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TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10059

AMENDMENT OF EXECUTIVE ORDER NO. 9195[1] OF JULY 7, 1942, AS AMENDED, PRESCRIBING REGULATIONS RELATING TO AERIAL FLIGHTS BY PERSONNEL OF THE ARMY, NAVY, MARINE CORPS, COAST GUARD, AND NATIONAL GUARD, AND OFFICERS OF THE PUBLIC HEALTH SERVICE DETAILED FOR DUTY WITH THE COAST GUARD

By virtue of and pursuant to the authority vested in the President by section 18 of the Pay Readjustment Act of 1942 (56 Stat. 368), and for the purpose of carrying into effect certain provisions of section 14 of the said Act as amended by section 3 of the act of March 25, 1948, Public Law 460, 80th Congress, Executive Order No. 9195 of July 7, 1942, as amended, prescribing regulations relating to aerial flights by personnel of the Army, Navy, Marine Corps, Coast Guard, and National Guard, and officers of the Public Health Service detailed for duty with the Coast Guard, is hereby further amended as follows:

1. The words "reserve components of the armed services" are substituted for the words "National Guard" occurring in the title and preamble of the said order.

2. Paragraph 11 of the said order is amended to read as follows:

11. For each officer, warrant officer, or enlisted person of the reserve components of the armed services not in the active military service of the United States who is in an inactive-duty-training pay status or drill pay status and who is required to participate regularly and frequently in aerial flights by orders of competent authority, the following requirements are prescribed:

(a) During one calendar month: 4 or more flights totaling at least 72 minutes (1.2 hours), or in lieu thereof to be in the air a total of at least 96 minutes (1.6 hours).

(b) During two consecutive calendar months when the requirements of subparagraph (a) above have not been met: 8 or more flights totaling at least 144 minutes (2.4 hours), or in lieu thereof to be in the air a total of at least 192 minutes (3.2 hours).

(c) During three consecutive calendar months when the requirements of subparagraph (b) above have not been met: 12 or more flights totaling at least 216 minutes (3.6 hours), or in lieu thereof to be in the air a total of at least 288 minutes (4.8 hours).

(d) Such required flights may be made at ordered drills, or equivalent periods of training, instruction, or duty, of the organization to which such officer, warrant officer, or enlisted person belongs or is attached, or at other times in accordance with regulations prescribed by the head of the department concerned.

(e) For fractions of a calendar month, the number of aerial flights and the time in the air required shall bear the same ratio to the number of flights and the time in the air required for a full calendar month as the period in question bears to the entire month.

(f) The duties prescribed above shall be in addition to any other duty or duties which may be required of such officers, warrant officers, or enlisted persons.

3. This order shall become effective on June 1, 1949, except that as to personnel entitled to increased pay for performing aerial flights under section 313 of the Naval Reserve Act of 1938 it shall become effective on July 1, 1949.

HARRY S. TRUMAN

THE WHITE HOUSE,
May 27, 1949.

[F. R. Doc. 49-4378; Filed, May 27, 1949; 4:58 p. m.]

[1] 3 CFR, Cum. Supp.

TITLE 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

Subchapter E—Account Servicing

PART 372—SECURITY SERVICING AND LIQUIDATIONS; FARM OWNERSHIP LOANS

SUBPART C—VOLUNTARY CONVEYANCE OF FARMS TO THE GOVERNMENT

Section 372.43 in title 6, Code of Federal Regulations (13 F. R. 9467), is hereby amended to read as follows:

§ 372.43 *Delegation of authority.* Subject to the policies and procedures prescribed in §§ 372.41 to 372.47:

(a) The State Director is authorized to release a borrower from personal liability on his account after credits due the

(Continued on p. 2847)

CONTENTS

THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

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CONTENTS—Continued

CONTENTS—Continued

CODIFICATION GUIDE

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

CODIFICATION GUIDE—Con.

borrower, as determined by the State Director, are allowed and to release the lien of (or satisfy) the security instrument.

(b) The State Director or his delegate is authorized to:

(1) Accept a deed offered by a Farm Ownership borrower, and credit the borrower's Farm Ownership account with the value of his farm and with any additional credits to which the borrower may be entitled, as determined by the State Director.

(2) Pay the expenses incident to the vesting of title to a Farm Ownership farm in the Government when a borrower has authorized the charging of such expenses to his Farm Ownership account. (Sec. 41 (i), 50 Stat. 529, as amended; 7 U. S. C. 1015 (i))

Dated: April 27, 1949.

[SEAL] DILLARD B. LASSETER,
Administrator,
Farmers Home Administration.

Approved: May 26, 1949.

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-4343; Filed, May 31, 1949; 8:54 a. m.]

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases, and Other Operations

[1949 C. C. C. Flaxseed Bulletin 1, Amdt. 1]

PART 643—OILSEEDS

SUBPART—1949 TEXAS FLAXSEED PURCHASE PROGRAM

Section 643.104, *Purchase price in designated counties*, of the regulations issued by the Commodity Credit Corporation with respect to the 1949 Texas Flaxseed Purchase Program (14 F. R. 2007), is hereby amended by adding the following counties and respective purchase prices for No. 1 flaxseed:

TEXAS

County:	No. 1 Flaxseed	County:	No. 1 Flaxseed
Brooks	$3.41	Frio	$3.36
Duval	3.42	Uvalde	3.32
McMullen	3.37	Hidalgo	3.35
La Salle	3.35	Colorado	3.44
Dimmit	3.32	McCulloch	3.32

(Sec. 4 (d), Pub. Law 806, 80th Cong. Interprets or applies secs. 4 (g), (l), 5 (d), Pub. Law 806, 80th Cong., sec. 1, Pub. Law 897, 80th Cong.)

Issued this 26th day of May, 1949.

[SEAL] HAROLD K. HILL,
Acting Manager,
Commodity Credit Corporation.

Approved:

RALPH S. TRIGG,
President, Commodity Credit Corporation.

[F. R. Doc. 49-4339; Filed, May 31, 1949; 8:53 a. m.]

[1949 C. C. C. Wheat Bulletin 2]

PART 671—WHEAT

SUBPART—1949 WHEAT PURCHASE PROGRAM

This bulletin states the requirements with respect to the 1949-Crop Wheat Purchase Program formulated by Commodity Credit Corporation (hereinafter referred to as CCC) and the Production and Marketing Administration (hereinafter referred to as PMA). The program will be carried out by PMA under the general supervision and direction of the Manager, CCC. Purchases will be made of wheat produced in the States of Georgia and South Carolina in 1949 in accordance with this bulletin.

Sec.

AUTHORITY: §§ 671.151 to 671.165 issued under sec. 4 (d), Pub. Law 806, 80th Cong. Interpret or apply secs. 4 (g), (l), 5 (d), Pub. Law 806, 80th Cong., sec. 1, Pub. Law 897, 80th Cong.

§ 671.151 *Administration.* In the field, the program will be administered through State PMA committees, county agricultural conservation committees (hereinafter referred to as county committees) and the Atlanta PMA commodity office.

Forms will be mimeographed by the State PMA offices, and distributed to county committees. All purchase documents will be completed and approved by the county committee. The county committee may designate in writing certain employees of the county agricultural conservation association to approve such forms on behalf of the committee.

§ 671.152 *Availability of purchases*—(a) *Area.* The purchase program will be available in the States of Georgia and South Carolina.

(b) *Time.* Purchases will be made from time of harvest through January 31, 1950, unless terminated earlier.

§ 671.153 *Eligible producer.* An eligible producer shall be any individual, partnership, association, corporation, or other legal entity producing wheat in 1949 as landowner, landlord, tenant, or sharecropper.

§ 671.154 *Eligible wheat.* Eligible wheat shall be wheat which meets the following requirements:

(a) Such wheat must be produced in the States of Georgia or South Carolina in 1949, by an eligible producer.

(b) The beneficial interest in the wheat must be in the producer and must always have been in him, or in him and a former producer whom he succeeded before the wheat was harvested.

(c) Such wheat on inspection at destination must be (1) wheat grading No. 3 or better; or (2) wheat grading No. 4 or No. 5 solely on the factor of test weight but otherwise grading No. 3 or better.

§ 671.155 *Approved forms.* The approved forms consist of the purchase documents which, together with the provisions of this bulletin and any supplements and amendments hereto, govern the rights and responsibilities of the producer. Any fraudulent representation made by a producer in executing the purchase documents will render him subject to criminal prosecution under Federal law. The approved purchase form shall consist of a "Memorandum of Purchase" (1949 CCC Wheat Purchase Form A), which has been executed by the producer(s) and approved by a member of the county agricultural conservation committee, or its designee.

§ 671.156 *Preparation and distribution of forms*—(a) *County committees.* The Memorandum of Purchase (1949 CCC Wheat Purchase Form A) must be completed in triplicate for each producer and must be signed by the producer and approved by a member of the county committee, or its designee. Numbers shall be assigned to 1949 CCC Wheat Purchase Form A, beginning with number 1 for each county and continuing consecutively as each form is com-

pleted. A separate transmittal memorandum shall be prepared in triplicate listing all 1949 CCC Wheat Purchase Form(s) A, pertaining to a car. The original and first copy of the transmittal memorandum together with all three copies of the 1949 CCC Wheat Purchase Form(s) A, and the original scale tickets, for those producers having wheat in one car should be transmitted to the State PMA office. The second copy of the transmittal memorandum shall be retained by the county committee.

(b) *State PMA Offices.* Upon receipt from the PMA commodity office of the destination net weight and grade of a car of wheat, the State PMA committee shall complete the remaining entries on 1949 CCC Wheat Purchase Form A, for each producer who delivered wheat in the car.

The State PMA committee will after completing the 1949 CCC Wheat Purchase Form(s) A, make disbursements in accordance with the entries shown in Section II, of 1949 CCC Wheat Purchase Form A, by issuing sight draft(s) drawn on CCC. After disbursements have been made distribution of the purchase documents shall be as follows: The original transmittal memorandum, the original of each 1949 CCC Wheat Purchase Form A, and the CCC copy of each sight draft, shall be forwarded to the Atlanta PMA commodity office; one copy of the 1949 CCC Wheat Purchase Form A and the original of the sight draft to the producer; one copy of each 1949 CCC Wheat Purchase Form A, and the applicable scale tickets, to the county office; one copy of the transmittal memorandum, and a copy of each sight draft shall be retained in the State office.

§ 671.157 *Liens.* If liens or encumbrances exist on the wheat, proper waivers must be obtained.

§ 671.158 *Service fees.* Each producer selling wheat under the purchase program will pay a service fee of 1 cent per bushel on the number of bushels contained in each railway car, or $3.00, whichever is greater. Since the final settlement will be made to producers on the basis of net weights and grades at destination, the amount of the service fee will be collected in all cases from the proceeds of the sale by entering on 1949 CCC Wheat Purchase Form A, "Memorandum of Purchase", in the first space provided for distribution of funds, "Commodity Credit Corporation, Atlanta 3, Georgia. (amount of fee)."

§ 671.159 *Set-offs.* If the producer is indebted to CCC, whether or not such indebtedness is listed on the county debt register, he must designate CCC as the payee of the proceeds of the purchase to the extent of such indebtedness but not to exceed that portion of the proceeds remaining after deduction of service fees and amounts due prior lienholders. If the producer is indebted to any other agency or corporation of the United States Department of Agriculture and such indebtedness is listed on the county debt register, he must designate such agency as payee of the proceeds as provided above. Indebtedness owing to CCC shall be given first consideration after claims of prior lienholders.

§ 671.160 *Delivery.* CCC will accept only bulk wheat which is loaded f. o. b. track in carload lots. Where the wheat of two or more producers is loaded into a single car, prior to loading the wheat into the car the bulk weight of the wheat of each producer must be determined as a basis for prorating the sales proceeds as provided below. If a producer delivers wheat into more than one car, a separate 1949 CCC Wheat Purchase Form A must be executed for him representing the quantity of wheat delivered to each car. The county agricultural conservation committee shall make arrangements for weighing facilities in order that each producer's wheat may be weighed before loading and, insofar as it is possible to determine, shall accept only eligible wheat. Scale tickets shall be completed for each producer indicating the weight of wheat loaded into the car.

§ 671.161 *Shipping instructions.* Shipping instructions shall be obtained from the Atlanta PMA commodity office. Producers must ascertain from the county committees, that shipping instructions have been received prior to loading the car. Under no circumstances will CCC assume demurrage charges resulting from delays in loading.

§ 671.162 *Basis of settlement.* Settlement will be made on the basis of official weights and grades determined at destination which will be forwarded to the State PMA committee by the PMA commodity office. The grade of the commingled wheat in a car, determined at destination, will be the grade to be used for settlement, with each producer having wheat in the car. If the net weight of dockage-free wheat in a railway car at destination varies from the weight of the wheat delivered by the producer(s) at loading point, as evidenced by the scale tickets, the destination weight shall be allocated to the producers on a basis proportionate to the loading weight of the wheat delivered by each producer.

§ 671.163 *Delivery of ineligible wheat.* Where wheat at destination is found to be ineligible, the Atlanta PMA commodity office will sell the wheat at the prevailing market price for such wheat. The sales proceeds less transportation and handling charges will be disbursed as provided by the "Memorandum of Purchase" executed by the producer.

§ 671.164 *Price schedule*—(a) *Rate for No. 1 wheat.* The basic purchase price for No. 1 wheat shall be the applicable support rate established for Georgia and South Carolina as set forth in 1949 C. C. C. Wheat Bulletin 1, Supplement 1.

(b) *Variations for grades.* Rates for other eligible grades shall be determined by subtracting the following discounts from the rate for No. 1 wheat:

Grade:	Cents per bushel
No. 2	1
No. 3	3
No. 4 (by test weight only)	6
No. 5 (by test weight only)	9
Smut-degree basis:	
Light smutty	2
Smutty	6
Garlic-degree basis:	
Light garlicky	2
Garlicky	6

§ 671.165 *Payment.* Payments for wheat purchased will be made and proceeds of ineligible wheat will be remitted by sight draft drawn on CCC by the State PMA office, in accordance with Fiscal Branch, PMA instructions.

Issued this 26th day of May 1949.

[SEAL] HAROLD K. HILL,
Acting Manager,
Commodity Credit Corporation.

Approved:

RALPH S. TRIGG,
President, Commodity Credit Corporation.

[F. R. Doc. 49-4340; Filed, May 31, 1949; 8:54 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

PART 927—MILK IN NEW YORK METROPOLITAN MARKETING AREA

MISCELLANEOUS AMENDMENTS

Pursuant to the provisions of § 927.4 (b) of Order No. 27, as amended (7 CFR, Supps. 927.1 et seq., 14 F. R. 1466), regulating the handling of milk in the New York metropolitan milk marketing area and of the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1001-1011), a public meeting was held at New York, New York, on April 11, 1949 to consider proposals for the amendment of the rules and regulations heretofore issued (11 F. R. 11266; 12 F. R. 457, 3241; 13 F. R. 2709; 14 F. R. 519, 1476) pursuant to said order. Notice of said public meeting was issued on April 4, 1949 and published in the FEDERAL REGISTER on April 9, 1949 (14 F. R. 1713).

After due consideration of the data, views, and arguments presented by interested parties at such public meeting, the rules and regulations as heretofore amended are hereby further amended, subject to the approval of the Secretary of Agriculture,[1] as follows:

1. Amend § 927.101 as follows:

A. In paragraph (h) change the "period" to a "comma" and add the following: "or the mixture from which such products are made."

B. In paragraph (k) change the term "Class II-B" to "Class III" and change the section reference from § 927.4 (c) (5) to § 927.4 (c) (5) (ii).

C. Add new definitions as follows:

(y) "Fluid milk products" means products which meet the definition of milk as set forth in paragraph (e) of this section, but to which are added ingredients other than those derived from milk, such ingredients not to exceed 4 percent. This definition shall not be deemed to include products that are included in other definitions in this section.

[1] See F. R. Doc. 49-4311, *infra.*

(z) "Fluid cream products" means products containing less than 60 percent butterfat which meet the definition of cream as set forth in paragraph (j) of this section, but to which are added ingredients other than those derived from milk, such ingredients not to exceed 4 percent, which products are not subsequently utilized in frozen desserts. This definition shall not be deemed to include products that are included in other definitions in this section.

