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The following Supplements are now available:

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Rules and Regulations

Title 7—AGRICULTURE

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

[Milk Order No. 72]

PART 972—MILK IN TRI-STATE MARKETING AREA

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AUTHORITY: §§ 972.0 to 972.95 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 972.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

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

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

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity speci-

fied in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than May 1, 1960.

The provisions of the said order are known to the handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued November 4, 1959, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued February 24, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective May 1, 1960, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER.

(Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011)

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

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Tri-State marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended:

DEFINITIONS

§ 972.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 972.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or such other officer or employee of the United States authorized to exercise the powers

or to perform the duties of the Secretary of Agriculture.

§ 972.3 Department of Agriculture.

"Department of Agriculture" means the United States Department of Agriculture.

§ 972.4 Tri-State marketing area.

"Tri-State marketing area", herein-after called the marketing area, means all that territory within the districts described in paragraphs (a), (b), (c), and (d) of this section, including all incorporated municipalities, military reservations, facilities, and installations, and State institutions wholly or partially within the defined districts.

(a) "Pikeville-Paintsville district" of the marketing area means the territory within the counties of Martin, Magoffin, Floyd, Johnson, and Pike, all in Kentucky.

(b) "Huntington district" of the marketing area means the territory within the counties of Boyd, Greenup, and Lawrence, in Kentucky; Lawrence County in Ohio; and the counties of Cabell and Wayne, in West Virginia.

(c) "Gallipolis-Scioto district" of the marketing area means the territory within the counties of Gallia, Meigs, Scioto, and Jackson, in Ohio; the townships of Beaver, Camp Creek, Jackson, Marion, Newton, Pee Pee, Scioto, Seal, and Union in Pike County, Ohio; Mason County in West Virginia; and Magisterial Districts 2, 3 and 8 in Lewis County, Kentucky.

(d) "Athens district" of the marketing area means the territory within Athens County, Ohio; the townships of Belpre, Marietta, Muskingum, Adams, and Waterford, in Washington County, Ohio; and Lubeck, Parkersburg, Tygart, and Williams Magisterial Districts in Wood County, West Virginia.

§ 972.5 Plant.

"Plant" means the land, buildings, surroundings, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment which is maintained and operated primarily for the receiving, handling, or processing of milk or milk products.

§ 972.6 Route.

"Route" means any delivery (including any delivery through a vendor or a sale from a plant or plant store) of any milk or milk product in the form designated as Class I disposition in § 972.41(a) other than delivery to any milk plant.

§ 972.7 Fluid milk plant.

"Fluid milk plant" means any plant from which a route is operated within the marketing area, except a plant which is a nonfluid milk plant pursuant to § 972.61.

§ 972.8 Supply plant.

Subject to the provisions of § 972.61 "supply plant" means any plant not a fluid milk plant pursuant to § 972.7, from which a total of 25,000 pounds or more of

milk, or an amount of skim milk and butterfat from which 25,000 pounds or more of Class I milk is derived, is delivered during the month in fluid form from such plant to any plant(s) which is a fluid milk plant pursuant to § 972.7: *Provided*, That any plant which qualified as a supply plant for at least three of the months of October through January, inclusive, may retain such status during the months of February through September, inclusive, next following for the purposes of § 972.44(c) without meeting the minimum delivery requirements described above in this section during the latter months.

§ 972.9 District designation of fluid milk plants and supply plants.

(a) A fluid milk plant or supply plant located in the marketing area is a district plant for the district in which it is located.

(b) A fluid milk plant or supply plant located outside the marketing area is a district plant for the district in which the nearest place listed pursuant to § 972.58 is located or is adjacent thereto.

§ 972.10 Nonfluid milk plant.

"Nonfluid milk plant" means any plant which is not a fluid milk plant or supply plant and is utilized for receiving, processing or distributing milk or milk products.

§ 972.11 Person.

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

§ 972.12 Producer.

"Producer" means a person other than a producer-handler who produces milk under a dairy farm inspection permit or equivalent certification given by a duly constituted health authority for the production of milk for fluid consumption, which milk is:

(a) Received at a fluid milk plant or supply plant (including milk caused to be delivered to such plant by a cooperative association which is not the handler for such milk); or

(b) Diverted by a handler for his account to a nonfluid milk plant during April, May, June, or July.

§ 972.13 Handler.

"Handler" means any person in his capacity as the operator of a fluid milk plant or supply plant.

§ 972.14 Producer-handler.

"Producer-handler" means any person who produces milk, operates a fluid milk plant and receives no milk from other dairy farmers.

§ 972.15 Cooperative association.

"Cooperative association" means any cooperative association of producers, duly organized as such under the laws of any state, which the Secretary determines, after application by the association:

(a) To be qualified under the standards set forth in the act of Congress of

February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have its entire organization and all of its activities under the control of its members; and

(c) To be currently engaged in making collective sales of or marketing milk or its products for its members.

§ 972.16 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk produced by one or more producers and (a) received at a fluid milk plant or supply plant directly from producers, or (b) diverted from a fluid milk plant or supply plant to a nonfluid milk plant in accordance with the conditions set forth in § 972.12.

§ 972.17 Other source milk.

"Other source milk" means skim milk or butterfat contained in:

(a) Receipts during the month in the form of milk or milk products designated in § 972.41(a) excluding: (1) Receipts of such milk or milk products from a fluid milk plant or supply plant, (2) producer milk;

(b) Milk products other than those in a form designated in § 972.41(a) from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

MARKET ADMINISTRATOR

§ 972.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 972.21 Powers.

The market administrator shall have the following powers with respect to this Part 972:

(a) To administer its terms and provisions;

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

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

(d) To recommend amendments to the Secretary.

§ 972.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this Part 972, including, but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to

enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 972.85:

(1) The cost of his bond and of the bonds of his employees;

(2) His own compensation; and

(3) All other expenses, except those incurred under § 972.84, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who after the date upon which he is required to perform such acts, has not made:

(1) Reports pursuant to § 972.30 or § 972.31; or

(2) Payments pursuant to §§ 972.80 through 972.87;

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

(h) Upon request, supply on or before the 25th day after the end of each month to each association of producers with respect to producers whose membership in such association has been verified by the market administrator, a record of the pounds of milk received by each handler from member producers and the class utilization of such milk. For the purpose of this report such member milk shall be prorated to each class in the proportions that the total receipts of milk from producers by such handler were classified in each class;

(i) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and

(j) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 5th day after the end of such month, the class prices and butterfat differentials computed pursuant to §§ 972.50 through 972.55; and

(2) On or before the 12th day after the end of such month, the uniform prices computed pursuant to § 972.71 and the butterfat differential computed pursuant to § 972.82.

REPORTS, RECORDS, AND FACILITIES

§ 972.30 Reports of receipts and utilization.

On or before the 5th day after the end of each month each handler, except a

producer-handler, shall report to the market administrator for each of the plants with respect to which he is a handler for such month, and for each accounting period within the month, in the detail and on the forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and the quantities of butterfat contained in (or used in the production of, as the case may be) producer milk received at the plant or diverted therefrom, other source milk, and milk and milk products received from any other fluid milk plant(s) and supply plant(s), and their respective sources;

(b) The utilization of such milk and milk products;

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe; and

(d) Each handler who submits reports on the basis of accounting periods of less than a month shall submit a summary report of the same information for the entire month.

§ 972.31 Other reports.

Handlers shall submit other reports as follows:

(a) The intention to receive other source milk shall be reported by the receiving handler on or before the first day other source milk is received and the intention to discontinue such receipts shall be reported on or before the last day such milk is received;

(b) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may request;

(c) On or before the 20th day after the end of each month each handler shall submit to the market administrator such handler's producer payroll for the month, which shall show:

(1) The total pounds of milk received from each producer and cooperative association and the total pounds of butterfat contained in such milk,

(2) The amount of payment to each producer and cooperative association, and

(3) The nature and the amount of any deductions and charges involved in the payments to each producer and cooperative association.

§ 972.32 Records and facilities.

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

(a) The receipt and utilization, in whatever form, of all skim milk and butterfat handled;

(b) The weights, samples, and tests for butterfat and for other content of all skim milk and butterfat handled;

(c) Payments to producers and cooperative associations of producers; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and each milk product on hand at the beginning and at the end of each month.

§ 972.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 972.40 Skim milk and butterfat to be classified.

Skim milk and butterfat required to be reported pursuant to § 972.30 shall be classified each month by the market administrator in the classes set forth in § 972.41 subject to the provisions of §§ 972.42 through 972.46.

§ 972.41 Classes of utilization.

Subject to the conditions set forth in §§ 972.42 through 972.46, the skim milk and butterfat described in § 972.40 shall be classified by the market administrator on the basis of the following classes:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat: (1) Disposed of (except as provided in paragraph (c) (2) and (3) of this § 972.41) in fluid form as milk, skim milk, buttermilk, flavored milk, and milk drink; (2) disposed of in the form of fluid sweet or cultured sour cream, any mixture of cream and milk (or skim milk) in fluid or whipped (aerated) form containing not less than 6 percent of butterfat not specified in Class II milk or Class III milk, and eggnog; (3) used to produce concentrated milk (excluding any product named in paragraph (b) or (c) of this section as Class II milk or Class III milk) for fluid consumption; and (4) not specifically accounted for as Class II milk or Class III milk;

(b) Class II milk shall be all skim milk and butterfat used to produce ice cream, ice cream mix, frozen desserts, and cottage cheese;

(c) Class III milk shall be all skim milk and butterfat (1) used to produce butter, frozen cream, spray process and roller process nonfat dry milk, all cheese (other than cottage cheese), evaporated and condensed milk (or skim milk) either in bulk or in hermetically sealed cans, any mixture disposed of in containers or dispensers under pressure for the purpose of dispensing whipped or aerated product, and any other milk product not specified in paragraph (a) or (b) of this section; (2) skim milk and buttermilk specifically accounted for as dumped or

disposed of for animal feed; (3) disposed of as bulk skim milk to any manufacturer of candy, soup, or bakery products who does not dispose of milk in fluid form; (4) in actual plant shrinkage of producer milk computed pursuant to § 972.42(d) but not in excess of 2 percent thereof; (5) in actual plant shrinkage of other source milk computed pursuant to § 972.42(d); and (6) in inventory on hand at the end of the month in the form of milk products listed in paragraph (a) of this section.

§ 972.42 Shrinkage.

The market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in producer milk and in other source milk in the following manner:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, by combining the shrinkage thereof for all fluid milk plants and supply plants operated by the handler, and

(b) Prorating the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section, between producer milk and other source milk at his fluid milk plants and supply plants after deducting from the total receipts therein the receipts from fluid milk plants and supply plants of other handlers.

§ 972.43 Responsibility of handlers and reclassification of milk.

All skim milk and butterfat shall be Class I milk, unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. Any skim milk or butterfat classified (except that transferred to a producer-handler) in one class shall be reclassified if used or re-used by such handler or by another handler in another class.

§ 972.44 Transfers.

(a) Skim milk or butterfat transferred from a fluid milk plant (including diverted milk, in the case of movements to nonfluid milk plants under subparagraph (3) of this paragraph) as any item listed in § 972.41(a) shall be classified as follows:

(1) If transferred to another fluid milk plant or supply plant (except the plant of a producer-handler), it shall be classified as Class I milk unless utilization in another class is reported to the market administrator by both handlers pursuant to § 972.30: *Provided*, That skim milk or butterfat assigned to a particular class shall be limited to the amount thereof remaining in such class in the transferee-plant after the subtraction of other source milk and inventory pursuant to § 972.46 and the classification of any transfers pursuant to paragraph (b) of this section: *And provided further*, That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified so as to allocate the greatest possible Class I milk utilization (and thereafter the greatest Class II utilization) possible to the producer milk of both handlers.

(2) If transferred to a producer-handler, it shall be Class I milk; and

(3) If transferred (including by diversion) to a nonfluid milk plant, it shall be Class I milk unless:

(i) Other utilization is mutually indicated in writing to the market administrator by both the transferor and transferee on or before the 5th day after the end of the month within which such transfer was made;

(ii) The transferee-plant maintains books and records showing utilization of all skim milk and butterfat at his plant which are made available if requested by the market administrator for audit; and

(iii) Such transferee-plant had actually used not less than an equivalent amount of skim milk or butterfat in the use indicated in such statement: *Provided*, That if such transferee-plant had not actually used an equivalent amount of skim milk or butterfat in such indicated use, the remaining balance shall be classified in the next highest-prices available class of utilization as if the classes of utilization set forth in § 972.41 were applicable at such transferee-plant.

(b) Except as provided in paragraph (c) of this section, skim milk and butterfat transferred in the form of any item listed in § 972.41(a) from a supply plant to a fluid milk plant or to another supply plant shall be classified as reported to the market administrator by both handlers on or before the 5th day after the end of the month within which such transfer was made: *Provided*, That the sum of the amounts assigned as Class I milk for any month during the period October through January, inclusive, to all supply plants supplying a fluid milk plant shall not result in the classification as Class II milk and Class III milk of more than 10 percent of the quantity of milk received directly from producers at such fluid milk plant during the month, and if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I milk utilization to the producer milk of both handlers.

(c) During each of the months of February through September, inclusive, a handler operating a fluid milk plant may allocate Class I milk to a supply plant(s) which transferred milk to such fluid milk plant for at least three of the months of October through January immediately preceding even though such milk is not transferred physically to such fluid milk plant during the current month: *Provided*, That the pounds to be subtracted from Class I milk and so allocated to any supply plant for the current month in the period February through September, inclusive, when added to any quantities actually transferred from such supply plant to such fluid milk plant during the current month and which are assigned to Class I milk pursuant to paragraph (b) of this section, shall not exceed the least of the following amounts:

(1) The monthly average number of pounds allocated as Class I milk from such fluid milk plant to such supply plant during the preceding period October through January, inclusive;

(2) An amount computed as follows: Determine the percentage which the pounds of Class I milk described under subparagraph (1) of this paragraph bears to the monthly average pounds of Class I milk at such fluid milk plant for the preceding period October through January, inclusive; and multiply the total Class I milk at such fluid milk plant for the current month by such percentage; and

(3) The pounds of milk received from producers at such supply plant during the current month.

(d) Skim milk and butterfat in the form of any item listed in § 972.41(a) transferred (including diverted) from a supply plant to a nonfluid milk plant shall be classified on the same terms as movements from fluid milk plants to nonfluid milk plants pursuant to paragraph (a)(3) of this section.

§ 972.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 972.30 and compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, and Class III milk for such handler: *Provided*, That the skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 972.46 Allocation of skim milk and butterfat classified.

The classification of skim milk and butterfat in producer milk shall be determined as follows:

(a) The pounds of skim milk remaining in each class after making the following computations shall be the pounds in such class allocated to producer milk:

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk in plant shrinkage pursuant to § 972.41(c)(4);

(2) Subtract from the pounds of skim milk remaining in each class, in series beginning with the lowest-priced available class, the pounds of skim milk in other source milk;

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with the lowest-priced available class, the pounds of skim milk in beginning inventory in the form of milk and milk products listed in § 972.41(a);

(4) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received, or which were allocated pursuant to § 972.44(c), from other fluid milk plants and supply plants assigned to such classes pursuant to § 972.44;

(5) Add to the remaining pounds of skim milk in Class III milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph (a); and

(6) If the total remaining pounds of skim milk in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the remaining pounds of skim milk in each class in series be-

ginning with the lowest-priced available class. Any amount so subtracted shall be known as overage.

(b) Allocate classified butterfat to producer milk according to the method prescribed in paragraph (a) of this section for skim milk;

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

§ 972.47 Accounting periods.

A handler may account for receipts for milk, utilization and classification of milk at his plants for periods within a month in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use such accounting period.

MINIMUM PRICES

§ 972.50 Basic formula price to be used in determining class prices.

The basic formula price to be used in determining the class prices provided by §§ 972.51 through 972.53 shall be the higher of the prices determined by the market administrator pursuant to paragraphs (a) and (b) of this section computed to the nearest tenth of a cent:

(a) The average of the basic (or field) prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the months at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture:

Present Operator and Location

- Borden Co., Mt. Pleasant, Mich.
- Borden Co., New London, Wis.
- Borden Co., Orfordville, Wis.
- Carnation Co., Oconomowoc, Wis.
- Carnation Co., Richland Center, Wis.
- Carnation Co., Sparta, Mich.
- Pet Milk Co., Belleville, Wis.
- Pet Milk Co., Coopersville, Mich.
- Pet Milk Co., New Glarus, Wis.
- Pet Milk Co., Wayland, Mich.
- White House Milk Co., Manitowoc, Mich.
- White House Milk Co., West Bend, Wis.

(b) The price computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph.

(1) From the average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago, as reported by the Department of Agriculture for the month, subtract three cents, add 20 percent thereof, and then multiply by 3.5; and

(2) From the average of the carlot prices per pound of nonfat dry milk for human consumption, spray and roller process, f.o.b. manufacturing plants in the Chicago area, as published by the Department of Agriculture for the period from the 26th day of the previous month through the 25th day of the current month deduct 5.5 cents, multiply by 8.5, and then multiply by 0.965.

§ 972.51 Class I milk prices.

Subject to the provisions of §§ 972.54 through 972.57, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each handler for producer milk classified as Class I milk for the month, shall be the basic formula price determined pursuant to § 972.50 adjusted as follows:

(a) Add the following amounts for the months indicated:

	Feb., Mar., and Aug.	Apr., May, June, and July	Sept., Oct., Nov., Dec., and Jan.
Pikeville-Paintsville district plants.....	\$1.65	\$1.20	\$2.10
Huntington district plants.....	1.55	1.10	2.00
Gallipolis-Scioto district plants.....	1.45	1.00	1.90
Athens district plants.....	1.35	.90	1.80

Provided, That beginning with the month of March 1960 add the following amounts for the months indicated:

	Mar., Apr., May, June, and July	Aug., Sept., Oct., Nov., Dec., Jan., and Feb.
Pikeville-Paintsville district plants.....	\$1.30	\$1.97
Huntington district plants.....	1.20	1.87
Gallipolis-Scioto district plants.....	1.10	1.77
Athens district plants.....	1.00	1.67

(b) Add or subtract a "supply-demand adjustment" of not more than 38 cents computed as follows:

(1) Divide the total gross volume of Class I milk (adjusted to eliminate duplications due to transfers between fluid milk plants) at all fluid milk plants for the second and third preceding months by the total receipts of milk from producers at such plants during the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "Class I utilization percentage";

(2) For each full percentage point that the Class I utilization percentage is above the applicable maximum base percentage listed below increase the Class I price by 3 cents; and for each full percentage point that the Class I utilization percentage is below the applicable minimum base percentage listed below decrease the Class I price by 3 cents:

Month for which price is being computed	Base utilization percentages	
	Minimum	Maximum
January.....	103	107
February.....	103	107
March.....	99	103
April.....	95	99
May.....	93	97
June.....	87	91
July.....	77	81
August.....	68	72
September.....	64	68
October.....	68	72
November.....	70	83
December.....	94	98

§ 972.52 Class II milk prices.

Subject to the provisions of §§ 972.54 through 972.57, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each handler for producer milk classified as Class II milk for each month shall be the average of prices per hundredweight computed for such month pursuant to the formula set forth in § 972.53(a), plus 25 cents: *Provided*, That the Class II price shall not be less than the price computed pursuant to § 972.53(b).

§ 972.53 Class III milk prices.

Subject to §§ 972.54 through 972.57, the minimum price per hundredweight on a 3.5 percent butterfat content basis to be paid by each handler for producer milk classified as Class III milk for the month shall be computed as follows:

(a) For each of the months of April, May, June, and July the price for Class III milk shall be the simple average, as computed by the market administrator, of the basic (or field) prices per hundredweight ascertained to have been paid or to be paid for ungraded (manufacturing-type) milk of 3.5 percent butterfat content received from farmers during such month at the following plants:

Company and Location of plant

- M and R Dietetic Laboratories, Inc., Columbus, Ohio.
- Pickerington Creamery, Pickerington, Ohio.
- Carnation Company, Coshocton, Ohio.
- Nestles' Milk Company, Marysville, Ohio.

(b) For each month, except April, May, June, and July, the price for Class III milk shall be the basic formula price.

§ 972.54 Butterfat differentials to handlers.

If the weighted average butterfat test of producer milk which is classified in any class for any handler is more or less than 3.5 percent, there shall be added to, or subtracted from, respectively, the price for such class, for each one-tenth of one percent that such weighted average butterfat test is above or below 3.5 percent, a butterfat differential (computed to the nearest tenth of a cent) calculated by the market administrator for such class as follows:

(a) *Class I milk.* Add 1.0 cent to the butterfat differential for Class II milk computed pursuant to paragraph (b) of this section;

(b) *Class II and Class III milk.* Subtract 3 cents from the average price per pound of butter for the month as described in § 972.50(b) (1), and multiply by .119.

§ 972.55 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 972.56 Prices of milk transferred by one handler to another handler.

The price to be paid by a handler for milk transferred by him to another han-

pler in any class shall be that applicable to such class of milk at the transferor handler's fluid milk plant or supply plant, pursuant to §§ 972.51 through 972.53: *Provided*, That any hauling charge with respect thereto chargeable to producers or to cooperative associations shall not exceed that customarily applied to deliveries of such producers or associations from their farms to the transferor handler's fluid milk plant or supply plant.

§ 972.57 Location adjustment credits to handlers.

(a) The price for Class I milk at a fluid milk plant or supply plant located outside the marketing area and more than 45 miles from the nearest of the following listed places, shall be, regardless of point of sale within or outside the marketing area, the same as the price for Class I milk for the district of the marketing area in which such nearest listed place is located or is adjacent to, less a location adjustment computed as follows: 2 cents per hundredweight for each 10 miles, or major fraction thereof, up to 100 miles, and 1.5 cents per hundredweight for each 10 miles, or major fraction thereof, in excess of 100 miles, by the shortest hard-surfaced highway distance as determined by the market administrator, from such fluid milk plant to such nearest listed place:

City Hall, Huntington, W. Va.
 City Hall, Ashland, Ky.
 City Hall, Portsmouth, Ohio.
 City Hall, Jackson, Ohio.
 City Hall, Athens, Ohio.
 City Hall, Marietta, Ohio.
 City Hall, Gallipolis, Ohio.
 City Hall, Pikeville, Ky.
 City Hall, Paintsville, Ky.
 City Hall, Williamson, W. Va.

(b) The location price adjustment pursuant to this section shall apply also to milk diverted from the fluid milk plant or supply plant and classified as Class I milk.

APPLICATION OF PROVISIONS

§ 972.60 Producer-handlers.

Sections 972.40 through 972.57 and §§ 972.70 through 972.85 shall not apply to a producer-handler. Any handler who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence of his qualifications satisfactory to the market administrator, and he shall furnish similar evidence of subsequent changes in his operations that affect his qualifications. Verification by the market administrator shall be made within 5 days after the date of receipt of such evidence, and shall be effective retroactively to the date on which the applicant became so eligible, but not earlier than the first day of the month during which verification of such eligibility is made.

§ 972.61 Plants subject to other orders.

(a) A plant from which during the month less Class I milk is disposed of on routes in the marketing area than in another market where the plant would be subject to the price and pooling re-

quirements of another order issued pursuant to the Act if not subject to the price and pooling requirements pursuant to this part, shall be a nonfluid milk plant unless the Secretary determines it to be a fluid milk plant pursuant to this part.

(b) Unless the Secretary determines otherwise, any plant which qualifies as a supply plant pursuant to § 972.8 shall not be a supply plant pursuant to this part if during the month it qualifies as a fully regulated plant under another order issued pursuant to the Act and it disposes of less milk to plants regulated under this part than its combined disposition on routes in a marketing area where another order applies and to plants fully regulated under such other order.

(c) Any plant which is a nonfluid milk plant pursuant to this section shall submit such reports as the market administrator may request with respect to milk received and utilization thereof.

DETERMINATION OF UNIFORM PRICE

§ 972.70 Net obligation of handlers.

The net obligation of each handler for producer milk received by him (including milk diverted by him pursuant to § 972.11) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amount computed by multiplying pounds of overage deducted from each class pursuant to § 972.46(a) and the corresponding step of § 972.46(b) by the applicable class price;

(c) Add a reclassification charge equal to the difference between the Class I price for the current month and the Class III price for the preceding month, or the Class II price for the current month and the Class III price for the preceding month multiplied by the hundredweight of skim milk and butterfat subtracted from Class I or Class II, respectively, pursuant to § 972.46(a)(3) and the corresponding step of § 972.46(b) which are not in excess of the skim milk and butterfat remaining in Class III in the previous month after the subtractions pursuant to § 972.46(a)(4) and the corresponding step of § 972.46(b); and

(d) With respect to each hundredweight of Class I milk allocated to a supply plant(s) pursuant to § 972.44(c), there shall be added an amount computed by multiplying such hundredweight of milk by the amount, if any, by which the Class I price at the fluid milk plant exceeds the Class I price applicable at the respective supply plant.

§ 972.71 Computation of uniform prices.

For each month the market administrator shall compute for each handler a "uniform price" per hundredweight to be paid to producers and associations of producers for milk of 3.5 percent butterfat content as follows:

(a) From the value of milk computed for such handler pursuant to § 972.70 subtract, if the weighted average butterfat test of producer milk represented by

the respective value is greater than 3.5 percent, or add, if such butterfat test is less than 3.5 percent, an amount computed by: Multiplying the amount by which its weighted average butterfat test varies from 3.5 percent by the butterfat differential computed pursuant to § 972.82, and multiplying the resulting figure by the total hundredweight of such milk;

(b) Add or subtract, as the case may be, any amounts necessary to correct errors in classification for previous months as disclosed by audit of the market administrator;

(c) Adjust the resulting amount by the sum of money used in adjusting the uniform price pursuant to paragraph (f) of this section, for the previous month, to the nearest cent;

(d) Add the amount representing the total value of location adjustments on producer milk pursuant to § 972.83;

(e) Divide the result by the total hundredweight of producer milk represented by the value computed pursuant to § 972.70; and

(f) Adjust the resulting figure to the nearest cent;

(g) In case of a handler who has two or more plants at which different Class I prices apply, adjust the uniform price for each plant as provided in § 972.83.

§ 972.72 Notification to handlers.

On or before the 12th day after the end of each month, the market administrator shall notify each handler of:

(a) The amount and value of his milk in each class and the totals thereof;

(b) His uniform price at each plant; and

(c) The amounts to be paid by such handler pursuant to §§ 972.80, 972.84 and 972.85 for such month.

PAYMENTS

§ 972.80 Time and method of final payment.

Each handler shall make payment, subject to the provisions of §§ 972.81 through 972.84, for all producer milk received (including milk diverted by him pursuant to § 972.12) during each month, as follows:

(a) Except as set forth in paragraph (b) of this section, to each producer, on or before the 18th day after such month at not less than such handler's applicable uniform price for milk of 3.5 percent butterfat;

(b) To a cooperative association on or before the 16th day after such month for milk received from producers from whom such association has received written authorization to collect payment a total amount equal to not less than the sum of the individual amounts due such producers pursuant to paragraph (a) of this section;

(c) On or before the 16th day after such month each handler shall pay to each cooperative association which operates a fluid milk plant or supply plant for skim milk and butterfat received as milk or a milk product from such cooperative association during such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class by the

respective class price pursuant to §§ 972.51, 972.52, and 972.53, adjusted by the appropriate butterfat and location differentials pursuant to §§ 972.54 and 972.58: *Provided*, That payment to a cooperative association for milk classified as Class I milk (but not moved) as an interhandler transfer pursuant to § 972.44 (c) during the February–September period shall be made to such cooperative association on the basis of the difference between the Class I price and the Class III price, adjusted as provided above for butterfat test and for the location of the supply plant.

§ 972.81 Partial payments.

Handlers shall make partial payments to producers as follows:

(a) On or before the last day of each month, each handler shall make payment except as set forth in paragraph (b) of this section, to each producer at not less than such handler's uniform price of the preceding month for the milk of such producer which was received by such handler during the first 15 days of the current month; and

(b) On or before the day immediately preceding the last day of each month, each handler shall make payment to a cooperative association for milk of producers from whom such association has received written authorization to collect payment at not less than such handler's uniform price of the preceding month for all such milk which was received by such handler during the first 15 days of the current month.

§ 972.82 Butterfat differential.

The applicable uniform price to be paid each producer or cooperative association pursuant to § 972.80 shall be increased or decreased for each one tenth of one percent which the butterfat content of the milk is above or below 3.5 percent, respectively, at the rate computed by the market administrator as follows: Multiply by 1.2 the average wholesale price per pound of 92-score butter at Chicago for the month as described in § 972.50(b) (1), divide the result by 10, and round to the nearest tenth of a cent.

§ 972.83 Location adjustments to producers.

In the case of any handler who operates two or more plants at which different Class I prices apply, the uniform price to producers at each plant where a lesser than the highest of such prices applies shall be reduced by the amount that the Class I price at the plant is less than such highest Class I price.

§ 972.84 Marketing services.

(a) (1) Except as set forth in paragraph (b) of this section each handler in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 972.80(a) shall make a deduction of 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(i) All milk received from producers at a plant not operated by a cooperative association;

(ii) All milk received at a plant operated by a cooperative association from producers who are not members of such association; and

(iii) All milk received at a plant operated by a cooperative association(s) from producers who are members thereof but for whom any of the services set forth below in this paragraph is not being performed by such association(s), as determined by the market administrator.

(2) Such deduction shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling, and testing of milk received from producers and in providing for market information to producers; such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer (1) who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deduction therefor to, a cooperative association, (2) whose milk is received at a plant not operated by such association, and (3) for whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct in lieu of the deduction specified under paragraph (a) of this section from payments made pursuant to § 972.80(a) the amount per hundredweight of milk authorized by such producer and shall pay over, on or before the 15th day after the end of the month, such deduction to the association entitled to receive it under this paragraph (b).

§ 972.85 Expense of administration.

As his pro rata share of the expense incurred pursuant to § 972.22(d) each handler shall pay the market administrator, on or before the 15th day after the end of each month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, to be announced by the market administrator on or before the 12th day after the end of such month with respect to all receipts within the month of producer milk (including such handler's own production) and other source milk at his fluid milk plant or supply plant classified as Class I milk pursuant to § 972.46: *Provided*, That if a handler uses more than one accounting period within a month, the rate of payment with respect to the quantities of milk specified in this § 972.85 shall be the monthly rate multiplied by the number of accounting periods within the month or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.

§ 972.86 Errors in payments.

Whenever audit by the market administrator of a handler's reports, books, records, or accounts discloses adjustments to be made, for any reason which result in moneys due the market administrator from such handler, or due such handler from the market administrator, or due any producer or coopera-

tive association from such handler, the market administrator shall promptly notify such handler of any such amount due, and explain the basis for such adjustment; and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 972.87 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 972.80 through 972.87 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 972.88 Termination of obligation.

The provisions of this § 972.88 shall apply to any obligation under this part for the payment of money:

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

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

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

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

(d) Any obligation on the part of the market administrator to pay a handler

any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 972.90 Effective time.

The provisions of this part or any amendment of this Part 972 shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 972.91.

§ 972.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision of this part whenever he finds that this part or any provision of this part obstructs, or does not tend to effectuate, the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

§ 972.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any handler, the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, or agency, as the Secretary may designate;

(b) The market administrator, or such other person as the Secretary may designate, shall:

(1) Continue in such capacity until removed by the Secretary,

(2) From time to time account for all receipts and disbursements, and, when so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, to such person as the Secretary may direct, and

(3) If so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

§ 972.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's

office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 972.94 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this Part 972.

§ 972.95 Separability of provisions.

If any provision of this part, or the application thereof to any person or circumstances, is held invalid, the remainder of this part and the application of such provision to other persons or circumstances, shall not be affected thereby.

Issued at Washington, D.C., this 12th day of April 1960, to be effective on and after the 1st day of May 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-3433; Filed, Apr. 14, 1960; 8:46 a.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 25—PERMITS FOR ACCESS TO RESTRICTED DATA

Part 25 is amended in its entirety to revise the procedures and categories of information under the Access Permit Program. Because interested persons will not be adversely affected and because the action liberalizes the conditions under which information may be obtained, the Commission has found that good cause exists why the regulations in this part should be made effective immediately.

Pursuant to the Administrative Procedure Act, Public Law 404, 79th Cong., 2d sess., the following rules are published as a document subject to codification, to be effective upon publication in the FEDERAL REGISTER.

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GENERAL PROVISIONS

§ 25.1 Purpose.

This part establishes procedures and standards for the issuance of an Access Permit to any person subject to this part who requires access to Restricted Data relating to the civil uses of atomic energy for use in his business, trade or profession; provides for the amendment, renewal, suspension, termination and revocation of an Access Permit; and specifies the terms and conditions under which the Commission will issue the Permit.

§ 25.2 Applicability.

The regulations in this part apply to any person within or under the jurisdiction of the United States who desires access to Restricted Data for use in his business, profession or trade.

§ 25.3 Definitions.

As used in this part:

(a) "Access Permit" means a permit, issued by the Atomic Energy Commission, authorizing access by the named permittee to Restricted Data relating to the civil uses of atomic energy in accordance with the terms and conditions stated on the permit.

(b) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

(c) "Category" means a category of Restricted Data designated in Appendix "A" to the regulations in this part.

(d) "Commission" means the Atomic Energy Commission or its duly authorized representatives.

(e) "Permittee" means the holder of a permit issued pursuant to the regulations in this part.

(f) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any state or any political subdivision of, or any political entity within a state, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(g) "Restricted Data" means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Act.

§ 25.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpre-

tation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 25.5 Communications.

All communications concerning the regulations in this part, and applications filed under them, should be addressed to the Commission Operations Office listed in Appendix "B" of this part responsible for the geographical area in which (a) the applicant's principal place of business is located, or (b) the principal place where the applicant will use the Restricted Data is located.

§ 25.6 Categories of available information.

For administrative purposes the Commission has categorized Restricted Data which will be made available to permittees into two categories as set forth in Appendix "A" to this part. Top Secret information and information pertaining to the design, manufacture or utilization of atomic weapons are not included in these categories and will not be made available under this part.

§ 25.7 Specific waivers.

The Commission may, upon application of any interested party, grant such waivers from the requirements of this part as it determines are authorized by law and will not constitute an undue risk to the common defense and security.

APPLICATIONS

§ 25.11 Applications.

(a) Any person desiring access to Restricted Data pursuant to this part should submit an application (Form AEC 378), in triplicate, for an access permit to the Commission's Operations Office, listed in Appendix "B" to this part, responsible for the area in which (1) the applicant's principal place of business is located, or (2) the principal place where the applicant will use the Restricted Data is located.

(b) Where an individual desires access to Restricted Data for use in the performance of his duties as an employee, the application for an access permit must be filed in the name of his employer.

(c) Self-employed private consultants, desiring access to Restricted Data, must file the application in their own name for an individual access permit.

(d) Each application should contain the following information:

(1) Name of applicant (unincorporated subsidiaries or divisions of a corporation must apply in the name of the corporation);

(2) Address of applicant;

(3) Description of business or occupation of applicant;

(4) (i) If applicant is an individual, state citizenship.

(ii) If applicant is a partnership, state name, citizenship and address of each partner and the principal location where the partnership does business.

(iii) If applicant is a corporation or an unincorporated association, state:

(a) The state where it is incorporated or organized and the principal location where it does business;

(b) The names, addresses and citizenship of its directors and of its principal officers;

(c) Whether it is owned, controlled or dominated by an alien, a foreign corporation, or foreign government, and if so, give details.

(iv) If the applicant is acting as agent or representative of another person in filing the application, identify the principal and furnish information required under this subparagraph with respect to such principal;

(5) Total number of full-time employees;

(6) Classification of Restricted Data (Confidential or Secret) to which access is requested;

(7) Potential use of the Restricted Data in the applicant's business, profession or trade. If access to Secret Restricted Data is requested, list the specific categories by number and furnish detailed reasons why such access within the specified categories is needed by the applicant. The need for Secret information should be stated by describing its proposed use in specific research, design, planning, construction, manufacturing, or operating projects; in activities under licenses issued by the Commission; in studies or evaluations planned or underway; or in work or services to be performed for other organizations.

In addition, if access to Secret Restricted Data in category C-65 Plutonium Production is requested, the application should also include sufficient information to satisfy the requirements of § 25.15 (b) (2).

(8) Principal Location(s) at which Restricted Data will be used.

(e) Applications should be signed by a person authorized to sign for the applicant.

(f) Each application shall contain complete and accurate disclosure with respect to the real party or parties in interest and as to all other matters and things required to be disclosed.

§ 25.12 Non-eligibility.

The following persons are not eligible to apply for an access permit:

(a) Corporations not organized under the laws of the United States or a political subdivision thereof.

(b) Any individual who is not a citizen of the United States.

(c) Any partnership not including among the partners one or more citizens of the United States; or any other unincorporated association not including one or more citizens of the United States among its principal officers.

(d) Any organization which is owned, controlled or dominated by the Government of, a citizen of, or an organization organized under the laws of a country or area listed as a Subgroup A country or destination in § 371.3 (15 CFR 371.3) of the Comprehensive Export Schedule of the United States Department of Commerce.

(e) Persons subject to the jurisdiction of the United States who are not doing business within the United States.

§ 25.13 Additional information.

The Commission may, at any time after the filing of the original application and before the termination of the permit, require additional information in order to enable the Commission to determine whether the permit should be granted or denied or whether it should be modified or revoked.

§ 25.14 Public inspection of applications.

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with the regulations contained in Part 2 of this chapter.

§ 25.15 Requirements for approval of applications.

(a) An application for an access permit authorizing access to Confidential Restricted Data in the categories set forth in Appendix "A" will be approved only if the application demonstrates that the applicant has a potential use or application for such data in his business, trade or profession and has filed a complete application form.

(b) (1) An application for an access permit authorizing access to Secret Restricted Data will be approved only if the application demonstrates that the applicant has a need for such data in his business, trade or profession and has filed a complete application form.

(2) An application for an access permit authorizing access to Secret Restricted Data in category C-65 Plutonium Production will be approved only if the application demonstrates also that the applicant:

(i) Is directly engaged in a substantial effort to develop, design, build or operate a chemical processing plant or other facility related to his participation in the peaceful uses of atomic energy for which such production rate and cost data are needed; or

(ii) Is furnishing to a permittee having access to C-65 under subdivision (i) of this subparagraph, substantial scientific, engineering or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to category C-65.

PERMITS

§ 25.21 Issuance.

(a) Upon a determination that an application meets the requirements of this regulation, the Commission will issue to the applicant an access permit on Form AEC 379.

(b) An Access Permit is not a security clearance. It does not authorize any individual not having an appropriate AEC security clearance to receive Restricted Data. See § 25.24 and Part 95 of this chapter.

§ 25.22 Scope of permit.

(a) All access permits will as a minimum authorize access, subject to the terms and conditions of the access permit, to Confidential Restricted Data in categories C-44 and C-65.

(b) In addition, access permits may authorize access, subject to the terms

and conditions of the access permit, to such Secret Restricted Data as is included within the particular category or categories specified in the permit.

§ 25.23 Terms and conditions of access.

(a) Neither the United States, nor the Commission, nor any person acting on behalf of the Commission makes any warranty or other representation, express or implied, (1) with respect to the accuracy, completeness or usefulness of any information made available pursuant to an access permit, or (2) that the use of any such information may not infringe privately owned rights.

(b) The Commission hereby waives such rights with respect to any invention or discovery as it may have pursuant to section 152 of the Act by reason of such invention or discovery having been made or conceived in the course of, in connection with, or resulting from access to Restricted Data received under the terms of an access permit.

(c) Each permittee shall:

(1) Comply with all applicable provisions of the Atomic Energy Act of 1954 and with Part 95 of this chapter and with all other applicable rules, regulations and orders of the Commission;

(2) Be deemed to have waived all claims for damages under section 193 of title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with or as a result of access to Restricted Data received under the terms of the access permit;

(3) Be deemed to have waived any and all claims against the United States, the Commission and all persons acting on behalf of the Commission that might arise in connection with the use, by the applicant, of any and all information supplied by them pursuant to the access permit;

(4) Obtain and preserve in his files written agreements from all individuals who will have access to Restricted Data under his access permit. The agreement shall be as follows:

In consideration for receiving access to Restricted Data under the access permit issued by the AEC, I hereby agree to:

(a) Waive all claims for damages under section 183 of Title 35 U.S. Code by reason of the imposition of any secrecy order on any patent application, and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with or resulting from access to Restricted Data received under the terms of the access permit issued to (insert the name of the holder of the access permit).

(b) Waive any and all claims against the United States, the Commission and all persons acting on behalf of the Commission that might arise in connection with the use, by me, of any and all information supplied by them pursuant to the access permit issued to (insert the name of the holder of the access permit).

(5) Pay all established charges for personnel security clearances, AEC consulting services, publication and reproduction of documents, and such other

services as the Commission may furnish in connection with the access permit.

§ 25.24 Administration.

With respect to each permit issued pursuant to the regulations in this part, the cognizant Operations Office, will:

(a) Process all personnel security clearances requested in connection with the permit;

(b) Review the procedures submitted by the Applicant, in accordance with Part 95 of this chapter, for the safeguarding of Restricted Data; and

(c) Provide information to the permittee with respect to the sources and locations of Restricted Data available under this permit and to assist the permittee in other matters pertaining to the administration of his permit.

§ 25.25 Term and renewal.

(a) Each access permit will be issued for a two year term, unless otherwise stated in the permit.

(b) Applications for renewal shall be filed in accordance with § 25.11. Each renewal application must be complete, without reference to previous applications. In any case in which a permittee has filed a properly completed application for renewal more than thirty (30) days prior to the expiration of his existing permit, such existing permit shall not expire until the application for a renewal has been finally acted upon by the Commission.

§ 25.26 Assignment.

An access permit is non-transferable and nonassignable.

§ 25.27 Amendment.

An access permit may be amended from time to time upon application by the permittee. An application for amendment may be filed, in triplicate, in letter form and shall be signed by an individual authorized to sign on behalf of the applicant. The term of an access permit shall not be altered by an amendment thereto.

§ 25.28 Commission action on application to renew or amend.

In considering an application by a permittee to renew or amend his permit, the Commission will apply the criteria set forth in § 25.15. Failure of an applicant to reply to a Commission request for additional information concerning an application for renewal or amendment within 60 days shall result in a rejection of the application without prejudice to resubmit a properly completed application at a later date.

§ 25.29 Suspension, revocation and termination of permits.

The Commission may revoke or suspend any access permit for any material false statement in the application or in any report submitted to the Commission pursuant to the regulations in this part or because of conditions or facts which would have warranted a refusal to grant the permit in the first instance, or for violation of any of the terms and conditions of the Atomic Energy Act of 1954 or Commission rules, regulations or orders issued pursuant thereto. A permittee should request termination of his

permit when he no longer requires Restricted Data for use in his business, trade or profession.

§ 25.30 Exceptions and additional requirements.

Notwithstanding any other provision in the regulations in this part, the Commission may deny an application for an access permit or suspend or revoke any access permit, or incorporate additional conditions or requirements in any access permit, upon finding that such denial, revocation or the incorporation of such conditions and limitations is necessary or appropriate in the interest of the common defense and security or is otherwise in the public interest.

§ 25.31 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Dated at Germantown, Md., this 11th day of April 1960.

For the Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

APPENDIX A

Categories of Restricted Data Available (Including Scope Notes for Each Category)

C-44 Nuclear Technology. This category includes classified technical information concerning nuclear technology. It may contain information on the following:

a. Materials, including metals, ceramics, organic and inorganic compounds. Included are such technical areas as the technology and fabrication of fuel elements, corrosion studies, cladding techniques and radiation studies.

b. Chemistry, chemical engineering and radiochemistry of all the elements and their compounds. Included are techniques and processes of chemical separations, radioactive waste handling and feed material processing.

c. Reactor physics, engineering and technology including theory, design, criticality studies and operation of reactors, reactor systems and reactor components.

This category does not include:

a. Information which reveals or from which can be calculated actual or planned (as distinguished from design) capacities, production rates and unit costs for the plutonium production program; or

b. Information on an actual or planned reactor system which falls within the scope of the military reactor categories—C-82, 83, 84, 85 and 86.

c. Top Secret information and information concerning weapons or classified methods of isotope separation.

