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[Grapefruit Reg. 320]

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

Limitation of Shipments

§ 933.1002 Grapefruit Regulation 320.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly

submitted to the Department after an open meeting of the Growers Administrative Committee on January 5, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); and the term "mature" shall have the same meaning as set forth in section 601.16 Florida Statutes, Chapters 26492 and 28090, known as the Florida Citrus Code of 1949, as supplemented by section 601.17 (Chapters 25149 and 28090) and also by section 601.18, as amended June 22, 1955 (Chapter 29760).

(2) During the period beginning at 12:01 a.m., e.s.t., January 11, 1960, and ending at 12:01 a.m., e.s.t., February 8, 1960, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

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

(ii) Any white seeded grapefruit, grown in the production area, which are smaller than $3\frac{1}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit;

(iii) Any pink seeded grapefruit, grown in the production area, which are smaller than $3\frac{1}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application

of tolerances, specified in said United States Standards for Florida Grapefruit;

(iv) Any seedless grapefruit, grown in the production area, which are not mature and do not grade at least U.S. No. 1: *Provided*, That such grapefruit may have discoloration to the extent permitted under the U.S. No. 2 Russet grade, and may have slightly rough texture caused only by speck type melanose; or

(v) Any seedless grapefruit, grown in the production area, which are smaller than $3\frac{1}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 6, 1960.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-213; Filed, Jan. 8, 1960; 8:50 a.m.]

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

Limitation of Shipments

§ 933.1001 Orange Regulation 368.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the bases of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as

hereinafter set forth. Shipments of oranges, including Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 5, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are, with the exception that no maximum diameter restriction is provided for all oranges, except Temple oranges, identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, including Temple oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

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

(2) During the period beginning at 12:01 a.m., e.s.t., January 11, 1960, and ending at 12:01 a.m., e.s.t., February 8, 1960, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, including Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Bronze;

(ii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title): *Provided*, That in determining the percentage of oranges in any lot which are smaller than $2\frac{1}{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size $2\frac{1}{16}$ inches in diameter or smaller; or

(iii) Any Temple oranges, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance of ten percent, by count, of Temple oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title).

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 7, 1960.

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

[F.R. Doc. 60-245; Filed, Jan. 8, 1960;
9:27 a.m.]

[Lemon Reg. 828]

PART 9 53 — LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.935 Lemon Regulation 828.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based become available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period

specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 6, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., January 10, 1960, and ending at 12:01 a.m., P.s.t., January 17, 1960, are hereby fixed as follows:

- (i) District 1: 23,250 cartons;
- (ii) District 2: 158,100 cartons;
- (iii) District 3: 46,500 cartons.

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

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 7, 1960.

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

[F.R. Doc. 60-244; Filed, Jan. 8, 1960;
9:27 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7511 c.o.]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

Coopchik-Forrest, Inc., et al.

Subpart—*Advertising falsely or misleadingly*: § 13.155 *Prices*: 13.155-45 *Fictitious marking*. Subpart—*Invoicing products falsely*: § 13.1108 *Invoicing products falsely*: 13.1108-45 *Fur Products Labeling Act*. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure*: § 13.1852 *Formal regulatory and statutory requirements*: 13.1852-35 *Fur Products Labeling Act*.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Coopchik-Forrest, Inc., et al., Docket 7511, Nov. 14, 1959]

In the Matter of Coopchik-Forrest, Inc., a Corporation, and Robert Coopchik, Alex Coopchik and Milton R. Forrest, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the

Commission charging a New York City furrier with violating the Fur Products Labeling Act by setting out fictitious prices of fur products on invoices and on consignment bills; by representing certain prices on the latter as "old prices" without giving the time of such alleged "old prices"; and by failing to maintain adequate records as a basis for such pricing claims.

Following acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on November 14 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents, Coopchik-Forrest, Inc., a corporation, and its officers, and Robert Coopchik, Alex Coopchik and Milton R. Forrest, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Representing, directly or by implication, that the respondents' regular or usual price of any fur product is any amount in excess of the price at which the respondents have usually and customarily sold such product in the recent regular course of business;

2. Representing, directly or by implication, that the regular or usual price of any fur product sold by anyone other than the respondents is any amount in excess of the price at which such other person has usually and customarily sold such product in the recent regular course of business;

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of fur products, and which:

1. Represents, directly or by implication, that the respondents' regular or usual price of any fur product is any amount in excess of the price at which the respondents have usually and customarily sold such product in the recent regular course of business;

2. Represents, directly or by implication, that the regular or usual price of any fur product sold by anyone other than the respondents is any amount in excess of the price at which such other person has usually and customarily sold such product in the recent regular course of business;

3. Sets forth "old prices" or "former prices" without designating the time of such "old prices" or "former prices";

C. Misrepresenting, in any manner, the savings available to purchasers of respondents' fur products;

D. Making claims or representations in advertisements respecting prices or values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

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

It is further ordered, That respondents Coopchik-Forrest, Inc., a corporation, and Robert Coopchik, Alex Coopchik and Milton R. Forrest, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: November 13, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-161; Filed, Jan. 8, 1960;
8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 65; Reg. No. SR-436]

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

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

PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

Special Civil Air Regulation; Airborne Weather Radar Equipment Requirements for Airplanes Carrying Passengers

In a notice of rule making published in the FEDERAL REGISTER (24 F.R. 5847) and circulated as Draft Release No. 59-10, dated July 15, 1959, the Federal Aviation Agency proposed to amend Parts 40, 41, and 42 of the Civil Air Regulations to require airborne weather radar to be installed on all aircraft certificated under the transport category rules and carrying passengers. Operationally, it was proposed to require that such radar equipment be in operation for all IFR flights, and for night VFR flights when thunderstorms or severe weather conditions were forecast for the flight plan route during the time of flight.

In commenting upon the draft release, the Air Line Pilots Association was

strongly in favor of the proposal and recommended its extension to all large aircraft engaged in air transportation.

Comments from representatives of the scheduled trunkline carriers recognized the desirability of having airborne weather radar on aircraft but opposed the mandatory requirement of such equipment by regulation.

Comments from local service air carriers, or their representatives, were generally opposed to any requirement for radar equipment on airplanes certificated in the nontransport category or for airplanes such as the DC-4 or C-46 certificated in the transport category, which are the type of airplanes being used by such air carriers.

As stated in the draft release, a recent survey of air carrier aircraft accidents for the calendar years 1950 through 1958 has indicated the importance of airborne weather radar as a safety measure in preventing aircraft accidents during certain severe weather conditions. The value of airborne weather radar as an aid to the safety of flight is further supported by the fact that a considerable number of air carrier airplanes are presently equipped with such radar and provisions have been made for the installation of such equipment on practically all new transport-type airplanes. It is considered particularly significant that at least one large air carrier presently has its entire fleet of airplanes fully equipped with airborne weather radar and during a two-year period has not experienced a single passenger or crew injury or any appreciable airplane damage due to thunderstorms or hail. Moreover, the air carrier has completed a high percentage of scheduled trips. As experience has indicated, radar equipment contributes to greater safety in passenger operations, since it facilitates the early detection and location by the pilot of certain areas of severe turbulence and enables him to avoid such areas or to take such other action as may be necessary in the interest of safety.

In view of the foregoing, the Administrator has concluded that, in the interest of safety, approved airborne weather radar should be made a required item of equipment at the earliest practicable date for transport category airplanes used in passenger operations under the provisions of Parts 40, 41, or 42 of the Civil Air Regulations, with the exception of Curtiss-Wright C-46 airplanes. The C-46 has been specifically exempted since it was not originally certificated under transport category rules. The notice of proposed rule making did not make this point clear.

The draft release proposed to allow 6 months for the procurement and installation of required radar equipment. However, in consideration of comments received and upon further investigation, the problems associated with the procurement and installation of the airborne radar equipment reasonably appear to require a longer period of time for the industry to comply with this regulation. The airlines have stated that the installation of the airborne radar equipment requires approximately 1,450 hours per airplane and some airplanes may require

more time because of necessary modifications. Also, the manufacturers may not be able to furnish the total number of airborne radar units for all airplanes within the proposed six-month period. These problems, together with the problems associated with the scheduling of airplanes for maintenance and overhaul, as well as for the installation of airborne radar equipment, have been considered in establishing the time allowed for the industry to meet this regulation. Upon these considerations the Administrator has determined that except for turbine-powered airplanes, a greater period of time should be allowed for the orderly procurement and installation of required equipment in order to avoid imposing any undue hardship upon operators of airplanes who are subject to this regulation. Accordingly, July 1, 1960, has been established as the date after which approved airborne weather radar will become required equipment for all turbine-powered airplanes used in the carriage of passengers under the provisions of Parts 40, 41, or 42 of the Civil Air Regulations. Since all turbine-powered aircraft subject to this regulation are, with very few exceptions, now equipped or are scheduled to be equipped with airborne weather radar prior to July 1, 1960, it appears that this compliance date will provide an adequate period of time to procure the required equipment and install it in those few remaining turbine-powered aircraft. January 1, 1961, has been established as the compliance date for certain other transport category airplanes specified in section 1(b) and used in passenger operations. Since approximately 80 percent of such airplanes used in passenger operations already have radar equipment installed, it appears that the January 1, 1961, compliance date will provide the operators with an adequate period of time to procure the required equipment and install it in the balance of such airplanes. After January 1, 1962, approved airborne weather radar will be required equipment for the remaining airplanes certificated under the transport category rules, except for Curtiss-Wright C-46 airplanes, and used in passenger operations under Parts 40, 41, or 42 of the Civil Air Regulations.

For the information of the operators, a note has been added to section 1(c) to indicate some of the transport category airplanes in current use which will have to have such equipment by January 1, 1962.

Technical Standard Order C-63, adopted by the Administrator, effective December 1, 1959 (24 F.R. 9262), contains the minimum performance standards for the approval of airborne weather radar equipment required by this regulation. Under the provisions of this Technical Standard Order, airborne weather radar equipment approved prior to the effective date of that order will also be approved for installation under this regulation.

To provide for the accomplishment of an orderly installation of the required airborne weather radar equipment, each operator conducting passenger operations under the provisions of Part 40,

41, or 42 of the Civil Air Regulations is required by section 2 of this regulation to establish a schedule for the progressive completion of such radar installations on its transport category airplanes on or before the dates specified therein. On or before July 1, 1960, a copy of the schedule required by paragraph (a) of section 2 shall be submitted to an authorized representative of the Administrator, together with a list of any airplanes the operator intends to discontinue using in the carriage of passengers prior to the date on which radar equipment must be installed.

Equipment requirements for dispatch and continuation of flight are described in section 3 of this regulation. Draft Release 59-10 proposed to require the radar equipment to be in operation for all IFR operations, and for night VFR operations when thunderstorms or severe weather conditions were forecast for the flight plan route during the time of flight. However, in the light of comments received, it appears that the original proposal would be unreasonably restrictive. Accordingly, the original proposal has been modified so as to bring the dispatch rule into accord with the capabilities of the radar equipment required to be installed. Thus, the dispatching rule prescribed herein provides that no airplane subject to this regulation shall be dispatched under IFR or night VFR conditions when current weather reports indicate that thunderstorms, or other potentially hazardous weather conditions detectable by airborne weather radar, may reasonably be expected to be encountered along the route to be flown, unless the approved airborne weather radar equipment is in a satisfactory operating condition. Should such equipment become inoperative en route, the airplane must be operated in accordance with the instructions and procedures specified in the operations manual for such occurrence. It should be noted that these dispatch and en route rules will apply after March 31, 1960, to all transport category airplanes subject to this regulation that have approved airborne weather radar equipment installed even though such equipment is not required to be installed until a later date. It should also be noted that approval of the instructions and procedures for the continuation of flight, in the event the radar equipment becomes inoperative en route, will be required at such time as the particular aircraft is required to have approved airborne weather radar equipment installed. In order to permit adequate time for the review of such instructions and procedures the operator should submit them to the assigned air carrier inspector at least 30 days prior to the required approval date. In this regard, the Federal Aviation Agency expects all air carrier aircraft not equipped with airborne weather radar to be operated strictly in accordance with procedures specified in the air carrier's operations manual, when there is a possibility of encountering potentially hazardous weather conditions.

Section 4 expressly exempts from the provisions of this regulation airplanes

used for the carriage of passengers solely within the States of Alaska and Hawaii. These operations have been excluded because thunderstorms and other potentially hazardous meteorological conditions detectable by radar rarely occur in those areas. The language of section 4 also makes it clear that the provisions of this regulation are not intended to be applicable to a transport category airplane during the conduct of a bona fide all-cargo, training, test, or ferry flight.

It will be noted that helicopters have not been made subject to this regulation. Upon further consideration of the original proposal, the Administrator has concluded that the installation of radar equipment is not a necessary safety requirement for helicopters at this time. Finally, attention is directed to the fact that large nontransport category airplanes presently being used in passenger service have been omitted from the list of airplanes subject to this regulation, as for example, C-46, DC-3 and L-18 type airplanes. However, the Federal Aviation Agency will continue to give active consideration to the necessity of requiring approved radar equipment to be installed on such airplanes.

This special regulation is being promulgated in lieu of individual amendments to Parts 40, 41, and 42 of the Civil Air Regulations because such a regulation is considered the most expedient method of implementing the original proposal.

Interested persons have been afforded an opportunity to participate in the making of this regulation (24 F.R. 5847), and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Administrator of the Federal Aviation Agency hereby makes and promulgates the following Special Civil Air Regulation:

1. *Airborne weather radar equipment requirement.* After the dates specified, the following transport category airplanes shall not be used for the carriage of passengers under the provisions of Parts 40, 41, or 42 of the Civil Air Regulations, unless approved airborne weather radar equipment is installed in such airplanes:

(a) July 1, 1960, for all turbine-powered airplanes certificated under the transport category rules.

(b) January 1, 1961, for the airplane types listed below:

Douglas DC-7 Series,
Douglas DC-6 Series, and
Lockheed 1049 and 1649 Series.

(c) January 1, 1962, for all airplanes certificated under the transport category rules, except C-46 type airplanes.

NOTE: Airplanes subject to the provisions of paragraph (c) of this section include, but are not limited to, the following types: Boeing 377; Convair 240, 340, and 440; Lockheed 049 and 749; Martin 202 and 404; and Douglas DC-4.

2. *Schedule for installation of equipment.*

(a) Each operator conducting passenger operations under the provisions of Parts 40, 41, or 42 of the Civil Air Regulations with transport category airplanes on which airborne weather is not installed, shall establish a schedule for the progressive completion of such radar installations, in accordance with the provisions of section 1 of this regulation. The schedule shall provide for the completion of all required radar in-

stallations on or before the dates specified in section 1 of this regulation, and the completion of at least 40 percent of the required installations on or before the following dates:

(1) August 1, 1960, for airplanes of the types specified in section 1(b), and

(2) February 1, 1961, for airplanes of the types specified in section 1(c).

(b) On or before July 1, 1960, a copy of the schedule required by paragraph (a) of this section shall be submitted to an authorized representative of the Administrator, together with a list of any airplanes the operator intends to discontinue using in the carriage of passengers prior to the date on which radar equipment must be installed.

3. *Requirement for dispatch and continuance of flight.* After March 31, 1960, all transport category airplanes having approved airborne weather radar installed shall be operated in accordance with the following rules when used in passenger operations under Parts 40, 41, or 42:

(a) *Dispatch.* No airplane shall be dispatched (or flight of an airplane started under the provisions of Part 42) under IFR or night VFR conditions when current weather reports indicate thunderstorms, or other potentially hazardous weather conditions which can be detected by airborne weather radar, may reasonably be expected to be encountered along the route to be flown, unless approved airborne weather radar equipment is installed in the airplane and is in a satisfactory operating condition.

(b) *En route.* In the event the airborne weather radar becomes inoperative en route, the airplane shall be operated in accordance with the instructions and procedures specified in the operations manual for such occurrence. After the date specified by section 1 of this regulation for the mandatory installation of approved airborne weather radar on the type of airplane involved, such instructions and procedures shall meet with the approval of an authorized representative of the Administrator.

4. *Exceptions.* The provisions of this regulation shall not apply to those airplanes used solely within the States of Alaska or Hawaii, or during all-cargo, training, test, or ferry flights.

5. *Effective date.* Except as otherwise specified, this regulation shall become effective February 15, 1960.

(Secs. 313(a), 601, 604, 605; 72 Stat. 752, 775, 778; 49 U.S.C. 1354, 1421, 1424, 1425)

Issued in Washington, D.C., on January 7, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-237; Filed, Jan. 8, 1960; 8:50 a.m.]

[Reg. Doc. No. 226; Amdt. 40-24]

PART 40 — SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

Drinking and Serving of Alcoholic Beverages

A notice of proposed rule making was published in the FEDERAL REGISTER July 3, 1959 (24 F.R. 5424) and circulated to the industry as Draft Release 59-7 dated July 3, 1959, which proposed to amend Part 40 by adding a new § 40.371 to prohibit (1) the drinking of any alcoholic beverage aboard an air carrier aircraft unless the beverage has been served by the air carrier operating the aircraft, and (2) the serving by the air carrier

of such beverage to any person who is or who appears to be intoxicated.

A large number of comments were received from individuals, air carriers, and other industry representatives. These comments ranged from opposition to hearty endorsement of the proposal, including suggestions that it did not go far enough and that all drinking and serving of alcoholic beverages aboard air carrier aircraft should be prohibited. Many of the comments were motivated by moral, religious, or social considerations, as well as safety.

The Federal Aviation Agency, when it proposed the rule, did so only after careful investigation and study. The Agency's responsibility is only for the air safety considerations and not for the social or moral aspects. The study and investigations which preceded the notice of proposed rule making were largely conducted by the Civil Aeronautics Administration, one of the predecessor agencies of the Federal Aviation Agency. The result indicated that there was no factual information, nor any specific occurrences sufficient to establish a safety hazard arising from the serving of alcoholic beverages by the air carrier to passengers aboard air carrier aircraft. The instances which were revealed tended to show that the occasional difficulties experienced had been caused either by passengers who had consumed a considerable quantity of alcoholic beverages prior to boarding the plane, or by those who drank from their own bottles during the course of the flight. This conclusion has been emphasized and verified by many of the comments received from the air carriers affected.

In addition to being confined to the safety aspects of this problem, the proposal was designed to regulate only so far as was necessary to meet safety requirements. It proposed to interfere as little as possible with the personal freedom of passengers and at the same time to prevent abuses that could possibly create a hazardous situation. It was for this reason that the proposed rule did not prohibit the consumption of alcoholic beverages, but sought to subject it to reasonable control. It is a generally accepted fact that flat prohibition has not proven successful in preventing consumption of alcoholic beverages. In this type of situation, it might even work adversely, since passengers who wish to drink might either do so to excess in advance of the flight, knowing that they could not obtain a drink aboard an aircraft, or would be encouraged to engage in surreptitious drinking from their own supply after boarding.

Some of the carriers and individuals who commented apparently misconstrued the intent of the proposed regulation insofar as they interpreted it as prohibiting passengers from bringing their own liquor aboard an aircraft. This was not our intention. The restriction proposed is against the consumption of alcoholic beverages unless they are served to the passengers by the air carriers. So construed, this would permit persons to bring liquor aboard and have it served to them by the air carrier, if the air carrier wishes to provide such

service. Some of the comments received from individuals made the point that they were accustomed to having a drink before a meal, or that they required or desired some liquor for medicinal reasons or to contribute to their peace of mind while flying. The rule as proposed and adopted herein would permit a carrier to develop its own policies in this regard so that it might accommodate the varying needs of its passengers, and at the same time prevent any safety hazard.

There was also some misapprehension as to the extent of the carrier's and its personnel's responsibility for enforcing this regulation. Some apparently thought that the crew members would be required to restrain physically a passenger who wished to consume drinks that were not served to him by the carrier, and they foresaw difficulties with discharging such a responsibility. This regulation would impose no such responsibility on the flight crew members. This regulation, like all other regulations adopted by the Agency, would be enforced through the various enforcement processes of the Agency. It is expected of the carriers that they would advise their passengers of the restriction in such a regulation and make suitable reports to the Agency of any known violations. The only time it would be expected that a crew member would be required to take direct action would be when such action is required for the safety of the flight. This is no greater burden than that now on the crew members to do whatever is necessary for the safety of the aircraft and the persons aboard it.

Several comments were made pointing out that the proposed rule prohibited an air carrier from serving an alcoholic beverage to any person if such person "is or appears" to be intoxicated. It was pointed out that a person might not appear to be intoxicated when, in fact, he or she was, and those commenting did not feel that it was proper to impose responsibility for this type of judgment. With this the Agency agrees and the words "is or" will be stricken from the proposed regulation, so that the carrier and its personnel may rely on the appearance of the passenger in determining whether or not to serve him or her alcoholic beverages. Two of the carriers proposed that action on the proposed regulation be delayed to permit the air carrier industry to develop a code which would control the amount and time of serving alcoholic beverages aboard aircraft. The Agency is strongly in favor of any such voluntary agreements that can be reached among the carriers. To the extent that they are in effect and complied with, they would clearly contribute to decreasing any safety hazard arising from the consumption of alcoholic beverages aboard air carrier aircraft. On the other hand, a code of this kind could not reach the principal problem involved—that of uncontrolled consumption by a passenger of his own liquor supply. Therefore, the adoption of a code, while extremely helpful, would not meet the entire problem. The adoption of this regulation will not in any

way inhibit the industry from adopting their own code, and in fact such a move would be viewed with favor by this Agency.

Interested persons have been afforded an opportunity to participate in the making of this regulation and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 40 of the Civil Air Regulations (14 CFR Part 40) is hereby amended by adding a new § 40.371 to read as follows:

§ 40.371 Drinking and serving of alcoholic beverages.

(a) No person shall drink any alcoholic beverage aboard an air carrier aircraft unless such beverage has been served to him by the air carrier operating the aircraft.

(b) No air carrier shall serve any alcoholic beverage to any person aboard an air carrier aircraft if such person appears to be intoxicated.

This amendment shall become effective on March 10, 1960.

(Secs. 313(a), 601; 72 Stat. 752, 775; 49 U.S.C. 1354, 1421)

Issued in Washington, D.C., on January 6, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-234; Filed, Jan. 8, 1960; 8:50 a.m.]

[Reg. Doc. No. 227; Amdt. 41-31]

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

Drinking and Serving of Alcoholic Beverages

A notice of proposed rule making was published in the FEDERAL REGISTER of July 3, 1959 (24 F.R. 5424) and circulated to the industry as Draft Release 59-7, dated July 3, 1959, which proposed to amend Part 41 by adding a new § 41.135 to prohibit (1) the drinking of any alcoholic beverage aboard an air carrier aircraft unless the beverage has been served by the air carrier operating the aircraft, and (2) the serving by the air carrier of such beverage to any person who is or who appears to be intoxicated.

A large number of comments were received from individuals, air carriers, and other industry representatives. These comments ranged from opposition to hearty endorsement of the proposal, including suggestions that it did not go far enough and that all drinking and serving of alcoholic beverages aboard air carrier aircraft should be prohibited. Many of the comments were motivated by moral, religious, or social considerations, as well as safety.

The Federal Aviation Agency, when it proposed the rule, did so only after careful investigation and study. The Agency's responsibility is only for the air safety considerations and not for the

social or moral aspects. The study and investigations which preceded the notice of proposed rule making were largely conducted by the Civil Aeronautics Administration, one of the predecessor agencies of the Federal Aviation Agency. The result indicated that there was no factual information, nor any specific occurrences sufficient to establish a safety hazard arising from the serving of alcoholic beverages by the air carrier to passengers aboard air carrier aircraft. The instances which were revealed tended to show that the occasional difficulties experienced had been caused either by passengers who had consumed a considerable quantity of alcoholic beverages prior to boarding the plane, or by those who drank from their own bottles during the course of the flight. This conclusion has been emphasized and verified by many of the comments received from the air carriers affected.

In addition to being confined to the safety aspects of this problem, the proposal was designed to regulate only so far as was necessary to meet safety requirements. It proposed to interfere as little as possible with the personal freedom of passengers and at the same time to prevent abuses that could possibly create a hazardous situation. It was for this reason that the proposed rule did not prohibit the consumption of alcoholic beverages, but sought to subject it to reasonable control. It is a generally accepted fact that flat prohibition has not proven successful in preventing consumption of alcoholic beverages. In this type of situation, it might even work adversely, since passengers who wish to drink might either do so to excess in advance of the flight, knowing that they could not obtain a drink aboard an aircraft, or would be encouraged to engage in surreptitious drinking from their own supply after boarding.

Some of the carriers and individuals who commented apparently misconstrued the intent of the proposed regulation insofar as they interpret it as prohibiting passengers from bringing their own liquor aboard an aircraft. This was not our intention. The restriction proposed is against the consumption of alcoholic beverages unless they are served to the passengers by the air carriers. So construed, this would permit persons to bring liquor aboard and have it served to them by the air carrier, if the air carrier wishes to provide such service. Some of the comments received from individuals made the point that they were accustomed to having a drink before a meal, or that they required or desired some liquor for medicinal reasons or to contribute to their peace of mind while flying. The rule as proposed and adopted herein would permit a carrier to develop its own policies in this regard so that it might accommodate the varying needs of its passengers, and at the same time prevent any safety hazard.

There was also some misapprehension as to the extent of the carrier's and its personnel's responsibility for enforcing this regulation. Some apparently thought that the crew members would be required to restrain physically a passenger who wished to consume drinks that were not served to him by the car-

rier, and they foresaw difficulties with discharging such a responsibility. This regulation would impose no such responsibility on the flight crew members. This regulation, like all other regulations adopted by the Agency, would be enforced through the various enforcement processes of the Agency. It is expected of the carriers that they would advise their passengers of the restriction in such a regulation and make suitable reports to the Agency of any known violations. The only time it would be expected that a crew member would be required to take direct action would be when such action is required for the safety of the flight. This is no greater burden than that now on the crew members to do whatever is necessary for the safety of the aircraft and the persons aboard it.

Several comments were made pointing out that the proposed rule prohibited an air carrier from serving an alcoholic beverage to any person if such person "is or appears" to be intoxicated. It was pointed out that a person might not appear to be intoxicated when, in fact, he or she was, and those commenting did not feel that it was proper to impose responsibility for this type of judgment. With this the Agency agrees and the words "is or" will be stricken from the proposed regulation, so that the carrier and its personnel may rely on the appearance of the passenger in determining whether or not to serve him or her alcoholic beverages. Two of the carriers proposed that action on the proposed regulation be delayed to permit the air carrier industry to develop a code which would control the amount and time of serving alcoholic beverages aboard aircraft. The Agency is strongly in favor of any such voluntary agreements that can be reached among the carriers. To the extent that they are in effect and complied with, they would clearly contribute to decreasing any safety hazard arising from the consumption of alcoholic beverages aboard air carrier aircraft. On the other hand, a code of this kind could not reach the principal problem involved—that of uncontrolled consumption by a passenger of his own liquor supply. Therefore, the adoption of a code, while extremely helpful, would not meet the entire problem. The adoption of this regulation will not in any way inhibit the industry from adopting their own code, and in fact such a move would be viewed with favor by this Agency.

Interested persons have been afforded an opportunity to participate in the making of this regulation and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 41 of the Civil Air Regulations (14 CFR Part 41) is hereby amended by adding a new § 41.135 to read as follows:

§ 41.135 Drinking and serving of alcoholic beverages.

(a) No person shall drink any alcoholic beverage aboard an air carrier aircraft unless such beverage has been served to him by the air carrier operating the aircraft.

(b) No air carrier shall serve any alcoholic beverage to any person aboard an air carrier aircraft if such person appears to be intoxicated.

* This amendment shall become effective on March 10, 1960.

(Secs. 313(a), 601; 72 Stat. 752, 775; 49 U.S.C. 1354, 1421)

Issued in Washington, D.C., on January 6, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-235; Filed, Jan. 8, 1960;
8:50 a.m.]

[Reg. Doc. No. 228; Amdt. 42-26]

PART 42—IRREGULAR AIR CARRIER AND OFF-ROUTE RULES

Drinking and Serving of Alcoholic Beverages

A notice of proposed rule making was published in the FEDERAL REGISTER of July 3, 1959 (24 F.R. 5424) and circulated to the industry as Draft Release 59-7, dated July 3, 1959, which proposed to amend Part 42 by adding a new § 42.65 to prohibit (1) the drinking of any alcoholic beverage aboard an air carrier aircraft unless the beverage has been served by the air carrier operating the aircraft, and (2) the serving by the air carrier of such beverage to any person who is or who appears to be intoxicated.