2. Amend § 927.102 as follows:

A. In paragraph (c) (3) change the words "lowest class price" to "lowest net return."

B. In paragraph (d) add the following: "If such butterfat is pooled butterfat and is received in the form of fluid milk products or fluid cream products, it should be deducted, as far as possible, from Class I–A, or Class II, as the case may be. If such butterfat is nonpooled butterfat and is received in the form of fluid milk products or fluid cream products, it should be deducted pro rata, as far as possible, from Class I–B, Class I–C, or from Class III."

C. In paragraph (d) delete the words "frozen desserts and homogenized mixtures," and delete paragraphs (f) and (g).

D. In paragraphs (k) (2), (s), (u), (w), (x), (z), and (dd) change the words "Class II–A" to "Class II" wherever they appear.

E. In paragraph (l) add the words "or more than 5 percent" after the words "less than 3 percent" wherever they appear.

F. Amend paragraph (m) to read as follows:

(m) Deduct butterfat received in the form of cultured or flavored milk drinks of less than 3 percent or more than 5 percent butterfat from butterfat in cultured or flavored milk drinks of less than 3 percent or more than 5 percent butterfat leaving the plant or in closing inventories at the plant. If such butterfat is pooled butterfat it should be deducted, as far as possible, from butterfat in cultured or flavored milk drinks of less than 3 percent or more than 5 percent butterfat classified as Class II. If such butterfat is nonpooled butterfat, it should be deducted, as far as possible, from butterfat in cultured or flavored milk drinks of less than 3 percent or more than 5 percent butterfat classified as Class III. Deduct remaining butterfat in the opening inventories or received in the form of cultured or flavored milk drinks of less than 3 percent or more than 5 percent from butterfat in products in which the handler claims to have used such butterfat. Deduct any remaining butterfat in opening inventories or received in the form of cultured or flavored milk drinks of less than 3 percent or more than 5 percent butterfat from plant loss and classify it as Class II.

G. In paragraph (q) delete the words "and classified as II–B."

H. In paragraph (x) change the words "Class III cheese" to "other cheese, except those to which the butter-cheese adjustment is applicable."

I. Amend paragraph (y) to read:

(y) Deduct the remaining butterfat in the opening inventories or received in the form of frozen cream pro rata from classes of butterfat leaving the plant or in closing inventories at the plant in cream, except Class II and in Class III cultured or flavored milk drinks.

J. In paragraph (cc) add the words "fluid cream products" after the words "frozen cream," change the term "Class II–A" to "Class II," and change the term "Class III cheese" to "other cheese, except those to which the butter-cheese adjustment is applicable."

K. In paragraph (ee), (ff), (kk) and (ll) add the words "but not more than 5 percent butterfat" after the words "3 percent butterfat or more" wherever they appear.

L. In paragraph (ff) add the following sentence: "Deduct remaining butterfat in the opening inventories or received in the form of cultured or flavored milk drinks containing 3 percent butterfat or more but not more than 5 percent butterfat from products in which the handler claims to have used such butterfat."

M. In paragraph (jj) add the following:

(15) Fluid cream products, 2.5 percent.

N. In paragraph (ll) insert the following sentence just prior to the last sentence: "Deduct remaining butterfat in the opening inventories or received in the form of cultured or flavored milk drinks containing 3 percent butterfat or more but not more than 5 percent butterfat from products in which the handler claims to have used such butterfat."

O. In paragraph (pp) delete the following: "Classification of butterfat deducted pursuant to (q) may be interchanged with the butterfat deducted pursuant to (nn) from the same products covered by (q) or with the classification of butterfat in receipts from dairy farmers classified on the basis of products covered by (q)."

3. Amend § 927.103 as follows:

A. In the section heading change the words "butterfat and skim milk classes" to "butterfat classes and skim milk uses."

B. Delete the sentence just prior to paragraph (a).

C. Delete paragraphs (a) and (b).

D. Amend paragraph (c) (1) by changing the "period" to a "comma" and adding the following: "separately tabulating that part of Class III subject to the butter-cheese adjustment and that part of Class III not subject to the butter-cheese adjusment."

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

(2) Butterfat received in the form of non pooled cream shall be assigned pro rata as far as possible to Class I–B, Class I–C, Class III not subject to the butter-cheese adjustment and Class III subject to the butter-cheese adjustment which have been tabulated pursuant to (1) of this paragraph. Any remaining non pooled butterfat shall be assigned to Class II as far as possible and then to Class I–A.

F. Amend paragraph (d) (1) by changing the "period" to a "comma" and adding the following: "separately tabulating that part of Class III subject to the butter-cheese adjustment and that part of Class III not subject to the butter-cheese adjustment."

G. Amend paragraph (d) (2) to read as follows:

(2) Butterfat received in the form of nonpooled milk, including nonpooled milk from dairy farmers, shall be assigned pro rata as far as possible to Class I–B, Class I–C, Class III not subject to the butter-cheese adjustment and Class III subject to the butter-cheese adjustment which have been tabulated pursuant to (1) of this paragraph. Any remaining nonpooled butterfat shall be assigned to Class II as far as possible and then to Class I–A.

H. Amend paragraph (e) to read as follows:

(e) *Skim milk.* (1) Pooled skim milk (including exempt skim milk) shall be assigned as far as possible to skim milk subject to the fluid skim differential.

(2) Exempt skim milk shall be assigned pro rata to skim milk subject to the fluid skim differential and skim milk not subject to the fluid skim differential.

(3) Pooled skim milk from separate sources may be assigned at the option of the handler or handlers involved to either the skim milk subject to the fluid skim differential or the skim milk not subject to the fluid skim differential after the assignment pursuant to subparagraph (2) of this paragraph.

4. Amend § 927.104 as follows:

A. Change the term "Class II–A" to "Class II" wherever it appears.

B. Change the first sentence to read as follows: "Butterfat or skim milk in closing inventories of milk, fluid milk products, fluid skim milk, cultured or flavored milk drinks, cream, sour cream and fluid cream products may be accounted for and classified by the handler at the time of filing reports in accordance with § 927.6 (a) of the orders in any of the products and classes in which it is intended that butterfat or skim milk in like products be assigned during the next month."

C. Delete the sentence which reads: "Butterfat in opening inventories of plain condensed milk that is allocated to butterfat in closing inventories of plain condensed milk shall be classified as Class II–B."

5. Amend § 927.105 as follows:

A. In the table set forth in paragraph (a) delete the word "salt" after the first word "Butter," delete the words "Butter (unsalted) ____ 82," and the words "Victory-mix ____ 11."

B. In paragraph (c) (3) add the words "or more than 5 percent" after the words "less than 3 percent."

C. In paragraph (c) (5) change the term "Class IV–B cheeses" to "cheeses subject to the butter-cheese adjustment" wherever such term appears.

D. In paragraph (c) (6) change the term "Class III cheeses" to "cheeses other than cream cheese and cheeses subject to the butter-cheese adjustment" wherever the term appears.

E. In paragraph (c) (8) change the words "the sources of such butterfat as a

receipt of milk from producers" to "the place and time of separation."

6. Amend § 927.106 as follows: Change the words "Class III or Class IV–B cheeses" to "cheeses other than cream cheese."

7. Amend § 927.107 as follows:

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

(b) Remaining butterfat received or in the opening inventories in the form of frozen cream which frozen cream was obtained from milk separated in the months of April through September shall be pro rated to uses of butterfat in the form of frozen cream as determined pursuant to § 927.102 (v), (w), (x), (y), (z), and (aa). The total butterfat derived from milk separated in each of the months shall be prorated separately.

B. In paragraph (c) change the words "received from producers" to "separated."

8. Change paragraph and subparagraph numbers as set forth below, and change any references to such paragraphs and subparagraphs in the rules and regulations and in the above tentative amendment to conform with the changed numbers wherever they may appear.

A. Change the paragraphs in § 927.101 as follows: (j) to (i), (k) to (j), (l) to (k), (m) to (l), (n) to (m), (o) to (n), (p) to (o), (q) to (p), (s) to (q), (t) to (r), (u) to (s), (v) to (t), (w) to (u), (x) to (v), (y) to (w), (z) to (x).

B. Change the paragraphs and subparagraph in § 927.102 as follows: (h) to (f), (j) to (g), (k) (1) to (h), (k) (2) to (i), (l) to (j), (m) to (k), (n) to (l), (o) to (m), (p) to (n) (1), (q) to (n) (2), (r) to (o), (s) to (p), (t) to (q), (u) to (r), (v) to (s), (w) to (t), (x) to (u), (y) to (v), (z) to (w), (aa) to (x), (bb) to (y), (cc) to (z), (dd) to (aa), (ee) to (bb), (ff) to (cc), (gg) to (dd), (hh) to (ee), (jj) to (ff), (kk) to (gg), (ll) to (hh), (mm) to (ii), (nn) to (jj), (oo) to (kk), (pp) to (ll).

C. Change the paragraphs in § 927.103 as follows: (c) to (a), (d) to (b), and (e) to (c).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c; 7 CFR 927.4 (b))

Issued this 28th day of April 1949.

C. J. BLANFORD,
Market Administrator, New York Metropolitan Milk Marketing Area.

[F. R. Doc. 49–4316; Filed, May 31, 1949; 8:49 a. m.]

PART 927—MILK IN NEW YORK METROPOLITAN MARKETING AREA

APPROVAL OF AMENDMENT

Pursuant to the provisions of § 927.4 (b) of Order No. 27, as amended (7 CFR, Supps. 927.1 et seq., 14 F. R. 1466), regulating the handling of milk in the New York metropolitan milk marketing area, the tentative amendment issued on April 28, 1949[1] by the market administrator of said Order No. 27, as amended, to the rules and regulations heretofore issued (11 F. R. 11266; 12 F. R. 457, 3241; 13 F. R. 2709; 14 F. R. 519, 1476) pursuant to the provisions of said Order No. 27, as amended, is hereby approved and shall be effective on and after the first day of June, 1949.

Order No. 27, as amended, requires that such rules and regulations, and amendments thereto, become effective on the first day of the month following their approval by the Secretary of Agriculture. The changes effected by this amendment to the rules and regulations do not require substantial or extensive preparation by handlers prior to its effective date. Furthermore, the said tentative amendment, as issued by the market administrator on April 28, 1949, was sent, on or about that date, to all handlers operating pool plants. In these circumstances, the time intervening between the date of approval of the tentative amendment and its effective date affords handlers a reasonable time to prepare for its effective date. It is, therefore, found and determined that June 1, 1949, herein fixed as the effective date for the said amendment, is reasonable and proper in the circumstances and that to defer the effective date of the said amendment to a date 30 days or more after publication in the FEDERAL REGISTER would be impracticable, unnecessary, and contrary to the public interest.

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

Done at Washington, D. C., this 26th day of May 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49–4311; Filed, May 31, 1949; 8:48 a. m.]

[1] F. R. Doc. 49–4316, *supra*.

TITLE 8—ALIENS AND NATIONALITY

Chapter II—Office of Alien Property, Department of Justice

PART 501—GENERAL RULES OF PROCEDURE

PART 511—BLOCKED ASSETS: REGULATIONS ISSUED ORIGINALLY BY THE TREASURY DEPARTMENT

PART 512—BLOCKED ASSETS: REGULATIONS ISSUED BY OFFICE OF ALIEN PROPERTY

MISCELLANEOUS AMENDMENTS

1. Part 501 is hereby amended by amendment of §§ 501.50 (b) and 501.60, as set out below:

§ 501.50 *Licensing.* • • •

(b) Transactions with respect to property over which jurisdiction has been transferred by Executive Order No. 9989, not authorized by general licenses or other public documents, may be effected only under specific licenses. Specific licensing activities are performed by the Foreign Funds Section of the Operations Branch and by the New York Office. Applications for specific licenses may be filed on Treasury Department Form TFE–1 or on such other forms as may from time to time be designated. Application forms may be obtained from the Office of Alien Property, 120 Broadway, New York 5, New York, or Washington, D. C. Applications for specific licenses shall be filed in duplicate with the Office of Alien Property, 120 Broadway, New York 5, New York.

§ 501.60 *Reporting concerning certain property.* All reports, forms, and other communications concerning property over which jurisdiction has been transferred by Executive Order No. 9989, which have been required to be made or filed with the Treasury Department, are on and after October 1, 1948, required to be made or filed with the Office of Alien Property.

2. Part 511 is hereby amended by amendment of §§ 511.205 (b) (3), (c), and (d), 511.211a (d) (2), and 511.320 (h), as set out below:

§ 511.205 *General Ruling No. 5.*
• • •

(b) *Duty of persons bringing or receiving securities.* • • •

(3) Scheduled securities delivered to any individual (whether for himself or for any other person, including any corporation or other organization) in the United States who, at the time he receives such securities has actual knowledge within the meaning of paragraph (a) (3) of this section that they are scheduled securities or who subsequently acquires such knowledge while the securities are still in his possession shall be forwarded by such individual within five (5) days after he acquires such securities or such knowledge, as the case may be, to the Federal Reserve Bank of New York, together with the above-specified statement, in triplicate: *Provided, however,* (i) That the foregoing provision, insofar as it concerns the subsequent acquisition of such knowledge, shall not affect any person who holds such securities as security for any obligation owing to such person; and (ii) that any individual who would otherwise be required by the provisions of this subparagraph to forward securities to the Federal Reserve Bank of New York may return the securities to the person from whom he received them if such person is in the United States. The individual initiating such return shall file a report with the Office of Alien Property, 120 Broadway, New York 5, New York, giving the name and address of the person originally delivering such securities to him, and shall advise the person to whom he returns such securities that they are scheduled securities which should be deposited with the Federal Reserve Bank of New York pursuant to this ruling unless they are returned with a similar notice to a person in the United States from whom they were received. The last person in the United States to whom such securities are returned shall forward them to the Federal Reserve Bank of New York together with the statement in triplicate provided in this paragraph. In case securities are returned under the rules of a securities exchange, an association of securities dealers, or a similar organization, the last person to whom such securities are returned under such pro-

cedure, if he is not the last person to whom such securities are returned hereunder, shall file with the Office of Alien Property, 120 Broadway, New York 5, New York, the above-specified statement in triplicate with respect to his original receipt of the securities in question together with the date on which he returned such securities to the person from whom he received them.

Securities forwarded to the Federal Reserve Bank of New York or returned to the person from whom received, in compliance with this paragraph, shall not be deemed to have been received or held in violation of this general ruling by the person forwarding or returning such securities. Such securities nevertheless shall be subject to all other provisions hereof.

(c) *Duty of persons to whom securities tendered.* Any person to whom scheduled securities are offered or tendered for the purpose of effecting any transaction with respect thereto who refuses to receive or accept delivery thereof having actual knowledge that they are scheduled securities shall file with the Office of Alien Property, 120 Broadway, New York 5, New York, a statement in triplicate setting forth:

(1) His name and address;

(2) A complete description of the securities;

(3) The name and address of the person who offered or tendered such securities and the date thereof; and

(4) The circumstances under which the securities were offered or tendered.

(d) *Disposition of securities delivered to Federal Reserve Bank of New York.* Except as otherwise instructed by the Director, Office of Alien Property, the Federal Reserve Bank of New York shall hold securities which are delivered pursuant to this general ruling until the Director, Office of Alien Property, is satisfied as to their status under the Order. Applications for release of securities so held may be filed with the Office of Alien Property, 120 Broadway, New York 5, New York.

The Federal Reserve Bank of New York shall act only as fiscal agent of the United States under this section, and shall receive and hold securities delivered to it pursuant to this section as such fiscal agent, subject to the further order of the Director, Office of Alien Property.

§ 511.211a *General Ruling No. 11A.* * * *

(d) *Definitions.* * * *

(2) The term "transfer" shall have the meaning prescribed in § 511.212 (e) (1). (General Ruling No. 12)

§ 511.320 *Public Circular No. 20.* * * *

(h) Application for special license authorizing any transaction or series of transactions in connection with any blocked estate, not authorized by § 511.130a of this part, may be made to the Office of Alien Property, 120 Broadway, New York 5, New York, on license application Form TFE-1. Such application should contain a complete statement of all relevant facts, including, as accurately as possible, an inventory of the assets, the names and nationality of all persons who have an interest in, or have made any claim against, the estate, and the probable method of distribution.

3. Part 512 is hereby amended by addition of Subpart D, containing § 512.338, as set out below:

SUBPART D—PUBLIC CIRCULARS

§ 512.338 *Public Circular No. 38*—(a) *Termination of agency of Federal Reserve Bank of New York.* Attention is directed to the fact that at midnight May 31, 1949, the Federal Reserve Bank of New York will cease to act as agent for the Office of Alien Property in its administration of Executive Orders 8389, as amended, and 9389, except, however, that the Federal Reserve Bank of New York will continue to act as custodian for that Office with respect to securities on the list appended to § 511.205 of this chapter as amended (General Ruling No. 5). That section has been further amended to provide that reports required to be filed with the Federal Reserve Bank of New York shall be filed, on and after June 1, 1949, with the Office of Alien Property, 120 Broadway, New York 5, New York, except that reports accompanying securities forwarded to the Federal Reserve Bank of New York shall continue to be filed with that Bank.

