable to such corporation) and

(iv) The excess of the deduction allowable to such corporation under section 561 (determined without regard to any dividend carryover) for the second preceding taxable year over the taxable income of such corporation for such year computed with the adjustments provided in section 545 (or if its income was included in the consolidated return of another affiliated group, that portion of the excess of the consolidated section 561 dividends paid deduction (determined as provided in subdivision (i) (a) of this subparagraph) for the second preceding taxable year, over the consolidated undistributed personal holding company income (determined as provided in subdivision (i) (b) of this subparagraph) for such year, attributable to such corporation) and reduced by—

(a) The excess of the amount of its taxable income so computed for the first preceding taxable year over its dividends paid deduction under section 561, determined without regard to any dividend carryover from the second preceding taxable year (or, if its income was included in the consolidated return of another affiliated group, that portion of the amount of such deduction absorbed in such consolidated return of another affiliated group) or

(b) If the income of such corporation is included in the consolidated return for the first preceding taxable year, the excess, if any, of the consolidated undistributed personal holding company income (determined without regard to any dividends paid deduction and dividend carryover) for the first preceding tax-

able year over the consolidated section 561 dividends paid deduction for such year, determined without regard to any dividend carryover.

(27) *Consolidated section 601 deduction.* The consolidated section 601 deduction relating to bank affiliates, shall be an amount equal to the aggregate of the earnings or profits of members of the group which are holding company affiliates of a bank as defined in section 2 of the Banking Act of 1933 devoted to the acquisition of readily marketable assets other than bank stock (not including any asset acquired, directly or indirectly, from another member of the group), subject, in the case of each such affiliate, to the limitations imposed by section 601 determined without regard to the qualifications expressed in paragraph (b) (1) (ii) and (iii) of this section.

(28) *Consolidated life insurance company taxable income.* The consolidated life insurance company taxable income in the case of an affiliated group consisting of corporations subject to the tax imposed by section 802 shall be the consolidated taxable income minus the consolidated section 804 deduction and plus the consolidated section 806 adjustment.

(29) *Consolidated section 804 deduction.* The consolidated section 804 deduction relating to the reserve and other policy liabilities shall be the consolidated taxable income multiplied by a figure to be determined and proclaimed by the Secretary for each taxable year pursuant to section 804.

(30) *Consolidated section 806 adjustment.* The consolidated section 806 adjustment relating to certain reserves provided in section 806 shall be an amount equal to 3¼ percent of the combined unearned premiums and unpaid losses of the several affiliated corporations on contracts other than life insurance or annuity contracts computed in the case of each corporation pursuant to the provisions of section 806 but the combined unearned premiums shall not be considered to be less than 25 percent of the combined net premiums on such other contracts written during the taxable year.

(31) *Consolidated 1954 life insurance company taxable income.* The consolidated 1954 life insurance company taxable income in the case of an affiliated group consisting of corporations subject to the tax imposed by section 802 (b) for taxable years beginning in 1954 shall be the consolidated taxable income plus eight times the consolidated section 806 adjustment and minus the consolidated reserve interest credit, if any.

(32) *Consolidated reserve interest credit.* The consolidated reserve interest credit shall be the aggregate of the reserve interest credits of the several members of the affiliated group.

(33) *Consolidated section 175 deduction.* The consolidated section 175 deduction shall be the aggregate of the amount of the deductions of the several affiliated corporations allowable under section 175 for the taxable year (determined without regard to the 25 percent limitation of section 175 (b)) and an amount equal to the aggregate of the consolidated section 175 carry-overs to the taxable year.

(34) *Consolidated section 175 gross income.* The consolidated section 175 gross income shall be the combined gross income derived from farming of the several affiliated corporations engaged in the business of farming and having expenditures of the type described in section 175 (a). For this purpose, there shall be eliminated profits and losses on intercompany transactions; and proper adjustment shall be made to eliminate any distortion in the amount of gross income attributable to transactions between members of the affiliated group at markedly fictitious values.

(35) *Consolidated section 175 carryovers.* The consolidated section 175 carryovers to the taxable year shall consist of—

(i) The excess, if any, of the amount of the consolidated section 175 deductions over 25 percent of the consolidated section 175 gross income of preceding taxable years to the extent that such consolidated section 175 deduction for any preceding taxable year was not attributable to a corporation making a separate return or joining in a consolidated return filed by another affiliated group for the taxable year and was not absorbed as a carryover by the consolidated section 175 gross income for preceding taxable years

and, with respect to any excess of deductions under section 175 over the 25 percent limitation of section 175 (b) of a corporation in a taxable year for which a separate return was filed or for which such corporation joined in a consolidated return filed by another affiliated group, but subject to the limitation prescribed in paragraph (b) (16) of this section.

(ii) The amount of such excesses of such corporation for preceding taxable years to the extent that such excesses were not absorbed as carryovers for preceding taxable years.

(b) *Computations.* In the case of affiliated corporations which make, or are required to make, a consolidated return, and except as otherwise provided in the regulations under section 1502—

(1) *Taxable income.* The taxable income of each corporation shall be computed in accordance with the provisions covering the determination of taxable income of separate corporations, except—

(i) There shall be eliminated unrealized profits and losses in transactions between members of the affiliated group and dividend distributions from one member of the group to another member of the group (referred to in the regulations under section 1502 as intercompany transactions)

(ii) No net operating loss deduction shall be taken into account;

(iii) No capital gains or losses shall be taken into account;

(iv) There shall be disregarded all gains and losses from involuntary conversions and from sales and exchanges of property subject to the provisions of section 1231,

(v) In the computation of the deduction under section 171, relating to amortizable bond premium, there shall be disregarded the bonds of one member of

the group owned by another member of the group during the taxable year;

(vi) In the computation of the taxable income of a corporation for the taxable year in which it became the common parent corporation of the affiliated group filing a consolidated return, the aggregate deductions of such corporation for such year otherwise allowable in excess of the gross income of such corporation for such year shall be excluded to the extent that such excess is attributable to that portion of such year preceding the date upon which such corporation became the common parent corporation of the group. Any amount excluded under this paragraph shall, to the extent that it constitutes a net operating loss within the provisions of section 172 or a net capital loss within the provisions of section 1222, be considered as a net operating loss or a net capital loss, as the case may be, separately sustained by such corporation and subject to the provisions of paragraph (a) (3) (ii) or (11) (ii) of this section;

(vii) In the case of a corporation which became a member of the affiliated group after January 1, 1954, common parent corporation or subsidiary, as the case may be, allowable deductions shall be determined subject to the qualifications prescribed in subparagraph (9) of this paragraph;

(viii) No deduction under section 170 with respect to charitable or other contributions shall be taken into account;

(ix) In the case of the deduction provided in section 615 (relating to mine exploration expenditures), the allowable deduction shall be determined subject to the qualifications prescribed in subparagraph (12) of this paragraph;

(x) In the case of a distribution of inventory to which section 311 (b) is applicable, or in the case of a distribution of property to which section 311 (c) is applicable by one member of the group to another member of the group, the gain recognized under such sections shall be eliminated;

(xi) No deductions under section 243, 244, 245, or 247 (relating to deductions with respect to dividends received and dividends paid) or under section 922 (relating to the special deduction for Western Hemisphere trade corporations) shall be taken into account; and

(xii) No deductions under section 175 (relating to soil and water conservation expenditures) shall be taken into account by a member of an affiliated group to which the consolidated section 175 deduction is applicable.

Intercompany profits and losses which have been realized by the group through final transactions with persons other than members of the group, and intercompany transactions which do not affect the consolidated taxable income shall not be eliminated. For the purpose of this subparagraph gain includible in income pursuant to section 357 (c) with respect to transfers of assets other than the capital assets and other than assets to which section 1231 is applicable, shall not be eliminated. For the purpose of the regulations under section 1502, a transaction not involving a sale or ex-

change of a capital asset or of property subject to the provisions of section 1231 shall not be considered an intercompany transaction if such transaction occurs in the regular course of the trade or business of the members of the group and if such members adopt, with the consent of the Commissioner and subject to such conditions as he deems proper, a consistent accounting practice of taking into account in the computation of consolidated taxable income the gains and losses reflected in such transactions. As used in this paragraph, the term "taxable income" includes the case in which the allowable deductions of a member (not including any net operating loss deduction) exceed its gross income.

(2) *Other computations on separate basis.* The various other computations required by the regulations under section 1502 to be made by the several affiliated corporations shall be made in the case of each such corporation in the same manner and under the same conditions as if a separate return were to be filed, but with the following exceptions:

(i) *Taxable income.* The taxable income used in any such computation shall be the taxable income of the corporation determined in accordance with the provisions of this section.

(ii) *Dividends received.* In the computation of the dividends received, there shall be excluded all dividends received from other members of the affiliated group.

(iii) *Capital gains and losses.* Capital gains and losses, short-term capital gains and losses, long-term capital gains and losses, and the additional capital loss deduction authorized by section 832 (c) (5) shall be determined without regard to—

(a) Gains or losses arising in intercompany transactions (other than gains described in section 357 (c)) and gains recognized to the distributing corporation pursuant to section 311 (c) by reason of distributions by one member of the group to another member of the group,

(b) Gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 1231,

(c) The net capital loss carryovers provided in section 1212, and

(d) In the case of a corporation which became a member of the affiliated group subsequent to January 1, 1954, common parent corporation or subsidiary, as the case may be, capital losses to the extent disallowed pursuant to the provisions of subparagraph (9) of this paragraph.

(iv) *Net operating loss.* In the computation of the net operating loss, as defined in section 172, the provisions of this section pertaining to the determination of taxable income shall apply.

(v) *Dividends paid.* In the computation of dividends paid, there shall be excluded all dividends paid by one member of the group to another, except as provided in § 1.1502-30 (b) (4).

(vi) *Federal income tax.* In the computation of the Federal income tax, there shall be used the consolidated tax, or a proportionate part thereof, if the tax

payable is properly computed on the basis of the consolidated return.

(vii) *Dividends paid by public utility.* In the computation of dividends paid on the preferred stock of a public utility, there shall be excluded all dividends paid by such public utility to another member of the group.

(viii) *Gains or losses under section 1231.* Gains and losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 1231 shall be determined without regard to—

(a) Gains and losses from intercompany transactions (other than gains described in section 357 (c)) and gains recognized pursuant to section 311 (c) upon the distribution of property subject to the provisions of section 1231 by one member of the group to another member of the group, and

(b) In the case of a corporation which became a member of the affiliated group subsequent to January 1, 1954, common parent corporation or subsidiary, as the case may be, such portion of any such loss as is disallowed pursuant to the provisions of subparagraph (9) of this paragraph.

(ix) *Mutual savings banks, domestic building and loan associations, and cooperative banks.* In the case of a mutual savings bank, a domestic building and loan association, and a cooperative bank—

(a) In the computation of total deposits or withdrawable accounts at the close of the taxable year for the purpose of section 593 (2) (relating to the deduction for bad debts) there shall be excluded the total deposits or withdrawable accounts of other members of the group, and

(b) In the computation of the deduction provided in section 591 (relating to dividends paid by banking corporations) there shall be excluded amounts paid to, or credited to the accounts of, other members of the group.

(3) *Limitations on net operating loss carry-overs and carry-backs from separate return years.* In no case shall there be included in the consolidated net operating loss deduction for the taxable year as consolidated net operating loss carry-overs under paragraph (a) (3) (ii) of this section (relating to the net operating losses sustained by a corporation in years for which separate returns were filed, or for which such corporation joined in a consolidated return filed by another affiliated group) and as consolidated net operating loss carry-backs under paragraph (a) (4) (iii) and (iv) of this section (relating to a net operating loss sustained by a corporation which for either of the two succeeding taxable years files a separate return or joins in a consolidated return filed by another affiliated group) an amount exceeding in the aggregate the taxable income of such corporation included in the computation of the consolidated taxable income for the taxable year decreased by its deductions under sections 243, 244, 245, 247, and 922 (and in the case of a member of an affiliated group to which the consolidated section 175 deduction is applicable, the section 175 deduction) increased by its separate net capital

gain, and increased or decreased, as the case may be, with respect to its separate gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 1231. This subparagraph shall not be applicable to a carry-over under paragraph (a) (3) (ii) of this section of a net operating loss of a corporation attributable to a period for which it was included in a consolidated return filed by another affiliated group for a taxable year beginning prior to January 1, 1954, all of whose members are included in the consolidated return filed for the taxable year if all of the members of such other affiliated group would have been members of the affiliated group if the law applicable to the taxable year had been applicable to such prior taxable year.

(4) *Law applicable to computations of net operating loss carryovers and carrybacks.* (i) In determining the amount of any net operating loss carry-back or carryover, consolidated or separate, to any taxable year, the necessary computations involving any other taxable year shall be made under the law and regulations applicable to such other taxable year. The preceding sentence shall apply with respect to all taxable years whether they begin before, on, or after January 1, 1954.

(ii) In the case of a consolidated net operating loss for a taxable year beginning in 1953 and ending in 1954, the amount of such consolidated net operating loss which shall be carried to the second preceding taxable year shall be the amount which bears the same ratio to such consolidated net operating loss as the number of days in the loss year after December 31, 1953, bears to the total number of days in such year. In determining the amount carried to any other taxable year, the amount absorbed for the second taxable year preceding the loss year shall not exceed the portion of the consolidated net operating loss which is carried to the second preceding taxable year.

(iii) For purposes of section 141 of the Internal Revenue Code of 1939 and that part of the regulations promulgated thereunder which relate to subchapter D of chapter 1 of such Code, excess profits net income and consolidated section 433 (a) excess profits net income shall be computed as if the regulations under section 1502 did not apply and as if such section and such regulations continued to apply to taxable years beginning after December 31, 1953.

(iv) Except as provided in (i) (ii) and (iii) of this subparagraph the computation of net operating loss deductions for the transitional years described in section 172 (g) shall be determined under regulations 129 in any case in which, under such section, the rules of the Internal Revenue Code of 1939 are applicable, and under the regulations under section 1502 in any case in which, under such section, the rules of the Internal Revenue Code of 1954 are applicable.

(5) *Limitation on absorption of unused dividend carryovers.* If, in the computation of the consolidated dividend carryover for the second consolidated return period in respect of which

the income of a corporation is included in the consolidated return of the group, there is involved a separate unused dividend carryover of such corporation for the second preceding taxable year together with a consolidated unused dividend carryover for the second preceding taxable year, or if, for the second consolidated return period in respect of which the income of two or more members of the group is included in the consolidated return of the group, there are involved the separate unused dividend carryovers of such corporations for the second preceding taxable year, no portion of the excess of the consolidated undistributed personal holding company income (determined without regard to any dividends paid deduction and dividend carryover) over the consolidated section 561 dividends paid deduction (determined without regard to any dividend carryover) for the first preceding taxable year shall be taken into account more than once in giving effect to the provisions of paragraph (a) (26) (ii) and (iv) of this section (relating to the computation of that part of the consolidated dividend carryover attributable to the unused dividend carryovers of the second preceding taxable year)

(6) *Apportionment of consolidated net operating loss.* If an affiliated group filing a consolidated return sustains a consolidated net operating loss within the provisions of section 172, relating to the net operating loss deduction, and if there are included as members of such group one or more corporations which made separate returns, or joined in a consolidated return filed by another affiliated group, either in a preceding taxable year or in a succeeding taxable year, the portion of such consolidated net operating loss attributable to such corporations severally shall be determined, such portion in the case of any such corporation being determined in an amount proportionate to the net losses (capital net losses and ordinary net losses alike) of the several affiliated corporations having net losses, to the extent that such losses were taken into account in the computation of the consolidated net operating loss.

(7) *Apportionment of consolidated net capital loss.* If an affiliated group filing a consolidated return sustains a consolidated net capital loss, and if there are included as members of such group one or more corporations which make separate returns, or join in a consolidated return filed by another affiliated group, in a succeeding taxable year, the portion of such consolidated net capital loss attributable to such corporations severally shall be determined, such portion in the case of any such corporation being an amount which bears the same ratio to the consolidated net capital loss which the net capital loss of such corporation bears to the aggregate of the net capital losses for the taxable year sustained by the several affiliated corporations having net capital losses.

(8) *Limitation on net capital loss carryover from separate return year.* In no case shall there be included in the computation of the consolidated net capital gain for the taxable year as a consolidated net capital loss carryover

under paragraph (a) (11) (ii) of this section (relating to net capital losses separately sustained) an amount exceeding in the aggregate the net capital gains of such corporation (determined without regard to any net capital loss carryover) included in the computation of the consolidated net capital gain for the taxable year increased with respect to its separate net gains from involuntary conversions and from sales or exchanges of property subject to the provisions of section 1231.

(9) *Qualifications on deductions where group membership changed after January 1, 1954.* In the case of an affiliated group formed at any time after January 1, 1954, or having among its members in the taxable year one or more subsidiaries which became members of the group subsequent to January 1, 1954, the consolidated taxable income for the taxable year, and for prior and subsequent taxable years to the extent affected by carrybacks and carryovers from the taxable year, shall be determined subject to the following qualifications:

(i) There shall be excluded in the case of the common parent corporation and in the case of any subsidiaries which were members of the group on January 1, 1954, those deductions from gross income otherwise allowable with respect to—

(a) Sales or exchanges of capital assets,

(b) Involuntary conversions and sales or exchanges of property subject to the provisions of section 1231,

(c) Securities subject to the provisions of section 165 (g) (3) or

(d) Debts subject to the provisions of section 166,

to the extent that such deductions otherwise allowable exceed in the aggregate—

(e) In the case of capital losses, the excess of the aggregate capital gains over the aggregate capital losses of such corporations for the taxable year, or

(f) In the case of ordinary losses, the aggregate of the ordinary taxable income of such corporations for the taxable year, increased in an amount equal to any excess of aggregate capital gains over aggregate capital losses of such corporations,

such capital gains and losses and such ordinary taxable income being determined pursuant to the provisions of the regulations under section 1502 but without regard to the provisions of subparagraphs (1) (iv) and (2) (iii) (b) of this paragraph and without regard to the losses in question:

(ii) There shall be excluded in the case of a subsidiary corporation which became a member of the affiliated group subsequent to January 1, 1954, those deductions from gross income otherwise allowable with respect to—

(a) Sales or exchanges of capital assets,

(b) Involuntary conversions and sales or exchanges of property subject to the provisions of section 1231,

(c) Securities subject to the provisions of section 165 (g) (3) or

(d) Debts subject to the provisions of section 166,

to the extent that such deductions otherwise allowable are attributable to events preceding the date upon which such corporation became a member of the group, and

(e) Being capital losses, exceed (1) the capital gains reduced by all other capital losses of such corporation for the taxable year, in the case in which such corporation was not, on January 1, 1954, a member of an affiliated group within the meaning of section 1504, or (2) in case such corporation was a member of an affiliated group on January 1, 1954, an amount which together with like losses computed subject to the provisions of the regulations under section 1502 in the case of other members of the group during the taxable year which were affiliated with such corporation on January 1, 1954, within the meaning of section 1504 is equal to the aggregate capital gains reduced by the aggregate of all other capital losses of such corporation and of such other members of the group, or

(f) Being ordinary losses exceed (1) the ordinary taxable income of such corporation for the taxable year increased in an amount equal to any excess of capital gains over capital losses for the taxable year, in the case in which such corporation was not, on January 1, 1954, a member of an affiliated group within the meaning of section 1504, or (2) in case such corporation was a member of an affiliated group on January 1, 1954, an amount which, together with like losses computed subject to the provisions of the regulations under section 1502 in the case of other members of the group during the taxable year which were affiliated with such corporation on January 1, 1954, within the meaning of section 1504, is equal to the ordinary taxable income of such corporation for the taxable year increased by the aggregate of the ordinary taxable income and decreased by the aggregate of the ordinary net losses of other members of the affiliated group during the taxable year which were affiliated with such corporation on January 1, 1954, within the meaning of section 1504, and increased further in an amount equal to any excess of aggregate capital gains over aggregate capital losses of such corporations,

such capital gains and losses, and ordinary taxable income and net losses, as the case may be, being determined pursuant to the provisions of the regulations under section 1502 but without regard to the provisions of subparagraphs (1) (iv) and (2) (iii) (b) of this paragraph, and without regard to the losses in question.

(iii) The portion of any loss otherwise allowable as a deduction for the taxable year which is disallowed pursuant to the provisions of subdivisions (i) and (ii) of this subparagraph shall, to the extent that it constitutes a net capital loss or a net operating loss, be considered as a net capital loss or a net operating loss, as the case may be, in respect to those members of the group by reference to which the amount of the deduction disallowed under subdivisions (i) and (ii) of this subparagraph was determined,

and, for the purpose of the carryback provisions, the year of the loss shall be considered as a taxable year occurring subsequent to the last taxable year in respect of which the income of such members of the group was included in a consolidated return, and, for the purpose of the carryover provisions, as a taxable year occurring prior to the first taxable year in respect of which their income was included in a consolidated return;

(iv) The provisions of (i) and (ii) of this subparagraph shall not apply with respect to the common parent corporation of an affiliated group formed subsequent to January 1, 1954, or to the common parent corporation or subsidiaries of a group in existence on January 1, 1954, acquiring new members subsequent to January 1, 1954, or with respect to subsidiaries becoming members of the group subsequent to January 1, 1954—

(a) If the group consists solely of the common parent corporation and one or more subsidiaries created, directly or indirectly, by the common parent corporation or by other members of the group;

(b) If, immediately after the corporation involved became a member of the group, common parent corporation or subsidiary, as the case may be, stock possessing at least 80 percent of the voting power of all classes of its stock then outstanding and at least 80 percent of each class of its nonvoting stock then outstanding is owned, directly or indirectly, by substantially the same interests by which such stock was owned on January 1, 1954;

(c) If the affiliated group involved was formed, or the new subsidiary became a member of the group, as an incident to an involuntary conversion or to a transfer made pursuant to an order of the Securities and Exchange Commission, the Federal Communications Commission, the Interstate Commerce Commission, or a similar regulatory body of State or Federal Government; or

(d) To the extent to which, upon consideration of the facts or circumstances presented by the particular case, the Commissioner determines that a consolidated taxable income computed with respect to the affiliated group but without regard to those paragraphs will not serve to distort the income tax liability of the group or of any of its members.

(10) *Loss to group of investment in an affiliate.* In the case of a loss to one or more members of an affiliated group sustained during the taxable year as the result of the worthlessness of the investment of such members in another affiliate, whether such investment was reflected in the stock, bonds, or open account advances to such other affiliate—

(i) Such losses shall be taken into account in the computation of consolidated taxable income for the year of the loss in an amount not greater in the aggregate than the excess of the consolidated taxable income for such year computed without regard to any such loss over that portion of such consolidated taxable income so computed attributable to such other affiliate; and

(ii) The portion of any such loss otherwise allowable as a deduction for the taxable year which is disallowed pursuant to the provisions of (i) of this subparagraph shall be considered as a consolidated net operating loss to be taken into account as a consolidated carryback to the two preceding taxable years and as consolidated carryovers to succeeding taxable years, but in an amount not greater for any such year than the excess of the consolidated taxable income for such year, computed without regard to such carryback or carryover, as the case may be, over that portion of such consolidated taxable income so computed for such year attributable to such other affiliate.

(11) *Disposal of timber or coal*—(i) *Intercompany transactions.* Section 631 (b) or (c) (relating to the disposal of timber or coal) shall apply to an amount received by a member of the group only to the extent such amount is received by the member of the group as a party to a transaction described in section 631 (b) or (c) with persons not members of the group.

(ii) *Application of sections 531 and 541 to coal royalties.* For the purpose of determining the consolidated accumulated taxable income and the consolidated undistributed personal holding company income the provisions of 631 (c) shall not apply to any amount received by a member of the group upon the disposal of coal.

(12) *Mine exploration expenditures*—(i) *Limitation under section 615 (a)* If the aggregate of the deductions, computed without regard to this sentence, allowable under section 615 (a) to the several members of the group exceeds \$100,000,

(a) The deduction under that section allowable to any member of the group shall be an amount which bears the same ratio to \$100,000 as its deduction computed without regard to this sentence bears to the aggregate of such deductions so computed for the members of the group, except that,

(b) If all the members of the group consent in writing, the deduction under that section allowable to such member shall be the deduction under that section computed without regard to this sentence, or such part thereof as the common parent corporation shall determine at the time the consent is filed, provided, however, that the aggregate of the deductions so allowable for all members of the group shall not exceed \$100,000.

(ii) *Limitation under 615 (c)* If the limitation provided in section 615 (c) is applicable to any member of the group, such limitation shall be deemed applicable to all members of the group.

(13) *Apportionment of unused dividend carryover and allowance of consolidated deficiency dividends deduction*—

(i) *Apportionment of unused dividend carryover* If an affiliated group filing a consolidated return has an unused consolidated dividend carryover and if there are included as members of such group one or more corporations which make separate returns, or join in a consolidated return filed by another affiliated group or if any member of the group

computes its tax liability under section 541 pursuant to the last sentence of § 1.502-30 (b) (4) in a succeeding taxable year, the portion of such unused consolidated dividend carryover attributable to such corporations severally shall be determined for the purpose of the dividend carryover, such portion in the case of any such corporation shall be determined in an amount proportionate to the deduction for dividends paid and the taxable incomes of the several affiliated corporations (determined with the adjustments provided in section 545) to the extent that such deduction and such taxable income were taken into account in the computation of the consolidated dividend carryover and the consolidated and undistributed personal holding company income.

(ii) *Deficiency dividends deduction.* For the purpose of applying section 547, relating to deficiency dividends, in case the affiliated group is subject to tax on its consolidated undistributed personal holding company income for the taxable year to which the deficiency in personal holding company tax relates, the consolidated deficiency dividends deduction described in paragraph (a) (25) of this section shall be allowed.

(14) *Apportionment of consolidated charitable contribution deduction.* If an affiliated group filing a consolidated return has an excess of the consolidated charitable contribution deduction over the limitation of paragraph (a) (1) (i) (c) of this section for the taxable year, and if there are included as members of such group one or more corporations which make separate returns or join in a consolidated return filed by another affiliated group in a succeeding taxable year, the portion of such excess attributable to such corporations severally shall be determined, such portion in the case of any such corporation being determined in an amount proportionate to such excess as the contributions of each such corporation bear to the aggregate of such contributions.

(15) *Limitation on section 175 carryovers from separate return years.* In no case shall there be included in the consolidated section 175 deduction for the taxable year as consolidated section 175 carryovers under paragraph (a) (36) (ii) of this section (relating to excess section 175 deductions of a corporation for years for which separate returns were filed or for which such corporation joined in a consolidated return filed by another affiliated group) an amount exceeding in the aggregate the amount by which 25 percent of the gross income of such corporation derived from farming included in the computation of the consolidated section 175 gross income for the taxable year exceeds the amount of the expenditures of such corporation of the taxable year deductible under section 175.