A large number of comments were received from individuals, air carriers, and other industry representatives. These comments ranged from opposition to hearty endorsement of the proposal, including suggestions that it did not go far enough and that all drinking and serving of alcoholic beverages aboard air carrier aircraft should be prohibited. Many of the comments were motivated by moral, religious, or social considerations, as well as safety.

The Federal Aviation Agency, when it proposed the rule, did so only after careful investigation and study. The Agency's responsibility is only for the air safety considerations and not for the social or moral aspects. The study and investigations which preceded the notice of proposed rule making were largely conducted by the Civil Aeronautics Administration, one of the predecessor agencies of the Federal Aviation Agency. The result indicated that there was no factual information, nor any specific occurrences sufficient to establish a safety hazard arising from the serving of alcoholic beverages by the air carrier to passengers aboard air carrier aircraft. The instances which were revealed tended to show that the occasional difficulties experienced had been caused either by passengers, who had consumed a considerable quantity of alcoholic beverages prior to boarding the plane, or by those who drank from their own bottles during the course of the flight. This conclusion has been emphasized and verified by many of the comments received from the air carriers affected.

In addition to being confined to the safety aspects of this problem, the proposal was designed to regulate only so far as was necessary to meet safety requirements. It proposed to interfere as little as possible with the personal freedom of passengers and at the same time to prevent abuses that could possibly create a hazardous situation. It was for this reason that the proposed rule did not prohibit the consumption of alcoholic beverages, but sought to subject it to reasonable control. It is a generally accepted fact that flat prohibition has not proven successful in preventing consumption of alcoholic beverages. In this type of situation, it might even work adversely, since passengers who wish to drink might either do so to excess in advance of the flight, knowing that they could not obtain a drink aboard an aircraft, or would be encouraged to engage in surreptitious drinking from their own supply after boarding.

Some of the carriers and individuals who commented apparently misconstrued the intent of the proposed regulation insofar as they interpreted it as prohibiting passengers from bringing their own liquor aboard an aircraft. This was not our intention. The restriction proposed is against the consumption of alcoholic beverages unless they are served to the passengers by the air carriers. So construed, this would permit persons to bring liquor aboard and have it served to them by the air carrier, if the air carrier wishes to provide such service. Some of the comments received from individuals made the point that they were accustomed to having a drink before a meal, or that they required or desired some liquor for medicinal reasons or to contribute to their peace of mind while flying. The rule as proposed and adopted herein would permit a carrier to develop its own policies in this regard so that it might accommodate the varying needs of its passengers, and at the same time prevent any safety hazard.

There was also some misapprehension as to the extent of the carrier's and its personnel's responsibility for enforcing this regulation. Some apparently thought that the crew members would be required to restrain physically a passenger who wished to consume drinks that were not served to him by the carrier, and they foresaw difficulties with discharging such a responsibility. This regulation would impose no such responsibility on the flight crew members. This regulation, like all other regulations adopted by the Agency, would be enforced through the various enforcement processes of the Agency. It is expected of the carriers that they would advise their passengers of the restriction in such a regulation and make suitable reports to the Agency of any known violations. The only time it would be expected that a crew member would be required to take direct action would be when such action is required for the safety of the flight. This is no greater burden than

that now on the crew members to do whatever is necessary for the safety of the aircraft and the persons aboard it.

Several comments were made pointing out that the proposed rule prohibited an air carrier from serving an alcoholic beverage to any person if such person "is or appears" to be intoxicated. It was pointed out that a person might not appear to be intoxicated when, in fact, he or she was, and those commenting did not feel that it was proper to impose responsibility for this type of judgment. With this the Agency agrees and the words "is or" will be stricken from the proposed regulation, so that the carrier and its personnel may rely on the appearance of the passenger in determining whether or not to serve him or her alcoholic beverages. Two of the carriers proposed that action on the proposed regulation be delayed to permit the air carrier industry to develop a code which would control the amount and time of serving alcoholic beverages aboard aircraft. The Agency is strongly in favor of any such voluntary agreements that can be reached among the carriers. To the extent that they are in effect and complied with, they would clearly contribute to decreasing any safety hazard arising from the consumption of alcoholic beverages aboard air carrier aircraft. On the other hand, a code of this kind could not reach the principal problem involved—that of uncontrolled consumption by a passenger of his own liquor supply. Therefore, the adoption of a code, while extremely helpful, would not meet the entire problem. The adoption of this regulation will not in any way inhibit the industry from adopting their own code, and in fact such a move would be viewed with favor by this Agency.

Interested persons have been afforded an opportunity to participate in the making of this regulation and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, Part 42 of the Civil Air Regulations (14 CFR Part 42) is hereby amended by adding a new § 42.65 to read as follows:

§ 42.65 Drinking and serving of alcoholic beverages.

(a) No person shall drink any alcoholic beverage aboard an air carrier aircraft unless such beverage has been served to him by the air carrier operating the aircraft.

(b) No air carrier shall serve any alcoholic beverage to any person aboard an air carrier aircraft if such person appears to be intoxicated.

This amendment shall become effective on March 10, 1960.

(Secs. 313(a), 601; 72 Stat. 752, 775; 49 U.S.C. 1354, 1421)

Issued in Washington, D.C., on January 6, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-236; Filed, Jan. 8, 1960; 8:50 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59-WA-437; Amdt. 176]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification

The purpose of this amendment to § 600.6005 of the regulations of the Administrator is to modify VOR Federal airway No. 5 by designating an east alternate between Nashville, Tenn., and Chattanooga, Tenn.

The modification of Victor 5 between Nashville and Chattanooga by designating an east alternate via the intersection of the Nashville VOR 117° and the Chattanooga VOR 333° radials will facilitate the control of air traffic between Nashville and Chattanooga. The control areas associated with Victor 5 are so designated that they will automatically conform to the modified airway. Accordingly, no amendment relating to such control areas would be necessary.

This action has been coordinated with the Army, the Navy, the Air Force, and interested civil aviation organizations. Accordingly, compliance with the notice, and public procedures provisions of section 4 of the Administrative Procedure Act have, in effect, been complied with. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) § 600.6005 (14 CFR, 1958 Supp., 600.6005) is amended as follows:

In the text of § 600.6005 VOR Federal airway No. 5 (Jacksonville, Fla., to London, Ontario), delete "Nashville, Tenn., VOR; Bowling Green, Ky., omnirange station," and substitute therefor "Nashville, Tenn., VOR, including an east alternate via the Chattanooga VOR 333° and the Nashville VOR 117° radials; Bowling Green, Ky., VOR."

This amendment shall become effective 0001 e.s.t. February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-200; Filed, Jan. 8, 1960; 8:48 a.m.]

[Airspace Docket No. 59-WA-436; Amdt. 177]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification

The purpose of this amendment to § 600.6016 of the regulations of the Ad-

ministrator is to modify segments of VOR Federal airway No. 16 between Graham, Tenn., and Crossville, Tenn.

The segment of Victor 16 between Graham and Nashville is presently designated via the intersection of the Graham VOR 069° and the Nashville VOR 254° radials, due to the fact that the direct airway radial of the Nashville VOR was unusable beyond 15 miles from the station. The Nashville VOR is now operating satisfactorily. Therefore, Victor 16 between Graham and Nashville is designated direct station-to-station. Also, the segment of Victor 16 between Nashville and Crossville is presently designated via the intersection of the Nashville omnirange 133° and the Crossville 275° radials, because of restricted radials to the east of Nashville. With the Nashville VOR operating satisfactorily, Victor 16 between Nashville and Crossville is designated direct station-to-station.

Victor 16 N between Nashville and Crossville is presently designated via the intersection of the Nashville omnirange 059° and the Crossville omnirange 291° radials. Due to the realigning of VOR Federal airway No. 140, including a south alternate between Nashville and London, Ky. (Airspace Docket No. 59-WA-153) Victor 16 N is being designated via the intersection of the Nashville 078° and the Crossville 298° radials in order to coincide with Victor 140 S between Nashville and the intersection of the Nashville and Crossville radials.

A south alternate to Victor 16 is designated between Nashville and Crossville to facilitate the control of Nashville terminal area arrivals and departures when it is not feasible to utilize either Victor 16 or V-16 N between Nashville and Crossville. The south alternate of Victor 16 between Graham and Crossville is revoked as the Federal Aviation Agency IFR peak-day survey for each half of the calendar year 1958, showed no aircraft movements on this segment. The control areas associated with Victor 16 are so designated that they will automatically conform to the modified airway. Accordingly, no amendment relating to such control areas would be necessary.

This action has been coordinated with the Army, the Navy, the Air Force, and interested civil aviation organizations. Accordingly, compliance with the Notice, and public procedures provisions of Section 4 of the Administrative Procedure Act have, in effect, been complied with. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) § 600.6016 (14 CFR, 1958 Supp., 600.6016, 23 F.R. 10337; 24 F.R. 702; 1282, 2227; 3870) is amended as follows:

In the text of § 600.6016 *VOR Federal airway No. 16 (Los Angeles, Calif., to Boston, Mass.)*, delete "intersection of the Graham omnirange 069° and the Nashville omnirange 254° radials; Nash-

ville, Tenn., omnirange station, including a north alternate via the intersection of the Jacks Creek, Tenn., omnirange 044° and the Nashville omnirange 284° radials; intersection of the Nashville omnirange 133° and the Crossville omnirange 275° radials; Crossville, Tenn., omnirange station, including a south alternate from the Graham omnirange station to the Crossville omnirange station via the intersection of the Graham 099° and the Crossville omnirange 257° radials, and also a north alternate from the Nashville omnirange station to the Crossville omnirange station via the intersection of the Nashville omnirange 059° and the Crossville omnirange 291° radials;" and substitute therefor "Nashville, Tenn., VOR, including a north alternate via the INT of the Jacks Creek, Tenn., VOR 044° and the Nashville VOR 284° radials; Crossville, Tenn., VOR, including a south alternate, and also a north alternate via the INT of the Nashville VOR 078° and the Crossville 298° radials;"

This amendment shall become effective 0001 e.s.t. February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-199; Filed, Jan. 8, 1960; 8:48 a.m.]

[Airspace Docket No. 59-WA-148; Amdt. 153]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification

On October 22, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 8553) stating that the Federal Aviation Agency proposed to amend § 600.6210 of the regulations of the Administrator by designating south alternates to the segments of VOR Federal airway No. 210 between Goffs, Calif., and Peach Springs, Ariz., and between Peach Springs and Tuba City, Ariz.

As stated in the notice, the Federal Aviation Agency is designating south alternates to the segments of Victor 210 between the Goffs VOR and the Peach Springs VOR and between the Peach Springs VOR and the Tuba City VOR. The transcontinental routes designated as Victor 210, VOR Federal airway No. 1512 and VOR Federal airway No. 1516 are coincident in this area and, because of the designation of Victor 1512 and 1516 as positive control route segments, these airways carry a high traffic volume. The varying speeds of aircraft, and the necessity for accomplishing altitude changes while maintaining standard IFR separation, creates a traffic control problem which can be relieved by designating the south alternates to Victor 210. This action will result in Victor 210 being modified to include a south alternate between the Goffs VOR

and the Peach Springs VOR, and another south alternate between the Peach Springs VOR and the Tuba City VOR. The control areas associated with this airway are so designated that they will automatically conform to the modified airway. Accordingly, no amendment relating to such control areas is necessary.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) § 600.6210 (14 CFR, 1958 Supp., 600.6210, 24 F.R. 1284; 2229) is amended as follows:

In the text of § 600.6210 *VOR Federal airway No. 210 (Los Angeles, Calif., to Imperial, Pa.)*, delete "Peach Springs, Ariz., VOR; Tuba City, Ariz., VOR;" and substitute therefor "Peach Springs, Ariz., VOR, including a south alternate via the INT of the Goffs VOR 084° and Peach Springs VOR 222° radials; Tuba City, Ariz., VOR, including a south alternate via the INT of the Peach Springs VOR 096° and Tuba City VOR 236° radials;"

This amendment shall become effective 0001 e.s.t. February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-195; Filed, Jan. 8, 1960; 8:46 a.m.]

[Airspace Docket No. 59-LA-38]

[Amdt. 152]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

[Amdt. 186]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEGMENTS

Revocation of Federal Airway, Associated Control Areas and Designated Reporting Point

On September 30, 1959, a notice of proposed rule making was published in the FEDERAL REGISTER (24 F.R. 7879) stating that the Federal Aviation Agency was considering an amendment to Parts 600 and 601 of the regulations of the Administrator which would revoke Blue Federal airway No. 71, and its associated control areas, from Toledo, Wash., to Seattle, Wash.

As stated in the notice, Blue 71 presently extends from Toledo to Seattle. An IFR peak-day airway traffic survey

for each half of the calendar year 1958 showed aircraft movements on this airway as zero and two respectively. On the basis of this survey, the retention of this airway, and its associated control areas, is unjustified as an assignment of airspace and the revocation thereof is in the public interest. Coincident with this action, § 601.4671, relating to the associated reporting points for this airway will be revoked.

No comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) Parts 600 and 601 (14 CFR, 1958 Supp., Parts 600, 601) are amended as follows:

1. Section 600.671 *Blue Federal airway No. 71 (Toledo, Wash., to Seattle, Wash.)* is revoked.
2. Section 601.671 *Blue Federal airway No. 71 control areas (Toledo, Wash., to Seattle, Wash.)* is revoked.
3. Section 601.4671 *Blue Federal airway No. 71 (Toledo, Wash., to Seattle, Wash.)* is revoked.

These amendments shall become effective 0001 e.s.t. February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-196; Filed, Jan. 8, 1960;
8:47 a.m.]

[Airspace Docket No. 59-WA-116]

[Amdt. 181]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

[Amdt. 201]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEG- MENTS

Modification of Federal Airway and Control Area Extension

On September 23, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 7650) stating that the Federal Aviation Agency proposed to amend § 600.6084 of the regulations of the Administrator by modifying a segment of VOR Federal airway No. 84 between Lansing, Mich., and London, Ont.

As stated in the notice, Victor 84 presently extends from Hinckley, Ill., to Syracuse, N.Y. The Federal Aviation Agency is modifying the United States portion of Victor 84 between Lansing, Mich., and London, Ontario. At present,

air traffic on this segment of the airway must traverse an area of highly concentrated military air operations in the vicinity of Selfridge Air Force Base, Mich. Due to the present alignment of airways in the Detroit area, it is necessary to route air traffic through the complex Detroit terminal area to bypass the military operations. In order to route air traffic around both the Selfridge AFB terminal and the Detroit terminal, the segment of Victor 84 from Lansing, Mich., to London, Ont., will be designated from the Lansing, Mich., VOR via the Flint, Mich., VOR; Peck, Mich., VOR; to the London, Ont., VOR. The Department of Transport of the Canadian Government agrees to this proposal, and will modify the Canadian portion effective concurrently on February 11, 1960.

The control areas associated with Victor 84 are so designated that they will automatically conform to the modified airway. Accordingly, no amendment relating to such control areas is necessary. While not mentioned in the Notice, Victor 84 is also used to describe the boundaries of the Detroit, Mich., control area extension (§ 601.1091). The redesignation of this airway will necessitate the redescription of the Detroit control area extension by reference to VOR Federal airway No. 42. The airspace encompassed by this modification is essentially the same as presently designated.

The Air Transport Association objected to the redesignation of Victor 84 via the Peck VOR, because it eliminated the more direct airway route between Lansing and London. ATA's recommendation was for the extension of VOR Federal airway No. 218 from Flint to London via the Peck VOR and the retention of Victor 84 between Lansing and London via the Selfridge VOR. Victor 84 could then be utilized whenever military air operations at Selfridge AFB permitted full use of the airway. However, the Federal Aviation Agency does not concur with ATA as the purpose for redesignating Victor 84 was to remove the airway from the highly concentrated military air operations connected with Selfridge AFB. Moreover, the U.S. Air Force has advised that they no longer have a requirement for the Selfridge VOR and will decommission the facility concurrently with the redesignation of Victor 84.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) § 600.6084 (24 F.R. 2228) § 601.1091 (14 CFR, 1958 Supp., 601.1091) are amended as follows:

1. In the text of § 600.6084 *VOR Federal airway No. 84 (Hinckley, Ill., to Syracuse, N.Y.)*, delete "Selfridge, Mich., VOR;" and substitute therefor "Flint, Mich., VOR; Peck, Mich., VOR;".
2. In the text of § 601.1091 *Control area extension (Detroit, Mich.)*, delete "on the west by VOR Federal airway No. 133, on the north by VOR Federal airway No. 84 and on the east by Red Fed-

eral airway No. 20." and substitute therefor "on the NW by VOR Federal airway No. 133 and on the NE by VOR Federal airway No. 42."

These amendments shall become effective 0001 e.s.t. February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-201; Filed, Jan. 8, 1960;
8:48 a.m.]

[Airspace Docket No. 59-WA-140]

[Amdt. 171]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

[Amdt. 198]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEG- MENTS

Extension of Federal Airway and Associated Control Areas

On October 28, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 8747) stating that the Federal Aviation Agency was proposing to extend VOR Federal airway No. 216 from Saginaw, Mich., to Toronto, Ontario, Canada, via the Peck, Mich., VOR, excluding that portion outside the continental limits of the United States.

No comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons set forth in the Notice, the proposed amendments are hereby adopted without change and set forth below:

1. Section 600.6216 *VOR Federal airway No. 216 (Lamar, Colo., to Saginaw, Mich.)*:

(a) In the caption, delete, "(Lamar, Colo., to Saginaw, Mich.)" and substitute therefor, "(Lamar, Colo., to Iowa City, Iowa, and Janesville, Wis., to Toronto, Ontario)."

(b) In the text, delete, "to the Saginaw, Mich., VOR" and substitute therefor, "Saginaw, Mich., VOR; Peck, Mich., VOR; to the Toronto, Ontario, VOR, excluding that portion outside the continental limits of the United States."

2. In the caption of § 601.6216 *VOR Federal airway No. 216 control areas (Lamar, Colo., to Saginaw, Mich.)*, delete "(Lamar, Colo., to Saginaw, Mich.)", and substitute therefor, "(Lamar, Colo., to Iowa City, Iowa, and Janesville, Wis., to Toronto, Ontario)."

RULES AND REGULATIONS

These amendments shall become effective 0001 e.s.t. February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-202; Filed, Jan. 8, 1960;
8:48 a.m.]

[Airspace Docket No. 59-WA-131]

[Amdt. 149]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

[Amdt. 184]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEG- MENTS

Designation of Federal Airway and Associated Control Areas

On August 29, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 7042) stating that the Federal Aviation Agency proposed to amend Parts 600 and 601 of the regulations of the Administrator by designating a VOR Federal airway No. 472 and its associated control areas between Franklin, Va., and Elizabeth City, N.C.

As stated in the notice, the Federal Aviation Agency is designating Victor 472 from Franklin, Va., to Elizabeth City, N.C., in order to provide a route for the use of VOR equipped aircraft into and from the Elizabeth City terminal which is presently served by a single colored airway. This action will result in Victor 472 and associated control areas being designated from the Franklin, Va., VOR to the Elizabeth City, N.C., VOR.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), Parts 600 and 601 (14 CFR, 1958 Supp., Parts 600, 601) are amended by adding the following sections:

§ 600.6472 VOR Federal airway No. 472 (Franklin, Va., to Elizabeth City, N.C.).

From the Franklin, Va., VOR to the Elizabeth City, N.C., VOR.

§ 601.6472 VOR Federal airway No. 472 control areas (Franklin, Va., to Elizabeth City, N.C.).

All of VOR Federal airway No. 472.

These amendments shall become effective 0001 e.s.t. February 11, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-197; Filed, Jan. 8, 1960;
8:47 a.m.]

[Airspace Docket No. 59-WA-334]

[Amdt. 34]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVI- GATIONAL AIDS IN THE CON- TINENTAL CONTROL AREA

Establishment of Coded Jet Route

On October 29, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 8802) stating that the Federal Aviation Agency was proposing to establish VOR/VORTAC jet route No. 90 from Seattle, Wash., to Chicago, Ill.

The Department of the Air Force objected in principle to the establishment of any segment of the proposed jet route not having adequate radar coverage for radar flight advisory service, and in addition, submitted the following specific objections:

1. The segment of the proposed jet route between Billings, Mont., and Dupree, S. Dak., would conflict along a 250-mile front with the Happy Home high altitude refueling area which is effective from 31,000 feet to 34,000 feet inclusive.

2. The proposed jet route would affect B-52/KC-135 departures from Ellsworth Air Force Base, S. Dak., to the extent that a corridor permitting unrestricted climb through the route structure would be required if Strategic Air Command aircraft are to efficiently carry out their missions.

Radar equipment is not presently available to provide radar flight advisory service to the proposed route in its entirety. This condition exists on other jet routes in use by civil jet aircarrier aircraft. It is not in the public interest to deny the use of the airspace to civil jet aircarrier aircraft when traffic control services can be provided, on a procedural basis, for those route segments not covered by radar.

Air Route Traffic Control will not normally clear IFR traffic through high

level refueling areas while in use, at flight levels 240 through 290 and 310 through 340, unless radar separation between such IFR traffic and tanker/receiver aircraft is provided by a Federal Aviation Agency facility. The segment of the proposed jet route which would traverse the Happy Home high altitude refueling area will be under surveillance of an FAA manned radar facility and the required separation can be provided.

The segment of the proposed jet route which would be traversed by Strategic Air Command aircraft departing Ellsworth Air Force Base during IFR weather conditions, would be under overlapping radar coverage from Air Defense Command radar facilities. These facilities are to be manned by FAA personnel prior to inauguration of civil jet aircarrier service on the proposed route. Inasmuch as aircraft operating along the route and aircraft departing the airbase would be under surveillance of FAA manned radar and also be under the jurisdiction of Air Route Traffic Control above 24,000 feet, Strategic Air Command aircraft could depart from the airbase with little or no restriction.

No adverse comments other than those of the Department of the Air Force were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons set forth in the Notice, the proposed amendment is hereby adopted without change and set forth below:

§ 602.590 VOR/VORTAC jet route No. 90 (Seattle, Wash., to Chicago, Ill.).

From the Seattle, Wash., VOR via the INT of the Seattle VOR 091° and the Mullan Pass, Idaho, VOR 269° radials; Mullan Pass VOR; Billings, Mont., VOR; Dupree, S. Dak., VOR; Sioux Falls, S. Dak., VOR; Mason City, Iowa, VOR; INT of the Mason City VOR 110° and the Northbrook, Ill., VOR 276° radials; to the Northbrook VOR.

This amendment shall become effective 0001 e.s.t. February 21, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on January 6, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-194; Filed, Jan. 8, 1960;
8:46 a.m.]

[Reg. Docket No. 223; Amdt. 150]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Alterations

The new and revised standard instrument approach procedures appearing hereinafter are adopted to become effective and/or canceled when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures. Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), I find that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days' notice.

Part 609 (14 CFR Part 609) is amended as follows:

1. The low or medium frequency range procedures prescribed in § 609.100(a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Glyndon FM Fargo VOR	FAR-LFR (Final)	Direct	1600	T-dn	300-1	300-1	200-½
	FAR-LFR	Direct	2300	C-dn S-dn A-dn	500-1 500-1 800-2	500-1 500-1 800-2	500-1½ 500-1½ 800-2

Procedure turn N side of E crs, 080° Outbnd, 260° Inbnd, 2100' within 10 miles.

Minimum altitude over facility on final approach crs, 1600'.

Crs and distance, facility to airport, 209°-0.9.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.9 miles, climb to 2700 on W crs of FAR-LFR within 10 miles.

CAUTION: Radio Tower 1075' MSL 1.0 mile SSE of airport.

Major Change: Transition from Barnesville FM deleted.

City, Fargo; State, N. Dak.; Airport Name, Hector; Elev., 900'; Fac. Class., SBRAZ; Ident., FAR; Procedure No. 1, Amdt. 9; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 8; Dated, 8 Mar. 58

2. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

A.D.F. STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Rockwood Int.	LOM	Direct	2000	T-dn	300-1	300-1	200-½
Salem VOR	LOM	Direct	2000	C-dn	400-1	500-1	500-1½
Carleton VOR	LOM (Final)	Direct	1500	S-dn-3L-R	400-1	400-1	400-1
Milan Int.	LOM	Direct	2000	A-dn	800-2	800-2	800-2
YIP LOM	LOM	Direct	2000				
Park Int.	LOM	Direct	2000				
Detroit LFR	LOM	Direct	2000				
Flat Rock Int.	LOM	Direct	2000				
Milan Int.	Creek Int*	V-10	2000				
Creek Int*	LOM (Final)	Direct	1500				

Radar transitions to final approach course authorized. Aircraft will be released for final approach without procedure turn on inbnd. Final approach crs at least 3.0 mi from LOM. Refer to Willow Run Radar Procedure if detailed information on sector altitudes is desired.

Procedure turn East side of crs, 212° Outbnd, 032° Inbnd, 2000' within 10 miles.

Minimum altitude over facility on final approach crs, 1500'.

Crs and distance, facility to Runway 3L, 032°-4.3 mi; to Runway 3R, 040°-4.6 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.3 miles of LOM, make right turn, climb to 2300' and proceed to Park Int via R-264 Windsor VOR or, when directed by ATIS, make right 180° turn, climb to 2300' and proceed to Flat Rock Int via SE crs DTW LFR.

*Int CRL VOR R-267 and front crs DTW ILS.

City, Detroit; State, Mich.; Airport Name, Detroit-Metropolitan Wayne County; Elev., 639'; Fac. Class., LOM; Ident., DT; Procedure No. 1, Amdt. 6; Eff. Date, 26 Dec. 59; Sup. Amdt. No. 5; Dated, 26 Dec. 59

RULES AND REGULATIONS

ADF STANDARD INSTRUMENT APPROACH PROCEDURE--Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
FAR-VOR.....	LOM.....	Direct.....	2300	T-dn.....	300-1	300-1	200-1/2
FAR-LFR.....	LOM.....	Direct.....	2300	C-dn.....	500-1	500-1	500-1 1/2
Rice Int.*.....	LOM (Final).....	Direct.....	1800	S-dn-35.....	500-1	500-1	500-1
Glyndon FM.....	LOM.....	Direct.....	2300	A-dn.....	800-2	800-2	800-2
FAR-VOR.....	Int VOR R-025 and CRS 351 to LOM.....	025-3.0.....	2300				
Int VOR R-025 and CRS 351.....	LOM (Final).....	351-2.6.....	1800				

Procedure turn E side of crs, 171° Outbnd, 351° Inbnd, 2300' within 10 mi.
 Minimum altitude over LOM on final approach crs, 1800'.
 Crs and distance, facility to airport, 351°-4.1 mi.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.1 mi after passing LOM, climb on crs 351 from LOM to 2300' within 10 mi or when directed by ATC: 1. Make left climbing turn, climb to 2700' on W crs Fargo LFR within 20 mi. 2. Make left climbing turn to intercept FAR-VOR R-281, climb to 2800' on R-281 within 20 mi of FAR-VOR.
 CAUTION: Unpainted smoke stack 1075' MSL 1.0 mi SSE of airport. 969' MSL stack 0.8 mi S of approach end of Runway 35.
 Major Change: Transition from Barnesville FM deleted.
 *Int FAR-VOR R-116 and Brng 351° to LOM.
 City, Fargo; State, N. Dak.; Airport Name, Hector; Elev., 900'; Fac. Class., LOM; Ident., FA; Procedure No. 1, Amdt. 12; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 11; Dated, 4 Apr 59

PROCEDURE CANCELLED, EFFECTIVE UPON PUBLICATION IN THE FEDERAL REGISTER. MFD-BMH FACILITY RELOCATED 11 DECEMBER 1959.
 City, Mansfield; State, Ohio; Airport Name, Mansfield; Elev., 1296'; Fac. Class., BMH; Ident., MFD; Procedure No. 1, Amdt. 6; Eff. Date, 21 Jan. 56; Sup. Amdt. No. 5; Dated, 15 May 54

STL-VOR.....	LOM.....	Direct.....	1800	T-dn.....	300-1	300-1	200-1/2
STL-LFR.....	LOM.....	Direct.....	1800	C-dn.....	500-1	500-1	500-1 1/2
Jerseyville Int.....	LOM.....	Direct.....	2000	S-dn-24.....	400-1	400-1	400-1
Cora Int.....	LOM.....	Direct.....	1800	A-dn.....	800-2	800-2	800-2
Lake "H".....	LOM.....	Direct.....	1800				
Academy Int.....	LOM.....	Direct.....	1900				
Mitchell Int.....	LOM.....	Direct.....	1800				
Maryland Hgts VOR.....	LOM.....	Direct.....	2000				
Prairie Int.....	LOM.....	Direct.....	2000				

Radar transitions to final approach course authorized. Information for radar terminal area transition altitudes on St. Louis radar procedure.
 Procedure turn North side of crs, 058° Outbnd, 238° Inbnd, 1900' within 10 miles of LOM.
 Minimum altitude over facility on final approach crs, 1300'.
 Crs and distance, facility to airport, 238°-4.1 mi.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.1 miles after passing LOM, climb to 2000' on crs of 238° to Lake "H" or, as directed by ATC: (1) Make right (North) turn, climb to 2000' direct to STL-VOR; (2) Make left turn (South), climb to 2600' direct to Barracks Int.
 Major Change: Deletes transition from Granite City Intersection.
 City, St. Louis; State, Mo.; Airport Name, Lambert Field; Elev., 568'; Fac. Class., LOM; Ident., ST; Procedure No. 1, Amdt. 17; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 16; Dated, 7 Dec. 58

3. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

*Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
 If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Amarillo LFR.....	AMA-VOR.....	Direct.....	4800	T-dn.....	300-1	300-1	200-1/2
Tradewind MHW.....	AMA-VOR.....	Direct.....	5000	C-dn.....	400-1	500-1	500-1 1/2
				S-dn-21.....	400-1	400-1	400-1
				A-dn.....	800-2	800-2	800-2

Procedure turn N side of crs, 030° Outbnd, 210° Inbnd, 4900' within 10 mi.
 Minimum altitude over facility on final approach crs, 4600'.
 Crs and distance, facility to airport, 209°-4.5 mi.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.5 mi, climb to 5000' on R-210 within 20 mi, or when directed by ATC, turn left, climb to 4700' on R-075 within 20 mi.
 City, Amarillo; State, Tex.; Airport Name, AFB/Municipal; Elev., 3604'; Fac. Class., BVOR; Ident., AMA; Procedure No. 1, Amdt. 7; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 6; Dated, 26 Dec. 59

BGS LFR.....	BGS VOR.....	019-11.5.....	4000	T-dn.....	300-1	300-1	200-1/2
				C-dn.....	600-1	600-1	600-1 1/2
				A-dn.....	NA	NA	NA

Procedure turn East side of crs, 324° Outbnd, 144° Inbnd, 3900' within 10 mi.
 Minimum altitude over facility on final approach crs, 3800'.
 Crs and distance, facility to airport, 144°-5.4 mi.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.4 miles, climb to 4100' on BGS VOR R-144 within 20 miles.
 NOTES: Weather and communications service not available at Howard County Airport. Prior ATC approval required in using this facility. Pilots using this approach shall, as soon as practicable, advise Webb Approach Control when contact or executing a missed approach.
 AIR CARRIER NOTE: Air Carrier use not authorized.
 City, Big Spring; State, Tex.; Airport Name, Howard County; Elev., 2560'; Fac. Class., BVOR; Ident., BGS; Procedure No. 1, Amdt. Orig.; Eff. Date, 30 Jan. 60

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn.....	300-1	300-1	300-1
				C-dn.....	2000-3	2000-3	2000-3
				A-dn.....	2000-3	2000-3	2000-3

Procedure turn E side of crs, 197° Outbnd, 017° Inbnd, 5600' within 10 mi.