(b) *Reports under outstanding licenses or general rulings.* Reports required to be filed with any Federal Reserve Bank pursuant to any outstanding license or general ruling (unless otherwise provided for by General Ruling No. 5, § 511.205 of this chapter), shall, on and after June 1, 1949, be filed with the Office of Alien Property, 120 Broadway, New York 5, New York.

(40 Stat. 411, 55 Stat. 839; 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, 1943 Cum. Supp.; E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp.; E. O. 9788, Oct. 14, 1946, 3 CFR, 1946 Supp.; E. O. 9989, Aug. 20, 1948, 3 CFR, 1948 Supp.)

Executed at Washington, D. C., this 26th day of May 1949.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-4332; Filed, May 31, 1949; 8:51 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Exchange Authority (Including Commodity Exchange Commission), Department of Agriculture

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

POSTING OF REGISTRATION CERTIFICATE

By virtue of the authority vested in the Secretary of Agriculture under the Commodity Exchange Act, as amended (7 U. S. C. 1-17a), § 1.12 (b), Part 1, Title 17, Code of Federal Regulations, as amended November 19, 1938 (17 CFR, Cum. Supp., 1.12 (b)), is hereby further amended as follows:

By inserting "(except an office of another registered futures commission merchant)" after the words "United States" in said § 1.12 (b).

The effect of this amendment will be to eliminate the requirement that registered futures commission merchants post duplicate certificates of registration in offices of agents who are also registered futures commission merchants. Since the amendment will operate to relieve a restriction and will not adversely affect the public, it is hereby found that notice and public procedure under section 4 of the Administrative Procedure Act are unnecessary, and that the amendment should be made effective within less than thirty days after publication in the FEDERAL REGISTER.

This amendment shall become effective upon publication in the FEDERAL REGISTER.

Issued this 26th day of May 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-4344; Filed, May 31, 1949; 8:54 a.m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes

[T. D. 5700]

PART 192—FERMENTED MALT LIQUORS

BREWERY BUILDINGS

1. Section 192.7 of Regulations 18 (26 CFR, Part 192), approved May 20, 1940, relating to fermented malt liquor, is hereby amended as follows:

§ 192.7 *Brewery buildings.* Brewery buildings must be securely constructed of substantial solid materials. If there are buildings, or parts of buildings, used in the conduct of another business (except as authorized by § 192.5) adjoining or constituting a part of the building on the brewery premises, such other buildings, or parts thereof, must be entirely separated from the brewery buildings by substantial, solid, and unbroken walls and floors. A similar separation shall be made in respect to bottling house buildings, where another business is conducted (except as authorized by § 192.6). If beer is conveyed from the brewery to the bottling house by pipe line, the brewery premises must be adjacent or contiguous to the bottling house premises. If the brewery and the bottling house are adjoining, there shall be no interior communication between the two premises, and such premises must be separated by solid and unbroken walls and floors, except for authorized conduits, tunnels, and pipe lines. All such buildings shall be so arranged and constructed as to afford adequate protection to the revenue and facilitate appropriate supervision by Government officers. (Secs. 3157, 3176, I. R. C.)

2. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regula-

tions for the reason that the changes made are of a liberalizing character.

3. The purpose of the amendment of § 192.7 is to liberalize the requirements for the separation of brewery buildings from buildings used for other purposes to the extent of deleting the provision for separation from the ground to the roof in a direct, vertical line. This amendment prescribes entire separation in such cases by substantial solid, and unbroken walls and floors.

4. This Treasury decision shall be effective immediately.

5. This Treasury decision is issued under the authority contained in sections 3157, 3176, Internal Revenue Code (26 U. S. C., 3157 and 3176).

(53 Stat. 370, 375; 26 U. S. C. 3157, 3176)

[SEAL] GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved: May 24, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

[F. R. Doc. 49-4334; Filed, May 31, 1949; 8:52 a. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury

PART 11—CUSTOMHOUSE BROKERS

BOOKS AND PAPERS

1. Section 11.8 (b) (6) (as amended by Dept. Circ. 559, September 27, 1939; 4 F. R. 4170) is hereby further amended.

2. The purpose of this amendment is to retain the requirement that a customhouse broker give notice of change of address to the collector of customs and the Committee on Practice but to eliminate the requirement that the broker also give notice to the Commissioner of Customs.

3. It is found that compliance with the notice, public rule-making procedure and effective date requirements of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) is unnecessary in connection with the issuance of this amendment for the reason that the change in effect grants an exemption or relieves a restriction.

§ 11.8 *Books and papers.* * * *

(b) *Requirements.* * * *

(6) All of the books and papers required by the foregoing provisions of this section shall be kept on file for at least 5 years and maintained in such manner that they may readily be examined. Any or all of such books and papers shall be made available to duly accredited agents of the United States on demand therefor within 5 years after their preparation or receipt by the broker, or within such longer period of time during which they remain in the possession of the broker. Each licensed customhouse broker shall advise the collector of customs at the headquarters port in each district in which his license is held, and the Committee, of each change of his business address. The broker shall also furnish such additional information regarding his activities as a licensed customhouse broker as such agents may require.

4. This amendment shall take effect on the date of its publication in the FEDERAL REGISTER.

(Sec. 641, 46 Stat. 759, as amended; 19 U. S. C. 1641)

[SEAL] E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 49-4319; Filed, May 31, 1949; 8:49 a. m.]

TITLE 34—NATIONAL MILITARY ESTABLISHMENT

Chapter V—Department of the Army

JOINT PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS

The Joint Procurement Regulations, formerly published as Parts 801 to 813, inclusive of Chapter VIII, Title 10, are amended by revision of §§ 802.108-3, 803.102 through 803.102-7, and 805.704, and by adding new §§ 809.604 (i) and 809.1202-45, as follows:

§ 802.108-3 *Department of the Air Force.* Policies and procedures to be followed with respect to the USAF disqualified bidders list are set forth in AFR 70-8. Restrictions imposed by JAAF Procurement Circular 29, 1948, as amended, and any future amendments, as pertain to Walsh-Healey and Davis Bacon Act violators, will continue to be observed by Department of the Air Force procurement activities until a new Air Force regulation is issued on this subject.

§ 803.102 *Specifications.*

§ 803.102-1 *In general.* Every item on an invitation for bids will be described by referencing the applicable specifications or, in lieu thereof, will contain a description as prescribed in § 803.102-4.

§ 803.102-2 *Specifications authorized for procurement.* The following type of specifications are authorized for procurement:

(a) Federal specifications;
(b) NME specifications;
(c) Air Force Navy Aeronautical specifications;
(d) United States Army specifications;
(e) United States Air Force specifications;
(f) Navy specifications;
(g) Tentative specifications;
(h) Other Government departmental specifications.

§ 803.102-3 *Use of tentative specifications.* (a) Tentative specifications are authorized for purchase of items, materials, processes, or services as follows:

(1) Those required for research and development projects, including experimental, engineering, service, and field tests, provided the technical and quantity requirements of the items are approved for these purposes by appropriate technical committee action;

(2) Those required for the current military procurement program, provided the applicable tentative specification is actually in process of conversion to an NME or Federal specification;

(3) Those required for components, spare parts, or materials required for maintenance of existing stocks of matériel.

(b) Requests for authority to use tentative specifications for purposes other than those listed above will be made to the Director of Logistics, General Staff, United States Army (Attention: Standards Branch, Procurement Group), in the case of the Army, and the Commanding General Air Matériel Command, in the case of the Air Force, and will fully justify the necessity for making an exception. Normally, approval will be given only for purchases required to meet emergency or special requirements.

§ 803.102-4 *Description in lieu of specifications*—(1) *Spare parts.* The use of purchase descriptions in lieu of specifications is authorized for procurement of spare parts necessary for the maintenance of existing stocks of matériel.

(2) *Supplies other than spare parts.* If the item required is not covered by an authorized specification, and preparation of a specification is not justified, a drawing or a description containing all of the essential requirements to be met by the article will be used instead. If, because of technically involved construction, or other sufficient reasons, such description cannot be made, the name of one or more makes of the item, including the words "or equal," will be specified so as not to limit competition to the particular makes named. This action is authorized as an expedient only, and is not considered normal procedure. Repeated use of this practice for the purchase of any item indicates a need for a specification and will be reported to Director of Logistics Division, General Staff, United States Army (Attention: Standards Branch, Procurement Group), in the case of the Army, and the Commanding General Air Matériel Command, in the case of the Air Force.

§ 803.102-5 *Supply of specifications to activities outside the Government.* A liberal attitude will be taken in complying with requests for specifications from prospective bidders and possible manufacturers of supplies, whether for the purpose of broadening the peacetime market or for establishing new sources of supply in case of emergency.

§ 803.102-6 *Options permitted by specifications.* Many adopted specifications cover several grades or types and provide for several options in methods of inspections, etc. When such specifications are used in conformity with § 803.102-2, the invitation will state specifically the grade, type, or method of inspection, etc., on which bids are to be based.

§ 803.102-7 *Samples, cuts, catalog descriptions, etc.* In special cases, it may be necessary to require bidders to submit samples, cuts, catalog descriptions, etc., with their bids. Such requirement will not be included unless necessary for proper evaluation.

§ 805.704 *Limitation on purchase and maintenance of motor vehicles or aircraft.* Section 16 of the act approved August 2, 1946 (60 Stat. 810; 5 U. S. C. 78) includes definite restrictions on the purchase of passenger motor vehicles (exclusive of busses, ambulances, and station wagons) or aircraft, and their maintenance, operation, and repair. Since such restrictions also cover matters other than purchase, the restrictions and prescribed procedures to be followed, including the certificate to be placed on procuring instruments, are published from time to time in Special Regulations and Air Force Regulations. (Within the Army, see SR 700–105–5; within the Air Force, see AFR 77–3.)

§ 809.604 *Interpretations not found in publications furnished contracting officers.* * * *

(i) The Department of Labor under date of April 1, 1949, has amended the second paragraph of article 103 (Overtime) on page 55 of Rulings and Interpretations No. 3 to read as follows:

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate received by the employee. The basic hourly rate shall be the quotient obtained by dividing the total compensation for the workweek, less overtime premium, by the total number of hours worked for which such compensation is paid.

§ 809.1202–45 *Woolen and worsted industry.* The woolen and worsted industry is defined as follows:

(a) The manufacturing or processing of all yarns (other than carpet yarns) spun entirely from wool or animal fiber (other than silk); and all processes preparatory thereto.

(b) The manufacturing, dyeing, or other finishing of fabrics and blankets (other than carpets, rugs, and pile fabrics) woven from yarns spun entirely of wool or animal fiber (other than silk).

(c) The manufacturing, dyeing, or other finishing of fulled suitings, coatings, topcoatings, and overcoatings knit from yarns spun entirely of wool or animal fiber (other than silk).

(d) The picking of rags and clips made entirely from wool or animal fiber (other than silk), and the garnetting of wool or animal fiber (other than silk) from rags, clips, or mill waste; and other processes related thereto.

(e) The manufacturing of batting, wadding, or filling made entirely of wool or animal fiber (other than silk).

(f) The manufacturing or processing of all yarns (other than carpet yarns) spun from wool or animal fiber (other than silk) in combination with cotton, silk, flax, jute, or any synthetic fiber; except the manufacturing or processing on systems other than the woolen system of yarns containing not more than 45 percent by weight of wool or animal fiber (other than silk) in combination with cotton, silk, flax, jute, or any synthetic fiber.

(g) The manufacturing, dyeing, or other finishing of the products enumerated in paragraphs (b), (c), (d), and (e) of this section from wool or animal fiber (other than silk) in combination with cotton, silk, flax, jute, or any synthetic fiber; except products containing not more than 25 percent by weight of wool or animal fiber (other than silk), with a margin of tolerance of 2 percent to meet the exigencies of manufacture.

Date effective: May 14, 1949.

Wage: $1.05 an hour of $42 for a week of 40 hours, arrived at on a time or piecework basis.

Learners and beginners (those with less than 320 hours' experience in the industry) may be paid subminimum rate unless experienced workers in the same plant and occupation are paid on a piecework basis, in which case learners and beginners will be paid the same rate if such rate earns more than the subminimum rate.

Wage for learners and beginners. 90 cents an hour or $36 per week of 40 hours arrived at on a time basis or the piecework rates if earnings based on such rates exceed 90 cents per hour.

[Proc. Cir. 13, 1949] (Pub. Law 413, 80th Cong.)

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

[F. R. Doc. 49–4318; Filed, May 31, 1949; 8:49 a. m.]

TITLE 36—PARKS, FORESTS, AND MEMORIALS

Chapter III—Corps of Engineers, Department of the Army

PART 311—PUBLIC USE OF CERTAIN RESERVOIR AREAS

FORT PECK RESERVOIR AREA, MISSOURI RIVER, MONTANA

The Secretary of the Army having determined that the use of the Fort Peck Reservoir Area, Missouri River, Montana, by the general public for boating, swimming, bathing, fishing and other recreational purposes will not be contrary to the public interest and will not be inconsistent with the operation and maintenance of the reservoir for its primary purposes, hereby prescribes rules and regulations pursuant to the provisions of section 4 of the act of Congress approved December 22, 1944 (58 Stat. 889) as amended by the Flood Control Act of 1946 (60 Stat. 641) for the public use of Fort Peck Reservoir Area, Missouri River, Montana, by amending §§ 311.1, 311.6 and 311.8 and by adding §§ 311.17 and 311.18, as follows:

§ 311.1 *Areas covered.* * * *

(v) Fort Peck Reservoir Area, Missouri River, Montana.

§ 311.6 *Hunting and fishing.* * * *

(b) Hunting shall be with shotgun only in any reservoir area listed in § 311.1 except for the following reservoir areas on which hunting of deer with rifles is also permitted:

* * * * * *

(3) Fort Peck Reservoir Area, Missouri River, Montana.

§ 311.8 *Picknicking.* (a) Picknicking is permitted, except in prohibited areas designated by the District Engineer or his authorized representative, in any reservoir area listed in § 311.1 except for the following reservoir areas in which picknicking is prohibited in all areas not specifically designated by the District Engineer for picknicking:

(1) Fort Peck Reservoir Area, Missouri River, Montana.

§ 311.17 *Dogs.* (a) Dogs are not permitted in any of the following reservoir areas unless on a leash, in a pen, or under complete control of the owner or manager.

(1) Fort Peck Reservoir Area, Missouri River, Montana.

§ 311.18 *Recreational activity programs.* (a) Special events such as water carnivals, boat regattas, music festivals, dramatic presentations, or other special recreational programs of interest to the general public are permitted in areas designated by the District Engineer or his authorized representative.

(b) A permit shall be obtained from the District Engineer or his authorized representative by the governmental or legally responsible private agency proposing to hold a special recreation program as indicated in this section. No charge will be made for this permit.

(c) The District Engineer in charge of the area shall have authority to revoke any permit granted under this section and to require the removal of any equipment upon failure of the permittee to comply with the terms and conditions of the permit or with the regulations in this part.

[Regs. May 12, 1949 ENGWF] (Sec. 4 58 Stat. 889, as amended; 16 U. S. C. 460d)

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

[F. R. Doc. 49–4317; Filed, May 31, 1949; 8:49 a. m.]

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Federal Security Agency

PART 21—COMMISSIONED OFFICERS

SUBPART Q—FOREIGN SERVICE ALLOWANCES

Effective June 1, 1949, Appendix A (14 F. R. 2242) is revised to read as follows:

FOREIGN SERVICE ALLOWANCE RATES

OFFICERS

Class I

Station			Travel
Subsistence	Quarters	Total	
None	None	None	$7.00

NOTE: The above allowances are applicable to all countries and places outside the continental United States not otherwise listed herein.

Class II

$2.55	$2.50	$5.05	$8.00

Aquadulce, Panama.
Argentina.
Colombia (except Bogota).
Czechoslovakia.
Island of Cyprus.
Luxemburg.

FOREIGN SERVICE ALLOWANCE RATES—Con.

OFFICERS—continued

Class III

Station			Travel
Subsistence	Quarters	Total	
$2.55	$3.75	$6.30	$9.00

China (including Hong Kong). Hungary.