C-65 Plutonium Production. This category includes information on reactor, fuel element and separations technology which reveals or from which can be calculated actual or planned (as distinguished from design) capacities, production rates and unit costs for the Hanford and Savannah River production facilities.

Technology which does not reveal or enable calculation of production rates and unit costs of Hanford or Savannah River production facilities is categorized in C-44—Nuclear Technology.

APPENDIX B

Commission's Operations Offices

Albuquerque Operations Office, U.S. Atomic Energy Commission, P.O. Box 5400, Albuquerque, N. Mex.

Chicago Operations Office, U.S. Atomic Energy Commission, 9800 South Cass Avenue, Aragonne, Ill.

Hanford Operations Office, U.S. Atomic Energy Commission, P.O. Box 550, Richland, Wash.

Idaho Operations Office, U.S. Atomic Energy Commission, P.O. Box 2108, Idaho Falls, Idaho.

New York Operations Office, U.S. Atomic Energy Commission, 378 Hudson Street, New York 14, N.Y.

Oak Ridge Operations Office, U.S. Atomic Energy Commission, P.O. Box E, Oak Ridge, Tenn.

San Francisco Operations Office, U.S. Atomic Energy Commission, 518 17th Street, Oakland 12, Calif.

Savannah River Operations Office, U.S. Atomic Energy Commission, P.O. Box A, Aiken, S.C.

Geographical areas of responsibility

Arizona, Kansas, New Mexico, Oklahoma, and Texas.

Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Alaska, Oregon, and Washington.

Colorado, Idaho, Montana, Utah, and Wyoming.

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Panama Canal Zone, Puerto Rico, Tennessee, Virginia, Virgin Islands and West Virginia.

California, Hawaii, Nevada, and U.S. Pacific Territories.

Alabama, Florida, Georgia, North Carolina, and South Carolina.

[F.R. Doc. 60-3445; Filed, Apr. 14, 1960; 8:48 a.m.]

PART 95—SAFEGUARDING OF RESTRICTED DATA**External Transmission of Documents and Material**

Notice is hereby given of amendment of the Commission's regulations relating to the transmission of Restricted Data under this Part. The amendment is designed to permit the transmission of Confidential material by first class mail or certified mail. In addition, the types of express services that may be used for transmitting either Secret or Confidential material are specified. Because the Atomic Energy Commission has issued a substantial number of access permits, and because interested persons will not be adversely affected, the Commission has found that good cause exists why the regulations in this part should be made effective without the customary 30 day period of notice. Effective upon publication in the FEDERAL REGISTER, § 95.33(d) is amended to read:

(d) *Methods of transportation.* (1) Secret documents and material shall be transported only by one of the following methods:

- (i) Registered mail.
- (ii) Railway or air express in "Armed Guard Service" or "Armed Surveillance Service".
- (iii) Individuals possessing appropriate AEC security clearance who have been given written authority by their employers.

(2) Confidential documents and material shall be transported by one of the methods set forth in subparagraph (1) of this paragraph or by one of the following methods:

- (i) Certified or first-class mail, if approved by the Manager of Operations administering the permit. Certified or first-class mail may not be used in any transmission of Confidential documents

to Alaska, Hawaii, the Canal Zone, Puerto Rico, or any United States territory or possession.

(ii) Railway or air express "Protective Signature Service;" railway express "Recorded Tally Service;" airlines "Protective Signature Service;" when available; rail or motor vehicles in sealed car or sealed van service; or services providing equivalent protection.

(iii) Material in less than carload, truckload, or planeload lots, by regular commercial carrier when the container and its contents weigh more than 500 pounds and such container is locked and sealed.

Dated at Germantown, Md., this 11th day of April 1960.

For the Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

[F.R. Doc. 60-3446; Filed, Apr. 14, 1960; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE**Chapter III—Federal Aviation Agency****SUBCHAPTER E—AIR NAVIGATION REGULATIONS**

[Airspace Docket No. 59-WA-418]

PART 600—DESIGNATION OF FEDERAL AIRWAYS**Modification of Federal Airways and Associated Control Areas***Correction*

In F.R. Doc. 60-3198, appearing at page 3022 of the issue for Friday, April 8, 1960, the word "Clay" in the third line of paragraph 2. (a) should read "City".

Title 19—CUSTOMS DUTIES**Chapter I—Bureau of Customs, Department of the Treasury**

[T.D. 55099]

PART 8—LIABILITY FOR DUTIES; ENTRY OF IMPORTED MERCHANDISE**Stainless Steel Table Flatware**

Additional Invoicing Information, Customs Regulations Amended; Requirement for additional invoicing information on customs invoices of stainless steel table flatware by T.D. 54574, revoked. Sections 8.13 and 8.15, Customs Regulations, amended.

As published in the FEDERAL REGISTER on December 29, 1959 (24 F.R. 10880), amendments to Part 30 of Title 15, Code of Federal Regulations, provide for the preparing of customs entry forms and the furnishing of "statistical information on import entry and withdrawal forms (customs Forms 7501, 7502, etc.) filed on or after January 1, 1960," by using "United States Import Duties Annotated for Statistical Reporting" in place of Schedule A, "Statistical Classification of Commodities Imported into the United States". Additionally, section 8.8 of the Customs Regulations has been recently amended (25 F.R. 1016) to correspond to such change so as to require the description of merchandise on entries and on invoices for customs purposes in terms of "U.S.I.D. Annotated".

These amendments of regulations have made unnecessary the additional information required on customs invoices of stainless steel table flatware by T.D. 54574 (1958), 23 F.R. 2794.

Accordingly, the requirement in T.D. 54574 for additional information on invoices of stainless steel table flatware is hereby revoked and the Customs Regulations are amended as follows:

Section 8.13(h) is amended by deleting "Stainless Steel Table Flatware" and "T.D. 54574" from the list of merchandise for which additional invoice information is required.

Section 8.15(c)(1) is amended by deleting "except in the case of articles specified in T.D. 54574, \$250 or less." so that it will read:

(1) Articles having an aggregate value, as specified in the first two numbered subdivisions of paragraph (a) of this section, of \$500 or less.

(R.S. 251, secs. 481, 624, 46 Stat. 719, 759; 19 U.S.C. 66, 1481, 1624)

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

Approved: April 11, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-3448; Filed, Apr. 14, 1960; 8:49 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.429]

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

Revision of Immigrant Visa Regulations

Part 42, Chapter I, Title 22 of the Code of Federal Regulations is revised and prescribed as follows:

- Sec.
42.1 Definitions.
- DOCUMENTATION OF NATIONALS, CLAIMANT NATIONALS AND FORMER NATIONALS
- 42.3 Nationals, claimant nationals and former nationals of the United States.
- PASSPORTS AND VISAS NOT REQUESTED FOR CERTAIN IMMIGRANTS
- 42.5 Immigrants not required to obtain visas.
- 42.6 Immigrants not required to present passports.
- CLASSIFICATION OF IMMIGRANTS
- 42.10 Presumption of nonpreference quota immigrant status and burden of proof.
- 42.12 Classification symbols.
- NONQUOTA IMMIGRANTS
- 42.20 General.
- 42.21 Spouses and children of United States citizens.
- 42.22 Returning resident aliens.
- 42.23 Natives of certain Western Hemisphere countries.
- 42.24 Certain former United States citizens.
- 42.25 Ministers of religion.
- 42.26 Certain United States Government employees.
- 42.27 Classes created by special legislation.
- QUOTA IMMIGRANTS
- 42.30 First preference quota immigrants.
- 42.31 Second preference quota immigrants.
- 42.32 Third preference quota immigrants.
- 42.33 Fourth preference quota immigrants.
- 42.34 Nonpreference quota immigrants.
- PETITIONS
- 42.40 Effect of approved petition.
- 42.41 Petitions for nonquota status.
- 42.42 Petitions for preference quota status.
- 42.43 Suspension or termination of action in petition cases.
- QUOTA CHARGEABILITY
- 42.50 General rules of quota chargeability.
- 42.51 Exception for accompanying child.
- 42.52 Exception for accompanying spouse.
- 42.53 Exception applying to alien born in United States.
- 42.54 Exception for alien born in quota area of which neither of his parents was a resident.
- 42.55 Quota chargeability of Asians other than Chinese persons.
- 42.56 Quota chargeability of Chinese persons.
- 42.57 Quota for China.
- 42.58 Immigrants chargeable to subquotas.
- QUOTA CONTROL
- 42.60 Control of quotas by the Department.
- 42.61 Control of subquotas.
- 42.62 Quota waiting lists.
- 42.63 Aliens not to be registered.
- Sec.
42.64 Procedure in registering quota immigrants.
- 42.65 Derivative registration.
- 42.66 Cancellation and reinstatement of registration.
- INELIGIBLE CLASSES OF IMMIGRANTS
- 42.90 Basis for refusal.
- 42.91 Aliens ineligible to receive visas.
- RELIEF FOR CERTAIN INELIGIBLE ALIENS
- 42.95 Relief for certain ineligible aliens.
- ADMINISTRATIVE WAITING LISTS
- 42.100 Administrative waiting lists.
- APPLICATION FOR IMMIGRANT VISAS
- 42.110 Place of application.
- 42.111 Supporting documents.
- 42.112 Passports.
- 42.113 Medical examination.
- 42.114 Personal appearance.
- 42.115 Application forms.
- 42.116 Registration and fingerprinting.
- 42.117 Execution of visa application.
- 42.118 Immigrant preceding his family; informal examination of members of family.
- ISSUANCE OF IMMIGRANT VISAS
- 42.120 Authority to issue visas.
- 42.121 Visa fees.
- 42.122 Validity of visas.
- 42.124 Procedure in issuing visas.
- 42.125 Issuance of new or replace visas.
- REFUSAL AND REVOCATION OF IMMIGRANT VISAS
- 42.130 Procedure in refusing visas.
- 42.134 Revocation of visas.
- TRANSFER OF CASES
- 42.140 Transfer of cases.
- ENTRY INTO AREAS UNDER UNITED STATES ADMINISTRATION
- 42.145 Aliens entering areas under United States administration, not included in section 101(a)(38) of the Act.
- FURNISHING VISA RECORDS FOR COURT PROCEEDINGS
- 42.150 Furnishing visa records for court proceedings.
- AUTHORITY: §§ 42.1 through 42.150 issued under sec. 104, 66 Stat. 174; 8 U.S.C. 1104. Statutory provisions interpreted or applied are cited to text in parentheses.
- § 42.1 Definitions.
- In addition to the pertinent definitions contained in the Immigration and Nationality Act, the following definitions shall be applicable to this part:
- Accompanying, or accompanied by.* "Accompanying" or "accompanied by" means, in addition to an alien in the physical company of a principal alien, an alien who is issued an immigrant visa within four months of the date of issuance of a visa to the principal alien, within four months of the adjustment of status in the United States of the principal alien, or within four months from the date of the departure of the principal alien from the country in which his dependents are applying for visas if he has traveled abroad to confer his quota chargeability upon them. An "accompanying" relative may not precede the principal alien to the United States.
- Act.* "Act" means the Immigration and Nationality Act, as amended.
- Chinese person.* "Chinese person" means an alien who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to China.

Consular officer. "Consular officer", as defined in section 101(a)(9) of the Act, shall include commissioned consular officers, the District Administrators of the Trust Territory of the Pacific Islands, and the Naval Administrator, United States Naval Administration Unit Saipan District, hereby designated as consular officers for the purpose of issuing immigrant visas, but shall not include a consular agent, an attaché or assistant attaché.

Department. "Department" means the Department of State of the United States of America.

Parent, father, or mother. "Parent", "father", or "mother", as defined in section 101(b)(2) of the Act, are terms which shall not be affected by the fact that the person with whom the relationship exists may be over twenty-one years of age or married.

Passport. "Passport", as defined in section 101(a)(30) of the Act, shall not be considered as limited to a national passport and shall not be considered as limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport as defined in section 101(a)(30) of the Act: *Provided*, That permission to enter a foreign country must be issued by a competent authority and must be clearly valid for such purpose in order to meet the requirements of section 101(a)(30).

Port of entry. "Port of entry" means a port or place designated by the Commissioner of Immigration and Naturalization at which an alien may apply for admission into the United States.

Principal alien. "Principal alien" means an alien from whom another alien derives a privilege or status under the law or regulations.

Regulation. "Regulation" means a rule established pursuant to the provisions of section 104(a) of the Act which has been duly published in the FEDERAL REGISTER.

Son or daughter. "Son" or "daughter" shall not include an adopted son or daughter who does not qualify, or who would not have qualified, as a "child" within the meaning of section 101(b)(1)(E) of the Act, or a stepson or stepdaughter who does not meet the requirements of section 101(b)(1)(B) of the Act.

Subquota. "Subquota" means that part of a quota of a governing country which may be made available, subject to a limitation of 100 annually, to quota immigrants born in any colony or other component or dependent area overseas from the governing country.

Western Hemisphere. "Western Hemisphere" means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in section 101(b)(5) of the Act.

DOCUMENTATION OF NATIONALS, CLAIMANT NATIONALS AND FORMER NATIONALS

§ 42.3 Nationals, claimant nationals and former nationals of the United States.

(a) A national of the United States shall not be issued a visa or other docu-

mentation as an alien for entry into the United States.

(b) A person whose case fulfills the conditions of section 360(b) of the Act and who continues to claim that he is a national of the United States may apply for a certificate of identity as provided in section 360(b) of the Act.

(c) A former national of the United States who seeks to enter the United States shall be required to comply with the documentary requirements applicable to aliens under the Act.

PASSPORTS AND VISAS NOT REQUIRED FOR CERTAIN IMMIGRANTS

§ 42.5 Immigrants not required to obtain visas.

An immigrant within any of the following categories shall not be required to obtain an immigrant visa:

(a) *Aliens lawfully admitted for permanent residence.* Any alien lawfully admitted for permanent residence who is not required under the regulations of the Immigration and Naturalization Service to present a valid immigrant visa upon returning to the United States.

(Sec. 211(b), 66 Stat. 181; 8 U.S.C. 1181)

(b) *Alien members of United States armed forces.* An alien member of the armed forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such armed forces, who has been previously lawfully admitted for permanent residence, and who is proceeding to the United States under official orders or permit of such armed forces.

(Sec. 284, 66 Stat. 232; 8 U.S.C. 1354)

(c) *Aliens entering from Guam, Puerto Rico or Virgin Islands.* An alien lawfully admitted for permanent residence who seeks to enter the continental United States or any other place under the jurisdiction of the United States directly from Guam, Puerto Rico or the Virgin Islands of the United States.

(Sec. 212(d) (7), 66 Stat. 188; 8 U.S.C. 1182)

(d) *Children born subsequent to issuance of visa to accompanying parent.* An alien child born subsequent to the issuance of an immigrant visa to his parent, who will arrive in the United States with, and apply for admission during the period of validity of the visa issued to, the parent.

(Sec. 211(a), 66 Stat. 181; 8 U.S.C. 1181)

(e) *American Indians born in Canada.* An American Indian born in Canada and having at least fifty per centum of blood of the American Indian race.

(Sec. 289, 66 Stat. 234; 8 U.S.C. 1359)

§ 42.6 Immigrants not required to present passports.

An immigrant within any of the following categories shall not be required to present a passport in applying for an immigrant visa:

(a) *Certain relatives of United States citizens.* An immigrant who is the spouse, unmarried son or daughter, or parent, of a United States citizen, unless such immigrant is applying for a visa in the country of which he is a national

and the possession of a passport is required for departure from that country.

(b) *Aliens lawfully admitted for permanent residence.* An alien lawfully admitted for permanent residence who is returning to the United States from a temporary visit abroad, unless such immigrant is applying for a visa in the country of which he is a national and the possession of a passport is required for departure from that country.

(c) *Certain relatives of aliens lawfully admitted for permanent residence.* An immigrant who is the spouse or unmarried son or daughter of an alien lawfully admitted for permanent residence, unless such immigrant is applying for a visa in the country of which he is a national and the possession of a passport is required for departure from that country.

(d) *Aliens qualified to receive first preference visas.* An immigrant who is eligible to receive a first preference quota visa, and his accompanying spouse and child, unless the immigrant is applying for a visa in the country of which he is a national and the possession of a passport is required for departure from that country.

(e) *Stateless persons.* An immigrant who is a stateless person and his accompanying spouse and unmarried son or daughter.

(f) *Nationals of Communist-controlled countries.* An immigrant who is a national of, and is applying for a visa outside of, a Communist-controlled country and who, because of his opposition to Communism, is unwilling to make application for a passport to, or unable to obtain a passport from, the government of such country, and his accompanying spouse and unmarried son or daughter.

(g) *Alien members of United States armed forces.* An immigrant who is a

member of the armed forces of the United States.

(h) *Beneficiaries of individual waivers.* An immigrant who establishes that he is unable to obtain a passport, who is not within any of the foregoing categories, and in whose case the passport requirement imposed by § 42.112 or by the regulations of the Immigration and Naturalization Service, shall have been waived by the Attorney General and the Secretary of State, as evidenced by a specific instruction from the Department to the consular officer.

(Sec. 222(b), 66 Stat. 193; 8 U.S.C. 1202)

CLASSIFICATION OF IMMIGRANTS

§ 42.10 Presumption of nonpreference quota immigrant status and burden of proof.

An applicant for an immigrant visa shall be presumed to be a nonpreference quota immigrant until he establishes to the satisfaction of the consular officer that he is entitled to a preference quota or nonquota status as provided by law. The burden of proof is upon the applicant to establish that he is entitled to the preference or nonquota status or quota chargeability claimed. The consular officer is authorized to require such evidence, in addition to compliance with petition approval requirements prescribed by statute, as he shall consider necessary to establish that the applicant is in fact entitled to the status claimed.

(Secs. 203(e), 291, 66 Stat. 179, 234; 8 U.S.C. 1153, 1361)

§ 42.12 Classification symbols.

A visa issued to an immigrant alien within one of the classes described in this section shall bear a symbol to show the classification of the alien.

(a) The following symbols shall be used in the cases of nonquota immigrants:

Class	Section of the law	Symbol to be inserted in visa
Eligible orphan adopted abroad.....	4(b)(2)(A), Act of September 11, 1957, as amended	K-1
Eligible orphan to be adopted.....	4(b)(2)(B), Act of September 11, 1957, as amended.	K-2
Spouse or child of adjusted first preference immigrant.....	9, Act of September 11, 1957, as amended.	K-3
Beneficiary of first preference petition approved prior to July 1, 1958.....	12A, Act of September 11, 1957, as amended.	K-4
Spouse or child of beneficiary of first preference petition approved prior to July 1, 1958.	12A, Act of September 11, 1957, as amended.	K-5
Beneficiary of second preference petition approved prior to July 1, 1957.....	12, Act of September 11, 1957, as amended.	K-6
Beneficiary of third preference petition approved prior to July 1, 1957.....	12, Act of September 11, 1957, as amended.	K-7
German expellee.....	15(a)(1), Act of September 11, 1957, as amended.	K-8
Netherlands refugee or relative.....	15(a)(2), Act of September 11, 1957, as amended.	K-9
Refugee-escapee.....	15(a)(3), Act of September 11, 1957, as amended.	K-10
Parent of United States citizen registered prior to December 31, 1953.....	4, Act of September 22, 1959.	K-15
Spouse or child of alien resident registered prior to December 31, 1953.....	4, Act of September 22, 1959.	K-16
Brother, sister, son or daughter of United States citizen registered prior to December 31, 1953.....	4, Act of September 22, 1959.	K-17
Spouse or child of alien classified K-15, K-16, or K-17.....	4, Act of September 22, 1959.	K-18
Parent of United States citizen admitted as alien under Refugee Relief Act of 1953.....	6, Act of September 22, 1959.	K-19
Spouse or child of alien admitted under Refugee Relief Act of 1953.....	6, Act of September 22, 1959.	K-20
Spouse of United States citizen.....	101(a)(27)(A) of the Act.....	M-1
Child of United States citizen.....	101(a)(27)(B) of the Act.....	M-2
Returning resident.....	101(a)(27)(C) of the Act.....	N
Native of certain Western Hemisphere countries.....	101(a)(27)(D) of the Act.....	O-1
Spouse of alien classified O-1 (unless O-1 in own right).....	101(a)(27)(E) of the Act.....	O-2
Child of alien classified O-1 (unless O-1 in own right).....	101(a)(27)(F) of the Act.....	O-3
Person who lost United States citizenship by marriage.....	101(a)(27)(D) and 324(a) of the Act.....	P-1
Person who lost United States citizenship by serving in foreign armed forces.....	101(a)(27)(D) and 327 of the Act.....	P-2
Minister of religion.....	101(a)(27)(F) of the Act.....	Q-1

Class	Section of the law	Symbol to be inserted in visa
Spouse of alien classified Q-1.....	101(a)(27)(F) of the Act.....	Q-2
Child of alien classified Q-1.....	101(a)(27)(F) of the Act.....	Q-3
Certain employees or former employees of United States Government abroad.....	101(a)(27)(G) of the Act.....	R-1
Spouse of alien classified R-1.....	101(a)(27)(G) of the Act.....	R-2
Child of alien classified R-1.....	101(a)(27)(G) of the Act.....	R-3

(b) The following symbols shall be used in the cases of quota immigrants:

Class	Section of the law	Symbol to be inserted in visa
First preference: Selected immigrant.....	203(a)(1) of the Act.....	T-1
Spouse of alien classified T-1.....	203(a)(1) of the Act.....	T-2
Child of alien classified T-1.....	203(a)(1) of the Act.....	T-3
Second preference: Parent of United States citizen.....	203(a)(2) of the Act.....	U-1
Second preference: Unmarried son or daughter of United States citizen.....	203(a)(2) of the Act.....	U-2
Third preference: Spouse of alien resident.....	203(a)(3) of the Act.....	V-1
Third preference: Unmarried son or daughter of alien resident.....	203(a)(3) of the Act.....	V-2
Fourth preference: Brother or sister of United States citizen.....	203(a)(4) of the Act.....	W-1
Fourth preference: Married son or daughter of United States citizen.....	203(a)(4) of the Act.....	W-2
Fourth preference: Spouse of brother, sister, son or daughter of United States citizen.....	203(a)(4) of the Act.....	W-3
Fourth preference: Child of brother, sister, son or daughter of United States citizen.....	203(a)(4) of the Act.....	W-4
Fourth preference: Adopted son or daughter of United States citizen who is beneficiary of petition approved prior to effective date of the Act of September 22, 1959.....	5(c), Act of September 22, 1959.....	W-5
Nonpreference quota immigrant.....	203(a)(4) of the Act.....	X

NONQUOTA IMMIGRANTS

§ 42.20 General.

A nonquota immigrant visa shall be issued to an alien only after he has established that (a) he is entitled to such classification under the provisions of section 101(a)(27) of the Act or other provision of law, and (b) he is otherwise eligible to receive an immigrant visa under the provisions of section 212 of the Act and § 42.91.

§ 42.21 Spouses and children of United States citizens.

An alien shall be classifiable as a nonquota immigrant under section 101(a)(27)(A) of the Act if the consular officer has received from the Immigration and Naturalization Service a petition filed in his behalf by a United States citizen and approved in accordance with section 205 of the Act and the consular officer is satisfied that the alien has the relationship to the United States citizen indicated in the petition.

(Sec. 101, 66 Stat. 169; 8 U.S.C. 1101)

§ 42.22 Returning resident aliens.

(a) An alien shall be classifiable as a nonquota immigrant under section 101(a)(27)(B) of the Act if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that: (1) He had the status of an alien lawfully admitted for permanent residence at the time of his departure from the United States; (2) he departed from the United States with the intention of returning thereto and has not abandoned this intention; and (3) he is returning to the United States from a temporary visit abroad and, if his stay abroad was protracted, that such stay was caused by reasons beyond his control and for which he was not responsible.

(b) Unless the consular officer has reason to question the legality of the alien's previous admission into the United States for permanent residence,

or his eligibility to receive an immigrant visa, only those records and documents required under section 222(b) of the Act which relate to the period of his residence in the United States and the period of his temporary visit abroad, shall be required. If any required record or document is unobtainable the provisions of § 42.111 shall apply.

(Sec. 101, 66 Stat. 169; 8 U.S.C. 1101)

§ 42.23 Natives of certain Western Hemisphere countries.

(a) An alien, other than one referred to in paragraph (c) of this section, shall be classifiable as a nonquota immigrant under section 101(a)(27)(C) of the Act if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that he is within a class described in that section.

(b) A spouse or child of a native of a country referred to in section 101(a)(27)(C) of the Act, other than one referred to in paragraph (c) of this section, who is not a native of that country shall establish to the satisfaction of the consular officer that he is accompanying a spouse or parent born in a nonquota country, or that he is following to join a spouse or parent born in such country who has the status in the United States of an alien lawfully admitted for permanent residence.

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to a Chinese person, or to any other person who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, unless such person is the child of, and is accompanying or following to join, an alien referred to in section 101(a)(27)(C) of the Act.

(Sec. 101, 66 Stat. 169; 8 U.S.C. 1101)

§ 42.24 Certain former United States citizens.

(a) *Women expatriates.* An alien shall, regardless of marital status, be

classifiable as a nonquota immigrant under section 101(a)(27)(D) of the Act if she establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that she was a citizen of the United States and that she meets the requirements of section 324(a) of the Act.

(b) *Military expatriates.* An alien shall be classifiable as a nonquota immigrant under section 101(a)(27)(D) of the Act if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that he was a citizen of the United States and that he lost his citizenship under the circumstances set forth in section 327 of the Act.

(Sec. 101, 66 Stat. 169; 8 U.S.C. 1101)

§ 42.25 Ministers of religion.

(a) An alien shall be classifiable as a nonquota immigrant under section 101(a)(27)(F) of the Act if he establishes to the satisfaction of the consular officer that he qualifies under that section and if the consular officer has received from the Immigration and Naturalization Service a petition filed by an authorized officer of a religious denomination and approved in accordance with section 204 of the Act on behalf of the principal alien.

(b) An alien of the class described in section 101(a)(27)(F)(ii) need not be named in the petition approved in behalf of the principal alien.

(c) The term "minister", as used in section 101(a)(27)(F) of the Act, means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergyman of such denomination. The term shall not include a lay preacher not authorized to perform the duties usually performed by a regularly ordained pastor or clergyman of the denomination of which he is a member, and shall not include a nun, lay brother or cantor.

(Sec. 101, 66 Stat. 170; 8 U.S.C. 1101)

§ 42.26 Certain United States Government employees.

An alien shall be classifiable as a nonquota immigrant under section 101(a)(27)(G) of the Act if it is established to the satisfaction of the consular officer by the presentation of appropriate evidence that he qualifies under that section. An alien may qualify on the basis of employment abroad with one or more agencies of the United States Government.

(Sec. 101, 66 Stat. 170; 8 U.S.C. 1101)

§ 42.27 Classes created by special legislation.

(a) An orphan shall be classifiable as a nonquota immigrant under section 4 of the Act of September 11, 1957, as amended, if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that he qualifies under that section, that he is an "eligible orphan" and the consular officer has received a petition filed in his behalf by a United States citizen and

spouse and approved by the Immigration and Naturalization Service.

(Sec. 4, 71 Stat. 639, Sec. 2, 73 Stat. 490; 8 U.S.C. 1205)

(b) An alien shall be classifiable as a nonquota immigrant under section 9 of the Act of September 11, 1957, as amended, if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that he qualifies as the spouse or child of an alien whose status has been adjusted by the Immigration and Naturalization Service to that of an alien lawfully admitted for permanent residence under the provisions of that section and that the marriage by virtue of which such relationship exists occurred prior to July 1, 1957. The approval of a petition in behalf of the alien spouse or child shall not be required.

(Sec. 9, 71 Stat. 641; 8 U.S.C. 1255a)

(c) An alien shall be classifiable as a nonquota immigrant if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that he qualifies under section 12 of the Act of September 11, 1957, as amended. Petitions according first preference quota status shall be considered to confer nonquota status upon the beneficiary under this section if such petitions were approved by the Immigration and Naturalization Service prior to July 1, 1958. Petitions according second or third preference quota status must have been approved by the Immigration and Naturalization Service prior to July 1, 1957 in order to confer nonquota status upon the beneficiary.

(Sec. 12, 71 Stat. 642, Sec. 12A, 72 Stat. 699; 8 U.S.C. 1153 note)

(d) An alien shall be classifiable as a nonquota immigrant if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that he qualifies under section 4 of the Act of September 22, 1959, and that the petition approved in his behalf is valid at the time of visa issuance. The spouse or child of such principal alien need not be the beneficiary of an approved petition and need not have been registered on a quota waiting list.

(Sec. 4, Pub. Law 86-363, 73 Stat. 644)

(e) An alien shall be classifiable as a nonquota immigrant if he establishes to the satisfaction of the consular officer by the presentation of appropriate evidence that he qualifies under section 6 of the Act of September 22, 1959 and if the consular officer has received from the Immigration and Naturalization Service a petition according him second or third preference quota status approved prior to January 1, 1959 and satisfactory evidence is presented that the petitioner was admitted into the United States under the Refugee Relief Act of 1953, as amended, or had his status in the United States adjusted under section 6 of that Act.

(Sec. 6, Pub. Law 86-363, 73 Stat. 645)

QUOTA IMMIGRANTS

§ 42.30 First preference quota immigrants.

(a) An alien shall be classifiable as a first preference quota immigrant under section 203(a)(1) of the Act if he establishes to the satisfaction of the consular officer that he is within one of the classes described in that section and, if within the class described in section 203(a)(1)(A), the consular officer has received from the Immigration and Naturalization Service a petition filed in his behalf by a prospective employer and approved in accordance with section 204 of the Act.

(b) An alien of the class described in section 203(a)(1)(B) of the Act need not be named in the petition approved in behalf of the principal alien.

(Sec. 203, 66 Stat. 178; 8 U.S.C. 1153)

§ 42.31 Second preference quota immigrants.

An alien shall be classifiable as a second preference quota immigrant under section 203(a)(2) of the Act if the consular officer has received from the Immigration and Naturalization Service a petition filed in his behalf by a United States citizen and approved in accordance with section 205 of the Act and the consular officer is satisfied that the alien has the relationship to the United States citizen indicated in the petition. A United States citizen, in order to confer second preference status upon a parent, must be at least twenty-one years of age. A United States citizen, in order to confer second preference status upon an unmarried son or daughter, must be a "parent" as defined in section 101(b)(2) of the Act and § 42.1.

(Sec. 203, 66 Stat. 178; 8 U.S.C. 1153)

§ 42.32 Third preference quota immigrants.

An alien shall be classifiable as a third preference quota immigrant under section 203(a)(3) of the Act if the consular officer has received from the Immigration and Naturalization Service a petition filed in his behalf by a lawful permanent resident of the United States and approved in accordance with section 205 of the Act and if the consular officer is satisfied that the alien has the relationship to the lawful permanent resident indicated in the petition. A lawful permanent resident, in order to confer third preference quota status upon an unmarried son or daughter, must be a "parent" as defined in section 101(b)(2) of the Act and § 42.1. The term "unmarried son or daughter" as used in this section of the Act shall include a "child" as defined in section 101(b)(1) of the Act.

(Sec. 203, 66 Stat. 178; 8 U.S.C. 1153)

§ 42.33 Fourth preference quota immigrants.

(a) An alien shall be classifiable as a fourth preference quota immigrant under section 203(a)(4) of the Act if he establishes to the satisfaction of the consular officer that he is within one of the classes

described in that section and, if he is a brother, sister, married son or daughter of a United States citizen the consular officer has received from the Immigration and Naturalization Service a petition filed in his behalf by a United States citizen and approved in accordance with section 205 of the Act. A United States citizen of any age may confer fourth preference status upon a brother or sister.

(b) The accompanying spouse or child of a brother, sister, married son or daughter of a United States citizen need not be named in the petition approved on behalf of the principal alien.

(c) Fourth preference quota visas may be issued to quota immigrants who are the adopted sons or daughters of United States citizens and are the beneficiaries of valid petitions granting fourth preference status approved by the Immigration and Naturalization Service prior to September 22, 1959.

(Sec. 203, 66 Stat. 178; 8 U.S.C. 1153)

§ 42.34 Nonpreference quota immigrants.

An alien shall be classifiable as a nonpreference quota immigrant if he is not entitled to or does not elect to apply for nonquota status or preference quota status.

(Secs. 201(d), 203(e), 66 Stat. 176, 179; 8 U.S.C. 1151, 1153)

PETITIONS

§ 42.40 Effect of approved petition.

Consular officers are authorized by the Secretary of State to grant, upon receipt of, and within the validity period of, a petition filed with and approved by the Immigration and Naturalization Service, the nonquota or preference quota status indicated in the petition. The approval of the petition shall have the effect of establishing prima facie that the alien is entitled to the classification approved in the petition. The approval of a petition by the Immigration and Naturalization Service shall not relieve the alien of the burden of establishing to the satisfaction of the consular officer that he is eligible in all respects to receive a visa.

(Secs. 204, 205, 66 Stat. 179, 180; 8 U.S.C. 1154, 1155)

§ 42.41 Petitions for nonquota status.

No alien shall be issued a visa as a nonquota immigrant if the approval of a petition is prescribed as a prerequisite to the granting of nonquota status unless the consular officer has received from the Immigration and Naturalization Service a petition filed and approved in accordance with section 204 or 205 of the Act or other provision of law.

§ 42.42 Petitions for preference quota status.

No alien shall be issued a visa as a preference quota immigrant if the approval of a petition is prescribed as a prerequisite to the granting of a preference immigrant status unless the consular officer has received from the Immigration and Naturalization Service a petition filed

and approved in accordance with section 204 or 205 of the Act or other provision of law.

§ 42.43 Suspension or termination of action in petition cases.

(a) *Suspension of action.* A consular officer shall suspend action in a petition case under any of the following circumstances:

(1) The petitioner requests suspension of action, or the consular officer knows or has reason to believe that the petition was approved erroneously, or that the approval of the petition was obtained by fraud, misrepresentation, or other unlawful means, or that the beneficiary is not entitled, for any other reason, to the status approved. In such a case the petition shall be forwarded to the Department with a report of the facts developed in order that it may be ascertained whether the Immigration and Naturalization Service desires to revoke or reaffirm the approval of the petition.

(2) The petition has been automatically revoked under the regulations of the Immigration and Naturalization Service due to the beneficiary's failure to obtain a visa within the prescribed period of validity of the petition. Such a petition may be revalidated by the Immigration and Naturalization Service and is to be returned to the office of the Service which approved the petition, at the request of the beneficiary in a non-quota case and in a preference quota case at the request of the beneficiary at such time as it appears that a quota number may be available within one year for the issuance of an immigrant visa.

(b) *Termination of action.* Consular officers shall terminate action in petition cases if the approval of a petition for nonquota or preference quota status has been revoked by the Immigration and Naturalization Service, and notice of revocation has been communicated to the appropriate consular officer, or if the consular officer finds that the petition has been automatically revoked under the regulations of the Immigration and Naturalization Service and may not be revalidated under those regulations.

(Sec. 206, 66 Stat. 181; 8 U.S.C. 1156)

QUOTA CHARGEABILITY

§ 42.50 General rules of quota chargeability.

An immigrant born in a quota area shall be chargeable to the quota of that quota area unless (a) he is classifiable as a nonquota immigrant, (b) his case falls within one of the exceptions to the general rule of quota chargeability as provided in section 202 of the Act, or (c) he is a Chinese person who is chargeable to the quota for Chinese persons as provided in section 201(a) of the Act and in § 42.56.

(Sec. 202, 66 Stat. 176; 8 U.S.C. 1152)

§ 42.51 Exception for accompanying child.

A quota immigrant child accompanied by his alien parent may be charged to the quota of the accompanying parent, as provided in section 202(a) (1) of the Act, regardless of the ancestry or place of birth of the child or of the accompany-

ing parent. A child born in a subquota area may be charged to the quota to which his accompanying parent is chargeable, including the quota of the governing country of the subquota area in which the child was born, if necessary to prevent the separation of the child from the accompanying parent or parents.

(Sec. 202, 66 Stat. 176; 8 U.S.C. 1152)

§ 42.52 Exception for accompanying spouse.

A quota immigrant spouse who is not a Chinese person, and who is not otherwise attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, may, as provided in section 202(a) (2) of the Act, be charged to the quota of his accompanying spouse, including the Asia-Pacific quota, and the quota for Chinese persons. An alien born in a subquota area who is not a Chinese person, and who is not otherwise attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, may be charged to the quota of the governing country of that subquota area if his accompanying spouse is chargeable thereto, if necessary to prevent the separation of the family.

(Sec. 202, 66 Stat. 176; 8 U.S.C. 1152)

§ 42.53 Exception applying to alien born in United States.

The quota chargeability of a quota immigrant who was born in the United States, who is not a Chinese person, and who is not otherwise attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, shall be determined by the provisions of section 202(a) (3) of the Act.

(Sec. 202, 66 Stat. 176; 8 U.S.C. 1152)

§ 42.54 Exception for alien born in quota area of which neither of his parents was a resident.

An alien who is not a Chinese person and who is not otherwise attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, who was born in a quota area in which neither of his parents was born or in which neither of his parents had a residence at the time of his birth, may be charged to the quota of either parent as provided in section 202(a) (4) of the Act. The parents of such an alien shall not be considered as having acquired a residence within the meaning of section 202(a) (4), if at the time of such alien's birth within the quota area they were merely visiting temporarily or were stationed there under orders or instructions of an employer, principal or superior authority foreign to such quota area in connection with the business or profession of the employer, principal or superior authority.

(Sec. 202, 66 Stat. 177; 8 U.S.C. 1152)

§ 42.55 Quota chargeability of Asians other than Chinese persons.

The quota chargeability of a quota immigrant who is attributable by as much as one-half of his ancestry to a

people or peoples indigenous to the Asia-Pacific triangle and who is not a Chinese person shall be determined by the provisions of section 202(b) of the Act unless the immigrant is a child who may be charged to the quota of his accompanying parent as provided in section 202(a) (1) of the Act. The exceptions to the general rule of quota chargeability provided in section 202(a) (2), (3) and (4) of the Act do not apply to an alien who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle.

(Sec. 202, 66 Stat. 177; 8 U.S.C. 1152)

§ 42.56 Quota chargeability of Chinese persons.

A Chinese person who is classifiable as a quota immigrant shall be chargeable, regardless of his place of birth, to the quota for Chinese persons of 105 annually authorized under section 201(a) of the Act, unless such person is a child chargeable to the quota of an accompanying parent as provided in section 202(a) (1) of the Act. (For definition of term "Chinese person" see § 42.1.) The exceptions to the general rule of quota chargeability provided in section 202(a) (2), (3) and (4) of the Act do not apply to a Chinese person.

(Sec. 201(a), 66 Stat. 176; 8 U.S.C. 1151)

§ 42.57 Quota for China.

An alien, other than a Chinese person, who was born in China and who is classifiable as a quota immigrant shall be chargeable to the quota for China, unless such alien falls within paragraph (1), (2), (3) or (4) of section 202(a) of the Act, except that an alien attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle born in China shall be charged to the quota for China unless he is a child chargeable to the quota of an accompanying parent under section 202(a) (1) of the Act.

(Sec. 202, 66 Stat. 177; 8 U.S.C. 1152)

§ 42.58 Immigrants chargeable to subquotas.

An immigrant born in a subquota area, other than an Asian or Chinese person referred to in §§ 42.55 or 42.56, shall be chargeable to the subquota of that area unless he is classifiable as a nonquota immigrant or unless his case falls within one of the exceptions to the general rule of quota chargeability as provided in §§ 42.51 through 42.54.

CROSS REFERENCE: For definition of the term "subquota" see § 42.1.

(Sec. 202, 66 Stat. 177; 8 U.S.C. 1152)

QUOTA CONTROL

§ 42.60 Control of quotas by the Department.

(a) For the purposes of section 203 (a) of the Act and §§ 42.30 through 42.34 of this part, the quota for each quota area for each quota year shall be the quota as proclaimed by the President under section 201(b) or 202(e) of the Act, less the quota numbers which have been deducted from such quotas before the beginning of each quota year pur-

suant to section 19(c) of the Immigration Act of 1917, as amended, sections 211(d) and 244 of the Act, section 13 of the Act of September 11, 1957, as amended, and by reason of the enactment of private legislation.

(b) Centralized control of quotas shall be established in the Department. The Department will allocate quota numbers on a world-wide basis to consular officers abroad in accordance with the provisions of sections 201(c) and 203 of the Act.

(c) Section 211(d) of the Act is interpreted to permit a finding that if the quota to which an alien is chargeable has been exhausted for the fiscal year in which he applied for admission and for the next fiscal year, he may be charged to the appropriate quota for the fiscal year in which the notification of the amendment of his record of entry by the Immigration and Naturalization Service is received in the Department, or the fiscal year following the receipt of such notification.

(Sec. 202, 66 Stat. 177; 8 U.S.C. 1152)

§ 42.61 Control of subquotas.

The limitations of section 202(c) of the Act shall apply to subquota areas listed by the Department. Subquotas shall be subject to the ten per cent monthly limitation upon the issuance of visas during the first ten months of each quota year applicable to the quota of the governing country. The ten per cent monthly limitation shall be applied insofar as practicable to each subquota, and subquotas shall be subject to the preference quota provisions of section 203 of the Act. The priority in the issuance of visas within each quota category to aliens chargeable to a subquota shall be determined by the registration priority of such aliens in relation to the whole quota of the governing country except that the priority of aliens chargeable to a subquota shall be determined by their priority on the subquota waiting list if the demand on the subquota is greater than the demand on the quota for the governing country.

(Sec. 202, 66 Stat. 177; 8 U.S.C. 1152)

§ 42.62 Quota waiting lists.

(a) *Establishment of waiting lists.* Separate quota waiting lists shall be maintained for each oversubscribed preference or nonpreference portion of each quota or subquota. Such lists shall show the priority date of registration within each of the preference or nonpreference classes. The lists shall be arranged so as to permit the transfer of the name of any applicant from one preference or nonpreference class to another without losing his original priority except that a registration priority acquired through the filing of a first preference quota petition as described in paragraph (b) of this section shall not, in itself, establish a registration priority in any other preference or nonpreference category. The name of each family member shall be listed separately under the quota for the quota area to which he is chargeable with appropriate cross references to members of the family who may be chargeable to other oversub-

scribed quotas. The provisions of section 202(a) of the Act shall be applied, if appropriate, when the turn of either spouse is reached on the quota waiting list. (For information regarding administrative waiting lists, see § 42.100.)

(b) *Registration of first preference quota immigrants.* The registration priority of a first preference quota immigrant shall be determined by the date on which the approved petition granting first preference quota status was filed with the Immigration and Naturalization Service by the prospective employer. An appropriate entry on the quota waiting list shall be made of the filing date of approved first preference petitions if the first preference portion of the quota is oversubscribed.

(c) *Registration of other preference quota immigrants.* Except as otherwise provided in §§ 42.63 and 42.66, the registration priority of quota immigrants in the second, third and fourth preference classes shall be determined in each class by the chronological order in which such immigrants are registered on quota waiting lists at each consular office as provided in § 42.64(b), or by the chronological order in which the required petitions for immigrants in such classes were filed with the Immigration and Naturalization Service, whichever date is earlier.

(d) *Registration of nonpreference quota immigrants.* Except as otherwise provided in §§ 42.63 and 42.66, the registration priority of nonpreference quota immigrants shall be determined by the chronological order in which their registration applications are received at each consular office, or as otherwise provided in § 42.64(b).

(e) *Registration priority.* (1) No alien shall be given a priority date earlier than January 1, 1944.

(11 F.R. 8924, 22 CFR 61.302)

(2) An alien who ceases to have second, third or fourth preference quota status shall retain his chronological registration priority which shall be transferred to any other category in which he may qualify, except to the first preference quota category.

(f) *Priority in order of consideration.* Consideration shall be given quota visa applications in the order prescribed in section 203(d) of the Act, and no immigrant within any category under a quota shall have his case considered until consideration shall have been given to other immigrants in the same category who have an earlier priority of registration on the chronological quota waiting list for such category.

(Sec. 203, 66 Stat. 179; 8 U.S.C. 1153)

§ 42.63 Aliens not to be registered.