Minimum altitude over facility on final approach crs, 5600'.

Crs and distance, facility to airport, 017—18.9.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 6.0 miles, climb to 5600', return to CDR VOR, hold on R-197.

City, Chadron; State, Nebr.; Airport Name, Chadron; Elev., 3312'; Fac. Class., BVOR; Ident., CDR; Procedure No. 1, Amdt. 2; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 1; Dated, 13 Dec. 58

Wichita Falls RBN.....	Wichita Falls VOR.....	Direct.....	3000	T-dn.....	300-1	300-1	200-1/2
		Direct.....	2600	C-dn.....	500-1	500-1	500-1 1/2
				A-dn.....	800-2	800-2	800-2

Procedure turn *N side of crs, 276° Outbnd, 096° Inbnd, 2300' within 10 miles. NA beyond 10 miles.

*Nonstandard due ATC requirements.

Minimum altitude over facility on final approach, 1700'.

Crs and distance, facility to airport, 082°—5.1 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.1 miles, turn left, climb to 2500' on R-040 within 20 miles.

City, Wichita Falls; State, Tex.; Airport Name, Sheppard AFB/Mun.; Elev., 1014'; Fac. Class., BVOR; Ident., SPS; Procedure No. 1, Amdt. 4; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 3; Dated, 11 July 59

4. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Binghamton VOR.....	BGM-MHW or River Int*.....	Direct.....	3500	T-dn.....	300-1	300-1	200-1/2
Montrose Int.....	BGM-MHW.....	Direct.....	3500	C-dn.....	400-1	500-1	500-1 1/2
Sidney Int.....	BGM-MHW.....	Direct.....	3500	S-dn-34.....	300-1/2	300-3/4	300-3/4
Sanford Int.....	BGM-MHW.....	Direct.....	3500	A-dn.....	600-2	600-2	600-2
Stevens Point.....	BGM-MHW.....	Direct.....	3500				
Lynn Int.....	BGM-MHW.....	Direct.....	3500				
Herrick Int.....	BGM-MHW.....	Direct.....	3500				

Procedure turn E side SE crs, 158° Outbnd, 338° Inbnd, 3500' within 10 mi of Binghamton MHW or River Int*.

Minimum altitude at G.S. Int inbnd, 3500'.

Altitude at G.S. and distance to approach end of Rwy from BGM-MHW or River Int*, 3505'—7.0 mi.

Altitude of G.S. and distance to approach end of Rny at OM, 2695'—3.9 mi; at MM, 1820'—0.6 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb on crs of 338° to 3500' within 15 miles, then make left turn to BGM-VOR or, when directed by ATC, make left climbing turn to 3500' to the BGM1 VOR.

*Int R-116 BGM VOR and SE crs BGM ILS.

City, Binghamton; State, N.Y.; Airport Name, Broome County; Elev., 1629'; Fac. Class., ILS; Ident., BGM1; Procedure No. ILS-34, Amdt. 7; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 6; Dated, 12 Sept. 59

Fargo VOR.....	LOM.....	Direct.....	2300	T-dn.....	300-1	300-1	200-1/2
Fargo LFR.....	LOM.....	Direct.....	2300	C-dn.....	500-1	500-1	500-1 1/2
Rice Int.**.....	LOM (Final).....	Direct.....	2100	S-dn-35*.....	200-1/2	200-1/2	200-1/2
Glyndon FM.....	LOM.....	Direct.....	2300	A-dn.....	600-2	600-2	600-2
FAR-VOR.....	Int VOR R-025 and IFAR Localizer.....	025—3.0.....	2300				
Int VOR R-025 and IFAR Localizer.....	LOM (Final).....	351—2.6.....	2100				

Procedure turn E side of crs, 171° Outbnd, 351° Inbnd, 2300' within 10 miles.

Minimum altitude at G.S. Int inbnd, 2100'.

Altitude of G.S. and distance to approach end of rny at OM 2002—4.1, at MM 1105—0.6.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, climb on N crs Fargo ILS to 2300 within 10 mi or when directed by ATC: 1. Make left climbing turn, climb to 2700' on W crs Fargo LFR within 20 miles. 2. Make left climbing turn to intercept FAR-VOR R-281, climb to 2800' within 20 mi. of FAR-VOR.

Caution: Unpainted smoke stack 1075' MSL 1.0 mi. SSE of airport. 909' MSL stack 0.2 mi. S of MM.

Note: Narrow localizer course—4°.

Major Change: Transition from Barnesville FM deleted.

*400-3/4 required when glide slope inoperative; 400-1 when only localizer and OM or compass locator can be received.

**Int FAR-VOR R-116 and IFAR ILS.

City, Fargo; State, N. Dak.; Airport Name, Hector; Elev., 900'; Fac. Class., ILS; Ident., IFAR; Procedure No. ILS-35, Amdt. 13; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 12; Dated, 2 May 59

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
St Louis VOR.....	LOM.....	Direct.....	1800	T-dn.....	300-1	300-1	200- $\frac{1}{2}$
St Louis LFR.....	LOM.....	Direct.....	1800	C-dn.....	500-1	500-1	500-1 $\frac{1}{2}$
Jerseyville Int.....	LOM.....	Direct.....	2000	S-dn 24.....	200- $\frac{1}{2}$	200- $\frac{1}{2}$	200- $\frac{1}{2}$
Wood River Int.....	LOM.....	Direct.....	1800	A-dn.....	600-2	600-2	600-2
Wood River Int.....	NE crs ILS (Final) (to intercept ILS crs 2 mi from LOM).	Direct.....	1800				
Lake "H".....	LOM.....	Direct.....	1800				
Cora Int.....	LOM (Final).....	Direct.....	1800				
Academy Int.....	NE crs ILS (Final).....	Direct.....	1900				
Mitchell Int.....	LOM.....	Direct.....	1800				
Maryland Hgts VOR.....	LOM.....	Direct.....	2000				
Prairie Int.....	LOM.....	Direct.....	2000				
Godfrey Int.....	NE crs ILS (Final).....	Direct.....	1900				

Radar transitions to final approach course authorized. Information for radar terminal area transition altitudes on St. Louis radar procedure.

Procedure turn N side NE crs, 058° Outbnd, 238° Inbnd, 1900' within 10 mi.

Minimum altitude at glide slope int inbnd, 1800'.

Altitude of glide slope and distance to approach end of runway at OM, 1782-4.1; at MM, 748-0.6.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, climb to 2000' on SW crs of ILS to Lake "H" or, as directed by ATC, (1) Make right (North) turn, climb to 2000' direct to STL-VOR; (2) Make left turn (South), climb to 2600' direct to Barracks Int.

Major Change: Deletes transition from Granite City Intersection.

City, St. Louis; State, Mo.; Airport Name, Lambert Field; Elev., 568'; Fac. Class., ILS; Ident., I-STL; Procedure No. ILS-24, Amdt. 19; Eff. Date, 30 Jan. 60; Sup. Amdt. No. 18; Dated, 23 May 59

These procedures shall become effective on the dates indicated on the procedures.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on January 5, 1960.

B. PUTNAM,

Acting Director, Bureau of Flight Standards.

[F.R. Doc. 60-185; Filed, Jan. 8, 1960; 8:45 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[Ex Parte No. 216]

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 145—PASSENGER SERVICE SCHEDULES

SUBCHAPTER B—CARRIERS BY MOTOR VEHICLE

PART 186—PASSENGER AND EXPRESS TARIFFS AND SCHEDULES

Posting of Notices of Increased Suburban Fares

DECEMBER 30, 1959.

Orders of September 15, 1959: The outstanding orders in the above entitled proceeding not yet having become effective, and appropriate petitions for reconsideration of such orders having been filed by the eastern railroads and the National Bus Traffic Association, such orders (and the effectiveness of Supplement No. 1 to Tariff Circular 24 and Supplement No. 3 to Tariff Circular M. P. No. 3), pursuant to section 17(8) of the Interstate Commerce Act, are stayed pending disposition of the matter.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-190; Filed, Jan. 8, 1960; 8:45 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Net Operating Loss Deduction

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case,

a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL]

DANA LATHAM,

Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to sections 14 and 64(b) of the Technical Amendments Act of 1958 (72 Stat. 1611 and 1656) and section 203 of the Small Business Tax Revision Act of 1958 (72 Stat. 1678), such regulations are hereby amended as set forth below. Except as otherwise expressly provided, these amendments shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954:

PARAGRAPH 1. Section 1.172 is revised to read as follows:

§ 1.172 Statutory provisions; net operating loss deduction.

Sec. 172. Net operating loss deduction—(a) Deduction allowed. There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the

term "net operating loss deduction" means the deduction allowed by this subsection.

(b) *Net operating loss carrybacks and carryovers*—(1) *Years to which loss may be carried.* A net operating loss for any taxable year ending after December 31, 1957, shall be—

(A) A net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss, and

(B) A net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(2) *Amount of carrybacks and carryovers.* Except as provided in subsection (1), the entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the 8 taxable years to which (by reason of subparagraphs (A) and (B) of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other 7 taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) With the modifications specified in subsection (d) other than paragraphs (1), (4), and (6) thereof; and

(B) By determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

(c) *Net operating loss defined.* For purposes of this section, the term "net operating loss" means (for any taxable year ending after December 31, 1953) the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) *Modifications.* The modifications referred to in this section are as follows:

(1) *Net operating loss deduction.* No net operating loss deduction shall be allowed.

(2) *Capital gains and losses of taxpayers other than corporations.* In the case of a taxpayer other than a corporation—

(A) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

(B) The deduction for long-term capital gains provided by section 1202 shall not be allowed.

(3) *Deduction for personal exemptions.* No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) *Nonbusiness deductions of taxpayers other than corporations.* In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) Any gain or loss from the sale or other disposition of—

(i) Property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) Real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) The modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account; and

(C) Any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account.

(5) *Special deductions for corporations.* No deduction shall be allowed under section 242 (relating to partially tax-exempt interest) or under section 922 (relating to Western Hemisphere trade corporations).

(6) *Computation of deduction for dividends received, etc.* The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

(e) *Law applicable to computations.* In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law 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.

(f) *Taxable years beginning in 1953 and ending in 1954.* In the case of a taxable year beginning in 1953 and ending in 1954—

(1) In lieu of the amount specified in subsection (c), the net operating loss for such year shall be the sum of—

(A) That portion of the net operating loss for such year computed without regard to this subsection which the number of days in the loss year after December 31, 1953, bears to the total number of days in such year, and

(B) That portion of the net operating loss for such year computed under section 122 of the Internal Revenue Code of 1939 as if this section had not been enacted which the number of days in the loss year before January 1, 1954, bears to the total number of days in such year.

(2) The amount of any net operating loss for such year which shall be carried to the second preceding taxable year is the amount which bears the same ratio to such 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 reduction for the second taxable year preceding the loss year shall not exceed the portion of the net operating loss which is carried to the second preceding taxable year.

(3) The net operating loss deduction for such year shall be, in lieu of the amount specified in section 122(c) of the Internal Revenue Code of 1939, the sum of—

(A) That portion of the net operating loss deduction for such year, computed as if subsection (a) of this section were applicable to the taxable year, which the number of days in such year after December 31, 1953, bears to the total number of days in such year, and

(B) That portion of the net operating loss deduction for such year, computed under section 122(c) of the Internal Revenue Code of 1939 as if this paragraph had not been enacted, which the number of days in such year before January 1, 1954, bears to the total number of days in such year;

(4) For purposes of the second sentence of subsection (b)(2), the taxable income for such year shall be the sum of—

(A) That portion of the net income for such year, computed without regard to this paragraph, which the number of days in such year before January 1, 1954, bears to the total number of days in such year, and

(B) That portion of the net income for such year, computed—

(i) Without regard to paragraphs (1) and (2) of section 122(d) of the Internal Revenue Code of 1939, and

(ii) By allowing as a deduction an amount equal to the sum of the credits provided in subsections (b) and (h) of section 26 of such Code, which the number of days in such year after December 31, 1953, bears to the total number of days in such year.

(g) *Special transitional rules*—(1) *Losses for taxable years ending before January 1, 1954.* For purposes of this section, the determination of the taxable years ending after December 31, 1953, to which a net operating loss for any taxable year ending before January 1, 1954, may be carried shall be made under the Internal Revenue Code of 1939.

(2) *Losses for taxable years ending after December 31, 1953.* For purposes of section 122 of the Internal Revenue Code of 1939—

(A) The determination of the taxable years ending before January 1, 1954, to which a net operating loss for any taxable year ending after December 31, 1953, may be carried shall be made under subsection (b)(1)(A) of this section; and

(B) In determining the amount of the carryback to the first taxable year preceding the first taxable year ending after December 31, 1953, the portion of the net operating loss carried to such year shall be such net operating loss reduced by—

(i) The net income for the second preceding taxable year computed as if the second sentence of section 122(b)(2)(B) of the Internal Revenue Code of 1939 applied, or

(ii) If smaller, the portion of the net operating loss which by reason of subsection (f) of this section is carried to the second preceding taxable year.

(3) *Taxable years beginning after December 31, 1953, and ending before August 17, 1954.* In the case of a taxable year which begins after December 31, 1953, and ends before August 17, 1954—

(A) The net operating loss deduction for such year shall be computed as if subsection (a) of this section applied to such taxable year, and

(B) For purposes of the second sentence of subsection (b)(2), the taxable income for such taxable year shall be the net income for such taxable year, computed—

(i) Without regard to paragraphs (1) and (2) of section 122(d) of the Internal Revenue Code of 1939, and

(ii) By allowing as a deduction an amount equal to the sum of the credits provided in subsections (b) and (h) of section 26 of such Code.

(4) *Excess profits tax not affected.* For purposes of subchapter D of chapter 1 of the Internal Revenue Code of 1939, excess profits net income shall be computed as if this section had not been enacted and as if section 122 of such Code continued to apply to taxable years to which this subtitle applies.

(h) *Disallowance of net operating loss of electing small business corporations.* In determining the amount of the net operating loss deduction under subsection (a) of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which such corporation is an electing small business corporation under subchapter S.

(i) *Carryback of net operating loss for taxable years beginning in 1957 and ending in 1958.* In the case of a taxable year beginning in 1957 and ending in 1958, the amount of any net operating loss for such year which shall be carried to the third preceding taxable year is the amount which bears the same ratio to such net operating loss as the number of days in the loss year after December 31, 1957, bears to the total number of days in such year. In determining the amount carried to any other taxable year, the reduction for the third taxable

year preceding the loss year shall not exceed the portion of the net operating loss which is carried to the third preceding taxable year.

(j) *Cross references.* (1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

[Sec. 172 as amended by secs. 14 and 64(b), Technical Amendments Act 1958 (72 Stat. 1611, 1656); sec. 203, Small Business Tax Revision Act 1958 (72 Stat. 1678)]

§ 1.172-1 [Amendment]

PAR. 2. Section 1.172-1 is amended as follows:

(A) By striking out paragraph (e) (2) thereof and inserting in lieu thereof the following:

(2) *Special transitional rules.* See section 172(g) for special transitional rules with respect to (i) net operating losses sustained in taxable years ending before January 1, 1954, (ii) net operating losses sustained in taxable years ending after December 31, 1953, and (iii) the net operating loss deduction for taxable years beginning after December 31, 1953, and ending before August 17, 1954.

(B) By revising paragraph (f) thereof to read as follows:

(f) *Taxable years subject to 1939 Code—(1) In general.* For the computation of the net operating loss deduction for any taxable year (other than the taxable years described in subparagraphs (2) and (3) of this paragraph) which is subject to the 1939 Code, see § 39.122-5 of Regulations 118 (26 CFR (1939) 39.122-5) or the corresponding section of prior applicable regulations.

(2) *Taxable years beginning in 1953 and ending in 1954.* The net operating loss deduction for a taxable year beginning in 1953 and ending in 1954, shall be, in lieu of the amount specified in section 122(c) of the 1939 Code and in § 39.122-5 of Regulations 118 (26 CFR (1939) 39.122-5), the sum of—

(i) That portion of the net operating loss deduction for such taxable year, computed in accordance with paragraph (b) of this section as though section 172(a) of the 1954 Code applied to such taxable year, which the number of days in such taxable year after December 31, 1953, bears to the total number of days in such taxable year, and

(ii) That portion of the net operating loss deduction for such taxable year, computed in accordance with section 122(c) of the 1939 Code and as though section 172(f) (3) of the 1954 Code had not been enacted, which the number of days in such taxable year before January 1, 1954, bears to the total number of days in such taxable year.

(3) *Taxable years beginning after December 31, 1953, and ending before August 17, 1954.* In the case of a taxable year which begins after December 31, 1953, and ends before August 17, 1954, the net operating loss deduction shall be computed in accordance with paragraph (b) of this section as though section 172(a) of the 1954 Code applied to such taxable year.

(4) *Statute of limitations, etc.; interest.* If a refund or credit of any overpay-

ment resulting from the application of subparagraph (2) or (3) of this paragraph is prevented on September 2, 1958, or within six months after such date, by the operation of any law or rule of law other than section 3760 of the 1939 Code or section 7121 of the 1954 Code, relating to closing agreements, and other than section 3761 of the 1939 Code or section 7122 of the 1954 Code, relating to compromises, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before March 2, 1959. No interest shall be paid or allowed on any overpayment resulting from the application of subparagraph (2) or (3) of this paragraph. See section 14(c) of the Technical Amendments Act of 1958 (72 Stat. 1611).

(C) By adding the following new paragraphs at the end thereof:

(g) *Electing small business corporations.* In determining the amount of the net operating loss deduction of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which such corporation was an electing small business corporation under subchapter S (sections 1371 to 1377, inclusive). However, see section 1374 and the regulations thereunder for allowance of a deduction to shareholders for a net operating loss sustained by an electing small business corporation.

(h) *Husband and wife.* The net operating loss deduction of a husband and wife shall be determined in accordance with this section, but subject also to the provisions of § 1.172-7.

§ 1.172-2 [Amendment]

PAR. 3. Section 1.172-2 is amended as follows:

(A) By striking "243" in subparagraph (2) (i) of paragraph (a) thereof and inserting in lieu thereof "243(a)".

(B) By striking "243" in the second sentence of the example in paragraph (b) thereof and inserting in lieu thereof "243(a)".

§ 1.172-4 [Amendment]

PAR. 4. Section 1.172-4 is amended as follows:

(A) By striking out paragraph (a) (1) thereof and inserting in lieu thereof the following:

(a) *General provisions—(1) Years to which loss may be carried—(i) In general.* In order to compute the net operating loss deduction the taxpayer must first determine the part of any net operating losses for any preceding or succeeding taxable years which are carryovers or carrybacks to the taxable year in issue.

(ii) *Loss for taxable years ending after December 31, 1957.* A net operating loss sustained in a taxable year ending after December 31, 1957, shall be carried back to the three preceding taxable years and carried over to the five succeeding taxable years.

(iii) *Loss for taxable years ending after December 31, 1953, and before January 1, 1958.* A net operating loss sustained in a taxable year ending after December 31, 1953, and before January 1, 1958, shall be carried back to the two

preceding taxable years and carried over to the five succeeding taxable years; this rule shall apply even though the loss year is otherwise subject to the 1939 Code.

(iv) *Loss for taxable years beginning after December 31, 1949, and ending before January 1, 1954.* A net operating loss sustained in a taxable year beginning after December 31, 1949, and ending before January 1, 1954, shall be carried back to the first preceding taxable year and carried over to the five succeeding taxable years.

(B) By adding the following new subparagraph (2-a) after paragraph (b) (2) thereof:

(2-a) *Taxable years beginning in 1957 and ending in 1958.* (i) Notwithstanding subparagraph (1) of this paragraph, in the case of a net operating loss sustained in a taxable year which begins in 1957 and ends in 1958, the amount of such loss which shall be carried back to the third preceding taxable year is the amount which bears the same ratio to such net operating loss (as determined under section 172(c)) as the number of days in the loss year after December 31, 1957, bears to the total number of days in such year.

(ii) To determine the portion of the net operating loss for such a taxable year ending in 1958 which shall be carried to any taxable year subsequent to such third preceding taxable year there shall be substituted, in the application of subparagraph (1)(ii) of this paragraph, for the taxable income of such third preceding taxable year an amount equal to the portion of the net operating loss which is carried back to such third preceding taxable year in accordance with this subparagraph, if such amount is smaller than the taxable income of such third preceding taxable year as computed under paragraph (a) of § 1.172-5.

(C) By striking example (2) in paragraph (b) (4) thereof and inserting in lieu thereof the following new example:

Example (2). (1) A taxpayer who makes his tax returns on the basis of a fiscal year ending June 30 has a net operating loss (computed as provided in section 172(c)) for the taxable year which begins July 1, 1957, and ends June 30, 1958. The amount of the carryback from such taxable year to the taxable year ending June 30, 1955, the third preceding taxable year, is 181/365ths of the net operating loss. If such amount is not less than the taxable income (computed as provided in § 1.172-5) for the taxable year ending June 30, 1955, the amount of the carryback to the taxable year ending June 30, 1956, is the excess of the net operating loss over the taxable income so computed for the taxable year ending June 30, 1955; and the amount of the carryback to the taxable year ending June 30, 1957, is the excess of the net operating loss over the aggregate of the taxable incomes so computed for the taxable years ending June 30, 1955, and 1956. The amount of the carryovers to the taxable years ending June 30, 1959, 1960, 1961, 1962, and 1963 is the excess of the net operating loss over the aggregate of the taxable incomes (computed as provided in § 1.172-5) for the taxable years ending June 30, 1955, 1956, and 1957; 1955, 1956, 1957, and 1959; 1955, 1956, 1957, 1959, and 1960; 1955, 1956, 1957, 1959, 1960, and 1961; and 1955, 1956, 1957, 1959, 1960, 1961, and 1962, respectively.

(ii) If, however, the taxable income (computed as provided in § 1.172-5) for the taxable year ending June 30, 1955, exceeds the amount of the carryback to such taxable year' (181/365ths of the net operating loss for the loss year), then the amount of the carryback to the taxable year ending June 30, 1956, is the excess of the net operating loss over the amount of the carryback to the taxable year ending June 30, 1955. The amount of the carryback to the taxable year ending June 30, 1957, is the excess of the net operating loss over the sum of the amount of the carryback to the taxable year ending June 30, 1955, and the taxable income (computed as provided in § 1.172-5) for the taxable year ending June 30, 1956. The amount of the carryovers to the taxable years ending June 30, 1959, 1960, 1961, 1962, and 1963 is the excess of the net operating loss over the sum of the amount of the carryback to the taxable year ending June 30, 1955, and the aggregate of the taxable incomes (computed as provided in § 1.172-5) for the taxable years ending June 30, 1956, and 1957; 1956, 1957, and 1959; 1956, 1957, 1959, and 1960; 1956, 1957, 1959, 1960, and 1961; and 1956, 1957, 1959, 1960, 1961, and 1962, respectively.

§ 1.172-5 [Amendment]

PAR. 5. Section 1.172-5 is amended by revising paragraph (b) thereof to read as follows:

(b) *Taxable year subject to 1939 Code*—(1) *In general.* For the computation of the net income for any taxable year (other than the taxable years described in subparagraphs (2) and (3) of this paragraph) subject to the 1939 Code, which is subtracted from the net operating loss for any other taxable year to determine the portion of such loss which is a carryback or carryover to a particular taxable year, see § 39.122-4(c) of Regulations 118 (26 CFR (1939) 39.122-4(c)) or the corresponding section of prior applicable regulations.

(2) *Taxable years beginning in 1953 and ending in 1954.* The net income for any taxable year beginning in 1953 and ending in 1954 which is subtracted from the net operating loss for any other taxable year to determine the portion of such net operating loss which is a carryback or a carryover to a particular taxable year shall be the sum of—

(i) That portion of the net income for such taxable year, computed as provided in clauses (i) and (ii) of the first sentence of section 122(b) (2) (B) of the 1939 Code, which the number of days in such taxable year before January 1, 1954, bears to the total number of days in such taxable year, and

(ii) That portion of the net income for such taxable year, computed—

(a) As provided in clauses (i) and (ii) of the first sentence of section 122 (b) (2) (B) of the 1939 Code but without regard to the modifications provided in section 122(d) (1) and (2) of such Code, and

(b) By allowing as a deduction an amount equal to the sum of the credits allowable for such taxable year under section 26(b) (relating to credit for dividends received) and section 26(h) (relating to credit for dividends paid on certain preferred stock) of the 1939 Code in determining normal-tax net income,

which the number of days in such taxable year after December 31, 1953, bears to the total number of days in such taxable year.

(3) *Taxable years beginning after December 31, 1953, and ending before August 17, 1954.* The net income for any taxable year beginning after December 31, 1953, and ending before August 17, 1954, which is subtracted from the net operating loss for any other taxable year to determine the portion of such net operating loss which is a carryback or a carryover to a particular taxable year shall be the net income for such taxable year, computed—

(i) As provided in clauses (i) and (ii) of the first sentence of section 122(b) (2) (B) of the 1939 Code but without regard to the modifications provided in section 122(d) (1) and (2) of such Code, and

(ii) By allowing as a deduction an amount equal to the sum of the credits allowable for such taxable year under section 26(b) (relating to the credit for dividends received) and section 26(h) (relating to the credit for dividends paid on certain preferred stock) of the 1939 Code in determining normal-tax net income.