Class IV

$3.00	$0.75	$3.75	$7.00

Bolivia.
Brazil (except Rio de Janeiro, Sao Paulo and Recife).
Chile (except Punta Arenas).
Costa Rico.
Cuba (except Havana).
El Salvador.
Equador.
Guatemala.
Honduras.
Korea.
Morocco.
Nicaragua.
Paraguay.
Peru.
Surinum.

Class V

$3.00	$1.00	$4.00	$7.00

Aghanistan.
Algeria.
Bermuda.
Denmark.
Ethiopia.
Finland.
Irish Free State.
Italy (except Rome and Naples).
Liberia (except Monrovia).
Netherlands.
Norway.
Recife, Brazil.
Spain.
Trieste (free city of).
Tunisia.
Union of South Africa.
Uruguay.

Class VI

$3.75	$0.75	$4.50	$7.25

Burma (except Rangoon).

Class VII

$3.75	$1.00	$4.75	$8.00

Great Britain and Northern Ireland (except London).
Mexico.
Portugal.

Class VIII

$3.75	$1.50	$5.25	$8.00

Ceylon.
Dominican Republic.
Egypt (except Cairo).
French Indo-China.
Siam.

Class IX

$3.75	$2.00	$5.75	$9.00

Alaska.
Belgium.
Bogota, Colombia.
Bulgaria.
Sweden.

Class X

$3.75	$3.00	$6.75	$10.00

Cairo, Egypt.
London.
Philippine Islands.
Switzerland.

Class XI

$3.75	$4.00	$7.75	$11.00

Netherlands, East Indies. Turkey.

Class XII

$4.50	$1.50	$6.00	$9.00

India.
Pakistan (except Karachi).
Syria.

FOREIGN SERVICE ALLOWANCE RATES—Con.

OFFICERS—continued

Class XIII

Station			Travel
Subsistence	Quarters	Total	
$5.25	$1.75	$7.00	$10.00

Iraq.
Monrovia, Liberia.
Naples, Italy.
Rome, Italy.
Saudi Arabia.

Class XIV

$6.00	$1.50	$7.50	$10.00

Havana, Cuba.
Karachi, Pakistan.
Malayan Union.
Rangoon, Burma.
Republic of Lebanon.
Singapore.

Class XV

$7.50	$3.50	$11.00	$15.00

None.

Class XVI

$6.00	$3.00	$9.00	$12.00

Iceland.
Yugoslavia.
Rumania.

Class XVII

None	$1.75	$1.75	$7.00

Australia.
Iran.
New Zealand.

Class XVIII

$3.00	None	$3.00	$7.00

France (except Paris and Orly Field).

Class XIX

$4.50	$0.50	$5.00	$10.00

Paris and Orly Field, France.

Class XX

$3.75	$2.00	$5.75	$10.00

None.

Special Classification

$7.00	$6.00	$13.00	$15.00

Palestine.
State of Israel.
Transjordan.

NOTE: Effective as of June 1, 1948. Maximum travel allowance is payable without regard to length of time as long as in a travel status. (See § 21.356 (f).)

$9.00	$5.00	$14.00	$18.00

Union of Soviet Socialist Republics.

$4.50	$2.50	$7.00	$7.00

Canton Island. Wake Island.

$8.25	$3.75	$12.00	$12.00

Greece (personnel not in receipt of diplomatic exchange rate).

NOTE: Greece (personnel in receipt of diplomatic exchange rate, allowances prescribed in Class I applicable).

$5.25	$3.75	$9.00	$9.00

Punta Arenas, Chile.

FOREIGN SERVICE ALLOWANCE RATES—Con.

OFFICERS—continued

Special Classification—Continued

Station			Travel
Subsistence	Quarters	Total	
$6.75	$3.25	$10.00	$11.00

Poland (personnel not in receipt of diplomatic exchange rate).

NOTE: Poland (personnel in receipt of diplomatic exchange rate, allowances prescribed in Class I applicable).

$3.75	$3.25	$7.00	$7.00

Bahrein Island, Persian Gulf.

$3.75	$4.75	$8.50	$8.50

Rio de Janeiro, Brazil. Sao Paulo, Brazil.

$6.75	$5.25	$12.00	$15.00

Venezuela.

Dated: May 23, 1949.

[SEAL] LEONARD A. SCHEELE,
Surgeon General.

Approved: May 24, 1949.

J. DONALD KINGSLEY,
Acting Federal Security Administrator.

[F. R. Doc. 49-4310; Filed, May 31, 1949; 8:47 a. m.]

TITLE 46—SHIPPING

Chapter II—United States Maritime Commission

[General Order 70]

PART 243—COMMERCIAL FORWARDING OF CERTAIN EXPORTS FOR FOREIGN RELIEF AND REHABILITATION

Whereas, the Commission having published in the FEDERAL REGISTER issue of May 4, 1949 (14 F. R. 2204), a notice of proposed rules as hereinafter set forth, constituting a revision of Part 243 of Title 46, Code of Federal Regulations, to become effective on June 6, 1949, unless modified by the Commission in the meantime; and

Whereas, the sixteen-day period provided in said publication for the submission to the Commission of written data, views, or arguments relative to the proposed rules having expired, and none having been received objecting to the proposed rules or which would require any change in the wording thereof, Now therefore, *It is hereby ordered*, That:

Part 243, Commercial Forwarding of Certain Exports for Foreign Relief and Rehabilitation, be revised to read as follows:

Sec.
243.1 Finding of the Commission.
243.2 Regulations.
243.3 Registration.

AUTHORITY: §§ 243.1 to 243.3 issued under 56 Stat. 171; 46 U. S. C. 1127.

§ 243.1 *Finding of the Commission.* The Commission finds that it is appropri-

ate in the public interest that cargoes exported pursuant to the Foreign Assistance Act of 1948 and other statutes providing for the relief and rehabilitation of Foreign countries, shall be forwarded through the facilities of private freight forwarders, in accordance with the rules set forth in this part.

§ 243.2 *Regulations.* (a) Pursuant to § 243.1, the following regulations are published and shall be applicable to all public and private agencies and persons engaged in the procurement, shipment, transportation and storage of all products supplied and shipped abroad from the United States pursuant to the aforementioned Foreign Assistance Act of 1948 and other foreign relief and rehabilitation statutes.

(b) *Use of private freight forwarders.* The aforementioned agencies and persons shall use the services of private freight forwarders for the forwarding of such supplies in accordance with ordinary commercial practice, except where emergency conditions make such use impossible.

(c) *Selection from list of registrants.* The agencies and persons concerned shall select freight forwarders to forward such export cargoes only from lists of forwarders heretofore or hereafter prepared by the Maritime Commission. Such listing merely indicates registration and docs not indicate approval or recommendation of the individual forwarders listed by the Commission.

(d) *Brokerage and forwarding fees; restrictions.* No person (which term includes individuals, partnerships, corporations and associations) shall collect brokerage or forwarding fees for forwarding service to any cargoes shipped pursuant to the Foreign Assistance Act of 1948, or other foreign relief and rehabilitation statutes, in which he has any beneficial interest, direct or indirect, or for which he shall receive, directly or indirectly, freight charges for services as a carrier. A person shall be deemed to have a beneficial interest in a cargo if such person or any stockholder, owner, officer or employee thereof shall own, or have any financial or proprietary interest in the cargo or any part thereof.

(e) *Foreign-owned forwarders.* Any person (as above defined) engaged in freight forwarding not a citizen of the United States within the definition of citizen of the United States contained in U. S. Code, Title 46, section 802, shall be designated as a "foreign owned" freight forwarder. Foreign owned freight forwarders shall not receive or collect brokerage or forwarding fees on cargoes shipped pursuant to the Foreign Assistance Act of 1948, and other relief and rehabilitation statutes, to any country receiving assistance under such statutes, aggregating in any period of three successive calendar months a larger percentage of the forwarder's gross revenues received for forwarding services during such period than the percentage represented by the ratio between the forwarder's gross revenues from forwarding shipments to the same country and his gross revenues from forwarding to all countries received during the year ended March 31, 1948. Foreign owned freight forwarders who, or whose predecessors, were established in the United States subsequent to September 3, 1939 shall not be permitted to service cargoes shipped under the Foreign Assistance Act of 1948, and other relief and rehabilitation cargoes and shall not be paid brokerage or other forwarding fees for services to such cargo.

Example: Between September 3, 1938 and September 3, 1939, a foreign-owned forwarder received $1,000 in fees and brokerage on cargo forwarded to Belgium, and his gross revenues during the same period from all forwarding services was $10,000. The ratio is 10%. He may not hereafter, during any three-month period, receive more than 10% of his gross income during such period on relief cargo forwarded to Belgium.

(f) *Sharing of compensation; restrictions.* No forwarder shall share any part of his compensation derived from the forwarding of relief cargoes, with any foreign government, or with any person, corporation or association directly or indirectly representing any such foreign government.

(g) *Compensation governed by commercial practices.* Compensation of freight forwarders for E. C. A. shipments moving through normal commercial channels shall be in accordance with the usual commercial practices in the ports involved.

(h) *Sanctions.* Any forwarder who fails to comply with the foregoing regulations, or who fails to submit the information required by the Commission, or who submits false or misleading information shall be refused listing or stricken from the list of eligible forwarders.

§ 243.3 *Registration.* (a) Pursuant to section 217 of the Merchant Marine Act of 1936, as amended, the Commission finds that it is necessary and appropriate in the public interest that all freight forwarders desiring to have their names included in the lists of forwarders eligible to forward cargoes exported pursuant to the Foreign Assistance Act of 1948 and other statutes providing for the relief and rehabilitation of foreign countries shall notify the Commission of their desire to participate in the forwarding of such cargoes, and shall furnish under oath to the Commission the following information called for by items (1) to (11) inclusive and shall make the certifications under oath, called for by item (12). The Commission may at any time call for additional information.

(1) Name: (i) Whether corporaton, partnership or individual ownership.

(ii) Address of main office.

(iii) Addresses of any branch offices in the United States and name under which each office is operated.

(iv) Date established under above name or any other name.

(v) Names and citizenship of principal stockholders, owners or officers.

(2) Number of employees in each office handling foreign freight forwarding work and matters immediately relating thereto.

(3) Average number of bills of lading and average tonnage forwarded abroad per month by each office during October, November and December 1947.

(4) Gross income during October, November and December 1947 from forwarding of export freight, indicating amounts derived from forwarding fees and amounts derived from brokerage.

(5) Do you specialize in forwarding particular commodities?

(i) If so, what commodities?

(6) Do you specialize in forwarding in particular trades or to particular destinations?

(i) If so, what trades and destinations?

(7) What experience have you had in forwarding of Government cargoes?

(8) Any special or additional facts you consider relevant to this application.

(9) Is the stock or other indices of ownership of the registrant forwarder directly or indirectly beneficially owned by persons not citizens of the United States? If so, to what extent?

(10) Is the registrant corporation, partnership or association a citizen of the United States as defined by U. S. Code, Title 46, section 802?

(11) If the answer to question 10 is in the negative, the forwarder shall furnish the Commission a statement of its total gross revenue from forwarding received during the period from September 3, 1939 to September 3, 1939 and a statement of its gross revenues received from forwarding cargoes shipped during that period to each of the nations receiving aid under the Foreign Assistance Act of 1948 and other relief and rehabilitation statutes. Foreign owned freight forwarders shall also submit every three months a statement of their gross revenues received during that period and the total gross revenues received from forwarding cargoes to each of the nations receiving aid under the aforementioned statutes, which cargoes were directly or indirectly paid for by funds furnished pursuant to the aforementioned statutes; such statement shall be furnished not later than the 15th day of January, April, July and October for the preceding 3 calendar months.

(12) Every freight forwarder who registers hereunder shall be required to execute the following certification:

(i) No stockholder, owner, officer or employee of the registrant's firm has or shall have, to the best of the registrant's knowledge, information and belief, any beneficial interest direct or indirect in any cargoes shipped pursuant to the Foreign Assistance Act of 1948 or other relief and rehabilitation statutes upon which brokerage or forwarding fees are or shall be collected.

(ii) No forwarding fees or brokerage shall be collected by the undersigned forwarder on any cargoes on which any stockholder, owner, officer or employee is known to have any beneficial interest direct or indirect, or on any cargoes on which the forwarder or any stockholder, owner, officer or employee shall receive reimbursement for services as a carrier.

(b) Before registering any forwarder under this section, the Commission will

request written clearance of such forwarder by the Office of International Trade, U. S. Department of Commerce, stating that such Office knows of no reason why such forwarder should not be registered as eligible to forward foreign relief cargoes exported pursuant to the Foreign Assistance Act of 1948, or other statutes providing for the relief and rehabilitation of foreign countries.

Effective date. Sections 243.1, 243.2 and 243.3 shall become effective 12:01 a. m., e. s. t., June 6, 1949.

Dated: May 26, 1949.

By the Commission.

[SEAL] A. J. WILLIAMS, *Secretary.*

[F. R. Doc. 49-4345; Filed, May 31, 1949; 8:54 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Bureau of Internal Revenue

[26 CFR, Part 184]

PRODUCTION OF BRANDY

TAX-PAID AND TAX-FREE SAMPLES

A 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. Prior to the 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 Commissioner of Internal Revenue, Washington 25, D. C., within the period of 30 days from the date of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority of sections 3037 and 3176, Internal Revenue Code (26 U. S. C., sections 3037 and 3176), and are to be effective on the 31st day following the date of publication thereof as a Treasury decision in the FEDERAL REGISTER.

[SEAL] GEO. J. SCHOENEMAN, *Commissioner of Internal Revenue.*

1. Sections 184.255, 184.256, 184.257, 184.258, 184.259, 184.260, 184.261, 184.262, 184.263 and 184.264 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, relating to the production of brandy, are amended and paragraph (l–1) is added to § 184.3 as follows:

§ 184.3 *Definitions.* • • •

(l–1) "Laboratory analysis" shall mean the determination of the composition of brandy or fruit spirits by chemical, physical, or organoleptic examination.

• • • • •

TAX-FREE SAMPLES FOR LABORATORY ANALYSIS

§ 184.255 *Unfinished spirits.* Upon approval by the storekeeper-gauger in charge at the distillery, or by the district supervisor when no storekeeper-gauger is assigned to the distillery, of an application submitted in accordance with the provisions of § 184.259, the distiller may remove for laboratory analysis samples of brandy or fruit spirits in the course of distillation and prior to the deposit in receiving tanks, as follows:

(a) Samples, not exceeding three in number and three pints in the aggregate, of the product of each still in a distilling unit in each 24-hour period;

(b) Where a discontinuous or batch still is operated, samples, not exceeding three in number and three pints in the aggregate, of the product of each batch distilled;

(c) Where the distiller desires to obtain spot-samples from various plates of a still in the course of distilling a day's production, one sample, not exceeding one pint, from each of the various plates.

The size and number of samples must be restricted to the minimum necessary for the purpose for which intended. The withdrawal of tax-free samples of unfinished spirits in excess of these limitations for laboratory analysis shall not be permitted, unless it is shown that such samples are insufficient and the Commissioner, upon receipt of a written application filed in accordance with the provisions of § 184.259 (c), authorizes the taking of additional samples. (Secs. 3037 and 3176, I. R. C.)

§ 184.256 *Finished spirits.* Upon approval by the storekeeper-gauger in charge at the distillery, or by the district supervisor when no storekeeper-gauger is assigned to the distillery, of a written application filed in accordance with the provisions of § 184.259, the distiller may remove for laboratory analysis samples of brandy or fruit spirits from tanks in the receiving room and tanks or packages in the brandy deposit room. Such samples shall not exceed: (a) One quart, in the aggregate, in any 24-hour period from any receiving tank; (b) one quart from any filling of a tank in the brandy deposit room; and (c) one pint from any package stored in the brandy deposit room: *Provided,* That when a receiving tank is filled and emptied and filled again in the same 24-hour period, samples, not to exceed one quart in the aggregate, may be taken from each filling of such receiving tank. The size and number of samples must be restricted to the minimum necessary for the purpose for which intended. The withdrawal in excess of these limitations of tax-free samples of brandy or fruit spirits for laboratory analysis shall not be permitted unless it is shown that such samples are insufficient for the purpose intended and the Commissioner, upon receipt of a written application filed in accordance with the provisions of § 184.259 (c), authorizes the taking of additional samples. (Secs. 3037 and 3176, I. R. C.)