(16) *Apportionment of consolidated section 175 deduction.* If an affiliated group filing a consolidated return has an excess of the consolidated section 175 deduction over the limitation of 25 percent of the consolidated section 175 gross income for the taxable year, and if there are included as members of such group one or more corporations which make

separate returns, or are joined in a consolidated return filed by another affiliated group, in a succeeding taxable year, the portion of such excesses attributable to such corporations severally shall be determined; such portion in the case of any such corporation being determined in an amount proportionate to such excess as the deductions of each such corporation bears to the aggregate of such deductions.

(17) *Applicability of consolidated section 175 deduction.* An affiliated group shall not be eligible to use the consolidated section 175 deduction unless all of the members of such group which are engaged in the business of farming during the taxable year have adopted, pursuant to section 175 (d), the method described in section 175. In the case of a corporation which is a member of an affiliated group which is not eligible to use the consolidated section 175 deduction, the deduction provided by section 175 shall be used in the computation of the taxable income of such corporation in the same manner and under the same conditions as if a separate return were to be filed, except that the gross income from farming of such corporation shall be determined without regard to profits or losses on intercompany transactions; and proper adjustment shall be made to eliminate any distortion in the amount of gross income attributable to transactions between members of the group at markedly fictitious values.

(18) *Computation of consolidated accumulated taxable income.* In the computation of consolidated accumulated taxable income no amount shall be taken into account with respect to any income or deductions attributable to members of the affiliated group which are subject to tax under section 541 as described in the last sentence of § 1.502-30 (b) (4)

(19) *Law applicable to the computation of consolidated dividends carryover* In the computation of the consolidated section 561 dividends paid deduction, the amount of the consolidated dividends carryover from a year to which subtitle A is not applicable to a taxable year to which such subtitle applies shall be determined under Regulations 129 if a consolidated return was filed for the year in which the dividends were paid or under the provisions of the Internal Revenue Code of 1939 if a separate return was filed for such year.

(20) *Law applicable to computation of deficiency dividends deduction.* If a deficiency is asserted with respect to a taxable year which began before January 1, 1954, the amount of any "deficiency dividend" shall include only amounts which would have been includible in the computation of the consolidated basic surtax credit, as defined in Regulations 129, or in the computation under the Internal Revenue Code of 1939 of the basic surtax credit for such taxable year, as the case may be.

(21) *Rules with respect to net operating losses under sections 381 and 382.* (i) If, in the computation of the consolidated net operating loss carryover, there is included an amount with respect to a net operating loss of a corporation, sus-

tained in a taxable year for which it filed a separate return or for which such corporation joined in a consolidated return filed for another affiliated group, which is a transferor or distributor of assets to a member of the affiliated group within the meaning of section 381 (a) the amount allowable as a carryover with respect to such transferor or distributor shall not exceed the amount of the taxable income of the acquiring corporation included in the computation of the consolidated taxable income for the taxable year. The computation shall be made as described in subparagraph (3) of this paragraph as though the acquiring corporation had sustained a net operating loss in a year for which separate returns were filed or for which the acquiring corporation had joined in a consolidated return filed by another affiliated group.

(ii) If, in addition to the amount described in (i) of this subparagraph, there is included an amount with respect to a net operating loss sustained by the acquiring corporation in a year for which it filed separate returns or for which it joined in a consolidated return filed by another affiliated group, the losses sustained by both the acquiring corporation and the transferor or distributor corporation which may be taken into account as a net operating loss deduction in determining the consolidated taxable income may not exceed the taxable income of the acquiring corporation computed in a manner described in subparagraph (3) of this paragraph.

(iii) For purposes of (i) and (ii) of this subparagraph, if the transferor or distributor corporation was a member of another affiliated group which filed a consolidated return, the amount of the consolidated net operating loss of such affiliated group, if any, attributable to such transferor or distributor, shall be treated as the net operating loss of such corporation separately sustained.

(iv) In any case in which a consolidated net operating loss was sustained by an affiliated group which includes a member whose net operating loss is subject to the limitations upon net operating losses provided by section 382, such section shall be applicable with respect to such member as if the portion of such consolidated net operating loss attributable to such corporation were a net operating loss of such corporation separately sustained.

(22) *Rules with respect to capital loss carryovers under section 381.* (i) If in the computation of the consolidated net capital loss carryovers for a taxable year there is included an amount with respect to a net capital loss of a corporation, sustained in a taxable year for which it filed a separate return or for which such corporation joined in a consolidated return filed by another affiliated group, which is a transferor or distributor of property to a member of the affiliated group within the meaning of section 381 (a) the amount allowable with respect to such transferor or distributor shall not exceed the net capital gains of the acquiring corporation (determined without regard to any net capital loss carryover) included in the computation of the consolidated net cap-

ital gain for the taxable year increased with respect to its separate gains for involuntary conversions and from sales or exchanges of property subject to the provisions of section 1231.

(ii) If there is included under paragraph (a) (1) (ii) of this section an amount with respect to net capital losses separately sustained by such acquiring corporation in years for which separate returns were filed or for which such corporation joined in a consolidated return filed by another affiliated group, the limitation described in (i) of this subparagraph shall be applicable with respect to the aggregate of such losses and the losses of its transferor or distributor corporations.

(iii) For purposes of (i) and (ii) of this subparagraph if the transferor or distributor corporation was a member of another affiliated group which filed a consolidated return, the amount of the consolidated net capital loss of such affiliated group, if any, attributable to such transferor or distributor, shall be treated as the net capital loss of such corporation separately sustained.

(c) *Statements and schedules for subsidiaries.* The statement of gross income and deductions and the several schedules required by the instructions on the return must be prepared and filed by the common parent corporation in columnar form so that the details of the items of gross income, deductions, and credits, for each member of the affiliated group, may be readily audited. Such statements and schedules shall include in columnar form a reconciliation of surplus for each such corporation, together with a reconciliation of the consolidated surplus. Consolidated balance sheets as of the beginning and close of the taxable year of the group, taken from the books of the members of the group, shall accompany the consolidated return prepared in a form similar to that required for reconciliation of surplus. If any member of the affiliated group computes its tax under section 541 in the manner provided in § 1.1502-30 (b) (4), a personal holding company schedule for such corporation shall be filed with the consolidated return.

(d) *Net operating loss deduction, excess charitable contributions, excess section 175 deductions, and dividend carryover before or after consolidated return period.* The consolidated net operating loss of an affiliated group, the excess of the consolidated charitable contributions over the 5 percent limitation of paragraph (a) (1) (i) (c) of this section, the excess of the deductions under section 175 over the limitation of 25 percent provided in paragraph (a) (1) (i) (f) of this section, or the unused consolidated dividend carryover shall be used in computing the consolidated net operating loss deduction, the consolidated charitable contribution carryover, the consolidated section 175 carryover, or the consolidated dividend carryover, as the case may be, notwithstanding that one or more corporations members of the group in the taxable year in which such loss or carryovers originate make separate returns (or join in a consolidated return made by another affiliated group) for a subsequent taxable year (or in the

case of a carryback computation for a preceding taxable year) but only to the extent that such consolidated net operating loss, such excess charitable contribution, such excess section 175 deduction, or such unused consolidated dividend carryover is not attributable to such corporations; and such portion of such consolidated net operating loss, such excess charitable contributions, such unused section 175 deductions, or such unused consolidated dividend carryover as is attributable to the several corporations making separate returns or computing their tax liability under section 541 pursuant to the last sentence of § 1.1502-30 (b) (4) (or joining in a consolidated return made by another affiliated group) for a subsequent taxable year (or in the case of a carryback computation for a preceding taxable year) shall be used by such corporations severally as carryovers or as carrybacks in such separate returns in such separate computations under section 541, or in such consolidated returns of the other affiliated group. Any unused dividend carryover of a corporation separately produced for a year prior to a taxable year in respect of which its tax liability under section 541 is computed upon the consolidated undistributed personal holding company income shall be used in computing the dividend carryover of such corporation (or the consolidated dividend carryover of another affiliated group of which it becomes a member) for a subsequent taxable year for which it makes a separate return or joins in a consolidated return of another group, but only to the extent that such unused dividend carryover was not absorbed in the computation of the consolidated section 561 dividends paid deduction for the intervening consolidated return period. Any net operating loss separately sustained by a corporation prior to a first taxable year in respect of which its income is included in the consolidated return of the group (or in either of the two years immediately following a consolidated return year) shall be used in computing the net operating loss deduction of such corporation (or the consolidated net operating loss deduction of another affiliated group of which it becomes a member) for a subsequent taxable year for which it makes a separate return or joins in a consolidated return of another group, but only to the extent that such net operating loss was not absorbed (either as a carryover or as a carryback) in the computation of the consolidated net operating loss deduction for consolidated return periods. Any excess of charitable contributions of a corporation for the year prior to a first taxable year in respect of which its income is included in the consolidated return of the group shall be used in computing the charitable contribution deduction of such corporation (or the consolidated charitable contribution deduction of another affiliated group of which it becomes a member) for a subsequent taxable year for which it makes a separate return or joins in a consolidated return of another group, but only to the extent that such excess charitable contribution was not absorbed as a carryover in the consolidated char-

itable contribution deduction for consolidated return periods. Any excess of section 175 deductions of a corporation for a year prior to a first taxable year in respect of which its income is included in the consolidated return of the group shall be used in computing the section 175 deduction of such corporation (or the consolidated section 175 deduction of another affiliated group of which it becomes a member) for a subsequent taxable year for which it makes a separate return or joins in a consolidated return of another group, but only to the extent that such excess section 175 deduction was not absorbed as a carry-over in the computation of a consolidated section 175 deduction for consolidated return periods.

(e) *Taxable year of less than 12 months.* Any period of less than 12 months for which either a separate return or a consolidated return is filed under the provisions of § 1.1502-13 shall be considered as a taxable year.

§ 1.1502-32 *Method of computation of income for period of less than 12 months.* If a corporation, during the taxable year of the group, becomes a member or ceases to be a member of an affiliated group which makes or is required to make a consolidated return for such year, the income of such corporation to be included in the consolidated return shall be computed on the basis of its income as shown by its books if the accounts are so kept that the income for the period during which it is a member of the group can be clearly and accurately determined. If the accounts are not so kept, the income to be included in the consolidated return shall be computed on the basis of that proportion of its income (subject to the elimination of items exempt from taxation and the addition of items not allowable as deductions) for the full period covered by its books which the number of days for which its income is included in the consolidated return bears to the number of days in the full period covered by its books; but, in the discretion of the Commissioner, there may be eliminated before the proration is made items of income or deduction clearly and accurately determined to be attributable to particular periods, and, after the proration is made, such eliminated items will be added to (if items of income) or deducted from (if deductible items) the income determined by proration for the period to which such items are applicable.

§ 1.1502-33 *Gain or loss from sale of stock, or bonds or other obligations.* Gain or loss from the sale or other disposition (whether or not during a consolidated return period) by a corporation which during any period of time has been a member of an affiliated group which makes or is required to make a consolidated return, of any share of stock or any bond or other obligation issued or incurred by another corporation which during any part of such period was a member of the same group, shall be determined, and the extent to which such gain or loss shall be recognized and shall be taken into account shall also be determined, in the same manner, to the

same extent, and upon the same conditions as though such corporations had never been affiliated except—

(a) In the case of a disposition (by sale, or in complete or partial liquidation not involving cash in an amount in excess of the adjusted basis of both the stock and the bonds and other indebtedness liquidated, or otherwise) during a consolidated return period to another member of the group (§§ 1.1502-31 and 1.1502-37)

(b) That the basis for determining the gain or loss, in the case of shares of stock, or in the case of bonds or other obligations, held during any part of a consolidated return period, shall be determined in accordance with § 1.1502-34 and 1.1502-35; and

(c) As provided in § 1.1502-36 (imposing certain limitations upon losses otherwise allowable upon sales of stock, or bonds or other obligations)

§ 1.1502-34 *Sale of stock; basis for determining gain or loss—(a) Scope of section.* This section prescribes the basis for determining the gain or loss upon any sale or other disposition (hereinafter referred to as "sale") by a corporation which is (or has been) a member of an affiliated group which makes (or has made) a consolidated return for any taxable year, of any share of stock issued by another member of such group (whether issued before or during the period that it was a member of the group and whether issued before, during, or after the taxable year 1929) and held by the selling corporation during any part of a period for which a consolidated return is made or required under the regulations under section 1502. For the basis in the case of a sale of bonds, see § 1.1502-35.

(b) *Sales made while selling corporation is member of affiliated group.* If the sale is made within a period during which the selling corporation is a member of the affiliated group, whether or not during a consolidated return period, and whether or not, as a result of such sale, the issuing corporation ceases to be a member of the group, the basis shall be determined as follows:

(1) The aggregate bases of all shares of stock of the issuing corporation held by each member of the affiliated group (exclusive of the issuing corporation) immediately prior to the sale, shall be determined separately for each member of the group, and adjusted in accordance with the other provisions of subtitle A, but without regard to any adjustment under the last sentence of section 1051 relating to losses of the issuing corporation sustained by such corporation after it became a member of the group.

(2) From the combined aggregate bases as determined in subparagraph (1) of this paragraph, there shall be deducted the sum of—

(i) All losses of such issuing corporation sustained during taxable years for which consolidated income tax returns were made or were required (whether the taxable year 1929 or any prior or subsequent taxable year) after such corporation became a member of the affiliated group and prior to the sale of the stock to the extent that such losses could not

have been availed of by such corporation as net loss or net operating loss in computing its net income or taxable income, as the case may be, for such taxable years if it had made a separate return for each of such years,

(ii) With respect to each of such taxable years for which consolidated returns were made or were required both for income and for excess profits tax purposes, the excess, if any of all losses of such issuing corporation for such year, properly adjusted in the computation of consolidated excess profits net income over the amount of such losses for such year computed under (i) of this subparagraph to the extent that such excess could not have been availed of by such corporation as a net operating loss in computing its excess profits net income for such taxable years if it had made a separate return for each of such years, and

(iii) With respect to each of such taxable years for which consolidated returns were made or were required for excess profits tax purposes only, all losses of such issuing corporation for such year, properly adjusted in the computation of consolidated excess profits net income, to the extent that such losses could not have been availed of by such corporation as a net operating loss in computing its excess profits net income for such taxable years if it had made a separate excess profits tax return for each of such years,

reduced by any losses of the issuing corporation apportioned under this section to its stock sold or otherwise disposed of in a prior transaction, disregarding any transaction between members of the affiliated group during a consolidated income or excess profits tax return period which did not constitute a partial liquidation of the issuing corporation. For any taxable year in which the group sustained a consolidated loss not availed of in prior or subsequent years as a deduction under net loss or net operating loss provisions, the amount deducted under this subparagraph shall be further reduced by an amount equal to that proportion of such consolidated loss which the loss of the issuing corporation for the year in which such loss was sustained bears to the aggregate losses of the members of the group for such year.

(3) The sum of the aggregate bases of all shares of stock, after making the deduction under subparagraph (2) of this paragraph, shall then be apportioned among the members of the affiliated group which hold stock of the issuing corporation, by allocating to each such member that proportion of the sum of the aggregate bases so reduced which the aggregate basis of the stock in the issuing corporation held by such member bears to the sum of the aggregate bases.

(4) The aggregate basis as determined under subparagraph (3) of this paragraph for each member of the affiliated group shall then be equitably apportioned among the several classes of stock of the issuing corporation held by such member according to the circumstances of the case—ordinarily by allocating to each class of such stock that proportion of the aggregate basis

which the basis of each class of such stock held by it at the time of the sale is to the sum of the bases of the several classes of such stock held by it.

(5) The basis of each share of stock of each class held by a member of the affiliated group shall then be determined by dividing the basis apportioned to such class under subparagraph (4) of this paragraph by the total number of shares of such class held by it.

(c) *Sales after selling corporation has ceased to be member of affiliated group.* If the sale is made after the selling corporation has ceased to be a member of the affiliated group, such basis shall be determined in accordance with paragraph (b) of this section, except that—

(1) The aggregate basis (under paragraph (b) (1) of this section) shall be determined for all shares of the issuing corporation held by each member of the group immediately prior to the time the selling corporation ceased to be a member of the group (rather than immediately prior to the sale)

(2) The reduction (under paragraph (b) (2) of this section) with respect to losses apportioned to stock sold or otherwise disposed of in prior transactions shall be determined without regard to the transaction which terminated the affiliation and all subsequent transactions;

(3) The allocation (under paragraph (b) (3) of this section) shall be made to each member of the group which held stock of the issuing corporation immediately prior to the time the selling corporation ceased to be a member of the group (rather than to the members holding such stock at the time of the sale), and

(4) The basis of each share of stock held by the selling corporation (determined, as above, as of the time the selling corporation ceased to be a member of the group) shall then be adjusted in accordance with the other provisions of subtitle A in order to determine the basis at the time of the sale.

(d) *Definition of "loss" "consolidated loss" "net loss" or "net operating loss" and "consolidated excess profits net income"* As used in this section the term "loss" means either the excess over the gross income of the issuing corporation of the sum of its allowable deductions (not including any net loss or net operating loss deduction) allowable in computing consolidated taxable income or the excess over the gross income of the issuing corporation of the sum of its allowable deductions (not including any net loss or net operating loss deduction), plus the proportionate part properly attributable to such corporation of the credits relating to interest on certain Government obligations and dividends received allowable in computing consolidated normal tax net income, the consolidated special class net income or consolidated net income subject to tax determined in accordance with the Internal Revenue Code of 1939 and provisions of consolidated returns regulations applicable to the period. The term "consolidated loss" means the excess of the sum of the losses, separately computed, over the sum of the normal tax net income, the special class net income,

the net income subject to tax or the taxable income determined in accordance with the provisions of the Internal Revenue Code of 1939 or the Revenue Act or of subtitle A of the Internal Revenue Code of 1954 and pursuant to the provisions of consolidated returns regulations applicable to the period; the term "net loss" or "net operating loss" means the net loss or net operating loss, as the case may be, determined in accordance with the provisions of the Internal Revenue Code of 1939 or the Revenue Act or of subtitle A of the Internal Revenue Code of 1954 and pursuant to the provisions of consolidated returns regulations applicable to the period; and the term "consolidated excess profits net income" means the consolidated excess profits net income or consolidated section 433 (a) excess profits net income determined in accordance with the provisions of the Internal Revenue Code of 1939 or the Revenue Act and pursuant to the provisions of consolidated returns regulations applicable to the period.

§ 1.1502-35 *Sale of bonds or other obligations; basis for determining gain or loss.* In the case of a sale or other disposition by a corporation, which is (or has been) a member of an affiliated group which makes (or has made) a consolidated income tax or excess profits tax return for any taxable year, of bonds or other obligations issued or incurred by another member of such group (whether or not issued or incurred while it was a member of the group and whether issued or incurred before, during, or after the taxable year 1929) and held by the selling corporation during any part of a period for which a consolidated return is made or required under the regulations under section 1502, the basis of each bond or obligation, for determining the gain or loss upon such sale or other disposition, determined in accordance with the other provisions of subtitle A, but without regard to any adjustment under the last sentence of section 1051, shall be decreased (except as otherwise provided in this section) by the excess, if any, of the aggregate of the deductions computed under § 1.1502-34 (b) (2) or (c) over the sum of the aggregate bases of the stock of the debtor corporation as computed under § 1.1502-34 (b) (1) or (c) as the case may be, held by the members of the group. The adjustment with respect to so much of such deductions as is based upon losses sustained during the taxable year 1929 and subsequent taxable years for which the last day prescribed by law for the filing of the return fell on or before March 1, 1945 (the date on which Treasury Decision 5441 was filed with the Division of the Federal Register) and availed of on consolidated returns filed for such years shall be made only in those cases in which the sales or other disposition of such bonds or other obligations resulted in a loss. See also § 1.1502-40 relating to disallowance of loss upon intercompany bad debts.

§ 1.1502-36 *Limitation on allowable losses on sale of stock, or bonds, or other obligations—(a) General rule.* No loss shall be allowed under §§ 1.1502-33, 1.1502-34, or 1.1502-35 upon the sale or

other disposition of stock or bonds or obligations to the extent that such loss is attributable to—

(1) Transfers of assets within the affiliated group (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period in which the corporations were affiliated (whether or not a consolidated return was made) or

(2) A distribution during a period in which the corporations were affiliated of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group.

(b) *Qualification of general rule.* Paragraph (a) of this section shall not be considered as in any way limiting the operation of the provisions of subtitle A relating to the basis for determining gain or loss upon the sale or other disposition of property, but as being in amplification of and not in substitution for such provisions; subject, however, to this qualification; that to the extent that the transfers of assets referred to in paragraph (a) of this section are taken into account under the terms of subtitle A in making adjustments in the basis, such transfers will not be taken into account, in denying losses under paragraph (a) of this section.

§ 1.1502-37 *Liquidations; recognition of gain or loss—(a) During consolidated return period.* (1) Gain or loss shall not be recognized upon a distribution during a consolidated return period, by a member of an affiliated group to another member of such group, in cancellation or redemption of all or any portion of its stock, except—

(i) Where such distribution is in complete liquidation and redemption of all of its stock (whether in one distribution or a series) and of its bonds and other indebtedness, if any, and falls without the provisions of section 332, and is the result of a bona fide termination of the business and operations of such member of the group, in which case the adjustments specified in §§ 1.1502-34 and 1.1502-35 shall be made, and § 1.1502-36 shall be applicable; or

(ii) Where such a distribution without the provisions of section 332 is one made in cash in an amount in excess of the adjusted basis of the stock, and bonds and other indebtedness, in which case gain shall be recognized to the extent of such excess.

(2) When the business and operations of the liquidated member of the affiliated group are continued by another member of the group, it shall not be considered a bona fide termination of the business and operations of the liquidated member. With respect to the acquisition of its bonds by the issuing company, see § 1.1502-41 (b)

(3) For the purpose of determining whether an affiliated corporation receiving property in a liquidating distribution qualifies under the provisions of section 332 (b) (1) the aggregate amount of the stock of the liquidated corporation owned by the several members of the affiliated group on the date of the adoption of the plan of liquidation and at all times, subsequent thereto and prior to the receipt of the property in

liquidation shall be considered as owned by the distributee.

(b) *After consolidated return period.* In case any such distribution is made after a consolidated return period, whether in complete or partial liquidation, except a complete liquidation within the provisions of section 332 (b) with respect to stock and with respect to bonds, debentures, notes, certificates, and other indebtedness of the liquidated corporation acquired prior to or during any taxable year subsequent to 1928 for which a consolidated income or excess profits tax return was filed, the adjustments specified in §§ 1.1502-34 and 1.1502-35 shall be made, and § 1.1502-36 will be applicable.

§ 1.1502-38 *Basis of property*—(a) *General rule.* Subject to the provisions of paragraphs (b) and (c) of this section and except as otherwise provided in §§ 1.1502-34, 1.1502-35 and 1.1502-39 the basis during a consolidated return period for determining the gain or loss from the sale or other disposition of property, or upon which exhaustion, wear and tear, obsolescence, amortization, and depletion are to be allowed, shall be determined and adjusted in the same manner as if the corporations were not affiliated, whether such property was acquired before or during a consolidated return period. Except as otherwise provided in § 1.1502-39 such basis immediately after a consolidated return period (whether the affiliation has been broken or whether the privilege of making a consolidated return is not exercised) shall be the same as immediately prior to the close of such period.

(b) *Intercompany transactions.* The basis prescribed in paragraph (a) of this section shall not be affected by reason of a transfer during a consolidated return period, other than upon liquidation as provided in paragraph (c) of this section (whether by sale, gift, dividend, or otherwise) from a member of the affiliated group to another member of such group.

(c) *Basis after liquidation.* (1) Where property is acquired upon a distribution described in § 1.1502-37 (a) in which gain or loss is recognized to the distributee, the basis of such property shall be its fair market value at date of acquisition.

(2) Where property is acquired upon a liquidation to which section 332 is applicable and if the first distribution in pursuance of the plan of liquidation occurs on or after June 22, 1954—

(i) Unless (ii) of this subparagraph is applicable, the basis of such property shall be the same as it would be in the hands of the transferor;

(ii) If the basis of such property is determined under 334 (b) (2) such section shall be applicable in determining the basis of property received on the liquidation (except property received by the liquidating corporation from other members of the affiliated group during a consolidated return period) and to any property transferred by the liquidating corporation to other members of the group during a consolidated return period as if such property had not been transferred and was received in such

liquidation. In addition, proper adjustment shall be made with respect to the effect of any other transactions between members of the group during a consolidated return period which creates a distortion of income or a substantial variation in basis of property from the basis such property would have had if there had been no such transactions.

(3) Where property is acquired upon a distribution (not a complete liquidation within the provisions of section 332 (b)) in which gain or loss to the distributee is not recognized as provided in § 1.1502-37 (a) the basis of such property shall be the same as the basis of the stock and the bonds and other obligations exchanged therefor, adjusted for—

(i) The transfer of assets within the affiliated group by the distributing corporation (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period for which the corporations were affiliated (whether or not a consolidated return was made)

(ii) Distributions during a period in which the corporations were affiliated of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group; and

(iii) Cash received in the distribution.

(4) Where property was acquired upon a distribution in which gain or loss to the distributee was recognized pursuant to the provisions of section 333 (a) or the corresponding provisions of the Internal Revenue Code of 1939 or the Revenue Act of 1938, the basis of such property shall be the same as the basis of the stock exchanged therefor, adjusted for—

(i) The transfer of assets within the affiliated group by the distributing corporation (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period for which the corporations were affiliated (whether or not a consolidated return was made)

(ii) Distribution during a consolidated return period of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group;

(iii) Cash received in the distribution; and

(iv) The amount of gain recognized to the distributee in the liquidation.

(d) *Basis not affected by acquisition or sale of stock.* Neither the acquisition of stock of a corporation nor its sale or other disposition shall affect the basis of the property of such corporation for determining gain or loss or upon which exhaustion, wear and tear, obsolescence, amortization, and depletion are to be allowed.

§ 1.1502-39 *Inventories*—(a) *Consolidated return for first year of affiliation.* If the income of an affiliated corporation is included in a consolidated return for the period immediately following the date upon which such corporation became a member of the affiliated group, the value of its opening inventory to be used in computing the consolidated taxable income shall be the proper value of the closing inventory used in comput-

ing its taxable income for the preceding taxable year.

(b) *Consolidated return after separate return by affiliates.* If—

(1) A corporation which is a member of the affiliated group for the first consolidated return period was a member of the group in the preceding taxable year, or

(2) A corporation which filed a separate return for its previous taxable year was not a member of the affiliated group within the meaning of section 141 of the Internal Revenue Code of 1939, at any time during the last taxable year of the group not subject to section 1502, but which would have been a member of the group during such period if section 1504 had been applicable and is a member of the affiliated group filing a consolidated return for the first taxable year to which section 1502 is applicable,

the value of its opening inventory to be used in computing the consolidated taxable income for the first consolidated return period shall be the proper value of the closing inventory used in computing its taxable income for the preceding taxable year, decreased in the amount of profits or increased in the amount of losses reflected in such inventories which arose in transactions between members of the affiliated group and which have not been realized by the group through final transactions with persons other than members of the group.