(4) *Statute of limitations, etc.; interest.* If a refund or credit of any overpayment resulting from the application of subparagraph (2) or (3) of this paragraph is prevented on September 2, 1958, or within six months after such date, by the operation of any law or rule of law other than section 3760 of the 1939 Code or section 7121 of the 1954 Code, relating to closing agreements, and other than section 3761 of the 1939 Code or section 7122 of the 1954 Code, relating to compromises, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed on or before March 2, 1959. No interest shall be paid or allowed on any overpayment resulting from the application of subparagraph (2) or (3) of this paragraph. See section 14(c) of the Technical Amendments Act of 1958 (72 Stat. 1611).

PAR. 6. Section 1.172-6 is revised to read as follows:

§ 1.172-6 Illustration of net operating loss carrybacks and carryovers.

The application of § 1.172-4 may be illustrated by the following example:

(a) *Facts.* The books of the taxpayer, whose return is made on the basis of the calendar year, reveal the following facts:

Taxable year	Taxable income	Net operating loss
1954	\$15,000	
1955	30,000	
1956		(\$75,000)
1957	20,000	
1958		(150,000)
1959	30,000	
1960	35,000	
1961	75,000	
1962	17,000	
1963	53,000	

The taxable income thus shown is computed without any net operating loss deduction. The assumption is also made that none of the other modifications prescribed in § 1.172-5 apply. There are no net operating losses for 1950, 1951, 1952, 1953, 1964, 1965, or 1966.

(b) *Loss sustained in 1956.* The portions of the \$75,000 net operating loss for 1956 which shall be used as carrybacks to 1954 and 1955 and as carryovers to 1957, 1958, 1959, 1960, and 1961 are computed as follows:

(1) *Carryback to 1954.* The carryback to this year is \$75,000, that is, the amount of the net operating loss.

(2) *Carryback to 1955.* The carryback to this year is \$60,000, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	15,000
Carryback	60,000

(3) *Carryover to 1957.* The carryover to this year is \$30,000, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000
Carryover	30,000

(4) *Carryover to 1958.* The carryover to this year is \$10,000, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)	20,000
Carryover	10,000

(5) *Carryover to 1959.* The carryover to this year is \$10,000, computed as follows:

Net operating loss	\$75,000
Less:	
Taxable income for 1954 (computed without the deduction of the carryback from 1956)	\$15,000
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)	30,000
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)	20,000
Taxable income for 1958 (a year in which a net operating loss was sustained)	0
Carryover	10,000

PROPOSED RULE MAKING

(6) *Carryover to 1960.* The carryover to this year is \$0, computed as follows:

Net operating loss.....	\$75,000	
Less:		
Taxable income for 1954 (computed without the deduction of the carryback from 1956).....	\$15,000	
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)....	30,000	
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)....	20,000	
Taxable income for 1958 (a year in which a net operating loss was sustained).....	0	
Taxable income for 1959 (computed without the deduction of the carryover from 1956 or the carryover from 1958)....	30,000	95,000
Carryover.....	0	0

(7) *Carryover to 1961.* The carryover to this year is \$0, computed as follows:

Net operating loss.....	\$75,000	
Less:		
Taxable income for 1954 (computed without the deduction of the carryback from 1956).....	\$15,000	
Taxable income for 1955 (computed without the deduction of the carryback from 1956 or the carryback from 1958)....	30,000	
Taxable income for 1957 (computed without the deduction of the carryover from 1956 or the carryback from 1958)....	20,000	
Taxable income for 1958 (a year in which a net operating loss was sustained).....	0	
Taxable income for 1959 (computed without the deduction of the carryover from 1956 or the carryover from 1958)....	30,000	
Taxable income for 1960 (computed without the deduction of the carryover from 1956 or the carryover from 1958)....	35,000	130,000
Carryover.....	0	0

(c) *Loss sustained in 1958.* The portions of the \$150,000 net operating loss for 1958 which shall be used as carrybacks to 1955, 1956, and 1957 and as carryovers to 1959, 1960, 1961, 1962, and 1963 are computed as follows:

(1) *Carryback to 1955.* The carryback to this year is \$150,000, that is, the amount of the net operating loss.

(2) *Carryback to 1956.* The carryback to this year is \$150,000, computed as follows:

Net operating loss.....	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account).....	0	
Carryback.....	150,000	

(3) *Carryback to 1957.* The carryback to this year is \$150,000, computed as follows:

Net operating loss.....	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account).....	\$0	
Taxable income for 1956 (a year in which a net operating loss was sustained)....	0	
Carryback.....	150,000	0

(4) *Carryover to 1959.* The carryover to this year is \$150,000, computed as follows:

Net operating loss.....	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account).....	\$0	
Taxable income for 1956 (a year in which a net operating loss was sustained)....	0	
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account).....	0	
Carryover.....	150,000	0

(5) *Carryover to 1960.* The carryover to this year is \$130,000, computed as follows:

Net operating loss.....	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account).....	\$0	
Taxable income for 1956 (a year in which a net operating loss was sustained)....	0	
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account).....	0	
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account).....	20,000	
Carryover.....	130,000	20,000

(6) *Carryover to 1961.* The carryover to this year is \$95,000, computed as follows:

Net operating loss.....	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account).....	\$0	
Taxable income for 1956 (a year in which a net operating loss was sustained)....	0	
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account).....	0	
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account).....	20,000	
Taxable income for 1960 (the \$35,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1960 not being taken into account).....	35,000	
Carryover.....	95,000	55,000

(7) *Carryover to 1962.* The carryover to this year is \$20,000, computed as follows:

Net operating loss.....	\$150,000	
Less:		
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account).....	\$0	
Taxable income for 1956 (a year in which a net operating loss was sustained)....	0	
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account).....	0	
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account).....	20,000	
Carryover.....	20,000	20,000

(d) *Determination of net operating loss deduction for each year.* The carryovers and carrybacks computed under paragraphs (b) and (c) of this section are used as a basis for the computation of the net operating loss deduction in the following manner:

Taxable year	Carryover		Carryback		Net operating loss deduction
	From 1956	From 1958	From 1956	From 1958	
1954			\$75,000		\$75,000
1955			60,000	\$150,000	210,000
1957	\$30,000			150,000	180,000
1959	10,000	\$150,000			160,000
1960		130,000			130,000
1961		95,000			95,000
1962		20,000			20,000
1963		3,000			3,000

§ 1.172-7 [Amendment]

PAR. 7. Section 1.172-7 is amended as follows:

(A) By striking the last sentence of paragraph (f) thereof and inserting in lieu thereof the following new sentence: "If the husband and wife also file joint returns for the calendar years 1957, 1958, and 1959, having joint taxable income in 1957 and 1958 and a joint net operating loss in 1959, the joint net operating loss carrybacks to 1956, 1957, and 1958 from 1959 are computed on the basis of the joint net operating loss for 1959, since separate returns were not made for any taxable year involved in the computation of such carrybacks."

(B) By striking "it is assumed that reference to the modifications prescribed in § 1.172-5 is unnecessary", in the first sentence of paragraph (g) thereof, and inserting in lieu thereof "it is assumed that there are no items of adjustment under section 172(b)(2)(A)".

(C) By striking "but has a net operating loss of \$200 for the fiscal year February 1, 1957, to January 31, 1958", in subdivision (i) of example (4) of paragraph (g) thereof, and inserting in lieu thereof "or for the fiscal year February 1, 1957, to January 31, 1958, but has a net operating loss of \$200 for the fiscal year February 1, 1958, to January 31, 1959".

(D) By striking subdivision (iv) of example (4) of paragraph (g) thereof and inserting in lieu thereof the following new subdivision:

(iv) The net operating loss carryover of W from the fiscal year beginning February 1, 1958, to her next fiscal year is \$200, that is, her net operating loss of \$200 for the fiscal year beginning February 1, 1958, reduced by the sum of her \$0 taxable income for 1956, her \$0 taxable income for the taxable year January 1, 1957, to January 31, 1957 (a year in which she had neither income nor loss), and her \$0 taxable income for the fiscal year February 1, 1957, to January 31, 1958 (also a year in which she had neither income nor loss). The \$0 taxable income for 1956 is computed as follows:

(E) By striking "February 1, 1957" in subdivision (v) of example (4) of paragraph (g) thereof and inserting in lieu thereof "February 1, 1958".

[F.R. Doc. 60-204; Filed, Jan. 8, 1960; 8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 960]

[AO-315]

WHITE POTATOES GROWN IN FLORIDA

Notice of Recommended Decision and Opportunity To File Written Exceptions

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed Marketing Agreement No. 137 and Order No. 60, hereinafter referred to as the "marketing agreement and order", regulating the handling of white potatoes grown in the State of Florida south or east of the Suwannee River, to be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), hereinafter called the "act". Interested parties may file exceptions to this recommended decision with the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., not later than the close of business on the 15th day after 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 proposed marketing agreement and order were formulated was held at Hastings, Florida, on November 3-6, 1959, pursuant to notice thereof which was published October 16, 1959, in the FEDERAL REGISTER (24 F.R. 8414). Such notice set forth the proposed marketing agreement and order which were sponsored by the North Florida Potato Council representing growers and shippers in the State of Florida.

Material issues. Material issues presented on the record of the hearing are as follows:

- (1) The existence of the right to exercise Federal jurisdiction;
- (2) The need for the proposed regulatory program to effectuate the declared purposes of the act;
- (3) The definition of the commodity and determination of the production area to be affected by the marketing agreement and order;
- (4) The identity of the persons and transactions to be regulated; and
- (5) The specific terms and provisions of the marketing agreement and order including:

(a) Definitions and terms used therein which are necessary and incidental to

Taxable income for 1960 (the \$35,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1960 not being taken into account).....	\$35,000
Taxable income for 1961 (the \$75,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1961 not being taken into account).....	75,000
	\$130,000
Carryover.....	20,000

(8) *Carryover to 1963.* The carryover to this year is \$3,000, computed as follows:

Net operating loss.....	\$150,000
Less:	
Taxable income for 1955 (the \$30,000 taxable income for such year reduced by the carryback to such year of \$60,000 from 1956, the carryback from 1958 to 1955 not being taken into account).....	\$0
Taxable income for 1956 (a year in which a net operating loss was sustained).....	0
Taxable income for 1957 (the \$20,000 taxable income for such year reduced by the carryover to such year of \$30,000 from 1956, the carryback from 1958 to 1957 not being taken into account).....	0
Taxable income for 1959 (the \$30,000 taxable income for such year reduced by the carryover to such year of \$10,000 from 1956, the carryover from 1958 to 1959 not being taken into account).....	20,000
Taxable income for 1960 (the \$35,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1960 not being taken into account).....	35,000
Taxable income for 1961 (the \$75,000 taxable income for such year reduced by the carryover to such year of \$0 from 1956, the carryover from 1958 to 1961 not being taken into account).....	75,000
Taxable income for 1962 (computed without the deduction of the carryover from 1958).....	37,000
	147,000
Carryover.....	3,000

attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and conditions;

(b) The establishment, maintenance, composition, powers, duties and operation of a committee which shall be the administrative agency for assisting the Secretary in the administration of the program.

(c) The establishment, composition and operation of a shippers advisory board to confer with and advise the committee with respect to recommendations for regulations.

(d) The authority to incur expenses and to levy assessments on shipments;

(e) The authority for the establishment of research and development projects;

(f) The methods for limiting the handling of potatoes grown in the production area;

(g) The methods for establishing minimum standards of quality;

(h) The methods for authorizing special regulations applicable to the handling of potatoes for specified purposes or to specified outlets under special regulations that are modifications of, or amendments to, grade, size, quality regulations;

(i) The necessity for inspection and certification of the commodity handled;

(j) The relaxation of regulations in hardship cases, and the methods and procedures applicable thereto;

(k) The procedure for establishing reporting requirements upon handlers;

(l) The requirements of compliance with all provisions of the marketing agreement and order and regulations issued pursuant thereto;

(m) Additional terms and conditions as set forth in § 960.82 through § 960.95, and published in the FEDERAL REGISTER (24 F.R. 8414) on October 16, 1959, which are common to marketing agreements and orders.

Findings and conclusions. Findings and conclusions on the aforementioned material issues, all of which are based on the evidence introduced at the hearing and the record thereof, are as follows:

(1) The major portion of the potatoes grown in the Florida production area enter commercial market channels with the great bulk of such shipments going to destinations outside of Florida. It is estimated that approximately 90 percent of the production within the production area is shipped in interstate commerce. The 1956 Florida potato production is estimated at 6,766,000 hundredweight for the winter and spring crops. Estimates for the Florida spring production were 3,998,000 hundredweight. The 1957 Florida potato production is estimated at 7,610,000 hundredweight, the 1958 production 5,977,000 hundredweight and the 1959 production at 4,944,000 hundredweight. Production estimates for the Florida spring crop were 4,390,000 hundredweight, 4,681,000 hundredweight and 3,084,000 hundredweight, respectively. Estimates of the 1959-60 production were not available at the time of the hearing. From the 1956 Florida potato crop of 6,766,000 hundredweight, 19,837 carlot

equivalents (including trucks) or approximately 5,951,100 hundredweight were shipped in interstate or foreign commerce. The distribution of Florida potatoes for the 1957 and 1958 calendar years was also widespread. Shipments were made in both of these years to essentially all of the States east of the Mississippi River, including the District of Columbia, and to the provinces of Quebec, Ontario, and British Columbia in Canada, as well as to points within Florida. The major portion of the market for potatoes grown in the production area lies outside the area.

Any handling of potatoes grown in the State of Florida exerts a direct influence upon all other handling of potatoes. It is a primary objective of potato handlers, as it is also of handlers of other commodities, to seek the highest return obtainable for the potatoes or other commodities they have to sell. In assessing the market outlook and in making sales, sellers survey all accessible markets with a view to accepting the most advantageous opportunities and offers to market their potatoes. Successful handlers are forced by competition to maintain and keep abreast of all possible market information, particularly the level and trend of prices in specific markets both within the area of production and beyond its borders. Markets within the production area provide opportunities for handlers to effect sales the same as markets outside the State. The opportunity for advantageous sales are eagerly sought by handlers and such opportunities are accepted regardless of whether the potatoes are sold at shipping point, or at destination, or in consuming markets within the State of Florida, or in such terminal markets as Washington, Philadelphia, New York, Chicago, or Atlanta, or in any other market beyond the production area. Both buyers and sellers use the latest and most modern means of communication to keep abreast of their competitors and to maintain the closest possible association with market conditions at every point where there may be potential sales opportunities. Shipping point handlers and receiving market handlers through close attention and modern communications, quote, offer, bargain, buy and sell, potatoes and thereby create an institution commonly referred to in the trade as "the potato market".

The potato market is a combination of all the phenomena that relate to the supply of, and demand for, potatoes in the potato producing area, the supply that is available for immediate marketing from other areas, the supply for marketing later, the quantity of such supplies, the supply of potatoes in the various ramifications of quality and size and their availability, prices quoted by sellers at shipping point and in receiving markets as well as the sundry points between, and the great variety of additional factors that influence both buyers and sellers in helping them to arrive at a meeting of minds, a closing of contracts of sale, and a final consummation of contract through exchange of potatoes and consideration. Florida white skin potatoes have occupied a unique position

in the potato market since they are a new crop competing largely with storage crop supplies. These white skin Florida potatoes enjoy marketing opportunities for processing into potato chips as well as for sale for use in fresh form. They chip well and produce a desirably white potato chip after cooking and consequently are desired by many chippers throughout the eastern half of the U.S. and to some extent in Canada. The desirable qualities of being "good chippers" and providing a new potato for other consumers has enabled Florida potatoes to compete with storage potatoes grown in other States.

The factors affecting the potato market are interdependent as between shipping point and receiving markets. A factor or factors which influence the market at shipping point soon are reflected in prices in terminal markets, subject to the effect of location factors and, in turn, factors influencing prices in receiving markets are soon reflected in the market at shipping point. For example, adverse weather conditions at shipping point may slow down the rate of harvesting, grading, packing or loading to such an extent that buyers will experience difficulty in filling orders and they will bid higher than otherwise for remaining available supplies. In turn, the increase in price of potatoes at shipping point will soon be reflected in the market at receiving points both outside the production area as well as within the area. An alternative to the above example may involve a similar set of circumstances at shipping point with adverse weather conditions, but if competing supplies in terminal markets take advantage of such situations by increasing the volume available, the price of potatoes in the terminal markets may not increase appreciably, if at all, and in turn prices at shipping point may fail to rise.

It is a well established fact, and well recognized in the potato market, that sale of potatoes in a market within that portion of the State of Florida comprising the production area exerts a direct influence upon all other sales of such potatoes, as also does the sale of potatoes in a market within any other state. The movement and sale of potatoes grown in Florida, whether to a market within or outside the production area, affects the price structure for all potatoes grown in Florida. The availability of supplies of potatoes of good chipping quality both within and outside the production area may have an additional effect upon the market for white skin potatoes grown in Florida. Even though supplies of storage potatoes held in other states may be heavy, unless those potatoes have equal chipping quality and will produce the white color desired after cooking, the price of Florida potatoes, both within the State of Florida and outside thereof, may be higher than otherwise. Conversely, if the supplies held in storage in states outside the production area is smaller than usual but has the desirable chipping and cooking quality sought by potato chippers, the price of Florida white skin potatoes may be lower than otherwise.

Changes in the supply of potatoes being marketed at any particular time and changes in estimates of potato supplies available for market affect the price of potatoes. Changes in the supply of potatoes grown in the Florida production area, or any part thereof, have a direct effect on both terminal market and shipping point prices for all potatoes. Potatoes grown in one portion of the production area and marketed at any given season whether winter crop or spring season compete with other potatoes marketed during such season whether such other potatoes are grown inside, or outside, of the production area.

Public agencies supply daily information relative to terminal potato markets such as Philadelphia, New York, Boston, Chicago, Atlanta, and during the active shipping season the same agencies supply similar information relevant to market information at shipping points in Florida as well as shipping point prices for potatoes grown in other producing areas. This published market information and information which handlers receive through private communications are closely followed by all handlers in an effort to keep up with competition and to maintain particular advantage to themselves so that they may continue to operate successfully. It is estimated that 50-60 percent of the white skin potatoes grown within the production area are produced with the expectation that they will be marketed for potato chip outlets largely outside the production area and located in other states. The remaining supplies are produced with the expectation that they will be marketed for fresh use. A small part of the potatoes grown for potato chip processing outlets is grown under contract with the chippers. The contracts usually specify a particular volume of potatoes of a particular grade and size. The acreage grown to supply this contract is premised upon the assumption that average yields will be obtained. The production in excess of the contract volume is marketed for the fresh market or other potato chip outlets on a strictly competitive basis. While it is estimated that normally 50-60 percent of the total production of white skin potatoes is sold to chip processors, however, because of low yields in the spring of 1959, the percentage of the crop marketed to potato chip outlets may have been considerably higher. A very small percentage of the crop is marketed for canning. These usually are potatoes of small size and the sale of such potatoes to canners is a salvage operation by the industry. Such salvage operations are performed by the packing houses usually on a special order basis. After the larger potatoes have been segregated from the smaller potatoes, the packer will load small quantities of the small potatoes for sale to canners, hucksters, or hog feeders and sell or donate these potatoes for such purposes as a convenient means of disposing of them and to remove them from the packing house premises.

It is a common practice for handlers to load potatoes at shipping points within the state and to ship such potatoes to

markets within the state particularly Jacksonville, Tampa, or Miami. Frequently the sales are made at the packing house and loaded on trucks or cars under the control of the buyer. The decision concerning the destination of the supplies whether within the state or outside thereof is frequently under the control of the buyer. The handler may also load cars or trucks with potatoes for shipment to such points as Jacksonville and before or upon arrival divert the shipments to markets outside the state. Conversely, shipments originally directed to markets outside the state may be diverted to markets within the state for final disposition. This diversion from intended destinations outside the state to markets within the state is a common practice, especially among truckers who are able to divert quickly in response to attractions from local prices. It is impossible in many cases at the time the potatoes are sold to a trucker to determine finally whether such potatoes will be marketed by the trucker within the production area or at a point, or even several points, outside the production area. Any such sale and movement of potatoes grown within the production area inevitably affects the market for potatoes irrespective of whether the sale or movement occurs within the production area or outside thereof.

The phenomena of sale and movement constitute the market for potatoes grown within the production area and, demonstrably, the interdependency of the markets both within and outside the production area directly burdens, obstructs, or affects interstate commerce. Phenomena making up the "market" for potatoes constitute commerce which is so inextricably intermingled that all sale and movement of such potatoes are either in the current of interstate or foreign commerce or directly burden, obstruct, or affect such commerce and, therefore, all such movement and sale of white skin potatoes grown in the production area should be subject to the authority of the act and of the marketing agreement and order which may be issued pursuant thereto.

(2) Prices for potatoes grown in Florida have fluctuated rather widely during the past several years, reflecting disorderly marketing conditions that have adversely affected growers returns. Production and price statistics for Florida potatoes are reported by the Agricultural Marketing Service of the U.S. Department of Agriculture, on the basis of two seasons within each crop year; namely, winter and early spring. During the past 10-crop years, 1949-58, the average farm price paid for Florida potatoes has exceeded the Florida parity equivalent price in only two seasons. The farm price for the 1958 season for Florida potatoes averaged \$2.65 per hundredweight, reflecting 75 percent of parity. During the 1958 early spring season, the average price paid was \$1.96 per hundredweight or 57 percent of parity for the Hastings section and \$2.25 per hundredweight or 60 percent of parity for other spring crop sections. The comparable price reported for the 1958

winter crop was \$4.75 per hundredweight or 134 percent of parity. The season average farm price for Florida potatoes has varied from \$1.97 per hundredweight in 1957 to \$4.11 per hundredweight in 1952. Winter season prices have varied from \$2.14 per hundredweight in 1957 to \$4.75 per hundredweight in 1958. Early spring prices have varied from \$1.85 per hundredweight in 1957 to \$3.98 per hundredweight in 1952 for the Hastings section and between \$1.78 in 1957 to \$4.58 in 1955 per hundredweight in other spring crop sections. Prices during the most recent 6-season period have reflected returns to farmers ranging from 51 percent of parity in 1957 to 125 percent of parity in 1955. Winter season prices during this same 6-year period have ranged between 54 percent of parity in 1957 to 134 percent of parity in 1958. During the same 6-year period early spring prices in the Hastings section received by growers have ranged between 49 percent of parity in 1957 and 126 percent of parity in 1955 and in other than the Hastings section prices have ranged between 44 percent of parity in 1957 and 159 percent of parity in 1955.

Volume shipments of Florida potatoes usually begin in February and continue into June of each crop year. For the white skin varieties volume shipments usually begin in April and continue into June. In some years shipments may extend into July. During this marketing period there is a wide range of prices with sharp, short time fluctuations in such prices within seasons and from season to season. Similarly, wide ranges in prices and sharp, short time fluctuations in such prices occur among different grades and sizes of potatoes. This is borne out by the 1959 season, f.o.b. shipping point data in the Hastings section. Sebago variety potatoes of U.S. No. 1, size A, or better quality in 100 lb. bags brought \$3.25 for the week ending April 25. During the same week, U.S. No. 1, size B potatoes brought \$0.85-\$1.00 and unclassified or "utilities" \$1.95 per hundredweight. In the week ending May 16 of the same year, U.S. No. 1, size A Sebago variety potatoes were selling at \$5.00 per hundredweight; U.S. No. 1, size B at \$0.85-\$1.25 and unclassified or "utilities" at \$3.90-\$4.00. On May 7 of the 1958 season, f.o.b. shipping point prices for Sebago variety potatoes in the Hastings section were \$4.00 per hundredweight for U.S. No. 1, size A; \$2.00 per hundredweight for U.S. No. 1, size B; and \$2.10 per hundredweight for unclassified, or "utilities". On June 6, 1958, f.o.b. shipping point prices for Sebago variety potatoes in the Hastings section were \$2.00 per hundredweight for U.S. No. 1, size A, \$0.75 per hundredweight for U.S. No. 1, size B; and \$1.10 per hundredweight for unclassified or "utility" potatoes.

The quantity of potatoes available on the market at any given time, either daily or seasonally, has a direct effect on the price which producers receive for their potato crops. Florida producers grow a high proportion of the new crop potatoes harvested during the winter and early spring seasons. The quantity of potatoes put on the market by Florida

producers or handlers also has a direct effect upon the price of all potatoes, particularly the price which Florida growers receive for their crop. The price of potatoes in the production area is a direct result not only of the total quantity of potatoes being marketed but also of the quality of potatoes as reflected by the different prices paid by grades and sizes for such potatoes. Certain grades and sizes of potatoes return higher prices to producers than other grades and sizes. For example, U.S. No. 1, size A potatoes normally return a higher price than U.S. No. 1, size B and a considerably higher price than unclassified or "utility grade" potatoes. The utility grade potatoes are not recognized in the U.S. Standards but common practice in the production area has brought about the marketing of these so-called grades, which range generally from 10 percent U.S. No. 1 quality to 60 percent U.S. No. 1 quality. Prices for "utility grade" potatoes are discounted sharply below the U.S. No. 1, size A grades. Small size potatoes such as U.S. No. 1, size B usually return lower prices to growers than the preferred U.S. No. 1, size A, but this depends in part upon the supply of U.S. No. 1, size B's available for market.

Shipments of immature potatoes, as indicated by skinning, apparently have no detrimental effect on the returns to growers since these are usually purchased by potato chippers and skinning is not considered as an adverse characteristic for chipping use. It is a common and usual practice among the great majority of handlers to grade their potatoes according to U.S. Standards except for the so-called utility grades, which usually are pick-outs in the process of packing the more preferred grades and sizes. The pick-outs are offered for sale and are purchased by certain chippers and by buyers who market these potatoes in the fresh market and certain areas, both intra- and inter-state. Testimony received at the hearing indicated that the practice of marketing utilities in competition with the more preferred grades and sizes has had a detrimental effect upon the market for Florida potatoes and has damaged the reputation of such potatoes in the potato market. At one time Florida potatoes enjoyed an exceptional reputation in the market but the demoralizing effect of marketing such low grades as the "utilities" has caused some buyers to look elsewhere for their supplies and all buyers to be extremely cautious in the purchase of Florida potatoes. Moreover, the practice of selling various low grades and sizes had led to abuses in the trades in bargaining locally for available supplies. Prices for lower grades have been used loosely as a means of bargaining for higher grades to pull down the entire price structure.

Testimony at the hearing indicated that the sale of the "utility" potatoes had undermined the price structure for all potatoes marketed, since these off-grades and off-sizes could be purchased in the area at very low prices from growers and handlers. Buyers frequently market these in direct competition with higher grades and sometimes pack them

for sale in retail stores in consumer size packs at a small discount from the average prices obtained for the more preferred grades and sizes. Thus, these buyers or handlers could obtain as much as or even more than they could expect from handling the more preferred grades and sizes. The withholding of poor grades and undesirable potatoes from the markets in effect reduces the available market supply of such potatoes. By reducing the quantity being marketed as well as eliminating the discounted grades and sizes from average prices, the grower's prices for potatoes thereby would be improved.

The sale of cull potatoes, including the lower qualities of the utility grade, not only returns discounted prices to growers but also gives only limited satisfaction to customers and such sales mitigate, against repeat sales, particularly for Florida potatoes. It is not in the public interest to sell cull potatoes under normal conditions because the evidence shows that consumers fail to obtain proper value for their expenditures as compared with the purchase of good quality potatoes, and the returns to growers are thereby adversely affected.

Prices to Florida potato producers and total returns to such producers could be augmented by handling only the more preferred grades and sizes of such potatoes. Voluntary efforts have been made and practiced by individual producers and handlers in Florida to eliminate some of the culls, especially when the average price level to Florida potato producers was low, but such voluntary efforts have not raised producers prices and returns appreciably when other handlers within the area of production continued to ship culls to the detriment of all other potato producers and handlers and contrary to the best interest of the Florida potato industry.

The orderly marketing of potatoes grown in Florida has been disrupted and the purchasing power of the producers thereof has been impaired by reason of the handling of certain grades, sizes and qualities of such potatoes which have adversely affected the level of prices returned to the potato producers. It was testified at the hearing that during the past 3 seasons from 1956-57 through 1958-59 that unpaid balances on loans made to potato growers in the production area by a production credit association operating in north Florida amounted to 39 percent in 1956-57, increased to 50 percent in 1957-58, and declined to 39 percent again in 1958-59. As a consequence, this association is restricting its loans to growers of white potatoes in the 1959-60 season because of previous heavy losses and because potato growers are currently considered poor financial risks. The factors contributing to the financial plight of the growers were attributed chiefly to disorderly grading, packaging, and marketing, with particular reference to the marketing of undersized, culls, and mixed grades of potatoes that enter the market in competition with better grades. Market gluts often cause farmers to sell in any available outlet for returns that amount to a salvage operation. This, in turn,

accelerates disorderly marketing conditions.