An alien shall not have his name entered on a quota waiting list if he (a) is issued an exchange-visitor visa or obtains a change of status in the United States to that of an exchange visitor under the provisions of section 201 of the United States Information and Educational Exchange Act of 1948, as amended, (b) has been admitted into the United States as a nonimmigrant and has willfully violated his nonimmigrant status,

or (c) enters or remains in the United States in violation of the immigration laws.

(Sec. 201, 62 Stat. 7, Sec. 402(f), 66 Stat. 276, 70 Stat. 241; 22 U.S.C. 1446)

§ 42.64 Procedure in registering quota immigrants.

(a) *Place of registration.* Every alien who desires to have his name registered on a quota waiting list shall make application for registration at a United States consular office in the consular district in which he has his residence, except that a consular officer shall, at the direction of the Department, or may in his discretion, accept an application for registration from nonresidents of the consular district, including aliens in the United States, who are entitled to have their names entered on a quota or subquota waiting list.

(b) *Application for registration.* Except as provided in § 42.62(b), the registration of a quota immigrant may be effected upon the basis of an application for registration properly executed by the immigrant and received in the consular office from such immigrant, or by any clear indication of the immigrant's intention to immigrate into the United States which was contemporaneously recorded in the files of a United States consular office abroad or of the Department. When an application for registration is received at a consular office the date, as well as the hour and minute wherever practicable, of the receipt of such registration application form shall be noted thereon and shall constitute the registration priority under which the applicant's name shall be registered in the proper category on the appropriate waiting list.

§ 42.65 Derivative registration.

(a) *Principal and derivative registrants.* The application of a quota immigrant for registration shall be considered as automatically including any spouse he may have or may subsequently acquire, and any unmarried son or daughter under twenty-one years of age such immigrant or his spouse may have or may subsequently acquire, regardless of whether such spouse, son or daughter was specifically named in his application for registration. The name of any spouse or unmarried son or daughter under twenty-one years of age included in the principal alien's application for registration shall be separately registered by the consular officer under the priority date of the principal alien. The provisions of this paragraph shall not adversely affect any privileges relating to derivative registration acquired prior to July 1, 1954.

(19 F.R. 3505, 22 CFR 42.21)

(b) *Termination of derivative registration.* The privilege of derivative registration accorded a spouse or unmarried son or daughter under twenty-one years of age under the provisions of paragraph (a) of this section, whose name has not been previously recorded on a waiting list, shall terminate only if by his own act the derivative registrant brings his case within the provisions of § 42.66(a). Sons or daughters who qual-

ify as derivative registrants shall not lose such status solely because they may subsequently reach the age of twenty-one or marry.

§ 42.66 Cancellation and reinstatement of registration.

(a) *Cancellation.* The registration of a quota immigrant shall be cancelled under any of the following circumstances: (1) The registrant abandons his intention to immigrate to the United States or for any reason fails to evidence his continued intention to apply for a visa within sixty days after being duly notified that his name has been reached on the quota waiting list, except that an alien who is the beneficiary of a valid first preference petition shall be entitled to a registration priority as of the filing date of the petition; (2) The registrant is issued an immigrant visa; (3) The registrant has been denied an immigrant visa on some ground which cannot be overcome by the presentation of further evidence or by a probable change in the circumstances of his case; (4) The registrant is issued an exchange-visitor visa or obtains a change of status in the United States to that of an exchange visitor under the provisions of section 201 of the United States Information and Educational Exchange Act of 1948, as amended; (5) The registrant, if admitted into the United States as a nonimmigrant, willfully violates his nonimmigrant status; (6) The registrant enters or remains in the United States in violation of the immigration laws; (7) The registrant was erroneously registered; (8) The registrant dies.

(b) *Reinstatement.* An alien may have his name reinstated on a quota waiting list under the following circumstances: (1) Any alien whose name has been removed from the quota waiting list under paragraph (a) (1) of this section who can establish to the satisfaction of the consular officer that his failure to evidence his continued intention to apply for a visa was for reasons beyond his control and for which he was not responsible, may make an application for a visa under his original priority on the quota waiting list when the circumstances which prevented him from applying for a visa cease to exist, or within sixty days thereafter; (2) An alien whose name has been removed from the quota waiting list under paragraph (a) (2) of this section, who fails to use his immigrant visa for reasons beyond his control and for which he is not responsible, and who makes application for another visa in a subsequent quota year and within sixty days of the termination of the circumstances which prevented him from using the original visa, may be accorded his original priority on the quota waiting list; (3) An alien whose name has been removed from the quota waiting list under paragraph (a) (4), (5) or (6) of this section may have his name reinstated on the quota waiting list as of the date of his departure from the United States; (4) An alien whose name has been removed from the quota waiting list under paragraph (a) (4), (5) or (6) of this section who qualifies under the provisions specified in section 203(a) (1) of the Act shall have his name rein-

stated on the quota waiting list as of the date the approved petition was filed with the Immigration and Naturalization Service.

INELIGIBLE CLASSES OF IMMIGRANTS

§ 42.90 Basis for refusal.

A visa shall be refused only upon a ground specifically set out in the law or regulations issued thereunder. The term "reason to believe", as used in section 221(g) of the Act, shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive an immigrant visa as provided in the Act and as implemented by the regulations contained in this part. Consideration shall be given to any evidence submitted indicating that the ground for a prior refusal of an immigrant visa may no longer exist. The burden of proof is upon the applicant to establish that he is not ineligible to receive a visa under the provisions of section 212 of the Act, or any other provision of law, and § 42.91.

(Sec. 221, 66 Stat. 192; 8 U.S.C. 1201)

§ 42.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.* Determinations relating to the ineligibility of aliens to receive immigrant visas under section 212(a) of the Act shall be governed by the following provisions:

(1-6) *Medical grounds of ineligibility.* (i) A determination of ineligibility to receive an immigrant visa under the provisions of section 212(a) (1) through (6) of the Act shall be based upon the finding of a competent medical examiner as referred to in § 42.113, except that in the case of an alien who applies for an immigrant visa at a consular office where no medical officer of the United States Public Health Service has been assigned or detailed, and the consular officer knows or has reason to believe that such alien is a drug addict, a chronic alcoholic, or is afflicted with psychopathic personality by reason of sexual deviation, a finding of ineligibility to receive an immigrant visa under the provisions of section 212(a) (4) or (5) of the Act may be based by the consular officer on facts or circumstances other than the finding of an examining physician.

(ii) Until July 1, 1961, the benefits of section 6 of the Act of September 11, 1957, as amended, shall be available to an alien afflicted with tuberculosis who is the spouse, child, or parent of a United States citizen, a lawful permanent resident of the United States, or an alien issued an immigrant visa. The benefits of section 6 shall also be available to an eligible alien whose case has been deferred for medical reexamination as an alien who may be afflicted with tuberculosis. An alien found eligible for the benefits of section 6 shall be subject to the restrictions imposed by the Immigration and Naturalization Service after consultation with the United States Public Health Service with regard to travel to and treatment in the United States.

(Sec. 6, 71 Stat. 640, Sec. 1, 73 Stat. 490; 8 U.S.C. 1182c)

(7) *Physical defect affecting alien's ability to earn a living.* An alien within the purview of section 212(a) (7) of the Act may be issued an immigrant visa, if otherwise qualified therefor, upon receipt by the consular officer of notice from the Immigration and Naturalization Service of the giving of a bond or undertaking as provided in section 221(g) of the Act, if the consular officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien might become a public charge within the meaning of section 212(a) (15) of the Act.

(8) *Paupers, professional beggars, or vagrants.* The provisions of section 212(a) (8) of the Act shall be applicable only in the case of an alien who at the time of visa application is a pauper, professional beggar, or vagrant.

(9) *Crime involving moral turpitude.* (i) A determination that a crime involves moral turpitude shall be based upon the moral standards generally prevailing in the United States. Before a finding of ineligibility under section 212(a) (9) of the Act may be made because of an admission of the commission of acts which constitute the essential elements of a crime involving moral turpitude, it must first be established that the acts constitute a crime under the criminal law of the jurisdiction where they occurred.

(ii) An alien who has been convicted of a crime involving moral turpitude or who admits the commission of acts which constitute the essential elements of such a crime and who has committed an additional crime involving moral turpitude is ineligible to receive a visa under the provisions of section 212(a) (9) of the Act although the crimes were committed while the alien was under the age of eighteen years.

(iii) An alien shall not be ineligible to receive a visa under section 212(a) (9) of the Act if his case falls within the provisions of section 4 of the Act of September 3, 1954.

(Sec. 4, 68 Stat. 1145; 8 U.S.C. 1182a)

(iv) An alien who is ineligible to receive a visa under section 212(a) (9) of the Act but who qualifies for the benefits of section 5 of the Act of September 11, 1957, shall be advised of the procedure for applying to the Immigration and Naturalization Service for relief under that provision of law. A visa shall not be issued to such an alien until the consular officer has received notification from the Immigration and Naturalization Service of the approval of the alien's application for the benefits of that section.

(Sec. 5, 71 Stat. 640; 8 U.S.C. 1182b)

(v) An alien shall not be ineligible to receive a visa under section 212(a) (9) of the Act by reason of having been tried and treated as a juvenile by a juvenile court for the commission of an offense involving moral turpitude since such proceedings are not regarded as criminal in nature. A juvenile convicted as an adult of a crime involving moral turpitude shall be subject to the provisions of section 212(a) (9) of the Act regardless of whether juvenile courts existed

within the jurisdiction at the time of the conviction.

(vi) A conviction in absentia of a crime involving moral turpitude shall not constitute a conviction within the meaning of section 212(a) (9) of the Act.

(vii) An alien shall not be considered ineligible to receive a visa under section 212(a) (9) of the Act by reason of a conviction of a crime involving moral turpitude for which a full and unconditional pardon has been granted by the President of the United States, by the Governor of a State of the United States, by the former High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a) (9) of the Act.

(viii) The term "purely political offense", as used in section 212(a) (9) of the Act, shall include offenses which resulted in convictions obviously based on trumped-up charges or predicated upon repressive measures against racial, religious or political minorities.

(10) *Conviction of two or more offenses.* (i) An alien who is ineligible to receive a visa under section 212(a) (10) of the Act but who qualifies for the benefits of section 5 of the Act of September 11, 1957 shall be advised of the procedure for applying to the Immigration and Naturalization Service for relief under that provision of law. A visa shall not be issued to such an alien until the consular officer has received notification from the Immigration and Naturalization Service of the approval of the alien's application for the benefits of that section.

(Sec. 5, 71 Stat. 640; 8 U.S.C. 1182b)

(ii) An alien shall not be ineligible to receive a visa under section 212(a) (10) of the Act by reason of having been tried and treated as a juvenile by a juvenile court for the commission of two or more offenses regardless of the period of confinement imposed by the sentence since such proceedings are not regarded as criminal in nature. A juvenile convicted as an adult of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more shall be subject to the provisions of section 212(a) (10) of the Act regardless of whether juvenile courts existed within the jurisdiction at the time of the convictions.

(iii) A conviction in absentia shall not constitute a conviction within the meaning of section 212(a) (10) of the Act.

(iv) An alien shall not be considered ineligible to receive a visa under section 212(a) (10) of the Act by reason of having been convicted of two or more offenses for which the aggregate sentences to confinement actually imposed were five years or more if a full and unconditional pardon or pardons for the offenses have been granted by the President of the United States, by the Governor of a State of the United States, by the former

High Commissioner for Germany acting pursuant to Executive Order 10062, or by the United States Ambassador to the Federal Republic of Germany acting pursuant to Executive Order 10608. A legislative pardon or a pardon, amnesty, expungement of penal record or any other act of clemency granted by a foreign state shall not serve to remove a ground of ineligibility under section 212(a) (10) of the Act.

(v) The term "purely political offense", as used in section 212(a) (10) of the Act, shall include offenses which resulted in convictions obviously based on trumped-up charges or predicated upon repressive measures against racial, religious or political minorities.

(vi) A sentence to confinement which has been suspended by a court of competent jurisdiction is not one which has been "actually imposed" within the meaning of section 212(a) (10) of the Act.

(11) *Polygamy.* An alien who is a member of a religious organization which tolerates polygamy is not ineligible to receive an immigrant visa under the provisions of section 212(a) (11) of the Act, unless such alien is a polygamist, or unless he practices or advocates the practice of polygamy.

(12) *Prostitution, procuring and related activities.* (i) The term "prostitute" means a woman given to promiscuous sexual intercourse for hire. A finding that an alien has "engaged" in prostitution must be based on elements of continuity and regularity which would indicate a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.

(ii) The fact that an alien may have ceased to engage in prostitution shall not serve to remove the existing ground of ineligibility to receive a visa under the provisions of section 212(a) (12) of the Act.

(iii) A prostitute or a person who has engaged in prostitution shall be ineligible to receive a visa under section 212(a) (12) of the Act notwithstanding the fact that prostitution may not be prohibited under the laws of the foreign country where the acts occurred.

(iv) An alien who is ineligible to receive a visa under section 212(a) (12) of the Act but who qualifies for the benefits of section 5 of the Act of September 11, 1957 shall be advised of the procedure for applying to the Immigration and Naturalization Service for relief under that provision of law. A visa shall not be issued to such an alien until the consular officer has received notification from the Immigration and Naturalization Service of the approval of the alien's application for the benefits of that section.

(Sec. 5, 71 Stat. 640; 8 U.S.C. 1182b)

(13) *Immoral sexual act.* An alien shall not be ineligible to receive a visa under section 212(a) (13) of the Act unless his primary purpose in coming to the United States is to engage in an immoral sexual act.

(14) *Aliens entering to perform skilled or unskilled labor.* An alien shall not be ineligible to receive a visa under the provisions of section 212(a) (14) of the Act, even if he is immigrating to the United States under a contract or other prearrangement of employment of any kind, until the Secretary of Labor shall have made the certification to the Secretary of State and the Attorney General as provided in clause (A) or (B) of section 212(a) (14) concerning the availability of such labor in the locality of the alien's destination, or the effect of the immigration of such foreign labor on conditions of workers in the United States. The existence or the cancellation of such a certification by the Secretary of Labor shall be recognized by the consular officer only upon the basis of an official notification from the Department. If the Secretary of Labor makes the certification referred to in section 212(a) (14) of the Act with respect to a particular occupation, an immigrant who is seeking to enter the United States for the purpose of engaging in such occupation shall be ineligible to receive a visa even if he has no offer, promise or contract of employment, or any other form of prearranged employment. Such certification shall apply only to the following classes of aliens who are coming to the United States to perform labor which is predominantly manual in nature: (i) Aliens who are classifiable as nonpreference quota immigrants; and (ii) Aliens who are classifiable as nonquota immigrants under section 101(a) (27) (C) or (D) of the Act (except the parents, spouses, or children of United States citizens or citizens or aliens lawfully admitted for permanent residence) unless their services are determined by the Attorney General to be urgently needed in the United States as contemplated in section 212(a) (14) of the Act.

(15) *Public charge.* (i) Any conclusion that an alien is ineligible to receive an immigrant visa under the provisions of section 212(a) (15) of the Act shall be predicated upon circumstances which indicate that the alien will probably become a charge upon the public after entry into the United States.

(ii) An alien within the purview of section 212(a) (15) of the Act may be issued an immigrant visa upon receipt of notice by the consular officer of the giving of a bond or undertaking, as provided in section 221(g) of the Act, if the consular officer is satisfied that the giving of such bond or undertaking removes the alien's ineligibility to receive a visa under this section of the law.

(16) *Aliens excluded and deported.* An alien who was excluded and deported from the United States within the meaning of section 212(a) (16) of the Act shall be required to obtain permission from the Immigration and Naturalization Service to reapply for admission if he applies for a visa within one year from the date of his deportation.

(17) *Aliens arrested and deported or removed from the United States.* An alien who was arrested and deported from the United States, or who was removed from the United States within the meaning of section 212(a) (17) of the

Act shall be required to obtain permission from the Immigration and Naturalization Service to reapply for admission into the United States, regardless of the period of time which may have elapsed since his deportation or removal.

(18) *Stowaways.* (Section 212(a) (18) of the Act inapplicable at time of visa application.)

(19) *Fraud and misrepresentation.*

(i) An alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, by fraud or by willfully misrepresenting a material fact for the purpose of gaining admission into the United States, regardless of whether such fraud or misrepresentation occurred before or after December 24, 1952, shall be ineligible to receive a visa under the provisions of section 212(a) (19) of the Act: *Provided*, That the provisions of this subdivision shall not be applicable in the case of a bona fide refugee if such fraud or misrepresentation was committed in connection with the alien's entry into, or sojourn in, a foreign country and consisted of obtaining travel documents or of misrepresenting his place of birth, and the refugee was in fear of being repatriated to his former homeland if he had disclosed the facts in his case: *Provided further*, That such fraud or misrepresentation was not committed for the purpose of evading the quota restrictions of the United States immigration laws, or investigation of the alien's record at the place of his former residence or elsewhere in connection with an application for a visa.

(ii) Subject to the conditions stated in subdivision (i) of this subparagraph, an alien who is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended, for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11(e) of the Refugee Relief Act of 1953, as amended, for the purpose of gaining admission into the United States as an alien eligible thereunder, shall be considered ineligible to receive a visa under the provisions of section 212(a) (19) of the Act.

(Sec. 10, 62 Stat. 1009, Sec. 11(e), 67 Stat. 405; 50 U.S.C. 1959, 1971i)

(iii) The commission of fraud or the willful misrepresentation of a material fact in seeking to enter the United States shall not render an alien ineligible to receive a visa under the provisions of section 212(a) (19) of the Act.

(B.I.A., Matter of M., 6 I & N. Dec. 149, approved by the Attorney General 9-13-54)

(iv) An alien who is ineligible to receive a visa under section 212(a) (19) of the Act but who qualifies for the benefits of section 7 of the Act of September 11, 1957, shall be advised of the procedure for applying to the Immigration and Naturalization Service for relief under that provision of law. A visa may not be issued to such an alien until the consular officer has received notification from the Immigration and Naturalization Service of the approval of the alien's

application for the benefits of that section.

(Sec. 7, 71 Stat. 640; 8 U.S.C. 1251a)

(20) *Immigrant documentary requirements.* (For waivers of documentary requirements for immigrants see §§ 42.5 and 42.6.)

(21) *Noncompliance with section 203 of the Act.* [Reserved]

(22) *Aliens ineligible to citizenship or who departed to avoid service in the armed forces.* An alien shall be refused an immigrant visa under the provisions of section 212(a) (22) of the Act if, having other than nonimmigrant status, he departed from or remained outside of the United States on or after September 8, 1939, to avoid or evade training or service in the United States armed forces.

(23) *Narcotics traffickers.* An alien shall be ineligible to receive an immigrant visa under the provisions of section 212(a) (23) of the Act, as amended by section 301(a) of the Narcotic Control Act of 1956, irrespective of whether the conviction for illegal possession of narcotic drugs or for conspiracy to violate any law or regulation relating to narcotic drugs within the contemplation of the Narcotic Control Act of 1956 occurred before or after July 18, 1956.

(Sec. 301(a), 70 Stat. 575; 8 U.S.C. 1182)

(24) *Aliens arriving in foreign contiguous territory or adjacent islands on nonsignatory or noncomplying transportation lines.* The provisions of section 212(a) (24) of the Act shall not be applicable to the following classes of immigrants:

(i) An alien who is described in section 101(a) (27) (B) of the Act;

(ii) An alien who is a native-born citizen of a country referred to in section 101(a) (27) (C) of the Act;

(iii) An alien who is a native of an adjacent island or foreign contiguous territory and who is seeking to enter the United States directly from an adjacent island, or from foreign contiguous territory;

(iv) An alien who proceeded to an adjacent island or foreign contiguous territory by nonsignatory carrier and who subsequently proceeded to Canada by signatory carrier and seeks to enter the United States from Canada, regardless of the method by which he first entered the adjacent island or foreign contiguous territory; or

(v) An alien who proceeded from the United States by a nonsignatory carrier to an adjacent island or foreign contiguous territory from which he seeks to reenter the United States, if, at the time of his last entry into the United States he would not have been ineligible to receive an immigrant visa under the provisions of section 212(a) (24) of the Act.

(25) *Illiterates.* (i) The provisions of section 212(a) (25) of the Act shall not be applicable to the following classes of immigrants: (a) An alien who has been lawfully admitted for permanent residence and who is returning from a temporary visit abroad; (b) An alien who is under sixteen years of age; (c) An alien who is physically incapable of reading; (d) An alien who is the parent, grandparent, spouse, son or daughter of an

alien eligible to receive a visa, or of an alien lawfully admitted for permanent residence, or of a citizen of the United States, if accompanying such eligible alien or accompanying or coming to join such citizen or lawfully admitted alien in the United States; or (e) An alien who establishes that he seeks admission to the United States to avoid religious persecution in the country of his last permanent residence whether such persecution is evidenced by overt acts or by laws or governmental regulations that discriminate against him or any group to which he belongs because of his religious faith.

(ii) A son or daughter, regardless of age, who is a United States citizen, a lawful permanent resident of the United States, or an accompanying alien eligible to receive a visa, may confer upon his parent or grandparent the benefits of the exemptions from the literacy requirement stated in subdivision (i) (d) of this subparagraph.

(Sec. 212(b), 66 Stat. 187; 8 U.S.C. 1182)

(26) *Nonimmigrant documentary requirements.* (Section 212(a) (26) of the Act inapplicable.)

(27) *Prejudicial activities.* [Reserved]

(28) *Members or affiliates of proscribed organizations.* (i) The term "affiliate", as used in section 212(a) (28) (C) and (I) of the Act, shall mean an organization which is related to, or identified with, a proscribed association or party, including any section, subsidiary, branch, or subdivision thereof, in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party. An organization which gives, loans, or promises support, money, or other thing of value for any purpose to any proscribed association or party shall be presumed to be an "affiliate" of such association or party, but nothing contained in this subdivision shall be construed as an exclusive definition of the term "affiliate."

(ii) Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa.

(iii) Voluntary service in a political capacity shall constitute affiliation with the political party or organization in power at the time of such service.

(iv) If an alien continues or continued his membership in or affiliation with a proscribed organization on or after his sixteenth birthday, only his activities after reaching sixteen years of age shall be pertinent to a determination whether the continuation of his membership or affiliation is or was voluntary.

(v) The term "operation of law", as used in section 212(a) (28) (I) (i) of the Act, shall include any case wherein the alien without his acquiescence automatically becomes or became a member or affiliate of a proscribed party or organ-

ization by official act, proclamation, or order, edict, or decree.

(vi) In accordance with the definition of "totalitarian party" contained in section 101(a)(37) of the Act, a former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, shall not be considered ineligible under the provisions of section 212(a)(28)(C) of the Act to receive a visa, unless the alien is known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship, within the meaning of section 212(a)(28)(D) of the Act.

(vii) The words "actively opposed", as used in section 212(a)(28)(I)(ii) of the Act, shall be considered as embracing speeches, writings, and other overt or covert activities in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a voluntary member or affiliate.

(29) *Espionage, sabotage, or other subversive activities.* [Reserved]

(30) *Alien accompanying excludable alien.* (Section 212(a)(30) of the Act inapplicable).

(31) *Alien aiding illegal entrant.* [Reserved]

(b) *Failure of application to comply with Act.* (1) An alien's visa application shall be considered as failing to comply with the provisions of the Act or the regulations issued thereunder if:

(i) The applicant fails to furnish the information to be included in such application as required by the Act or the regulations contained in this part;

(ii) The application contains a false or incorrect statement other than one which would constitute a ground of ineligibility under section 212(a)(9) or (19) of the Act;

(iii) The application is not supported by the documents required under the provisions of the Act or the regulations contained in this part;

(iv) The applicant refuses to be fingerprinted as required by the Act or the regulations contained in this part;

(v) The necessary fee is not paid for such application or for the issuance of the immigrant visa;

(vi) The alien fails to swear to, or affirm, the application before the consular officer; or

(vii) The application otherwise fails to meet the specific requirements of the Act for reasons for which the alien is responsible.

(2) The grounds of refusal described in subparagraph (1) of this paragraph shall not constitute a bar to the reconsideration of the application upon compliance with statutory or regulatory requirements, or to the consideration of a

subsequent application submitted by the same applicant.

(Sec. 221(g), 66 Stat. 192; 8 U.S.C. 1201)

(c) *Former exchange visitors.* An alien who was admitted into the United States as an exchange visitor subsequent to June 4, 1956, or who otherwise acquired the status of an exchange visitor subsequent to June 4, 1956, including an alien granted an extension of the period of his temporary admission subsequent to September 20, 1956, shall not be eligible to apply for and receive an immigrant visa unless (1) the consular officer is satisfied that for an aggregate of at least two years following the termination of his exchange visitor status the alien has resided and been physically present abroad in a country or countries cooperating in the exchange-visitor program, or (2) the residence abroad requirement of section 201(b) of the United States Information and Educational Exchange Act of 1948, as amended, has been waived as provided in that section. (See §§ 63.6 and 63.7 of this chapter.)

(Sec. 201, 62 Stat. 7, as amended, Sec. 402(f), 66 Stat. 276, 70 Stat. 241; 22 U.S.C. 1446)

(d) *Aliens entitled to A, E, or G non-immigrant classification.* An alien entitled to nonimmigrant classification under section 101(a)(15)(A), (E), or (G) of the Act who is applying for an immigrant visa and who intends to continue the activities required for such nonimmigrant classification in the United States, shall not be eligible to receive an immigrant visa until he has executed before the consular officer a written waiver of all rights, privileges, exemptions and immunities which would accrue to him by reason of such occupational status.

(Secs. 214(b), 247(b), 66 Stat. 189, 218; 8 U.S.C. 1184, 1257)

RELIEF FOR CERTAIN INELIGIBLE ALIENS § 42.95 Relief for certain ineligible aliens.

(a) *Exercise of discretion by the Attorney General under section 212(c) of the Act.* The exercise by the Attorney General of his authority under section 212(c) of the Act to grant discretionary relief from certain grounds of ineligibility other than those described in section 212(a)(26), (27), (28) and (29) to certain returning resident aliens shall remove the alien's ineligibility to receive a visa only under the provisions specified in the Attorney General's order.

(b) *Returning resident alien originally admitted under the Act of December 28, 1945.* An alien admitted into the United States under section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa after a temporary absence abroad solely because of a mental or physical defect or defects that existed at the time of the original admission.

(Sec. 3, 59 Stat. 659; 8 U.S.C. 234)

CROSS REFERENCE: For waiver of certain grounds of ineligibility by the Act of September 11, 1957, as amended, see § 42.91(a)(1-6), (9), (10), (12) and (19).

ADMINISTRATIVE WAITING LISTS

§ 42.100 Administrative waiting lists.

Whenever it becomes administratively impracticable at any consular office to give consideration to, and take final action upon, the case of an applicant for a quota or a nonquota immigrant visa without a waiting period, each applicant's priority shall be maintained by the registration of his name on an administrative waiting list.

APPLICATION FOR IMMIGRANT VISAS

§ 42.110 Place of application.

Every alien applying for an immigrant visa shall make application at a United States consular office in the consular district in which he has his residence, except that the consular officer shall, at the direction of the Department, or may, in his discretion, accept an application for an immigrant visa from an alien having no residence in the consular district if the alien is physically present therein.

§ 42.111 Supporting documents.

(a) *Authority to require documents and consideration accorded.* The consular officer shall have authority to require such documents as he may consider necessary to establish the alien's eligibility to receive an immigrant visa. All such documents submitted and any other evidence adduced by the alien shall be given consideration by the consular officer, including briefs submitted by attorneys or other representatives.

(b) *Documents required.* An alien applying for an immigrant visa shall be required to furnish with his application, if obtainable, two copies of a police certificate or certificates; two certified copies of any existing prison record, military record, and record of his birth; and two certified copies of all other records or documents concerning him or his case which the consular officer may deem to be necessary. An alien who has only one copy of any of these documents and cannot obtain another may present two certified or photostatic copies thereof, but the original shall be offered for inspection by the consular officer who may return it to the alien.

(1) A "police certificate" is a certification by the police or other appropriate authorities stating what, if anything, their records show concerning the alien. The words "appropriate police authorities", as used in section 222(b) of the Act, shall be considered as referring to the police authorities of any country, area or locality wherein the alien has had a residence for six months or more, or to any other police authority which maintains central police records, except that a consular officer may, in his discretion, require a police certificate covering any residence of less than six months if he has reason to believe that a police record exists in the country, area or locality of such residence.

(2) A "prison record" is an official document containing a report of the applicant's record of confinement in a penal or correctional institution, including his demeanor during confinement.

The submission of a prison record is not required if the applicant has not been confined in a penal or correctional institution.

(3) A "military record" is an official document containing a record of the applicant's service and conduct while in military service, including any convictions of crime before military tribunals as distinguished from other criminal courts. A certificate of discharge from the military forces or an enrollment book belonging to the applicant shall not be acceptable in lieu of the official military record unless it shows the alien's complete record while in military service as required by this subparagraph. The applicant may, however, be required to present for inspection such a discharge certificate or enrollment book if deemed necessary by the consular officer to establish the applicant's eligibility to receive a visa.

(4) A "record of birth" is a birth certificate showing the date and place of birth and the parentage of an alien, issued by the official custodian of birth records in the country of the applicant's birth and based upon the original registration of birth.

(5) "Other records or documents" shall include any records or documents which are pertinent to a determination of the applicant's identity, classification, or any other matter relating to his eligibility to receive a visa.

(c) *Unobtainable documents.* (1) If an immigrant establishes to the satisfaction of the consular officer, or the catalogue of available documents prepared by the Department indicates, that any document or record required under this section is unobtainable, the consular officer may permit the immigrant to submit, in lieu of such document or record, other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. A document or other record shall be considered "unobtainable" if it cannot be procured without causing to the applicant or a member of his family actual hardship, other than normal delay and inconvenience.

(2) If the consular officer determines that a supporting document, as referred to in paragraph (b) of this section, is in fact unobtainable, although the catalogue of available documents prepared by the Department shows that it is available, he shall affix to each copy of the visa application a statement bearing his signature and the seal of his office and setting forth in detail his reasons for considering the record or document unobtainable, and for accepting the particular secondary evidence attached to the visa.

(d) *Authenticity of records and documents.* If a consular officer has reason to believe that a particular record or document required under the provisions of this section and submitted by an applicant is not authentic or has been altered or tampered with in any material manner, he shall take such action as may be necessary to determine its authenticity, or to ascertain the facts to which such document purports to relate in the alien's case.

(e) *Photographs.* Each alien, regardless of age, shall furnish with his application for a visa three identical photographs. The photographs shall reflect a reasonable likeness of the alien at the time they are furnished, be one and one-half inches square, unmounted, show a full front view without head covering and be printed on a light background. Each copy of the photograph shall be signed by the person executing the application (see § 42.115(a)) in such manner as not to obscure the alien's features. One photograph each shall be attached to Forms FS-511 and FS-511a. The third photograph shall be appended to Form FS-511 in a sealed envelope.

(Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

§ 42.112 Passports.

(a) *Passport requirement.* Except as provided in § 42.6, every applicant for an immigrant visa shall present a passport, as defined in section 101(a)(30) of the Act and § 42.1, which is valid for at least sixty days beyond the period of validity of the immigrant visa, issued to such alien.

(b) *Aliens included in single passport.* The passport requirement referred to under paragraph (a) of this section may be met by the presentation of a passport including more than one person if such inclusion is authorized under the laws or regulations of the issuing authority and if a photograph of each person sixteen years of age or over to whom a visa is to be issued shall have been attached to the passport by the issuing authority.

(Sec. 222(b), 66 Stat. 193; 8 U.S.C. 1202)

§ 42.113 Medical examination.

(a) Prior to the issuance of an immigrant visa, the consular officer shall require every alien, regardless of age, to submit to a medical examination in order to determine his eligibility to receive a visa.

(b) At consular offices where medical officers of the United States Public Health Service are on duty, the alien's examination shall be conducted by such officers. If a medical officer of the United States Public Health Service is not available, the required examination shall be conducted by a physician selected by the alien from a panel of physicians approved by the consular officer.

(c) The consular officer shall bring to the attention of the panel of physicians the regulations of the United States Public Health Service governing the medical examination of aliens, and shall advise visa applicants, when laboratory facilities for the required tests are not available, that such tests must be made at the United States port of entry and may be a basis for the alien's exclusion.

CROSS REFERENCE: For regulations of the United States Public Health Service governing the medical examination of aliens see 42 CFR 34.

(Sec. 221(d), 66 Stat. 192; 8 U.S.C. 1201)

§ 42.114 Personal appearance.

Every applicant, regardless of age, including an alien whose application is executed by another person, shall be

required to appear personally before the consular officer in connection with the execution of his application.

(Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

§ 42.115 Application forms.

(a) *Aliens required to execute applications.* Every alien applying for an immigrant visa shall make separate application therefor on Form FS-510 (Application for Immigrant Visa and Alien Registration) in duplicate. An alien under fourteen years of age, or one physically incapable of executing an application, may have his application for an immigrant visa executed in his behalf by a parent or guardian. If the alien has no parent or guardian, the application may be executed by any person having lawful custody of, or a legitimate interest in, such alien.

(b) *Additional information as part of application.* An alien may be required in the discretion of the consular officer to complete Form FS-497 (Questionnaire to Determine Quota or Nonquota Status and Application for Quota Registration) for the purpose of assisting in the determination of the alien's classification and quota chargeability. In any case in which the consular officer believes that the information provided in Form FS-510 is inadequate to determine the alien's eligibility to receive an immigrant visa he may require the submission of such additional information as may be necessary or interrogate the alien on any matter which is deemed material. Any additional statements made by the alien shall become part of the visa application. All documents required under the authority of § 42.111 shall be considered papers submitted with the alien's application within the meaning of section 221(g)(1) of the Act.

(c) *Statements regarding race and ethnic classification.* The provisions of section 222(c) of the Act which require every alien applying for an immigrant visa and alien registration to state his race and ethnic classification in the application shall not be construed as pertaining to the alien's religion.

(Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

§ 42.116 Registration and fingerprinting.

(a) *Registration.* Form FS-510, when duly executed, shall constitute the alien's registration record for the purposes of section 221(b) of the Act.

(b) *Fingerprinting.* (1) Every alien, except a child under fourteen years of age, executing an application for an immigrant visa shall be fingerprinted on Form AR-4 (Alien Registration Fingerprint Card) or in such other manner as may be authorized by the Department. (2) An alien may be required at any time prior to the execution of Form FS-510 to have a set of his fingerprints taken on Form AR-4 if such procedure is necessary for purposes of identification or investigation.

(Sec. 221(b), 66 Stat. 191; 8 U.S.C. 1201)

§ 42.117 Execution of visa application.

(a) *Application fee.* The prescribed fee of \$5.00 for the furnishing and verifi-

cation of each application for an immigrant visa shall be collected and the fee receipt notation contained on Form FS-510 shall be completed. The application fee shall not be refunded without specific authorization from the Department.

(b) *Oath, signature and seal.* The applicant shall be required to read the application when it is completed, or it shall be read to him in his language, or he shall otherwise be apprised of its full contents, and he shall be asked whether he is willing to subscribe thereto. If the alien is not willing to subscribe to the application unless changes are made in the information stated therein, the required changes shall be made. Form FS-510 shall then be signed by or on behalf of the applicant in the space provided therefor in the presence of the consular officer. The application shall be sworn to, or affirmed, by or on behalf of the applicant before the consular officer, who shall then sign the application, indicate his title and affix the seal of his office in the designated place.

(c) *Interview.* Every alien executing an application for an immigrant visa shall be interviewed by a consular officer. The consular officer shall have authority to require, in his discretion, that an applicant answer any questions deemed to be material to determining his eligibility and appropriate immigrant classification.

CROSS REFERENCE: For reconsideration of visa refusal see § 42.130(e).

(Sec. 222, 66 Stat. 193; 8 U.S.C. 1202)

§ 42.118 Immigrant preceding his family; informal examination of members of family.

(a) If an applicant for an immigrant visa proposes to precede his family to the United States, the consular officer may arrange for an informal examination of the other members of the applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive a visa.

(b) In the event any member of such family is found upon informal examination to be ineligible to receive an immigrant visa, the alien who intends to precede his family to the United States shall be so informed, and required by the consular officer to acknowledge in writing that he has been so informed.

(c) A determination in connection with an informal examination that an alien appears to be eligible for a visa shall carry no assurance that the alien concerned will be issued an immigrant visa in the future. The alien who intends to precede his family to the United States shall be so informed and shall be required by the consular officer to acknowledge in writing that he has been so informed. The question of eligibility to receive a visa is one which shall be determined finally at the time the family member applies for a visa.

ISSUANCE OF IMMIGRANT VISAS

§ 42.120 Authority to issue visas.

Consular officers are authorized to issue immigrant visas at designated consular offices abroad in accordance with the authority contained in sections 101

(a)(16), 221(a) and 224 of the Act. (Consular offices authorized to issue immigrant visas are listed periodically in Visa Office Bulletins published by the Department of State.) A consular officer performing his duty in the territory of a country against which the sanctions provided by section 243(g) of the Act have been invoked shall not issue an immigrant visa to an alien who is a national, citizen, subject or resident of such a country, unless he has been informed that the sanction has been waived in the case of an individual alien or a specified class of aliens.

§ 42.121 Visa fees.

The prescribed fee of \$20.00 for the issuance of an immigrant visa shall be collected after the execution of the application and completion of the visa interview, and the fee receipt notation contained on Form FS-511 shall be completed prior to the issuance of the visa. The fee shall not be refunded without specific authorization from the Department.

(Sec. 281, 66 Stat. 230; 8 U.S.C. 1351)

§ 42.122 Validity of visas.

(a) The period of validity of a quota or nonquota visa shall not exceed four months, beginning with the date of issuance, except that any visa issued to an eligible orphan under section 4 of the Act of September 11, 1957, as amended, or under any other provision of law to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States armed forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business.

(Sec. 4, 71 Stat. 639; 8 U.S.C. 1205)

(b) If the visa was originally issued with a period of validity less than the maximum authorized by paragraph (a) of this section, such period may be extended up to but not exceeding the maximum period permitted. If an immigrant applies for an extension of the period of validity of his visa at a consular office other than the issuing office, the consular officer shall, unless he is satisfied beyond any doubt that the alien is eligible for the extension, communicate with the issuing office to ascertain if any objection is perceived to such extension. In extending the period of validity of an immigrant visa, the consular officer shall make appropriate notation of the new expiration date of the visa, affix his signature, indicate his title, and impress the seal of his office thereon.

(c) No fee shall be charged for extending the period of validity of an immigrant visa.

(d) The period of validity of a visa issued to an alien as a nonquota or first preference quota immigrant child, or under the quota of an accompanying parent as the accompanying child of such parent, shall not extend beyond the twenty-first birthday of the recipient.

The consular officer shall warn an alien when appropriate that he will be inadmissible as such an immigrant if he is not unmarried at the time of application for admission, or if he fails to apply for admission at a port of entry into the United States before reaching the age of twenty-one years. The consular officer shall also warn an alien issued a visa as a second or third preference quota immigrant as an unmarried son or daughter of a citizen or lawful permanent resident of the United States that he will be inadmissible as such an immigrant if he is not unmarried at the time of application for admission into the United States.

(Sec. 221(c), 66 Stat. 191, Sec. 4(c), 71 Stat. 639; 8 U.S.C. 1201, 1205)

§ 42.124 Procedure in issuing visas.

(a) *Insertion of data.* In issuing an immigrant visa the pertinent information shall be inserted in the designated blank spaces provided on Form FS-511 (Immigrant Visa and Alien Registration), in accordance with the instructions contained in this section.

(1) A symbol as specified in § 42.12 shall be used to indicate the classification of the immigrant.

(2) If the immigrant is the beneficiary of an approved visa petition, a notation shall be inserted on the visa indicating that the petition is attached.

(3) Nonquota immigrant visas may be numbered in consecutive order at each consular office, beginning a new series on July 1 of each year, if the principal consular officer considers the numbering of nonquota visas to be desirable. A quota immigrant visa shall bear the quota number assigned to the immigrant followed by a notation indicating the quota or subquota to which the alien is chargeable.

(4) The date of issuance and the date of expiration of the visa shall be inserted in the proper places on the visa and shall show the day, month, and year in that order, the name of the month being spelled out, as "24 December 1952".

(5) If an immigrant visa is to be valid for admission only at a specified port or ports of entry, the name or names of such port or ports shall be entered immediately below the expiration date of the visa and shall be preceded by the phrase, "valid only if presented at".

(6) In the event the passport requirement has been waived under the provisions of § 42.6, a notation shall be inserted in the space provided for the passport number, setting forth the section and paragraph under which the passport was waived.

(7) A photograph, appropriately signed, shall be attached in the space provided on Form FS-511 by the use of a legend machine unless specific authorization has been granted by the Department to use the impression seal only.

(b) *Documents comprising visa.* Form FS-511, and Form FS-510 when properly executed, together with one copy of each document required by the consular officer in accordance with § 42.111 shall constitute an immigrant visa. No seal, stamp or notation of any kind shall be placed in an alien's pass-

port to indicate that an immigrant visa has been issued.

(c) *Attachment of documents.* Form FS-511 shall be placed immediately above Form FS-510 and the supporting documents attached thereto. Form FS-511A, the duplicate copy of Form FS-510, and the duplicate copies of supporting documents shall be retained in the files of the consular office. Any document furnished to the consular officer by the alien's sponsor or other person with a request that the contents not be divulged to the visa applicant shall, if required to be attached to the visa, be placed in an envelope and sealed with the impression seal of the consular office, before being attached to the visa. If an immigrant visa is issued to an alien who is in possession of a United States re-entry permit, whether valid or expired, the consular officer shall attach the permit to the immigrant visa for appropriate disposition at the port of entry by the Immigration and Naturalization Service. Documents submitted which have no bearing on the alien's qualifications or eligibility to receive a visa may be returned to the alien or to the person furnishing them.

(d) *Signature, seal and delivery of visa.* The consular officer who issues an immigrant visa shall affix his signature, indicate his title, and impress the seal of his office on Form FS-511 in a manner which partly covers the photograph and his signature. Thereupon, the immigrant visa shall be issued by delivery to the immigrant or his authorized agent or representative.

(Sec. 221, 66 Stat. 191; 8 U.S.C. 1201)

§ 42.125 Issuance of new or replace visas.

(a) *New nonquota visa.* (1) A nonquota immigrant who establishes that his visa has been lost or mutilated, or has expired, may be issued a new nonquota immigrant visa at the same or any other consular office upon payment of the statutory application and visa fees if the immigrant is at that time found qualified to receive such a visa.

(2) Prior to issuing a new nonquota immigrant visa at a consular office other than that which issued the original visa, the consular officer shall communicate with the original visa-issuing office to ascertain if any reason is known why a new visa should not be issued.

(3) In the event a new nonquota immigrant visa is issued as provided in subparagraph (1) of this paragraph, the visa shall be given a new number in the series of nonquota immigrant visas issued at the consular office if that office numbers nonquota visas.

(b) *Replace quota visa.* (1) A quota immigrant who establishes that his visa has been lost or mutilated, or that he was otherwise unable to use it during the period of its validity because of reasons beyond his control and for which he was not responsible, may be issued a replace quota immigrant visa under the original quota number during the same quota year in which the original visa was issued, upon payment anew of the statutory application and visa fees, if the immigrant is at that time found quali-

fied to receive such a visa and the consular officer is in possession of the duplicate signed consular file copy of the original visa. Prior to issuing a replace quota immigrant visa to an alien whose original immigrant visa was issued at some other consular office, the consular officer shall also ascertain whether any reason is known to the original visa-issuing office why a replace visa should not be issued.

(2) In issuing a replace quota immigrant visa, as provided in subparagraph (1) of this paragraph, the word "Replace" shall be inserted on Form FS-511 before the word "Immigrant" in the title of the visa.

(Sec. 221(c), 66 Stat. 191; 8 U.S.C. 1201)

REFUSAL AND REVOCATION OF IMMIGRANT VISAS

§ 42.130 Procedure in refusing visas.