§ 184.257 *Disposition of samples.* Tax-free samples must be used solely for laboratory analysis. Such samples may not be furnished to salesmen and dealers for advertising or soliciting purposes. Where brandy or fruit spirits are sold subject to approval as to quality, a sample taken pursuant to the provisions of §§ 184.256, 184.259, 184.260, 184.261 and 184.262 may be furnished the purchaser. Remnants or residues of tax-free samples remaining after analysis and which are not desired to be retained as laboratory specimens or for further analysis or examination should be returned to the vessels in the distilling system, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are unsuitable for return to the distilling system, they should be destroyed. (Secs. 3037 and 3176, I. R. C.)

TAX-PAID SAMPLES FOR OTHER THAN LABORATORY ANALYSIS

§ 184.258 *Unfinished and finished spirits.* Upon approval by the storekeeper-gauger in charge at the distillery of an application submitted in accordance with the provisions of § 184.259 (a), the distiller may take samples of brandy or fruit spirits in the distillery, either in the course of distillation or from the receiving tanks, for other than laboratory analysis, subject to payment of tax on the quantity so removed. Such samples must be used strictly for sample purposes, and the number and size of the samples must be restricted to that necessary for bona fide sample purposes. (Secs. 3037 and 3176, I. R. C.)

GENERAL REQUIREMENTS

§ 184.259 *Application—(a) To the storekeeper-gauger in charge.* When the distiller desires samples of brandy or fruit spirits which, under the provisions of §§ 184.255, 184.256, and 184.258, may be authorized by a storekeeper-gauger and one is assigned to the premises, application, in triplicate, shall be submitted to that officer. The application shall be given a serial number beginning with "1" for the first application and running consecutively thereafter. The application should specify whether the samples are desired for laboratory analysis tax-free or for other purposes subject to payment of tax, the reasons why the samples are desired, the number and size of the samples to be taken, and the place or places of removal. Where it is desired to take samples from the distillery regularly for laboratory analysis, except spot-samples from the plates of a still, the application may be made for that purpose. Where spot-samples from the plates of a still or samples subject to payment of tax are desired, the application shall be submitted each day such samples are to be procured. No samples may be taken until the application is approved.

(b) *To the district supervisor.* When similar samples are desired and no storekeeper-gauger is assigned to the premises, the distiller shall make application, in triplicate, to the district supervisor. The application shall be given a serial number within the series prescribed in paragraph (a) of this section and shall show the information required therein. No samples may be taken until the application is approved.

(c) *To the Commissioner.* When the distiller desires samples other than those which, under the provisions of §§ 184.255, 184.256, and 184.258, may be authorized by the storekeeper-gauger he shall make application, in quadruplicate, through the district supervisor, to the Commissioner. The application shall be given a serial number within the series prescribed in paragraph (a) of this section and shall show the information required therein. The application must show the necessity for samples in number or quantities in excess of those which may be authorized by the storekeeper-gauger. The district supervisor shall satisfy himself as to the need for samples, note his recommendations on each copy of the application and forward all copies to the Commissioner. No sample may be taken until the application is approved. (Secs. 3037 and 3173, I. R. C.)

§ 184.260 *Approval of application—*(a) *By the storekeeper-gauger in charge at the distillery.* Upon receipt of an application submitted in accordance with the provisions of § 184.259 (a), the storekeeper-gauger must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application. The storekeeper-gauger, upon approval or disapproval of an application, shall return one copy to the distiller, forward one copy to the district supervisor, and retain the original copy in his office.

(b) *By the district supervisor.* Upon receipt of an application submitted in accordance with the provisions of § 184.259 (b), the district supervisor must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application, and shall note upon each copy his approval or disapproval. If the application is approved he shall file a copy and furnish the original and remaining copy to the Government officer assigned to supervise the withdrawal of the samples. At the time samples are withdrawn the Government officer shall file the original copy of the application at the distillery and furnish the distiller the remaining copy. If the application is disapproved, the district supervisor shall file the orginal copy and return the remaining copies to the distiller.

(c) *By the Commissioner.* Upon approval or disapproval of an application by the Commissioner, the original and two copies shall be returned to the district supervisor. If the application is approved, the district supervisor shall file a copy and furnish the original and remaining copy to the Government officer assigned to supervise the withdrawal of the samples. At the time samples are withdrawn, the Government officer shall file the original copy of the application at the distillery and furnish the distiller the remaining copy. If the application is disapproved, the district supervisor shall file the original copy and return the remaining copies to the distiller. (Secs. 3037 and 3176, I. R. C.)

§ 184.261 *Removal under supervision.* All samples must be taken under the immediate supervision of the storekeeper-gauger assigned to the distillery or a Government officer assigned to supervise the removal of such samples. When there is no Government officer assigned to the distillery and the application is transmitted to the district supervisor pursuant to the provisions of § 182.259 (b), the district supervisor shall authorize the taking of the samples at such time as officers visit the distillery to gauge brandy, make inspections, etc., unless in his opinion, the circumstances are such as to warrant the detailing of an officer especially to permit the distiller to obtain samples. (Sec. 3037 and 3176, I. R. C.)

§ 184.262 *Label.* At the time of the withdrawal of a sample the proprietor shall prepare a label and a copy thereof. The label and the copy shall be prepared on paper having dimensions of 3″ x 5″. The proprietor shall show on the label and on the copy, in the order listed and upon separate lines, the following information:

(a) The word "Sample";

(b) The serial number of the approved application covering the withdrawal of the sample;

(c) The kind of spirits;

(d) The place from which the sample was removed;

(e) The name of the distiller followed by the registered number of the distillery and the name of the State in which located;

(f) A statement showing the purpose for which the sample is intended;

(g) The size of the sample and the quantity in proof gallons extended to the fourth decimal place.

Upon completion, the label and the copy shall be presented to the storekeeper-gauger, who shall verify the accuracy of the data thereon, date and sign both copies, and supervise the affixing of the label to the sample container. Where the label is to be placed upon a container of a sample taken subject to payment of tax for other than laboratory purposes, the storekeeper-guager shall write upon the label and the copy the words "subject to taxpayment." The distiller shall not be required to affix red strip stamps to containers of taxable samples of brandy. The copy of the label shall be filed by the storekeeper-gauger in accordance with the provisions of § 184.263. (Secs. 3037 and 3176, I. R. C.)

§ 184.263 *Office record.* The proprietor shall furnish sufficient 3 x 5 file cases for the filing and retention of sample records. The copy of labels shall be kept by the storekeeper-gauger as a record of samples removed, and shall be filed numerically by application number and chronologically by date. If the distiller operates an internal revenue bonded warehouse on or contiguous to the distillery premises, the record of samples removed from the distillery shall be maintained separately from the record of samples removed from the warehouse. (Secs. 3037 and 3176, I. R. C.)

§ 184.264 *Report of taxable samples.* Each day taxable samples of brandy or fruit spirits are withdrawn, the storekeeper-gauger shall enter on Form 1615, "Taxable Samples of Distilled Spirits," in quadruplicate, a record of the taxable samples removed. All the information called for by the form shall be furnished. At the end of each month, the storekeeper-gauger shall complete the report, retain one copy of the form, and deliver the remaining three copies to the distiller, who shall forward the three copies to the collector with remittance for the tax due. The collector shall execute his certificate of taxpayment on each copy of the form, retain one copy, and return the remaining two copies to the distiller, who will retain one copy and deliver the other copy to the storekeeper-gauger. The storekeeper-gauger shall note the taxpayment on his retained copy and forward the other copy to the district supervisor. (Secs. 3037 and 3176, I. R. C.)

2. These amendments are designed to establish appropriate limitations and requirements for the withdrawal of tax-free samples of brandy and fruit spirits for laboratory analysis, including organoleptic examination, and the withdrawal of samples of brandy and fruit spirits for other bona fide sample purposes subject to taxpayment, as provided by law.

[F. R. Doc. 49-4333; Filed, May 31, 1949; 8:51 a. m.]

DEPARTMENT OF AGRICULTURE

Bureau of Animal Industry

[9 CFR, Part 131]

ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

GENERAL NOTICE OF PROPOSED RULE MAKING WITH RESPECT TO APPROVAL OF BUDGET AND FIXING OF RATE OF ASSESSMENT FOR CALENDAR YEAR 1949

Consideration is being given to the approval of a budget of expenses of the Control Agency established under the marketing agreement and the marketing order (9 CFR 131.1 et seq.), regulating the handling of anti-hog-cholera serum and hog-cholera virus, and the fixing of the rate of assessment to be paid by handlers, for the calendar year 1949, as follows: (1) The expenses which will necessarily be incurred by the Control Agency, established pursuant to the provisions of the marketing agreement and of the marketing order, for the maintenance and functioning of said Control Agency during the calendar year 1949, will amount to $36,725.00, from which shall be deducted the unexpended balance of $3,002.77 on hand with said Control Agency on January 1, 1949, from assessments collected during the calendar year 1948, leaving a balance of $33,722.23 to be collected during the calendar year 1949, and (2) of the amount of $33,-

722.23 to be collected during the calendar year 1949, the sum of $32,722.23 shall be assessed against handlers who are manufacturers, and $1,000 shall be assessed against handlers who, as distributors, market their products principally through veterinarians or other channels. The pro rata share of the expenses of the Control Agency to be paid for the calendar year 1949 by each handler who is a manufacturer shall be $24.93 per million cubic centimeters (determined by the nearest whole number) of hyperimmune blood collected by such handler during the calendar year 1948; and the pro rata share of such expenses to be paid for the calendar year 1949 by each handler who, as a distributor, markets his products principally through veterinarians or other channels shall be $2.25 per million cubic centimeters (determined by the nearest whole number) of serum sold by such handler. Such assessments shall be paid by each respective handler in accordance with the provisions of the marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid considerations shall file the same with the Hearing Clerk, Room 1846, South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 10th day after the publication of this notice in the FEDERAL REGISTER. All documents should be filed in quadruplicate.

(49 Stat. 781; 7 U. S. C. 851 et seq.)

Issued this 26th day of May 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-4342; Filed, May 31, 1949; 8:54 a. m.]

Production and Marketing Administration

[7 CFR, Part 27]

COTTON CLASSIFICATION UNDER UNITED STATES COTTON FUTURES ACT

NOTICE OF PROPOSED AMENDMENT TO REGULATIONS

Notice is hereby given in accordance with section 4 (a) of the Administrative Procedure Act (5 U. S. C. 1003 (a)) that the Secretary of Agriculture is considering an amendment to § 27.93 of the regulations under the act of August 11, 1916, as amended (39 Stat. 476, 40 Stat. 1351, 41 Stat. 725, 44 Stat. 1248; 26 U. S. C. 1920–1935) adding Lubbock, Texas, to the bona fide spot markets now designated in said § 27.93.

Any person who wishes to submit written data, views or arguments concerning the proposed amendment may do so by filing the same with the Director of the Cotton Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C., within fifteen days after the date of publication of this notice in the FEDERAL REGISTER.

Issued this 26th day of May 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-4338; Filed, May 31, 1949; 8:53 a. m.]

[7 CFR, Part 903]

HANDLING OF MILK IN THE ST. LOUIS, MISSOURI, MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS THERETO WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED ORDER AMENDING ORDER, AS AMENDED

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Supps., 900.1 et seq.), notice is hereby given of the filing with the Hearing Clerk of a recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and a proposed order amending the order, as amended, regulating the handling of milk in the St. Louis, Missouri, marketing area, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 1940 ed. 601 et seq.).

Interested parties may file exceptions to this recommended decision with the Hearing Clerk, Room 1844, South Building, United States Department of Agriculture, Washington 25, D. C., not later than the 10th day after the publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing, on the record of which the proposed marketing agreement and the proposed order amending the order, as amended, have been formulated, was called by the Production and Marketing Administration, United States Department of Agriculture, following receipt of proposed amendments filed by Sanitary Milk Producers. Additional proposals for consideration were submitted by various handlers in the St. Louis, Missouri, marketing area. The public hearing was held at St. Louis, Missouri, on September 20 to 24 and September 27 to 29, 1948, all dates inclusive, pursuant to a notice issued on September 9, 1948 (13 F. R. 5334).

The material issues presented on the record were whether:

(1) The terms "Secretary," "Department of Agriculture," "city plant," "country plant," "pool plant," "nonpool plant," "producer-handler," and "other source milk" should be defined; and the definitions of the terms "producer," "handler," and "delivery period" should be revised;

(2) The powers of the market administrator should be revised to include the authority to make rules and regulations to effectuate the terms and provisions of the order, and to recommend amendments to the Secretary; and the duties of the market administrator should be revised to require verification of all reports and payments required to be made by handlers pursuant to the provisions of the order;

(3) The provisions of the order relating to the classification of milk should be revised (i) to provide for the classification of certain products as Class I milk instead of Class II milk; (ii) to provide for a reduction in the percentage of the receipts of a handler, accounted for as actual plant shrinkage of producer milk, which could be classified as Class II milk, and to provide for the classification as Class II milk of a limited amount of unaccounted for other source milk received by a handler; (iii) with respect to the disposition of milk, skim milk, and cream to plants more than 110 miles from St. Louis, Missouri; (iv) with respect to transfers between handlers and producer-handlers; (v) with respect to transfers from a country plant to a city plant; (vi) with respect to milk or butterfat accounted for in excess of a handler's receipts of milk or butterfat; (vii) with respect to the allocation of milk classified to receipts of producer milk and receipts from other sources; and (viii) with respect to clarification of the responsibilities of handlers in determining the classification of milk and the reclassification of milk used or reused by the receiving handler or by another handler;

(4) The Class I and Class II price differentials to be added to the basic formula price in determining the price for Class I and Class II milk for the various months of the year should be revised, and such differentials should be adjusted in relation to the supply and sales of milk;

(5) The basic formula price used in determining the price for Class I and Class II milk should be revised to provide for the determination of such class prices for milk received during the delivery period on the basis of the basic formula price computed for the preceding delivery period rather than the current delivery period;

(6) The class prices which handlers are required to pay should be adjusted by a butterfat differential in accordance with the use made of butterfat in milk received from producers;

(7) An adjustment should be made in the location differential to handlers for milk purchased from producers at plants located outside of the marketing area;

(8) Any unpaid obligations of a handler or of the market administrator should bear interest at the rate of one-half of 1 percent per month until paid;

(9) A market-wide pool should be established in lieu of the present individual-handler pool;

(10) The pro rata assessment against each handler should be increased to provide sufficient funds to the market administrator for the administration of the order;

(11) The deductions to be made by handlers in making payments to producers, who are not members of a qualified cooperative, should be increased to provide sufficient funds to the market administrator for the performance of marketing services to such producers;

(12) The administrative provisions of the order should be clarified with respect to the required records and facilities to be made available to the market administrator and the application of the various provisions of the order in the event any provision is held invalid; and

(13) The various provisions of the order should be rewritten to conform with any amendments thereto.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of Sanitary Milk Producers, Square Deal Milk Producers of Illinois, Cooperative Milk Producers of Missouri, and various handlers who would be subject to the proposed marketing agreement and the order amending the order, as amended. The briefs contained statements in the nature of suggested findings of fact, conclusions, and arguments with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered, along with the evidence in the record, in making the findings and reaching the conclusions set forth herein. To the extent that any suggested finding and conclusion contained in the briefs is inconsistent with the findings and conclusions contained herein, the request to make such finding or to reach such conclusion is denied on the basis of the facts found and stated in connection with the conclusions in this decision.

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

(1) *Definitions.* (i) A definition of "Secretary" should be included in the order provisions and such term should be defined as "the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties, pursuant to the act, of the Secretary of Agriculture." This definition is proposed in lieu of the present definition of "War Food Administrator" who, during the war period, was delegated certain powers of the Secretary with respect to this and other marketing agreements and orders. Since the position of War Food Administrator has been abolished and his delegated powers returned to the Secretary, it is desirable that a definition of Secretary be substituted therefor. As a conforming change it is proposed that the word "Secretary" be substituted for "War Food Administrator" wherever it appears in the present order.

(ii) A definition of "Department of Agriculture" should be included to shorten the language in subsequent sections of the order.

(iii) The terms "city plant" and "country plant" should be defined so as to distinguish between what are commonly known as country receiving stations and city distributing plants. Milk disposed of for fluid uses in the St. Louis marketing area is received from producers at plants (city plants) approved by the appropriate health authority, where bottling facilities are maintained and from which wholesale and retail routes are operated within the marketing area; as well as at plants (country plants) approved by the appropriate health authority to furnish milk for fluid uses to city plants. It is necessary to define such plants in conformity with the recommended method of classifying sales of milk from a country plant to a city plant of another handler.