(c) *Separate returns made after consolidated returns.* If a corporation which was a member of an affiliated group in a consolidated return period makes or is required to make a separate return for the succeeding taxable year, the value of its opening inventory to be used in computing its taxable income for such succeeding taxable year shall be the proper value of its closing inventory used in computing consolidated taxable income for the last consolidated return period increased in the amount of profits or decreased in the amount of losses eliminated in the computation of such inventory as profits or losses arising in transactions between members of the affiliated group, but in an amount not exceeding, in the case of profits, either the amount of profits arising from such intercompany transactions reflected in the closing inventory of such corporation for such succeeding taxable year or the amount of such intercompany profits eliminated from its opening inventory for its first consolidated return period pursuant to the provisions of paragraph (b) of this section, and not exceeding, in the case of losses, either the amount of losses arising from intercompany transactions reflected in the closing inventory for such corporation for such succeeding taxable year or the amount of such intercompany losses eliminated from its opening inventory for its first consolidated return period pursuant to the provisions of paragraph (b) of this section.

§ 1.1502-40 *Bad debts*—(a) *Deduction during consolidated return period.* No deduction shall be allowed during a consolidated return period to any member of the affiliated group on account of worthlessness in whole or in part of any

obligation (including accounts receivable, bonds, notes, debts, and claims of whatsoever nature) of any other corporation which was a member of the group as of the last day of the taxable year or which was liquidated by the group during such year, except as a loss resulting from a bona fide termination of the business and operations of such other corporation, whether in liquidation or otherwise, in which case the loss shall be computed subject to the adjustments specified in § 1.1502-35 and the provisions of § 1.1502-36 shall be applicable.

(b) *Limitation of allowance after consolidated return period.* With respect to obligations (including accounts receivable) of a member of an affiliated group acquired in any way by another member of the group prior to or during any taxable year subsequent to 1928 for which a consolidated income or excess profits tax return was filed, the adjustments prescribed with respect to the allowance of losses upon the sale of bonds shall be applicable to the allowance of any bad debt deduction for any period subsequent to the consolidated return period. See § 1.1502-35.

§ 1.1502-41 *Sale and retirement by corporation of its bonds—(a) Issued at discount or premium.* If a corporation which during any taxable year has been a member of an affiliated group which makes or is required to make a consolidated return, has issued its bonds at a discount or premium (whether or not during a consolidated return period) deduction will be allowed for the amortization of the discount, and income included for the amortization of the premium, in the same manner, to the same extent, and upon the same conditions as if the corporation had never been affiliated, except that no deduction for amortization of discount shall be allowed, and no income shall be included for amortization of premium, during a period for which a consolidated return is made, on bonds of one member of the group owned by another member of the group.

(b) *Acquisition of bonds by issuing company.* If a corporation which has been a member of an affiliated group which makes or is required to make a consolidated return, acquires its bonds (whether or not from another member of such group and whether or not during a consolidated return period) gain or loss shall be recognized in the same manner to the same extent and upon the same conditions as if the corporation had never been affiliated, except that, if such bonds are acquired from another member of the group during a consolidated return period, and in a transaction other than a distribution in a liquidation in which gain or loss to the distributee is recognized pursuant to § 1.1502-37 (a) in determining the gain or loss to the issuing company from such acquisition, the basis thereof to such other member of the group shall be deemed the purchase price.

§ 1.1502-42 *Capital loss limitations and carryover.* (a) The provisions of sections 165, 832 (c) (5) 1211, 1212, and 1231 with respect to gains and losses from sales or exchanges of capital assets

shall be applied, in respect of such gains and losses sustained during a consolidated return period as if the affiliated group were the taxpayer.

(b) With respect to a net capital loss sustained by a corporation in a taxable year prior to the first consolidated return period in respect of which its income is included in a consolidated return, such loss (in an amount not in excess of the net capital gain of such corporation for succeeding consolidated return periods) shall, for the purposes of section 1212, relating to net capital loss carryovers, be treated as if such net capital loss had been sustained by the affiliated group.

(c) A consolidated net capital loss of an affiliated group for a consolidated return period shall be considered as a consolidated short-term capital loss in subsequent consolidated return periods notwithstanding that one or more corporations, members of the group in the taxable year in which such loss was sustained, make separate returns for subsequent taxable years (or join in a consolidated return made by another affiliated group) but only to the extent that such consolidated net capital loss is not attributable to such corporations; and such portion of such consolidated net capital loss as is attributable to the several corporations making separate returns (or joining in a consolidated return made by another affiliated group) for a subsequent taxable year shall be considered as a short-term capital loss in such separate returns, or in such consolidated return of the other affiliated group, but only to the extent that such portion of such consolidated net capital loss was not absorbed in intervening taxable years by net capital gains, consolidated or separate, as the case may be. Any net capital loss sustained by a corporation prior to the first taxable year in respect of which its income is included in the consolidated return shall be considered as a short-term capital loss in the separate return of such corporation (or the consolidated return of another affiliated group of which it becomes a member) for a subsequent taxable year for which it makes a separate return or joins in a consolidated return of another group, but only to the extent that such net capital loss was not absorbed in intervening taxable years by net capital gains, consolidated or separate, as the case may be.

§ 1.1502-43 *Credit for foreign taxes.* The credit allowed to an affiliated group for taxes paid or accrued under section 901 and for taxes deemed to have been paid under section 902 during the consolidated return period to any foreign country or to any possession of the United States, shall be computed and allowed as if the affiliated group were the taxpayer and as if the aggregate taxes paid or deemed to have been paid by the several members of the group and the credits allowed with respect to such payments were payments made and deemed to have been made by, and credits allowed to, the group.

§ 1.1502-44 *Methods of accounting—(a) In general.* All members of the affiliated group shall adopt that method

of accounting which clearly reflects the consolidated taxable income. A method of accounting which does not treat with reasonable consistency all items of gross income and deductions of the various members of the group shall not be regarded as clearly reflecting the consolidated taxable income. For example, one member of the group will not be permitted to report items of income or deductions on the cash method of accounting while another member of the same group reports the same or similar items on the accrual method. The provisions of this paragraph are subject to the exceptions stated in paragraph (b) of this section.

(b) *Combination of methods.* If the members of an affiliated group have established different methods of accounting, each member may retain such method with the consent of the Commissioner: *Provided*, That the consolidated taxable income is clearly reflected: *And provided further* That intercompany transactions affecting such consolidated taxable income shall be eliminated and adjustments on account of such transactions shall be made with reference to a uniform method of accounting to be elected by the members of the group with the consent of the Commissioner.

(c) *Adjustments required by changes in method of accounting.* In any case in which a member of an affiliated group changes its method of accounting the provisions of section 481 (a) shall be applicable.

§ 1.1502-45 *Mine exploration expenditures.* For the purpose of applying the limitation provided in section 615 (c) (whether during a consolidated return period or during a period for which a separate return is made) if during a preceding taxable year for which a consolidated return was made or was required to be made any member of the affiliated group for such preceding taxable year was allowed the deduction provided in section 615 (a) or made the election provided in section 615 (b) each member of the affiliated group for such preceding taxable year shall be deemed to have been allowed such deduction or to have made such election, as the case may be.

§ 1.1502-46 *Depreciation.* In the computation of the deduction for depreciation under section 167, property received by one member of the group from another member of the group during a consolidated return period, shall be treated in the same manner as it could be treated if it were held by the transferor.

§ 1.1502-47 *Election to deduct accrued taxes.* If all members of the affiliated group were taxpayers which, for each taxable year in which they were subject to the tax imposed by section 500 of the Internal Revenue Code of 1939 deducted Federal income and excess profits taxes when paid for the purpose of computing subchapter A net income under such Code, the affiliated group shall, if the tax liability under section 541 is computed upon the consolidated undistributed personal holding company income, deduct

taxes under section 545 when paid unless a member of the common affiliated group elects in its return or the common parent elects in a consolidated return for the group of which it is the common parent for a taxable year ending after June 30, 1954, to deduct the taxes described in section 545, when accrued. In any case in which the common parent corporation or any member of the affiliated group has, prior to the taxable year, elected to deduct such taxes when accrued, each member of the group shall be deemed to have so elected in the first year thereafter in which its income is included in the consolidated personal holding company income. If an election is made by the common parent corporation with respect to a year for which the tax liability under section 541 is computed upon the consolidated undistributed personal holding company income, each member of the group shall be deemed to have made such election in such year. Any such election made or deemed to have been made shall be applicable to each member of the group for the taxable year for which the election is made and for all subsequent taxable years. Any election so made shall be irrevocable.

§ 1.1502-48 *Liability for tax under section 531.* In any case in which an affiliated group computes the tax liability under section 541, upon the consolidated undistributed personal holding company income, the tax imposed by section 531 shall not be applicable.

§ 1.1502-49 *Additions to tax for failure to pay estimated tax.* (a) Except in the case of an affiliated group described in paragraph (b) of this section, any addition to the tax under section 6655 for underpayment of estimated tax of a member of an affiliated group which files a consolidated return for the taxable year shall be determined by allocating the tax shown on the consolidated return to the several members of the group by any of the methods provided in § 1.1552-1 (a) selected by the common parent corporation for the taxable year, without regard to the method elected under section 1552. If the group would use the method of allocation authorized by § 1.1552-1 (a) (4) it must be the method elected by the group with the approval of the Commissioner for the purpose of determining earnings and profits. In the application of section 6655 (d) (1) with respect to a member of the group which was included in a consolidated return for the preceding taxable year, whether or not such member is included in a consolidated return for the taxable year, the "tax shown on the return" for the preceding taxable year shall be the portion of the tax shown on such consolidated return determined by allocating such tax to the several members of the group by the procedure described above. In the application of section 6655 (d) (2) if the corporation was included in a consolidated return for the preceding taxable year, the "facts shown on the return" shall be the facts shown on the consolidated return of the group (whether of this or another affiliated group) for the preceding taxable year attributable to such corporation.

(b) In the case of an affiliated group which has filed pursuant to the provisions of § 1.1502-10 (c) (2) a declaration of estimated tax for the taxable year for which a consolidated return is filed, any addition to the tax provided by section 6655 shall be determined by reference to the payments made on such declaration and to the tax shown on the consolidated return.

(c) In the application of section 6655 (d) (1) with respect to the affiliated group described in (b) the "tax shown on the return" shall be—

(1) If the group filed a consolidated return for the preceding taxable year, the tax shown on such return, or

(2) If the group did not file a consolidated return for the preceding taxable year, the aggregate of the taxes of the several members of the group shown on any separate returns of such corporations for the preceding taxable year, plus the tax shown on a consolidated return for the preceding taxable year attributable to any member of the group which joined in a consolidated return with another affiliated group for such preceding taxable year. The tax attributable to any such corporation which joined in a consolidated return shall be determined by allocating the tax shown on such consolidated return in accordance with the procedure described in paragraph (a) of this section.

(d) In the application of section 6655 (d) (2) with respect to the affiliated group described in (b) the "facts shown on the return" shall be—

(1) If the group filed a consolidated return for the preceding taxable year, the facts shown on such return, or

(2) If the group did not file a consolidated return for the preceding taxable year, the facts shown on the separate returns of the members of the affiliated group for the preceding taxable year together with the facts shown on a consolidated return for the preceding taxable year attributable to any member of the group which joined in a consolidated return with another affiliated group for such preceding taxable year.

§ 1.1502-50 *Gain on sale of bonds and other evidences of indebtedness.* In the application of section 1232 (a) if one member of the affiliated group acquires a bond or other evidence of indebtedness from another member of the affiliated group during a consolidated return period, the determination of the amount which is treated as gain from the sale or exchange of property which is not a capital asset shall be made by including in the period of time during which such bond or other evidence of indebtedness was held, the period of time during which it was held by any other corporation which transferred it in a transaction to which § 1.1502-31 (b) (1) (i) (or the corresponding provision of prior consolidated returns regulations) is applicable without regard to any period of time before the last sale or exchange of such instrument to which such section is not applicable. In the application of section 1232 (c) if a bond or other evidence of indebtedness was acquired from another member of an affiliated group during a consolidated return period, then

the bond or other evidence of indebtedness shall be deemed to have been purchased at the time of, and as having a market value with coupons attached, determined by reference to the earliest date of purchase by any other corporation which transferred it in a transaction to which § 1.1502-31 (b) (1) (i) (or the corresponding provision of prior consolidated returns regulations) is applicable without regard to any purchase prior to the last purchase to which such section is not applicable.

§ 1.1503 *Statutory provisions; computation and payment of tax.*

Sec. 1503. *Computation and payment of tax—(a) General rule.* In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed prior to the last day prescribed by law for the filing of such return; except that the tax imposed under section 11 (c) or section 831 shall be increased for any taxable year by 2 percent of the consolidated taxable income of the affiliated group of includible corporations. For purposes of this section, the term "consolidated taxable income" means the consolidated taxable income computed without regard to the deduction provided by section 242 for partially tax-exempt interest.

(b) *Limitation.* If the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 921) or one or more regulated public utilities (as defined in subsection (c)), the increase of 2 percent provided in subsection (a) shall be applied only on the amount by which the consolidated taxable income of the affiliated group exceeds the portion (if any) of the consolidated taxable income attributable to the Western Hemisphere trade corporations and regulated public utilities included in such group.

(c) *Regulated public utility defined—(1) In general.* For purposes of subsection (b), the term "regulated public utility" means—

(A) A corporation engaged in the furnishing or sale of—

(i) Electric energy, gas, water, or sewerage disposal services, or

(ii) Transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) Transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipeline, if subject to the jurisdiction of the Federal Power Commission.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Interstate Commerce Commission, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Interstate Commerce Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or pub-

lic utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Civil Aeronautics Board.

(F) A corporation engaged in the furnishing or sale of transportation by common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under part III of the Interstate Commerce Act, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933.

(2) *Limitation.* For purposes of subsection (b), the term "regulated public utility" does not (except as provided in paragraph (3)) include a corporation described in paragraph (1) unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in paragraph (1). If the taxpayer establishes to the satisfaction of the Secretary or his delegate that—

(A) Its revenue from regulated rates described in paragraph (1) (A) or (D) and its revenue derived from unregulated rates are derived from its operation of a single interconnected and coordinated system or from the operation of more than one such system, and

(B) The unrelated rates have been and are substantially as favorable to users and consumers as are the regulated rates,

such revenue from such unregulated rates shall be considered, for purposes of this paragraph, as income derived from sources described in paragraph (1) (A) or (D).

(3) *Certain railroad corporations.—*(A) *Lessor corporation.* For purposes of subsection (b), the term "regulated public utility" shall also include a railroad corporation subject to part I of the Interstate Commerce Act, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into prior to January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in paragraph (1). For purposes of the preceding sentence, an agreement for lease of railroad properties entered into prior to January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into prior to January 1, 1954.

(B) *Common parent corporation.* For purposes of subsection (b), the term "regulated public utility" also includes a common parent corporation which is a common carrier by railroad subject to part I of the Interstate Commerce Act if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in paragraph (1). For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (A), received from a regulated public utility shall be considered as derived from sources described in paragraph (1) if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

§ 1.1503-1 *Computation and payment of tax—*(a) *General rule.* In any case in which a consolidated return is filed or required to be filed, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations prescribed under section 1502 promulgated prior to the last date prescribed by law for the filing of such return.

(b) *Limitation.* If the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 921) or one or more regulated public utilities (as defined in section 1503 (c)) the increase in tax described in section 1503 (a) shall be applied in a manner provided in the regulations under section 1502.

(c) *Regulated public utilities.* For regulations relating to the definition of "regulated public utility", see § 1.1502-2 (g)

§ 1.1504 *Statutory provisions; definitions.*

SEC. 1504. *Definitions—*(a) *Definition of "affiliated group."* As used in this chapter, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

(1) Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

(2) The common parent corporation owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(b) *Definition of "includible corporation"* As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 803 or 821.

(3) Foreign corporations.

(4) Corporations entitled to the benefits of section 931, by reason of receiving a large percentage of their income from sources within possessions of the United States.

(5) Corporations organized under the China Trade Act, 1922.

(6) Regulated investment companies subject to tax under subchapter M of chapter 1.

(7) Unincorporated business enterprises subject to tax as corporations under section 1361.

(c) *Includible insurance companies.* Despite the provisions of paragraph (2) of subsection (b), two or more domestic insurance companies each of which is subject to taxation under the same section of this subtitle shall be considered as includible corporations for the purpose of the application of subsection (a) to such insurance companies alone.

(d) *Subsidiary formed to comply with foreign law.* In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation

may, at the option of the domestic corporation, be treated for the purpose of this subtitle as a domestic corporation.

§ 1.1504-1 *Definitions.* The privilege of filing consolidated returns is extended to all includible corporations constituting affiliated groups as defined in section 1504. See the regulations under § 1.1502 for a description of an affiliated group and the corporations which may be considered as includible corporations.

§ 1.1505 *Statutory provisions; cross references.*

SEC. 1505. *Cross references.* (1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503 (a) (1).

(2) For allocation of income and deductions of related trades or businesses, see section 482.

§ 1.1551 *Statutory provisions; disallowance of surtax exemption and accumulated earnings credit.*

SEC. 1551. *Disallowance of surtax exemption and accumulated earnings credit.* If any corporation transfers, on or after January 1, 1951, all or part of its property (other than money) to another corporation which was created for the purpose of acquiring such property or which was not actively engaged in business at the time of such acquisition, and if after such transfer the transferee corporation or its stockholders, or both, are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then such transferee corporation shall not for such taxable year (except as may be otherwise determined under section 269 (b)) be allowed either the \$25,000 exemption from surtax provided in section 11 (c) or the \$60,000 accumulated earnings credit provided in paragraph (2) or (3) of section 535 (c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such exemption or credit was not a major purpose of such transfer. For purposes of this section, control means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of the corporation. In determining the ownership of stock for the purpose of this section, the ownership of stock shall be determined in accordance with the provisions of section 544, except that constructive ownership under section 544 (a) (2) shall be determined only with respect to the individual's spouse and minor children. The provisions of section 269 (b), and the authority of the Secretary under such section, shall, to the extent not inconsistent with the provisions of this section, be applicable to this section.

§ 1.1551-1 *Disallowance of surtax exemption and accumulated earnings credit—*(a) *In general.* If one corporation transfers on or after January 1, 1951, all or part of its property (other than money) to another corporation, neither the \$25,000 exemption from surtax provided in section 11 (c) nor the \$60,000 accumulated earnings credit provided in paragraph (2) or (3) of section 535 (c) shall be allowed the transferee if:

(1) The transferee was created for the purpose of acquiring such property, or

(2) The transferee was not actively engaged in business at the time of the acquisition, and

(3) After such transfer, the transferor or its stockholders, or both, are in control of the transferee during any part of the taxable year of the transferee, unless—

(4) The transferee establishes by the clear preponderance of the evidence that the securing of either such exemption or credit or both was not a major purpose of such transfer, or

(5) The Commissioner allows such exemption or credit pursuant to the authority provided in section 1551 and section 269 (b)

(b) *Purpose of section 1551.* (1) The purpose of section 1551 is to prevent avoidance or evasion of the surtax imposed by section 11 (c) or of the accumulated earnings tax imposed by section 531. It is not intended, however, that section 1551 be interpreted as delimiting or abrogating any principle of law established by judicial decision, or any existing provisions of the Internal Revenue Code, such as sections 269 and 482, which have the effect of preventing the avoidance or evasion of income taxes. Such principles of law and such provisions of the Code, including section 1551 are not mutually exclusive, and in appropriate cases they may operate together or they may operate separately.

(2) The provisions of section 269 (b) and the authority of the Commissioner thereunder, to the extent not inconsistent with the provisions of section 1551 are applicable to cases covered by section 1551. Pursuant to the authority provided in section 269 (b) the Commissioner may allow to the transferee any part of a surtax exemption or accumulated earnings credit for a taxable year for which such exemption or credit would otherwise be disallowed under section 1551, or he may apportion such exemption or credit among the corporations involved. For example, Corporation A transfers on January 1, 1955, all its property to Corporations B and C in exchange for all the stock of such corporations. Immediately thereafter, Corporation A is dissolved and its stockholders become the sole stockholders of Corporations B and C. Assuming that Corporations B and C are unable to establish by the clear preponderance of the evidence that the securing of the surtax exemption provided in section 11 (c) or the accumulated earnings credit provided in section 535 or both, was not a major purpose of the transfer, the Commissioner, nevertheless, has authority under sections 1551 and 269 (b) to allow one such exemption and credit and to apportion such exemption and credit between Corporations B and C.

(3) For the purpose of section 1551 and this section, a corporation maintaining an office for the purpose of preserving its corporate existence is not considered to be "actively engaged in business" even though such corporation may be deemed to be "doing business" for other purposes. Similarly for the purpose of section 1551 and this section, a corporation engaged in winding up its affairs, prior to an acquisition to which section 1551 is applicable, is not considered to be "actively engaged in business."

(c) *Meaning and application of the term "control."* (1) For the purpose of

section 1551 and this section, the term "control" means the ownership of stock possessing either (i) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or (ii) at least 80 percent of the total value of shares of all classes of stock of the corporation. In determining whether stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote is owned, all classes of such stock shall be considered together; it is not necessary that 80 percent of each class of voting stock be owned. Likewise, in determining whether stock possessing at least 80 percent of the total value of shares of all classes of stock is owned, all classes of stock of the corporation shall be considered together; it is not necessary that 80 percent of the value of shares of each class be owned. The fair market value of a share shall be considered as the value to be used for the purpose of this computation. The ownership of stock shall be determined in accordance with the provisions of section 544 and the regulations thereunder, except that constructive ownership under section 544 (a) (2) shall be determined only with respect to the individual's spouse and minor children. For example, in addition to stock held directly or under an option to purchase, an individual is deemed to own stock held directly or indirectly by or for his spouse or minor children, and also to own a proportionate part of the stock owned by a corporation, partnership, estate, or trust in which he holds an interest as a shareholder, partner, or beneficiary.

(2) Disallowance of the exemption and credit under section 1551 is not limited to the taxable year of the transferee corporation in which the transfer of property occurs. Section 1551 provides for the disallowance of the exemption and credit for any taxable year whether the taxable year in which the transfer of property occurs or any subsequent taxable year of the transferee corporation, if, during any part of such year, the transferor corporation or its stockholders, or both, are in control of the transferee corporation. Thus, if Corporation D on January 1, 1955, transfers a part of its property to Corporation E, a corporation not actively engaged in business at the time of the acquisition of such property, in exchange for 60 percent of the voting stock of Corporation E, and, thereafter, during a later taxable year with respect to which section 1551 is applicable, acquires an additional 20 percent of the voting stock of Corporation E, Corporation D, by reason of such later acquisition, is considered to be in control of Corporation E as of the time of such acquisition for the purpose of section 1551. Accordingly, Corporation E will be disallowed the surtax exemption and accumulated earnings credit for the taxable year in which the later acquisition of stock occurred and for each taxable year thereafter in which the requisite control continues, unless Corporation E establishes by the clear preponderance of the evidence that the securing of such exemption or credit, or both, was not a

major purpose of the transfer of the property in 1955.

(3) In determining, for the purpose of section 1551 whether a corporation, its stockholders, or both, are in control of a transferee corporation, it is not necessary that the stock be acquired on or after January 1, 1951. Thus, if Corporation F on June 1, 1950, owns 70 percent of the voting stock of Corporation G, and, thereafter, on January 2, 1955, Corporation F acquires an additional 10 percent of such stock, control within the meaning of section 1551 is acquired by Corporation F on January 2, 1955.

(d) *Nature of transfer* A transfer made by any corporation of all or part of its assets, whether or not such transfer qualifies as a reorganization under section 368 is within the scope of section 1551 except that section 1551 does not apply to a transfer of money only. For example, the transfer of cash for the purpose of expanding the business of the transferor corporation through the formation of a new corporation is not a transfer within the scope of section 1551 irrespective of whether the new corporation uses the cash to purchase from the transferor corporation stock in trade or similar property.

(e) *Purpose of transfer* In determining, for the purpose of section 1551 whether the securing of the exemption from surtax or the accumulated earnings credit constituted "a major purpose" of the transfer, all circumstances relevant to the transfer shall be considered. For disallowance of the surtax exemption and accumulated earnings credit under section 1551, it is not necessary that the obtaining of either such credit or exemption or both have been the sole or principal purpose of the transfer of the property. It is sufficient if it appears, in the light of all the facts and circumstances, that the obtaining of such exemption or credit, or both, was one of the major considerations that prompted the transfer. Thus, the securing of the surtax exemption or the accumulated earnings credit may constitute "a major purpose" of the transfer, notwithstanding that such transfer was effected for a valid business purpose and qualified as a reorganization within the meaning of section 368. The taxpayer's burden of establishing by the clear preponderance of the evidence that the securing of either such exemption or credit or both was not "a major purpose" of the transfer may be met, for example, by a showing that the obtaining of such exemption, or credit, or both, was not a major factor in relationship to the other consideration or considerations which prompted the transfer.

§ 1.1552 *Statutory provisions; earnings and profits.*

SEC. 1552. *Earnings and profits.*—(a) *General rule.*—Pursuant to regulations prescribed by the Secretary or his delegate the earnings and profits of each member of an affiliated group required to be included in a consolidated return for such group filed for a taxable year beginning after December 31, 1953, and ending after the date of enactment of this title, shall be determined by allocating the tax liability of the group for such year among the members of the group in accord with whichever of the following

methods the group shall elect in its first consolidated return filed for such a taxable year:

(1) The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(2) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities (determined without regard to the 2 percent increase provided by section 1503 (a)) based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Secretary or his delegate.

(b) *Failure to elect.* If no election is made in such first return, the tax liability shall be allocated among the several members of the group pursuant to the method prescribed in subsection (a) (1).

§ 1.1552-1 *Earnings and profits*—(a) *General rule.* For the purpose of determining the earnings and profits of each member of an affiliated group which is required to be included in a consolidated return for such group filed for a taxable year beginning after December 31, 1953, and ending after August 16, 1954, the tax liability of the group shall be allocated among the members of the group in accordance with whichever of the following methods the group shall elect in its first consolidated return for such a taxable year:

(1) The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(2) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and

their tax liabilities (determined without regard to the 2 percent increase provided by section 1503 (a) and § 1.1502-30 (a)) based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Commissioner.