(a) *Refusal procedure.* A consular officer shall not refuse an immigrant visa until Form FS-510 is executed by the applicant. When an immigrant visa is refused, an appropriate record shall be made in duplicate on a form prescribed by the Department, which shall be signed and dated by the consular officer. The applicant shall be informed of the provision of law, or regulation issued thereunder, on which the refusal is based, and of any statutory provisions under which administrative relief is available. He shall be further informed that the decision to refuse a visa will be reviewed by at least one other consular officer and that written notice of the result of such review will be sent to him. One copy of each of the documents which the consular officer required the alien to submit in support of the visa application shall be attached to the original of Form FS-510 which will then be returned to the alien. A copy of all documents pertinent to the refusal shall be attached to the duplicate of Form FS-510 and shall be retained with it in the consular files. Any copies of documents submitted by the alien not attached to the original or duplicate of Form FS-510 as provided in this section shall be returned to the alien.

(b) *Review of refusals at consular offices.* The principal consular officer at a post, or an alternate whom he may specifically designate, shall review the case of each applicant who has been refused a visa and shall record his decision over his signature and the date on a form prescribed by the Department. If the principal consular officer, or his alternate, does not concur in the refusal, he shall (1) refer the case to the Department for an advisory opinion, or (2) assume responsibility for the case himself.

(c) *Notice of decision.* Upon completion of review of a visa refusal at a consular office, formal written notice of the decision shall be delivered or mailed to the applicant upon a form prescribed by the Department. If the refusal is affirmed, the original of the form referred to in paragraph (a) of this section shall be attached to the formal notice of decision. The statutory basis for the refusal and any administrative relief avail-

able shall be indicated in the notice of decision.

(d) *Review of refusals by the Department.* The Department may request a consular officer in an individual case or in specified classes of cases to submit a report if an immigrant visa has been refused. The Department will review such reports and may furnish an advisory opinion to the consular officer for his assistance in giving further consideration to such cases. If upon the receipt of the Department's advisory opinion the consular officer contemplates taking action contrary to the advisory opinion, the case shall be resubmitted to the Department with an explanation of the proposed action. Rulings of the Department concerning an interpretation of law, as distinguished from an application of the law to the facts, shall be binding upon consular officers.

(e) *Reconsideration of refusal.* If a visa is refused, and the applicant within 120 days from the date of refusal adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based, his case shall be reconsidered without the requirement of the payment of an additional application fee.

(Sec. 221(g), 66 Stat. 192; 8 U.S.C. 1201)

§ 42.134 Revocation of visas.

(a) *Grounds for revocation.* Consular officers are authorized to revoke an immigrant visa under the following circumstances: (1) The consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; (2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the particular visa at the time it was issued; or (3) The consular officer obtains information establishing that, subsequent to the issuance of the visa, a ground of ineligibility has arisen in the alien's case.

(b) *Notice of revocation.* An alien shall, if practicable, be notified of the consular officer's intention to revoke his visa prior to his departure for the United States, and shall, if practicable, be given an opportunity to show why the visa should not be revoked.

(c) *Reconsideration of revocation.* The consular officer shall consider any evidence which may be submitted by the alien, his attorney or representative indicating that the revocation of the visa may have been unwarranted.

(d) *Report of revocation.* (1) If a visa is revoked, notice of revocation shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which the alien is known or believed to intend to travel to the United States, unless the visa has been cancelled in accordance with the provisions of paragraph (e) of this section; (2) If it is not practicable to notify the alien of revocation prior to his departure for the United States, a report explaining the circumstances shall be communicated promptly to the Department for transmission to the Immigration and

Naturalization Service; (3) In any case in which an immigrant visa has been revoked, a report shall be submitted to the Department. A copy of the report shall be sent to the consular office which issued the visa if the revocation is effected by any other consular office upon its own initiative, upon instruction of the issuing office, or upon instructions from the Department.

(e) *Cancellation of visa.* The holder of a revoked visa shall be requested to surrender Form FS-511 to the consular office indicated in the notification of cancellation of the visa. The word "revoked" shall be written plainly on the visa by the consular officer, who shall sign and date such notation. Appropriate notation of the action taken, including a statement of the reason therefor, shall be made on Form FS-511A or on an appended memorandum. The revocation of a visa shall be effective irrespective of whether such visa has been cancelled.

(Sec. 221(i), 66 Stat. 192; 8 U.S.C. 1201)

TRANSFER OF CASES

§ 42.140 Transfer of cases.

(a) All documents, papers and other evidence relating to an applicant for an immigrant visa whose application is pending or has been refused at one consular office may be transferred to another consular office at the applicant's request and risk if there is reasonable justification for the transfer of the applicant's file, and the transferring consular office has no reason to believe that the alien will be unable to appear at the receiving office to apply for a visa.

(b) The transfer of a case shall include any authorization to grant non-quota or preference quota status based upon an approved petition and the alien's registration priority.

(c) In no case shall a quota number be transferred from one consular office to another. A quota number allotted by the Department which cannot be used as a result of the transfer of a case to another office shall be returned to the Department immediately.

ENTRY INTO AREAS UNDER UNITED STATES ADMINISTRATION

§ 42.145 Aliens entering areas under United States administration not included in section 101(a)(38) of the Act.

An immigrant seeking to enter an area which is under United States administration but which is not within the "United States", as defined in section 101(a)(38) of the Act, is not required by the Act to be documented by a consular officer unless the authority contained in section 215 of the Act has been invoked.

FURNISHING VISA RECORDS FOR COURT PROCEEDINGS

§ 42.150 Furnishing visa records for court proceedings.

Upon receipt by a consular officer of a request for information from a visa file or record for use in court proceedings, as contemplated in section 222(f) of the Act, the consular officer shall, prior to the release of the information, submit

the request together with a full report to the Department.

Effective date. The regulations contained in this order shall become effective August 15, 1960.

The provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) relative to notice of proposed rule making are inapplicable to this order because the regulations contained therein involve foreign affairs functions of the United States.

JOHN W. HANES, JR.,
Administrator, Bureau of
Security and Consular Affairs.

APRIL 11, 1960.

[F.R. Doc. 60-3430; Filed, Apr. 14, 1960; 8:46 a.m.]

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 102—VOCATIONAL EDUCATION IN AGRICULTURE, DISTRIBUTIVE OCCUPATIONS, HOME ECONOMICS, AND TRADES AND INDUSTRIES, INCLUDING THE FISHERY TRADES AND INDUSTRY, AND IN AREA VOCATIONAL EDUCATION PROGRAMS

PART 141—FINANCIAL ASSISTANCE FOR STRENGTHENING SCIENCE, MATHEMATICS, AND MODERN FOREIGN LANGUAGE INSTRUCTION IN PUBLIC SCHOOLS

PART 142—LOANS TO PRIVATE NON-PROFIT SCHOOLS FOR ACQUISITION OF EQUIPMENT FOR STRENGTHENING INSTRUCTION IN SCIENCE, MATHEMATICS, AND MODERN FOREIGN LANGUAGE

PART 143—GUIDANCE, COUNSELING, AND TESTING: IDENTIFICATION AND ENCOURAGEMENT OF ABLE STUDENTS—STATE PROGRAMS

Equipment From a Communist Country

§ 102.110 [Amendment]

1. Section 102.110 of Title 45 of the Code of Federal Regulations is amended to add a new paragraph (c). The new paragraph describes the provision in the Department of Health, Education, and Welfare Appropriation Act, 1960 (Pub. Law 86-158; 73 Stat. 339, 346) which specifies that funds appropriated for "Defense Educational Activities" may not be used for the purchase of teaching equipment which originated in or was exported from a Communist country, unless such equipment is unavailable from any other source.

The new paragraph (c) reads as follows:

(c) *Equipment from a Communist country.* The Department of Health, Education, and Welfare Appropriation Act, 1960 (Pub. Law 86-158; 73 Stat. 339, 346), provides that no part of the funds which it appropriates for "Defense Educational Activities" shall be available for the purchase of science, mathematics or modern language teaching equipment, or equipment suitable for use for teaching in such fields of education, which can be identified as originating in or having been exported from a Communist country, unless such equipment is unavailable from any other source. This prohibition applies to expenditures with respect to which Federal participation is requested from fiscal year 1960 allotments under section 302 of the George-Barden Act.

(Sec. 1001, 72 Stat. 1602; 20 U.S.C. 581)

§ 141.11 [Amendment]

2. Section 141.11 of Title 45 of the Code of Federal Regulations is amended to add a new paragraph (c). The new paragraph describes the provision in the Department of Health, Education, and Welfare Appropriation Act, 1960 (Pub. Law 86-158; 73 Stat. 339, 346) which specifies that funds appropriated for "Defense Educational Activities" may not be used for the purchase of teaching equipment which originated in or was exported from a Communist country, unless such equipment is unavailable from any other source.

The new paragraph (c) reads as follows:

(c) *Equipment from a Communist country.* The Department of Health, Education, and Welfare Appropriation Act, 1960 (Pub. Law 86-158; 73 Stat. 339, 346), provides that no part of the funds which it appropriates for "Defense Educational Activities" shall be available for the purchase of science, mathematics or modern language teaching equipment, or equipment suitable for use for teaching in such fields of education, which can be identified as originating in or having been exported from a Communist country, unless such equipment is unavailable from any other source. This prohibition applies to expenditures with respect to which Federal participation is requested from fiscal year 1960 allotments (1) for supervisory services and administration under section 302(b) or 1008 of the Act and (2) for the acquisition of equipment under section 302(a) or section 1008 of the Act. It also applies to the acquisition of equipment from allotments made for fiscal year 1960 but carried over to fiscal year 1961 as the result of section 302(a)(4) of the Act.

(Sec. 1001, 72 Stat. 1602; 20 U.S.C. 581)

§ 142.11 [Amendment]

3. Section 142.11 of Title 45 of the Code of Federal Regulations is amended to add a new paragraph (g). The new paragraph describes the provision in the Department of Health, Education, and Welfare Appropriation Act, 1960 (P.L. 86-158; 73 Stat. 339, 346) which specifies that funds appropriated for "Defense Educational Activities" may not be used for the purchase of teaching equipment

which originated in or was exported from a Communist country, unless such equipment is unavailable from any other source.

The new paragraph (g) reads as follows:

(g) *Equipment from a Communist country.* The Department of Health, Education, and Welfare Appropriation Act, 1960 (P.L. 86-158; 73 Stat. 339, 346) provides that no part of the funds which it appropriates for "Defense Educational Activities" shall be available for the purchase of science, mathematics or modern language teaching equipment, or equipment suitable for use for teaching in such fields of education, which can be identified as originating in or having been exported from a Communist country, unless such equipment is unavailable from any other source. Accordingly, this condition applies to all loans made from the appropriation for the fiscal year ending June 30, 1960. A violation of this condition will constitute a misuse of funds which shall cause them to become immediately payable in full together with all interest accrued thereon. Inquiry should be made of the Commissioner if the borrower has any question whether a specific proposed use of loan funds might violate this condition.

(Sec. 1001, 72 Stat. 1602; 20 U.S.C. 581)

4. Section 143.12 of Title 45 of the Code of Federal Regulations is amended to add a new paragraph (b). The new paragraph describes the provision in the Department of Health, Education, and Welfare Appropriation Act, 1960 (P.L. 86-158; 73 Stat. 339, 346) which specifies that funds appropriated for "Defense Educational Activities" may not be used for the purchase of teaching equipment which originated in or was exported from a Communist country, unless such equipment is unavailable from any other source.

The section as amended reads:

§ 143.12 Federal participation in general.

(a) *Nature.* After fiscal year 1959, the Federal Government will pay from each State's allotment, as reduced by expenditures required pursuant to section 504(b) of the Act, one-half of the total sum expended under the approved State plan: (1) By the State and local educational agencies in the establishment, maintenance, or extension of

guidance, counseling, or testing programs approved under the State plan; and (2) for State agency supervision and related services with respect to such programs. There can be no Federal financial participation in the payment of obligations incurred or in expenditures made by local educational agencies for local guidance and counseling programs if the programs have not first been approved by the State agency under an approved plan.

(b) *Equipment from a Communist country.* The Department of Health, Education, and Welfare Appropriation Act, 1960 (P.L. 86-158; 73 Stat. 339, 346), provides that no part of the funds which it appropriates for "Defense Educational Activities" shall be available for the purchase of science, mathematics or modern language teaching equipment, or equipment suitable for use for teaching in such fields of education, which can be identified as originating in or having been exported from a Communist country, unless such equipment is unavailable from any other source. This prohibition applies to expenditures with respect to which Federal participation is requested from fiscal year 1960 allotments under section 502 or 1008 of the Act.

(Sec. 1001, 72 Stat. 1602; 20 U.S.C. 581)

Dated: March 24, 1960.

[SEAL] L. G. DERTHICK,
U.S. Commissioner of Education.

Approved: April 11, 1960.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 60-3431; Filed, Apr. 14, 1960;
8:46 a.m.]

PART 145—NATIONAL DEFENSE FOREIGN LANGUAGE FELLOWSHIPS

Other Service of a Public Nature

Part 145 is hereby designated as the part under which will be published regulations pertaining to the National Defense Foreign Language Fellowships awarded under section 601(b) of title VI of the National Defense Education Act of 1958, P.L. 85-864, as amended, 72 Stat. 1593, 20 U.S.C. 511.

The following regulations with respect to the "other service of a public nature" provision of section 601(b) are hereby adopted:

§ 145.1 Other service of a public nature.

(a) Section 601(b) of title VI of the National Defense Education Act of 1958, P.L. 85-864, as amended, 72 Stat. 1593, 20 U.S.C. 511, authorizes the United States Commissioner of Education to award stipends (National Defense Foreign Language Fellowships) to individuals undergoing advanced training in certain modern foreign languages, but only upon reasonable assurance that the recipients of such fellowships "will, on completion of their training, be available for teaching a modern foreign language in an institution of higher education or for such other service of a public nature as may be permitted in regulations of the Commissioner." "Other service of a public nature" is in general defined to mean participation in a professional or technical activity, either Governmental or non-Governmental, which contributes significantly to the conduct of the Nation's economic, cultural, educational, scientific, or political relations with other peoples, and in which competency in the language for which the fellowship is awarded is highly desirable.

(b) Because of priority of needs, fellowships awarded on the basis of the "other service of a public nature" authorization shall, for the time being, be limited to individuals who will be available for (1) teaching in an institution of higher education in a field in which competency in the language for which the fellowship is awarded is highly desirable, or (2) employment by the United States or an instrumentality or other agency thereof in a professional or technical activity which meets the criteria of paragraph (a) of this section and in which competency in the language for which the fellowship is awarded is highly desirable.

(Secs. 601, 1001; 72 Stat. 1593, 1602; 20 U.S.C. 511, 581)

Dated: March 24, 1960.

[SEAL] L. G. DERTHICK,
United States Commissioner of Education.

Approved: April 11, 1960.

BERTHA ADKINS,
Acting Secretary of Health, Education, and Welfare.

[F.R. Doc. 60-3432; Filed, Apr. 14, 1960;
8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Parts 170, 245]

ALCOHOLIC BEVERAGES

Notice of Proposed Rule Making

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 final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, 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 Director, Alcohol and Tobacco Tax Division, 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 (1) provide rules in the beer regulations (Part 245) for the payment of beer tax by semimonthly or prepayment return, (2) provide a revised basis for calculation of the penal sum of a brewer's bond, (3) implement certain administrative changes, and (4) make certain technical changes, 26 CFR Part 170, Miscellaneous Regulations Relating to Liquor, and 26 CFR Part 245, Beer, are amended as follows:

Part 170 is amended as follows:

§ 170.402 [Amendment]

Section 170.402 is amended by inserting immediately after the phrase "on and after June 24, 1959," the phrase "and before July 1, 1960."

Part 245 is amended as follows:

§ 245.5 [Amendment]

Section 245.5 is amended as follows:

1. By adding, immediately following the definition entitled "District Director," a new definition to read:

Executed under penalties of perjury.
"Executed under penalties of perjury"

shall mean signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return; claim, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this ----- (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct and complete."

2. By adding, immediately following the definition entitled "Removed for consumption or sale," two new definitions to read:

Secretary. "Secretary" shall mean the Secretary of the Treasury.

This chapter. "This chapter" shall mean Chapter I, Title 26, Code of Federal Regulations.

§ 245.41 [Amendment]

Section 245.41 is amended as follows:

1. By changing the period at the end of paragraph (m) to a comma and adding the words "showing their residence and business addresses.;" and

2. By changing the citation to read "(72 Stat. 1388; 26 U.S.C. 5401)".

§ 245.45 [Amendment]

Section 245.45 is amended as follows:

1. By striking from the first sentence the words "in triplicate,;" and

2. By changing the citation to read "(72 Stat. 1388; 26 U.S.C. 5401)".

§ 245.46 [Amendment]

Section 245.46 is amended by striking, at the end thereof, the words "nor be less than \$1,000.," and inserting in lieu thereof the words "where the tax on beer is to be prepaid, or \$500,000 where payment of such tax is to be deferred as provided in § 245.117a, and that the penal sum of any such bond shall be not less than \$1,000."

A new § 245.46a is added, immediately following § 245.46 to read:

§ 245.46a Tax deferral; extension of terms of existing bond.

Where a brewer intends to commence deferring tax on beer as provided in § 245.117a and his existing bond (or bonds) is in a sufficient penal sum, or where a brewer files a strengthening bond to increase the total penal sum of the existing bond (or bonds) to a sufficient penal sum to defer the tax, a consent of surety, Form 1533, shall be filed to extend the terms of the existing bond (or bonds) to cover future transactions. In either case, the consent shall properly identify the bond (or bonds), Form 1566, to which it applies and shall contain the following statement of purpose:

To continue in effect said bond (or bonds) (including all extension or limitations of

terms and conditions previously consented to and approved), notwithstanding that the tax on beer removed for consumption or sale will be paid under a semimonthly return system.

Section 245.52 is amended to read:

§ 245.52 Corporate surety.

Surety bonds may be given only with surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds, subject to the limitations as set forth in the current revision of Treasury Department Circular 570.

(61 Stat. 648; 6 U.S.C. 6)

§ 245.53 [Amendment]

Section 245.53 is amended by striking from the proviso the words "Treasury Department Form 356-Revised," and by inserting in lieu thereof the words "the current revision of Treasury Department Circular 570."

Section 245.60 is amended to read:

§ 245.60 Notice of bond termination.

On termination of the surety's liability under the bond, as provided in § 245.58, the assistant regional commissioner will notify the principal and sureties.

A new § 245.111a is added, immediately following § 245.111, to read:

§ 245.111a Types of containers.

Beer may be removed from a brewery for consumption or sale only in barrels, kegs, bottles, and similar containers, as provided in this part. Beer may be bottled only in bottles as defined in § 245.5. A container which the Director, Alcohol and Tobacco Tax Division, determines to be similar to a bottle or can shall be treated as a bottle for the purposes of this part. A container which the Director, Alcohol and Tobacco Tax Division, determines to be similar to a barrel or keg and which conforms to one of the sizes prescribed for barrels or kegs in § 245.113, shall be treated as such for the purposes of this part.

(72 Stat. 1389, 1390; 26 U.S.C. 5412, 5416)

§ 245.112 [Amendment]

Section 245.112 is amended as follows:

1. By striking the words "§§ 245.227 to 245.229." from the first sentence thereof and inserting in lieu thereof the words "§§ 245.117a, 245.117b, and 245.117c.;" and

2. By changing the citation to read "(68A Stat. 777, 778, 72 Stat. 1335; 26 U.S.C. 6311, 6313, 5061)".

§ 245.115 [Amendment]

Section 245.115 is amended by inserting, as the first entries under the headings "Number of bottles per case," "Fluid contents (ounces) of each bottle", and "Barrel equivalent", the figures "1", "288", and 0.07258", respectively.

Section 245.116 is amended to read:

§ 245.116 Time of tax determination and payment.

The tax on beer shall be determined at the time of its removal for consumption or sale, and shall be paid by return as provided in this part.

(72 Stat. 1334, 1335; 26 U.S.C. 5054, 5061)

§ 245.117 [Deletion]

Section 245.117 is revoked.

Three new sections, designated § 245.117a, § 245.117b, and § 245.117c, are added, immediately following § 245.116, to read as follows:

§ 245.117a Semimonthly return.

Except as otherwise provided in this part, the tax on beer shall be paid by semimonthly return on Form 2034, which shall be filed, with remittance, for the full amount of tax due as shown on the return. The quantities of keg and bottled beer removed daily for consumption or sale during the period covered by the return, and the aggregate quantity thereof, shall be reported in the tax return. Form 2034 shall be filed as a semimonthly return regardless of whether tax has been prepared as provided in § 245.117c during the return period. The brewer shall include for payment on his return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return. Prepayments made by the brewer during the semimonthly period shall be separately shown on the return. The brewer shall file his tax return, Form 2034, semimonthly, covering the period from his business day beginning on the 9th day of a month through his business day beginning on the 23d day of the same month, and the period from his business day beginning on the 24th day of a month through his business day beginning on the 8th day of the next succeeding month. The semimonthly tax return, Form 2034, shall be filed not later than the close of the third calendar day next succeeding the 8th or 23d calendar day of the month, as the case may be, excluding Saturdays, Sundays, legal holidays of the District of Columbia, and Statewide legal holidays of the State in which the return is required to be filed: *Provided*, That the return for the period ending at the close of the brewer's business day which began on June 23d of any year shall be filed not later than the close of the second next succeeding calendar day after June 23d, excluding Saturdays, Sundays, legal holidays of the District of Columbia, and Statewide legal holidays of the particular State in which the return is required to be filed. Where the semimonthly return and remittance are delivered by United States mail to the office of the district director, the date of the official postmark of the United States Post Office stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of delivery of such return and remittance: *Provided*, That where the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the brewer: *Provided further*, That where the return and remittance are sent by

registered mail, the date of registry, or where the return and remittance are sent by certified mail, the date of the postmark on the sender's receipt, shall be treated as the postmark date of the return and remittance. A return, Form 2034, shall be filed covering each return period even though no beer was removed for consumption or sale during the period.

(72 Stat. 1335; 26 U.S.C. 5061)

§ 245.117b Brewer in default; tax to be prepaid.

Where a check or money order tendered in payment of taxes on beer is not paid on presentment, or where the brewer is otherwise in default in payment of tax under § 245.117a, no beer shall be removed for consumption or sale or taken from the brewery for removal for consumption or sale until the tax thereon has been prepaid as provided in § 245.117c. The brewer shall continue to so prepay during the time that he is in default and thereafter until the assistant regional commissioner finds the revenue will not be jeopardized by deferred payment of tax as provided in § 245.117a. Any remittance made while the brewer is required to prepay under this section shall be in cash or shall be in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State or possession of the United States, or a money order, as provided in § 301.6311-1 of this chapter.

§ 245.117c Prepayment of tax.

Where a brewer is required to prepay tax under § 245.117b, or where the penal sum of the bond (or bonds), Form 1566, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or where a brewer is not, because of the provisions of § 245.46a, entitled to defer the tax, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale. Prepayment shall be made by forwarding or delivering to the district director a tax return, Form 2034, with remittance, covering the tax on beer. The word "Prepayment" shall be prefixed to the title of such form. For the purpose of complying with this section the term "forwarding" shall mean depositing in the United States mail, properly addressed to the district director.

(68A Stat. 777, 72 Stat. 1335; 26 U.S.C. 6311, 5061)

§ 245.143 [Amendment]

Section 245.143 is amended as follows:

1. By striking the word "application" in paragraph (a) and inserting in lieu thereof the word "claim";
2. By striking the words "an application" in the first sentence of paragraph (b) and inserting in lieu thereof the words "a claim";
3. By striking the word "application" in the last sentence of paragraph (b) and inserting in lieu thereof the word "claim"; and
4. By changing the citation to read "(72 Stat. 1335, 1389; 26 U.S.C. 5056, 5414)".

Section 245.148 is amended to read as follows:

§ 245.148 Claims for remission of tax.

Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 by the brewer or his duly authorized agent and submitted with Form 103 of the receiving brewery for the month in which the shipment is received. Where the loss is by casualty, the claim shall be submitted with the Form 103 for the month in which the loss is discovered. Where, for valid reason, the required claim cannot be submitted with such report, a statement shall be attached to the monthly report setting forth the reason why the claim cannot be filed at that time and specifying when it will be filed. No claim shall be allowed unless filed with the assistant regional commissioner within 6 months after the date of loss. The claim shall set out:

(a) The date and serial number of the shipment (as shown on the transfer paper).

(b) The quantity of beer lost (number and size of packages and their equivalent in barrels).

(c) The percent of loss.

(d) The specific cause of the loss.

(e) The nature of the loss (leakage, breakage, casualty, etc.).

(f) Full information as to whether the claimant has been indemnified by insurance or otherwise in respect of the tax or has any claim for indemnification. Full details shall be furnished on losses due to casualty or accident, supported if possible, by statements of the carrier or other parties having personal knowledge of the loss.

(72 Stat. 1335, 1389; 26 U.S.C. 5056, 5414)

§ 245.158 [Amendment]

Section 245.158 is amended as follows:

1. By striking therefrom the first three sentences and inserting in lieu thereof two new sentences to read: "Beer on which the tax has been paid, or on which the tax has been determined and therefore is to be reported for payment, which is removed from the market, may be returned to and stored in the brewery, and refund or credit of tax may be claimed thereon in accordance with the provisions of subpart T. Unless such beer is to be returned to the stock of the racking room or bottling house, it shall be identified as beer removed from the market, be completely segregated from all other beer, and be accessible for inspection by internal revenue officers."

§ 245.160 [Amendment]

Section 245.160 is amended by striking therefrom the second sentence, which begins "Such beer shall be".

§ 245.161 [Amendment]

Section 245.161 is amended as follows:

1. By striking from the first sentence the words "again removed for consumption or sale," and by inserting in lieu thereof the words "return to the stock of the racking room or bottling house,";
2. By changing the third sentence to read "The notice shall be executed under

penalties of perjury as defined in § 245.5.”;

3. By changing the sentence immediately preceding paragraph (a) to read “The notice, which shall be serially numbered, shall contain the following information:”;

4. By changing paragraph (a) to read

(a) The number and sizes of kegs and the actual quantity of beer contained therein expressed in barrels; or the number of cases, the number and size in ounces of the bottles comprising the cases, and the actual quantity of beer contained therein expressed in barrels. (The burden of proof of establishing the correct quantity of beer is on the brewer and where kegs or cases containing less than the original contents are involved, the actual quantity of beer shall be determined by weight unless the assistant regional commissioner has authorized the use of another method.);

5. By redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and by inserting a new paragraph (d) to read:

(d) If returned, the name of the person from whom returned.

and

6. By striking from redesignated paragraph (e) the words “again to be removed for consumption or sale.”, and inserting in lieu thereof the words “to be returned to the stock of the racking room or bottling house.”.

§ 245.162 [Amendment]

Section 245.162 is amended as follows:

1. By inserting in the first sentence, immediately following the words “destruction of the beer,” the word “or” and by striking from such sentence the words “or its return to the stock of the racking room or bottling house.”;

2. By striking the last sentence and inserting two new sentences to read “If the brewer desires to destroy such beer at some place other than the brewery, the assistant regional commissioner may require that the disposition of the beer be delayed pending arrangement of a convenient time for supervision, and, if the place of destruction is not readily accessible to an inspector, the assistant regional commissioner may require that the beer be moved to a more convenient location. The assistant regional commissioner may, at any time, to substantiate claims for refund or credit of tax on beer returned to the stock of the racking room or bottling house, notify the brewer that, until further notice, supervision will be required of any further return of beer to such stock.

Section 245.164 is amended to read:

§ 245.164 Claims for refund of tax.

Claims for refund of tax shall be filed on Form 843. Such claims, if for refund of tax on beer removed from the market, shall show (a) the name and address of the brewer, (b) the quantity of beer covered by the claim, (c) the amount of tax for which the claim is filed, (b) the reason for removal of the beer from the market and the facts relating thereto, (e) whether the brewer is indemnified by insurance or otherwise in respect of the

tax, and, if so, the nature of such indemnification and (f) the claimant's reasons for believing that the claim should be allowed. If the claim is for refund of tax on beer lost or destroyed by fire, casualty, or act of God, it shall contain the information specified in paragraphs (a), (b), (c), (e), and (f) of this section, and a statement of the circumstances surrounding the loss; the claim shall also show the date of the loss, and, if lost in transit, the name of the carrier. The brewer's notice required by § 245.161 or § 245.163 shall be incorporated, by reference, in the claim and, when feasible, the claim should be filed at the same time as the notice. Claims covering losses shall be supported, whenever possible, by affidavits of persons having knowledge of the loss, unless such affidavits are contained in the notice given under § 245.163. The assistant regional commissioner may require the submission of additional evidence in support of any claim filed under this section when deemed necessary for proper action on the claim. Any claim on Form 843 shall be filed with the assistant regional commissioner having jurisdiction over the region in which the tax was paid within 6 months after the date of removal from the market or loss or destruction by fire, casualty, or act of God. Such claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(72 Stat. 1335; 26 U.S.C. 5056)

Section 245.165 is amended to read:

§ 245.165 Claims for allowance of credit for tax.

In lieu of filing a claim for refund of tax as provided in § 245.164, a brewer may file with the assistant regional commissioner having jurisdiction over the region in which the tax was paid, a claim on Form 2635 for allowance of credit for the tax paid. Any claim for credit filed on Form 2635 shall include all of the information required under § 245.164 with respect to a claim for refund on Form 843. The brewer's notice required by § 245.161 or § 245.163 shall be incorporated, by reference, in the claim on Form 2635, and, when feasible, the claim should be filed at the same time as the notice. The brewer shall not anticipate allowance of a credit or make an adjusting entry therefor in a tax return pending consideration and action on the claim by the assistant regional commissioner. When written notification of allowance of the credit or any part thereof is received from the assistant regional commissioner, the brewer may make a proper adjusting entry and explanatory statement in the next subsequent beer tax return (or returns) to the extent necessary to exhaust the credit. The assistant regional commissioner may require the submission of additional evidence in support of any claim filed under this section when deemed necessary for proper action on the claim. A claim for allowance of credit for tax paid on beer must be filed within 6 months after the date of removal from the market, loss, or destruction by fire, casualty, or act of God. A claim will not be allowed if filed after

the prescribed time or if the brewer was indemnified by insurance or otherwise in respect of the tax.

(72 Stat. 1335; 26 U.S.C. 5056)

Section 245.170 is amended to read:

§ 245.170 General.

Beer may be removed from the brewery without payment of tax (a) for exportation, (b) for use as supplies on vessels and aircraft, or (c) for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation, in accordance with the provisions of Part 252 of this chapter. Tax-paid beer may be exported, delivered for use as supplies on certain vessels and aircraft, or transferred to and deposited in foreign-trade zones, with benefit of drawback, under the provisions of Part 252 of this chapter.

§§ 245.171-245.194 [Deletion]

Sections 245.171 to 245.194, inclusive, are revoked.

Subpart V, consisting of §§ 245.195 to 245.200, inclusive, is revoked.

§ 245.225 [Amendment]

Section 245.225 is amended as follows:

1. By changing paragraph (e) to read:

(e) Cereal beverage removed from the brewery;

2. By inserting a new paragraph (f) to read:

(f) Beer removed for consumption or sale and beer removed without payment of tax, showing with respect to each removal the date of removal, the identity of the person to whom the beer was shipped or delivered (not required in the case of sales in quantities of one-half barrel or less for delivery at the brewery), and the quantities of beer removed in kegs and bottles: *Provided*, That where the brewer keeps, at the brewery, copies of invoices or other commercial records containing the information required as to each such removal, such copies may be used in lieu of any other record required by this paragraph if they are maintained in such manner that the assistant regional commissioner is satisfied that the information may be readily ascertained therefrom by internal revenue officers.;

3. By redesignating paragraph (f) as paragraph (g);

4. By redesignating paragraph (g) as paragraph (h), and changing it to read:

(h) Beer returned to the brewery, showing separately such beer destroyed, used as material, reconditioned, and returned to the stock of the racking room or bottling house;

5. By redesignating paragraphs (h) through (l) as paragraphs (i) through (m);

6. By striking from the last sentence thereof the opening phrase which reads “Except as provided in the first proviso of § 245.116,” and by capitalizing the word “all” so that the sentence will begin “All entries in the records”; and

7. By changing the citation to read “(68A Stat. 896, 72 Stat. 1390, 1395; 26 U.S.C. 7503, 5415, 5555)”.

Section 245.227 is amended to read:

§ 245.227 Beer tax return, Form 2034.

All entries in the return, Form 2034, shall be fully supported by accurate and complete records. The brewer shall file the copy returned to him by the district director as a part of his records at the brewery.

(72 Stat. 1335, 1390, 1395; 26 U.S.C. 5061, 5415, 5555)

§§ 245.228 and 245.229 [Deletion]

Sections 245.228 and 245.229 are revoked.

Section 245.231 is amended to read:

§ 245.231 Verification.

All records, reports, returns, and forms which require a signature shall be executed under penalties of perjury as defined in § 245.5.

(68A Stat. 748, 749; 26 U.S.C. 6061, 6065)

Section 245.232 is amended to read:

§ 245.232 Retention of records, reports, and returns.

A brewer shall retain, at the brewery for a period of not less than four years, all records, reports, and returns required by this part. Such records, reports, and returns shall be readily available during the brewer's regular business hours for examination and taking abstracts therefrom by internal revenue officers.

(72 Stat. 1390; 26 U.S.C. 5415)

A new § 245.233 is added to read:

§ 245.233 Photographic copies of records.

Brewers who desire to record, copy, or reproduce records required to be preserved under § 245.232, by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original record, shall make application to the assistant regional commissioner, in triplicate, to do so, describing:

(a) The records to be reproduced.

(b) The reproduction process to be employed.

(c) The manner in which the reproductions are to be preserved.

(d) The provisions to be made for examining, viewing, and using such reproductions.

The assistant regional commissioner shall not approve any application, unless the Director, Alcohol and Tobacco Tax Division, has approved that type of record for reproduction and the reproduction process to be employed, and unless the manner of preservation of the reproductions and the provisions for examining, viewing, and using such reproductions are, in the assistant regional commissioner's opinion, satisfactory. Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it shall be treated and considered for all purposes as though it were the original record; all

provisions of law and regulations applicable to the original record shall be applicable to the reproduced record. As used in this section "original record" shall mean the record required by this part to be maintained or preserved by the brewer, even though it may be an executed duplicate or other copy of the document.

(72 Stat. 1395; 26 U.S.C. 5555)

[F.R. Doc. 60-3449; Filed, Apr. 14, 1960; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 6]

MIGRATORY BIRDS

Notice of Proposed Rule Making

Correction

In F.R. Doc. 60-3231, appearing at page 3037 of the issue for Friday, April 8, 1960, the introductory portion of § 6.3(b) preceding subparagraph (1) should read as follows:

(b) *Prohibited methods.* Migratory game birds may not be taken;

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 70]

GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF AND UNITED STATES CLASSES, STANDARDS AND GRADES WITH RESPECT THERETO

Notice of Proposed Rule Making

Notice is hereby given that the United States Department of Agriculture is considering amendments to the Regulations Governing the Grading and Inspection of Poultry and Edible Products Thereof and the United States Classes, Standards, and Grades with Respect Thereto under authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621 et seq.).

The proposed amendments would: change the descriptive terms in the standards to provide for a greater amount of flesh on the breast of A Quality birds; redefine the standards in certain respects so that they may be more uniformly applied; establish standards and grades for poultry parts; establish wholesale and procurement grades; and limit the use of the official letter grade mark on consumer packages and shipping containers of ready-to-cook poultry to product which was graded on an individual basis.

The amendment would also provide, beginning on July 1, 1960, for billing for the relief grader rendering resident service, on the basis of the salary of the grader regularly stationed at the plant. The relief grader's added salary cost would be recovered by increasing the charge for fringe benefits. The

fringe benefit factor is also increased to cover the cost to the Government due to the enactment of the Federal Employees' Health Benefits Act of 1959.

All persons who desire to submit written data, views or arguments in connection with the proposed amendments should file the same in triplicate, with the Chief of the Standardization and Marketing Practices Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington 25, D.C., not later than 30 days following publication hereof in the FEDERAL REGISTER.

The proposed amendments are as follows:

§ 70.1 [Amendment]

1. Delete the definition of "Rock cornish game hen" or "cornish game hen" from § 70.1.

§ 70.2 [Amendment]

2. Change § 70.2(c) by deleting the words "combined form of inspection and grade mark."

§ 70.4 [Amendment]

3. Change § 70.4(d) to read:

(d) Inspection service in official plants.

4. Delete § 70.4(f).

§ 70.91 [Amendment]

5. Change § 70.91(a) to read:

(a) The appropriate grade marks for consumer grades as specified in § 70.356 through § 70.359 are the only grade marks which may be applied individually to ready-to-cook poultry and edible poultry products prepared therefrom or to the containers in which such products are enclosed for the purpose of display and sale to household consumers.

§ 70.138 [Amendment]

6. Change § 70.138(a) to read:

(a) *Charges.* The charges for grading of poultry and edible products thereof shall be paid by the applicant for the service and shall include such of the items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the Agricultural Marketing Service, United States Department of Agriculture (hereinafter referred to as "AMS"). Such full costs shall comprise such of the items listed in this section as are due and included, from time to time, in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the month in which the service was rendered and are payable upon receipt. A charge will be made by AMS in the amount of one (1) percent per month, or fraction thereof of any amounts remaining unpaid after 30 days from the date of billing.

(1) A charge of \$5.00 per hour plus actual costs to AMS for per diem and travel costs incurred in rendering service not specifically covered in this section; such as, but not limited to, initial surveys;

(2) A charge of \$100 for the final survey and inauguration of the grading service including the assignment of one grader;

(3) A charge equal to the salary cost paid to each grader assigned to the applicant's plant by AMS: *Provided*, That, no charge is to be made for salary cost of any assigned grader of the designated plant while temporarily reassigned by AMS to perform grading service for other than the applicant, except when the assigned grader is performing service for the Department of Defense on products accepted for delivery by the applicant to the Department of Defense, in which case the applicant will be given credit for the service rendered based on a formula concurred in jointly by the Departments of Defense and Agriculture;

(4) A charge for the relief grader at the rate of the regular grader's salary and the actual travel expenses and per diem paid by AMS to any grader whose services are required for relief purposes when regular graders are on annual or sick leave;

(5) A charge for the actual cost to AMS of any travel and per diem incurred by each grader assigned to the plant while in the performance of grading service for the applicant;

(6) A charge to cover the actual cost to AMS of the travel (including the cost of movement of household goods and dependents) and per diem with respect to each grader who is transferred (other than for the convenience of AMS) from an official station to the designated plant;

(7) A charge equal to 20 percent of the base salary to cover an amount equal to the cost to AMS for the Employer's tax imposed under the United States Internal Revenue Code (26 U.S.C.) for Old Age and Survivors Benefits under the Social Security System and for Insurance as provided in the Federal Employees' Group Life Insurance Act of 1954, Federal Employees' Health Benefits Act of 1959, sick leave, annual leave, and related servicing costs;

(8) A charge equal to 7 percent of: (i) The overtime salary, (ii) the salary paid to each grader exclusive of one regular grader, and (iii) all charges made to the applicant for transportation and per diem which are paid by AMS to graders assigned to the applicant;

(9) An administrative service charge based on the aggregate weight of the total monthly volume of all poultry handled in the plant, and computed in accordance with the following table:

COMPUTATION OF ADMINISTRATIVE SERVICE CHARGES

Where an approved application is in effect and no product is handled.....	\$25.00
1 to 100,000 pounds.....	40.00
100,001 to 200,000 pounds.....	55.00
200,001 to 300,000 pounds.....	65.00
300,001 to 400,000 pounds.....	75.00
400,001 to 500,000 pounds.....	85.00
For each additional 100,000 pounds, or fraction thereof, in excess of 500,000 pounds.....	15.00

¹The maximum charge shall not exceed \$175.00.

7. Change § 70.182 to read:
 § 70.182 Dressed poultry.

The shipping containers only of dressed poultry may be identified as to grade by the appropriate wholesale grade mark, an acceptance mark for contract specifications as provided in § 70.11, or other means approved by the Administrator, and no official grade mark shall appear on the dressed poultry itself except for export poultry prepared in accordance with the requirements of the foreign country involved.

8. Add a new § 70.183 to read.
 § 70.183 Ready-to-cook poultry.

(a) Ready-to-cook poultry carcasses or parts may be graded only if they have been inspected and certified pursuant to the regulations in this part, or inspected and passed by any other inspection system which is acceptable to the Administrator, except that acceptability of non-inspected ready-to-cook carcasses or parts may be determined under institutional contract specifications pursuant to § 70.11.

(b) Only when ready-to-cook poultry carcasses or parts have been graded on an individual basis by a grader licensed under § 70.30 (a), or by a limited licensee pursuant to § 70.30 (d) and thereafter check-graded by such a grader, may the container or the individual carcasses or parts be identified with the appropriate letter grade mark. Except when otherwise permitted by the Administrator, the grading of ready-to-cook poultry with respect to the factors of fleshing and fat covering and the determination of the class of the poultry shall be performed prior to the disjuncting or cutting up of the carcass. Grading with respect to the other factors of quality may be performed after the carcass has been disjuncted or cut up.

9. Change § 70.228 to read:
 § 70.228 Appeal grading certificates.

Immediately after an appeal grading has been completed, an appeal grading certificate shall be issued. If the results of the appeal grading indicate that the original grading was not materially in error, the appeal grading certificate shall confirm the original grading. If the results of the appeal grading indicate that a material error was made in the original grading, the results of such appeal grading shall be shown on the appeal grading certificate. The appeal grading certificate shall supersede any previous grading certificate for the product involved and such supersedure shall be effective as of the time of issuance of the grading certificate with respect to which the appeal is made. Each appeal grading certificate shall clearly set forth the number and the date of the grading certificate which it supersedes. The provisions of §§ 70.200 to 70.202 shall, whenever applicable, also apply to appeal grading certificates except that copies of such appeal grading certificates shall be furnished to each interested party of record.

10. Change § 70.301 to read:
 § 70.301 Chickens.

The following are the various classes of chickens:

(a) *Rock Cornish game hen or Cornish game hen.* A Rock Cornish game hen or Cornish game hen is a young immature chicken (usually 5 to 6 weeks of age) weighing not more than 2 pounds ready-to-cook weight, which was prepared from a Cornish chicken or the progeny of a Cornish chicken crossed with another breed of chicken.

(b) *Broiler or fryer.* A broiler or fryer is a young chicken (usually 9 to 12 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and flexible breastbone cartilage.

(c) *Roaster.* A roaster is a young chicken (usually 3 to 5 months of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a broiler or fryer.

(d) *Capon.* A capon is a surgically unsexed male chicken (usually under 8 months of age) that is tender-meated with soft, pliable, smooth-textured skin.

(e) *Stag.* A stag is a male chicken (usually under 10 months of age) with coarse skin, somewhat toughened and darkened flesh, and considerable hardening of the breastbone cartilage. Stags show a condition of fleshing and a degree of maturity intermediate between that of a roaster and a cock or old rooster.

(f) *Hen or stewing chicken or fowl.* A hen or stewing chicken or fowl is a mature female chicken (usually more than 10 months old) with meat less tender than that of a roaster, and nonflexible breastbone.

(g) *Cock or old rooster.* A cock or old rooster is a mature male chicken with course skin, toughened and darkened meat, and hardened breastbone.

11. Change § 70.302 to read:
 § 70.302 Turkeys.

The following are the various classes of turkeys:

(a) *Fryer-roaster turkey:* A fryer-roaster turkey is a young immature turkey (usually under 16 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin, and flexible breastbone cartilage.

(b) *Young hen turkey:* A young hen turkey is a young female turkey (usually 5 to 7 months of age) that is tender-meated with soft, pliable, smooth-textured skin, and breastbone cartilage that is somewhat less flexible than in a fryer-roaster turkey.

(c) *Young tom turkey:* A young tom turkey is a young male turkey (usually 5 to 7 months of age) that is tender-meated with soft, pliable, smooth-textured skin, and breastbone cartilage that is somewhat less flexible than in a fryer-roaster turkey.