A proposal was also made to include definitions for the terms "pool plant" and "nonpool plant" in connection with the proposed substitution of a market-wide pool for the present individual-handler pool. In view of the conclusion contained herein that the proposal for a market-wide pool should be denied, these definitions are not needed.

(iv) A definition of "producer-handler" should be included in the order provisions and such term should be defined as "any person who produces milk under a dairy farm permit or rating issued by the appropriate health authority in the marketing area for the production of Grade A or Grade B raw milk and who processes milk from his own farm production distributing all or a portion of such milk within the marketing area as Class I milk but who receives no milk from producers." Other provisions are proposed which specify the classification and pricing of milk received by a handler from a producer-handler and provide for the classification of milk sold by a handler to producer-handlers. This definition will shorten the language of the order.

(v) A definition of "other source milk" should be included in the order provisions and defined as "all skim milk and butterfat transferred in any form by a producer-handler to a handler and all skim milk and butterfat in any form received from a source other than a producer, a city plant, or a country plant, except any Class II nonfluid milk product which is received and disposed of in the same form." This term is defined to facilitate the drafting and shorten the language of the order. Producers argued that milk received by a handler from a producer-handler should be considered as a receipt of other source milk. Although milk produced by a producer-handler meets all of the requirements of regular producer milk such milk is not available for regular purchases by handlers. Producer-handlers normally dispose of their milk during most of the year in Class I products. Under these conditions the pooling of any surplus milk purchased by a handler from producer-handlers would result in higher prices to producer-handlers than to regular producers shipping to such handler since the milk disposed of by a producer-handler as Class I milk is not pooled with producer milk. In order to afford the same treatment of receipts of milk, skim milk, and cream from a producer-handler as a receipt of other source milk, it is concluded that such receipts from producer-handlers should be included in the definition of other source milk.

Class II nonfluid milk products received and disposed of in the same form are excluded from the definition of other source milk since such products are not commingled with producer receipts and the allocation provisions provide for the deduction of other source milk from the lowest use class after deduction of allowable shrinkage. It is concluded that the work of both handlers and the market administrator will be simplified if handlers are not required to report and classify such nonfluid milk products. A handler is not relieved, however, of the responsibility of keeping records of receipts and utilization of such nonfluid milk products since such records are essential in establishing the utilization of milk reported by such handler.

(vi) The terms "producer" and "handler" should be revised to conform with the adoption of definitions for the terms "city plant" and "country plant." This revision does not change the application of any of the provisions of the order to any person or persons.

(vii) The definition of "delivery period" should be revised to include a calendar month or the portion thereof during which the order or any amendment thereto is in effect. The revised definition, which is commonly used in Federal milk marketing orders issued pursuant to the act, provides for a delivery period of less than one month duration in case of suspensions, terminations, or amendments made effective on a day other than the first of a calendar month, which require separate pool computations.

(2) *Powers and duties of the market administrator.* The powers of the market administrator as set forth in § 903.2 (b) should be revised to include all of the powers authorized by the Agricultural Marketing Agreement Act of 1937, as amended, to be delegated to the market administrator. This revision is needed to clarify the position of the market administrator with respect to his power to make rules and regulations to implement the provisions of the order and to recommend amendments to the Secretary. As indicated these powers, as well as the power to administer the terms and provisions of the order and to receive, investigate, and report to the Secretary complaints of violations of the terms and provisions of the order, are fixed by law.

Section 903.2 (c) defining the duties of the market administrator should be revised to include the verification of all reports and payments by each handler by audit, if necessary, of each handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat of such handler depends. For purposes of clarification such duty should be specifically set forth in the order. By so doing there is no intent to require the market administrator to perform additional duties.

(3) *Classification of milk.* The conclusions relating to classification of milk are as follows: (i) The provisions of the order relating to the classification of milk should be revised to provide for the classification in Class I, instead of in Class II, of all skim milk, buttermilk, flavored milk drinks, and cream disposed of by a handler in fluid form.

Heretofore the order has provided nominally for two classes of milk although, in fact, a third class has been provided for milk converted during certain months of the year into evaporated milk in hermetically sealed containers.

Only milk disposed of in fluid form and skim milk and butterfat the utilization of which is not established as having been used or disposed of in any form other than as milk has heretofore been in Class I. Skim milk, buttermilk, flavored milk, flavored milk drinks, cream, and all manufactured uses of milk have been in Class II with a special price provided for milk made into evaporated milk during January through June of each year.

The classification scheme herein recommended would result in milk and those products required by the health ordinances of the marketing area to be derived from milk produced under the sanitary standards of the health authorities in the marketing area being placed in Class I. Such products as butter, cheese, condensed and evaporated milk, and other milk products, which need not be made from graded milk and which normally are made from such milk only at times when a handler's supply of graded milk is in excess of his needs for graded milk, would be placed in Class II.

The health ordinances in effect in the several political subdivisions of the marketing area require that milk disposed of for consumption as milk and milk used to produce skim milk, buttermilk, flavored milk, flavored milk drinks, and cream be derived from milk produced in conformity with the sanitary standards of the local ordinances. In accordance with these ordinances, milk producers in the local supply area are inspected by the local health authorities and those producers in the area who meet the standards are given certificates of permission to ship to the marketing area. Normally only inspected producers are allowed to provide the milk disposed of as milk, cream, skim milk, buttermilk, flavored milk, and flavored milk drinks. In years of shortage, however, it has been the practice to allow the importation of milk, skim milk, and cream from sources outside the local milkshed. Such importations must meet sanitary standards similar to those applying to milk produced in the local supply area.

A major principle of milk classification systems is that uses of milk with similar economic values are placed in the same class. Because the milk and all the products of milk which it is concluded should be placed in Class I must be derived from milk that meets the standards of the local sanitary ordinances (even though upon occasion such milk and products may be imported from outside the local supply area, the costs of producing this milk, insofar as the sanitary standards have any effect, are the same for all uses. Moreover, it is the practice in this market to ship in whole fluid form all milk from producers needed in the marketing area for milk, cream, and other ordinance products. Products such as cream and condensed skim milk for use in the marketing area are not concentrated at country points but are made at plants in the marketing area. Some cream, however, is shipped into the market during times of shortage from outside the local supply area. Because all milk produced within the supply area for use as milk, cream, and other ordinance products must meet the same sanitary standards and is shipped in the form of whole fluid milk to the marketing area, and because there are no substitutes, at lower prices, for local milk in these uses, it is concluded that all milk used in milk, cream, and other ordinance products has the same economic value and, hence, must be placed in the same class, i. e., Class I.

Because of the day-to-day variations in delivery and sales of milk in St. Louis and especially because of the seasonal variation in the supply of milk produced in the St. Louis milkshed there are quantities of milk delivered to the marketing area not used or needed for use as Class I milk. This milk must be converted into various manufactured products such as butter, cheese, ice cream, evaporated and condensed milk. The products of this surplus milk must be sold in competition with similar products made from milk which does not meet the sanitary standards for milk in the marketing area and which is sold at prices lower than those which must apply to graded milk. If the prices for excess graded milk are too high in relation to the prices for ungraded milk, handlers will not purchase this excess milk from producers. It is necessary, therefore, that a class be established in which milk in excess of the market's needs for Class I may be classified, and a price applied to such class which is in appropriate relationship to the prices paid for ungraded milk in manufacturing uses. Such excess milk in the St. Louis marketing area is used in the form of butter, cheese, ice cream, condensed and evaporated milk, and other manufactured products. It is therefore concluded that these products should be classified as Class II milk.

A proposal was made at the hearing to designate the products to which the local sanitary standards apply as "ordinance products." To the extent that there are now certain products which must be made of locally inspected milk and which are not otherwise designated in the classification scheme this is an appropriate designation of such products. To the extent, however, that the purpose of such proposal was to provide an automatic change in classification of milk used to produce ice cream in the event that health authorities in the marketing area require that ice cream be made of locally inspected milk and thereby become an "ordinance product" the proposal should not be adopted. If the local health authorities do not require that milk utilized in ice cream meet the local sanitary standards, it will be necessary to consider whether such milk should be classified as Class I milk. The hearing record, however, does not disclose all of the pertinent detail regarding the prospective changes in the health ordinances with reference to ice cream, and it is not assured at this time that all of the circumstances of ice cream production will be such that the proper classification would result by the use of the term "ordinance product." For this reason ice cream should continue to be classified as Class II milk. If a substantial change in the sanitary standards develops, it will be appropriate to reconsider the classification of milk made into ice cream at a future hearing.

(ii) The proposal to amend the provisions of the order relating to the classification of plant shrinkage of skim milk and butterfat so as to provide for the classification as Class II milk of: (a) All skim milk and butterfat in milk received from producers not accounted for as having been disposed of in Class I milk, and which does not exceed 2 percent of such receipts of skim milk and butterfat, respectively, and (b) all skim milk and butterfat in receipts of other source milk not accounted for as having been disposed of in Class I milk, should be adopted.

The present provisions of the order provide that actual plant shrinkage which does not exceed 3 percent of the total receipts of milk from producers, shall be classified as Class II milk. No provision is made, however, for the classification as Class II milk of plant shrinkage of skim milk and butterfat in receipts of other source milk.

While handlers admitted that shrinkage on fluid operations can be held to 2 percent, they argued that the allowable shrinkage should be increased to include 3 percent of receipts from all sources. For several years the receipts of milk from producers, during most months of the year, have been utilized almost exclusively in fluid products. The record indicates that for the years of 1946 and 1947 the total shrinkage experienced on receipts of producer milk and other source milk, which included receipts of substantial quantities of ungraded milk manufactured into by-products, by handlers operating in the St. Louis, Missouri, marketing area averaged approximately 2.5 percent. Since receipts of milk from producers are utilized primarily in fluid products in the St. Louis market, it is believed that the allowable shrinkage on such milk should be limited to 2 percent of such receipts.

Since the provisions relating to the allocation of classified milk to the receipts of milk from producers provide for the subtraction of the receipts of other source milk from the lowest-priced available class, no specification is made as to the maximum shrinkage which can be allowed on such receipts. In the event producer milk and other source milk are both received in a country plant or a city plant, the shrinkage allocated to producer milk and other source milk should be computed on a pro rata basis according to the percentage of skim milk and butterfat received from each source. This procedure will treat in the proration shrinkage arising on milk received from producers and other sources in the same manner.

(iii) The order should be amended to provide that milk, skim milk, and cream disposed of by a handler to a nonhandler shall be Class I milk, unless the nonhandler's plant is located within 110 miles from St. Louis or within the counties of Phelps, Dent, Pulaski, Texas, Howell, Laclede, Wright, Dallas, Webster, Polk, Greene, Christian, or Lawrence in the State of Missouri. If such plant is within these boundaries the handler should be permitted to claim another

class on the basis of a utilization mutually indicated in writing to the market administrator by the handler and nonhandler, provided the nonhandler maintains records showing that an equivalent amount of milk, skim milk, and cream was actually utilized in the nonhandler's plant in the class indicated in the signed statement.

The present order provides that all milk or skim milk moved in fluid form to plants more than 110 miles from St. Louis shall be Class I milk. Handlers proposed that such 110 mile limit be extended. Both producers and handlers supported the addition of the above named counties to the present limits and submitted testimony which indicates that sufficient manufacturing facilities are available within this area to handle any seasonal surplus of milk, skim milk, or cream. The expansion of the surplus disposal area to include such counties is necessary to provide for the economical utilization of surplus milk in the expanding supply area for the St. Louis market and this expansion in the surplus disposal area should not create administrative difficulties in verifying the utilization of skim milk and butterfat.

(iv) Skim milk and butterfat transferred to a producer-handler in the form of milk, skim milk, or cream should be classified as Class I milk. Producer-handlers ordinarily engage in only fluid operations; hence any milk, skim milk, or cream which they might purchase from a handler would be for Class I use. Under such circumstances it is not necessary to provide for the classification of such a transfer in a lower class.

(v) The transfer provisions should provide that skim milk and butterfat disposed of in the form of milk, skim milk, or cream, by transfer or transfer of title, from a country plant of a handler to a country plant or a city plant of another handler (except a producer-handler) may be classified on the basis of a class mutually indicated in writing to the market administrator by both handlers: *Provided*, That such agreed classification shall not result in a greater proportion of such milk, skim milk, or cream being classified as Class I milk than the proportion of milk received from producers by such transferee-handler which is classified as Class I milk.

There are several independently owned country plants supplying milk to city plants in the St. Louis, Missouri, marketing area. The operators of these country plants are handlers under the terms of the present order. The present transfer provisions relating to the classification of milk received by a handler from such country plants provide that such milk may be classified on the basis of an agreed class mutually indicated in writing to the market administrator by both handlers. Under these provisions St. Louis handlers who receive milk direct from producers and purchase milk from independently owned country plants have classified purchases of milk from such country plants as Class I milk when substantial quantities of milk received direct from producers by such handlers were classified as Class II milk. This practice has resulted in nearby producers receiving a lesser f. o. b. St. Louis price than producers delivering to these country plants. Other handlers, who operate city plants, also own and operate country plants, and are required by the order to classify all of the producer milk in both plants on a pro rata basis which results in producers delivering to the city plant receiving the same f. o. b. St. Louis price as producers delivering to the country plant. The proposed change will eliminate these inequities by limiting the classification as Class I milk, which the independently owned country plant may obtain, to the same proportion as applies to producer milk delivered directly to a city plant. Moreover, by allowing some flexibility in the allocation of milk between country and city plants an opportunity is afforded to country plants to sell Class II milk when a market for Class I milk is not available, and still share in the Class I market.

(vi) The proposal to prorate milk accounted for in excess of receipts between the receipts of producer milk and receipts of other source milk should not be adopted. The reasons for over accounting are errors in weighing and testing receipts of milk and errors in recording sales of milk and milk products. Both of these are under the control of the handler. In order to protect the classification of producer milk it is necessary to charge handlers the price applicable to the class to which the over accounted for milk is allocated.

(vii) The provisions of the order relating to the allocation of milk, which is classified in the two classes, to receipts of producer milk and other source milk should be amended to provide for the subtraction of receipts of other source milk prior to the subtraction of receipts from other handlers. The present order permits a handler to subtract receipts from other handlers prior to the subtraction of other source milk receipts from the lowest-priced available class. Thus, a handler could purchase producer milk as Class II milk from another handler and at the same time buy other source milk as Class I milk. In order to protect the classification of producer milk, it is necessary to require that a handler subtract his receipts of other source milk from the lowest-priced available class before determining the allocated use of receipts from other handlers.

The proposal to amend the order to provide that the pounds of ungraded milk received from sources other than producers or handlers and disposed of as fluid milk in the marketing area be subtracted from the pounds of Class I milk should not be adopted. The order presently provides that sales of such milk outside of the marketing area be subtracted from Class I milk. Handlers argued that in the event sufficient graded milk were not available the Health Department might permit the sale of ungraded fluid milk. The order would not create any hardship upon the handler in this instance since he would be permitted to deduct such sales from Class I milk after all of his receipts of milk from producers were allocated to Class I milk.

The proposal to prorate the receipts of approved milk from a handler under another Federal order between Class I and Class II milk should not be adopted. The order permits a handler to allocate 5 percent of his receipts of milk from producers to sales of Class II milk prior to subtracting receipts of such approved milk from the lowest-priced available class. The 5 percent of producer milk permitted to be allocated as Class II milk is included to cover the daily fluctuations in receipts and sales of milk. Producers proposed to eliminate the 5 percent provision. It is concluded that the 5 percent provision is sufficient, and needed at this time, to cover such daily fluctuations. This should permit a handler to classify as Class I milk purchases of approved milk from sources other than producers or handlers if such supplies are needed for Class I uses.

The present allocation provisions provide for the subtraction from the various classes of the pounds of milk, skim milk, and cream received from sources other than producers on a volume basis. Thus, purchases of skim milk from sources other than producers may be eliminated from a class consisting principally of cream, purchases of cream from such sources may be eliminated from a class consisting principally of skim milk, etc. To eliminate this inconsistency, it is concluded that skim milk (whole milk less the pounds of butterfat contained therein) and butterfat should be classified and allocated separately. This is also necessary in order to establish a butterfat differential to handlers in accordance with the use made of butterfat in milk received from producers.

(viii) The order should be amended to clarify the responsibility of a handler in establishing the classification of all skim milk and butterfat received. The handler who first receives the skim milk and butterfat is responsible for reporting the utilization and for making full payment for skim milk and butterfat received from producers. He must, therefore, maintain the records necessary to prove the utilization reported to the market administrator.