A marketing agreement and order is necessary to authorize regulation of the sale and transportation of potatoes grown in Florida so that more orderly marketing conditions for such potatoes may be established. The establishment of more orderly marketing conditions brought about by marketing agreement and order regulations, will tend to establish parity prices for potatoes grown in Florida. A marketing agreement and order authorizing regulation of the handling of potatoes will assist the Florida industry in establishing and maintaining such minimum standards of quality and such grading and inspection requirements for potatoes grown in the production area which will effect such orderly marketing of such potatoes as will be in the public interest. The adoption of a marketing agreement and order program by handlers of Florida potatoes and the approval of such an order by Florida potato producers will tend to promote more orderly marketing of such potatoes and will be in the public interest. Accordingly, it is hereby found that the marketing agreement and order as hereinafter set forth will promote more orderly marketing of Florida potatoes and the operation of such a program will tend to establish and maintain such orderly marketing conditions for Florida potatoes as will establish, as the price to farmers, parity prices for such potatoes.

(3) The definition of the agricultural commodity to be regulated under the marketing agreement and order is necessary to distinguish it from other agricultural commodities. This commodity is commonly known in the production area and in the receiving markets as "potatoes" or "Irish potatoes". Accordingly, the term "potatoes" as defined in the proposed marketing agreement and order should apply specifically to white potatoes grown in the production area. The term "potatoes", when applied to Florida potatoes during the early spring season and unless otherwise identified means white potatoes similar to those grown in the Hastings area of Florida. This is generally recognized among the growers, shippers, receivers, potato chippers and others familiar with the Florida industry.

Marketing problems for Florida potatoes are intensified during the early spring season. Winter crop potatoes are marketed during a three-month period from December to March. Because of this relatively long period, gluts on the market are not common during this period. Also, winter crop potatoes are the first "new" potatoes to be marketed. The bulk of the winter crop is comprised of red skin varieties, although a few whites are grown and sold during this period. The early spring crop comes to market in late March and early April and reaches peak volume in mid-April. Volume shipments continue into late May. White skin varieties account for about 95 percent of the early spring crop and the early spring crop accounts for about two-thirds of the total Florida potato crop. Because this early spring

crop of white skin potatoes is larger than the winter crop of red skin potatoes and because the marketing season is much shorter, the impact of various marketing factors on price, such as the quality and quantity available for market, is much greater on the spring crop than for the winter crop. Also, winter crops are produced only in Florida and California so competition is not as serious as it is for the early spring crop which competes with other "new" crops from Alabama and California as well as storage stocks in Northern states.

If the Florida season is extended past mid-May, which is not uncommon, late spring crops from other southern states may also be in the markets in competition with Florida.

The proponents testified that red skin potatoes should be excluded from the definition for additional reasons. The demand for early spring reds is distinct and separate from the demand for whites. Much of the demand for Florida early spring crop potatoes is from potato chip manufacturers. The chippers do not use Florida red skin varieties because the potato chips produced do not compare to those manufactured from whites. About 50 to 60 percent of the Florida early spring crop is purchased by chippers.

In the fresh market, demand also differs between the two types of varieties. This difference is chiefly due to the location of the receiving markets. Southern markets prefer the red skin varieties while markets north of the Mason-Dixon line prefer the whites. Because of these differences, it was testified by several witnesses that prices for reds and whites move independently of each other, and the effects of price on one does not materially affect the other. For example, according to testimony, prices received for reds can be exceptionally high on certain days while prices for whites are low. The market for one can be strong while for the other it is weak or dull. The experiences of the several handlers testifying indicate that the differences between the two types of potatoes are significant enough to restrict the definition of "potatoes" under the marketing agreement and order to white skin varieties.

The definition of "potatoes" should include all varieties of white potatoes grown in the production area. Some of the common varieties of white potatoes are Sebago, Cherokee, Kennebec, Plymouth, Merrimac, White Rose, Katahdin, Pungo and New White. The definition should exclude red varieties such as Red Pontiac, La Sota, Norland, or Bliss Triumph. The definition of the term potatoes as hereinafter set forth, therefore, provides a basis for determining and distinguishing from other agricultural commodities, the agricultural commodity for which regulation is authorized under the marketing agreement and order.

"Production area" is defined to mean the exact area in which white potatoes must be grown before becoming subject to regulations authorized by the marketing agreement and order. It is proposed that the production area include all the

territory in the State of Florida south or east of the Suwannee River.

White potato production in Florida is concentrated largely in the tri-county area of Flagler, St. Johns and Putnam Counties, commonly known as the Hastings area. Minor, yet relatively important production is also located in the Homestead, Fort Myers, Immokalee, Lake Wales, Lake, East Coast, Balm and Gainesville areas. The Suwannee River is not only a natural geographical boundary but it includes all the peninsula area of Florida in which the above areas are located and where the majority of Florida potatoes are grown. The remaining counties in Florida, not included within the definition of "production area", are not potato producing counties with the exception of Escambia County which is the western-most county in Florida bordering on the Alabama-Florida state line. However, it was testified that the Escambia County deal is considered a part of the Loxley-Foley, Alabama potato deal rather than a part of the Florida deal. Testimony was given that potatoes produced in Escambia County are transported across the state line into Alabama for packing. In addition, Escambia County's production is largely of the red varieties.

The Suwannee River at the present time does not pass through any major potato producing sections so the prospect of confusion or difficulty in administration of the potato program because of potatoes being grown close to the boundary line is reduced to a minimum by reason of the boundary as set forth. This boundary is commonly recognized in Florida as a natural dividing line between the fruit and vegetable producing areas in Florida and the remainder of the State. For this reason, the Suwannee River is used quite extensively as a production area boundary for other marketing agreements and orders in effect for Florida-grown fruits and vegetables. The State Department of Agriculture has established road guard stations along the Suwannee River for the purpose of checking shipments of regulated commodities moving north or west across the Suwannee River. Experience under these programs indicates that this boundary would be the most practicable and workable.

The same varieties of white potatoes are grown in the aforementioned sections of the production area, hence, the exclusion of any portion of the production area would tend to defeat the purpose of the marketing agreement and order. Excluding any portion of the production area would permit the unregulated marketing of poor quality potatoes from such portion. These potatoes, however, could be identified with regulated potatoes and would depress prices received for the latter.

All territory included within the boundaries of the production area constitute the smallest regional production area that is practical and consistent with carrying out the declared policy of the act, and the production area, therefore, should be defined as set forth in the notice of hearing.

(4) The terms "handler" and "shipper" are synonymous and are defined as those persons who sell or transport potatoes or cause potatoes to be sold or transported within the production area or between the production area and any point outside thereof.

Handlers are the persons who will be subject to regulations authorized by the marketing agreement and order in that the act specifically excludes the regulation of producers in their capacity as producers. The activities involved in handling potatoes are hereinafter discussed and persons responsible for such activities perform the function of handlers. More than one handler may be involved in the handling of a given lot of potatoes and each such person should be responsible for complying with the terms of the marketing agreement and order.

A common or contract carrier transporting potatoes which are owned by another person performs an apparent handling function by the act of transporting the potatoes. Such carriers should not be subject to regulations under the marketing agreement and order because they are not responsible for the grade, size, and quality of potatoes being transported. The interest of the common and contract carrier in such potatoes is to transport them for a charge or fee to destinations selected by others. The responsibility of compliance on such shipments should be borne by the person or persons responsible for delivering such potatoes to the carrier or by the person who causes such potatoes to be delivered to such carriers. Therefore, the term handler which is synonymous with shipper should mean any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes or causes potatoes to be handled.

The definition of "handle" is necessary and appropriate so that each person responsible for compliance under the order will have knowledge of the functions which are regulated.

The term "handle" or "ship" is defined to include each and all of the functions, activities, or actions which are regulated under the marketing agreement and order.

These are the usual activities by which potatoes enter the current of commerce. This definition should also include any other activity which places potatoes in commerce within the production area or between the production area and any point outside thereof. The term includes not only the first act of handling or placing the potatoes in the current of commerce, but each succeeding action until the potatoes are delivered to a person located outside the production area provided this person was not involved in the handling function. For example, a receiver may buy potatoes at a terminal market located outside of the production area which potatoes have been transported or caused to be transported by a shipper or broker located within the production area. In this example, any sale or transportation by the receiver after taking delivery in the terminal market

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would not be included in the definition of handle. However, if a receiver purchases potatoes f.o.b. shipping point and causes them to be transported to his place of business in the terminal market outside of the production area, the function of transporting the potatoes would be included in the term handle.

The transportation, sale, or delivery of potatoes by a producer to a handler, registered with the committee shall not be considered an act of handling. However, in the event a producer sells potatoes other than to a registered handler then the producer shall become a handler and will be subject to regulations issued pursuant to the order. In order to qualify as a registered handler, a handler must have adequate grading facilities within the production area. If the handler's facilities are adequate to qualify in the opinion of the committee he would be approved by the issuance of a registered handler's certificate. Any producer then delivering or selling potatoes to a registered handler would be relieved of responsibility of compliance and such responsibility would be assumed by the registered handler.

There are three principal types of organizations in the production area selling and shipping potatoes. The first includes individual growers who handle their own potatoes. Another type is grower-selling organizations which are grower cooperatives performing the functions of packing and selling. The third group includes private packers and brokers. The grower who handles his own potatoes is referred to as a producer-handler under the marketing agreement and order. He has his own packing and grading facilities and performs functions of selling direct to his own outlets or contacts. The cooperatives generally have central packing houses and potatoes are brought there from the field to be graded, packed and sold from the shed. In the third group some private shippers may operate similar to the co-ops in that they have packing facilities to which growers deliver field-run potatoes. However, others in this group have the potatoes graded at the farm and take possession at the growers packing house. Brokers generally do not have grading equipment but do business with the other handlers in the production area.

Some potatoes are grown in the production area under contracts with potato chippers. Under these circumstances, the growers are usually handlers by reason of their sales to the chippers. In other cases, potato chippers may actually product potatoes for themselves. When any grower, including a chipper who grows potatoes for his own use, engages in handling activities within the definition of "handle" or "ship" such grower becomes a handler.

In summary, any sale or transportation of potatoes that places the potatoes in the current of commerce within the production area or between the production area and any point outside thereof is included within the definition of handle. Such sale or transportation may be performed or caused by any one or more persons such as producers in their

capacity as handlers, grower cooperative organizations, packing house operators or their agents, brokers or buyers who perform a handling function or any other person engaged in activities included within the definition of handle. The failure of one person to comply with marketing regulations should not relieve other persons who perform a handling function from responsibilities under the order.

(5) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the marketing agreement and order and such terms should be defined for the purpose of designating specifically their applicability in establishing the approximate limitation of their respective meanings wherever they are used.

(a) The definition of "secretary" should include not only the Secretary of Agriculture of the United States, but also in order to recognize the fact that it is physically impossible for him to perform personally all of the functions and duties imposed upon him by law any other officer or employee of the United States Department of Agriculture who is or who might hereafter be authorized to act in his stead.

The definition of "act" provides the correct legal citation of the statute pursuant to which the proposed regulatory program is to be operative. It makes it unnecessary to refer to such citation when used thereafter in the marketing agreement and order.

The definition of "person" follows the definition of that term as set forth in the act and will insure that it will have the same meaning as when used in the act.

"Producer" should be defined to mean any person who is engaged in a proprietary capacity in the production of potatoes within the production area and who is producing such potatoes for market. The definition of the term producer is necessary for appropriate determination as to eligibility to vote for, and to serve as, members or alternate members of the committee and for other reasons.

The term producer should be limited to those that have an ownership interest in potatoes which gives them title, or authority to pass title, to such potatoes. The person who owns and farms land resulting in his ownership of the potatoes produced on such land should clearly be considered as a producer of such potatoes. The same is true with respect to the person who rents and farms land resulting in his ownership of all or a portion of potatoes produced thereon. Likewise a person who owns land which he does not farm but as rental for such land obtains the ownership of a portion of the potatoes produced thereon should be regarded as a producer of that portion received as rent, and the tenant on such land should be regarded as a producer for the remaining portion produced on such land. In each of the above situations the person involved, regardless of whether an individual, partnership, association, corporation, or other business unit should be considered as one producer entitled to one vote. However, in cases where the ownership is divided

i.e., where one person obtains ownership of only a portion of the potatoes produced on a particular piece of land and another person obtains ownership of another portion such as in the landlord-tenant relationship, each such person should be considered as a producer and entitled to one vote. However, in the case of partnerships a partnership must vote as a unit. Normally, a husband and wife operation would be considered a partnership under the definition.

A producer who produces potatoes solely for his own use would also be a producer within the definition if the potatoes become a part of the market supply. For example, it was testified that some potato chippers grow potatoes in the area and ship them to their plants usually located outside of the production area. In these cases the chipping firm would be a producer in that it has title to the potatoes that were produced or has the authority to pass title.

Persons engaged in potato growing operations and paid for these services on a wage or per unit of production basis should not have producer status under the marketing agreement and order if such persons do not have title to any of the potatoes.

In summary, two primary criteria qualify a person as a producer (1) he has title to the potatoes or a portion of the potatoes, and can transfer such title or interest, and (2) he produces potatoes for market or potatoes that become a part of the market supply.

"Grading" is defined to mean the operation by which potatoes are sorted or separated into the various categories or classifications in which they will be marketed. Part of the grading operations includes the separation of merchantable potatoes, from those potatoes which should go to the cull pile or dump. Grading is an operation which is customarily performed on practically all potatoes marketed in the production area. It is usually a field or packing house operation utilizing a combination of mechanical and hand operations. In the grading process sizes and qualities are determined so that the potatoes which are to go to preferred price outlets are separated from those going to lower price outlets. In the Florida production area these outlets are usually fresh, chipping, or processing markets. In addition to the grading and sizing of the potatoes washing is a common practice in the area.

Some of the usual or typical classifications on the basis of grade, size, quality are U.S. No. 1, Size A, U.S. No. 1 percentage grades, that is where potatoes are packed to meet a certain percentage of a U.S. No. 1 grade, utilities, culls, and creamers. Some of these packs may be based upon official U.S. grades while others are local terms applied to potatoes which are graded out of lots meeting the U.S. grades. The definition of grading or preparation for market based on the foregoing should be set forth in the marketing agreement and order. This definition should mean the sorting or preparation of potatoes in the grades and sizes by any means including any repacking, regrading, and resorting of potatoes which have been previously prepared for market.

Definitions of "grade" and "size" are incorporated in the marketing agreement and order to enable all persons affected thereby to determine the requirements thereof and to interpret specifically and intelligently any regulations issued in such terms. Grade and size, the essential criteria employed in limitation of shipment regulations should be defined as comprehending the equivalents of the meanings assigned these terms in the official standards for potatoes issued by the U.S. Department of Agriculture (7 CFR §§ 51.1540 to 51.1559 and §§ 51.1575 to 51.1587) or modifications or amendments to such standards, and variations to such standards as may be set forth in regulations issued under the marketing agreement and order. Regulations under the marketing agreement and order can then use such terms with the constant meaning assigned thereto in such standards or such modified or amended standards, or the regulations can vary such terms by prescribing for example a percentage of a grade as may be required at the time of issuing such regulations. Inspectors of the Federal or Federal-State Inspection Service are qualified to certify the grade and size of potatoes grown in the production area in terms of any of the aforesaid standards, modifications, amendments or variations thereof.

The potato industry in Florida at the present time utilizes the U.S. Standards to a large extent. Therefore, the adoption of the U.S. Standards as a basis for grades and sizes would cause little or no disruption in customary packing house and sales operations.

The term "pack" is commonly used throughout the production area by the potato industry, and refers to one or more of a combination of factors relating to specific grade or size limitations or specific weight or container limitations or a combination of these factors. For example, it is a common practice to differentiate packs on the basis of 100-lb. packs or 50-lb. packs. Differences in packs are also recognized by grades, such as a U.S. No. 1 pack, or a utility pack. Packs may be recognized by particular sizes such as Size A or Size B packs. It is essential that differentiation should be authorized in the marketing agreement and order so that appropriate regulations tailored to the particular packs involved, and the market demands therefor, may be made effective and thereby tend to achieve the declared policy of the act. Pack should be defined as the basis for distinguishing the various sizes of shipping units in which potatoes are packed as well as the contents of the packages in terms of the quantity of potatoes and the grade and size thereof. Accordingly, the term "pack" should be defined as set forth in the marketing agreement and order.

"Container" should be defined in the marketing agreement and order as a basis for differentiating the numerous shipping units in which potatoes move to market and for the permissible application of different regulations to such different shipping units. Use of authority enacted in the recent container amendment to the act will provide a basis for the alleviation of problems associated

with containers. The principal containers used at the present time in marketing potatoes in the production area are burlap and paper bags. However, potatoes are being marketed throughout the United States in not only these two types of containers, but also in paper and mesh bags, Polyethylene bags, boxes, pallets, and bulk loads.

"Label" should be defined in the marketing agreement and order to mean any mark, brand, or other designation on the container which identifies the official grade, size, or both, of the potatoes contained therein and the name and address of the shipper. The use of labels or brands will provide a means for designating or identifying the contents of the container as meeting the requirements of any regulations issued under the order. Also, requiring the name and address of the shipper would identify the person responsible for the contents of the container and, consequently, regulations in effect. It was testified that the term label would not imply that the same label will be shown on all potatoes shipped from the production area and would in no way prohibit the shipper from using his own particular or private label, except that any labels used must contain the information required under regulations pertaining to labeling.

The term "varieties" is defined in the marketing agreement and order so that all interested parties may recognize the real differences in the characteristics of different varieties and differences in types of regulations which might be considered and recommended therefor. For the reasons stated above the term "varieties", of course, would be limited to varieties of white skinned potatoes since the definition of potatoes excludes potatoes with red skins. The definition should include all commonly grown white varieties now being produced such as Sebago, Katahdin, Merrimac, Chippawa, White Rose, Plymouth, Pungo, and New White, as well as any new variety or varieties that may be developed and produced in the future. Differences by groups of varieties should be recognized by the committee in their deliberations and the marketing agreement and order should authorize different regulations by different varieties. It is particularly important, especially in the development of a new variety, that the marketing agreement and order should contain authority to provide special treatment such as freedom from regulation if necessary for such variety. The means set forth in the definition of "varieties" is appropriate for determining different varieties of potatoes grown in the production area.

The definition of "committee" is incorporated in the marketing agreement and order to identify the administrative agency responsible for assisting the Secretary in the administration of the program. Committee means the Florida Potato Committee, the agency authorized by the act and essential to effective operation of the marketing agreement and order.

"Shippers Advisory Board" should be defined in the marketing agreement and order to identify the agency established under the program to assist and advise

the Florida Potato Committee with respect to the administration of the program. Since the Florida Potato Committee will be composed of producers or producer-handlers the establishment of a shipper's advisory board will be beneficial to the committee in their deliberations in that the board can furnish information and experience which might not otherwise be available to the committee.

"Fiscal period" should be defined to mean the period beginning and ending on the date as recommended by the committee and approved by the Secretary. This definition provides authority for the committee and the Secretary to set the dates for the fiscal period so that auditing and financial problems resulting from differences in crop conditions from one season to another may be met. This would result in balancing expenses and revenues from year to year in the event of drastic differences in the volume of shipments from one season to another. It was testified, however, that it was anticipated that normally a fiscal period of one year would be the practice followed. Since there is a definite break in shipments between one potato marketing season and another in the production area no difficulty should be encountered in establishing the beginning of one fiscal period and the close of another. The flexibility of the definition as set forth in the marketing agreement and order should facilitate operations under the program.

"District" should be defined in the marketing agreement and order to refer to each of the geographical sections or divisions of the production area either as initially established or as later reestablished in order to provide a basis for the nomination and selection of committee members and for regulatory purposes.

The proposed division into districts is adequate and equitable from the standpoint of the present situation and should provide a practicable basis for the purposes intended.

The definition of "export" is incorporated in the marketing agreement and order since different regulations thereunder are authorized for export shipments than for domestic shipments. Export markets may have requirements which differ from the domestic markets and special regulations may be justified. Export should be defined to include all shipments of potatoes outside of the continental United States. The proponents testified that "continental United States" should be limited to the United States and not include Hawaii and Alaska. Shipments to these two states would be considered in the same category as export shipments because of the difference in preparation that would be required for over-seas transportation. In the case of shipments to Alaska, such shipments would be considered similar to export shipments to Canada. It was also testified that it was possible that a shipment already originally destined for Alaska might be diverted enroute after it crossed the Canadian-U.S. border and thereby end up in the Canadian market.

(b) The Florida Potato Committee consisting of 12 producer or producer-handler members is the administrative agency sponsored by the industry to aid the Secretary in administering the marketing agreement and order and in carrying out the declared policy of the act. It was testified that a committee composed of 12 members, with the assistance of the Shippers Advisory Board established pursuant to §960.36 through 960.44, would provide adequate industry representation on the committee and would assure responsible judgment and deliberation with respect to recommendations made to the Secretary and the discharge of other committee duties. The number of members from each district as well as the total number of members on the committee and the distribution of such members within districts was thoroughly considered by the proponents of the marketing agreement and order who believe that all interests within the industry will be represented. Testimony indicates that the committee so established will be sufficiently familiar with current market demands, available supplies, current prices, price trends including prices by grade, sizes, quality, packs, varieties, containers and types of outlets, and other relevant factors which have to do with the marketing of potatoes. It would be aided in its determinations by the aforementioned Shippers Advisory Board.

The marketing agreement and order should provide that an alternate be selected for each member of the committee, so that in the event a member is unable to attend a meeting, the district or sub-district which he represents will, nevertheless, have representation on the committee. This provision is a logical method of providing for absentees whether such absences are voluntary or beyond the control of the members.

Individuals selected as committee members or alternates must be producers or producer-handlers for the reasons stated herein. Such persons may be producers or producer-handlers as individuals, or through a corporation, partnership, or other business unit. If a person qualifies within the definition of producer as defined in §960.8 and resides and produces potatoes in the sub-district for which selected he may serve as a member on the committee. It was testified that it was not desirable to exclude or eliminate bona fide potato growers simply because they also perform some other function. Many producers in the production area also pack and sell potatoes. While such producers may also perform the services of a handler they should not be discouraged or prevented from serving on the committee if they qualify in other respects. Committee members must be residents of the district which they represent and produce potatoes within the sub-district for which selected. It was testified that this requirement was necessary so as to achieve the best possible committee representation, since such persons would be familiar with the industry and the problems connected with their particular district and sub-district. As set forth elsewhere herein, the program is designed to benefit

growers, hence, the committee should be limited to producers or producer-handlers.

The term of office for committee members and alternates under the marketing agreement and order should be for one year beginning on September 1 and ending the following August 31, and any additional period needed for the selection and qualification of successors. A one year term is an adequate length of time and in addition it provides an opportunity for the industry to nominate new committee members and alternates each year. The beginning of each term of office occurs during an interlude between the completion of the spring season and the beginning of the fall season. This term of office will allow adequate time for the committee to organize and start operating before the opening of each season.

Committee members and alternates shall serve during the term of office for which they are selected and until their successors are selected and have qualified. Such provision is necessary in order to insure continuation of the committee's operations. Also, if committee members and alternates are not selected until after the beginning of a term of office such committee members should serve that portion of the term of office for which they are selected.

It was testified that the period beginning September 1 is considered by the industry as the starting date of the crop year, and if growers know at this time of the year who will serve on the committee it could affect their planning for the year. Since growers are making plans for planting and securing their financing during the fall months, the proponents believe growers should have this information available when considering their planting plans. The term of office as specified also will enable committee members to keep abreast of all factors which may affect the marketing policy and, in turn, make recommendations for regulation by crop years.

The selection of committee members and alternates should be on the basis of districts, which as set forth in the marketing agreement and order, provide a practicable and equitable manner of representation. The division of the production area into two districts for white potatoes is a logical division of the state due to a combination of geographic and seasonal factors. These districts are commonly accepted by potato producers and handlers as representing distinct geographical sections engaged in the marketing of white potatoes. In addition, the two districts are the same as used by the Department of Agriculture's Crop Reporting Service. The geographical basis for the extent and selection of committee membership is related to acreage and production within the production area so as to provide as equitable a basis as possible at this time for committee representation.

A provision for re-districting is necessary to enable the committee and the Secretary to consider from time to time whether the basis for representation has changed or could be improved and how such improvement may be made. Fu-

ture shifts or other changes in potato production in Florida cannot be foreseen at the present time. One of the outstanding features of Florida agriculture is the rather quick shifts that may occur in the acreage of commodities produced from one year to another. For example, the Immokalee area in south Florida is comparatively new in the potato production picture. Therefore, it is desirable to provide flexibility of operations so that if it should be in the best interests of the industry to change the boundaries of some districts, the committee may so recommend and the Secretary approve such action.

It is practical and equitable that selection of committee members and alternates be on the basis of the sub-districts as provided for in the marketing agreement and order. As aforementioned, this provides a geographical basis for such selection of the members. Such geographical basis has been related to the number of producers and the volume of production within the production area so that an equitable basis has been employed in establishing the districts and sub-districts.

The election by growers of nominees for membership on the committee should be prescribed in the marketing agreement and order. This is provided for in the procedure for holding meetings for this purpose. Nomination of prospective members and alternates at meetings of growers in their respective sub-districts is practical and desirable. In this way the industry may express its wishes and differences with respect to committee membership. In order to obtain an indication of the industry's preferences initial meetings should be sponsored by the U.S. Department of Agriculture or any agency or group requested by the Department to hold such meetings. Nomination meetings for the purpose of electing nominees for members or alternates after the initial committee has been selected should be called or held by the committee or by agencies or groups requested to hold such meetings by the committee.

Nomination meetings should be held not later than July 1 of each year inasmuch as the term of office is to begin as of September 1. This will assure sufficient time to forward the names of the nominees to the Secretary, and for him to consider the nominations submitted prior to the beginning of each term of office.

At least one nominee shall be designated for each position as member, and for each position as alternate member on the committee. However, a greater number of nominations may be submitted and the voters at the nomination meetings may indicate the ranking of their choice for all nominees for members and alternates. This method is appropriate and practical and is sponsored by the industry.

It is appropriate and proper that nominations should be supplied to the Secretary in the manner and form which he may prescribe. This requirement merely means that the industry through the committee would provide the Secretary with background information in con-

nection with each nominee so that the Secretary may be able to determine before making his selections if such nominees are qualified. To allow sufficient time for this purpose nominations should be supplied to the Secretary not later than July 15 of each year.

All persons participating in nomination meetings for members and alternates should be producers or producer-handlers of potatoes. Since the marketing agreement and order is designed to benefit potato producers, prospective committee members and alternates must qualify as producers. It was testified by the proponents that they believe the primary objective of the act is to increase returns to the grower, and since the increase of grower prices is the proper objective to which the program should be dedicated, for these reasons the committee should consist of producers or producers who also may be handlers. Since the committee would be composed of only producers, only producers should participate in the nomination meetings if the committee's decisions are to reflect producer sentiments.

Some growers produce potatoes in more than one district or sub-district in the State of Florida. If a grower does produce potatoes in more than one district or sub-district he may elect the district or sub-district in which he wishes to participate in electing nominees for committee members and alternates. In this way each potato grower shall have the same equitable voice in the nomination of committee members. Regardless of the number of districts or sub-districts in which a person produces potatoes, each person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries and affiliates and representatives in nominating members and alternates for the committee. This provision is deemed necessary as an appropriate safeguard for the protection of all potato growers participating in the meetings irrespective of the size of an individual's operations. This limitation however, is construed to mean that one vote may be cast for each position which is to be filled.

In order to assure the existence at all times of an administrative agency to administer the program the Secretary should be authorized to select committee members and alternates without regard to nominations, if for any reason they are not submitted to him in conformance with the procedure prescribed in the marketing agreement and order. For the reasons given above, such selections should, of course, be on the basis of the representation provided for in the marketing agreement and order.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary a written acceptance of his willingness and intention to serve in such a capacity. This requirement is necessary so that the Secretary will have definite knowledge that the person appointed is willing to serve and that the position has been filled. The requirement that these acceptances be filed within 10 days is appropriate and necessary so that the

full membership of the committee may be obtained without excessive delay.

It is also desirable and necessary that the Secretary be authorized to fill vacancies on the committee without regard to nominations if the names of nominees to fill such vacancies are not made available to the Secretary within 30 days after such vacancy occurs. This requirement is necessary to maintain continuity of the committee operations and to insure that all portions of the production area are adequately represented in the conduct of committee business.