(d) *Yearling hen turkey:* A yearling hen turkey is a fully matured female turkey (usually under 15 months of age).

that is reasonably tender-meated and with reasonably smooth-textured skin.

(e) Yearling tom turkey: A yearling tom turkey is a fully matured male turkey (usually under 15 months of age) that is reasonably tender-meated and with reasonably smooth-textured skin.

(f) Mature turkey or old turkey (hen or tom): A mature or old turkey is an old turkey of either sex (usually in excess of 15 months of age) with coarse skin and toughened flesh.

(g) For labeling purposes, the designation of sex within the class name is optional and the three classes of young turkeys may be grouped and designated as "young turkeys."

12. Change § 70.325 to read:

§ 70.325 A Quality or No. 1 Quality.

To be of A Quality or No. 1 Quality the live bird:

(a) Is alert, has bright eyes, and is of good health and vigor.

(b) Is well feathered, with feathers showing luster or sheen and quite thoroughly covering all parts of the body; and may have a slight scattering of pinfeathers.

(c) Is of normal physical conformation. (Slight defects which do not affect the normal distribution of the flesh and do not detract from the appearance of the carcass are permitted.)

(d) Has a well-developed, moderately broad and long breast sufficiently well-fleshed so that the breast has a rounded appearance with the flesh carrying well up to the crest of the breastbone; and has legs that are well-fleshed.

(e) Has a well-developed covering of fat in the skin considering the class, age, and sex of the bird.

(f) May have slight scratches, slight skin bruises, and slight callouses (i.e., slightly thickened, hardened, and darkened areas of skin over the breastbone), if these conditions do not materially affect the appearance of the bird, especially the breast; and may also have slightly scaly shanks; but is otherwise free from tears, broken bones, and breast blisters.

13. Change § 70.326 to read:

§ 70.326 B Quality or No. 2 Quality.

To be of B Quality or No. 2 Quality the live bird:

(a) Is of good health and vigor.

(b) Is fairly well feathered (i.e., some feathers may be lacking on some parts of the body); and may have a moderate number of pinfeathers.

(c) May have moderate abnormalities in conformation such as a dented, curved or crooked breast, crooked back, or misshapen legs or wings which do not seriously affect the distribution of the flesh or the appearance of the carcass.

(d) Has sufficient flesh on the breast and legs so as to prevent a thin appearance and a definite breastbone crestline.

(e) Has noticeable fat in the feather tracts of the breast and has sufficient fat in the skin on the breast and legs to prevent a distinct appearance of the flesh through the skin.

(f) Is free from tears, broken bones, flesh bruises, severe breast blisters, heavy callouses (i.e., thickened, hardened, and darkened areas of skin over the breast-

bone) and seriously scaly shanks; but it may have moderate skin bruises and scratches.

14. Change § 70.327 to read:

§ 70.327 C Quality or No. 3 Quality.

Any live bird, other than those classed as rejects, that does not meet the requirements of A or B Quality or No. 1 or 2 Quality may be of C Quality or No. 3 Quality. Such birds may:

(a) Be lacking in vigor.

(b) Have a large number of pinfeathers over all parts of the body and complete lack of plumage feathers on the back.

(c) Have definite, but not pronounced deformities (including, but not being limited to, a crooked breastbone, hunchback, and slight crippling).

(d) Be poorly fleshed, but not emaciated.

(e) Have only a small amount of fat in the feather tracts and be completely lacking in fat on back and thighs; and

(f) Have serious skin bruises and moderate flesh bruises, and more severe breast blisters than allowed for B Quality or No. 2 Quality.

15. Change § 70.350 to read:

§ 70.350 General.

(a) The United States standards for quality contained in §§ 70.350 to 70.355 are applicable to individual carcasses of ready-to-cook poultry, to parts of ready-to-cook poultry as described in paragraph (f) of this section, to any other ready-to-cook poultry product prepared in a manner approved by the Administrator, and to individual carcasses of dressed poultry.

(b) Carcasses or parts found to be unsound, unwholesome, or unfit for food in whole or in part shall not be included in any of the quality designations specified in §§ 70.350 to 70.355. If the carcass is dressed poultry, determination of unsoundness or unwholesomeness shall be based on external characteristics only. No part other than wing tips, of a dressed poultry carcass may be removed.

(c) The following factors shall be considered in ascertaining, pursuant to §§ 70.350 to 70.355, the quality of an individual carcass: (1) Conformation; (2) fleshing; (3) fat covering; (4) the degree of freedom from pinfeathers and vestigial feathers (i.e., hair or down, as the case may be); (5) the degree of freedom from tears and cuts (exclusive of normal processing cuts); (6) the degree of freedom from disjointed bones and broken bones; (7) the degree of freedom from discolorations of the skin and of the flesh and from blemishes and bruises of the skin and flesh; and (8) the degree of freedom from freezer burn.

(d) In interpreting the respective requirements specified in §§ 70.350 to 70.355 for A Quality, B Quality, and C Quality, the intensity, aggregate area involved and locations of (1) discolorations (whether or not caused by dressing operations), (2) bruises, (3) pinfeathers and (4) freezer burn, as such defects individually, or in combination, detract from the general appearance, shall be considered in determining the

particular quality of an individual carcass or part.

(e) A ready-to-cook carcass which has a defect may be graded after the defective portion has been removed, and the fact that a portion of the carcass has been removed, will not be considered in determining the quality of the balance of the carcass, if the remaining portion of the carcass is to be disjointed and packed as parts in the official plant where graded.

(f) The standards of quality are applicable to poultry parts cut in the manner described in subparagraphs (1) through (10) of this paragraph.

(1) "Breasts" shall be separated from the back at the shoulder joint and by a cut running backward and downward from that point along the junction of the vertebral and sternal ribs. The ribs may be removed from the breasts, and the breasts may be cut along the breastbone to make two approximately equal halves; or the wishbone portion, as described in subparagraph (3) of this paragraph, may be removed before cutting the remainder along the breastbone to make three parts. Pieces cut in this manner may be substituted for lighter or heavier pieces for exact weight-making purposes and the package may contain two or more of such parts without affecting the appropriateness of the labeling as "chicken breasts." Neck skin shall not be included.

(2) "Breasts with ribs" shall be separated from the back at the junction of the vertebral ribs and back. Breasts with ribs may be cut along the breastbone to make approximately two halves; or the wishbone portion, as described in subparagraph (3) of this paragraph, may be removed before cutting the remainder along the breastbone to make three parts. Pieces cut in this manner may be substituted for lighter or heavier pieces for exact weight-making purposes and the package may contain two or more of such parts without affecting the appropriateness of the labeling as "breasts with ribs." Neck skin shall not be included.

(3) "Wishbones" (Pulley Bones), with covering muscle and skin tissue, shall be severed from the breast approximately halfway between the end of the wishbone (hypocondrium) and front point of the breastbone (cranial process of the sternal crest) to a point where the wishbone joins the shoulder. Neck skin shall not be included.

(4) "Drumsticks" shall be separated from the thigh by a cut through the knee joint (femorotibial and patellar joint) and from the hock joint (tarsal joint).

(5) "Thighs" shall be disjointed at the hip joint and may include the pelvic meat but shall not include the pelvic bones. Back skin shall not be included.

(6) "Legs" shall include the whole leg, i.e., the thigh and the drumstick, whether jointed or disjointed. Back skin shall not be included.

(7) "Wings" shall include the entire wing with all muscle and skin tissue intact, except that the wing tip may be removed.

(8) "Backs" shall include the pelvic bones and all the vertebrae posterior to

the shoulder joint. The meat shall not be peeled from the pelvic bones. The vertebral ribs and/or scapula may be removed or included. Skin shall be substantially intact.

(9) "Halves" shall be prepared by making a full-length back and breast split of the carcass so as to produce approximately equal right and left sides.

(10) "Quarters" shall be prepared by splitting the carcass as specified in subparagraph (9) of this paragraph and the resulting halves shall be cut crosswise at almost right angles to the backbone so as to form quarters.

16. Delete §§ 70.353 through 70.367 and insert in lieu thereof:

STANDARDS FOR QUALITY OF DRESSED AND READY-TO-COOK POULTRY

§ 70.353 A Quality.

(a) *Conformation.* The carcass or part is free of deformities that detract from its appearance or that affect the normal distribution of flesh. Slight deformities such as slightly curved or dented breastbones and slightly curved backs may be present.

(b) *Fleshing.* The carcass or part has a well-developed covering of flesh. The breast is moderately long and deep and has sufficient flesh to give it a rounded appearance with the flesh carrying well up to the crest of the breastbone along its entire length.

(c) *Fat covering.* The carcass or part, considering the kind, class and part, has a well-developed layer of fat in the skin. The fat is well distributed so that there is a noticeable amount of fat in the skin in the areas between the heavy feather tracts.

(d) *Defeathering.* The carcass or part has a clean appearance, especially on the breast. The carcass or part is free of pinfeathers, diminutive feathers, and hair which are visible to the inspector or grader.

(e) *Cuts, tears and missing skin.* Parts are free of cuts, tears and missing skin (other than slight trimming on the edge). The carcass is free of these defects on the breast and legs. Elsewhere the carcass may have slight cuts, tears, or missing skin areas providing the aggregate area of flesh exposed thereby is not greater than the following, respectively: (1) On chickens, ducks, guineas and pigeons, 1½ inches; (2) on turkeys and geese, 3 inches.

(f) *Disjointed and broken bones and missing parts.* Parts are free of broken bones. The carcass is free of broken bones and has not more than one disjointed bone. The wing tips may be removed at the joint and the tail may be removed at the base. Cartilage separated from the breastbone is not considered as a disjointed or broken bone.

(g) *Discolorations of the skin and flesh.* The carcass or part is practically free of such defects. Discoloration due to bruising shall be free of clots (discernible clumps of red or dark cells). Evidence of incomplete bleeding, such as more than an occasional slightly reddened feather follicle, is not permitted. Flesh bruises and discolorations of the

skin such as "blue back" are not permitted on the breast or legs of the carcass or on these individual parts and only lightly shaded discolorations are permitted elsewhere. The total areas affected by flesh bruises, skin bruises and discolorations such as "blue back" singly or in any combination shall not exceed one-half of the total aggregate area of permitted discoloration. The aggregate area of all discolorations on a part shall not exceed ¼ inch. The aggregate area of all discolorations on the breast and legs of a carcass shall not exceed 1 inch in diameter for chickens, ducks, guineas and pigeons and 2 inches for turkeys and geese. Elsewhere on the carcass the aggregate area of all discolorations shall not exceed 2 and 3 inches respectively.

(h) *Freezer burn.* The carcass or part may have an occasional pockmark due to drying of the inner layer of skin (derma), provided that none are larger than ⅛ inch on chickens, guineas, ducks and pigeons, or ¼ inch on turkeys and geese.

§ 70.354 B Quality.

(a) *Conformation.* The carcass or part may have slight abnormalities, such as a dented, curved or crooked breast, crooked back, or misshapen legs or wings which do not materially affect the distribution of flesh or the appearance of the carcass or part.

(b) *Fleshing.* The carcass or part has a moderate covering of flesh considering the kind, class and part of the bird. The breast has a substantial covering of flesh with the flesh carrying up to the crest of the breastbone sufficiently to prevent a thin appearance.

(c) *Fat covering.* The carcass or part has sufficient fat in the skin to prevent a distinct appearance of the flesh through the skin, especially on the breast and legs.

(d) *Defeathering.* The carcass or part may have a few nonprotruding pinfeathers or vestigial feathers which are scattered sufficiently so as not to appear numerous. Not more than an occasional protruding pinfeather or diminutive feather shall be in evidence under a careful examination.

(e) *Cuts, tears and missing skin.* Parts may have cuts, tears and missing skin, provided that not more than a moderate amount of the flesh normally covered by skin is exposed. The carcass may have cuts, tears and missing skin, provided that the aggregate area of flesh exposed thereby on the breast and legs is not greater than the following, respectively: (1) On chickens, ducks, guineas and pigeons, 1½ inch; (2) on turkeys and geese, 3 inches. Elsewhere on the carcass the aggregate area of flesh exposed shall not be greater than the following, respectively: (i) on chickens, ducks, guineas, and pigeons, 3 inches; (ii) on turkeys and geese, 6 inches.

(f) *Disjointed and broken bones and missing parts.* Parts may be disjointed but are free of broken bones. The carcass may have two disjointed bones or one disjointed bone and one nonprotruding broken bone. Parts of the wing be-

yond the second joint may be removed at a joint. The tail may be removed at the base.

(g) *Discolorations of the skin and flesh.* The carcass or part is free of serious defects. Discoloration due to bruising shall be free of clots (discernible clumps of red or dark cells). Evidence of incomplete bleeding shall be no more than very slight. Moderate areas of discoloration due to bruises in the skin or flesh and moderately shaded discoloration of the skin such as "blue back" are permitted, but the total areas affected by such discolorations singly or in any combination may not exceed one half of the total aggregate area of permitted discoloration. The aggregate area of all discolorations on a part shall not exceed 1 inch for chickens, ducks, guineas and pigeons and 1½ inches for turkeys and geese. The aggregate area of all discolorations on the breast and legs of a carcass shall not exceed 2 inches on chickens, ducks, guineas and pigeons and 3 inches on turkeys and geese. Elsewhere on the carcass the aggregate area of all discolorations shall not exceed 4 inches and 6 inches respectively.

(h) *Freezer burn.* The carcass or part may have a few pockmarks due to drying of the inner layer of skin (derma), provided that no single area is larger than ½ inch.

§ 70.355 C Quality.

(a) A part that does not meet the requirements for A or B Quality may be of C Quality if the flesh is substantially intact.

(b) A carcass that does not meet the requirements for A or B Quality may be of C Quality. Both wings may be removed or trimmed. Trimming of the breast and legs is permitted, but not to the extent that the normal meat yield is materially affected.

UNITED STATES CONSUMER GRADES FOR READY-TO-COOK POULTRY

GENERAL

§ 70.356 General.

(a) The United States consumer grades for ready-to-cook poultry are applicable to poultry of the kinds and classes set forth in §§ 70.300 to 70.306, when each carcass or part has been graded by a grader in accordance with § 70.30 on an individual basis.

(b) All terms in the United States standards for quality set forth in §§ 70.350 to 70.355 shall when used in §§ 70.356 to 70.359 have the same meaning as when used in said standards.

GRADES

§ 70.357 U.S. Grade A.

A lot of ready-to-cook poultry or parts consisting of one or more ready-to-cook carcasses or parts of the same kind and class, each of which conforms to the requirements for A Quality, may be designated as U.S. Grade A.

§ 70.358 U.S. Grade B.

A lot of ready-to-cook poultry or parts consisting of one or more ready-to-cook carcasses or parts of the same kind and class, each of which conforms to the re-

quirements for B Quality or better, may be designated as U.S. Grade B.

§ 70.359 U.S. Grade C.

A lot of ready-to-cook poultry or parts consisting of one or more ready-to-cook carcasses or parts of the same kind and class, each of which conforms to the requirements for C Quality or better, may be designated as U.S. Grade C.

UNITED STATES WHOLESALE GRADES FOR DRESSED POULTRY AND READY-TO-COOK POULTRY

GENERAL

§ 70.360 General.

(a) The United States wholesale grades for dressed poultry and ready-to-cook poultry are applicable to dressed poultry and ready-to-cook poultry of the kinds and classes set forth in §§ 70.300 to 70.306 when graded as a lot by a grader in accordance with § 70.30 on the basis of an examination of each carcass in a representative sample thereof and are based upon the United States standards for quality set forth in §§ 70.350 to 70.355.

(b) When any lot of dressed poultry is so graded any carcass having any of the following conditions will for the purpose of § 70.360 to § 70.363 be considered as "No Grade": Dirty or bloody head or carcass, dirty feet or vent, fan feathers, neck feathers, garter feathers, or feed in the crop. A sample which contains "No Grade" birds for any reason shall not have a U.S. Grade assigned to it. Certificates issued will show the percentage of qualities and "No Grade," and describe the condition of "No Grade" birds.

(c) All terms in the United States standards for quality set forth in §§ 70.350 to 70.355 shall, when used in §§ 70.360 to 70.363, have the same meaning as when used in said standards.

GRADES

§ 70.361 U.S. Extras.

Any lot of dressed poultry or ready-to-cook poultry composed of one or more containers of carcasses of the same kind and class may be designated as U.S. Extras if not less than 90 percent, by count, of the carcasses in such lot are of A Quality, and the remainder is of B Quality.

§ 70.362 U.S. Standards.

Any lot of dressed poultry or ready-to-cook poultry composed of one or more containers of carcasses of the same kind and class may be designated as U.S. Standards if not less than 90 percent, by count, of the carcasses in such lot are of at least B Quality, and the remainder is of C Quality.

§ 70.363 U.S. Trades.

Any lot of dressed poultry or ready-to-cook poultry may be designated as U.S. Trades if it consists of carcasses of not less than C Quality.

UNITED STATES PROCUREMENT GRADES FOR READY-TO-COOK POULTRY

GENERAL

§ 70.364 General.

(a) The United States Procurement Grades for ready-to-cook poultry are applicable to ready-to-cook poultry of the kinds and classes set forth in §§ 70.300 to 70.306, graded as a lot by a grader in accordance with § 70.30.

(b) All terms in the United States standards for quality set forth in §§ 70.350 to 70.355 shall when used in §§ 70.364 to 70.366 have the same meaning as when used in said standards.

GRADES

§ 70.365 U.S. Procurement Grade I.

Any lot of ready-to-cook poultry composed of one or more carcasses of the same kind and class may be designated and identified as U.S. Procurement Grade I when: (a) 90 percent or more of the carcasses in such lot meet the requirements of A Quality, with the following exceptions: (1) Fat covering and conformation may be as described in this subpart for B Quality; (2) Trimming of skin and flesh to remove defects is permitted to the extent that not more than ¼ of the flesh is exposed on any part and the meat yield of any part is not appreciably affected; (3) The wings or parts of wings may be removed if severed at a joint, and the tail may be removed at the base.

(b) The balance of the carcasses meet the same requirements, except they may have only a moderate covering of flesh.

§ 70.366 U.S. Procurement Grade II.

Any lot of ready-to-cook poultry of the same kind and class which fails to meet the requirements of U.S. Procurement Grade I may be designated and identified as U.S. Procurement Grade II provided that (a) trimming of flesh from any part does not exceed 10 percent of the meat; (b) portions of a carcass weighing not less than one half of the whole carcass may be included if the portion approximates in percentage the meat to bone yield of the whole carcass.

§ 70.381 [Amendment]

17. Change § 70.381 so that the present wording becomes paragraph (a) and add a new paragraph (b) to read:

(b) The outline or shape of a shield in the form illustrated in figures 1 and 2 with or without the letters USDA or other information shall be the official identification symbol for the purposes of this part and when used, imitated, or simulated in any manner in connection with poultry shall be deemed to constitute a representation that the product has been officially graded for the purposes of § 70.2.

Issued at Washington, D.C., the 12th day of April 1960.

ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F.R. Doc. 60-3457; Filed, Apr. 14, 1960;
8:50 a.m.]

[7 CFR Part 947]

[Docket No. AO-313]

MILK IN SUBURBAN ST. LOUIS
MARKETING AREA

Decision on Proposed Marketing
Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at East St. Louis, Illinois, on June 22-26, 1959, pursuant to notice thereof issued on May 13, 1959 (24 F.R. 4000), and to a supplemental notice issued on May 26, 1959 (24 F.R. 4342), upon a proposed marketing agreement and order regulating the handling of milk in the Suburban St. Louis marketing area.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Agricultural Marketing Service, on January 11, 1960 (25 F.R. 293), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision, containing notice of opportunity to file written exceptions thereto. On the basis of filed exceptions certain changes were made. In view of these changes the Acting Deputy Administrator on March 31, 1960 (25 F.R. 2842), filed with the Hearing Clerk a revised recommended decision. Further opportunity was provided for filing written exceptions thereto.

Preliminary statement. The hearing on the record of which the proposed marketing agreement and order, as hereinafter set forth, were formulated, was conducted at East St. Louis, Illinois, on June 22-26, 1959, pursuant to notice thereof which was issued May 13, 1959 (24 F.R. 4342).

The material issues of the record relate to:

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

(2) Whether marketing conditions show the need for the issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

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

(a) The scope of regulation;

(b) The classification and allocation of milk;

(c) The determination and level of class prices;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings and conclusions.—(1) *Character of the commerce.* All milk to be regulated by the proposed marketing agreement and order is in the current of interstate commerce, or directly burdens, obstructs or affects interstate commerce in milk and its products.

Packaged fluid milk products from plants located in St. Louis, Missouri, and Vincennes, Indiana, are regularly distributed within the area herein specified as the Suburban St. Louis marketing area in direct competition with milk distributed from plants located in the marketing area. The plants located in St. Louis obtain their supply of milk from dairy farmers located in the proposed marketing area as well as from farms located elsewhere in Illinois and in Missouri.

Plants which will be regulated under the terms of the Suburban St. Louis order, hereinafter referred to as the Suburban order, during most months of a year receive milk from plants located in Wisconsin and Iowa as well as from nearby farms. In turn, bulk milk from a plant located in the southern part of the Suburban marketing area is sold under a contract arrangement to plants located in Kentucky and Arkansas.

During certain months, milk regularly delivered by farmers to Suburban handlers is in excess of fluid demand and is manufactured into various dairy products which are distributed in other states as well as in Illinois.

(2) *The need for an order.* Marketing conditions in the Suburban St. Louis marketing area are such that the issuance of an order to regulate the handling of milk in the area will tend to effectuate the declared policy of the Act.

Stability of marketing conditions can be assured for the Suburban St. Louis marketing area only when provision is made that all milk handlers engaged in competition in the sale of milk in the area pay no less than the minimum prices specified for milk on the basis of its use, and only when all farmers supplying milk to handlers in the market receive the same minimum price per hundred-weight for milk of equal quality.

The majority of dairy farmers who regularly deliver milk to handlers who will be regulated by the Suburban order are members of one of three proponent cooperative associations. However, no uniform method of payment for milk now exists throughout the market. Some Suburban dairy farmers receive the St. Louis order uniform price for their milk. Other dairy farmers receive prices which are less than the St. Louis uniform price. In no case does any Suburban proprietary handler pay to dairy farmers in accordance with a classified price plan based on actual utilization of the milk.

The variation in pay prices among handlers and the absence of a classification plan have caused market instability. Some Suburban handlers follow the practice of maintaining a regular supply of milk from dairy farmers during flush production months which is close to their Class I sales. During other months, when production is relatively short in relation to Class I demand, these handlers purchase supplemental supplies from other markets on an opportunity basis. Other handlers follow the practice of maintaining a supply of milk from dairy farmers during short production months which is close to their Class I demand, and, consequently, must market at surplus value concomi-

tant excess receipts during the flush production months. Handlers who operate under both types of procurement policies pay to dairy farmers prices which are generally based upon the St. Louis uniform price without regard to utilization. Accordingly, those handlers who have a relatively high Class I utilization of producer milk have a competitive advantage over those handlers with a low Class I utilization because they pay to dairy farmers a price which is less than the use value of their milk.

Most of the plants in the Suburban area are engaged primarily in the distribution of Class I milk. Since prices paid to dairy farmers are not determined on the basis of a classified pricing plan, the farmers have no assurance that they are receiving full utilization value of their milk. Without a classified pricing plan, dairy farmers may be paid manufacturing prices for a portion of their milk which is actually disposed of for fluid consumption. This condition has caused unrest and created doubt among farmers which contributes to market instability.

Some handlers distributing milk in the Suburban marketing area will not permit agents of the two bargaining associations to check weights and butterfat content of deliveries of members' milk and will not bargain with cooperatives relative to charges for hauling members' milk from the farm to the receiving plant. Such conditions contribute to market instability.

It is concluded that a Federal milk marketing order in the Suburban St. Louis marketing area is necessary in order to assure orderly marketing conditions by providing:

(a) A regular and definitive method for determining prices to producers at levels contemplated under the Agricultural Marketing Agreement Act;

(b) The establishment of uniform prices to handlers for milk received from producers according to a classified price plan based upon utilization made of the milk;

(c) An impartial audit of handlers' receipts and utilization to insure uniform prices for milk received;

(d) A means of insuring accurate weights and butterfat tests of milk;

(e) Uniform returns to producers supplying the market and an equitable sharing by all producers of the lower returns for sale of reserve milk which is in excess of the demand for fluid milk; and

(f) Marketwide information on receipts, sales and other data relating to milk marketing in the area.

(3) *Order provisions—(a) Scope of regulation.* The scope of regulation is made specific by providing appropriate definitions of the terms "marketing area", "producer", "handler", "pool plant", "other source milk", and such other definitions as are necessary to describe the incidence of order regulation.

1. *Marketing area.* The Suburban St. Louis marketing area should include all the territory within the Illinois counties of Bond, Calhoun, Clinton, Fayette, Franklin, Greene, Jackson, Jefferson,

Jersey, Macoupin, Madison, Marion, Monroe, Montgomery, Perry, Randolph, Washington, Williamson, and such parts of St. Clair County as are not already included in the St. Louis marketing area. All local, state and Federal reservations and installations located within this described territory should be part of the marketing area.

The sanitary requirements applicable for Grade A milk produced for fluid distribution throughout the marketing area are patterned according to a U.S. Public Health Ordinance and Code. Milk meeting the sanitary requirements of the city of St. Louis is accepted for distribution in Illinois. While milk meeting the sanitary requirements of the State of Illinois is not necessarily acceptable for distribution in St. Louis, it may be distributed throughout the proposed marketing area.

According to the United States Census, the 1950 population of the marketing area herein provided was about 705,000. The population of this area has increased significantly since 1950.

The Suburban marketing area includes the 19 counties which were proposed and supported by the various interested parties. For analytical convenience the 19 counties may be divided into three groups.

The first group, hereinafter referred to as the central group, would consist of nine counties, including Bond, Clinton, Jefferson, Madison, Marion, Monroe, Randolph, St. Clair and Washington. Within the central group almost all of the Class I sales are distributed from plants regulated under the St. Louis order, from unregulated plants located within one of the named counties, and from plants located in surrounding Illinois counties or at Mattoon, Illinois.

The percent of total Class I sales sold in each county included in the central group by handlers fully regulated under the St. Louis order ranges from approximately 18 percent in Jefferson to about 60 percent in Monroe. All distributing plants located in the central group and several plants located in surrounding counties would be pool plants because of the volume of sales distributed within the central group.

The second group, hereinafter referred to as the southern group, would consist of Franklin, Jackson, Perry and Williamson Counties which are located south of the previously mentioned central group. St. Louis handlers supply from 20 to 30 percent of total Class I sales in each of the four counties. Handlers whose plants would be regulated by the Suburban order because of sales in the central group sell most of the remaining Class I sales in the southern group.

Three additional plants, however, would be subject to full regulation by virtue of Class I sales in the southern group. About 5 percent of total Class I sales from one of these plants is distributed in one of the counties included in the central group and the remainder in the southern group. This plant receives its full supply of milk from a supply plant located at Carbondale, Illinois. The other two plants do not distribute milk in the central group. One

of these has distribution only within the confines of the southern group and also receives a full supply of milk from the supply plant located at Carbondale. The record is not clear as to the extent of the distribution area of the other; however, such plant sells between 25 and 50 percent of its total Class I sales within the southern group.

The third group of counties, hereinafter referred to as the northern group, would consist of Calhoun, Greene, Jersey, Macoupin, Montgomery and Fayette, which are located north of the central group. Several handlers who operate plants which would be regulated because of the volume of sales in the central group, if the group alone was to be included in the marketing area distribute milk in counties included in this northern group. One such handler, a cooperative association which operates a plant located at Carlinville within the northern group, distributes approximately 65 percent of this plant's total Class I sales within the central group and the remaining 35 percent in the northern group. Another handler whose plant is located at Edwardsville within the central group, disposes of approximately 10 percent of his total Class I sales within the northern group. A distributing plant at Mattoon, Illinois, which distributes approximately 22 percent of its total Class I sales within the central and southern groups, distributes about 11 percent of its total sales in three counties of the northern group.

It is estimated that handlers who either are regulated under the St. Louis order or would be regulated under the Suburban order, because of sales in the central and southern groups, distribute at least 60 percent of all Class I sales in Fayette County. Suburban handlers make the majority of Class I sales in Calhoun, Greene, Jersey, and Macoupin Counties. The exclusion of these counties from the Suburban market would give unregulated handlers a cost advantage in the procurement of milk as compared with regulated handlers, and could contribute to an unjustifiable loss by Suburban producers of part of their Class I market. Therefore, since the majority of Class I sales in these counties would be by regulated handlers, the five counties of Calhoun, Fayette, Greene, Jersey and Macoupin should be included as part of the Suburban marketing area.

A handler with a plant located at Litchfield in Montgomery County is the largest distributor of milk in that county. If this county were excluded, his plant would still be fully regulated under the terms of the Suburban order because the volume of Class I milk distributed from the plant into other counties included in the marketing area is in excess of the minimum pooling requirement. Therefore, the majority of sales in Montgomery County would be from regulated plants. Accordingly, Montgomery County should also be included.

Several handlers operating distributing plants located north and east of the marketing area distribute a relatively small volume of Class I sales within the marketing area and would be partially

regulated by the order. It is noted that the primary distribution area of most such plants has been proposed as the marketing area of a Central Illinois order. No decision has been reached as a result of the hearing held on this matter. In any event, such plants would not be disadvantaged in the competition for sales in view of the options provided for handlers operating these plants to pay either compensatory payments or the use value of their milk to dairy farmers delivering to such plants.

To summarize, the 19-county area forms a distinct milk marketing area. With two exceptions, it covers most of the sales territories served by the plants which would be fully regulated hereunder and the Illinois counties within which St. Louis handlers distribute milk. The two exceptions are the plants at Mattoon and Harrisburg, Illinois, which are located outside the proposed area as described in the notice of hearing. No smaller marketing area would so well encompass the sales areas of the handlers to be regulated and minimize the involvement of handlers whose major Class I business is elsewhere. Therefore, in order to remove any competitive disadvantage in the procurement of milk by regulated handlers and unreasonable exposure to the loss of a Class I market by dairy farmers delivering to these handlers, the 19 counties (not including that part of St. Clair County which is a part of the St. Louis marketing area), should be the Suburban St. Louis marketing area.

2. Producer. The term "producer" should include dairy farmers who regularly provide Grade A milk to pool plants for fluid consumption in the marketing area. Accordingly, the definition of "producer" should distinguish between those farmers who produce milk in compliance with the sanitary requirements of a fluid market and other dairy farmers whose milk is qualified only for use in manufactured dairy products. Milk intended for fluid consumption in the Suburban marketing area is required to be produced in compliance with specific health standards, but it is not necessary that such approval of sanitary practices be given by local health authorities. Sanitary approval by Government authorities at installations under their supervision also would be considered as satisfying the health approval provision.

The qualification of a farmer as a producer should be established primarily on receipt of his milk at a plant which is substantially supplying the marketing area. (Such plants are hereinafter defined as "pool plants".) Producer should also include those dairy farmers whose milk is temporarily diverted from a pool plant to a nonpool plant either by a pool plant operator or by a cooperative association. The milk so diverted would be deemed to have been received at the pool plant from which it was diverted. This provision will accommodate the most efficient handling of milk which serves as the reserve for the market. However, to obviate the possibility that unlimited diversion would encourage handlers to add producers in excess of those needed to supply the fluid requirements of the

market and the necessary reserve, a limit should be placed on the diversion privilege. Therefore, diversion should be limited to 10 days' production during each of the months of August through February. In recognition of the seasonal aspects of production and fluid consumption, no diversion limitation should apply in other months. Should more than 10 days' production of a particular dairy farmer be diverted during each of the months of August through February, that dairy farmer should be a producer during the month for that milk delivered directly to a pool plant and that milk diverted to the extent of 10 days' production.

Producers proposed that diversion should be performed only by cooperative associations. It is not necessary for market stability to so restrict the diversion privilege. Certain proprietary handlers receive milk from farmers who are not members of an association. Farms of nonmember producers may be so located in relation to a nonpool plant which has manufacturing facilities that they would be the producers whose milk could be most efficiently diverted.

It was proposed that cooperatives be permitted to divert milk between pool plants in order to facilitate the allocation of producer milk between plants in relation to the Class I needs of the respective plants. This is denied. Under certain conditions, a cooperative association may be the handler on bulk tank milk. (The findings and conclusions relative to this issue will be found in that part of the decision devoted to the definition of "handler".) Thus, flexibility in allocating producer milk is provided without necessitating inter-pool plant diversion.

A "dairy farmer for other markets" should be defined as any farmer who formerly delivered milk to a pool plant but who delivered his production to another market during those months when the Suburban market was most in need of milk and who resumed deliveries to the Suburban market during flush production months when his milk was no longer needed for Class I purposes on the other market. The milk of such farmers could only be used for manufacturing purposes during these flush months, thus contributing to a lower uniform price for those producers who have assumed the responsibility of regularly supplying the market. This circumstance would tend to place on Suburban producers the unwarranted burden of carrying the surplus of other Class I markets without a compensating participation in Class I sales.

A "dairy farmer for other markets" should be excluded from "producer" status and milk received at pool plants from such farmers would be other source milk. (Other source milk is defined subsequently.)

This method of dealing with dairy farmers who supply milk to the market on an opportunity basis will not discourage the entrance of new producers to the market. Its application will be limited to those dairy farmers who shift from the Suburban market to another market during short production months

and shift back to the Suburban market during the following flush production months.

3. *Pool plant.* Generally, there are two categories of milk plants functioning in the Suburban market. In one category are plants from which packaged Class I products are distributed in the marketing area. For discussion purposes, such plants will be referred to as distributing plants. In the other category are plants at which milk is received from dairy farmers, commingled and shipped to other plants for further processing and distribution. Such plants will be referred to as supply plants.

Of plants from which Class I milk may be distributed in the marketing area, it is necessary to distinguish between those which are primarily engaged in Class I distribution and those which are not. A plant from which more than 50 percent of the receipts of milk from Grade A dairy farmers is used for manufacturing purposes is not primarily engaged in Class I distribution. All of the distributing plants presently associated with the Suburban market dispose of as Class I milk considerably more than half of the Grade A milk received from dairy farmers. There is, therefore, no need to include in the marketwide pool plants from which less than half of such receipts is distributed as Class I milk. Inclusion of such plants in the pool would result in an uneconomic dissipation of the return for Class I milk which is intended to assure an adequate supply of milk for the market. This would not be in the public interest or promote orderly marketing.

Only those distributing plants from which a substantial proportion of Class I sales are made in the Suburban area should be fully subject to the pricing and pooling provisions of the order. The inclusion in the pool of plants from which only a minor share of their total Class I sales is distributed in the market would impose a hardship on handlers operating these plants, since it would place them at a competitive disadvantage in their primary sales territories where they compete with unregulated handlers for the major share of their business. Accordingly, it is appropriate to include in the pool only those distributing plants from which not less than 20 percent of their total Class I business is disposed of in the marketing area.

There are at least two plants from which routes are operated in the marketing area that receive no milk from producers. Their total supply of milk is received from a supply plant. Milk received at the supply plant which is not disposed of as Class I is used for manufacturing purposes. At all other distributing plants operating in the area, milk is received directly from producers. However, at most distributing plants, the volume of milk from producers is insufficient to meet Class I demands except in the flush production months. Operators of these plants purchase supplemental milk from plants located in Illinois, Iowa, and Wisconsin and from at least one plant regulated under the St. Louis Federal order.

Supply plants from which a substantial portion of their receipts of milk from

dairy farmers is regularly shipped to Suburban distributing plants are clearly associated with the market and their producers should participate in the pool. Supply plants from which incidental or minor quantities of milk are shipped to Suburban distributing plants are not primarily associated with the market and should not participate in the pool. The status of milk received from such plants is covered subsequently under the heading, "Provisions with respect to unpriced milk".

The pool or nonpool status of supply plants should depend upon actual shipments to distributing pool plants rather than upon the "reserve supply credit" technique. In essence, reserve supply credit would be earned by supply plants if their milk is actually used at distributing plants for bottling purposes. Proponents testified that the "reserve supply credit" method of qualifying supply plants is essential to avoid uneconomic movements of milk.

Other provisions of the order can more appropriately be relied upon to achieve this same objective. Location adjustments are allowed only on those quantities of milk from supply plants that are actually used for Class I purposes. Any quantities of milk shipped in excess of bottling requirements must be transferred at handler's expense. This serves as one impediment to the shipment of unnecessary quantities of milk to distributing plants. The level of the Class II price is also an important factor in the desire of supply plant operators to associate unduly large volumes of milk with the market.

Difficulties inherent in the operation of the proposed reserve supply credit device include the fact that supply plant operators cannot be sure if they are qualifying in any given month. The amount of credit would be affected by unpredictable fluctuations in sales at distributing plants, and, perhaps more importantly, from unpredictable fluctuations in receipts from producers at both the distributing plants and supply plants. The "reserve supply credit" method would require operators of supply plants to be unduly conservative in developing supplies of milk for the relatively short Suburban market even though the prices provided herein may be adequate to attract additional producers.

It is concluded that a supply plant should be considered as a regular source of supply for the market if shipments to distributing plants are equal to not less than 50 percent of the receipts from dairy farmers who meet the inspection requirements described in connection with "producer" during each of the months of August through January. It should also be required that the distributing plants to which such milk is shipped be primarily engaged in fluid milk distribution rather than in manufacturing operations. This can be objectively measured by requiring that at the distributing plants, 50 percent or more of the total Grade A receipts be used for Class I purposes. In the recommended decision this "half-fluid" requirement was included directly in the definition of distributing plant. How-

ever, in the exceptions it was emphasized that certain plants serve as surplus disposal outlets for other handlers who have only limited manufacturing facilities. Under the revised definition of pool plant provided herein, the surplus disposal plants will be able to accommodate unlimited quantities of milk from other distributing plants without affecting their own pool status. Supply plants which so qualify as pool plants during the months of August through January should be allowed to maintain pool status, if the operator so desires, during the following months of February through July even though, in any of such months, he may ship to the market less than the minimum percentage. This will accommodate the economical handling of seasonal reserve supplies which normally would not be needed by distributing plants during the spring and early summer months.

Since this order may become effective during a month following the start of the fall qualifying period, a handler may pool a supply plant during the flush production months of 1960 if his plant functioned as a significant source of milk supply for the market during the preceding short production months. To this end, for each month from the effective date of this order through July 1960, a supply plant may be a pool plant if the operator of the supply plant furnishes proof that 50 percent of receipts of approved milk of dairy farmers during the preceding period of August through January was shipped to distributing plants which are pool plants.

Certain plants which otherwise would qualify as pool plants by meeting the appropriate shipping percentages should be exempt from the pooling provisions of the order. Such exemption should cover plants which would be subject to the pooling and other provisions of another Federal order when a larger volume of milk is involved with the other order market than is involved with the Suburban market.

4. *Handler.* "Handler" is a term designed to cover all persons operating plants or otherwise having responsibility with respect to the marketing of milk in the area. The handler is the person who receives milk from producers and is responsible for reporting the receipts and utilization of milk and payment therefor. It includes (a) persons operating pool plants, (b) persons operating nonpool plants from which Class I milk is distributed on routes in the marketing area, (c) a cooperative association with respect to milk diverted to a nonpool plant, and (d) a cooperative association with respect to members' milk which is delivered to a pool plant in a tank truck owned and operated by, or under contract to, the association if the association gives prior notice to the market administrator and the plant operator of its intention to be the handler for such milk.

Proponents proposed that a cooperative association be permitted, under certain conditions, to be the handler on bulk tank and can milk which is moved from the farm to pool plants which are not operated by the association.

Designation of a bargaining-type cooperative association as the handler of bulk tank milk will assist the two bargaining associations in the efficient distribution of the available milk supply according to the needs of the various pool distribution plants. In some instances, the same tank truck load of milk may be split between two or more pool plants; and in other instances, two or more pool plants may receive the entire tank truck load on different days during the same month.

In the case of member farmers who market their milk in bulk tanks, weight readings and butterfat samples will be taken at the farm by persons responsible to a cooperative association and it therefore follows that the cooperative association will be held responsible to the pool for the receipt of such milk. In the case of dairy farmers who market their milk in cans, weight readings and butterfat tests are taken at the receiving plant where individual cans of milk of the same dairy farmer are dumped and commingled and, accordingly, the pool plant is held responsible for the milk receipt. In view of the difficulties involved, it would not be in the best interest of orderly marketing to permit or require a cooperative association to be the handler and account to the pool for can milk received at a pool plant not operated by the association.

It is necessary that the market administrator be able to establish the responsibility for milk received and, therefore, the cooperative association which intends to be the handler for bulk tank milk is required to so notify the market administrator. Otherwise, the handler at whose pool plant the milk is received must be held accountable for it and responsible for payments to producers. It follows that the association also will notify the operator of the pool plant that it intends to be the handler for the milk.

When a cooperative association is the handler for bulk tank delivered to the pool plant of another handler the transaction constitutes an interhandler transfer. In order to avoid misunderstanding concerning the classification of such transactions, the order should provide for pro rata classification at the pool plant of bulk tank milk of which the association is a handler. Such classification would be automatically subject to audit adjustment. This method will also expedite the association's report of receipts and utilization. The pool plant handler would be required to pay the association the class prices for milk received and classified in this manner. The association, in turn, would be required to settle with the pool through the producer-settlement fund and to settle with the market administrator for the administrative expense assessment on the milk.

5. The term "producer-handler" would apply to any person who produces milk on his own farm and operates a plant from which milk is distributed in the marketing area, but receives no milk from sources other than his own farm or from pool plants.

The milk produced by a producer-handler on his own farm would be exempt

from the pooling requirement which applies to other handlers. In view of this, it is necessary in the interest of orderly marketing that the term cover a particular type of operation. A handler whose milk supply is obtained entirely from his own farm production and from pool plants would qualify as a producer-handler, and any handler who obtains part of his milk supply from another dairy farmer or from nonpool plants would not so qualify.

Only two producer-handlers are currently distributing Class I milk in the Suburban marketing area and their competitive impact on other handlers and on other dairy farmers is not contributing to instability at the present time. Under these circumstances, market stability would not be endangered if such operators purchased needed supplemental supplies of milk from pool sources and disposed of surplus milk to pool sources provided appropriate conditions are applied. The order should provide that transfers of milk to producer-handlers from pool plants should be a Class I disposition by the transferor-handler; and receipts of milk at pool plants from producer-handlers should be other source milk. Such classification is appropriate otherwise producers would be forced to assume the reserve supply of producer-handlers without a compensating share of Class I sales.

The exemption of producer-handlers from pooling may provide incentive for individuals to adopt certain devices in an attempt to circumvent the order's intent to pool plants which receive milk from other farmers. In order to preclude the use of such devices, the order provides that to be a producer-handler the maintenance, care and management of the dairy animals and all other resources used to produce milk as well as the resources used in the processing, packaging and distribution of the milk be at the sole risk of the person who claims producer-handler status.

A producer-handler would be required to make such reports of his receipts and utilization as the market administrator deems necessary to verify the continuing status of such person and facilitate verification of transactions with other handlers.

6. "Other source milk" is defined in order to distinguish certain milk from producer milk. It would include milk received at a pool plant from nonpool sources and Class II products from any source which are reprocessed or converted to another product in the plant during the month.

(b) *The classification and allocation of milk.* All milk and milk products received by a handler should be classified in two classes according to use. Skim milk and butterfat should be classified separately in accordance with their use in Class I and Class II milk.

Skim milk and butterfat are not used in most products in the same proportions as contained in producer milk and, therefore, it is appropriate that they be classified separately according to use. Class prices, however, will apply to each hundredweight of milk, and will be adjusted by butterfat differentials accord-

ing to the butterfat content of the milk used in each class. The skim milk and butterfat content of milk products received and disposed of by handlers can be determined by recognized testing procedures. Some products such as fortified skim milk, condensed milk, and concentrated products present an accounting problem in that some water contained in the milk used to produce these products has been removed. It is necessary in the case of such products to provide an acceptable means of ascertaining the amount of skim milk and butterfat used to produce them. This can be established through the use of plant records made available to the market administrator, or by conversion factors.