The order should be clarified with respect to the reclassification of skim milk and butterfat which has been classified in one class but is later used or reused by such handler or by another handler in another class. In order to compute a current delivery period price, it is necessary to place inventories in some class temporarily. In the case of frozen cream condensed skim milk, and other condensed milk products, such inventory may not be ultimately used for several months. Obviously, if such milk is later used in another class, appropriate adjustment in the price to the handler should be made. Such a principle should also apply to milk and milk products transferred to another handler, if he disposes of them in a class other than the class in which they were temporarily placed. This principle requires that the market administrator reclassify milk and milk products whenever there is insufficient milk in the class in which it was originally classified to contain the use claimed by the handler.

(4) *Class I prices.* (i) The Class I price differential to be added to the basic formula price in determining the price of Class I milk should be revised by the adoption of a "supply-demand" adjustment based on the relationship of the total market receipts of milk from producers to the total market sales of Class I milk during the 12 preceding delivery periods.

Under the terms of the present order, as amended, the price of Class I milk is determined by adding the following amounts per hundredweight to the basic formula price: $1.35 for the delivery periods of July through December; $1.10 for the delivery periods of January through March; and $0.90 for the delivery periods of April through June. Proposals were submitted by certain producers for consideration at the public hearings held on July 7–9, 1948, and September 20–24, and 27–29, 1948, to amend the price of Class I milk, by adding to the above differentials 46 cents per hundredweight for the months of July through December and 23 cents per hundredweight for the months of January through March, if during the 12 months immediately preceding the delivery period the total amount of milk delivered by producers was less than 130 percent of the total Class I milk disposed of by all handlers. Upon the basis of the evidence received at the hearing held on July 7–9, 1948, the order, as amended, was further amended to provide for an increase in the Class I price differential of 46 cents per hundredweight for the period November 18 through December 31, 1948, and 23 cents per hundredweight for the period January 1 through March 31, 1949.

In the decision issued November 9, 1948, on the July 7–9 hearing, it was concluded that the producer proposal should not be adopted without a review of the related classification provisions of the order. It was further concluded, however, that the price action made effective November 18 should be effectuated on a temporary basis in view of the economic conditions, set forth in the decision, which affect the market supply of and demand for milk in the marketing area. The economic conditions as found on the record of the September 1948 hearing are essentially the same as those found on the record of the July 1948 hearing with a few exceptions. The production of milk per farm for the month of August 1948 was 299 pounds per day as compared with 261 pounds per day produced in August 1947. With this exception, the production per farm for each month since July 1947 has shown a decrease as compared with the same month of the previous year. Handlers contended that the price of feeds used in the production of milk had declined substantially during the months of July and August 1948 resulting in a more favorable feed-milk ratio. While this was true at the time of the hearing it must be recognized that this is offset somewhat by higher farm labor costs. Furthermore, increases in the price of hogs and beef cattle have made milk production less favorable relative to these farm enterprises.

All of the testimony at the hearing from producers, handlers, and consumers emphasized the need for increasing the production of Grade A milk in the St. Louis milkshed to supply all of the local demand for products which are required by the health authorities to be made from approved milk. In this connection, producers argued that the Class I price differential was not great enough to encourage dairy farmers in the supply area to deliver their milk to the St. Louis market rather than to manufacturing plants in the milkshed. In order to provide for more rapid changes in the Class I price differential which would reflect changes in the supply of and demand for milk in the market, they suggested that such differential be increased or decreased as the receipts of milk from producers varied in relation to the sales of Class I milk by all handlers.

As pointed out in the decision issued on November 9, 1948, substantial quantities of approved milk, skim milk, and cream have been purchased by handlers from the Chicago market for the past several years to supplement local production. Due to the seasonal variation in the production of milk by St. Louis producers, these purchases have been considerably greater during the fall and winter months than during the spring season. Both producers and handlers recognized the need of a more level production of milk locally and suggested that any change in the pricing provisions should reflect greater incentive for fall and winter production.

An analysis of the production and sales figures for the period 1941–48 indicates that an annual production of milk in the St. Louis market approximately 15 percent greater than the annual sales of Class I milk (fluid milk, skim milk, buttermilk, milk drinks, and cream) was needed during such years in order to supply the market with sufficient producer milk for Class I uses during the short production months. During the past 12 months the total receipts of producer milk have been about equal to the sales of Class I milk for this period.

In view of the uncertainty with respect to the receipts of milk and the demand for Class I milk in the market in the future, it is concluded that if during the 12 months immediately preceding the delivery periods of December, March, and June, respectively, the total volume of milk received from producers by all handlers was (*a*) less than 115 percent of the total Class I milk disposed of by all handlers during such 12 month period, the following amounts per hundredweight should be added to the price for Class I milk for each percentage point that such receipts were below 115 percent; 2 cents for the delivery periods of July through December and 1 cent for the delivery periods of January through March; or (*b*) more than 115 percent of the total Class I milk disposed of by all handlers during such 12 month period, 2 cents per hundredweight should be deducted from the price for Class I milk for the delivery periods of January through March, April through June, and July through December, respectively, for each percentage point that such receipts were above 115 percent of the total Class I milk disposed of by all handlers during such 12 month period. Thus, if during the 12 months of June through May the receipts of milk from producers was less than 115 percent of the Class I sales, there would be added to the Class I price for the following months of July through December 2 cents per hundredweight for each percentage point that such receipts were less than 115 percent of such sales. If during the 12 months of December through November such receipts were less than 115 percent of such sales, there would be added to the Class I price for the following months of January through March 1 cent per hundredweight for each percentage point that such receipts were less than 115 percent of such sales. However, under these conditions, no adjustment would be made in the price of Class I milk for the months of April through June. Downward adjustments in the Class I price would be made each period of January through March, April through June, and July through December when the receipts of milk from producers for the 12 months prior to December, March, and June, respectively, were more than 115 percent of the sales of Class I milk during such 12 month period.

On the basis of current receipts of milk from producers and Class I sales, the Class I price differential would be about $1.65 for the delivery periods of July through December and $1.25 for the delivery periods of January through March. These Class I price differentials and the reclassification of skim milk, buttermilk, milk drinks, and cream would have resulted in producer prices slightly less than the blend prices for the period of November 18, 1948, to April 1, 1949. The cost of milk and cream to handlers resulting from these prices with the butterfat values established will be considerably less than the cost at which handlers can import milk or cream from Chicago.

(ii) The proposal to establish a Class I price differential of $1.10 per hundredweight for the months of July and December in lieu of the present differential of $1.35 per hundredweight should not be adopted. Substantial quantities of milk, skim milk, and cream have been imported during these months for the past several years. Furthermore, these are months in which producers are normally required to dry feed heavily.

(iii) The price for Class II milk should be the basic formula price as set forth in the present order, i. e., the average of the prices paid by 23 manufacturing plants or a formula price based upon the open market price of 92-score butter and nonfat dry milk solids in the Chicago market, whichever is the higher. The Class II milk products are those which are not required to be made from milk meeting the health requirements in the marketing area. Since sales of these products have to compete with products made from ungraded milk, it is appropriate at this time to price such milk on the basis of a competitive price for milk purchased for manufacturing purposes.

(5) The proposal to revise the basic formula price used in determining the

price for Class I milk and Class II milk by providing for the determination of such class prices for milk received during the delivery period on the basis of the prices paid for milk for manufacturing uses during the preceding delivery period rather than the current delivery period should not be adopted. Such a plan would be of some benefit in giving producers and handlers more advance notice of class prices, but would distort the seasonal pattern of such prices. In view of the need for a more level production it is concluded that the adoption of such plan is not appropriate at this time.

(6) The class prices which handlers are required to pay for milk of 3.5 percent butterfat content should be adjusted in accordance with the classification of butterfat in milk received from producers. This is necessary in order to conform with the principle of classification and allocation of skim milk and butterfat, separately. The Class I price to handlers should be adjusted by a butterfat differential which is equivalent to the average daily wholesale price per pound of 92-score butter in the Chicago market, as reported by the Department of Agriculture during the delivery period, plus 40 percent; and the Class II price to handlers should be adjusted by a butterfat differential which is equivalent to the average price of such butter plus 20 percent. Under the present order, as amended, class prices are determined on the basis of milk of 3.5 percent butterfat content with a butterfat differential used in adjusting the price paid to producers. Such differential is the average daily wholesale price per pound of 92-score butter in the Chicago market plus 20 percent. The annual average butterfat test of milk received is approximately 3.8 percent.

Under the proposed plan the value of butterfat in Class I milk will bear a relationship to the cost of cream purchased from the Chicago market. The resulting price of Class I butterfat, however, will be somewhat less than the cost of such cream purchased. The value of butterfat in Class II milk is the same as the value set forth in the butter-nonfat dry milk solids price in the basic formula price.

(7) An adjustment should be made in the location differential to handlers for milk purchased from producers at plants located outside of the marketing area. Under the present order, as amended, a handler is allowed to deduct a location differential on all milk which he receives from producers at a plant located outside the marketing area. Such differential applies to Class II milk as well as Class I milk. This has resulted in Class II prices to producers f. o. b. country plants which are lower than prices paid by manufacturing plants in such locality. Furthermore, such differentials are allowed even though the milk does not move to the marketing area. It is concluded that such location differentials should apply on only that milk which the handler is required to pay producers the Class I price. It is not appropriate to apply these location differentials to Class II milk since such milk, as defined herein, may be disposed of in manufactured products in the supply area.

(8) The proposal that any unpaid obligations of a handler or of the market administrator, with respect to payments to producers, expense of administration, and deductions for marketing services, should bear interest at the rate of ½ of 1 percent per month, beginning on the first day of the calendar month next following the due date of such obligation, should not be adopted. The record does not show a need for such a provision at this time. Furthermore, the record is not clear as to the date any such obligations would become due in the event of a disputed claim.

(9) The proposal to establish a market-wide pool in lieu of the present individual-handler pool should not be adopted at this time.

There has been and continues to be less than an adequate supply of producer milk to satisfy the needs of the St. Louis market for all ordinance product uses during all seasons of the year. Proponents of the market-wide pool pointed out that it has been difficult in some measure to increase sources of supply because handlers who desire to furnish cream, skim milk, skim milk drinks, and other ordinance products to their customers, have lower uniform prices than handlers who do not engage in this trade. This condition is the result of classifying as Class II milk all of the ordinance products except whole fluid milk. It is the position of the proponents of the market-wide pool that such a pool would make it possible for them to expand their sources of producer milk in order to furnish the needs of the market without, at the same time, reducing their own individual prices.

It is true that the adoption of a market-wide pool would make it possible for certain handlers to procure additional supplies of milk without reducing the prices they pay to producers relative to the price paid by other handlers. If ordinance products were to be continued in Class II milk it might be desirable to adopt a market-wide pool because of this condition but, as pointed out above, it is concluded that all ordinance products should be placed in Class I milk. This change in the order will lessen the difficulties which the proponents proposed to deal with through the adoption of a market-wide pool.

In addition to the fact that the above mentioned difficulties will be ameliorated by the change in classification, the continuation of the individual-handler pool at this time appears to have certain advantages. In a period of shortage such as has characterized this market, an individual-handler pool is more likely than a market-wide pool to distribute any new supply of producer milk among all handlers in relation to their needs for Class I milk. Under the individual-handler pool a handler who has an excess of Class I milk merely depresses his price to producers by acquiring additional supplies. This tends to prevent such handlers from acquiring additional inspected milk when other handlers need it for Class I purposes. On the other hand, handlers who need an additional supply for Class I purposes can increase their purchases of producer milk without, at the same time, reducing their uniform price to producers and, because of the changes in classification, handlers can procure all of the producer milk needed for local consumption in ordinance products without depressing the price to producers. Because of this characteristic of the individual-handler pool, it appears that no change should be made in the pooling plan while this market remains in a short supply condition.

(10) The pro rata assessment against each handler should be increased from 2 cents to 2.5 cents per hundredweight on all producer milk received by such handler in order to provide the funds necessary for the maintenance and functioning of the market administrator in the administration of the order. The present rate of 2 cents per hundredweight on all producer milk has been insufficient to cover current expenses incurred by the market administrator. The market administrator has been able to finance the administration of the order currently through use of reserve funds. However, this reserve has now been reduced to the level which should be maintained to meet contingencies. Both producers and handlers recognize that the market administrator should have the necessary funds to enable him to administer properly the terms of the order. The record indicates that an assessment rate of 2.5 cents per hundredweight on the present volume of producer milk should provide the funds necessary for the maintenance and functioning of the market administrator in the administration of the order. In the event the volume of producer milk increases or such expenses of the market administrator decrease to the extent that a lesser rate would provide such necessary funds, provision is made which would enable the Secretary to reduce the rate accordingly.

(11) The deductions to be made by handlers in making payments to producers, who are not members of a qualified cooperative pursuant to § 903.10 (b), should be increased from 4 cents to 5 cents per hundredweight in order to provide sufficient funds to the market administrator for the performance of marketing services to such producers. The present 4 cent deduction is insufficient to defray current expenses incurred in performing marketing services to such nonmembers. The increase of 1 cent per hundredweight in these deductions will provide the market administrator with approximately $1,300 additional funds annually which are needed to verify weights, samples, and tests of milk received from such producers and to provide them with market information. In the event the volume of milk received from these producers increases or the cost of performing these services decreases to the extent that a lesser deduction would prove to be sufficient, provision is made which would enable the Secretary to reduce the rate of deductions accordingly.

(12) The provisions of the order, as amended, should be revised to provide that each handler shall keep adequate records of receipts and utilization of skim milk and butterfat and shall make available to the market administrator such records, as well as all facilities, operations, and equipment as the market

administrator deems necessary to (i) verify the receipts and utilization of skim milk and butterfat, (ii) weight, sample, and test for butterfat and other content all milk and milk products handled, and (iii) verify payments to producers. It is appropriate that the language of the order should be revised to make it clear to all interested parties that adequate books and records must be maintained by handlers to establish proof to the market administrator of the proper classification of milk and milk products. It is also appropriate that such books and records be made available to the market administrator upon request in order that he may verify compliance with all of the terms of the order.

Orders issued pursuant to the act require the handler to prove a utilization other than Class I, and it has been the practice to require adequate books and records as a means of verifying handler compliance. Such principles are necessary for the proper functioning of the order. Furthermore, it is essential that the handler make available to the market administrator, when the occasion arises, such facilities and equipment as will enable the market administrator to make examination of the complete operations of the handler. The market administrator is entrusted with the power and duty of administering the terms of the order which affects the incomes of thousands of producers as well as guaranteeing the industry that all handlers pay equivalent prices for milk used in each class. Thus, it is essential that he have the right and be permitted to make physical checks of individual plant operations in establishing the compliance of all handlers.

The order, as amended, should also be revised to clarify its status in the event any provision thereof, or its application to any other person or circumstance, is held invalid. In this event, the application of such provision, and of the remaining provisions thereof, to other persons or circumstances should not be affected thereby. This is necessary in the proper administration of the order and is commonly used in other orders issued pursuant to the act.

(13) The various provisions of the order, as amended, should be rewritten to conform with the recommended changes contained herein. In view of the numerous changes recommended, it is believed that it would be more convenient to all interested parties to incorporate those provisions of the order which are not affected by the recommended changes. Thus, a complete order amending the order, as amended, is made a part hereof in lieu of various amendments to the order, as amended.

In conformity with the establishment of the skim milk and butterfat method of classifying and accounting for milk, it is concluded that the date for filing reports by handlers should be changed from the 5th to the 7th day after the end of each delivery period, and the date for the announcement of uniform prices by the market administrator should be changed from the 10th to the 12th day after the end of the delivery period.

(14) *General.* (a) The proposed marketing agreement and the proposed order amending the order, as amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The proposed marketing agreement and the proposed order amending the order, as amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentatively approved marketing agreement upon which hearings have been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8e 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 of and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the proposed order amending the order, as amended, are such as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Recommended marketing agreement and order amending the order, as amended. The following order amending the order, as amended, is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The proposed marketing agreement is not included in this recommended decision because the regulatory provisions thereof would be the same as those contained in the proposed order amending the order, as amended.

§ 903.1 *Definitions.* The following terms shall have the following meanings:

(a) "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.).

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties, pursuant to the act, of the Secretary of Agriculture.

(c) "Department of Agriculture" means the United States Department of Agriculture or any other Federal Agency as may be authorized by act of Congress or by Executive Order to perform the price-reporting functions of the United States Department of Agriculture.