Also, to insure that all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted the marketing agreement and order should provide for alternate members on the committee. Such alternates should be authorized to act in the place and stead of the member during the member's temporary absence, or in the case of the death, removal, resignation, or disqualification of the member.

The marketing agreement and order should provide that seven committee members be necessary to constitute a quorum or pass on any committee action. Since the committee is composed of 12 members, seven members constitutes a majority which should be present. It was testified that seven members should provide the representation necessary and sufficient to conduct business. A smaller number could possibly mean that the industry was not adequately represented and this would not be fair or equitable to the industry. It was testified that while the proponents believe that 12 members are necessary to obtain adequate industry representation, they also believe that the normal seasonal aspects of the potato deal will have a direct influence on the interest of committee members and in turn upon their possible attendance at committee meetings. For this reason the proponents propose that only a majority of committee members be necessary to constitute a quorum or pass on action. The proponents recognize that interest will be related to the effect possible regulations may have on particular sections of the production area. However, as action taken by the committee will vitally affect all of the growers in the production area, at least seven members should concur in any action taken as this would represent a majority of the committee membership.

The committee should be authorized to vote by telephone, telegraph, or other means of communication as if may be necessary at times for the committee to act speedily and without trying to call a formal assembled meeting. Because marketing conditions often change rapidly, it is essential that the committee should be permitted to take action to protect the interests of producers the members represent. This authority does not extend to polls for the purpose of tightening or recommending regulations stricter than those in effect. Such action is deemed by the industry to be of such a serious nature that public participation in which all growers have an opportunity to express their views should be encouraged. Also,

in any assembled meeting all votes should be cast in person as this provision does not authorize proxy voting at an assembled meeting. If an assembled meeting is held all members should attend in person so as to participate in the discussions and present the views of the growers they represent. If for some reason a member is unable to attend the meeting he should arrange for his alternate to attend and vote in his stead.

Committee members and alternates while on committee business will necessarily incur some expenses. These expenses, which may include travel and living expenses, should be reimbursed so as to avoid personal financial loss to members which might otherwise occur because of their service to the committee. However, the proponents testified that no compensation should be authorized since it is expected that the committee members will be public spirited men who will be interested in their own welfare as well as the welfare of the growers they represent and, therefore, would not expect any compensation other than expenses. This authority should also extend to alternate members when performing official duties.

The committee should be given those specific powers which are set forth in section 8c(7)(c) of the act because such powers are granted by the enabling statutory authority and they are necessary for administrative agencies such as the Florida Potato Committee to function.

The committee's duties as set forth in the marketing agreement and order are necessary for the discharge of its responsibilities. The duties established for the committee are generally similar to those specified for administrative agencies under other programs of this character. They are reasonable and necessary if the committee is to function in the manner prescribed under the act and the marketing agreement and order. It should be recognized that these duties specified are not necessarily all inclusive and it is probable that there are other duties which the committee may need to perform which are incidental to, and not inconsistent with, its specified duties.

(c) The marketing agreement and order should contain provisions for the establishment of a Shippers Advisory Board. It was testified that the actual administration of the marketing agreement and order should be the responsibility of the Florida Potato Committee which would be a representative group of producers or producer-handlers since the program is designed for the benefit of producers. However, in order to assure that the thinking and the experience of handlers will always be available for the benefit of the committee in its considerations and deliberations with respect to marketing regulations, the Shippers Advisory Board is established to assist and advise the committee in this respect. Since it is possible that the Florida Potato Committee may be composed of only producers who do not handle their own potatoes, the Shippers Advisory Board would fill the void created by such a situation and, therefore, should be com-

posed of either handlers or producer-handlers. Under the marketing agreement and order, handlers would be eligible to serve only on the Shippers Advisory Board and producers only on the Florida Potato Committee. Producer-handlers however, would be eligible to serve on either the board or the committee, but not both at the same time.

To insure that members of the Shippers Advisory Board are both representative and experienced in the requirements and problems of the industry in the Subdistrict which they represent, such members must reside in the district and handle potatoes in the Subdistrict for which selected.

Members of the board should be selected for a one year term of office. This term of office coincides with the term for the committee members in that it begins on September 1 and ends the following August 31. As in the case of committee members it provides an adequate length of time for a term of office and yet provides an opportunity for the industry to elect new board members and alternates each year. Meetings for the election of initial board members would be the responsibility of the Department or some agency designated by the Department as would be the case with respect to the initial committee. In succeeding years the committee would have the responsibility of conducting the election meetings. The Department would notify the members of the initial board of their election and in succeeding years this responsibility would be delegated to the committee.

One member and his alternate to the board should be elected from District 1 and four members and their alternates should be elected to represent District 2. As mentioned previously, members and alternates of the board must be residents in the Districts for which elected. Since board members will represent handlers or producer-handlers they should be elected by such persons operating in their respective districts. One member and alternate should be a handler or producer-handler operating in Subdistrict D of District 2 if possible. This Subdistrict is the smallest Subdistrict in District 2 with respect to volume of production and due to the importance of its shipping period in the season this Subdistrict should have some representation on the board. However, in the event that the number of growers, handlers or producer-handlers is too small to qualify the required number for the committee and the board, the committee representation should have top priority, since committee members have the authority to vote on recommendations and other committee business. If the number of qualified persons from this Subdistrict is inadequate to provide membership on the Shippers Advisory Board a fourth member and/or alternate may be elected from another Subdistrict within District 2. The board should be elected as previously outlined since handlers or producer-handlers should be in the best position to know and determine those persons best qualified to represent this segment of the industry at committee meetings. Participation at election

meetings should be limited to handlers or producer-handlers since this is the segment of the industry the board represents. Procedures for the election and notification of the board should be conducted as set forth above.

Election meetings other than initial meetings, should be held under the sponsorship of the committee prior to July 1 of each year. These dates correspond to those of the nomination meetings for the committee members as required in § 960.27 and the committee will be qualified to supervise and conduct such meetings in the best interests of the program.

Alternate members to the board should be provided for the same reasons as alternate members are authorized to act in the place and stead of committee members. Alternate members should be authorized to provide for absentees.

In the event board members are not elected within the time and manner set forth in §§ 960.39 and 960.40, the committee should be responsible for the selection of board members who can best represent the handlers in the industry. Such selection should be made on the basis of representation provided for in § 960.38.

(d) The committee should be authorized to incur such expenses as the Secretary should find are reasonable and likely to be incurred by it during each fiscal period for the maintenance and functioning of such committee and for such other purposes as the Secretary might, pursuant to the provisions of the order, determine to be appropriate. The expenses so incurred should be shared by handlers on the basis of the ratio of each handler's total shipments to the total shipments by all handlers during specified fiscal periods. The basis for determination of the ratio of shipments by individual handlers should be based upon the total shipments by first handlers thereof. The above formula is believed to be the fairest method of obtaining operating revenues on an equitable basis.

The committee should be required to prepare a budget at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of income and expenditures necessary for the administration of the order for such period. Each such budget should be presented to the Secretary with an analysis of its components and an explanation thereof in the form of a report. It will be desirable for the committee to recommend a rate of assessment to the Secretary which is designed to bring in during each fiscal period sufficient income to cover expenses incurred by the committee. There should not be any increase made in the budget without prior recommendation of the committee and approval of the Secretary.

The funds to cover the expenses of the committee should be obtained through the levying of assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of such expenses by administrative agencies, such as the proposed Florida Potato Committee, and the statute also requires

that each marketing order issued pursuant to the act contain provisions requiring handlers to pay their pro rata shares of the necessary expenses. Moreover, in order to assure continuance of the committee, the payment of assessments by handlers should be permitted to be required irrespective of whether particular provisions of the marketing agreement and order are suspended or become inoperative.

Each handler should pay the committee, upon demand, his pro rata share of such reasonable expenses which the Secretary finds will likely be incurred by the committee during each fiscal period. Such pro rata share of expenses should be equal to the ratio between the total quantity of potatoes handled by him as the first handler thereof during a specified fiscal period and the total quantity of potatoes so handled by all handlers during the same fiscal period. It will be necessary that responsibility for the payment of the assessment on each lot of potatoes be fixed and it will be logical to impose such liability on the first handler of such potatoes. In most instances, the first handler and the applicant for inspection are the same person. However, in the event the first handler fails to apply for, and obtain, inspection, this does not in any way cancel his obligation with respect to the payment of assessments. Except in the case of movements to registered handlers, first handling should apply to potatoes when they have been subjected to grading or preparation for market. Assessment rates should be recommended by the committee and applied by the Secretary to a specific unit of shipment or its equivalent. For example, assessment rates might apply to carlot shipments or they might be applied on a hundredweight basis, or by any other unit of shipment commonly used in marketing potatoes grown in the production area. However, such assessments for a fiscal period should be applied on a uniform rate basis.

The committee should be authorized at any time during or subsequent to a given fiscal period, to recommend the approval of an amended budget and the fixing of an increased rate of assessment to balance necessary committee expenses and revenues. Upon the basis of such recommendations, or other available information, the Secretary should be authorized to approve amended budgets and, if he should find that the then current rate of assessment is insufficient to cover committee administration of the order, he should be authorized to increase the rate of assessment. The order should also authorize the application of such increased rate of assessment to all potatoes previously handled by first handlers during the specified fiscal period so as to avoid inequities among handlers.

Funds received by the committee pursuant to the levying of assessments should be used solely for the purpose of administration of the order, including appropriate research and development projects. The committee should be required to maintain books and records clearly reflecting the true up-to-date

operations of its affairs, so that its administration might be subject to inspection at any time by appropriate parties during regular hours of business.

Each member and each alternate, as well as employees, agents, and other persons working for or on behalf of the committee should be required to account for all receipts and disbursements, funds, property, or records for which they are responsible and the Secretary should have the authority, at any time, to ask for such accounting.

Whenever any person ceases to be a member or alternate of the committee, he should be required to account for all receipts, disbursements, funds, property, books, records, and other committee assets for which he is responsible. Such persons should also be required to execute assignments or such other instruments as may be appropriate to vest in their successor or any agency or person designated by the Secretary, the right to all such property and all claims vested in such person.

If the committee should recommend that the operations of the marketing agreement and order should be suspended, or if no regulation should be in effect for a part or all of a marketing season, the committee should be authorized to recommend, as a practical measure, that one or more of its members, or any other person, should be designated by the Secretary to act as a trustee or trustees during such period. This would provide a practical method whereby the committee's business affairs could be taken care of during periods of relative inactivity with a minimum of difficulty and expense.

The committee should provide periodic reports on its fiscal operations. It is expected that audit reports will be requested by the Secretary at appropriate times, such as at the end of each marketing season, or at such other times as might be necessary to maintain appropriate supervision and control of the committee's affairs. Also financial statements which reflect the current fiscal position of the committees should be furnished members and alternates and the Secretary at the close of each month. Audit reports and monthly financial statements should also be supplied on request to persons such as producers and handlers, having a valid interest in the contents of such reports. In no case should data of a nature which could be detrimental to the interests of an individual handler or producer be disclosed in copies of fiscal or other reports released.

Except as indicated below, handlers should be entitled to a proportionate refund of the excess assessments collected which remain at the end of a fiscal period, or at the end of such other period as might be deemed appropriate by reason of suspension or termination. Refunds should be credited to contributing handlers respectively against the operations of the following fiscal period, unless payment should be demanded, in which event proportionate refunds should be paid.

If and when the committee should be required to liquidate its affairs expenses

will necessarily be incurred in the liquidation process. The affairs of the committee which are to be liquidated might involve a number of years' operations. It will be appropriate, therefore, that funds remaining at the end of a fiscal period, which are in excess of those necessary for payment of expenditures during such period, be carried over into subsequent fiscal periods as a reserve for possible liquidation in the event of the termination of the order.

It is generally considered to be good business practice to provide for unforeseen contingencies. For example, it is possible that a severe freeze or freezes might result in a total or partial crop failure during a fiscal period. Also, the anticipated crop for any season might conceivably be reduced by other factors. The net effect of such a crop failure would be to reduce greatly or stop shipments, and could cause the discontinuance of regulation and the collection of assessments. In order to continue and maintain the nucleus of a committee organization and to assure the performance of a minimum of basic services, the committee should have authority to secure needed extra funds to cover the expenses of operation during such a fiscal period. Such funds might reasonably be drawn from the same reserve accrued for purposes of liquidation.

The above reserve might also properly serve another purpose. At the beginning of each fiscal period, there will be a need for operating monies at a time when there will usually be little, if any, revenue from assessments. It is customary and sensible budgetary practice, and the committee should be so authorized, to borrow operating funds from the above reserve until such time as assessment collections provide adequate revenue to meet current expenses. It is contemplated that any such reserve will have a threefold use; namely, (i) liquidation, (ii) crop failure advance, and (iii) fiscal year advance. It was testified that the reserve which would be accrued from excess assessments should be limited to an amount roughly equivalent to the average budget of expenses for one fiscal period. It will be built up over a period of years to equalize the burden among handlers.

Any funds remaining after liquidation has been effected, including any balance which might remain in the reserve fund, should be refunded to handlers on a pro rata basis. In some cases, however, an individual handler's account will be such a small amount as to make the return thereof impracticable or unduly expensive. Funds of such insignificant nature should be used by the committee for purposes of liquidation or put to such other use as the Secretary considers appropriate in the circumstances.

(e) The establishment or provision for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of potatoes was authorized by amendments to the act in Public Law 690, known as the Agricultural Act of 1954, enacted by the 83d Congress. Such authorization should be included in the marketing agreement and order.

Through the medium of research investigation, the committee might be able to obtain information which would enable the committee and the Secretary to determine with a greater degree of accuracy the effect of specific regulations on the market and thereby promote more orderly marketing.

As the industry and the committee become more aware of the value of and need for marketing research and development, projects will undoubtedly be initiated, the need for which will not have been foreseen early in committee operations. Therefore, the committee should have the authority to recommend and the Secretary should have the authority to approve the establishment of such projects which are in the best interests of potato marketing and which would assist, improve, and promote the marketing, distribution, and consumption of Florida potatoes. After approval, the committee should be empowered to engage in or contract for such projects, to spend funds for that purpose, and to consult and cooperate with other agencies with regard to their establishment. All such projects should receive the prior approval of the Secretary.

(f) The declared policy of the act is to establish and maintain such orderly marketing conditions for potatoes among other commodities, as will tend to establish for growers the equivalent parity price for such potatoes. The regulation of shipments of potatoes by grade, size, and quality is authorized in the marketing agreement and order and provides the practicable means of carrying out this policy.

Procedures and methods which are outlined in the marketing agreement and order for the development and institution of marketing policies relating to grade, size, quality, pack, container, or other regulations authorized by the marketing agreement and order provide a practical basis for the committee to obtain appropriate and adequate information relating to potato marketing problems. It also provides growers and handlers and other members of the industry with information regarding policies and regulations recommended by the committee. The factors set forth in the marketing agreement and order which the committee should take into consideration in developing its marketing policies are those commonly and usually taken into account by growers and handlers in their day-to-day evaluation of the market outlook with respect to potatoes.

In order that the Secretary may effectively carry out his responsibilities in connection with the marketing agreement and order the committee should prepare and submit to the Secretary a report on its proposed marketing policy relating to the marketing of potatoes during each season. In the event that it is necessary to amend or modify the marketing policy during the course of the season the committee should be authorized to do so and the Secretary should receive a report regarding the revised policy. The initial marketing policy offered each season by the committee should be prepared and submitted

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to the Secretary prior to or simultaneous with recommendations for regulations. This will give all interested parties maximum notice of probable regulations. Reports on marketing policy and regulations recommended by the committee should be publicly announced and made available to the industry at the committee's office.

The committee which has sole responsibility for recommending regulations authorized by the marketing agreement and order as well as modifications, suspensions, amendments, or terminations thereto should be authorized to consider and recommend any or all methods of regulations so authorized and deemed desirable. The committee as the local administrative agency should have this authority since it is logical to expect the committee to reflect the views of the industry. In turn the Secretary will look to the committee as the agency which properly reflects the thinking of the industry on matters pertaining to the marketing agreement and order.

The committee should not be authorized to recommend any regulations with respect to maturities or skinning classifications as specified in the U.S. Standards for Potatoes. The proponents testified that this limitation should be specified because of certain marketing problems and marketing requirements. It was their testimony that the subject of maturity and skinning of white potatoes is a debatable one within the industry as there are many conflicting viewpoints and theories on the relationship of skinning to maturity, and skinning is not considered to be a true index to maturity by many experienced growers, shippers, and buyers. They further testified that physiological maturity is considered by many research workers, growers and buyers to be that stage in the growth of a potato when it reaches its maximum specific gravity. It is possible, therefore, that a potato should be considered immature upon the basis of skinning but would in fact be mature if specific gravity tests were used as a standard. While the specific gravity of a potato usually increases with the growing period, it is possible during some seasons for a potato to reach its peak specific gravity without possessing a tough and tight skin, and if harvest is delayed until a tight skin is obtained, the specific gravity may decline and an unfavorable color loss occur.

Since over 50 percent of the white potato crop is utilized by potato chippers, the proponents believe it is important for the industry to know that it has the authority to market the type of potato with regard to maturity which the fresh market or chipping industry wants and desires. The skinned potato may have a high specific gravity or cooking quality which could be utilized advantageously by the buyers, so its handling should not be restricted even if it is completely void of skin. In addition, maturity is a factor only in the U.S. Fancy grade which grade is not normally packed by the Florida industry. Since it has not been a custom or industry practice to certify with respect to skinning on inspection certificates the pro-

ponents believe that in the interest of the industry this matter should be left to the option of the shippers, and buyers and, therefore, believe that no authority should be given to the committee to make recommendations on maturity or skinning.

The committee's authority to recommend regulations should extend only during the period April 10 to November 1 of each year. It was testified that the authority contained in the act should not be abused in attempting to effectuate the declared policy of the act or used in a capricious or ineffective manner in attempting to solve or cope with minor seasonal problems. It was established that serious marketing problems of the white potato industry in the production area commence in the spring season about April 10 of each year. The November 1 cut-off date falls in a period of inactivity after the spring crop has been marketed and subsequent to that date and until the ensuing spring season begins again about the following April 10, marketing problems within the production area are not sufficiently serious to warrant regulation. During most seasons it is probable that regulations would be terminated prior to November 1 in that the white potato season for Florida usually ends June or July. Accordingly, the committee should be given the authority to recommend regulations as set forth in the marketing agreement and order with the limitations as specified.

Evidence adduced at the hearing shows that authority should be established in the marketing agreement and order for the Secretary to issue regulations with respect to grade, size, quality or packs in any or all portions of the production area during any period. Such regulations should apply to all potatoes handled unless shipped pursuant to § 960.57 *Minimum quantities* or § 960.58 *Shipments for special purposes*. The limitation of shipments of poorer grades, off qualities, less desirable sizes and packs of potatoes grown in the production area will tend to increase the prices received for more desirable grades, qualities, sizes and packs, promote more orderly marketing and, thereby, tend to increase returns to producers of such potatoes. It was testified that some grades and sizes not only depress prices received for more desirable grades or sizes of potatoes, but at times return the cost of harvesting only to the grower, with other costs such as planting, etc., representing a complete loss.

Poor grades and off qualities may include not only unclassified potatoes as set forth in the U.S. Standards for Potatoes, but also other potatoes which show defects as set forth and described in such standards and in any modifications or amendments thereof which may be recommended by the committee and considered desirable by the Secretary. Limiting shipments by prohibiting the lower grades, off qualities, less desirable sizes, or certain packs which tend to depress prices will help to improve orderly marketing conditions for such potatoes by enhancing the competitive position of potatoes grown in the production area.

The orderly marketing of potatoes grown in the production area with the objective of increasing returns to producers of such potatoes will be promoted by authorizing regulations on shipments of particular grades, sizes, qualities, or packs differently for different varieties, for different portions of the production area, for different containers, for different markets, for the different purposes specified in § 960.58, or any combination of these groups during any period. This authority is particularly desirable and appropriate so that the committee and the Secretary will have the flexibility and authority to meet different marketing situations as they arise. While the common white variety of potatoes grown in Florida at the current time is the Sebago, it is possible that a new variety may be developed which will have characteristics which differ from the Sebago to the extent that the market demand will be based upon a different set of factors which are not currently applicable to the Sebago variety. It was testified that the industry should anticipate the possibility that in the future one variety may have a greater demand than another. It was also testified that certain varieties develop and mature differently than other varieties under the same conditions. Demand also differs for varieties having different markets or outlets. Because of the importance in the demand for Florida potatoes to use as potato chips, it is probable that the number of varieties more desirable for potato chips will tend to increase in Florida in the future. Conversely, there are certain varieties of white potatoes that are more acceptable for the fresh market than chips. Accordingly, authority under the marketing agreement and order should contain the flexibility necessary to adapt the program to the differences in demands by varieties.

It was testified that authority to regulate differently for different portions of the production area is extremely important in the Florida production area. While it was recognized that some administrative complications might arise if different regulations were attempted for different parts of the production area, this authority should be contained in the marketing agreement and order because of the variances in weather and disease problems which are common to the Florida production area. Damage from such causes may be extensive in a particular portion of the area and the committee should have authority to recommend regulations and the Secretary to issue regulations which will meet such problems in a practical manner.

Testimony introduced at the hearing indicated that there are different preferences in certain markets for certain grades and sizes of potatoes. For this reason it is important that the marketing agreement and order contain authority to permit the issuance of regulations for different markets. It was testified for example that the south prefers normally a large size potato, the east a medium size potato, and Canada a small size potato. Also, local markets in Florida may readily take different grades, sizes, qualities, and packs than nor-

mally shipped to more distant markets. Therefore, for effective administration of the marketing agreement and order authority should be contained therein to meet such differences in demands for particular markets.

Similarly, the marketing agreement and order should contain authority to regulate differently for different containers. Although practically all shipments at the present time are shipped in 50-lb. or 100-lb. sacks, it is possible in the future that different size containers may be used to a greater extent than at present.

While a small volume of consumer size containers are utilized at the present time by the Florida potato industry it is possible that their use will increase in the future and it would be desirable to require different grades, sizes or qualities in such containers than would be required in the larger size packs or containers.

It is also desirable and essential for efficient administration of the marketing agreement and order that authority to regulate differently for the special purposes specified in § 960.58, such as for export or for relief or charity, be contained therein. This is merely a matter of recognizing the practical aspects of a marketing situation and having the authority to provide such markets with the grades and sizes of potatoes which they will accept without affecting movement to the tablestock or chip market. Such authority provides a means of promoting orderly marketing thereby helping to improve growers returns. It also permits shipments for relief or for charity to be considered differently than those for commercial markets. It was testified that such instances will rarely occur, but no desirable purpose would be achieved by prohibiting such movement by the imposition of grade and size restrictions.

Testimony indicates there is definite need for providing a method of limiting the total volume of U.S. No. 1, Size B potatoes which may be shipped. The marketing situation for U.S. No. 1, Size B potatoes can become a serious problem during certain periods. The restrictions commonly used under a potato marketing agreement and order, i.e.—specifying minimum or maximum sizes or by requiring a higher grade, would not be successful in meeting this problem. There is a certain demand for U.S. No. 1, Size B potatoes. However, since the standard U.S. No. 1, Size A pack in the production area is sized to 1 7/8-inch minimum, the Size B normally ranges from 1 1/2 inches to 1 5/8 inches in diameter. The possibility of reducing the volume appreciably by restrictions within this size range would be extremely limited. Likewise, no appreciable volume could be taken off the market by restricting shipments to a higher grade since most potatoes falling in the Size B range grade U.S. No. 1 or better, with no difficulty. Therefore, the marketing agreement and order authorizes methods to meet this problem. For example, the committee could possibly recommend that only a certain percentage of the available U.S. No. 1, Size B potatoes could be shipped during any period.

This percentage could be based upon total shipments of all potatoes during a given day or given week or any other practical period. Such methods, recommended by the committee and approved by the Secretary, could be contained in rules and regulations. These rules and regulations may, for example, specify a percentage of Size B's which may be shipped. The base could depend upon the daily volume handled by particular handlers, the daily volume that may be shipped from the entire area, or the volume that may be shipped for a week or other specified period. The allowable percentage could be related to a proportion of a certain volume shipped during a given or specified period. Because of the fixed demand for a certain volume of Size B potatoes, the authority contained in the marketing agreement and order permits this demand to be met without unduly increasing overall marketings of Size B potatoes which would result in depressing prices.

Authority should be contained in the marketing agreement and order for regulating the size, weight, capacity, dimensions or pack of a container or containers which may be used in the packaging, transportation, sale, shipment or other handling of potatoes. This authority is necessary so that the committee may recommend and the Secretary approve regulations which would eliminate the use of certain containers which improperly reflect the weight and size of its contents or which introduce an element of competition that adversely affects prices received for the potatoes marketed therein. The container situation with respect to Florida potatoes presents no particular problems at the present time. However, it is contemplated that new types of containers particularly in the consumer size range may be developed and it may be necessary for the committee to use this authority to promote more orderly marketing and to prevent practices which may adversely affect returns to growers. This authority, however, should not be used to prevent experimentation on new containers or to preclude commercial development of new containers of different weights and capacities than those now being used.

The marketing agreement and order should contain authority for the establishment of pack specifications for the grading and packing of any variety or varieties of potatoes and require that all potatoes handled be packed in accordance with such specifications. To assure that potatoes are being so packed they should be identified by appropriate labels, seals, stamps or tags showing the particular pack specifications of the lot. Such means of identification should be affixed to containers by the handler under the supervision of the committee or the Federal-State Inspection Service. When pack specifications are in effect it is necessary to require the marking of the containers as to the exact size and grade of the contents to prevent misrepresentation. Also, the use of such authority would facilitate administration of the marketing agreement and order and assist in obtaining compliance under the program because it could be readily as-

certained whether handlers are complying with regulations and pack specifications. Additionally, the use of pack specifications with proper identification will instill trade confidence, increased acceptance of Florida potatoes, and the buyer will be assured of receiving a particular pack and that the lot meets the specification plainly marked on the container. The procedures and methods to be used with respect to pack specifications and their identification will be established through the issuance of rules and regulations recommended by the committee and approved by the Secretary.

No testimony was offered in support of paragraph (f) of § 960.56 as published in the notice of hearing. Accordingly, it has been deleted from the marketing agreement and order. However, testimony was offered to the effect that the Secretary should issue regulations upon the basis of recommendations of the committee and other available information. Further, and for the reasons stated elsewhere, the Secretary should always give careful consideration to the recommendations of the committee when considering the maximum restrictions imposed by any particular regulations.

(g) The committee should be authorized to recommend and the Secretary to establish such minimum standards of quality and such grading and inspection requirements during any and all periods when potato prices reach the equivalent parity as will be in the public interest. Some potatoes are of such low quality and small sizes, they do not give consumer satisfaction at any time. Normally, consumers do not receive proper value from their expenditures for low quality potatoes, such as culls, and it is not in the public interest of either the producers or the consumers to permit shipments of such poor quality potatoes irrespective of the price level. The marketing agreement and order, therefore, contains authority for the establishment of such minimum standards of quality, as will be in the public interest and such grading and inspection requirements as may be necessary to insure such minimum standards of quality are met.

Most shipments of Florida potatoes are made in carlots or trucklots. However, some smaller shipments are made, but these constitute a very minor percentage of the total movement. These small shipments, such as individual household purchases or convenience purchases, would be in a "nuisance" category and would present real operating problems if required to meet requirements under the marketing agreement and order, particularly with respect to inspection. The nuisance factor involved in such shipments outweigh the advantage of controls on such small transactions. Therefore, authority should be contained in the marketing agreement and order to relieve such shipments from grade, size, and quality requirements, assessments or inspection. However, in the event it should be found necessary, such shipments may be required to meet grade and size requirements while waiving other requirements such as inspection and assessments. The committee should have

authority flexible enough to meet local conditions including authority to change minimum quantity exemptions through various rules and regulations for different parts of the production area from season to season. However, exempted minimum quantities should apply only to shipments which in their entirety are within the minimum quantity specified, and under no circumstances should apply to any portion of a shipment which in the aggregate would exceed the specified minimum.

(h) The Secretary should be authorized upon the basis of recommendations and information submitted by the committee to modify, suspend, or terminate regulations with respect to the handling of potatoes for purposes other than for disposition in normal trade channels. Potatoes moving to, or sold in, certain outlets such as those specified in § 960.58 of the marketing agreement and order are usually handled in a different manner or such outlets usually accept different grades, sizes, qualities, packs, or containers, and different prices are returned or a combination of such considerations may apply, for such handling of potatoes usually does not have any appreciable effect on the marketing of the great bulk of potatoes handled in commercial markets. Therefore, any sales to these outlets would in most instances provide returns which would tend to supplement farm income realized from the sale of potatoes in their recognized commercial market rather than depressing prices received. Therefore, the order provides authority for the committee and the Secretary to give appropriate consideration to the handling of potatoes for such purposes differently from the bulk of potatoes moving to regular commercial markets. Such authority may offer opportunities to improve orderly marketing conditions for potatoes which would tend to increase total returns to potato growers in the production area.