1. *Milk classes.* Class I milk would be defined as skim milk and butterfat disposed of in those milk products which are now required by health authorities having jurisdiction in the marketing area to be made from milk from approved sources. The extra cost of getting Grade A quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used as Class I higher than the price for uninspected milk which is used for manufacturing purposes.

More specifically, Class I should be defined to include all skim milk and butterfat disposed of in fluid form as milk, skim milk, concentrated milk, milk drinks (plain or flavored), cream (sweet or sour) and any mixture of milk, skim milk or cream (except frozen dessert mixes, eggnog, aerated cream products and sterilized products packaged in hermetically sealed containers).

Class I products which contain concentrated skim milk solids, such as skim milk drinks and buttermilk to which extra solids are often added, or concentrated whole milk disposed of in unsterilized fresh form for fluid use, should be included under the Class I definition. Products commonly known as evaporated milk or condensed milk, which are either packed in hermetically sealed containers or are used in the manufacture of other milk products, should not be considered concentrated milk and should not be classified as Class I.

It is necessary in accounting for Class I sales of fortified, concentrated and reconstituted milk that the order provisions prevent the displacement of producer milk in Class I use. This requires that such disposition be accounted for on the basis of milk used to produce such products, which includes all water originally associated with the milk solids used. Fortified, concentrated and reconstituted milk compete for the same Class I sales as whole milk or skim milk and, if made from other source milk, could displace producer milk which is available for the same purpose. It is concluded, therefore, that accounting for skim milk in these Class I products on the basis of original volume, including all the water originally associated with the solids, is necessary to return to producers a value commensurate with the use and availability of their milk for Class I purposes.

Producers proposed classification as Class I for that skim milk and butterfat used to produce "Smetina" and "salad dressing". The record is not clear as to the full ingredients of "Smetina" and "salad dressing" nor is it clear as to whether they are distributed only from plants processing dairy products or from food warehouses as well. No description of either product is contained in the Grade A milk law provided and administered by the State of Illinois which is the authority responsible for the minimum sanitary regulations on milk throughout the marketing area. Accordingly, the specific inclusion of "Smetina" and "salad dressing" as Class I is denied.

Class II milk should include all skim milk and butterfat used to produce any product other than those specified as Class I, including, but not restricted to, butter, cheese, evaporated and condensed milk, nonfat dry milk, cottage cheese, ice cream mix and eggnog. These products are not required to be made from Grade A milk.

Class II should also include the skim component of any skim milk which is dumped after prior notification to, and opportunity for verification by, the market administrator; and skim milk and butterfat used for livestock feed to the extent that appropriate records of such utilization are maintained by the handler.

Butterfat and skim milk used to produce Class II products should be considered disposed of when so used. Handlers will need to maintain stock records of such products, however, to permit audit of the utilization by the market administrator.

Handlers have inventories of milk and fluid milk products at the beginning and end of each month which enter into the accounting of receipts and utilization. Manufactured products on hand are not included in the inventory account because the milk used to produce such products will already have been accounted for. Handlers will need to keep records of such manufactured products but such products will not be included in inventories for the purpose of accounting for current receipts.

Closing inventory would be accounted for as Class II milk. Accordingly, it is necessary to provide a proper method of reclassifying in the following month, the milk in beginning inventory which is used for Class I disposition. The method of reclassifying beginning inventory would be in accordance with the general procedure of giving precedence in Class I assignment to producer milk received during the month. Priority of Class I assignment is then given to receipts of the handler in the previous month from other pool sources which were priced as Class II milk.

It may be necessary to determine to what extent in the previous month other source milk became an inventory item. The amount of beginning inventory assigned to Class I milk but not covered by the reclassification charge would be subject to compensatory payments, provided that such payments would not apply to any milk which has been classified and priced as Class I milk under another Federal order.

Allowance of Class II classification would be made for a reasonable amount of shrinkage in recognition that there is some loss of skim milk and butterfat in the processing and distribution of milk. A shrinkage allowance of up to two percent received from producers is provided. This amount of shrinkage allowance is common under Federal orders and official notice is here taken of a similar allowance in Federal Order 3 regulating the handling of milk in the St. Louis, Missouri, marketing area.

Milk may be received at a pool plant in tank trucks from other pool plants and from cooperative associations in their capacity as handlers. In this case the maximum shrinkage allowance of 2 percent would be allocated at the rate of 1.5 percent to the plant where received, leaving the other 0.5 percent for the shipping plant or cooperative association. This system of applying shrinkage allowance recognizes that relatively little shrinkage occurs in the receiving of milk and relatively more in its processing, bottling and distribution.

No shrinkage allowance would be allowed to the operator of a pool plant on producer milk diverted to a nonpool plant inasmuch as such milk is not physically received at the pool plant.

No shrinkage would be allowed on receipt of dairy products such as butter, powder, cheese, and cottage cheese curd.

Since it is not feasible to segregate shrinkage of other source milk from shrinkage of producer milk, total shrinkage is prorated between the two on the basis of the respective volumes of receipts. The amount prorated to the producer milk would be classified as Class II utilization only up to a total of 2 percent. Any shrinkage above the 2 percent maximum would be classified as Class I milk. No limit is necessary on shrinkage of other source milk since such milk is deducted from the lower use classification under the allocation procedure.

2. Transfers. It is necessary to establish rules for the classification of skim milk and butterfat which are transferred or diverted from one plant to another.

In the case of skim milk and butterfat used in the production of manufactured milk products, Class II classification should be established at the pool plant where the product is made. Packaged Class I products should be classified as Class I at the transferor plant. Therefore, the rules for classification for transfers need apply only to skim milk and butterfat which are moved in bulk fluid form.

Milk products in bulk fluid form transferred to another pool plant should be classified as Class I milk unless the operator of each plant indicates in his report to the market administrator that such milk is to be classified as Class II and there is sufficient Class II classification available at the transferee plant pursuant to the allocation procedure. Class II classification, however, should be subject to the provision that such classification will result in the maximum amount of producer milk at both plants being assigned to Class I milk.

Milk products in bulk fluid form may also be transferred or diverted to non-

pool plants. When diverted, milk will move directly from the producers' farm to the nonpool plant. Most plants which will be pool plants under the terms of the Suburban order are located within or near the marketing area. However, one supply plant which is located in Wisconsin will become a pool plant. Adequate manufacturing facilities are located within the scope of arcs drawn 150 miles from the main U.S. post office of the cities of Alma, Alton, Benton or Red Bud to accommodate disposition of surplus by plants which are located in or near the marketing area. A surplus disposal area circumscribed by an arc drawn 50 miles from its plant would accommodate surplus disposal problems of any pool plant located a considerable distance from the marketing area. Administrative feasibility requires that some limit be set on the area within which the market administrator should send his staff to verify utilization.

Transfers and diversions to nonpool plants located within the areas described which are adequate to accommodate surplus disposition may be classified as Class II provided the following conditions are met: (1) The transferring or diverting handler claims classification in Class II milk in his regular report of receipts and utilization; (2) The operator of the nonpool plant, if requested, makes his books and records available to the market administrator for the purpose of verifying receipts and utilization of all milk in the nonpool plant; and (3) The Class I milk (as defined in the order) disposed of from the nonpool plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers approved to supply Grade A milk and receipts in consumer packaged form which are priced as Class I under this or other Federal orders. If the Class I disposition from the nonpool plant exceeds such receipts, provision should be made to classify as Class I an amount equivalent to such excess.

The order should not provide duplication of Class I classification on milk transferred to the same nonpool plant from other plants regulated by this and other Federal orders. It is reasonable, therefore, to assign receipts in packaged form which are classified as Class I under any Federal order to Class I disposition at the nonpool plant before bulk transfers are so classified. Bulk transfers to such nonpool plant which are classified as Class I should not be less than the Suburban market's pro rata share of the remaining Class I sales from such nonpool plant. This method of classification and proration of Class I sales provide equality of treatment among handlers under the Suburban order as well as handlers under other Federal orders in case of transfers to a common nonpool plant.

Milk transferred from a pool plant to the plant of a producer-handler should be Class I milk for reasons explained in the previous findings relative to producer-handlers. Transfers to a pool plant from a plant of a producer-handler should be classified as other source milk and allocated accordingly.

3. *Allocation.* Milk from sources other than producers frequently will be received at pool plants. Since the order applies class prices only to producer milk, it is necessary to determine the classification of skim milk and butterfat contained in milk received from these other sources.

In order to insure the effectiveness of the classified pricing program, producer milk must have priority in assignment to Class I utilization. The allocation to Class I and Class II utilization of receipts from different sources as set forth in the order will accomplish this objective. The allocation should provide further that after setting aside the appropriate allowances for shrinkage of producer milk, skim milk and butterfat in other source milk should be subtracted from Class II utilization before skim milk and butterfat contained in producer milk are so assigned.

One exception should be made to the prior allocation to Class II utilization of other source milk. Other source milk in packaged Class I form received from plants fully regulated under another Federal order which are disposed of in the same packages as received should be subtracted from Class I utilization at the receiving plant. Plants which will be regulated under the proposed Suburban order regularly receive packaged Class I products from plants regulated under other Federal orders. One Suburban plant receives packaged milk from a St. Louis pool plant which milk is distributed by the Suburban handler in the St. Louis marketing area. Other Suburban plants regularly receive packaged Class I products from plants regulated under another order. Since this milk is regularly received at Suburban plants from other Federal order plants, it can only be concluded that the dairy farmers supplying milk to the other Federal order plants have assumed the responsibility of supplying the milk for such products and for the reserve supply associated therewith. Therefore, Suburban St. Louis producers who will not be the regular source of supply of milk for such products should not receive priority of classification to such Class I disposition. However, in order to prevent abuse and inequities to Suburban producers, the Suburban order should provide that plants which receive packaged milk from other Federal orders shall not receive prior allocation to Class I for such milk if the same product is processed and packaged in containers of the same type and size in the Suburban plant during the month.

Other source bulk milk which is priced and pooled as Class I under another Federal order may also be received at pool plants. Such milk should take priority with respect to the highest utilization over other source milk not so priced and pooled. This will minimize compensatory payments by Suburban handlers on supplemental milk purchased from unpriced sources.

Receipts of milk from other pool plants would be subtracted from the class utilization to which they are assigned pursuant to the transfer provisions.

The sequence of subtractions from Class II utilization (except where otherwise indicated) to achieve proper assignment of Class I utilization to producer milk should be as follows:

- (1) Allowable shrinkage of producer milk;
- (2) Receipts of packaged Class I products from plants regulated under other Federal orders should be subtracted from Class I utilization;
- (3) Receipts of unpriced other source milk;
- (4) Receipts of bulk other source milk classified and not priced as Class I under another Federal order;
- (5) Receipts of bulk other source milk classified and priced as Class I under another Federal order;
- (6) Beginning inventory;
- (7) Receipts from other handlers according to classification; and
- (8) Overage.

The order should not provide a 5 percent assignment of producer milk to Class II utilization before the Class II assignment of other source milk. While Suburban handlers frequently find it necessary to utilize as Class I bulk milk received from other sources, such other source milk is purchased and so used only when producer milk is insufficient for the particular handler's Class I sales. Therefore, it can be concluded that the other source milk is a supplemental rather than a regular dependable supply.

(c) *The determination and level of class prices*—1. *Class I price.* For the first 18 months, the minimum Class I price each month per hundredweight of milk containing 3.5 percent butterfat at plants located in the "base zone" should be the St. Louis Federal order Class I price effective at a pool plant located at Collinsville, Illinois, minus 10 cents. The "base zone" should include the counties of Clinton, Franklin, Jackson, Jefferson, Madison, Marion, Monroe, Perry, Randolph, Washington, Williamson, and that part of St. Clair County not included in the St. Louis marketing area. The minimum Class I price at plants located elsewhere in the marketing area should be the St. Louis order Class I price at a pool plant located at Collinsville minus 15 cents.

Various Class I prices were proposed for the Suburban order, all of which were tied to the St. Louis order Class I price. Because of the overlapping of the Suburban and the St. Louis milk procurement areas, the various proposals were predicated on the necessity of equating the uniform prices paid to Suburban producers with the uniform prices paid to those producers delivering to plants regulated under the St. Louis order whose farms are located in the Illinois portion of the St. Louis milkshed.

Other factors must be considered. Primarily, the level of the Class I price must be such as to bring forth a regular and dependable supply of Grade A milk for the Suburban market. As corollary considerations, the Class I price must recognize (a) the desirability of so aligning Suburban and St. Louis Class I prices to provide equity for both groups of handlers and to eliminate the possible in-

equity to St. Louis or Suburban producers if one of the respective Class I prices is so low in relation to the other as to precipitate the transfer of a Class I market; (b) the difference in cost to Grade A dairy farmers in complying with inspection requirements of St. Louis health authorities as compared with inspection requirements of Suburban health authorities; and (c) the need to align Suburban prices with prices in other areas which may serve as alternative sources of supply.

One guide in determining the Class I price which will assure an adequate supply of milk for the Suburban market is the historical price relationship between St. Louis and Suburban plants. As previously stated, no uniform method of calculating payments to dairy farmers has existed in the Suburban market. However, it is possible to approximate the average prices paid. Generally, operators of distributing plants which will be regulated have paid prices that approximate that St. Louis order uniform price at the zone where their respective plants are located. Such prices have not attracted an adequate and regular supply of Grade A milk for the market from local dairy farmers. Suburban handlers have found it necessary to import milk during approximately 9 months of the year to supplement deliveries from local dairy farmers. The supplemental milk is bought principally from plants located at Platteville and Madison, Wisconsin, and Cedar Rapids, Iowa. However, in view of the fact that the compulsory Illinois Grade A statute is relatively recent, it is necessary to allow a period of time to evaluate supply response under these conditions.

At least four plants regulated by the St. Louis order are located within the Suburban marketing area and one is located in Effingham County which lies each of the Suburban area. Class I milk from three of these plants is distributed in various counties included in the Suburban marketing area. The three plants, one of which is located at Collinsville, are approximately the same distance from the city of St. Louis. Thus, Collinsville will provide the point of St. Louis pricing pursuant to which the appropriate Suburban Class I price may be computed.

St. Louis order handlers distribute significant proportions of the total fluid milk sales distributed in 14 of the 19 counties herein specified as the Suburban marketing area. In the spring of 1958, the magnitude of St. Louis distribution ranged from a low of approximately 20 percent of total Class I sales in Franklin County to a high of approximately 60 percent of such sales in Monroe County. It is evident that while the St. Louis marketing area is the primary market of St. Louis handlers, the magnitude of sales in the Suburban market by these handlers cannot be overlooked in arriving at an appropriate price plan. Producers delivering to these St. Louis handlers have assumed the responsibility of supplying the Grade A milk needed for the Class I sales in Illinois made by such handlers. Any Class I price advantage to Suburban handlers beyond

that dictated by economic considerations would tend to jeopardize a significant proportion of the established Class I market of St. Louis producers.

It is generally accepted that the Grade A inspection requirements of the St. Louis health department are more stringent than those enforced by authorities responsible for the Suburban market. Therefore, it would be expected that St. Louis order Class I prices should be higher than the Suburban Class I prices by the additional cost of complying with St. Louis Grade A inspection. Various witnesses estimated the magnitude of the additional cost involved. Such estimates differed considerably because of the comparatively larger costs of converting existing facilities to meet St. Louis standards as compared with the lower additional costs of building new facilities to meet St. Louis rather than Illinois standards. It is concluded that 10 cents appropriately represents the lesser cost involved in producing Grade A milk for the Suburban market.

Another measure of the appropriateness of the Suburban Class I price is a comparison of such price with the Class I price effective at plants located in other areas which are alternative sources of supply for the Suburban market. During the 12-month period ending with September 1959, the average price for Class I milk under the Chicago Federal milk order at a plant located in the same zone as is the Platteville, Wisconsin, plant was \$3.50. Adding a transportation cost computed at a rate of 1.5 cents for each 10 miles or fraction thereof (this is the rate of location adjustments included herein), the price of Class I milk delivered to a Suburban plant located at Collinsville, Illinois, which is a relatively large population center located north of Highway 50 in the Suburban marketing area, would have been approximately \$4.01. This computation does not include a handling charge. Applying similar assumptions to milk delivered from the unregulated plant at Madison, Wisconsin, the average price for Class I milk delivered to a plant located at Collinsville would have been \$4.10. Class I milk from a plant regulated under the terms of the Cedar Rapids, Iowa, order would have cost about \$4.26 delivered to a plant located at Collinsville. During the same 12-month period the average Suburban Class I price at plants located in the base zone would have been \$4.09.

The order should provide that the Class I and uniform prices applicable at pool plants located in the northern zone should be five cents less than those applicable at plants located in the base zone. The northern zone should include the counties of Bond, Calhoun, Fayette, Greene, Jersey, Macoupin and Montgomery.

Madison and St. Clair Counties are by far the most densely populated counties included in the Suburban area. The plants of several of the larger Suburban handlers are located in these two counties as are the plants of several St. Louis handlers. Not including the 10-cent difference in the cost of producing Grade A milk for the two markets, Sub-

urban plants should pay for milk at least as much as do St. Louis plants similarly located.

Historically, prices received by dairy farmers delivering to plants located in other counties included in the base zone have been higher than those received by farmers delivering to plants located in the northern zone of the marketing area. One handler entered specific data on this subject. During 1958 prices paid to farmers delivering milk to a plant operated by this handler which is located in the northern zone, at Carlinville, were less than the prices received by farmers who deliver to a plant located in the southern zone, at Carbondale, which is operated by the same handler.

Plants located in the northern counties of the marketing area are closer to alternative supply sources and, therefore, can obtain Class I supplies at a lower cost. Handlers with plants located in these northern counties distribute Class I milk in base zone counties in competition with handlers operating plants located therein, however, the cost of moving milk from the northern counties to the base zone should offset the difference in the Class I prices.

At a hearing held in St. Louis on January 18, 19, 20, 25, and 26, 1960, proposals were made to provide less seasonal variation in the Class I price provisions of the St. Louis Federal order.

If such proposals are adopted, the Suburban order would also provide less seasonal variation in the Class I price. The related problem of seasonal production incentive to producers is dealt with under topic (d)4 below.

Some time after the order has been in operation in a full year, a hearing can be called to consider more permanent Class I price provisions. At such time considerable marketwide data on all aspects of the marketing of milk in the area will be available. These data can be expected to provide the basis for a reappraisal of the Class I price structure."

2. Class II price. The minimum Class II price each month per hundredweight of milk containing 3.5 percent butterfat should be the minimum Class II price for the same month under the terms of the St. Louis order.

Some milk in excess of Class I requirements is necessary to maintain an adequate supply of milk for the market on an annual basis. The price for this excess milk should be maintained at the highest level consistent with facilitating its use in manufactured products. The price, however, should not be so low that handlers will be encouraged to procure supplies of Grade A milk solely for manufacturing purposes.

The recommended decision provided that the Suburban Class II price should be 10 cents higher than the St. Louis Class II price. In their exceptions, interested parties pointed out that while some relatively large shippers of ungraded milk may have received a price for their milk which was in excess of the St. Louis Class II price because of quantity and quality premiums, such prices were not representative of prices paid throughout the market for ungraded

milk. It was further argued in these exceptions that a Suburban Class II price which is in excess of the St. Louis Class II price would tend to cause handlers operating in both markets to concentrate Class II milk in the market with the lowest price.

In view of these considerations the Suburban Class II price should be the same as that contained in the St. Louis Federal order.

3. Butterfat differentials. Butterfat and skim milk are to be accounted for separately for classification purposes. Class and uniform prices are to be established for milk containing 3.5 percent butterfat. Therefore, to reflect differences in the value of the milk due to variations in butterfat content, it will be necessary to adjust Class I, Class II and uniform prices in accordance with the average butterfat test of milk in each class, and of the milk delivered by each producer.

The values resulting from multiplying the average price of 92-score butter at Chicago by 0.120 for Class I milk and 0.115 for Class II milk will provide an appropriate basis for adjusting such prices for each one-tenth percent variation in butterfat content. The resulting differentials will conform with those applied under the St. Louis order.

The butterfat differential to producers should correspond to the weighted average values of butterfat used for Class I and Class II purposes. This follows the principle of uniform prices to all producers and will reflect changes in the use of butterfat in each class.

4. Location differentials. Class I and uniform prices paid by handlers operating plants located a considerable distance from the market should be subject to minus adjustments to reflect the cost of moving milk to the market. Adjustments to Class I prices at such plants are necessary to equalize the cost of milk to all handlers distributing in the marketing area. Adjustments to producer prices will recognize the lesser location value of producer milk which must be transported a considerable distance to the Suburban market.

No location adjustments should apply at plants located less than 50 miles from the nearest main U.S. post office in Alma, Alton, Benton or Red Bud, Illinois. The area thus circumscribed will insure that no handler operating a distributing plant located within or adjacent to the marketing area will have a competitive advantage over any other handler operating a plant which is similarly located.

A location differential of 1.5 cents for each 10 miles should be used for adjusting Class I and uniform prices. This rate approximates the cost of moving milk to the Suburban market and conforms with rates similarly used in other Federal milk orders in this region. Accordingly, it is concluded that a rate of 9 cents should be established at plants located more than 50 miles but less than 60 miles from the nearest of the named basing points. For each additional 10 miles or fraction thereof, the per hundredweight location adjustment should be increased 1.5 cents.

No location adjustment should be allowed on Class II milk. Costs involved

in moving manufactured products are minor relative to costs of moving whole milk. Manufactured dairy products are much less perishable and the components of manufactured products are usually in concentrated form. Accordingly, there is little value in milk used for manufacturing purposes which can be equated to plant location.

In computing the aggregate Class I location adjustment allowed at distributing plants on milk received in bulk from distant plants, a method should be provided for allocating Class I utilization. Such allocation of Class I should begin with milk received from producers. Receipts from other pool plants which are not subject to location adjustments should be next allocated to Class I and, then in sequence, milk received from those plants which have the least location adjustment.

5. *Equivalent price.* If for any reason a price quotation required for computing class prices or for any other purpose is not available in the manner described, the market administrator should use a price determined by the Secretary to be equivalent to the price which is required. Experience has shown that quotations described in the order may not be available at all times. It is concluded that provision for such contingencies should be made by providing for a determination by the Secretary of an equivalent price.

6. *Provisions with respect to unpriced milk.* The order should provide for payments to the producer-settlement fund with respect to unpriced milk which is allocated to Class I at a pool plant. Operators of nonpool distributing plants would have the choice of making payments to the producer-settlement fund or paying Grade A dairy farmers from whom they receive milk the use value of such milk pursuant to the pricing, classification and all other provisions of the order.

The rate of payment on such milk should be equal to the difference between the Class I and Class II prices during the months of March through July and the difference between the Class I and uniform prices during the months of August through February.

At times, operators of pool plants may purchase milk for Class I use from sources which are not fully subject to classification and pricing under the terms of any Federal order. Unpriced Grade A milk which is purchased from such unregulated sources by Suburban handlers to supplement deliveries from dairy farmers will usually represent Grade A milk which is in excess of the demand for Grade A distribution in another market. As surplus, its value in the other market is less than the value of milk used for Class I purposes. If Suburban handlers were allowed to purchase such milk and dispose of it for Class I purposes without some compensatory feature in the order, such handlers would have a competitive advantage as compared with other Suburban handlers, and would have incentive to replace regular producer milk with milk which is surplus in another market.

To avoid both these deleterious consequences to the orderly marketing of milk

in the Suburban area, it is concluded that handlers operating pool plants at which other source milk which is not priced as Class I under any Federal order is allocated to Class I should pay into the producer-settlement fund a compensatory amount which will reflect generally the difference in value between regulated and unregulated milk used for Class I purposes.

When milk is available in substantial volumes from nonpool sources, pool plants could obtain such milk at prices reflecting its value as surplus milk which would approximate the Class II price under the order. During the seasonally high production months of March through July, therefore, the rate of payment on other source milk allocated to Class I should be the difference between the Class II price and the Class I price adjusted to the location of the plant from which such other source milk was received from dairy farmers. During the months of August through February, milk supplies are shorter than in other markets. It is not likely that other source milk will be available to the market at surplus prices. It reasonably may be expected that during such months such milk will be available from unregulated sources at prices not less than the level of the uniform price under the order.

Compensatory payments during these months, therefore, should be the difference between the uniform price and the Class I price, both adjusted by location differentials to the plant from which such other source milk is supplied.

It is administratively necessary to use the stated rate of compensatory payment instead of attempting to determine a particular rate in each given case. Pool plant operators may obtain other source milk with little or no advance notice from a wide variety of sources. Any attempt to determine the actual cost of such milk to the regulated handler would be complicated by the number of plants involved. Some of the plants supplying the other source milk might be operated by the same handler, in which case the interplant billing would be purely arbitrary. There is the possibility of arbitrary billing even where the plants are not under common ownership. In addition, the originating plant would not be subject to the audit and payment provisions of the order. It is, therefore, necessary to have definite and specified rates applicable to all handlers similarly situated. The rates herein provided are those which will best effectuate the intent of the Act under current marketing conditions in the area.

Other source milk used in the form of nonfat dry milk or condensed skim milk should be considered to be from a source at the location of the plant where it is used. The transportation cost on such skim milk in terms of the skim milk equivalent and the basis of accounting for such milk under the order, will be insignificant or relatively minor. By following this procedure, the compensatory payment on other source milk derived from nonfat dry milk or condensed skim milk will be comparable to that on

any unpriced other source whole milk which is allocated to Class I milk.

No compensatory payment would be required on milk which is classified and priced as Class I under any other Federal order. The alignment of Class I prices for the Suburban market with those for other Federal orders precludes any significant competitive advantage to Suburban handlers who purchase other Federal order milk.

Another type of unpriced milk is that distributed in the marketing area by a handler operating a nonpool plant. Such a nonpool plant is primarily associated with another market since less than 20 percent of its total Class I sales are made in the marketing area. Several handlers operating plants located to the north and east of the proposed area would be in this category.

The use of other source milk by these nonpool distributors differs in an important respect from the use of other source milk by operators of pool plants. Sales by nonpool distributors in the market are on a regular basis, whereas the purchase of supplemental milk by pool plants is usually sporadic and from different, more-distant sources.

The integrity of the regulation can be maintained by providing alternative methods of determining compensatory payments at a nonpool distributing plant. Subject to proper reporting and the maintenance of adequate records, the operator of such plant should be given an opportunity to choose between payment into the producer-settlement fund of: (1) An amount equal to the volume of Class I milk disposed of in the marketing area at the same rate applying to unpriced milk allocated to Class I at pool plants, or (2) the amount by which total payments to dairy farmers delivering to such plant are less than the total obligation to producers which would be due if such plant were a pool plant.

If the partially regulated handler elects to make payments under the first option, the regulation would be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk at pool plants. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers, or by combination of payments to his farmers and to the producer-settlement fund, he will not have any advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area. His total minimum obligation for milk will be determined in the same manner as if he were a fully regulated handler.

Affording this second option to partially regulated nonpool plants will adequately protect the regulatory plan in this market. The option to pay directly to dairy farmers who regularly supply such nonpool plants with milk at the full utilization value of such milk in accordance with the order will not place the operators of pool plants at a competitive disadvantage in the procurement of their milk supply.

Under the second option, the operator of the nonpool plant would be required to file a complete report of receipts and

utilization. From such reports, subject to audit, the value of his milk would be computed at the class prices and adjusted for location and butterfat content in the same manner as for a pool plant. From this utilization value the market administrator would subtract the payments to the Grade A dairy farmers who constitute the regular supply of milk for the nonpool plant as verified from the producer payroll. Only such payments would be allowed as had been made to such farmers by the 20th day following the end of the month. The payment would be the gross amount paid to such farmers for milk at the nonpool plant. Bona fide deductions for supplies and services, such as hauling, would be allowed as authorized by the dairy farmer.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects to pay on his in-area sales he should be required to pay administrative expense only on such quantities of milk so disposed of in the marketing area. If he elects the payment based on the utilization value of his milk, he should pay administrative expense on his entire receipts of milk from Grade A dairy farmers and any other receipts from unpriced sources which are allocated to Class I milk the same as is required of pool plants. Obviously, the second option necessitates as much verification of the reports and utilization by the market administrator as at a pool plant. Such verification might well include the checking of weights and butterfat tests of receipts from dairy farmers and products sold as well as a complete audit of the books and records for such plant.

It is possible that nonpool plants from which milk is distributed in the Suburban market will also be nonpool distributing plants under the terms of another Federal order. To eliminate any duplication of equalization and administrative payments, the Suburban order should credit such handlers with payments made under similar provisions of another Federal order.

(d) *Distribution of proceeds to producers*—1. *Type of pool.* Returns from the sale of milk should be distributed to producers through a marketwide pool rather than through individual-handler pools.

The Act specifies that an order must provide for (1) the payment of uniform prices for all milk delivered by producers to the same handler, or (2) the payment of uniform prices for all milk delivered by producers to all handlers based upon the marketwide use of such milk. The former method of payment is by individual-handler pools, the latter by a marketwide pool. Under either method, all handlers pay the same class prices for producer milk except for plant location and butterfat content differences.

Under the individual-handler pool, the minimum prices to be paid producers will be uniform to all producers delivering their milk to the same handler. The uniform price will depend upon the proportion of producer receipts used in each class by the handler. Although each handler is required to pay minimum uniform prices to all the producers who de-

liver milk to his plant during each month, the prices paid by different handlers may differ because the proportion of milk used in each class may vary.

While locally produced Grade A milk for the Suburban market has been in relatively short supply on an annual basis, daily and seasonal fluctuations in receipts in relation to sales inevitably result in the necessity of utilizing some Grade A milk in lesser valued manufactured products. The manufacturing facilities for handling reserve supplies of milk vary considerably. Some handler's plants are equipped to handle their own reserve as well as the reserve of other handlers while other handlers have extremely limited manufacturing facilities. One cooperative association which operates several plants in the area supplies all the milk required by at least two proprietary plants which will become regulated and supplemental milk to other proprietary plants. The reserve supply associated with these sales is manufactured at a plant operated by the cooperative. Under such situation, a marketwide pool would better contribute to market stability and most efficient handling of reserve supplies by insuring an equal return to all producers engaged in supplying the Class I demand of the Suburban market.

A marketwide pool will also contribute to the flexibility of milk marketing in two other important respects. One of these is that supplemental supplies may be freely distributed among handlers without affecting the prices paid to producers at each plant. The other is that temporary or seasonal reserves may be shifted between plants either by transfer of the milk or of the producers so as to result in the most economical use of milk and facilities without affecting the prices paid to producers at individual plants.

2. *Payments to individual producers and to members of cooperative associations.* Each handler should make final payment to each producer for milk delivered by such producer at the appropriate uniform price on or before the 20th day of the month following receipt of the milk. Provision is made for partial payments on milk received during the first 15 days of the month, such payment to be made on or before the last day of the month.

Payments due any producer for milk should be paid by the handler to a cooperative association if the cooperative association makes a written request for such payment and if the member producer has given the cooperative association written authorization, in the form of a contract or in any other form, to collect such payments. The association's request should also provide for any loss incurred because of any improper claim.

Unless a cooperative association can receive payment for the milk marketed on behalf of its producer-members, it cannot reblend the sales proceeds from milk sold in various outlets. This important function is specifically provided for in the Act.

Provision is made for handlers to make payments to a cooperative association two days in advance of the time the han-

dlers is required to make payments to individual producers in order that all producers will receive payment on approximately the same date.

In making such payments for producer milk to a cooperative association, the handler should at the same time furnish the cooperative association with a statement showing the name of each producer for whom payment is being made, the volume and average butterfat content of milk delivered by each such producer, and the amount of and reasons for any deductions which the handler withheld from the amount payable to each producer. This statement is necessary so the cooperative association can make proper distribution of the money to producers for whom it collects payment.

3. *Producer-settlement fund.* Since the amount which the order requires a particular handler to pay for his milk may be more or less than the amount he is required to pay to producers or cooperative associations, some method of balancing these amounts is necessary. A producer-settlement fund should be established for this purpose. All handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations should pay the difference into the producer-settlement fund; all handlers who are required to pay more to producers or cooperative associations than they are required to pay for their milk on the basis of utilization should receive the difference from the producer-settlement fund. Amounts paid into and out of the producer-settlement fund for this purpose will be equal except for minor differences that may result from rounding of uniform prices.

In order to permit this rounding of prices, to allow for unavoidable delays in receiving payments from handlers, and to permit payments to be made to any handler which audit by the market administrator reveals is due such handler from the producer-settlement fund, a reserve should be held in the producer-settlement fund at all times. The amount of the reserve contemplated in the proposed order should be sufficient for these purposes. This reserve would be adjusted each month.

4. *Seasonal incentive plan.* Exceptions to the recommended decision emphasized the necessity that the Suburban order provide a "take out-pay back" seasonal production incentive plan should the St. Louis order be amended to provide such a plan as was proposed at the hearing held in St. Louis during January 1960. Otherwise, as the exceptions emphasized, the alignment of uniform prices between the two orders would be destroyed.

A "take out-pay back" seasonal incentive method provides that a specified amount of money is deducted from the uniform prices computed for the months when production is seasonally high and an amount proportional to the total deducted is added to the uniform prices computed for the months when production is seasonally low.

Provision should be made to include a like plan for the Suburban order since

the St. Louis order was amended to provide a "take out-pay back" plan effective April 1, 1960, as hereby officially noticed. This will eliminate extreme seasonal producer price misalignment between the two orders.

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

1. *Records and reports.* Provisions should be included in the order to advise handlers that they are required to maintain adequate records of their operations and to make the reports necessary to establish classification of producer milk and payments due for such milk. Time limits must be prescribed for filing such reports. Dates must also be established for the announcement of prices by the market administrator.

It should be provided that the market administrator report to each cooperative association which so requests, the percentage class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the utilization of members' milk in each handler's plant will be prorated to each class in the proportion that total receipts of producer milk were used in by such handler. These reports are necessary for the cooperative association to market effectively the milk of its members.

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

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

Dates must be prescribed for announcing prices, filing reports and making payments. The following time schedule

(which applies to the indicated day of the month following the month for which computations are being made) should allow all interested persons adequate time to perform each function:

6th: Announcement by the market administrator of the Class I price and Class I butterfat differential for the current month and of the Class II price and Class II butterfat differential for the preceding month.

7th: Submission by handlers of report of monthly receipts and utilization.

12th: Announcement by market administrator of uniform prices.

12th: Notification by market administrator to handlers of the value of their producer milk, the amounts due to or payable from producer-settlement fund, and the amounts due the administrative assessment and marketing service accounts.

15th: Payment by handlers of amounts due to producer-settlement fund.

17th: Payments by market administrator out of producer-settlement fund.

18th: Payments by handlers to cooperative associations.

20th: Payments by handlers to producers and to market administrator for expenses of administration and marketing services.

2. *Expenses of administration.* Each handler operating a pool plant, or a cooperative association in its capacity as a handler, should be required to pay to the market administrator, as his pro rata share of the cost of administering the order, not more than 5 cents per hundredweight, or such lesser amounts as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I which is not classified and priced under another Federal order; and

(c) As previously specified with respect to nonpool plants from which Class I milk is distributed in the marketing area.

Each handler operating a nonpool plant from which milk is distributed in the marketing area should pay the same rate of assessment on the basis of the hundredweight of Class I milk distributed in the marketing area or on the basis of total receipts from qualified dairy farmers and unpriced other source milk allocated to Class I. The findings and conclusions relative to the necessity of the alternative determination of the expense of administration payable by such handlers have been detailed previously in this decision.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The Act provides that such costs of administration shall be financed through an assessment on handlers. In view of the manner in which the regulation applies to various handlers and types of handler operations, the described application of administrative assessment appropriately assigns a proportionate share of expense to each handler.

The volume of milk which would be subject to administrative assessment in the Suburban market is relatively small in relation to that in some other Federal markets. It is necessary, therefore, to prescribe a somewhat higher rate of assessment for this market than is prescribed for larger markets to insure that

the market administrator has adequate funds to perform his obligations. It is therefore determined that an administrative assessment rate of 5 cents is needed to assure proper administration of this order. Provision should be made to reduce this rate if experience shows that a lower rate is adequate.

3. *Marketing services.* A provision should be included in the order for furnishing market services to producers, such as verifying the tests and weights of producer milk, and furnishing market information. These services should be provided by the market administrator, unless such services are provided by a qualified cooperative association for its producer-members. The costs should be borne by the producers receiving the service. A marketing service assessment of 6 cents per hundredweight is necessary in this market. This amount should be deducted from payments to such producers for the use of the market administrator in financing such services. Provision should be made for the Secretary to reduce this rate if experience shows a lower rate will furnish adequate funds for supplying such service by the market administrator. For producers for whom a cooperative association is rendering such services, the handler should pay to the cooperative association such deductions as the producer has authorized the cooperative to collect in lieu of the payments to the market administrator.

4. *Interest payments.* Provision should be made for the payment of interest on amounts due to or from accounts of the market administrator, at the rate of one-half of one percent per month or any portion thereof that the account is overdue.

This method of charging interest is closely analogous to the common business practice of allowing a discount on payments made for goods within a specified period, charging the full invoice amount for a subsequent period, and accruing interest thereafter. The date for payments to and from the market administrator for the producer settlement fund and to him for the administrative and marketing service accounts are specified in the order. In consideration of this specific notice to interested parties, the interest charge should begin on the first day after the due date. Thereafter it continues to accrue at the rate of one-half of one percent per month, a reasonable rate to compensate for the cost of borrowing money and in accord with business practice.

Interest charges should not be assessed on payments due individual producers or cooperative associations since these are not routinely subject to supervision by the market administrator.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests

to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The proposed marketing agreement and order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

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

Recommended marketing agreement and order. The following order regulating the handling of milk in the Suburban St. Louis marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the proposed order.

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

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

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Suburban St. Louis marketing area, is approved or favored by the producers, as defined un-

der the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of January 1960 is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C., this 11th day of April 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order Regulating the Handling of Milk in the Suburban St. Louis Marketing Area

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

APPLICATION OF PROVISIONS

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DETERMINATION OF UNIFORM PRICE TO PRODUCERS

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947.80	Time and method of payment for producer milk.
947.81	Butterfat differential to producers.
947.82	Location differentials to producers.
947.83	Producer-settlement fund.
947.84	Payments to the producer-settlement fund.
947.85	Payments out of the producer-settlement fund.
947.86	Adjustment of accounts.
947.87	Expense of administration.
947.88	Marketing services.
947.89	Adjustment of overdue accounts.

TERMINATIONS OF OBLIGATIONS

947.90	Termination of obligations.
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MISCELLANEOUS PROVISIONS

947.100	Effective time.
947.101	Suspension or termination.
947.102	Continuing obligations.
947.103	Liquidation.
947.104	Agents.
947.105	Separability of provisions.

AUTHORITY: §§ 947.0 to 947.105 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 947.0 Findings and determinations.

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

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

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

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

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate com-

merce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to: (a) producer milk, and (b) other source milk allocated to Class I milk pursuant to § 947.45(a) (3) and the corresponding step of § 947.45(b) excluding other source milk on which a corresponding assessment is payable under another Federal order. A handler operating a distributing plant which is a nonpool plant shall pay administrative assessments pursuant to § 947.62.

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

DEFINITIONS

§ 947.1 Act.

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

§ 947.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 947.3 Department.

"Department" means the United States Department of Agriculture.

§ 947.4 Person.

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

§ 947.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

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

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 947.6 Suburban St. Louis marketing area.

"Suburban St. Louis marketing area" (hereinafter called the marketing area) means all the territory, including all Government installations, within the perimeter boundaries of the area which includes the counties of Bond, Calhoun, Clinton, Fayette, Franklin, Greene, Jackson, Jefferson, Jersey, Macoupin, Madison, Marion, Monroe, Montgomery, Perry, Randolph, St. Clair (except Scott Military Reservation, East St. Louis,

Centerville, Canteen and Stites Townships and the city of Belleville), Washington and Williamson, all in the State of Illinois. "Base zone" means that portion of the marketing area included in Clinton, Franklin, Jackson, Jefferson, Madison, Marion, Monroe, Perry, Randolph, St. Clair, Washington and Williamson Counties. "Northern zone" means that portion of the marketing area included in Bond, Calhoun, Fayette, Greene, Jersey, Macoupin and Montgomery Counties.

§ 947.7 Producer.

"Producer" means any person, except a producer-handler or a dairy farmer for other markets, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (a) delivered directly from the farm to a pool plant, or (b) diverted to a nonpool plant which is not a pool plant under the terms of another order issued pursuant to the Act for the account of a handler any number of days during the months of March through July or to the extent of not more than 10 days' production during any month from August through February. Milk so diverted shall be deemed to have been received by the diverting handler at a pool plant at the location of the plant from which diverted.

§ 947.8 Producer-handler.

"Producer-handler" means any person who operates a distributing plant and processes milk from his own farm production, and who distributes all or a portion of such milk within the marketing area on a route but who receives no milk from other dairy farmers or from nonpool plants in the form of items designated in § 947.41(a): *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources used to produce milk on his own farm(s) are the personal enterprise of and at the personal risk of such person, and (b), the operation of the processing and distribution facilities is the personal enterprise of and at the personal risk of such person.

§ 947.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a distributing plant or a supply plant;

(b) Any cooperative association with respect to milk from producers diverted for its account from a pool plant to a nonpool plant; and

(c) Any cooperative association with respect to the milk of its members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to such cooperative association, if the cooperative association, prior to delivery, notifies in writing the market administrator and the handler to whose plant the milk is delivered, that it will be the handler for the milk. Milk so delivered shall be deemed to have been received by the cooperative association

at a pool plant at the location of the pool plant to which it is delivered.

§ 947.10 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer whose milk is received at a pool plant during any of the months of March through July of 1961 and any year thereafter from a farm from which approved milk, which was not producer milk under this part, was delivered to another market to the extent of more than 15 days production during any of the preceding months of August through February: *Provided*, That milk from the same dairy farm was delivered by the same dairy farmer to a plant which was a pool plant during any of the months of March through July preceding the August through February period.

§ 947.11 Distributing plant.

"Distributing plant" means a plant at which approved milk is processed and packaged and from which approved milk is disposed of during the month as Class I milk in the marketing area on routes.

§ 947.12 Supply plant.

"Supply plant" means a plant from which approved milk is moved during the month to a distributing plant which is a pool plant.

§ 947.13 Pool plant.

"Pool plant" means:

(a) A distributing plant from which during the month not less than 50 percent of total receipts of approved milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 947.9(c) is distributed as Class I milk on routes, and from which not less than 20 percent of the plant's total Class I sales are disposed of in the marketing area on routes;

(b) A supply plant from which during the month not less than 50 percent of total receipts of approved milk from dairy farmers and from cooperative associations in their capacity as handlers pursuant to § 947.9(c) is shipped to distributing pool plants from each of which not less than 50 percent of total receipts of approved milk is distributed as Class I milk on routes: *Provided*, That a supply plant which qualifies as a pool plant in each of the months of August through January shall be a pool plant in each of the following months of February through July unless the operator of such plant submits a written request to the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments: *And provided further*, That for each month from the effective date of this order through July 1960, a supply plant may be a pool plant if the operator of such supply plant furnishes proof that 50 percent of such plant's receipts of approved milk of dairy farmers during the preceding period of August through January, inclusive, was shipped to distributing plants pursuant to paragraph (a) of this section.

§ 947.14 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant.

§ 947.15 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk (a) received at a pool plant directly from producers, or (b) received by a cooperative association in its capacity as a handler pursuant to § 947.9 (b) and (c).

§ 947.16 Approved milk.

"Approved milk" means any skim milk and butterfat contained in milk, skim milk or cream which is approved by a duly constituted health authority for distribution as Class I milk.

§ 947.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of products designated as Class I milk pursuant to § 947.41(a), except (1) such products received from a pool plant, or (2) producer milk; and

(b) Products designated as Class II milk pursuant to § 947.41(b) (1) from any source (including those from a plant's own production), which are reprocessed or converted to another product in the plant during the month.

§ 947.18 Route.

"Route" means disposition of Class I products (including disposition through a vendor and sales from a plant or plant store) to a wholesale or retail stop other than to a pool or nonpool plant.