(b) *Method of election.* The election under section 1552 (a) (1), (2) or (3) shall be made not later than the time prescribed by law for filing the first consolidated return of the group for a taxable year beginning after December 31, 1953, and ending after August 16, 1954 (including extensions thereof) if the group elects to allocate its tax liability in accordance with the method prescribed in section 1552 (a) (1), (2) or (3), a statement shall be attached to the return so stating. Such statement shall be made by the common parent corporation and shall be binding upon all members of the group. In the event that the group desires to allocate its tax liability in accordance with any other method pursuant to section 1552 (a) (4), approval of such method by the Commissioner must be obtained within the time prescribed above. If such approval is not obtained in such time, the group shall allocate in accordance with the method prescribed in section 1552 (a) (1) The request shall state fully the method which the group wishes to apply in apportioning the tax liability. An election once made shall be irrevocable and shall be binding upon the group with respect to the year for which made and for all future years for which a consolidated return is filed or required to be filed unless the Commissioner authorizes a change to another method prior to the time prescribed by law for filing the return for the year in which such change is to be effective.

(c) *Failure to elect.* If a group fails to make an election in accordance with paragraph (b) of this section, the method prescribed under section 1552 (a) (1) shall be applicable and shall be binding upon the group in the same manner as if an election had been made to so allocate.

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

Approved: August 24, 1955.

A. N. OVERBY,
Acting Secretary of the Treasury.

[F. R. Doc. 55-7027; Filed, Aug. 29, 1955;
8:49 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Defense Mobilization

[Defense Mobilization Order—VII-3, Supp. 1]

DMO VII-3, SUPP. 1—POLICY ON THE CONTROL OF MATERIALS AND FACILITIES BY THE USE OF PRIORITIES AND ALLOCATION AUTHORITY UNDER DISASTER CONDITIONS

By virtue of the authority vested in me by Executive Order 10480 of August

14, 1953, as amended, it is hereby ordered as follows:

1. Controls on the distribution and use of materials and facilities shall be used to assist in providing materials and facilities for the restoration of productive capacity damaged or destroyed by a major disaster as defined and determined under the provisions of Public Law 875, 81st Cong. (42 U. S. C. 1855)

(a) Whenever the facility to be restored has production orders identified by the symbols A-E.

(b) Whenever failure to restore the facility would result in failure to meet a defense delivery schedule.

(c) Whenever failure to restore the facility would prevent the provision of a service necessary to meet a defense delivery schedule.

(d) When and to the extent that assistance is necessary to restore mobilization base capacity for the production of defense items including materials and services covered by Office of Defense Mobilization expansion goals whether or not such goals remain open.

2. This Supplement shall take effect August 27, 1955.

OFFICE OF DEFENSE
MOBILIZATION,
ARTHUR S. FLEMING,
Director

[F. R. Doc. 55-7073; Filed, Aug. 23, 1955;
10:18 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

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

Appendix C—Public Land Orders
[Public Land Order 1203]

[Washington 01330]

WASHINGTON

RESERVING PUBLIC LANDS IN CONNECTION WITH PHALON LAKE PUBLIC FISHING AREA; REVOKING EXECUTIVE ORDER NO. 3747 OF OCTOBER 16, 1922

By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141), and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, and the act of March 10, 1934, as amended by the act of August 14, 1946 (48 Stat. 401; 60 Stat. 1080; 16 U. S. C. 661-666c), it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Washington are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining but not the mineral-leasing laws, and reserved under the jurisdiction of the Department of the Interior for use of the Department of Game of the State of Washington in connection with the Phalon Lake Public Fishing Area, under such conditions as may be prescribed by the Secretary of the Interior:

WILAMETTE MERIDIAN

T. 38 N., R. 39 E.,
Sec. 21, lot 3.

The tract described contains 9.70 acres.

RULES AND REGULATIONS

Executive Order No. 3747 of October 16, 1922, reserving the above-described tract for use of the Bureau of Fisheries for fish-cultural purposes, is hereby revoked.

ORME LEWIS,
Assistant Secretary of the Interior

AUGUST 23, 1955.

[F. R. Doc. 55-6996; Filed, Aug. 29, 1955;
8:45 a. m.]

[Public Land Order 1210]

[Misc. 69028]

CALIFORNIA

POWER SITE RESTORATION NO. 517 AND
RESERVOIR SITE RESTORATION NO. 22;
PARTIALLY REVOKING RESERVOIR SITE NO.
17 AND POWER SITE RESERVE NO. 326; RE-
VOKING POWER SITE RESERVE NO. 205

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

1. The orders described below, withdrawing public lands as indicated, are hereby revoked so far as they affect the following-described lands:

(a) The Executive order of June 8, 1926, creating Reservoir Site Reserve No. 17 (Pacific Slope Basins in California)

MOUNT DIABLO MERIDIAN

T. 36 N., R. 4 W.,
Sec. 32, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 36 N., R. 5 W.,
Sec. 22, SW $\frac{1}{4}$.

Sec. 34, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$.

The areas described aggregate 440 acres.

(b) The Executive order of December 11, 1912, creating Power Site Reserve No. 326, Sacramento River No. 2, California:

MOUNT DIABLO MERIDIAN

T. 37 N., R. 4 W.,
Sec. 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 40 N., R. 4 W.,
Sec. 28, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 36 N., R. 5 W.,
Sec. 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
Sec. 10, E $\frac{1}{2}$ SE $\frac{1}{4}$,
Sec. 11, W $\frac{1}{2}$, NE $\frac{1}{4}$.

The areas described aggregate 280 acres.

2. The Executive order of September 26, 1911, reserving the following-described lands as Power Site Reserve No. 205, is hereby revoked:

MOUNT DIABLO MERIDIAN

T. 39 N., R. 4 W.,
Sec. 2, lots 1 and 2.

The areas described aggregate 20.77 acres.

3. An order of the Acting Director of the Geological Survey of June 9, 1955 (Power Site Cancellation No. 104) cancelled the Departmental order of August 24, 1933, so far as it approved the classification as power sites in Power Site Classification No. 267 of the following-described lands:

MOUNT DIABLO MERIDIAN

T. 36 N., R. 4 W.,
Sec. 32, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 36 N., R. 5 W.,
Sec. 22, SW $\frac{1}{4}$,
Sec. 34, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$.

The areas described aggregate 440 acres.

4. The Federal Power Commission in Docket No. DA-868—California, adopted June 8, 1945, vacated the power withdrawal of the following-described land, which was reserved under the provisions of Section 24 of the Federal Power Act pursuant to the filing of an application on April 14, 1934, for license under the act for proposed Water-Power Project No. 1270:

MOUNT DIABLO MERIDIAN

T. 36 N., R. 5 W.,
Sec. 34, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 10 acres.

5. All the lands released from withdrawal by this order, or by the orders described in paragraphs 2 and 3, are included in other withdrawals or disposals as follows:

(a) In First Form Reclamation Withdrawal:

T. 36 N., R. 4 W.,
Sec. 32, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 36 N., R. 5 W.,
Sec. 22, SW $\frac{1}{4}$,
Sec. 34, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$.

(b) By Executive Order No. 4203 of April 14, 1925, in aid of classification pursuant to the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141) as amended:

T. 37 N., R. 4 W.,
Sec. 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 36 N., R. 5 W.,
Sec. 10, E $\frac{1}{2}$ SE $\frac{1}{4}$,
Sec. 11, SW $\frac{1}{4}$ NE $\frac{1}{4}$.

(c) Approved State school selections:

T. 40 N., R. 4 W.,
Sec. 28, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 36 N., R. 5 W.,
Sec. 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$.

(d) Patented lands:

T. 36 N., R. 5 W.,
Sec. 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$.

(e) In Power Project No. 560 effective December 6, 1924.

T. 36 N., R. 5 W.,
Sec. 34, N $\frac{1}{2}$ SE $\frac{1}{4}$.

(f) In Shasta National Forest:

T. 36 N., R. 4 W.,
Sec. 32.

T. 39 N., R. 4 W.,
Sec. 2, lots 1 and 2.

T. 40 N., R. 4 W.,
Sec. 28, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 36 N., R. 5 W.,
Secs. 22 and 34.

T. 36 N., R. 5 W.,
Sec. 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
Sec. 10, E $\frac{1}{2}$ SE $\frac{1}{4}$,
Sec. 11, W $\frac{1}{2}$ NE $\frac{1}{4}$.

6. The SE $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 10, T. 36 N., R. 5 W., was restored to location, entry or selection, subject to the provisions of Section 24 of the Federal Power Act and to the withdrawal for national forest purposes, by Departmental order of July 12, 1935 (Restoration No. 826)

7. The undisposed of national forest lands, subject to the provisions of existing withdrawals, shall become subject to the public-land laws relating to national forest lands on the 91st day after publication of this order in the FEDERAL REGISTER.

8. Effective on the date of publication of this order in the FEDERAL REGISTER, the lands released from withdrawal by this order, other than the State school and patented lands, and the lands in first form reclamation withdrawal, shall be subject for a period of 90 days to application by the State of California under any statute or regulation applicable thereto, for rights-of-way for public highways or as a source of material for the construction and maintenance of such highways pursuant to Section 24 of the Federal Power Act as amended (16 U. S. C. 1946 ed., Supp. V, 818)

ORME LEWIS,

Assistant Secretary of the Interior

AUGUST 23, 1955.

[F. R. Doc. 55-6997; Filed, Aug. 29, 1955;
8:45 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 953]

[Docket No. AO144-A6]

HANDLING OF LEMONS GROWN IN
CALIFORNIA AND ARIZONA

NOTICE OF RECOMMENDED DECISION AND
OPPORTUNITY TO FILE WRITTEN EXCEP-
TIONS WITH RESPECT TO PROPOSED FUR-
THER AMENDMENTS TO MARKETING AGREE-
MENT AND ORDER

Correction

In F R. Document 55-6871, appearing in the issue for Wednesday, August 24, 1955, at page 6191, change the word "protest" in column 2, line 5, page 6192, to read "protect"

[7 CFR Part 1004]

[Docket No. AO-271]

HANDLING OF MILK IN CENTRAL ARIZONA
MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND
OPPORTUNITY TO FILE WRITTEN EXCEP-
TIONS THERETO WITH RESPECT TO PRO-
POSED MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order regulating the handling

of milk in the Central Arizona marketing area to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.)

Interested parties may file exceptions to this recommended decision with the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington, D. C., not later than the close of business on the 15th day after the publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing on the record of which the recommended marketing agreement and order was formulated was called by the Agricultural Marketing Service, United States Department of Agriculture, following receipt of a petition and proposed order filed by the Arizona Dairymen's League, Phoenix, Arizona. The public hearing on the record of which the proposed marketing agreement and order was formulated was conducted at Phoenix, Arizona, on April 19-23, 1955, pursuant to a notice thereof issued March 29, 1955 (20 F. R. 2084)

The material issues of record related to:

1. Whether the handling of milk in the market is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

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

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

- (a) The scope of regulation,
- (b) The classification of milk,
- (c) The level and method of determining class prices,
- (d) The method to be used in distributing proceeds to producers, and
- (e) Administrative provisions.

Findings and conclusions. Upon the evidence adduced at the hearing and the record thereof, it is hereby found and concluded that:

(1) **Character of commerce.** All milk which will be regulated under the proposed marketing agreement and order is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products.

Milk produced in California is purchased on both regular and supplemental bases to meet the demand for fluid milk products of consumers in the Central Arizona marketing area as defined in the proposed order. On a regular basis, four milk producers (of the twelve supplying Yuma) whose farms are located in Bard, California, regularly supply milk to handlers located in Yuma, Arizona. A distributor in Yuma disposes of bottled milk in the Bard-Winterhaven area in California. Also, a distributor operating a milk depot in the marketing area processes milk that is sold on vendor routes in New Mexico.

On a supplemental basis, substantial quantities of milk produced in California and Utah are imported each year to supply part of the raw milk require-

ments of nearly all handlers in the Central Arizona marketing area. Such imports have been necessary each year during July through October (the months of seasonally-short production of milk in the area) in some years milk is imported for periods as long as 7 months (1951) to 10 months (1952). In 1952 importations of Grade A milk into Phoenix and Tucson totaled nearly 69 million pounds; in 1954 they totaled about 29 million pounds. Milk so imported was commingled with locally-produced milk and distributed to consumers throughout Arizona. The record shows that handlers operating in this manner compete actively throughout the entire marketing area with handlers buying all, or most, of their milk supplies from local producers.

In addition to the importations of whole milk just described, substantial quantities of such concentrated Grade A milk products as nonfat dry milk solids are imported from out-of-state sources and regularly used in the fortification of such fluid milk products as buttermilk and skim milk drinks. Imported nonfat dry milk solids are also used in making reconstituted fluid milk products for sale in the Central Arizona marketing area during several months of the year.

Substantial quantities of such manufactured dairy products as cottage cheese and ice cream distributed in the marketing area originate from locations outside the State of Arizona. For example, a handler located in the marketing area distributes ice cream that is processed and manufactured in company-affiliated plants located in Texas. Seasonal surpluses of locally-produced Grade A milk are used in the manufacture of cottage cheese and ice cream, and must, in turn, be sold in competition with similar products manufactured in areas outside Arizona from milk produced outside of the State.

(2) **The need for regulation.** The marketing and pricing conditions in the Central Arizona marketing area require the issuance of a Federal milk marketing agreement and order to establish and maintain orderly marketing conditions and effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended.

The problems encountered by producers in the Central Arizona marketing area are typical of those occurring in unregulated fluid milk markets where producers are unorganized or where producer cooperative associations have been unsuccessful in establishing effective bargaining relationships with handlers. The Federal milk marketing order proposed herein for Central Arizona will implement the declared congressional policy of establishing and maintaining orderly marketing conditions by:

(a) Providing a regular and dependable method for determining minimum prices to producers at levels comparable to those contemplated under the act;

(b) Establishing uniform prices to handlers for milk received from producers according to a classification plan based on the use made of such milk by the handler;

(c) Providing an impartial audit of handler's records of receipts and utilization to further insure uniform prices for milk purchased;

(d) Providing all producers with a means whereby the weighing and testing of their milk can be checked to insure accuracy;

(e) Establishing uniform returns to producers supplying the area and insuring that the lower returns from the sale of reserve milk are shared equitably among all producers;

(f) Establishing uniform rules for the operation of a market-wide base and excess plan that will (i) acquaint producers with the rules for establishing bases and determining base and excess prices; and (ii) encourage producers to balance seasonal fluctuations in the production of milk with a relatively steady consumer demand for such production; and

(g) Providing market-wide information on the receipts, sales and other data relating to milk; market problems in the area.

The hearing record contains considerable testimony on the chaotic marketing conditions in Central Arizona created by the wide variety of classification and pricing planes used by different distributors serving the area, the resultant lack of uniformity in prices paid producers for milk, and the ineffectiveness of the producers in protecting themselves against sharp cuts in producer prices during periods of milk price wars among distributors.

The effects of a milk price war became widespread in the latter part of 1954 when distributors lowered paying prices on successive occasions until producers were receiving approximately \$1.00 a hundredweight less for milk in December than in June. The depressed and erratic producer prices have persisted. Record testimony indicates these actions have lowered prices to producers to the point where a continuous and adequate supply of pure and wholesome milk for the area is threatened. Producers need a regular and dependable method for determining minimum prices for their milk that will provide price levels that reflect general economic conditions, local supply and demand, and be in harmony with those contemplated under the enabling act.

Under present marketing conditions no two handlers pay producers on exactly the same basis. Prices paid producers vary greatly between handlers. This lack of uniformity, and uncertainty, of prices to producers fosters market instability and permits inequities to occur among and between handlers in the prices paid for producer milk. As an example, the record indicates that one handler was paying \$6.36 a hundredweight for 4.0 percent milk during the same period that another handler was paying as low as \$5.08. The classification and pricing plan of the attached order is the only available means of establishing uniform prices among handlers for milk received from producers according to the use made of such milk by each handler. This use-classification plan is equitable and will apply similarly to all handlers. To insure equity among

handlers and full accountability to producers, the use-classification plan must be supplemented by an impartial audit of handlers' records of receipts and utilization. The market-wide pooling provisions of the order proposed herein will provide a means of insuring uniform returns to producers and equitable sharing of the burden of the inevitable seasonal excesses of producer milk.

Many producers supplying handlers in the Central Arizona area have no effective means of insuring the accuracy of the weights and tests of their regular deliveries of milk. In addition, only part of the handlers permit an audit of their records by the producer associations for the purpose of establishing the accuracy of the proportions of milk paid for as base and as excess under the handler-operated base-excess plans now in use. These plans are individual to each plant, there is no uniformity in methods of figuring the proportion of excess milk, and there are indications that some handlers have manipulated the plan to benefit favored producers. There is need for a Federal order to correct these inequities.

The record also indicates that producers have no regular and dependable method for participating in the price-determining decisions that govern the sale of their milk. Handlers and their representatives have used various means to discourage producers from joining the proponent producers' cooperative association. They further hamper the growth of the association by refusing to make deductions for association dues even though the producer-members authorized such deductions. Such actions have kept producers from having an effective role in determining the prices they receive for milk, or the proportion of their milk to be paid for as base milk and excess milk. An order will give producers a voice in the deliberations as to what price they should receive for their milk, and will provide a means whereby the producers associations can carry out a full scale marketing service program applicable to all handlers with which the members have business. The classified use plan of the attached order, together with the pricing formula herein established, should insure a sufficient quantity of pure and wholesome milk for the marketing area, will protect the interests of producers, handlers, and consumers and be in the public interest.

(3) *Order provisions*—(a) *Scope of regulation.* Federal milk orders achieve marketing and pricing stability by using techniques authorized by the Agricultural Marketing Agreement Act of 1937, as amended. Important among these techniques are the requirements that (1) regulated distributors (handlers) pay at least specified minimum prices to producers in accordance with a classified use plan established in an order, and (2) these payments be distributed to each producer on a uniform basis through either an individual-handler pool or a marketwide pool. Under the circumstances it is important to establish clearly which plants and which milk will be subject to all or part of the pricing provisions of an order and, in turn which producers will participate in the

distribution of returns through the specified pool. To identify such persons and to facilitate reference to them throughout this decision and in the proposed order, such terms as "marketing area" "producer" "pool plant" "handler" "producer milk" and "other source milk" are defined and are used herein.

Marketing area. The Central Arizona marketing area should be defined to include all of the territory within the counties of Maricopa, Pima, Pinal, and Graham, and all the territory south of 33° latitude (North from the Equator) in Yuma County all in the State of Arizona.

Fluid milk products sold for consumption in this area must be approved by health authorities who are governed by health ordinances, practices and procedures generally patterned after the United States Public Health Service Milk Ordinance and Code. The record testimony indicates that within this defined area the health standards are substantially equal and are under the jurisdiction of operating health authorities. These conditions support the adoption of milk marketing regulations that are applied equally within the defined area.

Marketing areas, as defined in Federal milk orders, are designed to cover as nearly as is practicable, areas in which milk is sold to consumers rather than the areas where the milk may be produced. The proposed order would regulate distributing plants that are in substantial sales competition with one another within and outside the defined marketing area. Record data show that four handlers, all with plants located in Maricopa County (the central part of the marketing area) compete with each other in all of the five counties included in the marketing area. Handlers with plants located in the southern part of Yuma County also compete with a handler located in Pinal County. Handlers selling only in Graham County compete with two handlers located in Tucson in addition to the four handlers selling in all five counties. The marketing area thus includes the most densely populated places in Central Arizona and comprises the most important sales territory served by handlers located within the area.

It will be noted that the marketing area defined herein includes less territory than that requested by both the producers' associations and by various handlers. Although all territory originally requested by handlers was not included in the notice of hearing, the notice did state that if the evidence adduced at the hearing indicated it would not be feasible to promulgate an order for all or part of the area set forth in the notice, or that additional territory should properly be included under any proposed order, the hearing would be reopened for the purpose of giving further consideration to appropriate extensions of the marketing area. A careful review of the record testimony indicates that it is clearly feasible to issue an order for the marketing area proposed herein without reopening the hearing to consider extending the defined marketing area.

The vast majority of the milk produced in Arizona is produced and processed within the Central Arizona marketing area. This milk will be subject to regulation by the attached order regardless of where it might be sold. The record shows that regulated handlers sell a substantial proportion of the milk consumed in most counties located outside the defined marketing area. Individual handlers will not be disadvantaged significantly in making sales in these out-of-area counties because (1) their principal competitors also will be regulated by the same order, (2) the economies of scale inherent in the large-scale processing and distribution of milk in paper containers will tend to offset any short-run advantage in producer prices that might accrue to an occasional unregulated handler, (3) 90 percent of the milk produced in Arizona will be subject to the minimum pricing provisions of the order, (4) in some of the outlying counties the only competition encountered by regulated handlers is a local producer-handler (who would be exempt from the pricing provisions of the attached order), (5) for the most part the remainder of the State of Arizona is a deficit milk production area, and (6) in some counties producers selling to local dairies have an alternative of shipping to regulated handlers in the Central Arizona marketing area should they become dissatisfied with pricing and marketing conditions under which they have to sell milk to local unregulated plants (which should have the effect of stabilizing producer prices in out-of-area counties at levels close to those to be paid producers whose milk is priced by the order). It is neither administratively feasible nor necessary to include within the marketing area all the territory in which handlers may be distributing any portion of their sales of fluid milk products. In fact, it would be impracticable, if not impossible, to extend the marketing area to include all the territory in which there would be some competition with unregulated distributors. However, should handlers regulated herein be forced into a disadvantageous competitive condition in any of the unregulated portions of the State after the order has become effective (because of the failure to extend the marketing area), the consideration of an appropriately enlarged marketing area can be handled expeditiously at a public hearing called for that purpose. Market-wide data on sales in and out of the marketing area obtained under the order will assist in evaluating any developments affecting the future appropriateness of the size of the defined marketing area.

The marketing area should not include the territory in Yuma County lying North of the 33° latitude. No handler in the Central Arizona area sells milk in that portion of the county. This excluded territory is located 85 to 165 miles from Phoenix and is rural in nature (having only one town with a population of more than 1000 persons in 1950). Nearly all the milk sold there originates in Los Angeles, California, is paid for as Class I milk under the California Milk Control Act, and is sold by one person on a wholesale route in con-

junction with other food items. Furthermore, milk sold in this area has no effect on the competitive relationships with and between regulated handlers in the Central Arizona marketing area.

Accordingly, it appears that the marketing area defined herein includes the territory which will minimize the problems of competition with unregulated distributors and at the same time regulate enough sales area to restore and maintain orderly marketing conditions for producer milk.

Definition of plants and milk to be subject to regulation. Record testimony indicates that milk plants supplying the Central Arizona marketing area are distributing plants located within the area that dispose of the major portion of their milk receipts as fluid milk products. These "fluid milk products" are required to be made from milk produced in compliance with the Grade A requirements of the duly constituted health authorities having jurisdiction in the area and include such products as milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream and mixtures in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, eggnog, yogurt, ice cream mix and aerated cream). Plants disposing of their producer receipts in such form in the marketing area by delivery to retail or wholesale outlets, including delivery by a vendor or a sale from a plant or a plant store, should be fully regulated under the order. They are herein defined as "pool plants"

The order shall also provide standards for plants from which pool plants making route sales draw supplemental supplies of milk. Plants shipping supplemental supplies to a market generally fall into two broad categories. One category includes plants that supply milk to the market in such a manner as to be considered closely associated with the market. Although the record discloses that no such plants from any area, including out-of-state areas, are serving the Central Arizona marketing area with regularity, some provision should be made to regulate plants of this type that might become closely associated with the market. Such plants are a normal part of milk procurement facilities in many markets and nothing in this order will preclude any plant wherever located from serving the market in the future should a need for their services arise. This objective can best be accomplished by defining also as a "pool plant" any plant that ships to pool plants making route sales in the areas as Class I milk a majority (at least 50 percent) of its receipts of producer milk in the current month during the period of July through October, and 20 percent in the current month during the period November through June: *Provided*, That, if a plant meets these standards during the months of July through October, such plant should be permitted, upon written application to the market administrator on or before October 31 following such compliance, to be designated as a "pool plant" until the end of the following June. Plants not qualified under these standards cannot be considered as closely

associated with the Central Arizona market, and receipts from them should be considered as other source milk. The standards recommended herein will provide the framework for appropriate regulation of plants shipping supplemental supplies if such plants should become regularly associated with the market.

A "pool plant" is defined to include any plant subject to full regulation under the proposed order.

A "handler" is defined to be the operator of any pool plant. Such handler is the person to whom the provisions of the order are applicable. The handler receives the milk and thus must be held responsible for reporting the receipt and utilization of it. If the milk is priced, he is responsible for paying producers the specified minimum prices. A "handler" should include a cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant for its account. If a handler also operates an unregulated plant(s) this definition is not intended to include such person in his capacity as an operator of such plant(s). This definition should include producer-handlers in order that they may be required to report to the market administrator whenever necessary to determine their status.

"Producer" should be defined as any person other than a "producer-handler" who produces milk in compliance with the Grade A requirements of a duly constituted health authority having jurisdiction within the marketing area, which milk is received at a pool plant. Provision should be made so that the milk of producers regularly received at a pool plant may be diverted for the account of a handler to a nonpool plant without such producers losing their status under the order. This will permit milk regularly associated with the market to be diverted to manufacturers during periods of flush production and over weekends and holidays when supply and demand relationships may require some reserve and surplus milk to be manufactured in plants not regulated by the order. Producers whose milk is so diverted will continue to receive the uniform price under the order and their milk will be available for fluid use when needed. Diverted milk should be deemed to have been received at the plant from which it was diverted. Producer milk should include all skim milk and butterfat contained in milk produced by producers and received at pool plants directly from producers or diverted by a handler from such plant.

"Producer-handler" should be defined as a person who operates a pool plant in which he handles only milk of his own production and such milk from other handlers as is priced under the order at such other handler's plant. A producer-handler should be subject to the order only to the extent that he must submit reports to the market administrator as required and maintain and make available to the market administrator, accounts, records and facilities so that the market administrator may verify that such person is a producer-handler. It seems unnecessary

to require under the order that a producer-handler pay any particular price for milk produced on his own farm.

Classification provisions of the proposed order should provide that any milk, skim milk, or cream transferred by a handler to a producer-handler should be Class I milk. Any supplemental supplies of milk which may be obtained from other handlers may, by virtue of the type of operation involved, be presumed to be needed by the producer-handler for fluid use and should be classified in the supplying handler's plant as Class I milk. A producer-handler may receive milk from other handlers and still maintain his status as a producer-handler. Pursuant to the proposed order any milk which a handler receives from a producer-handler would be other source milk and would, therefore, be allocated to the lowest class utilization at the pool plant(s) of a handler after the allocation of shrinkage on producer milk. This method of allocating producer-handler milk will preserve producers' priority on the Class I sales in the marketing area. Thus, the producer-handler who, by being exempt, enjoys the full advantage of his fluid milk sales, will not also share in the Class I market of other producers.

"Other source milk" should be defined as all skim milk and butterfat utilized by the handler in his operations except fluid milk products received from pool plants, inventory, and current receipts of producer milk. This includes any non-fluid milk products from any source, including those produced at the handler's plant during the same or an earlier month which are reprocessed or converted to other products during the month in the plant. Thus, other source milk would represent butterfat and skim milk from sources not subject to the Class I pricing provisions of the attached order. Defining other source milk in this manner will insure uniformity among all handlers under the allocation and pricing provisions of the order.