Such outlets would be export, relief or charity, processing, or for other purposes which may become apparent in the future and which would be specified by the committee and approved by the Secretary. The authority contained in this section, however, will not apply to potatoes grown in the production area for use as potato chips or prepeeling as the record evidence discloses that such potatoes are equivalent to, and interchangeable with, potatoes grown for fresh market. It was testified that it was impossible for a handler to know in all instances which shipments will be utilized in the fresh market or by chippers or prepeeling potato users since these outlets usually utilize the same grades, sizes, and qualities. It was testified that fresh market potatoes are many times diverted to chippers or prepeelers. Also, in other instances, potatoes sold to chippers or prepeelers may be diverted to the fresh market. Florida potatoes purchased for manufacture into potato chips require the same grades, sizes, and qualities normally used in the fresh market. Contracts between growers and chippers require that potatoes delivered meet U.S. grades or

modifications of such grades. In the case of prepeeling, the prepeeler does not change the form of the potato. The only function he is performing is the removal of the skin. In effect, this potato is still a fresh market potato and the prepeeler has simply performed a function normally performed by the housewife or consumer. Accordingly, in order to carry out the declared policy of the act for white potatoes grown in this production area and based upon evidence in the hearing record, no distinction between potatoes grown in the production area can be drawn on the basis of differentiation in outlets to fresh market or to outlets for chipping or prepeeling since these outlets compete for the same potatoes.

Export demands for potatoes may differ from potatoes preferred for domestic consumption. Most of the export demand for Florida potatoes is from Canada. It was testified that Canadians prefer a smaller size potato than usually preferred in the United States. It is also possible that some export shipments may be made to Puerto Rico and Cuba and authority should be included in the marketing agreement and order to take advantage of any particular demands from these areas.

Shipments for relief or charity have been previously discussed herein and since they are usually in the nature of gifts, monetary considerations are not important, and restrictions on such shipments would not have any material effect on prices to growers.

Shipments for processing other than for chips or prepeelers would in most instances be for canning or freezing. Very small size potatoes, known locally as "creamers" are sold to canners.

At the present time the only other processing outlet for Florida potatoes other than those previously mentioned is a use for potato salad. Salad makers in many instances prefer small sizes and, hence, authority is necessary to facilitate movement to these outlets.

It was also testified that some potatoes are utilized by livestock feeders in the production area. It was the testimony of the proponents that such movement of low grade potatoes should be permitted. However, such shipments should be confined to the production area and the potatoes should be treated in such a way as to render them unfit for human consumption.

The marketing agreement and order should authorize special consideration for shipments of potatoes for other special purposes. Studies and research on the development of new potato products are being conducted by many agencies—State, Federal, and private. If any new potato products are developed which could utilize Florida potatoes, the committee and the Secretary should be authorized to give special consideration to shipments for such purposes.

The requirement that the Secretary should notify the committee of any regulations or any modifications, suspensions or terminations of regulations is appropriate and necessary to enable the committee to be informed of such actions. The committee's obligation to give rea-

sonable notice by such means as are deemed adequate to inform producers and handlers of regulatory orders issued by the Secretary is appropriate and necessary for the proper and efficient administration of the marketing agreement and order.

The authority for modifying, suspending or terminating grade, size, quality, pack, container, assessment or inspection requirements to facilitate special purpose shipments should be accompanied by additional administrative authority for the committee to recommend and the Secretary to prescribe adequate safeguards to prevent shipments for such purposes from entering market channels other than those intended. The authority for the establishment of safeguards should include such limitations or appropriate qualifications on shipments which are necessary and incidental to the proper and efficient administration of the marketing agreement and order. Such safeguards, among others, may include inspections so that the administrative committee may have an accurate record of the grade, size, and quality of potatoes shipped to special outlets, applications to make such special shipments, requirements for the payment of assessments in connection with such shipments, reports by handlers on the number of such shipments and the volume of potatoes shipped, as well as assurances by purchasers that potatoes are to be used for the purpose designated.

In order to maintain appropriate identification of potatoes shipped to special outlets the safeguards authorized herein may provide for the issuance of certificates of privilege to handlers of potatoes and, in addition, require that handlers obtain certificates on all shipments handled by them for such special outlets. Certificates of privilege may be issued by the committee as an indication that approval of a handler's application to make special purpose shipments has been granted, and as a means of identifying specific shipments. Certificates of privilege should be issued in accordance with rules and regulations established by the Secretary on the basis of committee recommendations, or other available information, in order that the issuance of such certificates may be handled in an orderly and efficient manner which can be made known to all handlers. The committee should be authorized by the marketing agreement and order to deny or rescind certificates of privilege when this action proves necessary to prevent abuse of the privileges conferred thereby, or upon evidence satisfactory to the committee that a handler to whom a certificate of privilege has been issued has handled potatoes contrary to the provisions of the certificate issued to him. If the committee rescinds or denies a certificate of privilege to any handler such action shall be in terms of a specified period of time. Handlers affected by the denial of a certificate or the rescinding of such a certificate should have the right of appeal to the committee for reconsideration.

The Secretary shall have the right to modify, change, alter or rescind any safeguards prescribed, or any certificates

of privilege issued by the committee in order that he may retain all rights necessary to carry out the declared policy of the act. The Secretary should give prompt notice to the committee of any action taken by him in connection therewith, and the committee should notify all persons affected by the indicated action.

The committee should maintain detailed records relevant to safeguards and to certificates of privilege, and should submit reports thereon to the Secretary when requested in order to supply pertinent information requisite for him to discharge his duties under the act and the marketing agreement and order.

(i) Inspection of potatoes grown in the production area by the Federal or Federal-State Inspection Service must be required for the purpose of determining officially whether shipments meet requirements effective under marketing regulations issued pursuant to the marketing agreement and order. Federal or Federal-State Inspection Service has operated in the State of Florida for a number of years and potato growers and handlers throughout the production area are well acquainted with the service and with the inspection which it offers on shipments of potatoes. The service is available throughout the entire production area and reasonably prompt inspection can be given at all points within the production area. Provision is made in the marketing agreement and order for inspection of potatoes grown in the production area by the Federal or Federal-State Inspection Service or such other inspection services as the Secretary might approve during any period in which the handling of potatoes is regulated under the program. Inspection and certification requirements should apply to all potatoes shipped under regulations issued under the marketing agreement and order except when relieved therefrom pursuant to rules and regulations applicable to minimum quantities or special purpose shipments.

Inspection and certification requirements are necessary so that the shipper as well as subsequent handlers, the committee, and other interested parties may determine if shipments comply with the regulations in effect and applicable to such shipments. Effective regulation of the handling of potatoes grown in the production area requires evidence that each shipment is in compliance with regulations under the marketing agreement and order and the provision for inspection and certification affords the practical means of establishing the fact that the shipments do comply and can be so identified.

Responsibility for obtaining inspection should fall primarily on the handler who first handles regulated potatoes after they have been prepared for market since he is usually the person responsible for the grade, size, quality, pack and container in which the potatoes are being shipped or handled. However, each handler regardless of whether the first or subsequent handler should be required to bear responsibility for determining that each of his shipments is inspected and certified. Identification

and certification is essential to proper administration of the marketing agreement and order so that a determination may be made as to whether each shipment accords with regulations issued thereunder. The handler who first handles potatoes should be required to obtain such inspection. Subsequent handlers should not be permitted to handle potatoes unless a properly issued inspection certificate valid under the terms of the marketing agreement and order applies to such potatoes. If a handler should receive potatoes which have not been inspected he should be responsible for having them inspected before selling or transporting them. This procedure avoids the potential shift of responsibility which would be expected to occur in the absence of making each handler responsible for inspection and certification of any uninspected potatoes handled by him. This requirement is also necessary so that the committee can obtain evidence in the form of inspection certificates to determine whether the requirements of regulations in effect are being met.

Whenever any shipments of potatoes subject to regulation have been inspected, but are later dumped from the containers in which they were inspected, or the lot on which the inspection certificate was issued is broken up, such potatoes can no longer be specifically identified with reference to the inspection certificate. If any such lot of potatoes should thereafter be repacked, the repacked potatoes have a new identity. However, any subsequent handling of such potatoes should be in compliance with regulations in effect. Otherwise, effective regulation will not be obtained. Therefore, the order should provide that the committee may require the person who handles potatoes after they have been repacked, resorted, or regraded to have such potatoes reinspected and recertified prior to further handling so that the shipper thereof as well as subsequent handlers and the committee may determine that such shipments comply with regulations in effect and applicable to potatoes that have been repacked or regraded.

The committee with the approval of the secretary should be authorized to determine the length of time an inspection certificate is valid insofar as the requirements of the proposed marketing agreement and order are concerned. Such requirement is appropriate and necessary especially with respect to floor lot or platform inspections which might be administratively desirable to accommodate handlers and truckers. It would not be practical and feasible for the committee to rely upon inspection certificates which are not reasonably current.

Florida potatoes are marketed soon after harvest and are extremely perishable. They could deteriorate in a short period of time to the point where they would not meet regulations in effect at actual time of shipment and would no longer conform to the findings in the inspection certificate.

Copies of inspection certificates issued pursuant to the requirements of the marketing agreement and order should be

supplied to the committee promptly so it can discharge its administrative responsibilities under the program.

The committee should be authorized to recommend, and the Secretary to issue, regulations requiring that potatoes transported by motor vehicle shall be accompanied by a copy of the inspection certificate issued thereon or by other approved evidence of inspection. These requirements may include the surrender of such documents to such authority or agency as designated by the Secretary upon committee recommendation. The committee is authorized under the marketing agreement and order to administer its terms and provisions and this procedure enables the committee to enforce regulations in connection with truck movement of potatoes passing through various road guard stations along the production area boundary. Since a large percentage of potatoes produced in the production area move by truck such authority is necessary to effectuate the other provisions of the marketing agreement and order.

(j) Certain hazards are encountered in the production of Florida potatoes which are beyond the control or reasonable expectation of the producer of such potatoes. Because of these circumstances, and to provide equity among producers and handlers insofar as any regulations under the marketing agreement and order are concerned, the committee should be given authority to issue exemption certificates to producer applicants to permit such applicants to sell their equitable proportion of all shipments from the production area. It is contemplated, however, that such an exemption will require the approved applicant to sell his best quality potatoes.

The committee, by reason of its knowledge of the conditions and problems applicable to the production of potatoes in the production area and the information which it will have available in each case, should be well qualified to judge each applicant's case in a fair and equitable manner and to fix the quantity of exempted potatoes which each such applicant may sell.

The provisions contained in the notice of hearing relevant to the procedure to be followed in issuing exemption certificates, in investigating exemption claims, in appealing exemption claim determinations, and in recording and reporting exemption claim determinations to the Secretary are necessary to the orderly and equitable operation of the marketing agreement and order and they should, therefore, be incorporated in the agreement and order.

(k) The committee should have authority, with the approval of the Secretary, to require that handlers submit to it such reports and information as are needed to perform its functions. It is difficult to anticipate every type of report, or kind of information, which the committee may need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request reports and information if needed, of the type set forth in the marketing agreement and order. The standards to be followed by the com-

PROPOSED RULE MAKING

mittee in requesting handlers to furnish reports should be along the lines set forth in § 960.80 of the marketing agreement and order and such reports should be those necessary for operation of the committee in carrying out its responsibilities under the marketing agreement and order. Reports furnished to the committee should be submitted in such manner and at such times as may be designated by it. Such reporting procedures should accord with the need and requirements of the committee which are essential to administration of the marketing order because changing conditions may warrant changes in the forms and methods of reporting. The right to approve, and also to modify, change, or rescind, any requests by the committee for information in order to protect handlers from unreasonable requests for reports is retained by the Secretary.

Since it is possible that a question may arise with respect to compliance with the marketing agreement and order, each handler should maintain complete records of his handling and disposition of potatoes for a period of not less than two years subsequent to the termination of each crop year.

Any and all reports and records submitted for committee use by handlers shall remain under appropriate protective classifications and be disclosed to none other than persons authorized by the Secretary.

(1) Except as provided in the marketing agreement and order, no handler should be permitted to handle potatoes, the handling of which is prohibited pursuant to regulations issued under the marketing agreement and order, and no handler should be permitted to handle potatoes except in conformity with the marketing agreement and order and regulations issued thereunder. If the program is to be effective, no handler should be permitted to evade its provisions since such action on the part of one handler, although possibly of small impact on the industry measured by the proportion of potatoes handled by him, such action would, in any appreciable aggregate, tend to impair operation of the program and otherwise render it ineffective.

(m) The provisions of § 960.82 through § 960.92, as published in the FEDERAL REGISTER of October 16, 1959 (24 F.R. 8414), and as hereinafter set forth, are common to marketing agreements and orders now operating. The provisions of §§ 960.93 through 960.95, as hereinafter set forth, are also included in other marketing agreements now operating. Each of such sections sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the marketing agreement and order. These provisions are incidental to, and not inconsistent with, section 8c (6) and (7) of the act, and are necessary to effectuate the other provisions of the marketing agreement and order and to effectuate the declared policy of the act. The substance of such provisions, therefore, should be included in the marketing agreement and order.

General findings. Upon the basis of evidence introduced in the hearing and the record thereof it is found that:

(1) The marketing agreement and order as hereinafter set forth, and all of the terms and provisions thereof, will tend to effectuate the declared policy of the act with respect to white potatoes produced in the production area, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices and by protecting the interest of the consumer (i) by approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such potatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such potatoes as will be in the public interest;

(2) The said marketing agreement and order authorizes regulation of the handling of white potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in a proposed marketing agreement and order upon which the hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several marketing agreements and orders applicable to any subdivision of the production area would not effectively carry out the declared policy of the act;

(4) The said marketing agreement and order prescribe, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of white potatoes grown in the production area; and

(5) All handling of potatoes as defined in the said marketing agreement and order, is in the current of interstate or foreign commerce, or directly burdens, obstructs or affects such commerce.

Recommended marketing agreement and orders. The following marketing agreement and order are recommended as the detailed means by which the aforesaid findings and conclusions may be carried out.

DEFINITIONS

§ 960.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been del-

egated, or to whom authority may hereafter be delegated, to act in his stead.

§ 960.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 960.3 Person.

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

§ 960.4 Production area.

"Production area" means all territory in the State of Florida south or east of the Suwannee River.

§ 960.5 Potatoes.

"Potatoes" means all varieties of Irish potatoes grown within the production area other than red skin varieties.

§ 960.6 Handler.

"Handler" is synonymous with "Shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes or causes potatoes to be handled.

§ 960.7 Handle.

"Handle" or "Ship" means to transport, sell, or in any other way to place potatoes in the current of commerce within the production area or between the production area and any point outside thereof: *Provided*, That such terms shall not include the transportation, sale, or delivery of potatoes by a producer to a handler registered as such with the committee and who has adequate facilities within the production area for grading. In the event a producer sells potatoes other than to a registered handler, such producer shall be the handler of such potatoes.

§ 960.8 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of potatoes for market.

§ 960.9 Grading.

"Grading" is synonymous with "preparation for market" and means the sorting or separation of potatoes into grades, sizes and packs for market purposes.

§ 960.10 Grade and size.

"Grade" means any one of the established grades of potatoes and "Size" means any one of the established sizes of potatoes as defined and set forth in the U.S. Standards for Potatoes (§§ 51.1540 to 51.1556 of this title) or U.S. Consumer Standards for Potatoes (§§ 51.1575 to 51.1587 of this title), both issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon recommended by the committee and approved by the Secretary.

§ 960.11 Pack.

"Pack" means a quantity of potatoes in any type of container and which falls

within specific weight limits or within specific grade or size limits, or any combination thereof, recommended by the committee and approved by the Secretary.

§ 960.12 Container.

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

§ 960.13 Label.

"Label" means to mark, brand, or otherwise designate on containers the official grade or size, or both, of potatoes therein.

§ 960.14 Varieties.

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

§ 960.15 Committee.

"Committee" means the Florida Potato Committee, established pursuant to § 960.22.

§ 960.16 Shippers Advisory Board.

"Shippers Advisory Board", "Advisory Board", or "Board" means the advisory board established pursuant to § 960.36.

§ 960.17 Fiscal period.

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

§ 960.18 District.

"District" means each one of the geographical divisions of the production area initially established pursuant to § 960.24, or as reestablished pursuant to § 960.25.

§ 960.19 Export.

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

COMMITTEE

§ 960.22 Establishment and membership.

(a) The Florida Potato Committee consisting of twelve members, all of whom shall be either producers or producer-handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Persons selected as committee members or alternates to represent producers shall be producers or producer-handlers, or officers or employees of a producer or producer-handler, residing and producing potatoes in the district for which selected.

§ 960.23 Term of office.

(a) The term of office of committee members, and their respective alternates shall be for one year and shall begin as of September 1 and end as of August 31 of the succeeding year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and

have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 960.24 Districts.

For the purpose of determining the basis for selecting committee members the following districts of the production area are hereby initially established.

District I. Central and South Florida District: The counties of Dade, Pinellas, Hillsborough, Polk, Osceola, Brevard, Manatee, Hardee, Highlands, Okeechobee, Indian River, St. Lucie, Martin, Charlotte, Glades, Lee, Hendry, Collier, Palm Beach, Broward, Monroe, Sarasota, DeSoto, Seminole, Orange, Sumter, Citrus, Hernando and Pasco in the State of Florida; and

District II. North Florida District: The counties of Suwannee, Columbia, Baker, Nassau, Duval, Bradford, Clay, Gilchrist, Union, Alachua, Putnam, St. Johns, Flagler, Levy, Marion, Volusia and Lake in the State of Florida.

§ 960.25 Redistricting.

The committee may recommend and pursuant thereto the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to: (a) Shifts in potato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies resulting to producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in apportionment of members within districts may become effective within less than 30 days prior to the date on which the terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 960.26 Selection.

The Secretary shall select as committee members from the respective districts and subdivisions of districts the following number of producers or producer-handlers with their respective alternates:

District I. Central and South Florida District: Two producers or producer-handlers selected as follows:

Subdistrict A. (Lower East Coast and Everglades Areas). One producer or producer-handler from the Counties of Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Brevard, Okeechobee, Osceola, Orange and Seminole in the State of Florida.

Subdistrict B. (Central and Lower West Coast Areas). One producer or producer-handler from the Counties of Monroe, Collier, Hendry, Lee, Charlotte, Glades, Highlands, De Soto, Hardee, Manatee, Sarasota, Pinellas, Hillsborough, Polk, Pasco, Hernando, Citrus and Sumter in the State of Florida.

District II. North Florida District: Ten producers or producer-handlers selected as follows:

Subdistrict A. (Hastings Area). Five producers or producer-handlers from the

Counties of St. Johns, Duval and Nassau in the State of Florida.

Subdistrict B. (Flagler Area). Two producers or producer-handlers from the Counties of Volusia and Flagler in the State of Florida.

Subdistrict C. (East Putnam Area). Two producers or producer-handlers from the Counties of Putnam, Clay, Lake and Marion in the State of Florida.

Subdistrict D. (Gainesville Area). One producer or producer-handler from the Counties of Baker, Union, Bradford, Alachua, Levy, Suwannee, Columbia and Gilchrist in the State of Florida.

§ 960.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers or producer-handlers shall be held in each district or subdistrict to nominate members and alternates for the committee. For nominations to the initial committee, the meetings may be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by such Department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to July 1 of each year, after the effective date of this subpart;

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee and eligible voters at such meetings may ballot to indicate the ranking of their choice for each nominee;

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe not later than July 15 of each year;

(d) Only producers or producer-handlers may participate in designating nominees for producer or producer-handler committee members and their alternates. In the event a person is engaged in producing potatoes in more than one district or subdistrict, such person shall elect the district or subdistrict in which he may participate as aforesaid in designating nominees; and

(e) Regardless of the number of districts or subdistricts in which a person produces potatoes, each such person shall be entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district or subdistrict in which he elects to vote.

§ 960.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 960.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 960.24 through 960.26, inclusive.

§ 960.29 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary or the person designated by the Secretary within 10 days after being notified of such selection.

§ 960.30 Vacancies.

To fill committee vacancies, the Secretary may select such members and alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 960.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 960.24 through 960.26 inclusive.

§ 960.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence. In the event of death, removal, resignation or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

§ 960.32 Procedure.

(a) Seven members of the committee shall be necessary to constitute a quorum and seven concurring votes shall be required to pass any motion or approve any committee action.

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

§ 960.33 Expenses and compensation.

Committee members and alternates may be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

§ 960.34 Powers.

The committee shall have the following powers:

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

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

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

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

§ 960.35 Duties.

It shall be, among other things, the duty of the committee:

(a) As soon as practicable at the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members and to adopt such rules and

regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to potatoes;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with the issuance of certificates of privilege or exemptions, or both;

(i) To investigate an applicant's claim for exemptions;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

SHIPPERS ADVISORY BOARD**§ 960.36 Establishment and membership.**

(a) A Shippers Advisory Board consisting of five members who are either handlers or producer-handlers is hereby established. For each member of the Board there shall be an alternate who shall have the same qualifications as the member.

(b) Persons selected as Board members or alternates to represent handlers or alternates or producer-handlers, or officers or employees of a handler or producer-handler, residing and handling potatoes in the district or subdistrict for which selected. A producer-handler may not serve as a committee member or alternate and a Board member or alternate at the same time.

§ 960.37 Term of office.

The term of office of Board members and their respective alternates shall be for one year and shall begin as of September 1 and end as of August 31. The Board members and alternates shall serve during the term of office for which they are elected, or during that portion thereof beginning on the date on which they are elected and continuing until the end thereof and until their successors are elected.

§ 960.38 Districts.

One member and alternate from District I shall be elected by the handlers and producer-handlers operating in District I. Four members and alternates shall be elected by the handlers and producer-handlers operating in District II. To the extent possible one member and alternate shall be a handler or producer-handler operating in Subdistrict D of District II.

§ 960.39 Election of initial members.

A meeting or meetings of handlers or producer-handlers shall be held in each district or subdivision of a district to elect members and alternate members to the Shippers Advisory Board. For elections to the initial Board, the meetings may be sponsored by the United States Department of Agriculture or any agency or group requested to do so by such Department.

§ 960.40 Election of succeeding members.

For the election of succeeding members and alternate members to the Board, the committee shall hold such meetings or cause them to be held prior to July 1 of each year, after the effective date of this subpart.

§ 960.41 Alternate members.

An alternate member shall, in the event of such member's absence from a meeting of the Board, act in the place and stead of such member, and in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been elected.

§ 960.42 Failure to elect.

If members and alternate members are not elected within the time and in the manner specified in §§ 960.37 and 960.38, the members of the committee may select the Board members and alternates on the basis of the representation provided in § 960.38.

§ 960.43 Function.

The Shippers Advisory Board may meet only with the committee. The Board may attend each meeting of the committee held to consider recommendations with respect to regulations of the shipment of potatoes. The Board's function shall be solely to advise the committee on matters relating to such recommendations. The Board shall have no vote with the committee in any matter.

§ 960.44 Expenses and compensation.

Board members and alternates may be reimbursed for expenses necessarily incurred by them in the performance of duties under this part.

EXPENSES AND ASSESSMENTS**§ 960.45 Expenses.**

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes under regulation handled by him as the first handler thereof during a fiscal period and the total quantity of potatoes under regulation handled by all handlers as first handlers thereof during such fiscal period.

§ 960.46 Budget.

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

§ 960.47 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles potatoes which are regulated under this part shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

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

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this subpart throughout the period it is in effect irrespective whether particular

provisions thereof are suspended or become inoperative.

§ 960.48 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided for in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the secretary, may carry over such excess into subsequent fiscal periods as a reserve; *Provided*, That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purpose specified in this subpart and shall be accounted for in the manner provided in this subpart. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal, or expiration of the term of office, of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this subpart.

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

RESEARCH AND DEVELOPMENT**§ 960.50 Research and development.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of potatoes. The expenses of such projects shall be paid from funds collected pursuant to § 960.47.

REGULATION**§ 960.54 Marketing policy.**

Prior to, or at the same time as initial recommendations are made pursuant to § 960.55, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping potatoes during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the demand and supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or handler. In determining each such marketing policy, the committee shall give due consideration to the following:

- (a) Market prices of potatoes, including prices by grades, sizes and quality in different packs, and such prices in competing areas;
- (b) Supply of potatoes by grade, size and quality in the production area and in other producing areas;
- (c) Trend and level of consumer income;
- (d) Marketing conditions affecting potato prices; and
- (e) Other relevant factors.

§ 960.55 Recommendations for regulations.

The committee, upon complying with the requirements of §§ 960.32 and 960.54, may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart, will tend to effectuate the declared policies of the Act, except that no recommendations may be made on maturities of potatoes, or skinning as classified within the U.S. Standards for Potatoes, or for any regulations to be effective prior to April 10 or subsequent to November 1 of any year.

§ 960.56 Issuance of regulations.

The Secretary shall limit by regulation the handling of potatoes whenever he finds from the recommendation and information submitted by the committee, and from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such regulation may:

- (a) Limit in any or all portions of the production area, the handling of particular grades, sizes, qualities, or packs of any or all varieties of potatoes during any period; or

PROPOSED RULE MAKING

(b) Limit the handling of particular grades, sizes, qualities, or packs of potatoes differently for different varieties, for different portions of the production area, for different containers, for different markets, for different purposes specified in § 960.58, or any combination of the foregoing, during any period; or

(c) Limit the handling of potatoes by establishing in terms of grades, sizes, or both, minimum standards of quality; or

(d) Fix the size, weight, capacity, dimension or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of potatoes; or

(e) Establish and prescribe pack specifications for the grading and packing of any variety or varieties of potatoes and require that all potatoes handled shall be packed in accordance with such pack specifications and identified by appropriate labels, seals, stamps or tags showing the particular pack specifications of the lot, affixed to the containers by the handler under the supervision of the committee or an inspector of the Federal-State Inspection Service.

§ 960.57 Minimum quantities.

The committee, with the approval of the Secretary may establish for any or all portions of the production area, minimum quantities below which handling will be free from regulations issued or effective pursuant to §§ 960.47, 960.56, 960.58, 960.62 or any combination thereof.

§ 960.58 Shipments for special purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary whenever he finds that it will tend to effectuate the declared policy of the Act, shall modify, suspend, or terminate regulations issued pursuant to §§ 960.47, 960.56, 960.57, 960.62, or any combination thereof, in order to facilitate handling of potatoes for the following purposes:

- (a) For export;
- (b) For relief or for charity;
- (c) For processing; or
- (d) For other purposes which may be specified by the committee, with the approval of the Secretary, except that potatoes for use either as potato chips or prepeeling, shall be considered as being for the same purpose as potatoes for fresh market.

§ 960.59 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 960.60 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent handling of potatoes pursuant to § 960.57 or § 960.58 from entering channels of trade other than those authorized, and rules governing the issuance and the contents of Certificates of Privilege if such certificates

are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship potatoes pursuant to §§ 960.57 and 960.58; or

(2) Handlers shall obtain inspection pursuant to § 960.62, or pay the assessment levied pursuant to § 960.47, or both, in connection with shipments made under § 960.58; or

(3) Handlers shall obtain Certificates of Privilege from the committee to handle potatoes affected or to be affected under the provisions of §§ 960.57 and 960.58.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that potatoes handled by him for the purposes stated in §§ 960.57 and 960.58 were handled contrary to the provisions of this part.

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

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

INSPECTION

§ 960.62 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to §§ 960.47, 960.56 and 960.58, or any combination thereof, no handler shall handle potatoes unless the potatoes are inspected by an authorized representative of the Federal or Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, except when relieved from such requirements pursuant to § 960.57 or § 960.58, or both.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle potatoes after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless each lot of such potatoes is inspected by an authorized representative of the Federal or Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided*, That the committee, with the approval of the Secretary, may provide for waiving inspection requirements on any potatoes in circumstances where it appears reasonably certain that after regrading, resorting or repacking, such potatoes meet the applicable quality and other standards then in effect.

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

(d) When potatoes are inspected in accordance with the requirements of

this section a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(e) The committee may recommend and the Secretary may require that any potatoes transported by motor vehicle shall be accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated.

EXEMPTIONS

§ 960.70 Procedure.

The committee may adopt, with the approval of the Secretary, the procedure pursuant to which certificates of exemption will be issued to producers.