MARKET ADMINISTRATOR**§ 947.20 Designation.**

The agency for the administration of this part shall be a market administrator, appointed by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 947.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) Administer its terms and provisions;

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

(c) Make such rules and regulations as are necessary to effectuate its terms and provisions; and

(d) Recommend amendments to the Secretary.

§ 947.22 Duties.

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

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

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay from the funds received pursuant to § 947.87, the cost of his bond and of the bonds of his employees, his own compensation and all other expenses, except those incurred under § 947.88 that are necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

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

(f) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this part as do not reveal confidential information;

(g) Verify all reports and payments of each handler by audit or such other investigation as may be necessary, of such handler's records and facilities and of the records and facilities of any other person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(h) Publicly announce on or before:

(1) The 6th day of each month, the minimum price for Class I milk, pursuant to § 947.51(a), and the Class I butterfat differential, pursuant to § 947.53 (a), both for the current month; and the minimum price for Class II milk, pursuant to § 947.51(b), and the Class II butterfat differential, pursuant to § 947.53 (b), both for the preceding month; and

(2) The 12th day after the end of each month, the uniform price, pursuant to § 947.71, and the producer butterfat differential, pursuant to § 947.81.

(i) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the class utilization of producer milk received by each handler from members of the association. For the purpose of this report, the milk so received shall be allocated to each class for each handler in the same ratio as all approved milk received by such handler during the month; and

(j) The 12th day after the end of each month, report to each handler the amount and value of producer milk, amounts payable to or payable from the producer-settlement fund, and amounts due the administrative assessment and marketing service accounts.

REPORTS, RECORDS AND FACILITIES**§ 947.30 Reports of receipts and utilization.**

On or before the 7th day after the end of each month, each handler, for each of his pool plants, and each cooperative association who is a handler pursuant to § 947.9 (b) and (c), shall report to the

market administrator for the preceding month, in the detail and on the forms prescribed by the market administrator, the following information:

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

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

(c) The quantities of skim milk and butterfat contained in other source milk, including milk under other Federal orders;

(d) The inventories of Class I milk and milk products on hand at the beginning and end of the month;

(e) The utilization of all skim milk and butterfat required to be reported by this section;

(f) The name and address of each producer from whom milk was not received during the previous month, and the date in the month on which milk was first received from such producer;

(g) The name and address of each producer who discontinues deliveries of milk, and the date on which milk was last received from such producer; and

(h) Such other information with respect to receipts and utilization of milk and milk products as the market administrator may request.

§ 947.31 Other reports.

(a) On or before the 7th day after the end of the month, each handler, except a producer-handler, who operates a nonpool plant from which fluid milk products are disposed of during the month in the marketing area on routes shall report to the market administrator the quantities of skim milk and butterfat so disposed of, and shall make such other reports with respect to receipts of milk and utilization thereof as are requested by the market administrator.

(b) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 947.32 Payroll reports.

On or before the 20th day after the end of the month, each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator his producer payroll for that month, which shall show for each producer:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The plant at which such milk was received;

(d) The days for which milk was received from such producer;

(e) The average butterfat content of such milk; and

(f) The net amount of the handler's payment to the producer, together with the price paid and the amount and nature of any deductions.

§ 947.33 Reports to cooperative associations.

Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to § 947.80(b) shall report to such cooperative association for each such producer on forms ap-

proved by the market administrator as follows:

(a) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month;

(b) On or before the 7th day after the end of the month (1) the total pounds of milk received from each producer together with the butterfat content of such milk, and (2) the amount or rate and nature of any deductions authorized by a cooperative association.

§ 947.34 Reports of transportation rates.

On or before the 10th day after a request is received from the market administrator, each handler who makes deductions from payments to producers for hauling shall submit a schedule of transportation rates which are charged and paid for such transportation of milk from the farm of the producer to such handler's plant(s). Any changes made in this schedule of transportation rates and the effective dates thereof shall be reported to the market administrator within 10 days.

§ 947.35 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business, such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data which are required to be reported pursuant to §§ 947.30 through 947.34 and the payments required to be made pursuant to §§ 947.80 through 947.88.

§ 947.36 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK

§ 947.40 Basis of classification.

All skim milk and butterfat received by a handler at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 947.9(c) which is required to be reported pursuant to § 947.30 shall be classified by the market administrator pursuant to the provisions of §§ 947.41 through 947.45.

§ 947.41 Classes of utilization.

Subject to the conditions set forth in §§ 947.42 and 947.43, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in fluid form as milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), cream (sweet or sour), concentrated milk, fortified milk or skim milk, reconstituted milk or skim milk and mixtures of milk, skim milk or cream (except frozen dessert mixes, eggnog, aerated cream, and sterilized products in hermetically sealed containers); and

(2) Not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those specified as Class I in paragraph (a) (1) of this section;

(2) In inventory on hand in the form of products designated as Class I milk in paragraph (a) of this section at the end of the month;

(3) Accounted for and used for live-stock feed;

(4) Dumped (skim milk portion only) with the prior approval of the market administrator;

(5) Actual shrinkage of skim milk and butterfat allocated pursuant to § 947.46 (b) (2) not to exceed the following: 2 percent of the skim milk and butterfat, respectively, received from producers except that which is diverted pursuant to § 947.7, plus one and one-half percent of skim milk and butterfat, respectively, received from pool plants of other handlers in bulk tank lots or from a cooperative association which is the handler for the milk pursuant to § 947.9(c), less one and one-half percent of skim milk and butterfat, respectively, disposed of in bulk tank lots to other plants excluding milk diverted pursuant to § 947.7; and

(6) In shrinkage of skim milk and butterfat, respectively, allocated to other source milk pursuant to § 947.46(b) (1).

§ 947.42 Responsibility of handlers.

In establishing the classification of skim milk and butterfat as required by this part, the burden rests upon the handler who first receives such skim milk and butterfat to establish to the satisfaction of the market administrator that such skim milk and butterfat should not be classified as Class I.

§ 947.43 Transfers.

Skim milk and butterfat transferred or diverted in bulk form as any item specified in § 947.41(a) (1) from a pool plant or by a cooperative association in its capacity as a handler pursuant to § 947.9 (b) and (c) shall be classified as follows:

(a) As Class I milk if transferred to a pool plant unless:

(1) The transferee and transferor-handlers claim Class II utilization in their reports submitted pursuant to § 947.30;

(2) The transferee plant has utilization in Class II of an equivalent amount

of skim milk and butterfat, respectively, after the subtractions pursuant to § 947.45(a) (1), (2), (3), and (4) and the corresponding subtractions pursuant to § 947.45(b): *Provided*, That if the transferor plant receives other source milk, the classification of the skim milk and butterfat transferred results in the highest valued class utilization to milk of producers; and

(3) In the case of transfers by a cooperative association, the milk shall be allocated pro rata to each class in the proportion remaining after the computations pursuant to § 947.45(a) (7) and the corresponding step of (b).

(b) As Class I milk if moved to the plant of a producer-handler.

(c) As Class I milk if moved to a non-pool plant which is not the plant of a producer-handler unless:

(1) The transferee plant is located less than 150 miles from the main U.S. post office in either Alma, Alton, Benton or Red Bud, Illinois; or less than 50 miles from the transferor plant, by shortest highway distance as determined by the market administrator.

(2) The transferor-handler claims classification of such skim milk and butterfat in Class II in his report submitted pursuant to § 947.30; and

(3) The operator of the transferee plant maintains books and records showing the utilization of skim milk and butterfat at such plant, which are made available if requested by the market administrator for the purpose of verification.

(d) As Class I if moved to a nonpool plant to the extent of the pro rata quantity of skim milk and butterfat pursuant to the following computations if the skim milk and butterfat, respectively, is not classified as Class I milk pursuant to paragraph (c) of this section:

(1) From the total skim milk and butterfat, respectively, disposed of from such nonpool plant and classified as Class I milk pursuant to the classification provisions of this part applied to such nonpool plant, subtract the skim milk and butterfat received at such plant directly from dairy farmers who are approved to supply Grade A milk and who the market administrator determines constitute the regular source of supply for such nonpool plant;

(2) From the remaining amount of skim milk and butterfat, respectively, classified as Class I milk at such nonpool plant subtract any Class I milk received in consumer-type packages from a plant fully regulated by this or another Federal order issued pursuant to the Act;

(3) Prorate the remaining Class I milk to bulk receipts at the nonpool plant which are fully subject to the classification and pricing provisions of this and other Federal milk orders issued pursuant to the Act; and

(4) The quantity of such Class I milk prorated to receipts from pool plants subject to this part shall be further prorated to such plants in accordance with the quantities claimed to be moved to such nonpool plant as Class II milk.

§ 947.44 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and other obvious errors the reports submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class, at each of the pool plants of such handler, or in the case of a cooperative association for that milk received pursuant to § 947.9(c) or diverted to a nonpool plant pursuant to § 947.9(b): *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 947.45 Allocation of skim milk and butterfat.

(a) The pounds of skim milk remaining in each class after making the following computations with respect to each pool plant shall be the pounds of skim milk in each class allocated to the producer milk received at such plant:

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk classified as Class II milk pursuant to § 947.41(b)(5);

(2) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk in Class I products received in consumer packages and disposed of in the same packages, if such skim milk is subject to the Class I pricing provisions of another order issued pursuant to the Act: *Provided*, That the same Class I products are not processed and packaged in containers of the same type and size in the plant during the month;

(3) Subtract from the pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk which is not classified, priced and pooled as Class I under the terms of another order issued pursuant to the Act (with that subject to another order subtracted last);

(4) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk not subtracted pursuant to subparagraph (2) of this paragraph which is priced and pooled as Class I under the terms of another order issued pursuant to the Act;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II milk the pounds of skim milk contained in inventory of items designated as Class I milk pursuant to § 947.41(a) on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) Subtract the pounds of skim milk in items designated in Class I milk pursuant to § 947.41(a) received from other pool plants and from cooperative associations which are the handlers for the milk pursuant to § 947.9(c) from the pounds of skim milk in the respective

classes in which such skim milk is classified pursuant to § 947.43(a); and

(8) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in series beginning with Class II milk. Any amount so subtracted shall be known as "overage".

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and pounds of butterfat remaining in producer milk in each class pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in producer milk in each class.

§ 947.46 Shrinkage.

The market administrator shall allocate shrinkage to each pool plant and to a cooperative association in its capacity as a handler pursuant to § 947.9(c) as follows:

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

(b) Prorate the resulting amounts between (1) skim milk and butterfat in other source milk received in bulk fluid form, and (2) skim milk and butterfat in producer milk (excluding diverted milk) and in bulk fluid receipts from other pool plants and from cooperative associations in their capacity as handlers pursuant to § 947.9(c).

MINIMUM PRICE

§ 947.50 Basic formula price.

The basic formula price for each month to be used in determining the class prices, set forth in § 947.51, shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.

(a) Determine the average of the basic or field prices paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or the Department of Agriculture:

Concern and Location

Borden Co., Mount Pleasant, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Ava Mo.
Carnation Co., Seymour, Mo.
Carnation Co., Sparta, Mich.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Litchfield Creamery Co., Litchfield, Ill.
Pet Milk Co., Greenville, Ill.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight obtained by adding any plus amounts obtained pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply by 3.5 the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department during the month; add 20 percent thereof;

(2) From the weighted average of carlot prices per pound of nonfat dry milk spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the month by the Department, subtract 5.5 cents and multiply by 7.0.

§ 947.51 Class prices.

Subject to the provisions of §§ 947.52 and 947.53 the minimum class prices per hundredweight for the month shall be determined by the market administrator as follows:

(a) *Class I price.* The price per hundredweight of Class I milk for the first eighteen months beginning with the effective date of this section at plants located in the base zone shall be 10 cents less, and at plants located in the northern zone shall be 15 cents less than the St. Louis Federal milk order (Part 903 of this chapter), Class I price effective at a pool plant located at Collinsville, Illinois.

(b) The price per hundredweight of Class II milk shall be the St. Louis Federal milk order (Part 903 of this chapter) Class II price for the same month.

§ 947.52 Location differentials to handlers.

For producer milk which is received at a pool plant located 50 miles or more from the main U.S. post office in either Alma, Alton, Benton or Red Bud, Illinois, whichever is nearest, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the price specified in § 947.51(a) for plants located in the base zone shall be reduced at the rate set forth in the following schedule:

Distance (miles):	Rate per hundredweight (cents)
50 but not more than 60.....	9
For each additional 10 miles or fraction thereof.....	1.5

Provided, That for the purpose of calculating such location differential, transfers of milk, skim milk and cream between pool plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds receipts from producers and from cooperative associations in the capacity as a handler, such assignment to transferor plants to be made first to plants at which no location credit is applicable and then in sequence beginning with the plant at which the lowest location differential would apply.

§ 947.53 Butterfat differentials to handlers.

If the average butterfat test of Class I milk or Class II milk, as calculated pursuant to § 947.45(c), is more or less than 3.5 percent, there shall be added to, or

subtracted from, respectively, the price for such class of utilization, for each one-tenth of one percent that such average butterfat test is above or below 3.5 percent, a butterfat differential calculated for each class of utilization as follows:

(a) *Class I milk.* Multiply by 0.120 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the previous month, and round to the nearest one-tenth cent.

(b) *Class II milk.* Multiply by 0.115 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the month, and round to the nearest one-tenth cent.

§ 947.54 Use of equivalent prices.

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

§ 947.55 Rate of payment on unpriced milk.

The rate of payment per hundredweight on unpriced Class I milk shall be calculated as follows:

(a) For the months of March through July subtract the Class II price, adjusted by the Class II butterfat differential, from the applicable Class I price, adjusted by the Class I butterfat differential and the Class I location differential at the location of the plant from which such milk is supplied.

(b) For the months of August through February, subtract the uniform price adjusted by the producer butterfat and location differentials from the Class I price adjusted by the Class I butterfat, and location differentials at the location of the plant from which such milk is supplied.

APPLICATION OF PROVISIONS

§ 947.60 Producer-handlers.

Sections 947.40 through 947.45, 947.50 through 947.53, 947.70 through 947.71, and 947.80 through 947.88 shall not apply to a producer-handler.

§ 947.61 Plants subject to other Federal orders.

The provision of this part shall not apply to a plant specified in paragraph (a), (b) or (c) of this section except as follows: The operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require, and allow verification of such reports by the market administrator.

(a) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualifies as a pool plant pursuant

to § 947.13(a) and the Secretary determines that more Class I milk is disposed of from such plant to retail or wholesale outlets (except pool plants) in the Suburban St. Louis marketing area than in the marketing area regulated pursuant to such other order;

(b) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant is a pool plant pursuant to the first or second proviso of § 947.13(b); or

(c) The Secretary determines that a plant should be subject to another order.

§ 947.62 Handlers operating nonpool distributing plants.

On or before the 25th day after the end of each month, each handler, except a producer-handler, operating a nonpool distributing plant shall pay to the market administrator the amounts computed pursuant to paragraph (a) of this section, unless the handler elects at the time of reporting pursuant to § 947.31(a) to pay the amounts computed pursuant to paragraph (b) of this section;

(a) An amount:

(1) For deposit to the producer-settlement fund, equal to the hundredweight of skim milk and butterfat disposed of from such nonpool plant as Class I milk in the marketing area on routes multiplied by the rate of payment on unpriced milk pursuant to § 947.55; and

(2) For administrative assessment, equal to the rate specified in § 947.87 multiplied by the hundredweight of such Class I skim milk and butterfat disposed of in the marketing area on routes, unless an administrative assessment is applied to milk at such nonpool plant pursuant to another order issued pursuant to the Act on the same basis as plants fully regulated by such other order; or

(b) An amount:

(1) For deposit to the producer-settlement fund, equal to any plus amount remaining after deducting the amounts computed under subdivisions (i) and (ii) of this subparagraph from the obligation that would have been computed pursuant to § 947.70 for such nonpool plant and any supply plant(s) (meeting the requirements equivalent to § 947.13(b)) which serves as a source of milk for such nonpool plant, had such plant(s) been a pool plant(s);

(i) The gross payments made on or before the 20th day after the end of the month for milk received at such nonpool plant(s) during the month from dairy farmers who supply approved milk, and

(ii) Any payments to the producer-settlement funds under other orders issued pursuant to the Act applicable to milk handled at such plant during the month as a partially regulated plant under such other orders;

(2) For administrative assessment, equal to the amount which would have been computed pursuant to § 947.87 if such nonpool plant were a pool plant during the month: *Provided*, That such amount shall be reduced by any amount paid as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in

other marketing areas, pursuant to the terms of other orders issued pursuant to the Act: *And provided further*, That

(i) If less Class I milk is disposed of from such nonpool plant on routes in the Suburban St. Louis marketing area than is disposed of on routes in another marketing area as defined in an order issued pursuant to the Act, and

(ii) If an administrative expense assessment is applied at such nonpool plant as if a fully regulated plant pursuant to the order for the marketing area where the volume of Class I milk disposed of from such nonpool plant is greatest, no administrative expense assessment shall be applicable under this order.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 947.70 Computation of the obligation of each handler.

For each month the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 945.45 by the applicable class price and total the resulting amounts;

(b) Add an amount computed as follows: Multiply the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 947.45 (a) (3) and (b) by the rate of payment on unpriced milk pursuant to § 947.55 adjusted by the location differential applicable at the nearest plant(s) from which an equivalent amount of other source milk was received;

(c) Add the amount computed by multiplying the pounds of overage deducted from each class pursuant to § 947.45 (a) (8) and (b) by the applicable class price; and

(d) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the month by the pounds of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 947.45(a) (5) and the corresponding step of (b) for the preceding month, or the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 947.45(a) (5) and the corresponding step of (b) for the month, whichever is less;

(2) Multiply the rate of payment on unpriced milk pursuant to § 947.55 by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 947.45(a) (5) and the corresponding step of (b), which are in excess of the sum of (i) the pounds of skim milk and butterfat, respectively, on which a payment is applicable pursuant to subparagraph (1) of this paragraph, and (ii) the pounds of skim milk and butterfat assigned in the preceding month to Class II pursuant to § 947.45(a) (4) and the corresponding step of (b).

§ 947.71 Computation of the uniform price.

For each month, the market administrator shall compute the uniform price

per hundredweight of milk of 3.5 percent butterfat content, f.o.b. marketing area, received from producers as follows:

(a) Combine into one total the values computed pursuant to § 947.70 for all handlers who made the reports prescribed in § 947.30 and who are not in default of payments pursuant to § 947.84;

(b) For each of the months of April, May, June, and July subtract an amount equal to 10 cents per hundredweight on the total amount of producer milk included in these computations, which amount is to be retained in the producer settlement fund and disbursed according to the provisions of paragraph (c) of this section;

(c) For each of the months of October, November and December add one-third of the total amount subtracted pursuant to paragraph (b) of this section;

(d) Add an amount equivalent to the total deductions made pursuant to § 947.82 and add an amount computed by multiplying 5 cents by the hundredweight of producer milk received at plants located in the northern zone;

(e) Subtract if the weighted average butterfat content of milk received from producers is more than 3.5 percent, or add if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the producer butterfat differential by the difference between 3.5 and the average butterfat content of producer milk, and multiplying the resulting figure by the total hundredweight of such milk;

(f) Add an amount equivalent to one-half of the unobligated balance in the producer-settlement fund;

(g) Divide the resulting amount by the total hundredweight of producer milk; and

(h) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price per hundredweight of producer milk containing 3.5 percent butterfat delivered to plants located in the base zone.

§ 947.72 Notification of handlers.

On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the total thereof;

(b) The uniform price computed pursuant to § 947.71 and the producer of butterfat differential computed pursuant to § 947.81; and

(c) The amounts to be paid by such handler pursuant to §§ 947.84, 947.87 and 947.88, and the amount due such handler pursuant to § 947.85.

PAYMENTS

§ 947.80 Time and method of payment for producer milk.

(a) Except as provided in paragraph (b) and (c) of this section, each handler shall make payment to each producer for milk received during the month as follows:

(1) On or before the last day of each month to each such producer who did not discontinue shipping milk to such handler before the 25th day of the month an amount equal to not less than the Class II price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph.

(2) On or before the 20th day of the following month, an amount equal to not less than the uniform price adjusted by the butterfat and location differentials to producers multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made such producer pursuant to subparagraph (1) of this paragraph;

(ii) Less marketing service deductions made pursuant to § 947.88;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer;

(iv) Less proper deductions authorized in writing by such producer; and

(v) Less 5 cents for each hundredweight of milk received from each producer at a plant located in the northern zone.

(b) In the case of a cooperative association which has so requested the handler in writing, such handler shall, on or before the second day prior to the date payments are due to individual producers pursuant to paragraph (a) of this section, pay the association for milk received during the month from the producer-members of such association an amount equal to not less than the total due such producer-members as determined pursuant to (a) (1) and (a) (2) (i), (ii), (iii), and (v) of this section less any deductions authorized in writing by such association: *Provided*, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association.

(c) On or before the second day prior to the date payments are due individual producers, each handler shall pay a cooperative association for milk received by him from such association for which the association is the handler not less than the minimum prices for milk in each class, subject to the applicable location and butterfat differentials.

§ 947.81 Butterfat differential to producers.

In making payments for milk received from producers pursuant to § 947.80 the uniform price shall be adjusted by adding or subtracting, respectively, for each one-tenth of one percent by which the average butterfat content of such milk is more or less than 3.5 percent, respectively, an amount determined by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined by § 947.53,

dividing by the total butterfat in producer milk, and rounding to the nearest tenth of a cent.

§ 947.82 Location differentials to producers.

In making payments for milk received from producers at a pool plant located 50 miles or more from the main U.S. post office in either Alma, Alton, Benton or Red Bud, Illinois, whichever is nearest, by the shortest hard-surfaced highway distance, as determined by the market administrator the applicable uniform price shall be reduced at the rates set forth on the following schedule:

Distance (miles):	Rate per hundredweight (cents)
50 but not more than 60.....	9
For each additional 10 miles or fraction thereof.....	1.5

§ 947.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", into which he shall deposit all payments made by handlers pursuant to §§ 947.62, 947.84 and 947.86, and out of which he shall make payments due handlers pursuant to §§ 947.85 and 947.86.

§ 947.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator the amount by which the value of his milk as computed pursuant to § 947.70 for such month is greater than the obligations of such handler for milk received from producers, pursuant to § 947.80.

§ 947.85 Payments out of the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount by which the obligation of such handler for milk received from producers, pursuant to § 947.80, exceeds the value of milk for such handler calculated pursuant to § 947.70, less any unpaid balances due the market administrator from such handler pursuant to §§ 947.84, 947.86, 947.87, 947.88 or 947.89.

§ 947.86 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in monies due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 947.87 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler shall pay to the market administrator on or before the 20th day after

the end of each month 5 cents, or such lesser amount as the Secretary may prescribe, for each hundredweight of skim milk and butterfat contained in (a) producer milk, and (b) other source milk allocated to Class I milk pursuant to § 947.45(a)(3) and the corresponding step of § 947.45(b) excluding other source milk on which a corresponding assessment is payable under another Federal order. A handler operating a distributing plant which is a nonpool plant shall pay administrative assessments pursuant to § 947.62.

§ 947.88 Marketing services.

(a) *Deduction of marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to § 947.80, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such monies shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers cooperative association.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

§ 947.89 Adjustment of overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 947.84, 947.85, 947.87 or 947.88 shall be increased one-half of one percent for each month or portion thereof that such payment is overdue.

TERMINATION OF OBLIGATIONS

§ 947.90 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money:

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this

section, terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(a) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 947.100 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 947.101.

§ 947.101 Suspension or termination.

The Secretary may suspend or terminate this part or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 947.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 947.103 Liquidation.

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

§ 947.104 Agents.

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

§ 947.105 Separability of provisions.

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

[F.R. Doc. 60-3434; Filed, Apr. 14, 1960; 8:47 a.m.]

Notices

DEPARTMENT OF STATE

International Cooperation
Administration

DESIGNATING CERTAIN OFFICERS TO ACT AS DIRECTOR

By virtue of the authority vested in me by section 1(d) of Reorganization Plan 7 it is directed as follows:

During the absence or disability of the Director of the International Cooperation Administration or in the event of a vacancy in the Office of the Director, the following designated officers of the International Cooperation Administration shall, in the order of succession indicated, act as Director:

1. Deputy Director
2. Deputy Director for Operations
3. Deputy Director for Management

This order shall be effective immediately.

JAMES W. RIDDLEBERGER,
Director.

MARCH 4, 1960.

[F.R. Doc. 60-3427; Filed, Apr. 14, 1960;
8:46 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OUTER CONTINENTAL SHELF OFF LOUISIANA

Salt Lease Offer

APRIL 12, 1960.

Pursuant to section 8 of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. sec. 1331 et seq.) and the regulations issued thereunder (43 CFR Part 201), sealed bids addressed to the Manager, Bureau of Land Management Office, 1001-A Maritime Building, New Orleans, Louisiana, will be received on or before May 19, 1960, at 10:00 a.m., c.s.t., for the lease of salt deposits in certain areas of the Outer Continental Shelf, adjacent to the State of Louisiana. Bids will be opened in the Jackson Room, Sheraton Charles Hotel, 211 St. Charles Street, New Orleans, Louisiana. Bids may be delivered in person to the Office of the Manager or to the Jackson Room between 8:30 a.m., c.s.t., and 10:00 a.m., c.s.t., May 19, 1960. Bids received by mail or delivered in person after 10:00 a.m., c.s.t., May 19, 1960, will not be considered.

All bids must be submitted in accordance with applicable regulations, particularly 43 CFR 201.20, 201.21 and 201.22. Bids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for filing of the bids. Bidders are warned

against violation of section 1860, Title 18 U.S.C., prohibiting unlawful combination or intimidation of bidders. Bidders must submit with each bid one-fifth of the amount bid in cash, or by cashier's check, bank draft, certified check or money order payable to the order of the Bureau of Land Management.

The leases will provide for a royalty rate of \$0.03 per short ton, a rental rate of \$3 per acre or minimum royalty of \$5,000. An acceptable \$15,000 surety bond will be required for each salt lease, unless the successful bidder is maintaining an approved full area bond in the sum of \$100,000, which by its terms covers all types of minerals.

This offer is made pursuant to Paragraph 13 of the October 12, 1956 Agreement between the United States and the State of Louisiana, as amended March 31, 1960, and to a joint declaration by

the Secretary of the Interior and the State Mineral Board of Louisiana that salt leases on the tracts herein offered for bid are desirable for utilization of salt to facilitate production of sulphur.

Bids will be considered on the basis of the highest cash bonus offered for a tract but no total bid amounting to less than \$5 per acre or fraction thereof will be considered. Overriding royalty, payments out of production, logarithmic or sliding scale bids will not be considered. No bid for less than a full tract, as listed below, will be considered. A separate bid, in a separate sealed envelope, must be submitted for each tract. The envelope should be endorsed "Sealed bid for salt lease, Louisiana, (insert number of tract), not to be opened until 10:00 a.m., c.s.t., May 19, 1960." The right is reserved to reject any or all bids. The tracts offered for bid are as follows:

LOUISIANA OFFICIAL LEASING MAP No. 7
GRAND ISLE AREA

Tract No.	Block	Description	Acreage
La.-850	9	E $\frac{1}{2}$	2,500
La.-851	9	W $\frac{1}{2}$	2,500
La.-852	16	E $\frac{1}{2}$, that portion in Zone 2, as that zone is defined in the agreement between the United States and the State of Louisiana, Oct. 12, 1956.	1,672
La.-853	16	W $\frac{1}{2}$, that portion in Zone 2, as that zone is defined in the agreement between the United States and the State of Louisiana, Oct. 12, 1956.	428
La.-854	17	E $\frac{1}{2}$	2,500
La.-855	17	W $\frac{1}{2}$, that portion in Zone 2, as that zone is defined in the agreement between the United States and the State of Louisiana, Oct. 12, 1956.	2,495
La.-856	22	E $\frac{1}{2}$	2,500
La.-857	22	W $\frac{1}{2}$	2,500
La.-858	23	E $\frac{1}{2}$	2,500
La.-859	23	W $\frac{1}{2}$, that portion in Zone 2, as that zone is defined in the agreement between the United States and the State of Louisiana, Oct. 12, 1956.	2,490

¹ These tracts are limited by the line (3 geographic miles seaward from the so-called "Chapman Line") which was defined in the Agreement of October 12, 1956 between the United States of America and the State of Louisiana, as the landward boundary of Zone 2 for the purpose of administration of the areas pending settlement of court proceedings. Until final determination of the position of the State boundary has been made, the acreage herein assigned to each tract will be considered administratively to be the acreage of that tract in Zone 2.

Copies of the prescribed lease form as provided in § 201.24 of the regulations may be obtained from the BLM office at New Orleans, about May 1, 1960.

Bidders are requested to submit their bids in the following form:

Manager, Bureau of Land Management Office, Department of the Interior, 1001-A Maritime Building, 203 Carondelet Street, New Orleans, La.

SALT BID

The following bid is submitted for a salt lease on land of the Outer Continental Shelf specified below:

Area _____
Official Leasing Map No. _____

Tract No.	Total amount bid	Amount per acre	Amount submitted with bid
			(Signature)
			(Address)

Important. The bid must be accompanied by one-fifth of the total amount bid. This amount may be in cash, money order, cashier's check, certified check, or bank draft.

A separate bid must be made for each tract.

EDWARD WOOLEY,
Director.

[F.R. Doc. 60-3447; Filed, Apr. 14, 1960; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. SA-353]

ACCIDENT OCCURRING NEAR CHARLES CITY, VA.**Notice of Hearing**

In the matter of investigation of accident involving Aircraft of United States Registry N 7462, which occurred January 18, 1960, near Charles City, Virginia; Docket No. SA-353.

Notice is hereby given that an Accident Investigation Hearing on the above styled matter will be held commencing May 3, 1960, at 0930 (local time) in the John Marshall Room of the John Marshall Hotel, Richmond, Virginia.

Dated this 11th day of April 1960.

[SEAL] CLAUDE M. SCHONBERGER,
Hearing Officer.[F.R. Doc. 60-3450; Filed, Apr. 14, 1960;
8:49 a.m.]

[Docket No. SA-354]

ACCIDENT OCCURRING NEAR CANNELTON, IND.**Notice of Hearing**

In the matter of investigation of Accident Involving Aircraft of United States Registry N 121US, which occurred March 17, 1960, near Cannelton, Indiana; Docket No. SA-354.

Notice is hereby given that an Accident Investigation Hearing on the above styled matter will be held commencing May 10, 1960, at 0930 (local time) in the McCurdy Hotel, Evansville, Indiana.

Dated this 11th day of April 1960.

[SEAL] VAN R. O'BRIEN,
Hearing Officer.[F.R. Doc. 60-3451; Filed, Apr. 14, 1960;
8:49 a.m.]

[Docket 10077]

BROWNSVILLE, TEXAS/TAMPICO, MEXICO, SUSPENSION CASE**Notice of Hearing**

In the matter of the Board investigation to determine whether Pan American World Airways' certificate insofar as it authorizes service to Brownsville, Texas, and Tampico, Mexico, should be altered, amended, modified, or suspended.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on April 27, 1960, at 10:00 a.m. (Local Time) in Stillman Town Hall in the Fort Brown Memorial Center, Brownsville, Texas, before Examiner Thomas L. Wrenn.

Dated at Washington, D.C., April 12, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.[F.R. Doc. 60-3452; Filed, Apr. 14, 1960;
8:49 a.m.]

[Docket 11195]

LINEA INTERNACIONAL AEREA, S.A.**Notice of Hearing**

In the matter of the application of Linea Internacional Aerea, S.A., for a foreign air carrier permit.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on May 3, 1960, at 10:00 a.m., e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Walter W. Bryan.

Dated at Washington, D.C., April 11, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.[F.R. Doc. 60-3453; Filed, Apr. 14, 1960;
8:49 a.m.]**FEDERAL COMMUNICATIONS COMMISSION**

[Docket Nos. 13301, 13302; FCC 60M-634]

SAM H. BENNION AND JAMES C. WALLENTINE**Order Continuing Hearing**

In re applications of Sam H. Bennion, Pocatello, Idaho, Docket No. 13301, File No. BPCT-2598; James C. Wallentine, Pocatello, Idaho, Docket No. 13302, File No. BPCT-2624; for construction permits for new television broadcast stations (Channel 10).

It is ordered, This 11th day of April 1960, that the hearing now scheduled for April 11, 1960, is continued to May 2, 1960.

Released: April 12, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] BEN F. WAPLE,
Acting Secretary.[F.R. Doc. 60-3454; Filed, Apr. 14, 1960;
8:50 a.m.]

[Docket Nos. 13376-13378; FCC 60M-636]

JOHN CLEMON GREENE, JR., ET AL.**Order Scheduling Hearing**

In re applications of John Clemon Greene, Jr., Winchester, Virginia, Docket No. 13376, File No. BP-12240; Shenandoah Life Stations, Incorporated (WLS), Roanoke, Virginia, Docket No. 13377, File No. BP-12610; Edwin R. Fischer, Winchester, Virginia, Docket No. 13378, File No. BP-13139; for construction permits.

Pursuant to agreements reached by counsel for all participants at the pre-hearing conference held on this day, and as fully explained on the record thus made,

It is ordered, This 11th day of April 1960, that the following dates for procedural steps shall govern in this proceeding:

Exchange of tentative drafts of engineering exhibits: June 9, 1960.

Exchange of all exhibits in final form: June 23, 1960.

Notification of witnesses desired for cross-examination: July 6, 1960.

Commencement of hearing: July 12, 1960.

Released: April 12, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,[SEAL] BEN F. WAPLE,
Acting Secretary.[F.R. Doc. 60-3455; Filed, Apr. 14, 1960;
8:50 a.m.]

[Docket Nos. 13455, 13456; FCC 60-355]

PAUL J. MOLNAR AND OHIO MUSIC CORP.**Order Designating Applications for Consolidated Hearing on Stated Issues**

In re applications of Paul J. Molnar, Cleveland, Ohio, Docket No. 13455, File No. BPH-2847, Req.: 93.1 Mc, #226; 24.66 kw; 403 ft.; Ohio Music Corporation, Cleveland, Ohio, Docket No. 13456, File No. BPH-2890; Req.: 93.1 Mc, #226; 20 kw; 622.6 ft., for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 8th day of April 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that except as indicated by the issues specified below, the instant applicants are legally, technically, financially, and otherwise qualified to construct and operate the instant proposals; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated February 5, 1960, and incorporated herein by reference, notified the 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 any one 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 applicants' replies to the aforementioned letter have not entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring a hearing on the particular issues herein-after specified; 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 area and population within the 1 mv/m contours of each of the operations proposed, respectively, by Paul J. Molnar and the Ohio Music Corporation, and the availability of other such FM broadcast service to the said areas and populations.

2. To determine, on a comparative basis, which of the instant proposals would better serve the public interest, convenience and necessity in the light of the evidence adduced pursuant to the foregoing issue and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed station.

(b) The proposals of each of the applicants with respect to the management and operation of the proposed station.

(c) The programing service proposed in each of the said applications.

3. 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 to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.140 of the Commission's rules in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

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: April 12, 1960.

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

[F.R. Doc. 60-3456; Filed, Apr. 14, 1960;
8:50 a.m.]

GENERAL SERVICES ADMINISTRATION

[Delegation of Authority No. 379]

CHIEF JUDGE OF THE TAX COURT OF THE UNITED STATES

Delegation of Authority To Lease Space in New York, N.Y.

1. Pursuant to authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat.

377), as amended, authority is hereby delegated to the Chief Judge of the Tax Court of the United States to procure by lease approximately 3,600 square feet of building space in New York, New York, to be used as a courtroom and related office space for a firm period not to exceed five years, in accordance with section 210(h) (1) of the Federal Property and Administrative Services Act of 1949 (72 Stat. 294), as amended.

2. This authority shall be exercised in accordance with applicable limitations and requirements of the above-cited Act.

3. Any such lease shall be executed by July 1, 1960, and may be amended or renewed from time to time, but any single renewal for a period longer than one year shall require the approval of the Administrator of General Services.

4. The rental under any such lease shall not exceed that permitted by the terms of the Economy Act of June 30, 1932 (47 Stat. 412), as amended.

5. The Chief Judge of the Tax Court of the United States may redelegate this authority to any officer or employee of the Tax Court.

This delegation of authority is effective immediately.

Dated: April 8, 1960.

FRANKLIN FLOETE,
Administrator of General Services.

[F.R. Doc. 60-3442; Filed, Apr. 14, 1960;
8:48 a.m.]

GROUND STATEITE TALC HELD IN THE NATIONAL STOCKPILE Proposed Disposition

Pursuant to the provisions of section 3(e) of the Strategic and Critical Materials Stock Piling Act, 53 Stat. 811, as amended, 50 U.S.C. 98b(e), notice is hereby given of a proposed disposition of approximately 6,285 short tons of ground stateite talc now held in the national stockpile.

The Office of Civil and Defense Mobilization has made a revised determination, pursuant to section 2(a) of the Strategic and Critical Materials Stock Piling Act, that there is no longer any need for stockpiling this talc. The revised determination was based upon the finding of the Office of Civil and Defense Mobilization that such talc is obsolescent for use in time of war.

General Services Administration proposes to offer said talc for sale, on a competitive basis, at intervals of not less than six months, with not more than approximately 2,400 short tons to be offered for sale at any one time.

This plan of disposition has been fixed with due regard to the protection of producers, processors, and consumers against avoidable disruption of their usual markets as well as the protection of the United States against avoidable loss on disposal.

It is proposed to make the talc covered by this notice available for sale beginning six months after the date of publication of this notice in the FEDERAL REGISTER.

Dated: April 11, 1960.

FRANKLIN FLOETE,
Administrator of General Services.

[F.R. Doc. 60-3443; Filed, Apr. 14, 1960;
8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation APRIL 1960 MONTHLY SALES LIST Sales of Certain Commodities

Notice to buyers. Pursuant to the policy of Commodity Credit Corporation issued October 12, 1954 (19 F.R. 6669) and subject to the conditions stated therein; as well as herein, the commodities listed below are available for sale on the price basis set forth.

The CCC Monthly Sales List, which varies from month to month as additional commodities become available or commodities formerly available are dropped, is designed to aid in moving CCC's inventories into domestic or export use through regular commercial channels.

Principal changes in the list for April are the addition of pea beans, as announced March 8 (press release USDA 705-60), and a reduction in the sales price for nonfat dry milk for unrestricted domestic use.

If it becomes necessary during the month to amend this list in any material way—such as by the removal or addition of a commodity in which there is general interest or by a significant change in price or method of sale—an announcement of the change will be sent to all persons currently receiving the list by mail from Washington. To be put on this mailing list, address: Director, Price Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C.

All commodities (except oats) currently offered for sale by CCC, plus tobacco from CCC loan stocks are eligible for export sale under the CCC Export Credit Sales Program.

The following commodities are currently eligible for barter: Cotton, tobacco, rice (milled), wheat, corn, barley, rye, and sorghum grain. This list is subject to change from time to time.

Interest rates per annum under the CCC Export Credit Sales Program for April 1960 are 5 percent for periods up to six months, 5½ percent for periods from over six and up to 18 months, and 6 percent for periods from over 18 months up to a maximum of 36 months.

The CCC will entertain offers from responsible buyers for the purchase of any commodity on the current list. Offers accepted by CCC will be subject to the terms and conditions prescribed by the Corporation. These terms include payment by cash or irrevocable letter of credit before delivery of the commodity, and the conditions require removal of the commodity from CCC storage within a reasonable period of time. Where conditions of sale for export differ from those for domestic sale, proof of exportation is also required, and the buyer is responsible for obtaining any required U.S. Government export permit or li-

cense. Purchases from CCC shall not constitute any assurance that any such permit or license will be granted by the issuing authority.

Announcements containing all terms and conditions of sale will be furnished upon request. For easy reference a number of these announcements are identified by code number in the following list. Interested persons are invited to communicate with the Commodity Stabilization Service, USDA, Washington 25, D.C., with respect to all commodities or—for specified commodities—with the designated CSS Commodity Office.

Commodity Credit Corporation reserves the right to amend, from time to time, any of its announcements. Such amendments shall be applicable to and be made a part of the sale contracts thereafter entered into.

CCC reserves the right to reject any or all offers placed with it for the purchase of commodities pursuant to such announcements.

If CCC does not have adequate information as to the financial responsibility of a prospective buyer to meet all contract obligations that might arise by acceptance of an offer or if CCC deems such buyer's financial responsibility to be inadequate CCC reserves the right (i) to refuse to consider the offer, (ii) to accept the offer only after submission by the buyer of a certified or cashier's check, bond, letter of credit or other security acceptable to CCC assuring that the buyer will discharge the responsibility under the contract, or (iii) to accept the offer upon condition that the buyer promptly submit to CCC such of the aforementioned security as CCC may direct. If a prospective buyer is in doubt as to whether CCC is acquainted with his financial responsibility he should communicate with the CSS office at which the offer is to be placed to determine whether a financial statement or advance financial arrangement will be necessary in his case.

Disposals and other handling of inventory items often result in small quantities at given locations or in qualities not up to specifications. These lots are offered promptly upon appearance by public notice issued by the appropriate CSS office and therefore generally they do not appear in the Monthly Sales List.

On sales for which the buyer is required to submit proof to CCC of exportation the buyer shall be regularly engaged in the business of buying or selling commodities and for this purpose shall maintain a bona fide business office in the United States, its territories or possessions, and have a person, principal, or resident agent upon whom service of judicial process may be had.

Prospective buyers for export should note that generally, sales to United States Government agencies, with only minor exceptions, will constitute a domestic unrestricted use of the commodity.

Commodity Credit Corporation reserves the right, before making any sale, to define or limit export areas.