(b) *Classification of milk.* Milk received by regulated handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, it is used, as either Class I milk or Class II milk.

A classified-use plan of this type will insure that minimum prices for milk will be uniform among handlers according to use, that a price may be fixed for the milk disposed of as Class I at a level that will bring forth an adequate supply of pure and wholesome milk, and that a necessary reserve of quality milk may be maintained at all times (and used at prices in line with its value when processed into manufactured dairy products) without disrupting marketing and pricing conditions within and outside the established marketing area.

The products which should be included in Class I milk are those distributed to the consumer in fluid form and required by health authorities in the proposed marketing area to be obtained from milk or milk products from approved "Grade A" sources. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it

necessary to provide a price for milk used in Class I products somewhat above the ungraded, or manufacturing, milk price. This higher price should be at such a level that it will yield a blend price to producers that will encourage the production of enough milk to meet market needs.

Reserve milk not needed seasonally or at other times for Class I use must be disposed of for use in manufactured products. These products are less perishable, are not required to be made from inspected milk, and must be sold in competition with products made from unapproved milk produced throughout the United States. Milk so used should be classified as Class II milk and priced in accordance with its value in such outlets.

In accordance with these standards, Class I milk should comprise all skim milk (including reconstituted and concentrated nonfat milk solids) and butterfat (1) disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream or any mixture in fluid form of milk, skim milk and cream (except eggnog, ice cream, ice cream mixes, yogurt, aerated cream, and sterilized products contained in hermetically sealed containers) and (2) not accounted for as Class II milk.

Fluid milk products which contain concentrated skim milk solids, such as skim milk drinks and buttermilk to which extra solids have been added, or concentrated whole milk disposed of for fluid use, should be included under the Class I milk definition and all the solids therein should be priced at the same rate. Products such as evaporated or condensed milk packaged in bulk or in hermetically sealed cans would not be considered as Class I milk; they need not be handled as fluid milk products, nor need they be made from Grade A milk exclusively.

Skim milk and butterfat are not used in many products in the same proportions as contained in the milk received from producers, and therefore should be classified separately according to their separate uses. The skim milk serum and butterfat content of milk products, received and disposed of by a handler, can be determined through certain recognized testing procedures. Some of these products, such as ice cream and condensed products, present a difficult problem of testing (and accounting) in that some of the water contained in the milk has been removed. It is necessary, in the case of such products, to provide an acceptable means of ascertaining the amount of skim milk and butterfat contained in, or used to produce, these products. This may be accomplished through the use of adequate plant records made available to the market administrator in the case of products manufactured by a handler, or by means of standard conversion factors of skim milk and butterfat used to produce such products in the case of products purchased by a handler or where plant production records are inadequate. The accounting procedure to be used in the case of any condensed milk product should be based on the pounds of milk or skim milk required to produce such product.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from producers should be responsible for establishing the classification of, and making payment to producers for, such milk. Fixing responsibility in this manner is a practice which is followed consistently in both regulated and unregulated markets. It is necessary to administer effectively the provisions of the order in order to achieve equality of cost among handlers. The operator of the plant at which milk is first received from producers is the person with whom contractual relations have been made by producers or their representatives. Except for the limited quantities of shrinkage which may be classified in Class II under certain conditions set forth elsewhere in this decision, all skim milk and butterfat which is received and for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage to handlers who fail to keep complete and accurate records and to assure that producers receive full value for their milk on the basis of its use.

All skim milk and butterfat used to produce products other than those classified in Class I milk should be Class II milk. Included as Class II milk are products such as ice cream, ice cream mix, and other frozen desserts and mixes; eggnog; yogurt; aerated cream; butter; cheese, including cottage cheese; evaporated and condensed milk (plain and sweetened) nonfat dry milk solids, dry whole milk; condensed or dry buttermilk; and any other products not specified as Class I milk. Skim milk and butterfat disposed of to commercial food product manufacturing plants, other than dairy plants, which do not dispose of fluid milk products for fluid consumption, should be Class II milk. The health ordinances applicable in the marketing area do not require that these products be made from locally approved milk.

Cream placed in storage and frozen should be classified as Class II milk. Such cream is intended primarily for use in ice cream and ice cream mixes. Skim milk disposed of as animal feed also should be classified as Class II. Any frozen cream or other Class II products which are used later in a pool plant would be considered as other source milk at the time of such use and assigned to the lowest priced utilization in the plant.

Butterfat and skim milk used to produce Class II products should be considered to be disposed of when so used, and will not enter into the classification problem again unless reused or reconverted. Handlers will need to maintain stock records on such products, however, to permit audit of their utilization records by the market administrator. Class II products from any source, including those produced in the plant from producer milk, which are used for further processing or manufacture, should be considered to be a receipt of other source milk. This will maintain priority of as-

signment of current receipts of producer milk to Class I utilization.

Handlers have inventories of fluid milk products at the beginning and end of each month which enter into the problem of accounting for current receipts and utilization. Inventory is intended to include stocks on hand of bulk milk, skim milk, and cream and bottled milk and other fluid milk products designated as Class I milk. Manufactured products (Class II) on hand are not included in the inventory account because the milk used to produce such products will already have been accounted for as Class II milk. As previously indicated, handlers will need to keep stock records of such products but they will not be included in inventory for the purpose of accounting for current receipts.

It is concluded that inventory should be accounted for as Class II milk. If fluid milk products in inventory are accounted for as Class II milk at the end of the month, it will be necessary to provide a method to deal with the producer milk inventory which is used in the current month for Class I purposes but which the handler accounted for to producers as Class II milk at the end of the previous month. Handlers, at times, also use other source milk in their operations. Producer milk from inventory should have prior claim on Class I sales over current receipts of other source milk. This can be accomplished by considering the ending inventory in one month as a receipt in the following month and subtracting such receipt (under the allocation procedure) in series starting with Class II milk following the subtraction of other source milk. To the extent that opening inventory is allocated to Class I milk and there was an equivalent amount of producer milk classified in Class II milk in the previous month (after the allocation of other source milk) a reclassification charge should be made at the difference between the Class I price in the current month and the Class II price in the preceding month. This will promote equality in the cost of milk among handlers and returns to producers, irrespective of whether or not such producer milk is from the previous month's ending inventory or is a current receipt.

Shrinkage should be determined by subtracting from the total pounds of skim milk and butterfat received by the handler his total established utilization of skim milk and butterfat, respectively, in various products. Shrinkage not in excess of 2 percent of the handler's receipts of skim milk and butterfat from producers and other source milk should be prorated between producer and other source milk on the basis of the pounds received from each source. None of the shrinkage should be assigned to milk received from other pool plants because shrinkage on such milk will be allowed to the transferring handler. The evidence indicates that a plant operated in a reasonably efficient manner, and for which complete and accurate records of receipts and utilization are maintained, should be able to keep total shrinkage at less than 2 percent of total receipts. It is concluded, therefore, that shrinkage not in excess of 2 percent of

total receipts of producer milk and other source milk should be classified as Class II milk; any in excess of this quantity should be classified as Class I milk.

Transfers. Classification of butterfat and skim milk used in the production of Class II milk items should be considered to have been established when the product is made. Classification of Class I milk should be established when the butterfat or skim milk is disposed of by the handler. However, since some Class I items may be disposed of to other plants for processing, specific classification procedures should be prescribed for transfers to other plants.

Milk, skim milk, cream or other products designated as Class I milk transferred by a handler to the plant of another handler, except that of a producer-handler, should be classified as Class I milk unless both handlers indicate in their reports to the market administrator that they desire such milk to be classified as Class II milk. However, sufficient Class II utilization must be available at the transferee plant for such assignment after prior allocation of shrinkage and other source milk. Furthermore, the assigning to classes must be such as will result in the maximum amount of producer milk of both handlers being assigned to Class I milk. These actions will carry out the recognized principle that the highest-valued uses should be assigned first to those producers regularly supplying the market.

In order to reduce the administrative expense of verifying the use of milk or skim milk transferred great distances, transfers of milk or skim milk to plants 250 miles or more from the nearer (by the shortest hard-surfaced highway distance) of the respective City Halls of Phoenix or Tucson, Arizona, should be Class I in all cases. The costs involved in transporting milk or skim milk in fluid form such a distance appear such that it would not be economically feasible to move the milk farther for Class II disposition.

Cream presents a somewhat different problem because its value is so much greater in relation to its bulk that it may be transported long distances for manufacture. In order to provide for such transfer and at the same time provide reasonable assurance that the butterfat is being classified according to use, it should be provided that cream may be Class II if the following conditions are met: (1) The transferring handler requests such a classification, (2) it is clearly labeled as manufacturing grade cream and the shipment is so invoiced, (3) if the operator of the nonpool plant maintains books and records of utilization at the plant which are made available on request of the market administrator for verification of usage, (4) if prior notice of the intended shipment is furnished to the market administrator, and (5) the nonpool plant used an equivalent amount of skim milk and butterfat in the use indicated.

The more common form of transfer to a nonpool plant is the movement of excess milk to nearby manufacturing plants. It is provided that transfers of milk, skim milk, or cream from a pool

plant to a nonpool plant located within a radius of 250 miles be Class I unless Class II use is affirmatively established. Evidence of Class II use consists of a certification by the pool plant operator that the transfer was intended for Class II use, and verification by the market administrator of the records made available by the nonpool plant operator to establish that the milk was not utilized for other than manufacturing purposes.

Allocation. Because the order class prices apply only to the producer milk, it is necessary, if a pool plant has butterfat or skim milk other than that received in producer milk, to determine the quantities of milk in each class to be assigned to current receipts from producers. The milk of producers who are regularly engaged in supplying the market should be assigned the Class I utilization first. This is necessary to insure the effectiveness of the classified pricing program of the order. The system of assigning utilization of milk to receipts from different sources which will carry out this objective is set forth in detail in the order.

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

- (1) Class II shrinkage of producer milk;
- (2) Other source milk;
- (3) Beginning inventory;
- (4) Receipts from other handlers (according to classification), and
- (5) Overage.

Since uniform prices paid producers by each handler are to be calculated monthly, the assignment of utilization described above should be carried out with respect to all milk received during each month. To apply a shorter accounting period would place an accounting and reporting burden upon handlers and increase the cost of administering the order.

(c) **Class prices.** In order to restore and maintain orderly marketing conditions in the Central Arizona area, minimum Class I and Class II prices for producer milk must be established at levels that will reflect economic conditions affecting the market supply and demand for milk or its products and assure the maintenance of a supply of quality milk adequate for the needs of the market. The enabling act requires that minimum prices established by Federal milk orders meet this standard. An important point in this requirement is that the prices shall be at a level that over a reasonable period of time, due consideration being given the need for a reserve of milk and the seasonal variation in production, the supply of milk meeting the quality standards of a market will be about equal to the needs of the market for milk of that quality. This means, in turn, that the minimum prices provided for in the order can be related to general economic conditions, but cannot be maintained out of line with such conditions. If producer prices are too low, not enough milk of acceptable quality will be produced to supply fully the Class I needs of the market. If such prices are too high, on the

other hand, milk production will be over stimulated and fluid consumption will tend to be curtailed. These actions would cause more milk to be produced than is needed to supply the demand for Class I milk, including the necessary reserves, and would eventually result in the shifting of agricultural resources toward the production of unnecessary and uneconomic surpluses and this would depress the blend price to producers.

The concept of adjusting minimum class prices in response to changes in supply and demand conditions, and thereby influencing production of milk through consequent changes in producers' blend prices, has wider geographical implications today than in the past. In earlier days producers were limited to supplying milk to local markets because of inadequate transportation facilities and the local nature of health regulations and milk distribution systems. Today the technological advances in milk production, including the widespread use of milk cooling equipment on farms; the rapid motor transportation from farms to a number of cities instead of one or two, especially through the advent of bulk farm tank milk pickup; the increased efficiency of milk processing equipment and plants; the increasing importance of paper containers for packaging milk; the use of refrigerated delivery trucks; the sale of milk through vendors and stores in distant cities; and the corollary trend among health authorities of approving sources of milk derived from a wider supply area under agreements for reciprocal inspection—all these factors enable milk to be transported and sold long distances from the point of production and processing. The hearing record was replete with testimony showing that these developments have and are influencing the marketing organization and price structure for producer milk and for fluid milk products in Arizona. That these developments affect the level of prices paid for milk produced in Arizona is borne out by the many references in the record to the need of keeping Arizona prices in reasonable alignment with those in other areas, particularly California.

Class I prices. Producers proposed that the Class I price for 4 percent milk be established for each month by adding a differential of \$3.05 to a "basic formula price" that reflects the values on a nation-wide basis of manufacturing milk used for butter and powder (through a butter-nonfat dry milk solids formula) and condensing (through the Mid-west condensery price series). They requested a further provision that for producer milk received at plants in Pima County (Tucson) the price be 36 cents a hundredweight higher. Handlers requested a 3.5 percent basis for pricing and a Class I differential of \$1.90 over the basic formula price.

The evidence demonstrates that pricing should be based on milk of 3.8 percent butterfat test and that the appropriate price level for Class I milk of such test in Central Arizona would be the basic formula price plus \$2.75 for plants in the Tucson zone, \$2.50 a hundredweight for plants in the Phoenix-

Safford zone and \$2.40 for those plants in the Yuma zone.

The general price level for Grade A milk in Phoenix from May 1953 through June 1954 (the most recent period when the market was not involved in pricing or marketing disturbances) was \$6.44 a hundredweight for 4 percent milk (purchased on a butterfat basis at the rate of \$1.61 a pound butterfat). By August 1954, this level of prices decreased to an average of \$6.00 per hundredweight or of \$1.50 a pound butterfat. This decrease was approximately commensurate to the reduction in the price support levels for dairy products. The price level of about \$6.00 per hundredweight for 4.0 milk remained in effect in the Phoenix area until upset by the marketing conditions reviewed earlier in this decision. Except for periods of unsettled conditions, the price for milk in Tucson has been higher by the amount of extra transportation charges involved. The level of prices existing in the area before the market became unstabilized in late 1954 maintained enough local production to meet the fluid needs of the area during months of flush production, but had not induced enough local production to meet year-round demands in the market. The market was not over-supplied on a year-round basis. This indicates that a price in the neighborhood of \$1.50 a pound butterfat under present nationwide marketing conditions is not and has not been too high. At the same time, however, the economic conditions affecting the cost of producing milk in Arizona and the relative profitability of dairying compared with other agricultural enterprises are slightly more favorable to dairying than heretofore. This situation is reflected in the current slightly upward trend in local milk production. These conditions and trends indicate that a Class I price of \$6.00 for 4.0 percent milk will induce an adequate supply for the Central Arizona marketing area. Furthermore, if producers need any added incentive pricewise, it should be supplied through the market-wide blend price by the effects of those order provisions that require classification, check weighing and testing, and full and accurate accountability to producers for milk sold to handlers. These conclusions can be carried out in Central Arizona by adding a Class I differential of \$2.75 each month of the year to a basic formula price which reflects the value of manufacturing milk at a national level. This Class I differential would apply to plants located in or within 60 miles of Tucson, Arizona, and would be adjusted downward through appropriate location differentials (discussed elsewhere in this decision). This further action has the effect of setting a Class I differential of \$2.50 for producers shipping to plants in the Phoenix-Safford zone and \$2.40 for those shipping to plants in the Yuma zone.

Record evidence indicates that, under present conditions, this level of prices appears to be in appropriate alignment with prices established for Grade A milk in the Los Angeles, California market under regulations promulgated by the State of California, Department of Agriculture, Bureau of Milk Control.

The basic formula price recommended herein is comparable with that proposed at the hearing and with those presently used in the Federal order markets in the State of Texas. The purpose of this basic formula price is to reflect the general economic factors underlying the price for milk used in manufactured dairy products. Because the market for most manufactured products is nation-wide, prices of such products reflect, to a large extent, changes in general economic conditions affecting the supply and demand for milk. These prices, in turn, influence the local market prices for the same uses of milk. Prices for milk used for fluid purposes are related to prices paid for milk used for manufacturing purposes since the production and marketing of inspected milk for fluid purposes is influenced by many of the same economic conditions. Also, manufacturing milk plants serve as alternative outlets for milk which farmers produce for fluid markets. For these reasons, most fluid milk markets have used the prices for butter and nonfat dry milk solids, or the prices paid by condenseries (with differentials over these basic manufacturing prices) to establish fluid milk prices. The differential that is added to the basic formula price should, in general, reflect the additional costs of getting Grade A milk produced and delivered to consumers in the quantities required to meet the needs for fluid consumption in the Central Arizona marketing area.

The basic formula price to be used in establishing the current price for Class I milk of 3.8 percent butterfat test should be the higher of the following for the preceding month: (1) The prices paid to farmers at Mid-west condenseries for milk of 3.5 percent butterfat content adjusted to a 3.8 percent basis, and (2) a formula price based on the market prices of butter and nonfat dry milk solids on the Chicago, Illinois, wholesale market. Chicago, Illinois, is a large central market for butter and nonfat dry milk solids and changes in prices at that point reflect the changing conditions affecting the supply and demand for milk and its products throughout the country. The use of these alternative components in the basic formula price will reflect the value of manufactured milk; the use of the higher price resulting therefrom is appropriate because alternative supplies of milk must be obtained at any given time in competition with the most favorably priced manufacturing outlet. Subtracting 3 cents from the Chicago butter price, adding 20 percent and multiplying by 3.8 makes appropriate allowances, respectively, for the costs of manufacturing butter, for the overrun involved, and for the pounds of butterfat contained in the milk. The deduction of 5.5 cents from the average price for spray and roller nonfat dry milk solids in Chicago is a manufacturing allowance; multiplying the result by 8.5 adjusts for the pounds of solids obtained from a hundredweight of skim milk; and multiplying the result by 0.962 adjusts for the pounds of skim milk in a hundredweight of milk containing 3.8 percent butterfat.

Handlers recommended that the order provide for a basic test of 3.5 percent butterfat rather than the 4 percent

basis proposed by the Arizona Dairymen's League. Handlers based their recommendation on the facts that the market-wide average test of milk received from producers and the average test of products sold to consumers are both somewhat less than 4 percent. Moreover, Los Angeles, California, is the nearest market from which Central Arizona handlers can purchase raw milk when local production is insufficient to meet sales requirements and the only market to which any substantial quantity of milk, surplus to the needs of the Central Arizona marketing area, can be sold for processing. The Bureau of Milk Control of the State of California announces its Class I prices for Los Angeles in terms of 3.8 percent milk. Because of marketing interrelationships, it would seem appropriate to announce Central Arizona prices on a basis comparable with those in California. For these reasons, a reasonable butterfat test on which to calculate and announce prices in the Central Arizona marketing area, especially during the period immediately after the attached order would go into effect, is 3.8 percent. Setting the basic test at this level rather than at 4 percent will not, in itself, alter the level of returns to producers because the price structure established herein has been adjusted to that basis.

If experience indicates that the proposed level, or the basis or method of pricing, fails to bring forth a satisfactory level of producer milk receipts in the marketing area, it will be appropriate to re-examine these provisions in conjunction with the complete marketing information that will become available after the order has been in effect. Although the basic formula is designed to respond to general supply and demand conditions affecting the production of milk, it also is important to have the Class I price responsive to local conditions. An important local condition is the relationship between the supply of milk immediately available to the market and the proportion of this milk disposed of for Class I purposes. However, because of limitations on accurate market-wide data, no automatic adjustment of Class I prices based on changing supply-demand relationships is proposed herein. It is concluded, however, that after the accumulation of at least one-year's data the basis or method of pricing should be reexamined at a public hearing called for that purpose. For this reason the Class I price differential adopted will be effective for a period of only 18 months.

The market administrator should announce the Class I price near the beginning of each month. In order to do this, it will be necessary to use price quotations for the previous month in determining the basic formula price. These quotations will be available in time for the market administrator to announce the Class I prices on or before the 6th day of the month to which the price applies.

Class II prices. Every fluid milk market needs a "reserve" supply of Grade A milk to meet day to day fluctuations in receipts from producers and in Class I sales. In the Central Arizona marketing

area, sales of milk vary considerably on a daily basis, but do not change greatly from season to season. Milk supplies, on the other hand, because of the seasonal variations in production, are greater during the winter and spring months than during the summer and fall months. The result is that handlers must process on a year-round basis the daily and seasonal surpluses into various manufactured products. Since milk going into these products must be paid for at the Class II price, this price should be fixed at a level which will induce handlers to accept and market whatever quantities of such milk may be offered from time to time by the producers who provide the market's regular fluid supply. It is of equal importance to establish a price that will return to producers full value for their milk.

All products included in Class II may be made from unapproved milk. Approved milk which may be used in some of these products by regulated handlers and, therefore, must be priced at a level that is competitive with the cost of alternative supplies of milk or in line with the cost of milk products that would otherwise be used in the Class II products processed by handlers in this area. The record shows that ice cream, cottage cheese, and condensed milk are the most important outlets for reserve and surplus milk in this area.

There is no group of plants in Central Arizona carrying on extensive manufacturing operations whose prices can be used as a basis for fixing the Class II price under the order. The two plants that represent the most important outlets for surplus milk in the area are owned and operated by persons who would be handlers under the order. Obviously, the pay prices at these plants for ungraded milk may not be used to determine the level of Class II prices under the order.

The record shows that because of a lack of local ungraded milk, and, at times, reserve and surplus milk, handlers in Central Arizona must rely on imports of cream and nonfat solids in processing Class II products and even Class I products. The record also indicates that these ingredients cannot be purchased locally at less than the level of prices for such manufactured products. It seems clear, then, that the most appropriate formula for a Class II price is one based on wholesale prices of butter and nonfat dry milk solids.

Handlers suggested a butter-nonfat dry milk solids formula that averaged about 25 cents per hundredweight lower in price in 1954 than the butter-nonfat dry milk solids formula used herein in connection with the basic formula price (section 50 (b)). The price level proposed by handlers coincided almost exactly with the level of prices reported paid for ungraded manufacturing milk by the two plants located in the marketing area. The Class II formula should reflect a price that will insure that surplus milk will move into manufacturing uses during flush production months, yet will be high enough in the months of short production to insure its use in meeting the Class I require-

ments of the market. To effectuate this the Class II price should be established by using the butter-nonfat dry milk solids formula in the basic formula price (section 50 (b)) during the short production months of July through December and the price resulting from the same formula less 25 cents per hundredweight during the months of January through June.

In order that the Class II price may be kept in line with current changes in manufacturing values, the central market prices for butter and nonfat milk solids during the current month should be used for determining Class II prices under the order.

Location differentials. Class I milk products because of their bulky, perishable nature incur a relatively high transportation cost if such products or the milk used to produce them are moved a considerable distance. Milk delivered directly by farmers to plants in or near the urban centers in the defined marketing area is therefore worth more to a handler than milk which is received from farmers at a plant located many miles from the market. This is so because in the latter instance the handler must incur the additional costs of moving that milk into the central market. The producer, in turn, receives less for milk delivered to points distant from the central market in lieu of incurring the additional costs of hauling his milk into the central market. Under these conditions the value of producer milk delivered to plants located some distance from the central market is reduced in proportion to the distance (and cost of transporting such milk) from the point of receipt to the central market.

In order to allow for the cost of moving Class I milk from distant plants that are, or might become, regular sources of supply for Central Arizona, it is necessary to establish the Class I price for milk delivered to plants at a point in the marketing area and then provide a schedule of deductions from the Class I milk price as location differentials or adjustments. The city of Tucson is one of two principal consuming areas in Arizona and, at the same time, represents the point at which producer prices have been, and will continue to be, the highest. It also represents the part of the marketing area most expensive to supply (because of its location with respect to the main segment of the Central Arizona milkshed). Accordingly, the distances used in determining the location differentials should be measured from the City Hall of Tucson, Arizona, and should apply at plants located more than 60 miles by shortest hard-surfaced highway distance as determined by the market administrator.

The rates should begin with 25 cents at plants located in the 60-160 mile zone (notably Phoenix and Safford), 35 cents at plants located in the 160-260 mile zone (notably Yuma) and 1 cent for each additional 10 miles or fraction thereof as measured from the City Hall in Tucson. Handlers can be expected to move milk into the market in the most efficient and feasible manner. In the Central Arizona marketing area this means hauling in bulk by tank truck. The location differ-

entials proposed herein are based on the record data relating to the actual cost of hauling milk by this method both within the area and between points in Arizona and California. They also are comparable with those contained in other Federal milk marketing orders. The rates should apply in each market to all milk assigned to or otherwise classified as Class I.

A method is provided for determining, if necessary, the priority of milk from various plants in allocating milk to Class I for purposes of computing the aggregate of location adjustments to be allowed. Such adjustments would be made in sequence beginning with those plants nearest Tucson.

The value of milk used in manufactured dairy products is affected little, if any, by the location of the plant receiving and processing such milk (in contrast to the situation with respect to Class I fluid milk products). This phenomenon occurs because of a very significant difference in the costs of transporting the two types of dairy products—fluid milk products are bulky, easily contaminated, and almost non-storable, whereas such manufactured products as butter and cheese, for example, are easily stored for use over long periods of time, easily transported for use in any areas of the country or world, may be made from ungraded milk, and have a high value relative to the cost of transporting them. For these reasons the prices for Class II products vary little as distance from the consuming market becomes greater. These phenomena are borne out in the record by noting the tendency for comparable prices to be paid for ungraded milk into similar uses in different parts of Arizona and California. Accordingly, no adjustment should be made in the Class II price for reason of location of the plant to which the producer milk is delivered.

In line with the economic considerations which affect the value of milk for fluid market uses when it is delivered by farmers to plants located some distance from the consuming market, it is necessary and appropriate that the uniform prices paid producers delivering milk to plants to which location differentials apply also should be reduced by the same rates applicable to handlers to reflect the lower value of such milk f. o. b. the point of actual delivery (in contrast to its value when delivered to Tucson plants where the cost of obtaining milk supplies is greatest).

Butterfat differentials. In an earlier section of this decision it was concluded that butterfat and skim milk should be accounted for separately for classification purposes. It will be necessary, therefore, to adjust Class I and Class II milk prices in accordance with the average test of milk in each class by a butterfat differential that will reflect differences of value due to variations in the butterfat content in each product. As pointed out earlier in this decision, the basing point from which such adjustments are to be made should be 3.8 percent butterfat.

The butterfat differentials for Class I milk and Class II milk should be appropriate to the level of class prices pro-

vided for herein for Class I and Class II milk. Also, the differential for Class I milk must reflect the continuing necessity for appropriate price alignment of Class I prices with California markets. This is necessary and desirable since the Class I prices proposed in this decision are in alignment with those prices. To effectuate this the Class I price should be increased or decreased for each one-tenth of one percent of butterfat above or below 3.8 percent, respectively, by the value obtained by multiplying the Chicago butter price for the preceding month by 0.175. The Class II butterfat differential would be determined by multiplying the Chicago butter price for the current month by 0.115.