§ 960.71 Granting exemptions.

The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee that by reason of a regulation issued pursuant to § 960.56 he will be prevented from handling as large a proportion of his production as the average proportion of production handled during the entire season, or such portion thereof as may be determined by the committee, by all producers in said applicant's immediate production area and that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control or by acts beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of potatoes specified thereon. Such certificates shall be transferred with such potatoes at time of transportation or sale.

§ 960.72 Investigation.

The committee shall be permitted at any time to make a thorough investigation of any producer's claim pertaining to exemptions.

§ 960.73 Appeal.

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

§ 960.74 Records.

(a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes handled under exemption certificates, a record of appeals for reconsideration of applications, and

such other information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 960.70 through 960.73, or any combination thereof.

REPORTS

§ 960.80 Reports.

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to the following:

(1) The quantities of potatoes received by a handler;

(2) The quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such potatoes; and

(4) Identification of the inspection certificates and the exemption certificates, if any, pursuant to which the potatoes were handled, together with the destination of each exempted disposition, and of all potatoes handled pursuant to §§ 960.57 and 960.58.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers identities or operations.

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

COMPLIANCE

§ 960.81 Compliance.

Except as provided in this subpart, no handler shall handle potatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall handle potatoes except in conformity to the provisions of this subpart.

MISCELLANEOUS PROVISIONS

§ 960.82 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or

other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 960.83 Effective time.

The provisions of this subpart or any amendments thereto shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 960.84 Termination.

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

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

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, have been engaged in the production of potatoes for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such potatoes produced for market.

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

§ 960.85 Proceedings after termination.

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

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

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

upon the members of the committee and upon the said trustees.

§ 960.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart; or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 960.87 Duration of immunities.

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

§ 960.88 Agents.

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

§ 960.89 Derogation.

Nothing contained in this subpart is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 960.90 Personal liability.

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

§ 960.91 Separability.

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

§ 960.92 Amendments.

Amendments to this subpart may be proposed from time to time by the committee or by the Secretary.

§ 960.93 Counterparts.

This agreement may be executed in multiple counterparts and when one

counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.¹

§ 960.94 Additional parties.

After the effective date hereof, any handler who has not previously executed this agreement, may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.¹

§ 960.95 Order with marketing agreement.

Each signatory handler favors and approves the issuance of an order by the Secretary regulating the handling of potatoes in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the act, such an order.¹

Copies of this notice of hearing may be procured from the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 6th day of January 1960.

F. R. BURKE,
Acting Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-214; Filed, Jan. 8, 1960;
8:50 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 218]

PIPER

Airworthiness Directives

Pursuant to the authority delegated to me by the Administrator, (§ 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring modification of the front seat belt in certain Piper PA-22 Series aircraft. The proposed directive will supersede AD 57-17-2 (23 F.R. 438).

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section, of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before February 9, 1960, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed

¹ Applicable only to the proposed marketing agreement.

in the light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a), (14 CFR Part 507), by adding the following airworthiness directive:

PIPER. Applies to PA-22 "150" and PA-22 "160" aircraft Serial Numbers 22-3218, 22-3387, 22-3388 to 22-7049 inclusive, and 22-7054.

Compliance required by April 1, 1960. Install safety belt extension, P/N 14920-2 or equivalent, on the front seat belt in order to eliminate deterioration due to heat from the rear seat heater outlet and chafing where the web attaches to the attaching lug.

(Piper Service Bulletin No. 184 covers this same subject.)

This supersedes AD 57-17-2 (23 F.R. 438).

Issued in Washington, D.C., on January 5, 1960.

B. PUTNAM,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-183; Filed, Jan. 8, 1960;
8:45 a.m.]

[14 CFR Part 514]

[Reg. Docket No. 222]

TECHNICAL STANDARD ORDERS FOR AIRCRAFT MATERIALS PARTS, PROCESSES, AND APPLIANCES

Safety Belts

Pursuant to the authority delegated to me by the Administrator § 405.27, 24 F.R. 2196) notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 514 of the regulations of the Administrator by adopting a new Technical Standard Order.

This Technical Standard Order will amend § 514.32 (21 F.R. 7720) which establishes minimum performance standards for safety belts used on civil aircraft of the United States. Proposed new material consists of an exception to NAS 802 specification, § 3.1.2 to alleviate the requirement of the six-month retesting period for synthetic materials used in webbing manufacture, since such material is resistant to the effects of humidity and aging. Section 514.32(b) is amended to require that the date of manufacture be legibly and permanently marked on the belt. The present regulation stipulates marking the belt with the serial number and/or date of manufacture.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before

February 24, 1960, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further publication as a draft release.

This amendment is proposed under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (72 Stat. 752, 775; 49 U.S.C. 1354(a), 1421).

In consideration of the foregoing it is proposed to amend Part 514 as follows: By amending § 514.32 as follows:

§ 514.32 Safety belts—TSO-C22d.

(a) *Applicability*—(1) *Minimum performance standards*. Minimum performance standards are hereby established for safety belts which are to be used on civil aircraft of the United States.¹ Safety belts manufactured for installation on civil aircraft on or after the effective date of this section, shall meet the standards of National Aircraft Standards Specification 802, revised May 15, 1950,² with the exceptions covered in subparagraph (2) of this paragraph. Belts approved under prior issuances of this section may continue to be manufactured under the earlier provisions.

(2) *Exceptions*. (i) For the purpose of this section the strengths specified in section 4.1.1 of NAS 802 shall be 1500 pounds and 3000 pounds instead of 3000 pounds and 6000 pounds.

(ii) In complying with section 4.3.2.2 of NAS 802, the curved portion of the test form may be padded with no more than one inch of medium density sponge-rubber, or equivalent, and covered with suitable fabric to simulate a person's body and clothing.

(iii) Synthetic material webbing which is not subject to loss of strength due to the influence of humidity, temperature variations, etc., need not be subjected to the first six-month retesting period specified in section 3.1.2 of NAS 802. Retesting at succeeding six-month periods will be necessary if the belt manufacturer is unable to ascertain by means of textile data available to him that the webbing is unaffected by ambient storage conditions for the period of time involved.

(b) *Marking*. (1) Each half of each safety belt shall be marked in accordance with § 514.3 except that the weight required by paragraph (c) of § 514.3 need not be shown and the rated strength of the safety belt assembly shall be shown, and

(2) In lieu of the marking requirement in paragraph (d) of § 514.3 the date of manufacture is required. The serial number may also be marked on

¹ New military safety belts, identified by an NAF, AAF, or AN drawing number, an AAF order number or other official military designation or specification numbers are also eligible for installation on all civil aircraft.

² Copies may be obtained from the National Standards Association, 616 Washington Loan and Trust Building, Washington 4, D.C.

the belt but not in lieu of the date of manufacture.

Issued in Washington, D.C., on January 5, 1960.

B. PUTNAM,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-184; Filed, Jan. 8, 1960;
8:46 a.m.]

NOTICES

DEPARTMENT OF THE TREASURY

Bureau of Customs

[TC 491.22]

TAPE AND SIMILAR RECORDING AND REPRODUCING MACHINES AND PARTS THEREOF

Tariff Classification

JANUARY 5, 1960.

In a decision of the United States Customs Court published as C.D. 2070 in the weekly Treasury Decisions (Vol. 94, No. 11), it was held that recorded tapes for a so-called "tape recorder and playback machine" that reproduces sound or replays previous recordings and also produces master disk records by means of recorded tapes were parts of articles similar to phonographs, gramophones, and graphophones and classifiable under paragraph 1542, Tariff Act of 1930. In reaching its conclusion, the court apparently found that such "tape recorder and playback machine," irrespective of its method of operation, was an article similar to the phonographs, gramophones, and graphophones provided for in paragraph 1542.

C.D. 2070 was a rehearing of the same issue before the court in C.D. 1973. The reasons given in its decision in C.D. 1973 were included by reference in C.D. 2070. The following statement is included among those reasons:

Of greatest significance, however, is that the articles named in said modified paragraph 1542, and the machine under discussion, accomplish the same end result, i.e., the reproduction of sound by means of previous recordings.

The application of the principle of the court's decision to such or similar merchandise would appear to require that machines which not only reproduce sound or replay previous recordings irrespective of their method of operation but also those which record sound in addition to reproducing it by means of previous recordings irrespective of their method of operation, such as disc recorders, wire recorders, tape recorders (not including those machines of a type chiefly used in business offices and recording on nonmagnetizable recording mediums provided for in paragraph 372 nor those machines which are something more than the named articles in paragraph 1542, such as the radio-phonograph

combination, the subject of C.A.D. 369 (35 C.C.P.A. 39)) be classified as articles similar to phonographs, gramophones, and graphophones, and parts thereof, under paragraph 1542, Tariff Act of 1930, as amended, with duty at the rate of 15 percent ad valorem. It is currently the practice to classify electrically-operated disc, wire, and tape recording and play-back machines, not including those mentioned which are provided for in paragraph 372, in chief value of metal, as articles having as an essential feature an electrical element or device, wholly or in chief value of metal, not specifically provided for, under paragraph 353, Tariff Act of 1930, and dutiable at the rate of 13¾ percent ad valorem under that paragraph as modified.

Such an application of the court's decision would further appear to necessitate the classification under paragraph 1542, with the assessment of duty at the rate of 15 percent ad valorem, of parts, not specially provided for, of such machines which record and reproduce sound, such as recording wires, whether or not bearing recordings, in chief value of metal, currently classified under paragraph 353, and assessed with duty at the rate of 13¾ percent ad valorem.

In addition, the application of the principle of C.D. 2070, would appear to necessitate the classification of parts, not specially provided for, not in chief value of metal, of such machines which record and reproduce sound under the provisions of paragraph 1542, with duty at the rate of 15 percent ad valorem, which are now classified as articles wholly or in chief value of cellulose acetate, not specially provided for, under paragraph 31, with duty at the rate of 17 percent ad valorem (example—blank record discs), or which are now classified as manufactures wholly or in chief value of wood, not specially provided for, under paragraph 412, with duty at the rate of 16¾ percent ad valorem (example—wooden cases), or which are now classified under other paragraphs according to their component material of chief value usually at a higher rate than 15 percent ad valorem.

Notice is hereby given that the Bureau of Customs has under consideration the propriety of advising collectors that the existing uniform practices of classifying wire, disc, and tape recorders and other sound recording and reproducing mechanisms, and parts of the foregoing require modification in view of the principles of C.D. 2070.

Any person desiring to make representations as to the applicability of the principles of C.D. 2070 to a product he is importing or manufacturing should address a communication to the Commissioner of Customs, Washington 25, D.C., naming the product, giving its specifications and component material of chief value, describing how it functions and operates, and stating where and how it is chiefly used in the United States.

To assure consideration before the issuance of the instructions referred to above such communications must be received in the Bureau not later than 30

days from the date of publication of this notice. No hearings will be held.

[SEAL] LAWTON M. KING,
Acting Commissioner of Customs.

[F.R. Doc. 60-203; Filed, Jan. 8, 1960;
8:48 a.m.]

DEPARTMENT OF COMMERCE

Bureau of Foreign Commerce

[Filed 23-659 etc.]

A/B LABECO ET AL.

Order Temporarily Denying Export Privileges

In the matter of A/B Labeco, Kungsgatan 4A, Stockholm C, Sweden, and Kurfurstendamm 26a, West Berlin, Germany; Sven Hakanson, trading as Elmetrik, Sovdeborgsgatan 31, Malmoe, Sweden; Lauter G.m.b.H., Kurfurstendamm 26a, West Berlin, Germany, and Orsoy-Niederrhein, West Germany; Vitromecano A/B, Kungsgatan 4A Stockholm C, Sweden; Turesson Trading Co. A/B, Kaglestigen 6, Bromma, Stockholm, Sweden; A. B. Herlasteel, 34-B Artillerigatan, Stockholm, Sweden; Rederi A/B Lauter Shipping, 34-B Artillerigatan, Stockholm, Sweden, Respondents; Files 23-659, 3-130; 23-679.

The Director, Investigation Staff, Bureau of Foreign Commerce, U.S. Department of Commerce, pursuant to the provisions of § 382.11 of the Bureau of Foreign Commerce Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations), has applied to the Compliance Commissioner for an order temporarily denying to A/B Labeco, Sven Hakanson, trading as Elmetrik, Lauter G.m.b.H., Vitromecano A/B, Turesson Trading Co. A/B, A. B. Herlasteel, and Rederi A/B Lauter Shipping, the respondents herein, all United States export privileges pending the continued investigation of the facts giving rise to this application and the commencement of such administrative proceedings as may be deemed proper against the respondents.

The Compliance Commissioner, having considered the evidence submitted in support of said application, has reported the facts upon which the application is based and has recommended that the application be granted. After careful consideration of the report and the evidence submitted together therewith, it is found that the evidence reasonably supports the conclusion that the respondents Aktiebolaget Labeco and Elmetrik have been and are engaged in a continuing conspiracy to procure materials exported from the United States and thereafter to cause them to be transshipped to unauthorized destinations. It is found also that the other respondents named herein are affiliates or subsidiaries of Aktiebolaget Labeco and Elmetrik and that it is necessary to make them subject to this order so that evasion may be prevented. It appears from the evidence that unless an order is entered and published denying temporarily to the respondents all export privileges, they may continue to obtain such commodities and thereafter

NOTICES

cause them to be transshipped in violation of the applicable regulations. Now, having concluded that it is necessary to further the foreign policy of the United States and because of the significance to the national security of the respondents' conduct, and believing that the public interest requires that this temporary order be issued: *It is hereby ordered:*

(1) The respondents, A/B Labeco, Sven Hakanson, trading as Elmetrik, Lauter G.m.b.H., Vitromecano A/B, Turesson Trading Co. A/B, A. B. Herlasteel, and Rederi A/B Lauter Shipping, their officers, agents, servants, and employees, and all persons and firms associated with them, are hereby denied all privileges of participating directly or indirectly in any manner, form, or capacity in any exportation of any commodity or technical data from the United States to any foreign destination, including Canada. Without limitation of the generality of the foregoing, participation in an exportation shall include and prohibit respondents' participation (a) as parties or as representatives of a party to any validated export license application; (b) in the obtaining or using of any validated or general export license or other export control document; (c) in the receiving, ordering, buying, selling, delivering, or disposing of any commodities in whole or in part exported or to be exported from the United States; and (d) in the financing, forwarding, transporting, or other servicing of exports from the United States;

(2) Such denial of export privileges shall apply not only to the said respondents, but also to any other person, firm, corporation, or business organization with which the respondents may be now or hereafter related by ownership, affiliation, control, position of responsibility, or other connection in the conduct of trade which may involve exports from the United States or services connected therewith;

(3) This order shall take effect forthwith and shall remain in effect pending the final disposition of this proceeding unless it is hereafter amended, modified, or vacated;

(4) No person, firm, corporation, or other business organization, within the United States or elsewhere, and whether or not engaged in trade relating to exports from the United States, without prior disclosure of the facts to, and specific authorization from the Bureau of Foreign Commerce, shall directly or indirectly in any manner, form, or capacity (a) apply for, obtain, transfer, or use any license, shipper's export declaration, bill of lading, or other export control document relating to any exportation of commodities from the United States, or (b) order, receive, buy, sell, use, deliver, dispose of, finance, transport, forward, or otherwise service or participate in an exportation from the United States, or in a re-exportation of any commodity exported from the United States, with respect to which any of the persons or companies within the scope of paragraphs (1) and (2) hereof may receive any benefit or have any interest or participation of any kind or nature, direct or indirect;

(5) A certified copy of this order shall be served upon each of the respondents.

(6) In accordance with the provisions of § 382.11(c) of the Export Regulations, the respondents may move at any time to vacate or modify this temporary denial order by filing an appropriate motion therefor, supported by evidence, with the Compliance Commissioner and may request oral hearing thereon, which, if requested, shall be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

Dated: December 31, 1959.

JOHN C. BORTON,
Director,
Office of Export Supply.

[F.R. Doc. 60-191; Filed, Jan. 8, 1960;
8:46 a.m.]

ATOMIC ENERGY COMMISSION

SPECIAL NUCLEAR MATERIAL

Notice of Proposed Lease Agreement

This Notice amends a similarly entitled Notice published in the FEDERAL REGISTER on December 16, 1959, 24 F.R. 10164-10165.

1. Delete the second sentence of said Notice and substitute in lieu thereof the following: "The new Agreement will be put into use on or about March 1, 1960."

2. Delete the fourth sentence of said Notice and substitute in lieu thereof the following: "Any comments on the new Lease Agreement should be addressed to that office so as to be received prior to February 15, 1960."

3. Delete the fifth sentence of said Notice and substitute in lieu thereof the following: "The new Lease Agreement must be executed by each licensee desiring to assume the lease responsibilities for special nuclear material to be received either directly from the Commission or from another licensee after February 29, 1960."

Dated at Germantown, Md., this 5th day of January 1960.

For the Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

[F.R. Doc. 60-193; Filed, Jan. 8, 1960;
8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12769; FCC 60M-9]

STANLEY BLUMENTHAL

Order Continuing Hearing

In the matter of Stanley Blumenthal, 215 Cozine Avenue, Brooklyn 7, New York, Docket No. 12769; application for renewal of Radiotelegraph Second Class Operator License No. T2-2-1626.

The Hearing Examiner having under consideration a joint petition by the Chief of the Commission's Field Engineering and Monitoring Bureau and the Associate General Counsel, filed Decem-

ber 28, 1959, requesting that hearing in the above-entitled proceeding, which heretofore was scheduled to commence on January 6, 1960, be continued without date;

It appearing that respondent consents to the continuance herein sought, and that good cause exists to warrant the granting thereof;

It is ordered, This 4th day of January 1960, that the petition is granted and that hearing in the above-entitled proceeding is continued indefinitely.

Released: January 5, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-205; Filed, Jan. 8, 1960;
8:49 a.m.]

[Docket Nos. 13338, 13339; FCC 59-1321]

DIXIE RADIO, INC., AND RADIO NEW SMYRNA, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Dixie Radio, Inc., Brunswick, Georgia, Requests: 1550 kc, 1 kw, Day, Docket No. 13338, File No. BP-12399; Radio New Smyrna, Inc., New Smyrna Beach, Florida, Requests: 1550 kc, 250 w, Day, Docket No. 13339, File No. BP-12796; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 29th day of December 1959;

The Commission having under consideration the above-captioned and described applications;

It appearing that except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated June 26, 1959, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of either of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications at this time and requiring a hearing on the particular issues as hereinafter specified; and

It further appearing that by letter dated July 10, 1959, the Commission notified Dixie Radio, Inc. and the licensee of Radio Station WPAP (formerly WFBF) that in its letter of June 26, 1959,

the proposal of Dixie Radio, Inc., File No. BP-12399, was listed in Appendix 8 thereof as "Panama City, Florida" whereas the correct location is "Brunswick, Georgia"; and that the above letter correcting the inaccuracy is hereby incorporated in the instant order; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the instant proposals and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations involved in interference between the proposals.

3. To determine whether the interference received by either proposal from the other proposal herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

4. To determine whether the instant proposal of Dixie Radio, Inc. would involve objectionable interference with Station WPAP, Fernandina Beach, Florida, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the antenna system proposed by Radio New Smyrna, Inc. would constitute a hazard to air navigation.

6. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the instant applications should be granted.

It is further ordered, That Rowland Radio, Inc., licensee of Station WPAP, Fernandina Beach, Florida, is made a party to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be

heard, the instant applicants and party respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 6, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-206; Filed, Jan. 8, 1960;
8:49 a.m.]

[Docket Nos. 12833, 12834; FCC 60M-10]

**GEORGE T. HERNREICH AND
PATTESON BROTHERS**

Order Continuing Hearing

In re applications of George T. Hernreich, Jonesboro, Arkansas, Docket No. 12833, File No. BPCT-2538; Alan G. Patteson, Jr., and Mathew Carter Patteson, d/b as Patteson Brothers, Jonesboro, Arkansas, Docket No. 12834, File No. BPCT-2567; for construction permits for new television broadcast stations (Channel 8).

The Hearing Examiner having under consideration a joint motion filed on January 4, 1960, by George T. Hernreich and Patteson Brothers, requesting that the hearing in the above-entitled proceeding presently scheduled for January 5, 1960, be continued to January 21, 1960; and

It appearing that the applicants are presently engaged in negotiations looking toward the dismissal of one application and it is expected that a petition requesting dismissal of such application will be filed within the next few days;

It further appearing that counsel for the Broadcast Bureau, the only other party, has informally consented to immediate consideration and grant of the instant motion;

It is ordered, This 4th day of January 1960, that the motion be and it is hereby granted; and the hearing in the above-entitled proceeding be and it is hereby continued to January 21, 1960.

Released: January 5, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-207; Filed, Jan. 8, 1960;
8:50 a.m.]

[Docket No. 13326; FCC 60M-14]

KDEF BROADCASTING CO. (KDEF)

Order Scheduling Hearing

In re application of KDEF Broadcasting Co. (KDEF), Albuquerque, New Mexico, Docket No. 13326, File No. BP-12293; for construction permit.

It is ordered, This 4th day of January 1960, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on March 24, 1960, in Washington, D.C.

Released: January 5, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-208; Filed, Jan. 8, 1960;
8:50 a.m.]

[Docket Nos. 12957-12959; FCC 60M-17]

PIONEER BROADCASTING CO. ET AL.

Order Continuing Hearing

In re applications of Pioneer Broadcasting Company, Spanish Fork, Utah, Docket No. 12957, File No. BP-11678; Jack E. Falvey and Harry Saxe, d/b as Fortune Broadcasting, Salt Lake City, Utah, Docket No. 12958, File No. BP-12239; United Broadcasting Company (KVOG), Ogden, Utah, Docket No. 12959, File No. BP-12260; for construction permits.

The Hearing Examiner having under consideration a petition for postponement of various procedural dates, filed by United Broadcasting Company on December 21, 1959;

It appearing that the time for filing objections has expired, and no objection has been filed to a grant of the petition;

It is ordered, This 5th day of January 1960, that the above petition is granted, and the dates designated for hearing and various procedural steps herein are postponed as follows:

	From	To
Date for preliminary exchange of information.	Dec. 21, 1959	Jan. 4, 1960
Date for exchange of exhibits constituting direct cases of applicants.	Dec. 29, 1959	Jan. 12, 1960
Date for hearing.....	Jan. 6, 1960	Jan. 20, 1960

Released: January 5, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-209; Filed, Jan. 8, 1960;
8:50 a.m.]

[Docket No. 13332; FCC 60M-15]

SUBURBAN BROADCASTERS

Order Scheduling Hearing

In re application of Patrick Henry, David D. Larsen, Steward B. Kett and

James B. Glenn, Jr., d/b as Suburban Broadcasters, Elizabeth, New Jersey, Docket No. 13332, File No. BPH-2731; for construction permit.

It is ordered, This 4th day of January 1960, that David I. Kraushaar will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on March 10, 1960, in Washington, D.C.

Released: January 5, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-210; Filed, Jan. 8, 1960;
8:50 a.m.]

HOUSING AND HOME FINANCE AGENCY

Public Housing Administration

RATIFICATION, CONFIRMATION, AND VALIDATION OF ACTIONS

Effective January 2, 1960, all regulations, rules, orders, policies, determinations, directives, authorizations, permits, privileges, requirements, designations, and other actions which were issued or taken by or under the authority of the Commissioner of the Public Housing Administration and which were in effect on December 31, 1959, are hereby continued in full force and effect until modified, superseded, or repealed. Any actions taken in accordance with the aforesaid on January 1, 1960, are hereby ratified.

Approved: January 5, 1960.

[SEAL] LAURENCE DAVERN,
Acting Commissioner.

[F.R. Doc. 60-186; Filed, Jan. 8, 1960;
8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 6, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35931: *Paint and related articles between points in IFA territory.* Filed by Illinois Freight Association, Agent (No. 82), for interested rail carriers. Rates on paint, paint materials, and related articles, in straight or mixed carloads between points in Illinois Freight Association territory.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 27 to Illinois Freight Association tariff I.C.C. 917.

FSA No. 35932: *Fertilizer and fertilizer materials—IFA territory to the south.* Filed by Illinois Freight Association,

Agent (No. 65), for interested rail carriers. Rates on fertilizer and fertilizer materials as described in the application, in carloads from points in Illinois Freight Association territory to points in southern territory.

Grounds for relief: Short-line distance formula, grouping, and relief line arbitrations.

Tariff: Illinois Freight Association tariff I.C.C. 928.

FSA No. 35934: *Substituted service—C&NW for Hennepin Transportation Co., Inc.* Filed by Middlewest Motor Freight Bureau, Agent (No. 211), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between Butler, Wis., and St. Paul, Minn., on traffic originating at or destined to points in the territories described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 121 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

FSA No. 35935: *Substituted service—CRI&P for Southern-Plaza Express, Inc.* Filed by Middlewest Motor Freight Bureau, Agent (No. 212), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between Chicago (Burr Oak), Ill., on the one hand, and Kansas City (Armourdale), Kans., Oklahoma City, Okla., Dallas, Fort Worth, and Houston, Tex., on the other, between Kansas City (Armourdale), Kans., on the one hand, and St. Louis, Mo., Oklahoma City, Okla., Dallas and Houston, Tex., on the other, and between St. Louis, Mo., on the one hand, and Dallas and Houston, Tex., on the other, on traffic originating at or destined to points in the territories described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 121 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

AGGREGATE-OF-INTERMEDIATES

FSA No. 35933: *Fertilizer and fertilizer materials—IFA territory to the south.* Filed by Illinois Freight Association, Agent (No. 85), for interested rail carriers. Rates on fertilizer and fertilizer materials as described in the application, in carloads from points in Illinois Freight Association Territory to points in southern territory.

Grounds for relief: Maintenance of depressed rates to meet market and rail carrier competition.

Tariff: Illinois Freight Association tariff I.C.C. 928.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-188; Filed, Jan. 8, 1960;
8:45 a.m.]

[Rev. S.O. 562, Taylor's I.C.C. Order 111]

TOLEDO SHORE LINE RAILROAD CO. Diversion or Rerouting of Traffic

In the opinion of Charles W. Taylor, Agent, The Detroit and Toledo Shore

Line Railroad Company, because of work-slowdown, is unable to transport traffic routed over and to points on its lines.

It is ordered, That:

(a) Rerouting traffic: The Detroit and Toledo Shore Line Railroad Company, and its connections, are hereby authorized to divert or reroute such traffic over any available route to expedite the movement, regardless of routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained: The railroads desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Notification to shippers: The carriers rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date: This order shall become effective at 12:30 p.m., December 31, 1959.

(g) Expiration date: This order shall expire at 11:59 p.m., January 15, 1960, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 31, 1959.

INTERSTATE COMMERCE
COMMISSION,
CHARLES W. TAYLOR,
Agent.

[F.R. Doc. 60-189; Filed, Jan. 8, 1960;
8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3843]

MERRIMACK-ESSEX ELECTRIC CO.

Notice of Proposed Issuance and Sale of Notes to Bank by Subsidiary to Prepay Note Held by Parent

JANUARY 4, 1960.

Notice is hereby given that Merrimack-Essex Electric Company ("Merrimack"), a wholly-owned subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act and Rules 45 and 50(a)(2) promulgated thereunder as applicable to the transactions proposed therein, which are summarized as follows:

As of December 31, 1959, Merrimack had outstanding short-term notes in an aggregate face amount of \$9,775,000, of which \$7,000,000 face amount was held

by NEES and \$2,775,000 by banks. Merrimack now proposes to issue and sell to The First National Bank of Boston \$3,750,000 face amount of notes due March 31, 1960, and use the proceeds to prepay an equal face amount of short-term notes held by NEES, maturing on the same date.

The notes to be issued may be prepaid at any time without premium, and will bear interest not in excess of the prime rate (presently 5 percent) in effect on the date of issuance. In the event that such interest rate exceeds the 5 percent interest rate borne by the notes held by NEES, the latter proposes to reimburse Merrimack for such excess interest cost.

It is stated that no State commission or Federal commission other than this Commission, has jurisdiction over the proposed transactions and that no fees or commissions are to be paid in connection therewith. Incidental services will be performed by New England Power Service Company, an affiliated service company at the actual cost thereof, which is estimated not to exceed \$800 for Merrimack and \$200 for NEES.

Notice is further given that any interested person may, not later than January 19, 1960, at 5:30 p.m., request this Commission in writing that a hearing be held in respect of the declaration, stating the nature of his interest, the reasons for such request, and the issues of fact or law which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-187; Filed, Jan. 8, 1960;
8:45 a.m.]

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