Commodity	Sales price or method of sale
Dairy products.....	Sales are in carlots only in store at storage location of products. Submission of offers: For products in Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, submit offers to the Portland CSS Commodity Office. For products in other States and the District of Columbia, submit offers to the Cincinnati CSS Commodity Office.
Nonfat dry milk (bags and drums) as available.	Domestic, unrestricted use: Announced prices, under LD-29 as amended: spray process, U.S. extra grade, 15.00 cents per pound. Roller process, U.S. extra grade, 13.00 cents per pound. Export: Competitive bid under LD-33 pursuant to invitations to bid to be issued by Cincinnati and Portland CSS Commodity Offices.
Cotton, upland.....	Domestic or Export (unrestricted use): Competitive bid and under the terms and conditions of Announcement CN-A (Sales by local sales agencies of Choice (A) cotton for unrestricted use), Announcement NO-C-12 (Sale of 1958 and prior crop cotton for unrestricted use), and Announcement NO-C-13 (Sale of 1959-crop Choice (A) cotton for unrestricted use). Under CN-A, cotton to be sold at highest price offered but in no event at less than 110 percent of the applicable Choice (B) support price plus carrying charges. Under NO-C-12 and NO-C-13, cotton in CCC's catalogs to be sold at highest price offered but in no event at less than the higher of (1) the market price as determined by CCC or (2) 110 percent of the applicable Choice (B) support price plus carrying charges.
Cotton, extra long staple.....	Domestic or Export, unrestricted use: Competitive bid and under the terms and conditions of Announcements NO-C-6 as amended and NO-C-10 as amended, but not less than the higher of (1) 105 percent of the current support price plus reasonable carrying charges, or (2) the domestic market price as determined by CCC.
Catalogs.....	Catalogs for upland cotton (except cotton offered under CN-A) and extra long staple cotton showing quantities, qualities, and locations may be obtained for a nominal fee from the New Orleans CSS Commodity Office. Catalogs or lists of cotton offered under CN-A may be obtained from local sales agencies.
Wheat, bulk.....	Domestic, unrestricted use: Commercial wheat-producing area: Market price basis in store but not less than the 1959 applicable loan rate plus (1) 25 cents per bushel if received by truck or (2) 20 cents per bushel if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Examples of the foregoing minimum price per bushel (ex rail or barge): Chicago, No. 1 RW \$2.32 Minneapolis, No. 1 DNS 2.39 Kansas City, No. 1 HW 2.32 Portland, No. 1 SW 2.23 Noncommercial wheat-producing area: Same basis as in commercial area except 133 percent of applicable support rate. Export: (1) As wheat under Announcement GR-261 revised, as amended, or as flour under Announcement GR-262 revised, as amended, for application under arrangements for barter which permit exportation of wheat as flour and approved credit sales only at prices determined daily (2) under Announcement GR-212, revised, amended, for specific offerings as announced and (3) under Announcement GR-345 for redemption of certificates under Payment-in-Kind Program. Available Evanston, Dallas, Kansas City, Minneapolis, and Portland CSS Commodity Offices.
Corn, bulk.....	Domestic, unrestricted use: Market price, basis in store, ¹ but not less than the 1959 applicable loan rate plus (1) a markup of 16 cents per bushel for corn in storage at point of production or (2) a markup of 18 cents per bushel and the rail freight from point of production to the present point of storage for corn in storage at other than the point of production. Examples of the foregoing minimum price per bushel for No. 2 yellow corn, 13.3% moisture and 1.4% foreign material including average paid-in freight from Woodford County, Ill., to Chicago and Redwood County, Minn., to Minneapolis, respectively: Chicago..... \$1.50¼ Minneapolis..... 1.33¼ Nonstorable corn, unrestricted use (as available): At not less than market price as determined by CCC. At bin sites, through ASC County Offices. At other locations through the Commodity Offices indicated below. Export: Under Announcement GR-212, revised, amended, for application to arrangements for barter and approved credit and emergency sales and under Announcement GR-368 for Feed Grain Payment-in-Kind Program. Available Evanston, Dallas, Kansas City, Minneapolis, and Portland CSS Commodity Offices.
Oats, bulk.....	Domestic, unrestricted use: Market price, basis in store, ¹ but not less than the 1959 applicable loan rate, plus (1) a markup of 15 cents per bushel for oats in storage at point of production and (2) a markup of 17 cents per bushel and the rail freight from point of production to present point of storage for oats in storage at other than the point of production. Examples of the foregoing minimum price per bushel including average paid-in freight from Woodford County, Ill., to Chicago and Redwood County, Minn., to Minneapolis respectively: Chicago, No. 3 oats..... \$0.75¼ Minneapolis, No. 3 oats..... .66¼ Export: Under Announcement GR-212, revised, amended, for application to approved emergency sales and under Announcement GR-368 for Feed Grain Payment-in-Kind Program. Available Minneapolis, Evanston, Kansas City, Portland, and Dallas CSS Commodity Offices.
Barley, bulk.....	Domestic, unrestricted use: Market price basis in store but not less than 1959 applicable loan rate plus (1) 18 cents per bushel if received by truck or (2) 15 cents per bushel if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Example of the foregoing minimum price per bushel (ex rail or barge): Minneapolis, No. 2 or better..... \$1.15 Export: Under Announcement GR-212, revised, amended, for application to arrangements for barter and approved credit and emergency sales, and under Announcement GR-368 for Feed Grain Payment-in-Kind Program. Available Minneapolis, Evanston, Kansas City, Portland, and Dallas CSS Commodity Offices.

¹ In those counties in which grain is stored in CCC bin sites delivery will be made f.o.b. buyer's conveyance at bin sites without additional cost; sales will also be made in store approved warehouses in such county and adjacent counties at the same price, provided the buyer makes arrangements.

Commodity	Sales price or method of sale									
Rye, bulk.....	<p>Domestic, unrestricted use: Market price basis in store but not less than the 1959 applicable loan rate plus (1) 21 cents per bushel if received by truck or (2) 16 cents per bushel if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Example of the foregoing minimum price per bushel (exrail or barge): Minneapolis, No. 2 or better..... \$1.29</p> <p>Export: Under Announcement GR-212 revised, amended, for application to arrangements for barter and approved credit and emergency sales, and under Announcement GR-368 for Feed Grain Payment-in-Kind Program. Available Minneapolis, Evanston, Portland, Dallas, and Kansas City CSS Commodity Offices.</p>									
Grain sorghums, bulk.....	<p>Domestic, unrestricted use: Market price basis in store but not less than the 1959 applicable loan rate plus (1) 35 cents per hundredweight if received by truck or (2) 29 cents per hundredweight if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Example of the foregoing minimum price per hundredweight (ex rail or barge): Kansas City, No. 2 or better..... \$2.19</p> <p>Export: Under Announcement GR-212, revised, amended, for application to arrangements for barter and approved credit and emergency sales, and under Announcement GR-368 for Feed Grain Payment-in-Kind Program. Available Evanston, Dallas, Kansas City, Minneapolis, and Portland CSS Commodity Offices.</p>									
Rice, milled (as available).....	<p>Domestic, unrestricted use: Market price but not less than equivalent 1959 loan rate for rough rice by varieties and grades plus 5 percent, adjusted for milling, plus 37 cents per hundredweight basis in store. Prices and quantities available by varieties and grades may be obtained from Dallas CSS Commodity Office.</p> <p>Example of the minimum prices of milled rice per hundredweight at mills:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>U.S. No. 3</th> <th>U.S. No. 4</th> </tr> </thead> <tbody> <tr> <td>Blue Bonnet.....</td> <td>\$9.41</td> <td>\$8.70</td> </tr> <tr> <td>Century Patna.....</td> <td>8.66</td> <td>8.03</td> </tr> </tbody> </table> <p>Export: Under GR-379 for application to arrangements for barter and approved credit sales. Prices and quantities available by varieties and grades may be obtained from Dallas CSS Commodity Office.</p>		U.S. No. 3	U.S. No. 4	Blue Bonnet.....	\$9.41	\$8.70	Century Patna.....	8.66	8.03
	U.S. No. 3	U.S. No. 4								
Blue Bonnet.....	\$9.41	\$8.70								
Century Patna.....	8.66	8.03								
Rice, rough (as available).....	<p>Domestic, unrestricted use: Market price but not less than 1959 loan rate plus 5 percent, plus 37 cents per hundredweight, basis in store.</p> <p>Export: As milled or brown under Announcement GR-369, Rice Export Program Payment-in-Kind, and under GR-379 for approved credit sales. Prices, quantities, and varieties of rough rice available from Dallas and Portland CSS Commodity Office.</p>									
Soybeans, bulk 1957 and 1958 crop (as available).	<p>Domestic or export: Market price basis in store but not less than the 1959 basic loan rate for No. 2 grade, basis point of storage, plus 20 cents per bushel, plus the value of billing, if any, as determined by the CSS Commodity Office. Market discounts for quality factors will be applied to the basic price to determine the actual sales prices. Available Dallas, Evanston, Kansas City, and Minneapolis CSS Commodity Offices.</p>									
Pea beans (bagged) (as available).....	<p>Domestic or export, unrestricted use: Basic sales for No. 1 beans f.o.b. Michigan points of production at domestic market price but not less than \$6.83 per hundredweight, with amount of paid-in freight to be added, as applicable. Prices of other grades will be determined on the basis of market differentials. Available Evanston CSS Commodity Office.</p>									
Tung oil.....	<p>Export: Competitive bid on limited quantities under Announcement DL-OP-10 by Dallas CSS Commodity Office.</p>									
Peanuts, shelled (as available) all types.	<p>Domestic, unrestricted use: Under COO Peanut Announcement 3, market price but not less than the following minimum prices:</p> <table border="0"> <tr> <td>No. 1's:</td> <td></td> </tr> <tr> <td> Virginias.....</td> <td>19.60 cents per pound.</td> </tr> <tr> <td> Spanish.....</td> <td>19.60 cents per pound.</td> </tr> <tr> <td> S. E. Runners.....</td> <td>18.35 cents per pound.</td> </tr> </table> <p>Domestic for crushing or export: Competitive bid under COO Peanut Announcement 1, as amended.</p>	No. 1's:		Virginias.....	19.60 cents per pound.	Spanish.....	19.60 cents per pound.	S. E. Runners.....	18.35 cents per pound.	
No. 1's:										
Virginias.....	19.60 cents per pound.									
Spanish.....	19.60 cents per pound.									
S. E. Runners.....	18.35 cents per pound.									
Peanuts, farmers' stock (as available).	<p>Domestic for crushing or export: Competitive bid under Announcement 1, as amended. Available Dallas CSS Commodity Office.</p>									
Linseed oil.....	<p>Domestic, unrestricted use: Competitive bid on limited quantities under CT-OP-11 as announced from time to time by the Cincinnati CSS Commodity Office.</p> <p>Export: Competitive bid under CT-OP-12 on limited quantities as announced from time to time by the Cincinnati CSS Commodity Office.</p>									

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 407, 63 Stat. 1055; 7 U.S.C. 1427, sec. 208, 63 Stat. 901)

Issued April 7, 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-3435; Filed, Apr. 14, 1960;
8:47 a.m.]

**Commodity Stabilization Service,
Sugar Division
SUGARCANE**

Notice of Hearing on Prices for Hawaiian Sugarcane and Designation of Presiding Officers

Pursuant to the authority contained in section 301(c) (2) of the Sugar Act of

1948, as amended, (61 Stat. 929; 7 U.S.C. Sup. 1131), and in accordance with the rules of practice and procedure applicable to fair price proceedings (7 CFR 802.1 et seq.), notice is hereby given that a public hearing will be held as follows:

At Hilo, on the Island of Hawaii, in the Auditorium of the Hilo Electric Light Company, Limited, on May 5, 1960, at 9:00 a.m.

The purpose of the hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining, pursuant to the provisions of section 301(c) (2) of said Act, fair and reasonable prices or rates for the 1960 crop of Hawaiian sugarcane to be paid, under either purchase or toll agreements, by producers who process sugarcane grown by other producers and who apply for payments under the said Act.

The hearing after being called to order at the time and place mentioned herein, may be continued from day to day within the discretion of the presiding officers, and may be adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the presiding officers.

In the interest of obtaining the best possible information, all interested persons are requested to appear at the hearing to express their views and present appropriate data in regard to the foregoing matter.

Ward S. Stevenson, Charles F. Denny, and Will N. King are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearing.

Issued this 8th day of April 1960.

LAWRENCE MYERS,
Director, Sugar Division,
Commodity Stabilization Service.

[F.R. Doc. 60-3436; Filed, Apr. 14, 1960;
8:47 a.m.]

**SECURITIES AND EXCHANGE
COMMISSION**

[File No. 1-4015]

**CONSOLIDATED DEVELOPMENT
CORP.**

Order Summarily Suspending Trading

APRIL 11, 1960.

In the matter of trading on the American Stock Exchange in the common stock, par value 20 cents per share of Consolidated Development Corporation (formerly known as Consolidated Cuban Petroleum Corporation), File No. 1-4015.

The common stock, par value 20 cents per share of Consolidated Development Corporation (formerly known as Consolidated Cuban Petroleum Corporation), being listed and registered on the American Stock Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934 that trading in said security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative

acts or practices, this order to be effective for a period of ten (10) days, April 12, 1960, to April 21, 1960, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-3428; Filed, April 14, 1960;
8:46 a.m.]

[File No. 24D-2303]

UTAH OIL COMPANY OF NEW YORK, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

APRIL 11, 1960.

I. Utah Oil Company of New York, Incorporated, a New York corporation, 25 North Street, Rochester 4, New York, filed with the Commission on May 5, 1958 a notification on Form 1-A and an offering circular relating to an offering of 300,000 shares of its \$1 par value common stock at \$1 per share for an aggregate of \$300,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof, and Regulation A promulgated thereunder; and

II. The Commission has reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with in that:

1. The proposed offering would exceed the \$300,000 limitation set forth in Regulation A.

2. The notification fails to reflect prior sales of securities as required.

3. The notification fails to contain copies of the provisions of the governing instruments defining the rights of holders of such securities as required by the regulation.

B. The notification and offering circular contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The failure to set forth the method by which the securities are to be offered.

2. The failure to reflect the fact that the underwriter named has withdrawn as underwriter.

3. The failure to set forth a reasonably itemized statement of purposes for which the proceeds of the offering are to be used.

4. The failure to set forth the provisions for refunding amounts paid by purchasers if all of the securities offered are not sold.

5. The failure to set forth the cost to the president of oil and gas leases transferred by him to the company.

6. The failure to set forth the dates, terms and material provisions of the two leases which are the company's only properties.

7. The failure to disclose the distances from production and dry holes, the fact that the acreage was chosen at random without benefit of favorable geological data or information, and the fact that the leases alone are too small in area to justify the cost of geophysical work or expenditures for a wildcat test.

8. The failure to furnish appropriate financial statements prepared in accordance with generally accepted accounting principles and practices.

C. The offering would be made in violation of Section 17 of the Securities Act of 1933, as amended.

III. It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-3429; Filed, Apr. 14, 1960;
8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket No. E-6932]

CALIFORNIA ELECTRIC POWER CO.

Notice of Application

APRIL 8, 1960.

Take notice that on March 28, 1960, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by California Electric Power Company ("Applicant"), a corporation organized under the laws of the State of Delaware and doing business in the States of California, Nevada and Arizona, with its principal business office at San Bernardino, California, seeking an order authorizing the issuance of \$12,000,000 principal amount of First Mortgage Bonds, -- percent Series due 1990. The aforesaid First Mortgage Bonds are to be dated on or about May 20, 1960, and will mature May 1, 1990. Applicant will issue the aforesaid First Mortgage Bonds

under the Indenture of Mortgage and Deed of Trust to The First National Bank of Denver and Elmer W. Johnson, Trustees, dated as of May 1, 1960, under Applicant's proposed supplemental indenture. Applicant proposes to issue and sell the aforesaid First Mortgage Bonds under the principals of competitive bidding. Applicant states that the proceeds from the issuance and sale of the aforesaid First Mortgage Bonds will be used for the discharge of its obligations and for use in its construction program and completion and/or improvement of facilities.

Any person desiring to be heard or to make any protests with reference to said application should on or before the 25th day of April 1960, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3418; Filed, Apr. 14, 1960;
8:45 a.m.]

[Docket No. G-11774]

CONSUMERS NATURAL GAS CORP.

Notice of Application and Date of Hearing

APRIL 8, 1960.

Take notice that Consumers Natural Gas Corp. (Applicant), an Indiana corporation, having its principal place of business at 201-207 First National Bank Building, Marion, Indiana, filed on January 23, 1957, an application, and on January 4, 1960, an amendment thereto, pursuant to section 7(a) of the Natural Gas Act for an order directing American Louisiana Pipe Line Company (American Louisiana) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant the necessary volumes of natural gas for distribution and resale to the public in the City of Angola, Steuben County, Indiana, all as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate approximately 7.2 miles of 6-inch lateral transmission pipeline from a point on American Louisiana's Payne-Bridgman 22-inch line near Ashley, Indiana to the corporate limits of Angola. Applicant also proposes to construct and operate a natural gas distribution system in said city.

Applicant estimates the natural gas requirements of the City of Angola as follows:

Year of service	Met	
	Annual	Peak day
1.....	144,390	1,210
2.....	230,150	1,967
3.....	281,540	2,402

The gas is to be sold to residential, commercial and small industrial consumers.

Applicant estimates that the total capital cost of the proposed construction for the third year of operation will be \$635,900, which it proposes to finance by the issuance of 40 percent common stock (35,714 shares) and 60 percent 6½ percent long term notes.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 10, 1960, at 10:00 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 26, 1960.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3419; Filed, Apr. 14, 1960;
8:45 a.m.]

[Docket No. RI60-243]

GULF OIL CORP.

Order Providing for Hearing on and Suspension of Proposed Change in Rate

APRIL 8, 1960

On March 11, 1960, Gulf Oil Corporation (Gulf) tendered for filing a proposed change in rate for jurisdictional sales of natural gas to Tennessee Gas Transmission Company. The filing is designated as follows:

Description: Notice of Change, undated.
Rate schedule designation: Supplement No. 10 to Gulf's FPC Gas Rate Schedule No. 80.
Producing area: Holmwood Field, Calcaesteu Parish, Louisiana.
Effective date: April 1, 1960.¹
Rate in effect: 22.08333 cents per Mcf.
Proposed increased rate: 22.83333 cents per Mcf.
Pressure base: 15.025 psia.

The notice of change purports to reflect the contractually provided severance tax reimbursement in lieu of the gathering tax reimbursement and thereby increases the total price from 22.08333 cents to 22.83333 cents per Mcf.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that the supplement herein designated be suspended for a period of one day beyond statutory notice and the use thereof deferred as hereinafter ordered.

¹ The stated effective date is that proposed by Gulf and upon which Gulf's increase filed in Docket No. G-16696 became effective subject to refund.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in the above-described supplement.

(B) Pending such hearing and decision thereon, Supplement No. 10 to Gulf's FPC Gas Rate Schedule No. 80 is hereby suspended and the use thereof deferred for a period of one day from April 11, 1960, and until such further time as each is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3420; Filed, Apr. 14, 1960;
8:45 a.m.]

[Docket No. CP60-33]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Application and Date of Hearing

APRIL 6, 1960.

Take notice that on February 9, 1960, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP60-33 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain lateral and gathering facilities to enable Applicant to take into its certificated main pipeline system natural gas which it may purchase from producers in the general area of its existing transmission system during the 12-month period following the date on which such certificate may be issued herein, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The total cost of the facilities proposed under this application is not to exceed \$3,000,000, with the total cost of any single connection limited to \$500,000.

The purpose of this budget-type proposal is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of gas in various producing areas generally co-extensive with said system.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 10, 1960, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 29, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefore is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3421; Filed, Apr. 14, 1960;
8:45 a.m.]

[Project 2088]

OROVILLE-WYANDOTTE IRRIGATION DISTRICT

Notice of Application of Further Amendment of License

APRIL 8, 1960.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Oroville-Wyandotte Irrigation District, licensee for Project No. 2088, for further amendment of its license for the project so as to: (a) defer until a later date the construction of Slate Creek Dam; (b) change Sly Creek Dam from rock-fill to earth-fill and raise reservoir pool elevation by 10 feet; (c) change Little Grass Valley Dam from concrete-faced rock-fill to sloping-core rock-fill; (d) change Ponderosa Dam from concrete arch to zoned earth-fill with gated chute spillway on right abutment; (e) change Forbestown Diversion Dam spillway from radial gate type to ungated type; (f) raise by approximately 10 feet the elevation of Slate Creek and South Fork Diversion Dams; (g) enlarge and realign Slate Creek Diversion Tunnel; (h) realign South Fork Diversion Tunnel and Woodleaf and Forestown Power Tunnels; (i) enlarge Woodleaf and Forbestown penstocks and relocate associated surge tanks; (j) change Woodleaf and Forbestown Powerhouses from indoor to outdoor type; and (k) change Kelly.

Ridge development of project to (1) relocate and revise relative lengths of canals, tunnels, and syphons in Miners Ranch Conduit, (2) enlarge and change configuration of Miners Ranch Dam and raise maximum storage elevation by 3 feet, (3) substitute canal for upper portion of Kelly Ridge Power Tunnel, and (4) increase rated capacity of Kelly Ridge Powerhouse from 9,000 to 9,900 kilowatts.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is May 31, 1960. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3422; Filed, Apr. 14, 1960;
8:45 a.m.]

[Docket No. G-19086 etc.]

PEOPLES GULF COAST NATURAL GAS PIPELINE CO. ET AL.

Order Consolidating Proceedings

APRIL 7, 1960.

Peoples Gulf Coast Natural Gas Pipeline Company and Natural Gas Pipeline Company of America, Docket No. G-19086; Hassie Hunt Trust, Operator, et al., Docket No. G-19115; H. L. Hunt, Operator, et al., Docket No. G-19116; Hunt Oil Company, Docket No. G-19117; William Herbert Hunt Trust Estate, Operator, Docket No. G-19118; Lamar Hunt Estate, Docket No. G-19119; George W. Graham, Inc., Operator, et al., Docket No. G-19123; Placid Oil Company, Operator, et al., Docket Nos. G-19124, G-19125; Natural Gas Pipeline Company of America, Docket No. G-20202; Iowa Southern Utilities Company, Docket No. G-20313; Missouri Utilities Company, Docket No. G-20335; City of Corning, Iowa, Docket No. G-20591; Iowa-Illinois Gas and Electric Company, Docket No. G-20593; Lateral Gas Pipeline Company, Docket No. CP60-42; Iowa Electric Light and Power Company, Docket No. CP60-43; Iowa Power and Light Company, Docket No. CP60-48.

On March 3, 1960, Iowa Power and Light Company (Iowa Power) filed application with the Commission pursuant to section 7(a) of the Natural Gas Act for the purpose of obtaining the authorizations necessary to provide natural gas service to the communities of Milo, Elliott, Dallas and Melcher, Iowa, and to obtain the gas supply for the proposed service from Natural Gas Pipeline Company of America (Natural). Notice of said application was issued by the Commission on March 22, 1960 and published in the FEDERAL REGISTER on March 29, 1960 (25 F.R. 2649).

By its application in Docket Nos. G-19086 et al., Peoples Gulf Coast Natural Gas Pipeline Company (Peoples) and Natural Gas Pipeline Company of America (Natural) proposed the expansion of Peoples system by 85,000 Mcf per day and the sale of all of its gas by Peoples

to Natural, which would, in turn, make sales to the distributors presently being served by both companies. 10,632 Mcf of said 85,000 Mcf per day were reserved for service to new areas, including those proposed to be served by Iowa Power in Docket No. CP60-48.

In proceedings consolidated with the aforementioned matters, Natural has proposed an expansion of its system of 100,000 Mcf per day.

Notices of these applications, consolidation and setting date of hearing were published in the FEDERAL REGISTER on February 9, 1960 (25 F.R. 1143) March 4, 1960 (25 F.R. 1918), March 12, 1960 (25 F.R. 2117). The hearing on these consolidated matters will commence on April 11, 1960.

A motion to consolidate these proceedings was filed by Iowa Power on March 23, 1960.

The Commission finds: The above-entitled dockets concern related matters and should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations.

The Commission orders: The above-entitled dockets be and the same hereby are consolidated and will be heard on April 11, 1960, at 10:00 a.m., e.s.t. in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

By the Commission,

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3423; Filed, Apr. 14, 1960;
8:45 a.m.]

[Docket No. G-16134]

SUNRAY MID-CONTINENT OIL CO.

Notice of Application and Date of Hearing

APRIL 8, 1960.

Take notice that Sunray Mid-Continent Oil Company (Sunray), a Delaware corporation with principal place of business in Tulsa, Oklahoma, filed an application for a disclaimer of jurisdiction in Docket No. G-16134 on August 22, 1958, or, alternatively, for a certificate of public convenience and necessity of limited duration, pursuant to section 7(c) of the Natural Gas Act, authorizing Sunray to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Sunray Proposes to sell natural gas in interstate commerce to Natural Gas Pipeline Company of America (Natural) for resale.

The proposed sale will be made under a contract between Sunray and Natural, dated June 10, 1958, and designated as Sunray's FPC Gas Rate Schedule No. 167, providing for the sale of gas produced from, and attributable to, Sunray's interest in 640 unitized acres located in Camrick Field, Texas County, Oklahoma. Of this 640 acres, Sunray holds the equivalent of 60 acres while The Texas Com-

pany¹ holds the equivalent of the remaining 580 acres. Sunray's interest consists of 9.375 percent of all gas produced from any part of this unit. With the exception of the acreage dedicated and the volumes of gas to be sold and purchased thereunder, Sunray's contract with Natural incorporates by reference the "terms, covenants and provisions identical with those contained in The Texas Company Agreement, applicable respectively to Buyer and The Texas Company therein".

The Texas Company Agreement, to which reference is made, is a contract between The Texas Company as seller and Natural as buyer, dated February 21, 1955, as amended October 15, 1956, which is on file as The Texas Company (Operator) et al., FPC Gas Rate Schedule No. 133.² The gas produced from and attributable to The Texas Company's 580 acres in the aforesaid unit is dedicated along with other acreage to the performance of this contract, i.e. the Texas-Natural contract. This sale by The Texas Company to Natural was permanently certificated in Docket No. G-8820 by order issued on November 15, 1955, in Natural Gas Pipeline Company of America, et al., Docket No. G-8839, et al. The rate being charged Natural by The Texas Company under its Rate Schedule No. 133 for gas now being produced and sold from acreage dedicated to the performance of the contract is 16.4 cents per Mcf. This rate is in effect subject to refund.³ A prior periodic increase from 16.0 cents to 16.2 cents per Mcf under this rate schedule (No. 133) was also suspended and subsequently made effective subject to refund.⁴ Sunray's estimated sales and billing for the first month of service shows an initial rate of 16.4 cents per Mcf.

Take further notice that: (1) pursuant to mandate, issued on October 10, 1959, by the United States Court of Appeals for the Tenth Circuit and filed with the Commission on October 12, 1959, remanding the instant proceedings to the Commission for further proceedings in conformity with the opinion and judgment of said Court handed down on September 1, 1959, in said proceedings there styled as Sunray Mid-Continent Oil Company v. F.P.C., 270 F. 2d 404, and (2) pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 17, 1960, at 10:00 a.m., e.d.s.t., in a Hearing Room of the Federal

¹By letter dated May 1, 1959, and filed May 5, 1959, the Commission was advised that The Texas Company had changed its name to Texaco Inc., effective May 1, 1959.

²By Commission letter, dated May 19, 1959, all of The Texas Company rate schedules were redesignated as Texaco Inc. rate schedules. The above-mentioned agreements of February 21, 1955, and October 15, 1956, are also on file as Supplement Nos. 1 and 2 to Sunray's FPC Gas Rate Schedule No. 167.

³See order issued on July 15, 1958, The Texas Company (Operator), et al., Docket No. G-14248.

⁴See order issued on June 18, 1957, The Texas Company, Docket No. G-11710.

Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by the aforesaid application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before May 2, 1960.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3424; Filed, Apr. 14, 1960;
8:45 a.m.]

[Docket No. G-18137]

TEXAS GAS TRANSMISSION CORP.

Notice of Application and Date of Hearing

APRIL 8, 1960.

Take notice that on February 8, 1960, Texas Gas Transmission Corporation filed an application requesting the Commission to amend the certificate of public convenience and necessity issued to it on October 5, 1959, in Docket No. G-18137, to permit the authorized service to continue until April 15, 1961, in lieu of the present termination date of April 15, 1960, all as more fully represented in the application which is on file with the Commission, and open to public inspection.

In its order issued October 5, 1959, the Commission authorized Texas Gas to sell additional volumes of up to 50,000 Mcf of natural gas per day to American Louisiana Pipe Line Company, on an interruptible basis, for a period extending to April 15, 1960. The additional sales were to be made at two existing delivery points in Kentucky and Louisiana, 30,000 Mcf per day at Slaughters, Kentucky and 20,000 Mcf per day at Eunice, Louisiana. The deliveries were proposed to assist the American Natural System to restore the normal balance of its storage projects, which had been reduced considerably below the scheduled balances due to the severe 1958-1959 winter and to permit Texas Gas to avoid take-or-pay penalties on its gas purchase contracts.

Applicant desires to extend this sale of interruptible gas to American Louisiana until April 15, 1961.

The proposed sale would be made at the same price and under the same conditions as that authorized in the October 5, 1959, order.

The volumes of gas to be sold under the initial certificate were estimated by the Applicant to be between 7,000,000 and 10,000,000 Mcf.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on June 13, 1960 at 10:00 a.m., e.d.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concern-

ing the matters involved in and the issues presented by such application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 1, 1960.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3425; Filed, Apr. 14, 1960;
8:46 a.m.]

[Docket No. G-18377]

TIDEWATER OIL CO.

Notice of Severance

APRIL 6, 1960.

Take notice that the application of Tidewater Oil Company, in Docket No. G-18377 which has been heretofore consolidated with various other applications in the consolidated proceedings entitled: Coastal Transmission Corporation, et al., Docket No. G-18338, et al., and scheduled to be heard therewith, is hereby severed from said consolidated proceedings for such disposition as might hereafter be appropriate.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3426; Filed, Apr. 14, 1960;
8:46 a.m.]

[Docket No. G-17849, etc.]

EL PASO NATURAL GAS CO. ET AL.

Order Denying Motions for Disposition of Applications Under Shortened Procedure, Setting Date of Hearing and Permitting Intervention

APRIL 11, 1960.

El Paso Natural Gas Company, Docket No. G-17849; Northern Natural Gas Company, Docket No. G-18110; The Atlantic Refining Company, Docket No. G-17571; Phillips Petroleum Company, Operator, Docket No. G-17747; Socony Mobil Oil Company, Inc., Docket No. G-17842; Shell Oil Company, Operator, Docket No. G-17888; Pioneer Production Corporation, Operator, Docket No. G-18553; Riddell Petroleum Corporation, Docket No. G-18609; Pan American Petroleum Corporation, Operator, Docket No. G-18660; Sinclair Oil & Gas Company, Operator, Docket No. G-18748.

Motions for the disposition of their respective applications under the shortened procedure provided by § 1.32(b) of the Commission's rules of practice and procedure were filed by the following parties: Socony Mobil Oil Company, Inc. (Docket No. G-17842), Shell Oil Company (Docket No. G-17888), Sinclair Oil & Gas Company (Docket No. G-18748), Pioneer Production Corporation (Docket No. G-18553), The Atlantic Refining Company (Docket No. G-17571), Pan American Petroleum Corporation (Docket No. G-18660), Riddell Petroleum Corporation (Docket No. G-18609). Answers to these motions were filed by El Paso Natural Gas Company, in support there-

of, by The Public Utilities Commission of California, in opposition thereto, and by Southern California Gas Company and Southern Counties Gas Company of California, conditionally in support of the motions.

Petitions to intervene in these proceedings were filed by: Southern California Gas Company and Southern Counties Gas Company of California (jointly) on January 8, 1960, Pacific Gas and Electric Company on January 14, 1960, San Diego Gas and Electric Company on January 14, 1960; Notices of Intervention were filed by the Public Service Commission of Wisconsin on January 13, 1960, and the Public Utilities Commission of the State of California and the State of California on January 15, 1960.

Answers and objections to the petitions to intervene were filed by Socony Mobil Oil Company, Inc., on January 18, 1960, and January 20, 1960. Answers and objections to the Notice of Intervention of the Public Service Commission of Wisconsin were filed by The Atlantic Refining Company on January 22, 1960, and Socony Mobil Oil Company, Inc., on January 29, 1960.

The Commission finds:

(1) The public convenience and necessity requires that the above-entitled matters be heard fully in a formal proceeding.

(2) It appears that the participation in these proceedings by the following parties may be in the public interest: Southern California Gas Company and Southern Counties Gas Company of California, Pacific Gas and Electric Company, San Diego Gas and Electric Company, the Public Service Commission of Wisconsin, the Public Utilities Commission of the State of California and the State of California.

The Commission orders:

(A) The motions made in the instant proceedings to dispose of the applications under the shortened procedure provided by § 1.32(b) of the Commission's Rules of Practice and Procedure be and the same hereby are denied.

(B) Southern California Gas Company and Southern Counties Gas Company of California, Pacific Gas and Electric Company, San Diego Gas and Electric Company, the Public Service Commission of Wisconsin, the Public Utilities Commission of the State of California and the State of California are hereby permitted to intervene in these proceedings subject to the rules and regulations of the Commission: *Provided, however,* That the participation of these interveners shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene: *And provided, further,* That the admission of these interveners shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered in these proceedings.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on June 13, 1960, at

10:00 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by the applications concerned herein.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3439; Filed, Apr. 14, 1960;
8:47 a.m.]

[Project 2213]

SWIFT NO. 2 HYDROELECTRIC PROJECT

Notice of Land Withdrawal; Washington

APRIL 12, 1960.

In the matter of Swift No. 2 Hydroelectric Project, Public Utility District No. 1 of Cowlitz County, Washington.

Conformable to the provisions of Section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the lands hereinafter described, insofar as title thereto remains in the United States are included in power Project No. 2213 (Swift No. 2 Hydroelectric Project) for which completed application for a license was filed September 17, 1959, by the Public Utility District No. 1 of Cowlitz County, 1421 Fourteenth Avenue, Longview, Washington. Under said Section 24 these lands are, from said date of filing, reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

The area reserved by the filing of the application for this project is approximately 57.05 acres, of which 3.79 acres are acquired lands within the Lewis River Ranger Station, and 53.26 acres are public lands, patented with a power site reservation, approximately 56.16 acres of this land were previously reserved by Power Site Reservation No. 74 or Project No. 264.

WILLAMETTE MERIDIAN, WASHINGTON

All portions of the following described subdivisions lying within the project boundaries as delimited on map Exhibit K-2 (F.P.C. No. 2213-16) entitled "Project No. 2213 Washington, Public Utility District No. 1 Cowlitz Co., Swift Hydroelectric Project No. 2, Lewis River, Project Area and Project Boundary, Power Canal and Forebay" filed in the Federal Power Commission September 17, 1959.

Acquired Lands

T. 7 N., R. 5 E.,
Sec. 30: Lot 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Public Lands

T. 7 N., R. 5 E.,
Sec. 30: Lots 5 and 6.

Copies of the project map exhibits J (F.P.C. No. 2213-14) and K (revised) sheet 2 (F.P.C. No. 2213-16) have been transmitted to the Bureau of Land Management, Geological Survey, and Forest Service.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3441; Filed, Apr. 14, 1960;
8:48 a.m.]

[Docket Nos. RI60-195, etc.]

COTTON VALLEY OPERATORS COMMITTEE ET AL.

Amendment to Order

APRIL 6, 1960.

In the order accepting rate schedule for filing and ordering hearing on and suspending proposed change in rate, allowing increased rate to become effective subject to refund, denying motion in part and terminating proceedings, issued March 18, 1960 and published in the FEDERAL REGISTER on March 26, 1960 (25 F.R.; p. 2595): Under the listing Company names change The Ohio Oil Company to read "The Ohio Oil Company, et al." also make the same change after Docket No. G-12045 and Docket No. G-13475.

In ordering paragraph (D) the words "increased rates which were superseded but were not made effective" should be corrected to read "increased rates which were suspended but were not made effective." Also in ordering paragraph (I) the phrase "paragraph (10)" should read "paragraph (H)" and the phrase "paragraph (D)" should read "paragraph (H)".

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3438; Filed, Apr. 14, 1960;
8:47 a.m.]

[Docket No. RI60-24, etc.]

E. B. McFARLIN ET AL.

Order Providing for Hearing and Suspension of Proposed Charges in Rates; Amendment

APRIL 6, 1960.

E. B. McFarlin and E. P. Ketchum et al., Docket Nos. RI60-24, et al.; West Lake Natural Gasoline Company (Operator), et al., Docket No. RI60-30.

In the order providing for hearing and suspension of proposed changes in rates, issued January 15, 1960, and published in the FEDERAL REGISTER on January 23, 1960 (25 F.R.; p. 618): In the chart under column headed "proposed increased rate" change "17.2295" to read "17.0" for Docket No. RI60-30, West Lake Natural Gasoline Company (Operator), et al.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3440; Filed, Apr. 14, 1960;
8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-34]

WESTINGHOUSE ELECTRIC CORP.

Notice of Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 10, set forth below, to License No. CX-6 authorizing Westinghouse Electric Corporation to conduct experiments as described in its application for amendment dated October 6, 1959, and January 15, 1960, except as restricted by the license amendment, in its Westinghouse Reactor Evaluation Center CRX Facility located near Waltz Mill, in Westmoreland County, Pennsylvania. Amendment No. 10 revises License No. CX-6, as amended, in its entirety. The amended license permits greater flexibility in operation of the CRX Facility than has heretofore been authorized. The Commission has found that conduct of the experiments in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has further found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the conduct of the proposed experiments would not present any substantial change in the hazards to the health and safety of the public from those previously considered and evaluated in connection with the previously approved operation of the facility.

In accordance with the Commission's rules of practice (10 CFR Part 2), the Commission will direct the holding of a formal hearing on the matter of issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within 30 days after the issuance of the license amendment. For further details see (a) the application for license amendment by Westinghouse Electric Corporation, and (b) a hazards analysis of the proposed experiments prepared by the Hazards Evaluation Branch, Division of Licensing and Regulation, all on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (b) above may be obtained at the Commission's Public Document Room, or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 8th day of April 1960.

For the Atomic Energy Commission.

H. L. PRICE,
*Director, Division of
Licensing and Regulation.*

[License No. CX-6; Amdt. 10]

The utilization facility authorized for construction by Construction Permit No. CPCX-10, dated October 17, 1957, issued to Westinghouse Electric Corporation (hereinafter "Westinghouse") was constructed and has operated under License No. CX-6, issued November 25, 1957, and Amendments 1-9 thereto.

License No. CX-6, as amended, is revised in its entirety to read as follows:

1. The Atomic Energy Commission (hereinafter "the Commission") finds that:

a. Westinghouse will operate the facility in conformity with the application amendments dated October 7, 1959, and January 15, 1960, and in conformity with the Atomic Energy Act of 1954, as amended, and the rules and regulations of the Commission;

b. There is reasonable assurance that the facility can be operated without endangering the health and safety of the public;

c. Westinghouse is technically and financially qualified to operate the facility;

d. Issuance of a license to operate the facility will not be inimical to the common defense and security or to the health and safety of the public;

e. Westinghouse has submitted proof of financial protection which satisfies the requirements of Commission regulations currently in effect.

2. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses Westinghouse:

a. Pursuant to section 104(c) of the Atomic Energy Act of 1954, as amended, and Title 10, CFR, Chapter 1, Part 50, "Licensing of Production and Utilization Facilities", to possess and operate as a utilization facility the critical experiment facility designated below, and to conduct critical experiments as described in the amendments to the application dated October 7, 1959, and January 15, 1960.

b. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 30, "Licensing of Byproduct Material", to possess but not to separate such byproduct material as may be produced in the operation of the facility.

3. This license applies to the facility which is owned by Westinghouse and located near Waltz Mill, in Westmoreland County, Pennsylvania, and described in the amendments to the application dated October 7, 1959, and January 15, 1960.

4. This license shall be deemed to contain and be subject to the conditions specified in § 50.54 of Part 50 and § 70.32 of Part 70; is subject to all applicable provisions of the Act and rules, regulations and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

a. *Operating restrictions.* (1) Westinghouse shall not operate the facility at a power level in excess of 2,000 watts (thermal).

(2) Subject to the provisions of this paragraph 4., Westinghouse shall operate the facility only in accordance with the design and performance specifications and operating limits and procedures described in the amendments to the application dated October 7, 1959, and January 15, 1960.

(3) In any case where the procedures, limits or specifications described in the amendments to the application dated October 7, 1959, and January 15, 1960, are not consistent with the requirements of this paragraph 4., the requirements contained herein shall govern.

(4) Westinghouse may change or modify the design or performance specifications or operating limits or procedures described in Chapter 1 of the Safety Report only after a request for a license amendment has been prepared and submitted to the Atomic Energy Commission and such license amendment has been issued.

(5) Westinghouse may change or modify the design or performance specifications or operating limits or procedures described in Chapters 2-8 of the Safety Report only after issuance of a license amendment authorizing such change or modification or in accordance with the following procedures:

After review of the proposed change by the Westinghouse Reactor Safeguards Committee, Westinghouse shall provide the Commission with a report describing the proposed change including (a) a hazards evaluation of the proposed change and (b) a determination by the Westinghouse Reactor Safeguards Committee as to whether or not the proposed change may involve hazards greater than, or different from, those analyzed in the Safety Report or may involve a material alteration of the facility.

If, within 15 days after the date of acknowledgment by the Division of Licensing and Regulation of receipt of such report, the Commission does not issue any notice to Westinghouse to the contrary, Westinghouse may make such change without further approval.

If, within 15 days after the date of acknowledgment by the Division of Licensing and Regulation of receipt of such report, the Commission notifies Westinghouse that the hazards involved may be greater than or different from those analyzed in the Safety Report, or that the proposed change may involve a material alteration of the facility, the change shall not be made until such change has been authorized in writing by the Commission. If a license amendment is necessary to authorize the proposed change, the report submitted by Westinghouse shall be deemed to constitute an application for license amendment.

(6) No experiment or test shall be conducted in the facility until the proposed experiment or test has been reviewed by the Manager of the facility and an analysis prepared in accordance with the methods described in Chapter 8 of the Safety Report. If the proposed experiment or test falls within the design or performance specifications or operating limits or procedures described in Chapters 1-8 of the Safety Report, and if the Manager determines that such experiment or test does not involve hazards which may be greater than, or different from, those analyzed in the Safety Report, or a material alteration of the facility, then Westinghouse may conduct such experiment or test without prior approval by the Commission. If such determination is not made by the Manager, the proposed experiment or test shall not be conducted until approval of the Commission has been obtained in accordance with the procedures specified in paragraph 4.a.(5).

(7) For purposes of this paragraph 4., a proposed experiment, test or change shall be deemed to involve hazards which may be "greater than, or different from, those analyzed in the Safety Report" if (1) the probability of any type of accident analyzed in the Safety Report might be increased, or (2) the possible consequences of any type of accident analyzed in the Safety Report might be increased, or (3) such experiment, test or change might create a credible probability of an accident of a type different from, and a possible consequence of which would not be of a lesser magnitude than each of, the accidents analyzed in the Safety Report. The "Safety Report" as used in this paragraph 4. is defined as "Safety Report for the Critical Reactor Experiment Facility", WCAP 1316, dated October 7, 1959, as amended by WCAP 1316, Addendum 1, dated January 15, 1960.

b. *Records.* In addition to those otherwise required under this license and applicable regulations, Westinghouse shall keep the following records:

(1) Facility operating records, including power levels.

(2) Records showing radioactivity released or discharged into the air or water beyond the effective control of Westinghouse as measured at the point of such release or discharge.

(3) Records of emergency scrams, including reasons for emergency shutdowns.

(4) Records containing a description of each change made pursuant to the procedures described in paragraph 4.a. (5) hereof.

c. Reports

(1) Westinghouse shall immediately report to the Commission any indication or occurrence of a possible unsafe condition relating to the operation of the facility.

(2) Westinghouse shall submit to the Commission an annual report of operating experience and activities. The report shall be based on each calendar year of operation. The first such report shall be filed with the Commission on or before January 31, 1961. This report shall include the following:

a. A description and hazards evaluation of each series of experiments or tests.

b. Matters referred to, material submitted to and actions taken by the Westinghouse Reactor Safeguards Committee pursuant to paragraph 4.a. (5), above.

5. This license is effective as of the date of issuance and shall expire at midnight March 31, 1965, unless sooner terminated.

Date of issuance: April 8, 1960.

For the Atomic Energy Commission.

H. L. PRICE,
Director.

Division of Licensing and Regulation.

[F.R. Doc. 60-3417; Filed, Apr. 14, 1960;
8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

APRIL 12, 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. 36148: *Styrene—Texas to Conn. and Mass.* Filed by Southwestern Freight Bureau, Agent (No. B-7771), for interested rail carriers. Rates on styrene, in tankcar loads from specified points in Texas to specified points in Massachusetts also Naugatuck, Conn.

Grounds for relief: Market competition.

Tariff: Supplement 680 to Southwestern Freight Bureau tariff I.C.C. 4139.

FSA No. 36149: *Sugar—Washington Points to Texas Points.* Filed by Trans-Continental Freight Bureau, Agent (No. 366), for interested rail carriers. Rates on sugar beet or cane, in carloads and sugar, beet or cane, liquid, in tank-car loads from Scalley, Sugar Plant No. 2, and Toppenish, Wash., to Dallas, Fort Worth and Great Southwest, Tex.

Grounds for relief: Market competition.

Tariff: Supplement 1 to Trans-Continental Freight Bureau, tariff I.C.C. 1628.

FSA No. 36150: *Bituminous coal—Appalachian area to Monroe, Mich.* Filed

by Roy S. Kern, Agent (No. 56), for interested rail carriers. Rates on bituminous coal, in carloads from mines in states of Ohio, Pennsylvania, Maryland, West Virginia, Virginia, eastern Kentucky and Tennessee to Monroe, Mich.

Grounds for relief: Water-truck competition.

Tariff: Supplement 52 to Baltimore & Ohio Railroad tariff I.C.C. 3122 and 12

other schedules described in the application.

FSA No. 36151: *Class and commodity rates from and to West Savannah, Ga.* Filed by O. W. South, Jr., Agent (SFA No. A3931), for interested rail carriers. Rates on all commodities, carload and less-than-carload between West Savannah, Ga., on the one hand, and points in

the United States and Canada, on the other.

Grounds for relief: New station and grouping.

By the Commission.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-3437; Filed, Apr. 14, 1960; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—APRIL

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