The use of butterfat differentials in this manner follows standard practice in most fluid milk markets for adjusting for butterfat variations. At these levels they reflect the recommendations of the market interests at the public hearing and are such as will ease the transition of the market from a direct ratio butterfat basis of payment to a butterfat-skim milk basis of payment. In order that the Class I butterfat differential may be announced early each month, it is provided that the Class I differential be based on the average price of butter in the preceding month. This will permit the announcement of the Class I differential at the same time that the Class I price is announced.

Class II prices and butterfat differentials will not be announced until after the end of the month. Although handlers will not know the cost of such milk as it is utilized, they do know that in any sales competition with other processors located throughout the nation their competitors also will be paying for milk on the basis of current market values.

The butterfat differential used in making payments to producers should be calculated at the average of the returns actually received from the sale of butterfat in producer milk. The rate to be used for this purpose would be the average of the Class I and Class II differentials weighted by the proportion of butterfat in producer milk classified in each class. Thus, producer returns for butterfat will reflect the actual sale value of their butterfat at the class prices provided in the order. In the Central Arizona area this should mean, for most months, a producer butterfat differential at or near the value of the Class I butterfat differential. The producer butterfat differential in no way affects the differentials used in calculating a handler's obligation at class prices; it merely prorates returns among producers whose milk differs in butterfat test.

Compensatory payments on unpriced milk. Compensatory payments on unpriced milk disposed of as Class I milk in the Central Arizona marketing area are unnecessary under prevailing marketing conditions and the terms of the order proposed herein.

Over 90 percent of the production of the Central Arizona marketing area, as defined herein, is concentrated in the Salt River Valley. Inter-market competition from unregulated areas for route sales in the area is nonexistent. Except for producer-handlers, no plants,

other than pool plants, distribute Class I milk on routes in the area. All such distributors will be handlers and will be treated equally under the complete classification and pricing provisions of this order. As pointed out previously in this decision, the Central Arizona marketing area has no year-round surplus. Any supply plant that becomes closely associated with the market by meeting the specified requirements will be a fully regulated pool plant. Milk from supply plants not meeting those standards will be considered as other source milk. The allocation provisions pertaining to other source milk should provide adequate protection for the equitable operation of the market-wide pool and still permit the importation of milk.

The Class I pricing formula adopted herein is an appropriate alignment with the price for Class I milk in Los Angeles, California. Under those circumstances, and as long as any milk coming into the Central Arizona marketing area is paid for in accordance with the classification and pricing provisions promulgated by the State of California Bureau of Milk Control, the need for compensatory payments on milk emanating in California seems unnecessary. Although the above conclusions with respect to the need for compensatory payments are clear under present marketing conditions, it is conceivable that competitive conditions or operating practices of regulated and unregulated handlers, both in and outside the marketing area, can change enough to create a need for remedial action with appropriate compensatory payment provisions. If such developments occur, appropriate modifications in the attached order can be proposed by the industry and reconsidered on relatively short notice at a public hearing called for that purpose.

Considerable testimony was adduced at the hearing relative to the need for, and the amount of, a compensatory payment to meet the peculiar marketing problem in the northern portion of Yuma County occasioned by a vendor operating out of Blythe, California. This problem is automatically obviated by the finding that regulation of that area as part of the Central Arizona Marketing area is unnecessary.

(d) *Payments to producers*—(a) *Type of pool.* The order should provide that the proceeds from the sale of milk in both classes by all handlers be combined and distributed to producers through a "market-wide" type of equalization pool. Under this type of pool each producer will receive minimum prices that are uniform with those received by all producers delivering milk to the Central Arizona area, subject, of course, to butterfat and location differentials. The "blend" price, and the "base" and "excess" prices during the months of January through June, will be a weighting of the proportions of all producers' milk paid for at Class I and Class II prices, and will, in effect, return to each producer his share of the Class I sales of the market.

Under the marketing conditions and the organizational structure of the industry in Central Arizona, as set forth in the record, it is clear that the market-wide type of equalization pool is a neces-

sary part of any effective program to establish and maintain orderly marketing and pricing conditions.

Only two handlers in Central Arizona are equipped to process reserve and surplus milk in their own plants. For this reason, and those already pointed out in the discussion of the necessity for an appropriate Class II price, it is imperative that a pool be established that will provide for an equitable sharing, particularly during the flush production season, of the lower returns that are inevitable with an adequate and necessary reserve of milk. Because many plants do not have facilities for processing reserve and surplus milk, the adoption of an individual-handler pool, wherein plants operating on a Class I basis can pay a higher blend price than those who would carry the reserve needs of the market, would automatically deter handlers from handling such milk or from equipping their plants for that purpose. The burden of carrying the necessary reserve supplies of milk would continue to be shouldered by only a part of the producers who share in the year around Class I sales in the area.

A market-wide pool will permit any handler to bid on such business as that offered by military installations and other public institutions and to obtain the supplies for such sales without upsetting the market whenever the business might shift from one handler to another.

The producer cooperative associations in Central Arizona assume the responsibility for marketing the reserve and surplus milk of their member-producers. A market-wide pool will facilitate the movement of milk supplies by these associations between handlers to meet their individual needs or to those non-pool processing plants that can make the most efficient use of such milk. A market-wide pool will aid the market in retaining qualified, experienced and willing producers during periods of seasonal surpluses (by permitting them to receive the market-wide uniform price) hence their milk will be available to fill the Class I requirements of the market at other seasons of the year. These factors, taken in conjunction with the variations in amount of reserve supplies among plants, all support the adoption of a market-wide pool.

Base-excess plan. A base and excess plan of distributing returns for milk among producers should be employed in connection with the market-wide pool established herein. Record evidence indicates that receipts vary between the spring and fall months to a greater extent than Class I sales. In addition, same handlers have difficulty in utilizing efficiently all milk delivered to them during periods of seasonally high production. Consequently, there is a need for an incentive to maintain production in the late summer and fall months relative to that of the winter and spring months.

Handlers and producers serving the Central Arizona market are now relying and have relied on various forms of base-excess plans to provide the incentive needed to induce local dairymen to strive for a more nearly even level of milk pro-

duction throughout the year. Producers and handlers alike feel that the presently-operated base-excess plans perform a much-needed function, even though their actual operation in many cases leaves much to be desired from the standpoint of equity between handlers and fairness to producers. These latter conditions can arise because distributors themselves establish the rules of the base-excess plan and control the adjustment and transfer of bases.

Base and excess plans are effective means of improving the seasonal pattern of milk deliveries because they relate producer returns directly to delivery of additional milk in the late summer and fall as compared with usual deliveries in the winter and spring. Such a plan will help to achieve a production pattern more nearly fitted to the sales pattern for fluid milk products in the area. Were some version of this plan not included in the attached order, the most likely result would be an increased seasonality of production with its attendant problems of surplus disposal in the flush production months and the need for additional imports in the short production months. Any movement in this direction will work against market stability in this area. It is concluded, therefore, that a base-excess plan, uniformly applied to all producers by being made a part of the attached order, will play an essential role in stabilizing marketing and pricing conditions in the Central Arizona area.

The base-excess plan proposed herein would establish for each producer a base equal to his average daily deliveries during the four months of August through November. If a producer did not deliver milk to the market during the entire period, the days of actual delivery from the first day of delivery but not less than 90 would be used.

During the months January through June separate uniform prices would be computed for base milk and excess milk for the purpose of allocating Class I sales first to base milk. Base milk would be that quantity of milk delivered by each producer up to his average daily base multiplied by the number of days in the month during which he delivers milk to any handler. The excess milk price would be the Class II price except in those months when the total Class I sales exceed the total quantity of base milk. During such months the excess milk price would be a blend of a Class I and Class II usage of excess milk. Provision is made for producers who may enter the market after the start of the base-forming period to establish a full base by delivering a minimum of 90 days during the specified period. Producers delivering milk for less than 90 days will have their bases calculated by dividing their total deliveries during the base-forming period by 90. The base-operating period (when payments are made for base milk and excess milk) should be limited to the 6-month period, January-June. These are the months in which the production of milk and the inadequacy of surplus processing facilities combine to create difficult marketing conditions.

Any producer should be permitted to transfer his entire base provided the

market administrator is given advance notice and the transfer is made as of the first of a month. Permitting bases to be so transferred will alleviate situations wherein a producer discontinues the production of milk before the end of the base-paying period of January-June. Such a provision will give a producer added incentive to increase production during the August-November period because he can benefit from all the base he can establish even though he discontinues milk production in the spring. This action will encourage a more level pattern of seasonal production, and is, therefore, compatible with the need for and the purposes of a base-excess plan.

(b) *Payments to individual producers and to members of cooperative associations.* Handlers should make payments to each producer for milk delivered by such producer at the appropriate uniform price. Payments due any producer for milk should be paid by the handler to a cooperative association that makes a written request for such payments if the producer has given the cooperative association written authorization, in the form of a contract or in any other form, to collect such payments. The association's request should also agree to indemnify the handler for any loss incurred because of an improper claim. In making such payments for producer milk to a cooperative association the handler should at the same time furnish the cooperative association with a statement showing the name of each producer for whom payment is being made to the cooperative association, the volume and average butterfat content of milk delivered by each such producer, and the amount of and reasons for any deductions which the handler withheld from the amount payable to each producer. This statement is necessary so the cooperative association can make proper distribution of the money it collects to the producer-members for whom it makes collections.

Qualified cooperative associations of dairymen, if they so request, should be permitted to receive payment from handlers for their producer-members as a group. A provision authorizing handlers to make payment directly to such qualified cooperative associations for milk received from producer-members is necessary to enable an association to carry out its essential functions authorized by the enabling act. A cooperative association, if it is to carry out these essential functions, must have full authority in the collective bargaining and selling of members' milk.

The record shows that the proponent cooperative association operating in the Central Arizona area has responsibility for marketing surplus producer milk during months of flush production. This milk may be sold within or outside the marketing area. Such sales may result in financial losses or gains to the association, hence the association must be in a position to spread such losses or gains over the entire membership if it is to handle such milk effectively and efficiently. The Agricultural Marketing Agreement Act authorizes a qualified producer cooperative association to collect payments on behalf of all its mem-

bers for milk caused to be marketed to all types of outlets by such association and to reblend the proceeds from its entire sales. The order should provide that payment to such a cooperative association is a proper satisfaction of the payments required by the order to be made to individual producer-members.

(c) *Producer-settlement fund.* Since the amount which the order requires a particular handler to pay for his milk may be more or less than the amount he is required to pay to producers or cooperative associations, it is necessary to provide for some method of balancing these amounts. A producer-settlement fund should be established for this purpose. All handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations should pay the difference into the producer-settlement fund; all handlers who are required to pay more to producers or cooperative associations than they are required to pay for their milk on the basis of utilization should receive the difference from the producer-settlement fund. Amounts paid into and out of the producer-settlement fund for this purpose will be equal, except for minor differences that may result from rounding of uniform prices. In order to permit this rounding of prices, to allow for unavoidable delays in receiving payments from handlers, and to permit payments to be made to any handler which audit by the market administrator reveals is due such handler from the producer-settlement fund, a reserve should be held in the producer-settlement fund at all times. The amount of the reserve contemplated in the proposed order should be sufficient for these purposes. This reserve would be adjusted each month.

If at any time the balance in the producer-settlement fund is insufficient to cover payments due to all handlers from the producer-settlement fund, payments to such handlers should be reduced uniformly per hundredweight of milk. The handlers may then reduce payments to producers by an equivalent amount per hundredweight. Amounts remaining due such handlers from the producer-settlement fund should be paid as soon as the balance in the fund is sufficient, and handlers should then complete payments to producers. In order to reduce the possibility of this occurring, milk received by any handler who has not made payments required of him into the producer-settlement fund should not be considered in the computation of the uniform price in subsequent months until such handler has completed all delinquent payments.

(e) *Other administrative provisions.* Certain other provisions are needed in the order to carry out the administrative steps necessary to accomplish the purposes of the proposed regulation.

Terms and definitions. In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to insure that each usage of the term implies the same meaning. Definitions for base and excess milk are

included. Other terms defined in the proposed order are common to many other Federal milk orders.

Marketing administrator Provisions should be made for the appointment by the Secretary of a market administrator to administer the order and to set forth the powers and duties for such agency essential to the proper functioning of his office.

Records and reports. Provisions should be included in the order to advise handlers that they are required to maintain adequate records of their operations and to make the reports necessary to establish the proper classification and pricing of producer milk and payments due producers for such milk. Time limits must be prescribed for filing such reports and for making payments to producers. Dates must also be established for the announcement of prices by the market administrator.

It should be provided that the market administrator report to the cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the utilization of members' milk in each handler's plant will be prorated to each class in the proportion that total receipts of producer milk were used in each class by such handler. In addition to the regular reports of handlers, provision is made for the handler, prior to the diversion of the milk of a producer, to notify the market administrator and the cooperative association, if such producer is a member of an association, of his intention to divert such milk. These reports are necessary if a cooperative association is to market to best advantage the milk of its member producers.

Handlers should maintain and make available to the market administrator all records and accounts of their operations, and such facilities as are necessary to determine the accuracy of the information reported to the market administrator as he may deem necessary or any other information upon which the classification of producer milk depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled and to verify all payments required under the order.

It is necessary that handlers retain records to prove the utilization of the milk received from producers and that proper payments were made therefor. Since the books of all handlers associated with the market cannot be audited immediately after the milk has been delivered to a plant, it is necessary that such records be kept for a reasonable period of time.

The order should provide for specific limitations of the time that handlers should be required to retain their books and records and of the period of time in which obligations under the order should terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F. R. 444). That decision covering the retention of records and

limitations of claims is equally applicable in this situation and is adopted as a part of this decision. Without a provision for termination of obligations after a reasonable period of time has elapsed, handlers may file claims which, because the period involved might extend back over many years, could be in substantial amounts. This creates uncertainties which would endanger the stability of the market and lead to serious inequities. The order should provide that any obligation to pay a handler shall terminate two years after the month in which the milk was received if an underpayment is claimed, or within two years after payment was made if a refund is claimed, unless within such period of time the handler files a petition pursuant to section 8c (15) (A) of the act, claiming such money. Handlers also need the protection of provisions terminating their obligations to make payments. Since handlers cannot be forewarned always as to contingent liabilities, it is extremely difficult and burdensome for them to make adequate provisions therefor by setting up reserves or by taking other precautionary measures. The obligation of any handler to pay money should, except under certain extraordinary conditions, such as litigation, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. It is concluded that in general, a period of two years is a reasonable time within which a market administrator should complete his auditing and inspection work and render any billings for money due under the order. Provisions are necessary, also, as contained in the order included herewith, to meet such contingencies as failure of the handler to submit required books and records and to deal with situations where fraud or willful concealment of information may be involved.

It was proposed that if a handler fails to make the required reports or payments, his name shall be publicly announced at the discretion of the market administrator. Such announcement is provided for by the act, and it is concluded that its adoption will facilitate the enforcement of the terms of the order.

Expenses of administration. Each handler should be required to pay the market administrator as his pro rata share of the cost of administering each order not more than 4 cents per hundredweight or such lesser amounts as the Secretary may, from time to time, prescribe on (a) producer milk (including such handler's own production) and (b) other source milk in pool plants which is allocated to Class I milk.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The act provides that such cost of administration shall be financed through an assessment on handlers.

One of the duties of the market administrator is to verify the receipts and

disposition of milk from all sources. The record indicates that other source milk is received by handlers to supplement local producer supplies of milk. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment to all producer milk (including handlers' own production) and to other source milk allocated to Class I milk.

Proponents of the order suggested a rate of 5 cents per hundredweight to provide the funds needed to administer properly the attached regulation. In view of the anticipated volume of milk and the costs of administering orders in markets of comparable circumstances, it is concluded that an initial rate of 4 cents per hundredweight is necessary to meet the expenses of administration. Provision should be made to enable the Secretary to reduce the rate of assessment below the 4 cents per hundredweight maximum without necessitating an amendment to the order. This should be done at any time experience in the market reveals that a lesser rate will produce sufficient revenue to administer the order properly.

Marketing services. A provision should be included in the order for furnishing market services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These should be provided by the market administrator and the cost should be borne by the producer receiving the service. If a cooperative association is performing such services for any member-producers and is approved for such activities by the Secretary, the market administrator may accept this in lieu of his own service.

There is need for a marketing service program in connection with the administration of an order in this area. Orderly marketing will be promoted by assuring individual producers that payments received for their milk are in accordance with the Classification, pricing and pooling provisions of the order, and reflect accurate weights and tests of such milk. To accomplish this fully, it is necessary that the butterfat tests and weights of individual producer deliveries of milk as reported by the handler be verified for accuracy.

In the case of producers who are members of cooperatives having plants, the matter of milk-testing and milk-weighing is under the complete control of such producers and is assessed against such producers either through an association check-off or as a plant operating cost. Bargaining associations in the area are performing check-weighing and check-testing services for their members under their association check-off. In order to place such services on a market-wide basis, the market administrator should also provide them for producers not otherwise receiving services through a cooperative association. The additional service of providing market information to producers is carried on to some extent at present by the cooperatives although detailed information regarding market prices, supplies, and the utilization of milk is not available to either the cooper-

ative associations and their members or the independent producers.

An important phase of the marketing service program of the order is to furnish producers with correct market information. Efficiency in the production, utilization and marketing of milk will be promoted by the dissemination of current information on a market-wide basis to all producers.

To enable the market administrator to furnish these marketing services, provision should be made for a maximum deduction of 5 cents per hundred-weight with respect to receipts of milk from producers for whom he renders marketing services. If later experience indicates that marketing services can be performed at a lesser rate, provision is made for the Secretary to adjust the rate downward without the necessity of a hearing. In the event any qualified cooperative association of producers is determined by the market administrator to be performing such services for its members, handlers would be required to pay to the cooperative association such association dues as are authorized by its members.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of certain interested parties in the market. The briefs contained suggested findings of fact, conclusions and arguments with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions herein before set forth. To the extent that such suggested findings and conclusions contained in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied.

Recommended marketing agreement and order. The following order regulating the handling of milk in the Central Arizona marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The proposed marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the recommended order.

DEFINITIONS

§ 1004.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 1004.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 1004.3 *Department.* "Department" means the United States Department of Agriculture or such other Federal agency as is authorized to perform the price reporting functions specified in this order.

§ 1004.4 *Person.* "Person" means any individual, partnership, corporation, association or any other business unit.

§ 1004.5 *Cooperative association.* "Cooperative association" means any cooperative association of producers which the Secretary determines:

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

(b) To have and to be exercising full authority in the sale of milk for its members.

§ 1004.6 *Central Arizona marketing area.* "Central Arizona marketing area" hereinafter called the "marketing area" means all territory included within the counties of Maricopa, Pima, Pinal, Graham, and the territory south of 33 degrees latitude (North from the Equator) in Yuma County, all in the State of Arizona.

§ 1004.7 *Producer.* "Producer" means any person other than a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority having jurisdiction within the marketing area and whose milk is received at a pool plant or is diverted from a pool plant by the handler who operates such pool plant, or by a cooperative association, to a plant which is not a pool plant for the account of such handler or cooperative association. "Producer" does not mean any dairy farmer with respect to milk received by a handler who is partially exempted from the provisions of this part pursuant to § 1004.61.

§ 1004.8 *Pool plant.* "Pool plant" means any milk plant:

(a) Approved or recognized by any health authority having jurisdiction within the marketing area for the receipt or processing of Grade A milk and from which Class I milk is disposed of on a route(s) in the marketing area;

(b) Supplying to any agency of the United States Government located within the marketing area Class I milk products; or

(c) Any plant which ships fluid milk products approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of producer milk in the current month during the period of July through October or 20 percent in the current month during the period November through June to a plant specified in paragraph (a) of this section: *Provided*, That if a plant qualifies in each of the months of July through October in the manner prescribed in this section such plant shall upon written application to the market administrator on or before October 31 following such compliance, be designated as a pool plant until the end of the following June.

(d) For the purpose of this definition, milk diverted from a pool plant to a non-pool plant as described in § 1004.7 shall be deemed to have been received at the pool plant from which such milk was diverted.

§ 1004.9 *Nonpool plant.* "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 1004.10 *Handler.* "Handler" means (a) any person in his capacity as the operator of a pool plant; or (b) a cooperative association with respect to milk of producers diverted for the account of such association from a pool plant to a nonpool plant in accordance with the provisions of § 1004.7.

§ 1004.11 *Producer-handler.* "Producer-handler" means any person who is both a producer and a handler, but who receives no milk from producers or other dairy farmers: *Provided*, That, such person provides proof satisfactory to the market administrator that (a) the maintenance, care and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled is the personal enterprise of and at the personal risk of such person in his capacity as a producer, and (b) the operation of a fluid milk plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

§ 1004.12 *Market administrator.* "Market administrator" means the person designated pursuant to § 1004.20 as the agency for the administration of this order.

§ 1004.13 *Producer milk.* "Producer milk" means all skim milk and butterfat produced by a producer, which is received at a pool plant either directly from such producer or from other handlers.

§ 1004.14 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

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

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

§ 1004.15 *Fluid milk product.* "Fluid milk product" means milk (including frozen or concentrated milk) skim milk, buttermilk, flavored milk, flavored milk drinks and cream in fluid form or any mixture in fluid form of milk, skim milk and cream (except sterilized products packaged in hermetically sealed containers, eggnog, yogurt, ice cream mix and aerated cream)

§ 1004.16 *Route.* "Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or a plant store) of milk or any milk product classified as Class I milk pursuant to § 1004.41 (a) other than a delivery to another pool plant.

§ 1004.17 *Base milk.* "Base milk" means producer milk received by handlers from a producer during the months of January through June which is not in excess of such producer's daily base determined pursuant to § 1004.90, multiplied by the number of days during the month for which milk was received from such producer.

§ 1004.18 *Excess milk.* "Excess milk" means producer milk received by handlers from a producer which is in excess

of base milk received from such producer during the months of January through June of each year.

§ 1004.19 *Chicago butter price.* "Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

§ 1004.20 *Designation.* The agency for the administration of this order shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1004.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 1004.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditions upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary.

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

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

(d) Pay out of the funds received pursuant to § 1004.86: (1) The cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1004.85, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly disclose to handlers and producers, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he

is required to perform such acts, has not made reports pursuant to §§ 1004.30 through 1004.32 or payments pursuant to §§ 1004.80 through 1004.86;

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

(h) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler;

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

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

(k) On or before the date specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, and mail to each handler at his last known address a notice of, the following:

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

(2) The 12th day of each month, the uniform price, and the producer butterfat differential, both for the preceding month.

REPORTS, RECORDS, AND FACILITIES

§ 1004.30 *Reports of sources and utilization.* On or before the 7th day after the end of each month each handler, except a producer-handler, shall report for each of his pool plants for such month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

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

(1) Producer milk;

(2) Fluid milk products received from other pool plants,

(3) Other source milk,

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

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements as to the disposition of Class I milk on routes entirely outside the marketing area, and inventories of fluid milk products on hand at the end of the month.

§ 1004.31 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time

and in such manner as the market administrator may prescribe;

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

(1) On or before the 7th day of each of the months of February through July the aggregate quantity of base milk received at his pool plant(s) for the preceding month,

(2) On or before the 20th day after the end of the month, for each of his pool plants, his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including, for the months of January through June, the pounds of base milk, (iii) the days for which milk was received from such producer if less than the entire month, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment to the producer, together with the price paid and the amount and nature of any authorized deductions,

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

(4) On or before the day prior to diverting producer milk pursuant to § 1004.7 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted, and

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

§ 1004.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data for each month with respect to:

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

(b) The weights and tests for butterfat and other content of all products handled;

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

(d) Payments to producers, including any deductions authorized by producers, and disbursement of money so deducted.

§ 1004.33 *Retention of records.* All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain; *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary

in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK

§ 1004.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat to be reported for pool plants pursuant to § 1004.30 (a) shall be classified each month by the market administrator, pursuant to the provisions of §§ 1004.41 through 1004.45.

§ 1004.41 *Classes of utilization.* Subject to the conditions set forth in §§ 1004.42 through 1004.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including reconstituted and concentrated nonfat milk solids) and butterfat; (1) disposed of from the plant in the form of fluid milk products, except those classified pursuant to subparagraph (b) (3) of this section, and (2) not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat; (1) used to produce any product other than a fluid milk product; (2) contained in inventories of fluid milk products on hand at the end of the month; (3) disposed of as skim milk for livestock feed; and (4) in shrinkage not to exceed 2 percent, respectively, of the skim milk and butterfat contained in producer milk (except that diverted pursuant to § 1004.7) and other source milk: *Provided*, That if shrinkage of skim milk or butterfat is less than such 2 percent it shall be assigned pro rata to the skim milk or butterfat contained in producer milk (except that diverted pursuant to § 1004.7) and other source milk, respectively.

§ 1004.42 *Responsibility of handlers.* All skim milk and butterfat to be classified pursuant to this order shall be classified as Class I milk, unless the handler who first receives such skim milk and butterfat establishes to the satisfaction of the market administrator that it should be classified as Class II milk.

§ 1002.43 *Transfers.* (a) Skim milk and butterfat transferred to a pool plant of another handler (except a producer-handler) in the form of fluid milk products shall, to the extent required, be classified so as to result in the maximum assignment of the producer milk of both handlers to Class I milk. Any additional amounts of skim milk and butterfat shall be classified Class I milk unless the operators of both plants claim utilization thereof in Class II milk in their reports submitted pursuant to § 1004.30: *Provided*, That the skim milk or butterfat so assigned to Class II milk for any month shall be limited to the respective amounts thereof remaining in Class II

milk for such month at the pool plant(s) of the receiving handler after the subtraction of other source milk pursuant to § 1004.45;

(b) Skim milk and butterfat transferred to the plant of a producer-handler in the form of fluid milk products, shall be classified as Class I milk;

(c) Skim milk and butterfat transferred or diverted in bulk form as milk or skim milk to a nonpool milk plant shall be classified as Class I unless, (1) the transferee-plant is located less than 250 miles from the City Hall of Phoenix or Tucson, Arizona, whichever is nearer, by the shortest hard-surfaced highway distance, as determined by the market administrator, (2) the transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1004.30 for the month within which such transaction occurred, (3) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (4) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified as Class I milk; and

(d) Skim milk and butterfat transferred in bulk form as cream to a nonpool plant shall be classified Class I milk unless, (1) the transferring handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 1004.30, (2) the handler attaches tags or labels to each container of such cream bearing the words "Grade C cream for manufacturing uses only" and the shipment is so invoiced, (3) the handler gives the market administrator sufficient notice to allow him to verify the shipment, (4) the operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and (5) not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That, if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the pounds transferred in excess of such actual use shall be classified as Class I milk.

§ 1004.44 *Computation of skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and other obvious errors, the report submitted by each handler pursuant to § 1004.30 and compute the total pounds of skim milk and butterfat respectively, in Class I milk and Class II milk at all of the pool plants of such handler: *Provided*, That, the skim milk contained in any product

utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1004.45 *Allocation of skim milk and butterfat classified.* (a) The pounds of skim milk remaining in each class after making the following computations each month with respect to the pool plant(s) of each handler, shall be the pounds of skim milk in such class allocated to the producer milk of such handler for such month.

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 1004.41 (b),

(2) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk,

(3) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month: *Provided*, That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk the balance shall be subtracted from the pounds of skim milk remaining in Class I milk,

(4) Subtract the pounds of skim milk in fluid milk products received from pool plants of other handlers from the pounds of skim milk remaining in the class to which assigned, pursuant to § 1004.43 (a)

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

(6) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with Class II milk. Any amount so subtracted shall be called "overage"

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk;

(c) Add the pounds of skim milk and the pounds of butterfat in each class calculated pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in the producer milk allocated to each class.

MINIMUM PRICES

§ 1004.50 *Basic formula price.* The higher of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest whole cent, shall be known as the basic formula price.

PROPOSED RULE MAKING

(a) The average of the basic, or field, prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department, divided by 3.5 and multiplied by 3.8:

Present Operator and Location

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

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

(1) From the Chicago butter price, subtract 3 cents, add 20 percent thereof, and multiply by 3.8.

(2) From the simple average as computed by the market administrator of the weighted averages of the carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.962.

§ 1004.51 *Class prices.* Subject to the provisions of §§ 1004.52 and 1004.53, the minimum prices per hundredweight to be paid by each handler for milk received at his pool plant(s) from producers during the month shall be as follows:

(a) *Class I milk price.* For each month during an eighteen month period following the effective date of this order, the minimum price per hundredweight of Class I milk containing 3.8 percent butterfat shall be the basic formula price for the preceding month plus \$2.75.

(b) *Class II milk price.* The Class II milk price shall be the "butter-powder" price computed pursuant to § 1004.50 (b) during the months of July through December, and that price less 25 cents during the months of January through June.

§ 1004.52 *Butterfat differentials to handlers.* For each class of milk containing more or less than 3.8 percent butterfat, the class prices calculated pursuant to § 1004.51 shall be increased or decreased, respectively for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.175; and

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

§ 1004.53 *Location differentials to handlers.* For that milk which is received from producers at a pool plant located 60 miles or more from the City Hall, Tucson, Arizona, by the shortest hard-surfaced highway distance as determined by the market administrator and which is assigned to Class I milk pursuant to the proviso of this section when moved to another pool plant, or classified as Class I milk without such movement, the price specified in § 1004.51 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the City Hall of Tucson, Ariz. (miles)	Rate per hundredweight (cents)
60 but not more than 160	25.0
160 but not more than 260	35.0
For each additional 10 miles or fraction thereof an additional	1.0

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the plant to which transferred after making the calculations prescribed in § 1004.45 (a) (1) through (4) and the comparable steps in (b) for such plant, such assignment to the transferring plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1004.54 *Use of equivalent prices.* If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1004.60 *Producer-handler* Sections 1004.40 through 1004.45, 1004.50 through 1004.53, 1004.70 through 1004.75, and 1004.80 through 1004.87 shall not apply to a producer-handler.

§ 1004.61 *Plants subject to other Federal orders.* Upon application to the market administrator and a subsequent determination by the Secretary, any plant specified in paragraph (a) or (b) of this section shall be treated as a non-pool plant except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator:

(a) Any pool plant which (1) would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, and (2) does not dispose of a greater volume of Class I milk to retail or wholesale outlets (except pool plants or nonpool plants) in the Central Arizona marketing area than in the marketing area regulated pursuant to such other order; and

(b) Any plant which (1) would otherwise be subject to the classification and

pricing provisions of another order issued pursuant to the act, and (2) qualified as a pool plant for each of the preceding months of July through October in accordance with the provisions of § 1004.8 (c)

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 1004.70 *Computation of the value of producer milk for each handler.* For each month, the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 1004.45 by the applicable class price, total the resulting amounts; and add any amount necessary to reflect adjustments in location differential allowance required pursuant to the proviso of § 1004.53;

(b) Add an amount computed by multiplying the pounds of any overage deducted from either class pursuant to § 1004.45 (a) (6) and (b) by the applicable class price; and

(c) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I milk price for the current month by the hundredweight of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1004.45 (a) (4) and (b) for the preceding month or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1004.45 (a) (3) and (b) for the current month, whichever is less.

§ 1004.71 *Computation of the uniform price.* For each of the months of July through December, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.8 percent butterfat content, as follows:

(a) Combine into one total the values computed pursuant to § 1004.70 for the producer milk of all handlers who submit reports prescribed in § 1004.30 and who are not in default of payments pursuant to §§ 1004.80 or 1004.82;

(b) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 3.8 percent, or add, if such average butterfat content is less than 3.8 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 3.8 percent by the butterfat differential computed pursuant to § 1004.73, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the sum of the deductions to be made from producer payments for location differentials pursuant to § 1004.74;

(d) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund,

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) hereof; and

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

§ 1004.72 *Computation of uniform prices for base milk and excess milk.*

For each of the months of January through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.8 percent butterfat content, as follows:

(a) Compute the aggregate value of excess milk for all handlers who submit reports pursuant to § 1004.30, and who are not in default of payments pursuant to §§ 1004.80 or 1004.82 as follows: (1) Multiply the hundredweight of such milk not in excess of the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II milk price, (2) multiply the hundredweight of excess milk not included in subparagraph (1) hereof by the Class I milk price, and (3) add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 3.8 percent butterfat content received from producers;

(c) Subtract the total value of excess milk, determined by multiplying the uniform price obtained in paragraph (b) of this section, plus 4 cents, times the hundredweight of excess milk, from the total value of producer milk for the month as determined according to the calculations set forth in § 1004.71 (a) through (d) (using location differentials applicable to base and excess milk)

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 3.8 percent butterfat content.

§ 1004.73 *Butterfat differential to producers.* The applicable uniform prices to be paid each producer shall be increased or decreased for each one-tenth of one percent which the average butterfat content of his milk is above or below 3.8 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined pursuant to § 1004.52, dividing by the total butterfat in producer milk and rounding to the nearest even tenth of a cent.

§ 1004.74 *Location differential to producers.* The applicable uniform prices computed pursuant to §§ 1004.71 and 1004.72 (for base milk) to be paid for producer milk received at a pool plant located 60 miles or more from the City Hall at Tucson, Arizona, by the shortest hard-surfaced highway distance, as determined by the market administrator, shall be reduced according to the location of the pool plant where such milk was received at the rates set forth in § 1004.53. The rates applicable to excess milk shall be determined by dividing the quantity of excess milk specified in § 1004.72 (a) (2) by the total quantity of excess milk

and multiplying the result by the rates applicable to base milk.

§ 1004.75 *Notification of handlers.* On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the total thereof;

(b) For the months of January through June the amounts and value of his base and excess milk respectively, and the totals thereof;

(c) The uniform price(s) computed pursuant to §§ 1004.71 and 1004.72 and the butterfat differential computed pursuant to § 1004.73; and

(d) The amounts to be paid by such handler pursuant to §§ 1004.82, 1004.85, and 1004.86 and the amount due such handler pursuant to § 1004.83.

PAYMENTS

§ 1004.80 *Time and method of payment for producer milk.* (a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is receiving during the month as follows:

(1) On or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph,

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments: (i) Less payments made such producer pursuant to subparagraph (1) of this paragraph, (ii) less marketing service deductions made pursuant to § 1004.85, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1004.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers, pay the cooperative association for milk

received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month, and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of January through June the total pounds of base and excess milk received, (iii) the amount of rate and nature of any authorized deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1004.84.

§ 1004.81 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1004.82 and 1004.84, and out of which he shall make all payments pursuant to §§ 1004.83 and 1004.84: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1004.82 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of his producer milk as computed pursuant to § 1004.70 for such month, is greater than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials.

§ 1004.83 *Payments out of the producer-settlement fund.* On or before the 13th day after the end of each month, the market administrator shall pay to each handler any amount by which the total value of his producer milk, computed pursuant to § 1004.70, for such month is less than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1004.84 *Adjustment of accounts.* Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler,

(b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1004.85 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1004.80, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

§ 1004.86 *Expense of administration.* On or before the 15th day after the end of each month, each handler shall pay to the market administrator, for each of his approved plants, 4 cents or such lesser amount as the Secretary may prescribe, for each hundredweight of butterfat and skim milk contained in (a) producer milk, and (b) other source milk allocated to Class I milk pursuant to § 1004.45 (a) (2) and (b).

§ 1004.87 *Termination of obligations.* The provisions of this section shall apply to any obligations under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation,

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

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

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

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

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

BASE RATING

§ 1004.90 *Computation of daily average base for each producer.* (a) Subject to the rules set forth in § 1004.91, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk received from such producer at all pool plants during the months of August through November immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of November, inclusive, or by 90, whichever is more;

§ 1004.91 *Base rules.* The following rules shall apply in connection with the establishment and assignment of bases.

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base as calculated pursuant to § 1004.90 to each person for whose account producer milk was delivered to pool plants during the months of August through November; and

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the

end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, the entire base shall be transferrable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1004.92 *Announcement of established bases.* On or before December 25 of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1004.100 *Effective time.* The provisions of the part, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1004.101 *Suspension or termination.* The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto.

§ 1004.102 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator) such further acts shall be performed notwithstanding such suspension or termination.

§ 1004.103 *Liquidation.* Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1004.110 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and represen-

tative in connection with any of the provisions of this part.

§ 1004.111 *Separability of provisions.* If any provisions of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D. C., this 25th day of August 1955.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator

[F. R. Doc. 55-7017; Filed, Aug. 29, 1955;
8:49 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

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

NOTICE OF FILING OF PETITION FOR EXTENSION OF TOLERANCE FOR RESIDUES OF PARATHION

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 the American Cyanamid Company, 30 Rockefeller Plaza, New York 20, New York, for extension of the tolerance of 1 part per million for residues of parathion (O,O-diethyl O-p-nitrophenyl thiophosphate) to the following raw agricultural commodities: Alfalfa, barley, clover, corn forage, hops, oats, olives, pangola grass, pea forage, timothy, vetch, wheat.

The analytical method proposed in the petition for determining residues of parathion is reported by Averill and Norris in *Analytical Chemistry*, Volume 20, pages 753-756 (1948)

Dated: August 23, 1955.

[SEAL] JOHN L. HARVEY,
Acting Commissioner
of Food and Drugs.

[F. R. Doc. 55-7029; Filed, Aug. 29, 1955;
8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

SOLICITATION OF PROXIES

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Securities and Exchange Commission has under consideration certain proposed amendments to Regulation X-14 under the Securities Exchange Act of 1934. The principal purpose of the proposed amendments is to clarify the applicability of the regulation to proxy contests. The proposed action would be taken pur-

suant to sections 14 (a) and 23 (a) of the act.

The definitions contained in the regulation would be expanded and their applicability to proxy contests clarified. The rules would be clarified to permit specifically, in the case of a contest or threatened contest, certain solicitations, subject to specified conditions, prior to furnishing security holders with a formal proxy statement.

All participants in a proxy contest would be required to file with the Commission statements setting forth their identity, interests, and connections having a bearing upon the solicitation or the contest. Certain of this information would be required to be included in any pre-proxy statement material and all of it would be required to be included in the subsequent proxy statement.

At the present time, the management is required to furnish an opposing security holder or group of security holders with a list of security holders or mail the proxy material for the opposing person or group. The existing rules provide that such material need not be mailed until the management mails its own material. This provision would be changed to require the management to mail the material promptly after its receipt, provided it is received not more than four months prior to the date of the proposed meeting.

Section 240.14a-9 (Rule X-14A-9), which prohibits the use of false or misleading statements in proxy material, would be expanded to specify certain types of statements which would be deemed misleading within the meaning of the rule.

Schedule 14A, which specifies the information required to be included in a proxy statement, would be amended to specify more adequately and clearly the information to be included in the case of a proxy contest.

The text of the proposed amendments is as follows:

1. Paragraph (f), the definition of the term "solicitation" in § 240.14a-1 (Rule X-14A-1), would be revised as follows:

§ 240.14a-1 Definitions. * * *

(f) *Solicitation.* (1) The terms "solicit" and "solicitation" include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy.

(ii) Any request to execute or not to execute, or to revoke, a proxy.

(iii) The furnishing of a form of proxy to security holders under circumstances reasonably calculated to result in the procurement of a proxy or the revocation of a proxy; or

(iv) Any statement made or used by or on behalf of any participant in a solicitation (a) in support of or in opposition to any matter to be acted upon by security holders of an issuer, including an election of directors, whether addressed directly to security holders, or to a group of persons or the general public or (b) which may facilitate, influence, aid, or obstruct the giving or revoking of proxies by security holders.

(2) Without limiting the scope of this definition, the term "solicitation" shall include the dissemination, distribution

or publication by or on behalf of a participant for the purposes specified in subparagraph (1) of this paragraph of letters, releases, advertisements, scripts, speeches, addresses and reprints of other material whether such material was originally prepared or issued by a participant in a solicitation or otherwise. The term "solicitation" shall not apply, however, to the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, the performance by the issuer of acts required by § 240.14a-7, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

2. The following new paragraph (c-1) would be added after paragraph (c) *Last fiscal year* in § 240.14a-1 (Rule X-14A-1).

(c-1) *Participant or participant in a solicitation.* The terms "participant" or "participant in a solicitation" include any person who solicits proxies; any nominee for whose election as a director proxies are solicited; the officers or directors of an issuer who designate or who are authorized to designate a nominee; any person who joins with another to solicit proxies by permitting his name to be used in such activities or otherwise; any committee or group organized to solicit proxies and any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes the initiative in organizing, directing or financing any such committee or group; any person who finances or joins with another to finance the solicitation of proxies or the acquisition of securities in connection with a solicitation; any person who, on behalf of any participant solicits the purchase or sale of securities for the purpose of supporting or securing support for a participant; and any person who is a party to any joint venture or any other contract, arrangement or understanding with a participant, for the purpose of buying, selling, holding or voting securities, or of making a profit or preventing a loss in such securities, during or in connection with the activities of the person or persons on whose behalf proxies are solicited. The term does not include (1) a bank, broker or dealer who does no more than lend money, execute orders or transmit proxy soliciting material in the ordinary course of business as a bank or broker or dealer, (2) any person retained or employed by a participant to, and who does no more than, request security holders to execute a proxy, or (3) any person employed by a participant in the capacity of attorney, accountant, public relations or financial adviser and whose activities are limited to the performance of his duties in the course of such employment.

3. The introductory text of § 240.14a-2 (Rule X-14A-2) would be amended as follows.

§ 240.14a-2 *Solicitations to which §§ 240.14a-1 to 240.14a-12 apply.* Sections 240.14a-1 to 240.14a-12 apply to every solicitation of a proxy with respect to securities listed and registered on a national securities exchange, whether or

not trading in such security has been suspended, except the following:

4. A new paragraph (d) would be added to § 240.14a-3 (Rule X-14A-3) as follows:

§ 240.14a-3 *Information to be furnished security holders.* * * *

(d) Any soliciting material which includes, in whole or in part, any reprints or reproductions of any previously published material shall:

(1) State the name of the author and publication, the time, the date of prior publication, and identify any person who is described or quoted without being named, in the previously published material.

(2) State whether or not the consent of the author and publication has been obtained to the use of the material as proxy soliciting material.

(3) If the person using the material, or anyone on his behalf, prompted, requested or induced or paid, directly or indirectly for the preparation or prior publication of the material previously published, state the circumstances.

(4) If any person using the material, or any one on his behalf, has made or proposes to make any payments or give any other consideration in connection with the publication or republication of such material, state the circumstances.

5. The following new paragraph (e) would be added to § 240.14a-5 (Rule X-14A-5)

§ 240.14a-5 *Presentation of information in proxy statement.* * * *

(e) There shall be set forth on the outside front cover page of every proxy statement the following statement in capital letters printed in bold-face roman type at least as large as 10-point modern type and at least 2 points leaded.

THE SECURITIES AND EXCHANGE COMMISSION HAS NOT IN ANY WAY PASSED UPON THE MERITS OF OR GIVEN APPROVAL TO, ANY MATTER DESCRIBED HEREIN, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROXY STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

6. Paragraph (b) of § 240.14a-7 (Rule X-14A-7) would be amended to read as follows:

(b) Copies of any proxy statement, form of proxy or other communication furnished by the security holder shall be mailed by the issuer to such of the holders of record specified in paragraph (a)

(1) of this section as the security holder shall designate. The issuer shall also mail to each banker, broker or other person specified in paragraph (a) (2) of this section a sufficient number of copies of such proxy statement, form of proxy or other communication as will enable the banker, broker or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him. Any such material furnished by the security holder within 120 days prior to an annual meeting date or proposed special meeting date shall be mailed by the issuer with reasonable promptness after receipt of a tender of the material to be

mailed, of envelopes or other containers therefor and of postage or payment for postage. Neither the management nor the issuer shall be responsible for such proxy statement, form of proxy or other communication.

7. Paragraph (a) of § 240.14a-9 (Rule X-14A-9) would be revised and a new paragraph (b) would be added as follows:

§ 240.14a-9 *False or misleading statements.* (a) No solicitation subject to §§ 240.14a-1 to 240.14a-12 shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which is false or misleading.

(b) Specifically but without limiting the general scope of paragraph (a) of this section, the following are deemed misleading within the meaning of this section:

(1) Predictions of specific future business and financial results.

(2) Irrelevant statements which confuse or mislead.

(3) Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, unless factual data supporting such assertions are filed with the Commission prior to such use.

(4) Unsupported or unsupported accusations, questions or innuendoes.

(5) Material purporting to be factual but not based upon facts which can be established by data available to the Commission.

8. A new § 240.14a-11 (Rule X-14A-11) would be adopted as follows:

§ 240.14a-11 *Identification of proxy material.* The name and identity of the issuer or other persons or group, for or on whose behalf it is sent or published, shall be clearly stated on the facing or front page of every proxy statement, notice of meeting, form of proxy and each communication or other proxy material sent or given to security holders or otherwise published and on the envelope or other wrapper thereof. Such identification shall be clearly distinguishable from the material of any other issuer, person or group engaged in a solicitation of security holders for the same meeting or subject matter.

9. A new § 240.14a-12 (Rule X-14A-12) would be adopted as follows:

§ 240.14a-12 *Special provisions applicable to proxy contests—*(a) *To what this section applies.* This section applies to all solicitations subject to §§ 240.14a-1 to 240.14a-12 with respect to any election of directors or any other matter which

is to be acted upon by security holders (1) in opposition to the management of the issuer or to some other person or group of persons, and (2) to all solicitations by or on behalf of the management of an issuer or any other person or group of persons in response to or in anticipation of an opposition solicitation, except that this section shall not apply to proposals submitted pursuant to § 240.14a-8 where there otherwise is no solicitation with respect to such proposals.

(b) *Filing requirements.* (1) No solicitation subject to this section shall be made or continued by any person unless there has been filed with the Commission, in conformity with the provisions of this section, by or on behalf of each participant in such solicitation a statement in duplicate containing the information specified by Schedule 14B. If any solicitation on behalf of management or of any other person has been made prior to a solicitation in opposition thereto, a statement for each participant in behalf of management or such other person shall be filed with the Commission within five business days after notice of the opposition solicitation. If additional persons subsequently become participants, a statement containing the information specified in Schedule 14B for each such person shall be filed with the Commission within two business days after such person becomes a participant. Upon any material change in the facts reported in any statement filed by or in behalf of any participant, an appropriate amendment to such statement shall be filed with the Commission within two business days after the occurrence of the event representing the change. All statements filed pursuant to this paragraph shall be part of the official public files of the Commission.

(2) Three copies of any soliciting material proposed to be sent or furnished to security holders or published prior to the furnishing of a written proxy statement specified by § 240.14a-3 (a) shall be filed with the Commission in preliminary form, at least five business days prior to the date definitive copies of such material are first sent or given to security holders or published, or such shorter period as the Commission may authorize upon a showing of good cause therefor.

(3) Notwithstanding the provisions of § 240.14a-3 (b) and (c), three copies of the annual report referred to in § 240.14a-3 (b) shall be filed with the Commission, as proxy material subject to §§ 240.14a-1 to 240.14a-12 whenever any solicitation subject to this rule in opposition to the management has occurred prior to the time such report is distributed to security holders or otherwise published. Such report shall be filed with the Commission in preliminary form at least ten days prior to the date definitive copies of the report are first sent or given to security holders or otherwise published. Definitive copies of the report shall be filed as required by § 240.14a-6 (c)

(c) *Preliminary solicitations.* Notwithstanding the provisions of § 240.14a-3 (a) solicitations subject to this section may be made prior to the furnishing to

security holders of a written proxy statement containing the information specified in Schedule 14A. *Provided, That:*

(1) The statements required by paragraph (b) (1) of this section have been filed by or on behalf of each participant in such solicitation;

(2) The information specified in Schedule 14A is not at the time available;

(3) No form of proxy is furnished to security holders prior to the time the written proxy statement required by § 240.14a-3¹ (a) is furnished to security holders;

(4) At least the information specified in Items 2 (a) 2 (b) (1) 3 (a) and 3 (c) of each statement required to be filed by each participant in such solicitation pursuant to Schedule 14B, or an appropriate summary thereof, is furnished to security holders or published not later than the first solicitation permitted by this section and is thereafter included in each communication sent or given to security holders or published in connection with the solicitation;

(5) The information specified in Schedule 14A is sent or given security holders at the earliest practicable date.

10. Item 3 of Schedule 14A would be revised as Item 3 (a) and a new paragraph (b) would be added as follows:

Item 3. Persons Making the Solicitation—

(a) *Solicitations not subject to § 240.14a-12 (Rule X-14A-12).* (1) If the solicitation is made on behalf of the management of the issuer, so state. Give the name of any director of the issuer who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(2) Unless the election of directors is the only matter to be acted upon, state the estimated total cost of the solicitation to the issuer. If any portion of the estimated costs are to be paid by any person other than the issuer, describe the arrangements and identify such persons.

(3) If the solicitation is to be made otherwise than by the use of the mails, state the method to be used. If the solicitation is to be made by specially engaged employees or other paid solicitors, state (i) the material features of any contract or arrangement for such solicitation, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of specially engaged employees of the issuer or employees of any other person (name such other person) who will solicit proxies.

(4) If the solicitation is made otherwise than by or on behalf of the management of the issuer, so state and give the names of the persons by whom and on whose behalf it is made and furnish with respect to such solicitation the information called for by subparagraphs (2) and (3) of this item.

(b) *Solicitations subject to § 240.14a-12 (Rule X-14A-12).* Each issuer, person, or group making a solicitation subject to § 240.14a-12 (Rule X-14A-12) shall furnish the following information:

(1) Describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the issuer have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, the manner and nature of their employment for, and time to be devoted to, such purpose and an estimate of the cost to the issuer of such employment.

(3) If specially engaged employees, representatives or other persons have been or are

to be employed to collect security holders, state (i) the material features of any contract or arrangement for such solicitation, (ii) the cost or anticipated cost thereof, and (iii) the number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) The total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) The names of the person or persons who have paid the amounts so far spent or committed for and the amounts paid or committed for by each.

(6) The names of the person or persons who will pay any amounts to be expended in the future for, in furtherance of, or in connection with the solicitation of security holders.

(7) A specific statement whether it is intended that (a) the issuer will be requested to pay the costs of the solicitation and (b) whether the payment of such costs will be submitted to a vote of security holders.

Instruction. Costs and expenditures within the meaning of this Item 3 shall include fees for counsel, public relations consultants, advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation.

11. Item 4 of Schedule 14A would be revised to add a new paragraph (b) as follows:

Item 4. Interest of certain persons in matters to be acted upon—(a) Where the solicitation is not subject to § 240.14a-12 (Rule X-14A-12). Describe briefly any substantial interest, direct or indirect (by security holdings or otherwise) of each of the following persons in any matter to be acted upon, other than elections to offices:

(1) If the solicitation is made on behalf of the management, each person who has been a director or officer of the issuer at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the management, each person on whose behalf the solicitation is made.

(3) Each nominee for election as a director of the issuer.

(4) Each associate of the foregoing persons.

Instruction. This item does not apply to any interest arising from the ownership of securities of the issuer where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) *Where the solicitation is subject to § 240.14a-12 (Rule X-14A-12).* (1) If the matters to be acted upon include an election of directors, describe any interest, direct or indirect, in the securities of the issuer, and its affiliates of each of the following persons:

(A) If the solicitation is made by the management, each person who has been a director of the issuer at any time since the beginning of the last fiscal year and who participated in or was consulted concerning the designation of the proposed nominees;

(B) Each participant in the solicitation as defined in § 240.14a-1 (Rule X-14A-1);

(C) Each nominee for election as a director of the issuer;

(D) Each associate of the foregoing persons.

(2) As to any matters to be acted upon, including an election of directors, describe any substantial interest, direct or indirect (by security holdings or otherwise) of the persons specified in (1) in such matter.

(3) With respect to any such solicitation include the information, or a fair and adequate summary thereof, required to be included in the statements filed or required to be filed with the Commission pursuant to § 240.14a-12 (Rule X-14A-12) by or on

behalf of each participant in the solicitation by the management, or by any other person or group not otherwise described under subsections (1) and (2) of this paragraph (b).

12. Item 7 (c) of Schedule 14A would be revised as follows:

(c) Describe briefly all remuneration payments (other than payments reported under paragraph (a) or (b) of this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a) (1), naming each such person, and (ii) all directors and officers of the registrant as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments should be stated, together with an explanation of the basis for future payments.

13. The following would be added to Regulation X-14 following Schedule 14A.

SCHEDULE 14B—INFORMATION TO BE INCLUDED IN STATEMENTS FILED BY A PARTICIPANT IN A PROXY SOLICITATION PURSUANT TO § 240.14a-12 (b) (1) (RULE X-14A-12 (b) (1))

1. *Issuer.* State name and address of issuer.

2. *Identity and background.* ¹(a) State your name, residence and business addresses.

¹(b) State the following:

(1) Your present principal occupation or employment and give name, principal business and address of any corporation or other organization in which such employment is carried on;

(2) Similar information as to all principal occupations or employments during the last ten years giving starting and ending dates of each.

(c) State whether or not you presently hold or during the past ten years have held any positions or offices with the issuer, its subsidiaries or affiliates, and if so, give the dates and nature of such positions and offices.

(d) State whether or not, during the past ten years you have held any positions or offices with any business enterprise other than the positions and offices stated in answer to (b) and (c) above, and if so, give the dates, names, principal businesses and addresses of such enterprises, and the nature of the positions and offices held.

(e) State whether or not you are or have been a participant in any other proxy contest involving this or other issuers within the past ten years. If so, identify the principals, subject matter and your relation to the parties and the outcome.

(f) State whether or not, during the past ten years, you have been convicted in a criminal proceeding (excluding minor traffic violations or similar misdemeanors) and if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

3. *Interests in securities of the issuer.* ¹(a) State the amount of each class of securities of the issuer or of any of its parents or subsidiaries you own beneficially, directly or indirectly, the amounts owned of record but not beneficially, and, with respect to securities acquired within the past two years, the dates of acquisition, and the amount acquired on each date.

¹This information would be required to be included in all preliminary soliciting material by proposed § 240.14a-12 (e) (Rule X-14A-12 (c)).

PROPOSED RULE MAKING

(b) If any of the securities specified in paragraph (a) are held in a margin account with a registered broker-dealer or hypothecated for payment of any debt to a bank, in the regular course of business of such broker-dealer or bank, indicate this fact and the amount of the indebtedness as to the latest practicable date. If any part of the aggregate purchase price or market value of any of the shares specified in paragraph (a) is represented by funds borrowed or otherwise obtained or supplied for the purpose of acquiring or holding such securities other than pursuant to a margin account or bank loan in the regular course of business of a bank or broker, state the amount so borrowed or obtained, describe the transaction, state the name of the parties and state whether any of the securities are hypothecated or otherwise subject to a lien or charge as security for the transaction, giving the details of any such arrangements.

¹ (c) State the amount of securities of the issuer owned beneficially, directly or indirectly, by each of your associates (as defined in Rule X-14A-1) and the name and address of each such associate.

(d) State whether or not you are a party to or participant in any contracts, arrangements or understandings with any person with respect to the securities described under paragraph (a) or any other securities of the

issuer, including but not limited to joint ventures or any other contracts, arrangements and understandings regarding the purchase or sale of securities, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. If so, name the persons with whom such contracts, arrangements, or understandings exist and give the details thereof.

4. *Further matters.* (a) Describe the time and circumstances under which you became associated with the solicitation.

(b) State the nature and extent of your activities or proposed activities in organizing, conducting or financing the solicitation including the solicitation or proposed solicitation of the purchase or sale of securities of the issuer for the purpose of supporting or securing support for a participant.

(c) Furnish for yourself and your associates, the information required by item 7 (f) of Schedule 14A.

(d) State whether or not you have any arrangement or understanding with any person on your own behalf or on behalf of any of your associates:

(i) With respect to any future employment by the issuer or its affiliates;

(ii) With respect to any future transactions to which the issuer or any of its affiliates will or may be a party.

If you have any such arrangement or understanding with any person, state the name of such person and describe the arrangement or understanding.

5. *Signature.* The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete, and correct, to the best of my knowledge and belief.

(Date)

(Signature)

All interested persons are invited to submit views and comments on the above-mentioned proposal in writing to the Securities and Exchange Commission, Washington 25, D. C., on or before September 30, 1955. Views or comments will be available for public inspection except in cases where the person submitting them requests that they shall not be made public.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

AUGUST 19, 1955.

[F. R. Doc. 55-7013; Filed, Aug. 20, 1955;
8:48 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Document 7]

CALIFORNIA

ORDER OPENING LANDS TO MINERAL LOCATION, ENTRY AND PATENT

AUGUST 23, 1955.

1. Under authority of the act of April 23, 1932 (47 Stat. 136; 43 U. S. C. 154), and the regulations thereunder contained in 43 CFR 185.36, and in accordance with the authority delegated to me by the Director, Bureau of Land Management, by section 2.5 of Order No. 541, dated April 21, 1954 (19 F. R. 2473, 2476) it is ordered as follows:

2. Subject to valid existing rights and the provisions of existing withdrawals, the following described lands shall, commencing at 10:00 a. m., local time, California, on September 28, 1955, be open to location, entry and patenting under the United States Mining Laws, subject to the stipulation quoted below, to be executed and acknowledged in favor of the United States by the locators, for themselves, their heirs, successors and assigns, and recorded in the county records and in the United States Land Office at Los Angeles, California, before locations are made:

SAN BERNARDINO MERIDIAN

T. 15 S., R. 24 E.

Sec. 8, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$.

¹ This information would be required to be included in all preliminary soliciting material by proposed §240.14a-12 (e) (Rule X-14A-12 (c)).

The areas described total 15 acres of public lands.

Stipulation: In carrying on the mining and milling operations contemplated hereunder, locator will, by means of substantial dikes, or other adequate structures, confine all tailings, debris and harmful chemicals in such a manner that the same shall not be carried into the Colorado River bottom lands by storm waters, or otherwise.

There is reserved to the United States, its agents and employees, at all times, free ingress to, passage over and egress from all of the above described lands for the purpose of inspection; and there is further reserved to the United States, its successors and assigns the prior right to use any of the lands hereinabove described, to construct, operate, and maintain canals, dikes, wasteways, ditches, telephone and telegraph lines, electric transmission lines, roadways and appurtenant works, including the right to take and remove from the lands hereinabove described such construction materials as may be required in the construction of irrigation works, without any payment made by the United States or its successor for such right. The locator further agrees that the United States, its officers, agents and employees and its successors and assigns, shall not be held liable for any damage to the improvements or workings of the locator resulting from the construction, operation and maintenance of any works of the United States and/or the removal of construction materials from the lands hereinabove described.

3. Inquiries concerning these lands shall be addressed to the Manager, Land

Office, Bureau of Land Management, Room 1512 U. S. Post Office Building, Los Angeles, California.

C. K. CARON,
Acting State Supervisor.

[F. R. Doc. 55-6998; Filed, Aug. 20, 1955;
8:45 a. m.]

ATOMIC ENERGY COMMISSION

Patent Compensation Board

[Docket No. 10]

MANUEL DITTENHEIMER

NOTICE OF APPLICATION

Notice is hereby given that Manuel Dittenheimer has filed a claim for an award in the above docket before the Patent Compensation Board, United States Atomic Energy Commission. The claim is based on applicant's alleged concepts.

The application of Manuel Dittenheimer is on file with the Patent Compensation Board. Any person other than the applicant desiring to be heard with reference to the application should file with the Patent Compensation Board, United States Atomic Energy Commission, Washington 25, D. C., within thirty days from the date of publication of this notice, a statement of fact concerning the nature of his interest.

MARGARET H. MELIN,
Acting Clerk,
Patent Compensation Board.

AUGUST 18, 1955.

[F. R. Doc. 55-7025; Filed, Aug. 20, 1955;
8:49 a. m.]

DEPARTMENT OF DEFENSE

Office of the Secretary

SECRETARY OF ARMY

DELEGATION OF AUTHORITY RELATIVE TO ST. LAWRENCE SEAWAY POWER OR NAVIGATION PROJECTS

The following delegation of authority is promulgated pursuant to the authority vested in me by Subsection 202 (f) of the National Security Act of 1947, 61 Stat. 495, as amended, and Reorganization Plan No. 6 of 1953.

1. I hereby delegate to the Secretary of the Army full power and authority to act for and in the name of the Secretary of Defense, and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to P. L. 891, 81st Congress, 2d session, insofar as such action is related to the St. Lawrence Seaway Power Project or the St. Lawrence Seaway Navigation Project.

2. All requests for waiver of the navigation and vessel inspection laws of the United States made hereunder by the Secretary of the Army to the head of any department or agency responsible for the administration of such laws shall be deemed to have been made by the Secretary of Defense and with the full authority and power of the Secretary of Defense.

The authority delegated herein may not be redelegated.

C. E. WILSON,
Secretary of Defense.

AUGUST 18, 1955.

[F. R. Doc. 55-6995; Filed, Aug. 29, 1955; 8:45 a. m.]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order 93-55]

EXECUTIVE ASSISTANT TO ATTORNEY GENERAL

DELEGATION OF AUTHORITY TO ACCEPT SERVICE OF SUMMONS OR OTHER PROCESS IN CERTAIN CASES

By virtue of the authority vested in me by subsection (b) of section 208 of the Department of Justice Appropriation Act, 1953 (66 Stat. 560; 43 U. S. C. 666) and by section 2 of Reorganization Plan No. 2 of 1950 (64 Stat. 1261), I hereby designate the Executive Assistant to the Attorney General as the representative of the Attorney General to accept service of summons or other process in any suit within the purview of subsection (a) of the said section 208 in which the United States is a party defendant.

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

HERBERT BROWNELL, Jr.,
Attorney General.

AUGUST 23, 1955.

[F. R. Doc. 55-7026; Filed, Aug. 29, 1955; 8:49 a. m.]

DEPARTMENT OF COMMERCE

Maritime Administration

CALIFORNIA PORTS/FAR EAST

ESSENTIALITY AND U. S. FLAG SERVICE REQUIREMENTS OF TRADE ROUTE NO. 29; CONCLUSIONS AND DETERMINATIONS

Notice is hereby given that on August 18, 1955, the Maritime Administrator, acting pursuant to Section 211 of the Merchant Marine Act, 1936, as amended, found and determined the essentiality and United States flag service requirements of United States foreign Trade Route No. 29 and, in accordance with his action of October 29, 1954, ordered that the following conclusions and determinations reached by the Maritime Administrator with respect to said route be published in the FEDERAL REGISTER:

1. Trade Route No. 29, as described below, is reaffirmed as an essential foreign trade route of the United States: "Between California ports and ports in the Far East (Japan, Formosa, Philippine Islands, and the continent of Asia from the Union of Soviet Socialist Republics to Siam, inclusive) "

2. Requirements for United States flag operation are approximately 15 sailings per month with freight vessels serving the route exclusively and approximately 17 sailings per month serving it in conjunction with United States Atlantic, Gulf and Pacific Northwest ports; and approximately 2 sailings per month with combination (passenger-cargo) ships.

3. The combination ships require accommodations for not less than 500 passengers each, adequate dry cargo and reefer space and service speed of not less than 20 knots. The C-3 type vessel and the Mariner type now operated on Trade Route No. 29 are suitable for operation thereon; and the present C-2 type vessels are suitable for interim operation thereon. Under present conditions approximately 35 freighters serving the route exclusively and approximately 63 serving it in conjunction with U. S. Atlantic, Gulf and Pacific Northwest ports, supplemented by three combination (passenger-freight) vessels, are required to serve the route adequately. Replacement freighters should be somewhat superior to the present C-3 design or of the Mariner type.

Any person, firm or corporation having any interest in the foregoing who desires to offer comments and views thereon should submit same in writing to the Secretary, Maritime Administration, Department of Commerce, Washington 25, D. C., within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER. The Maritime Administrator will consider these comments and views and take such action with respect thereto as in his discretion he deems warranted.

Dated: August 25, 1955.

By order of the Maritime Administrator.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 55-7024; Filed, Aug. 29, 1955; 8:49 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-7393, etc.]

COLORADO OIL AND GAS CORP. ET AL.

NOTICE OF FINDINGS AND ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

AUGUST 24, 1955.

In the matters of Colorado Oil and Gas Corporation, Docket No. G-7393; W. H. Busch, Docket No. G-8330; Texas Gas Transmission Corporation, Docket No. G-8827; Vaughey and Vaughey, Docket No. G-8848; Squaw Oil Company, Docket No. G-9057.

Notice is hereby given that on August 12, 1955, the Federal Power Commission issued its findings and orders adopted August 10, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7001; Filed, Aug. 23, 1955; 8:46 a. m.]

[Docket No. G-8518]

ORANGE GROVE OIL & GAS CO. AND H. J. MOSSER

NOTICE OF ORDER MAKING EFFECTIVE PROPOSED RATE CHANGES

AUGUST 24, 1955.

Notice is hereby given that on August 11, 1955, the Federal Power Commission issued its order adopted August 10, 1955, modifying order (FR 20-5473) making effective proposed rate changes upon filing of bond to assure refund of excess charges in the above-entitled matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7002; Filed, Aug. 23, 1955; 8:46 a. m.]

[Docket No. G-8559]

OLIN GAS TRANSMISSION CORP.

NOTICE OF ORDER MAKING EFFECTIVE PROPOSED TARIFF CHANGES

AUGUST 24, 1955.

Notice is hereby given that on August 11, 1955, the Federal Power Commission issued its order adopted August 10, 1955, making effective proposed tariff changes upon filing of undertaking to assure refund of excess charges in the above-entitled matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7003; Filed, Aug. 29, 1955; 8:46 a. m.]

[Docket No. G-8872]

ALGONQUIN GAS TRANSMISSION CO. AND TENNESSEE GAS TRANSMISSION CO.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

AUGUST 24, 1955.

Notice is hereby given that on August 15, 1955, the Federal Power Commission

issued its findings and order adopted August 10, 1955, issuing certificate of public convenience and necessity in the above-entitled matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7004; Filed, Aug. 29, 1955;
8:46 a. m.]

[Docket No. G-9161]

TEXAS CO.

NOTICE OF ORDER SUSPENDING PROPOSED
RATE CHANGES

AUGUST 24, 1955.

Notice is hereby given that on August 11, 1955, the Federal Power Commission issued its order adopted August 10, 1955, modifying order (FR 20-5410) suspending proposed changes in rates in the above-entitled matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7005; Filed, Aug. 29, 1955;
8:46 a. m.]

[Docket No. G-9173]

T. L. JAMES AND COMPANY, INC., ET AL.

NOTICE OF ORDER SUSPENDING PROPOSED
RATE CHANGES

AUGUST 24, 1955.

Notice is hereby given that on August 11, 1955, the Federal Power Commission issued its order adopted August 10, 1955, modifying order (20 F. R. 5472) suspending proposed changes in rates in the above-entitled matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7006; Filed, Aug. 29, 1955;
8:46 a. m.]

[Docket No. G-5136, etc.]

M & D OIL Co. et al.

NOTICE OF FINDINGS AND ORDERS ISSUING
CERTIFICATES OF PUBLIC CONVENIENCE
AND NECESSITY

AUGUST 24, 1955.

In the matters of A. S. Megert and A. C. Donell d/b/a M & D Oil Company, Docket No. G-5136; William F. Stevens, Docket No. G-5140; Douglas E. Procter, Jr., et al., Docket No. G-7106; Flora A. Maze Gas Company, Docket No. G-8684, B. E. Talkington, et al., Docket No. G-8694, Walter E. Anderson, Docket No. G-8721.

Notice is hereby given that on August 18, 1955, the Federal Power Commission issued its findings and orders adopted August 17, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7007; Filed, Aug. 29, 1955;
8:47 a. m.]

[Docket No. G-8560, etc.]

CLARK E. NYE AND ALPHA PETROLEUM
CORP. ET AL.

NOTICE OF FINDINGS AND ORDERS ISSUING
CERTIFICATES OF PUBLIC CONVENIENCE
AND NECESSITY

AUGUST 24, 1955.

In the matters of Clark E. Nye and Alpha Petroleum Corporation, Docket No. G-8560; Phillips Petroleum Company, Docket No. G-8738; Hudson & Hudson, Inc., et al., Docket No. G-8747; Canon Oil Production, Docket No. G-8777; Humble Oil & Refining Company, Docket No. G-8835.

Notice is hereby given that on August 19, 1955, the Federal Power Commission issued its findings and orders adopted August 17, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7009; Filed, Aug. 29, 1955;
8:47 a. m.]

[Docket No. G-8868, etc.]

CHAMPLIN REFINING CO. ET AL.

NOTICE OF FINDINGS AND ORDERS ISSUING
CERTIFICATES OF PUBLIC CONVENIENCE
AND NECESSITY

AUGUST 24, 1955.

In the matters of Champlin Refining Company, Docket No. G-8868; Watson Oil and Gas Company, Inc., Docket No. G-8910; E. Max Beren, et al., Docket No. G-8926; Burch Spears, Docket No. G-8973; Perry Gas Company, Docket No. G-8976.

Notice is hereby given that on August 19, 1955, the Federal Power Commission issued its findings and orders adopted August 17, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7010; Filed, Aug. 29, 1955;
8:47 a. m.]

[Docket No. G-4958, etc.]

BIG RUN OIL & GAS Co. ET AL.

NOTICE OF FINDINGS AND ORDER ISSUING CER-
TIFICATES OF PUBLIC CONVENIENCE AND
NECESSITY

AUGUST 23, 1955.

In the matters of Big Run Oil and Gas Company Docket No. G-4958; Frederick Oil and Gas Company Docket No. G-4971, W. H. Mossor, Docket No. G-4972; Middle Run Oil and Gas Company Docket No. G-4975, Wade Farm Oil and Gas Company, Docket No. G-4976; Road Run Oil and Gas Company, Docket No. G-4977; Prunty Oil and Gas Company, Docket No. G-4978; Wright Oil and Gas Company, Docket No. G-4979; W. H. Mossor, Docket No. G-4980; McCune Oil and Gas Company, Docket No. G-4981, Ola O. White Farm Oil and Gas Company, Docket No. G-4982; Kidd Oil and Gas Company, Docket No. G-4983.

Notice is hereby given that on August 19, 1955, the Federal Power Commission issued its findings and order adopted August 17, 1955, issuing certificate of public convenience and necessity in the above-entitled matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7011; Filed, Aug. 29, 1955;
8:47 a. m.]

[Docket No. G-4791, etc.]

GROVER LOWE, TRUSTEE, ET AL.

NOTICE OF APPLICATIONS AND DATE OF
HEARING

AUGUST 24, 1955.

In the matters of Grover Lowe, Trustee, Docket No. G-4791, Anna Lowe, Agent, Docket No. G-4792; Anna Lowe, Trustee, Docket No. G-4793.

Take notice that Grover Lowe, Trustee, Anna Lowe, Agent, and Anna Lowe, Trustee (Applicants), individuals whose addresses are Prestonsburg, Kentucky, filed on November 10, 1954, applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicants to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications which are on file with the Commission and open for public inspection.

Applicants produce, respectively, natural gas from approximately a 162 acre tract in Floyd County, an 85 acre tract in Martin County and a 400 acre tract in Floyd County Kentucky, which they sell, respectively, to the Kentucky and West Virginia Gas Company and the United Fuel Gas Company for transportation in interstate commerce for resale, and to the Columbian Fuel Corporation for resale to the United Fuel Gas Company for transportation in interstate commerce for resale.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on Thursday, September 22, 1955, at 9:40 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before

September 9, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7019; Filed, Aug. 29, 1955; 8:49 a. m.]

[Docket Nos. G-4963; G-4970]

HAUGET OIL & GAS CO. AND FLUHARTY-
RIDDLE OIL & GAS CO.

NOTICE OF APPLICATIONS AND DATE OF
HEARING

AUGUST 24, 1955.

Take notice that the Haught Oil & Gas Company, a partnership, Applicant, and the Fluharty-Riddle Oil & Gas Company, a partnership, Applicant, by and through W. H. Mossor, partner and agent in and for both Applicants, whose addresses are Harrisville, West Virginia, filed on November 18, 1954, applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicants to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications which are on file with the Commission and open for public inspection.

Applicants produce natural gas from 5.5 and 5 acres, respectively, in Ritchie County, West Virginia, which they sell at 19 cents per Mcf to Penova Interests for transportation and resale to the Hope Natural Gas Company for transportation in interstate commerce for resale.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on Thursday, September 22, 1955, at 9:50 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's Rules of Practice and Procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before September 9, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision pro-

cedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7020; Filed, Aug. 29, 1955; 8:49 a. m.]

[Docket No. G-6006]

McALESTER FUEL CO.

NOTICE OF APPLICATION AND DATE OF
HEARING

AUGUST 24, 1955.

Take notice that the McAlester Fuel Company (Applicant) a Delaware corporation whose address is McAlester Building, Magnolia, Arkansas, filed on November 26, 1954, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing applicant to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant produces natural gas from unitized acreage, viz., Sacroc Unit, Canyon Reef Pool of Kelly-Snyder Field and Diamond "M" Field, Scurry County, Texas and also purchases natural gas from other parties in the fields which, after processing, it sells to the Fullerton Oil & Gas Corporation for resale to the El Paso Natural Gas Company for transportation in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on Thursday, September 22, 1955, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's Rules of Practice and Procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before September 9, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7022; Filed, Aug. 29, 1955; 8:49 a. m.]

[Docket No. G-9118]

ROWLAND OIL CO.

NOTICE OF APPLICATION AND DATE OF
HEARING

AUGUST 24, 1955.

Take notice that Rowland Oil Company (Applicant) an Oklahoma corporation whose address is 810 Colcord Building, Oklahoma City, Oklahoma, filed on July 8, 1955, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicant to render service as hereinafter described subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to produce natural gas from the Noble-Olson Zone, Chickasha Field, Grady County, Oklahoma, which will be sold to the Consolidated Gas Utilities Corporation for transportation in interstate commerce for resale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on September 29, 1955, at 9:30 a. m., e. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of section 1.30 (c) (1) or (c) (2) of the Commission's Rules of Practice and Procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before September 14, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 55-7021; Filed, Aug. 29, 1955; 8:49 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3406]

DELAWARE POWER & LIGHT CO.

NOTICE OF FILING OF DECLARATION RELATING TO TEMPORARY FINANCING OF NEW CONSTRUCTION

AUGUST 24, 1955.

Notice is hereby given that Delaware Power & Light Company ("Delaware") a registered holding company and also a public-utility operating company, has

filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 (a) and 7 thereof as applicable to the proposed transactions, which are summarized as follows:

Delaware proposes to borrow funds for construction purposes from time to time prior to February 1, 1958, under an agreement which it has entered into with a group of seven banks in Wilmington, Delaware, and New York City whereby the banks will hold for its use for a period extending from August 1, 1955, to February 1, 1958, a revolving credit in the amount of \$12,000,000. At the time of each advance to it from the revolving credit Delaware will issue unsecured promissory notes due in 90 days from the date of each such issue. Until August 1, 1957, the interest rate will be the highest prime rate charged on the date of the loan by any of the participating banks which are members of the New York Clearing House Association, but not in excess of 3½ percent per annum, after August 1, 1957, the interest rate will be such highest prime rate on the date of the loan, even though in excess of 3½ percent per annum. The notes may be prepaid at any time without penalty, except that Delaware may not prepay any note in whole or in part from the proceeds of any subsequent loan under the agreement at a lower rate of interest. No commitment or similar fee is being paid to the banks for their extension of credit.

The names of the lending banks and their respective participations are as follows:

Wilmington Trust Co.....	\$1,800,000
Irving Trust Co.....	4,800,000
The First National City Bank of New York.....	2,400,000
The New York Trust Co.....	1,200,000
Equitable Security Trust Co.....	900,000
The president, directors and company of the Farmers Bank of the State of Delaware.....	600,000
Delaware Trust Co.....	300,000
Total	12,000,000

It is contemplated that notes aggregating close to the full \$12,000,000 credit may be outstanding from time to time during the period of the agreement.

Delaware plans to repay amounts borrowed under the revolving credit agreement by the subsequent sale from time to time during the next 30 months of bonds and equity securities in the aggregate amount of \$42,000,000. The proceeds of such permanent financing not required for the payment of the temporary bank loans will be used for construction purposes, estimated to aggregate \$68,000,000 for the years 1955, 1956, and 1957. The nature and extent of the permanent financing will be determined by conditions existing at the time, but it is anticipated that such financing will include the issuance of bonds, preferred and common stocks in amounts which will maintain conservative capitalization ratios. Such permanent financing will be the subject of separate filings.

Delaware's construction program includes a specially designed 50,000 kilo-

watt generating station which it has agreed to build south of Wilmington to supply electricity and steam to a new oil refinery now being built by Tide Water Associated Oil Company ("Tide Water") Delaware estimates that the cost of the new generating station will be approximately \$22,000,000. Pursuant to a proposed agreement between Delaware and Tide Water, which is now being drafted in final form, Delaware will be reimbursed for all expenses incurred in connection with the operation of the plant and will receive an annual return on gross investment of 6 percent after income taxes. In addition, Tide Water will pay Delaware amounts sufficient to amortize the cost of the plant over a period of from 25 to 28 years. Delaware states that a provision will be included in the agreement whereby, at the end of ten years, and at five-year intervals thereafter, Tide Water may purchase the plant at its amortized value and terminate the agreement. The agreement will terminate in 25 years, but may be extended from year to year thereafter.

Delaware will pay a fee of \$2,500 to the counsel for said banks, in addition to miscellaneous expenses estimated at \$200:

It is stated that no other commission has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than September 12, 1955 at 5:30 p. m., request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the Rules and Regulations promulgated under the Act, or the Commission may grant exemption from its Rules as provided in Rules U-20 (a) and U-100, or take such other action as it deems appropriate.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 55-7014; Filed, Aug. 29, 1955;
8:48 a. m.]

[File No. 31-630]

PAUL SMITH'S COLLEGE OF ARTS AND
SCIENCES

NOTICE OF FILING OF APPLICATION FOR
EXEMPTION

AUGUST 24, 1955.

Notice is hereby given that Paul Smith's College of Arts and Sciences ("College") has filed an application with this Commission, designating section 3 (a) (1) of the Public Utility Holding Company Act of 1935 ("Act") as

applicable thereto, requesting exemption on behalf of itself and its subsidiary companies, Paul Smith's Electric Light and Power and Railroad Company ("Electric") a public-utility company, and Paul Smith's Hotel Company, a non-utility company, from the provisions of the Act.

All interested persons are referred to said application, which is on file in the offices of the Commission, for a statement of the request contained therein and the facts alleged in support thereof which are summarized as follows:

College is incorporated under the Education Law of the State of New York for the purpose of establishing, operating and maintaining a college of higher education, and has its principal office and place of business at Paul Smith's, Franklin County, New York. Its assets, other than the capital stock of its subsidiary companies, consist principally of land, buildings and other facilities usual and necessary to the operations of a school of higher learning. All of such properties are located wholly within the State of New York. College owns all of the outstanding capital stock, other than directors' qualifying shares, of its subsidiary companies.

Electric was incorporated as a public utility company under the laws of the State of New York and has its principal office at Paul Smiths, New York. It is engaged in the generation, transmission, and retail distribution of electric energy in Clinton, Essex, Franklin, and St. Lawrence Counties, New York, and sells electric energy at wholesale to the Villages of Lake Placid and Tupper Lake, New York, for distribution through their municipally owned systems. Electric owns hydro-electric plants on the Saranac River and Raquette River in Franklin, Clinton, and St. Lawrence Counties and a diesel electric generating plant at Piercefield, St. Lawrence County, New York. Electric's business is carried on wholly within the State of New York and the company is subject to the jurisdiction of the New York Public Service Commission.

Notice is further given that any interested person may, at any time not later than September 16, 1955, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on this matter, stating the nature of his interest, the reason for such request, and the issues of fact or law, if any, raised by such application which he proposes to controvert, or he may request to be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the application, as filed or as hereafter amended, may be granted, or the Commission may take such other action as it deems appropriate.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 55-7015; Filed, Aug. 29, 1955;
8:48 a. m.]