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

(e) "St. Louis, Missouri, Marketing Area," hereinafter called the "marketing area," means the territory within the corporate limits of the City of St. Louis, Kirkwood, and Valley Park, Missouri; the territory within St. Ferdinand, Normandy, Clayton, Jefferson, Lemay, and Gravois Townships in St. Louis County, Missouri; and the territory within Scott Field Military Reservation, and East St. Louis, Centreville, Canteen, and Stites Townships in St. Clair County, Illinois.

(f) "Delivery period" means a calendar month, or the portion thereof during which this order or any amendment thereto is in effect.

(g) "Producer" means any person, irrespective of whether such person is also a handler, who produces milk, under a dairy farm permit or rating issued by the appropriate health authority in the marketing area for production of Grade A or Grade B raw milk, which is received at a city plant or at a country plant. As used herein, such "dairy farm permit or rating" means one issued by any of the health authorities duly authorized to administer regulations governing the quality of milk disposed of in the marketing area.

(h) "City plant" means a plant where fluid milk is received from producers or from a country plant, and from which packaged milk, skim milk, or cream is disposed of as Class I milk in the marketing area to wholesale or retail outlets, including plant stores.

(i) "Country plant" means a plant at which milk is received from producers, and which is approved by the appropriate health authority in the marketing area to furnish milk to a city plant.

(j) "Handler" means a person who operates a city plant or a country plant.

(k) "Producer-handler" means any person who produces milk under a dairy farm permit or rating issued by the appropriate health authority in the marketing area for the production of Grade A or Grade B raw milk, and who processes milk from his own farm production distributing all or a portion of such milk within the marketing area as Class I milk but who receives no milk from other producers.

(l) "Nonhandler" means any person who is not a handler but who distributes fluid milk on retail or wholesale routes, or engages in the manufacture of milk products.

(m) "Market administrator" means the person designated pursuant to § 903.2 as the agency for the administration hereof.

(n) "Other source milk" means all skim milk and butterfat transferred in any form by a producer-handler to a handler, and all skim milk and butterfat received in any form from a source other than a producer, a city or a country plant, except any Class II nonfluid milk product which is received and disposed of in the same form.

§ 903.2 *Market Administrator*—(a) *Designation.* The agency for the administration hereof 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.

(b) *Powers.* The market administrator shall have the following powers with respect to this order:

(1) To administer its terms and provisions:

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

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

(4) To recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this order, including, but not limited to, the following:

(1) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(2) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;

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

(4) Pay, out of the funds provided by § 903.9: (i) The cost of his bond and of the bonds of his employees, (ii) his own compensation, and (iii) all other expenses, except those incurred under § 903.10, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(5) Keep such books and records as will clearly reflect the transactions provided for herein and submit such books and records to examination by the Secretary as requested;

(6) Furnish such further information and such verified reports as the Secretary may request;

(7) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation hereof as does not reveal confidential information;

(8) Publicly disclose to handlers and to producers, unless otherwise directed by the Secretary, the name of any handler who, within 15 days after the date upon which he is required to perform such acts, has not made (i) reports pursuant to § 903.3 (a), or (ii) payments pursuant to § 903.8;

(9) Verify all reports and payments of each handler by audit, if necessary, of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and

(10) Publicly announce the prices and butterfat differentials determined for each delivery period as follows: (i) On or before the 6th day after the end of such delivery period, the prices and butterfat differential for each class of milk computed pursuant to § 903.5; and (ii) on or before the 12th day after the end of such delivery period, the uniform price computed pursuant to § 903.7 (b) for each handler with the butterfat differential applicable pursuant to § 903.8, in the payment for milk to producers and any adjustments made pursuant to § 903.7 (b) (3).

§ 903.3 *Reports, records, and facilities*—(a) *Delivery period reports of receipts and utilization.* On or before the 7th day after the end of each delivery period each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) The quantities of skim milk and butterfat contained in all receipts at each of his city plants and country plants within such delivery period of (i) milk from producers (including his own farm production), (ii) milk, skim milk, cream, and milk products from other handlers, and (iii) other source milk;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph, including a separate statement of the disposition of Class I milk outside the marketing area;

(3) The name and address of each producer from whom milk is received for the first time, and the date on which such milk was first received; and

(4) The name and address of each producer who discontinues deliveries of milk, and the date on which such milk was last received.

(b) *Reports of payments to producers.* On or before the 20th day after the end of each delivery period, each handler shall report to the market administrator his producer pay roll for such delivery period which shall show for each producer (1) the total pounds of milk received from such producer with the average butterfat test thereof, (2) the net amount of the payment made to such producer together with the price, deductions, and charges involved, and (3) the amount and nature of any payments made pursuant to § 903.8 (d).

(c) *Reports of transportation rates.* On or before the 10th day after the request of the market administrator, each handler shall submit a schedule of transportation rates which are charged and paid for the transportation of milk from the farm of such producer to such handler's plant or plants. Any changes made in this schedule of transportation rates and the effective dates thereof shall be reported to the market administrator within 10 days.

(d) *Reports of producer-handlers.* Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may request and shall permit the market administrator to verify such reports.

(e) *Records and facilities.* Each handler shall keep adequate records of receipts and utilization of skim milk and butterfat and shall, during the usual hours of business, make available for such examination of the market administrator or his representative all records, facilities, operations, and equipment as the market administrator deems necessary to (1) verify the receipts and utilization of all skim milk and butterfat and, in case of errors or omissions, ascertain the correct figures; (2) weigh, sample, and test for butterfat and other content all milk and milk products handled; and (3) verify payments to producers.

(f) *Retention of records.* All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain, except that all such books and records pertaining to transactions before August 1, 1946, shall be retained until October 1, 1949: *Provided,* That if, within such three-year period or before October 1, 1949, whichever is applicable, 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.

§ 903.4 *Classification of milk*—(a) *Basis of classification.* All skim milk and butterfat received by a handler at his country plant(s) and city plant(s) in (1) milk from producers (including milk of his own production), (2) milk, skim milk, cream, and other milk products from other handlers, and (3) other source milk, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section.

(b) *Classes of utilization.* Subject to the conditions set forth in paragraphs (c), (d), (e), and (f) of this section, the classes of utilization shall be as follows:

(1) Class I milk shall be all skim milk and butterfat (i) disposed of in fluid form as milk, skim milk, buttermilk, milk drinks (whether plain or flavored), cream (fresh, frozen, and sour), and any milk product, except cottage cheese, ice cream, and ice cream mix, which is required by the appropriate health authority in the marketing area to be made from Grade A or Grade B raw milk, and (ii) not specifically accounted for as Class II milk.

(2) Class II milk shall be all skim milk and butterfat accounted for (i) as having been used or disposed of in any product other than those specified in Class I milk, (ii) as actual plant shrinkage of skim milk and butterfat in milk received from producers, but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively, and (iii) as actual plant shrinkage of skim milk and butterfat in other source milk: *Provided,* That if milk from producers and other source milk are both received, during the same delivery period, in a country plant or a city plant the shrinkage of skim milk and butterfat, respectively, allocated to producer milk and to other source milk shall be computed pro rata according to the proportions of the volumes of skim milk and butterfat, respectively, received from such sources to their total.

(c) *Responsibility of handlers and reclassification of milk.* (1) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk and butterfat

proves to the market administrator that such skim milk and butterfat should be classified in another class.

(2) Any skim milk or butterfat classified in one class shall be reclassified if used or reused by such handler or by another handler (except a producer-handler) in another class.

d) *Transfers.* (1) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream, by transfer or diversion, from a city plant of a handler to any plant of another handler, except a producer-handler, shall be classified as Class I milk, unless utilization in another class is mutually indicated in writing to the market administrator by both handlers on or before the 7th day after the end of the delivery period within which such transaction occurred, in which case such skim milk and butterfat shall be classified according to such mutual agreement: *Provided*, That skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in such class in the plant of the transferee-handler after the subtraction of other source milk pursuant to paragraph (f) of this section, and any excess of such skim milk or butterfat, respectively, shall be assigned to Class I milk.

(2) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream, by transfer or transfer of title, from a country plant of a handler to a country plant or a city plant of another handler, except a producer-handler, shall be classified as Class I milk, unless utilization in another class is mutually indicated in writing to the market administrator by both handlers on or before the 7th day after the end of the delivery period within which such transaction occurred, in which case such skim milk and butterfat shall be classified according to such mutual agreement: *Provided*, That the amount of skim milk or butterfat classified as Class I milk pursuant to this subparagraph shall be limited to the amount computed pursuant to paragraph (f) (1) (vii) of this section.

(3) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream, by transfer or diversion, from a country plant or a city plant of a handler to a city plant of a producer-handler shall be classified as Class I milk.

(4) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream, by transfer or diversion, from a country plant or a city plant of a handler to any plant other than a city plant or a country plant of a handler or to a nonhandler shall be classified as Class I milk unless (i) the transferee-plant is located within 110 air-line miles from the City Hall in St. Louis, Missouri, or in the counties of Phelps, Dent, Pulaski, Texas, Howell, Laclede, Wright, Dallas, Webster, Polk, Greene, Christian, or Lawrence in the State of Missouri, and the handler claims another class on the basis of a utilization mutually indicated in writing to the market administrator by both the handler and the operator of the transferee-plant on or before the 7th day after the end of the delivery period within which such transaction occurred, (ii) the operator of the transferee-plant maintains books and records, showing the utilization of all skim milk and butterfat received at such plant, which are made available if requested by the market administrator for the purpose of verification, and (iii) not less than an equivalent amount of skim milk and butterfat was actually utilized in such plant in the use indicated in such statement; in which case such skim milk and butterfat shall be classified according to such mutual agreement: *Provided*, That if upon inspection of the records of such plant it is found that an equivalent amount of skim milk and butterfat was not actually used in such indicated use the remaining pounds shall be classified as Class I milk.

(5) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream, from a plant of a handler to retail establishments which disposes of milk, skim milk, or cream for both fluid and other uses shall be classified as Class I milk: *Provided*, That skim milk and butterfat contained in milk, skim milk, or cream so disposed of in bulk to retail establishments which, under the applicable health regulations, are permitted to receive milk, skim milk, or cream other than of Grade A quality for nonfluid purposes shall be classified as Class II milk if used or disposed of by such establishment in other than fluid form, provided that the market administrator is allowed to verify such use or disposition.

(e) *Computation of skim milk and butterfat in each class.* For each delivery period, the market administrator shall correct for mathematical and other obvious errors the delivery period report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such handler.

(f) *Allocation of skim milk and butterfat classified.* (1) The pounds of skim milk remaining in each class after making the following computations for each handler for each delivery period shall be the pounds of skim milk in such class allocated to producer milk received by such handler during such delivery period:

(i) Subtract from the total pounds of skim milk in Class II milk the plant shrinkage of skim milk in milk received from producers, computed pursuant to paragraph (b) (2) (ii);

(ii) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk in ungraded milk received as other source milk and disposed of as Class I milk outside the marketing area;

(iii) Subtract from the pounds of skim milk remaining in Class II milk an amount of skim milk so utilized, pursuant to paragraph (b) (2) (i) of this section, but not to exceed 5 percent of the total receipts of skim milk in milk received from producers: *Provided*, That a smaller percentage shall be applied under this subdivision if designated by the handler on his report made pursuant to § 903.3 (a) (1);

(iv) Subtract from the pounds of skim milk remaining in Class II Milk the pounds of skim milk in other source milk (exclusive of the pounds of skim milk subtracted pursuant to subdivision (ii) of this subparagraph): *Provided*, That if the pounds of skim milk to be subtracted from Class II milk is greater than the pounds of skim milk remaining in such class, the balance shall be subtracted from the pounds of skim milk remaining in Class I milk;

(v) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subdivision (iii) of this subparagraph;

(vi) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in milk, skim milk, cream, and other milk products received from a city plant of another handler and assigned to such class: *Provided*, That if the pounds of skim milk to be subtracted from Class II milk is greater than the pounds of skim milk remaining in such class, the balance shall be subtracted from the pounds of skim milk remaining in Class I milk;

(vii) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subdivision (i) of this subparagraph; or if the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes, in series beginning with the lowest-priced class.

(viii) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in milk, skim milk, cream, and other milk products received from a country plant of another handler and assigned to such class: *Provided*, That the pounds of skim milk to be subtracted from Class I milk shall not exceed its pro rata share of the volumes of skim milk allocated to Class I milk and Class II milk after the subtraction of receipts of other source milk and receipts from city plants of another handler;

(2) Determine the pounds of butterfat in each class to be allocated to milk received from producers in the same manner prescribed for skim milk in subparagraph (1) of this paragraph.

(g) *Determination of producer milk in each class.* Add the pounds of skim milk and the pounds of butterfat allocated to milk received from producers in each class, respectively, as computed pursuant to subparagraphs (1) and (2) of paragraph (f) of this section, and determine the percentage of butterfat in each class.

§ 903.5 *Minimum prices*—(a) *Basic formula price.* The basic formula price per hundredweight to be used in determining the class prices, set forth in paragraph (b) of this section, shall be the higher of the prices per hundredweight for milk of 3.5 percent butterfat content computed pursuant to subparagraphs (1) or (2) of this paragraph.

(1) Determine the arithmetic average of the available basic, or field, prices paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the delivery period at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture:

Concern and Location
Carnation Co., Ava, Mo.
Carnation Co., Seymour, Mo.
Pet Milk Co., Greenville, Ill.
Litchfield Creamery Co., Litchfield, Ill.
Indiana Condensed Milk Co., Bunker Hill, Ill.
Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Greenville, Wis.
Borden Co., Black Creek, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Chilton, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Jefferson, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
Borden Co., New London, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price per hundredweight computed as follows: Multiply by 3.5 the average daily wholesale price per pound of 92-score butter in the Chicago market, as reported by the Department of Agriculture during the delivery period, add 20 percent thereof, and add or subtract, as the case may be, to such sum 3½ cents for each full ½ cent that the average of the carlot prices per pound of nonfat dry milk solids for human consumption, f. o. b. Chicago area manufacturing plants, as reported by the Department of Agriculture during the delivery period (including in such average the quotations published for any fractional part of the previous delivery period which were not published and available for the price determination of such nonfat dry milk solids for the previous delivery period), is above 5½ cents: *Provided*, That if such f. o. b. manufacturing plant prices of nonfat dry milk solids are not reported there shall be used for the purpose of such computation the average of the carlot prices of nonfat dry milk solids for human consumption, delivered at Chicago, as reported by the Department of Agriculture during the delivery period; and in the latter event 7½ cents shall be used in lieu of the "5½ cents."

(b) *Class prices.* Subject to the provisions of paragraphs (c) and (d) of this section, each handler shall pay producers, at the time and in the manner set forth in § 903.8, not less than the following prices per hundredweight of milk:

(1) *Class I milk.* The price for Class I milk shall be the basic formula price plus the following amounts per hundredweight: $1.35 for the delivery periods of July through December; $1.10 for the delivery periods of January through March; and 90 cents for the delivery periods of April through June: *Provided*, That if during the 12 months prior to the month immediately preceding each of the following delivery period groups, the total volume of milk received from producers by all handlers was more or less than 115 percent of the total Class I milk disposed of by all handlers during such 12 month period the following adjustments shall be made to the price for Class I milk for the respective group of delivery periods:

Delivery period group	For each percentage point that receipts from producers as a percent of Class I milk is:	
	Below 115 percent (add)	Above 115 percent (subtract)
	Cents	*Cents*
January through March	1	2
April through June	0	2
July through December	2	2

(2) *Class II milk.* The price for Class II milk shall be the basic formula price.

(c) *Location differentials to handlers.* With respect to skim milk and butterfat contained in milk received from producers at a handler's city plant located outside the marketing area which is classified as Class I milk, and with respect to skim milk and butterfat contained in milk received from producers at a handler's country plant which is moved from such plant to a city plant and allocated as Class I milk pursuant to § 903.4 (f) (vii), or which is moved from such plant to a nonhandler's plant and classified as Class I milk pursuant to § 903.4 (d) (2), such a handler shall be allowed the amount per hundredweight set forth in the schedule below for the air-line distance from the City Hall in St. Louis within which is located the plant where the milk is first received:

Mileage zone	Amount per hundredweight (cents)
Not more than 10 miles	6
More than 10 but not more than 20 miles	12
More than 20 but not more than 30 miles	14
More than 30 but not more than 40 miles	16
Within each 10-mile zone thereafter—an additional 1 cent.	

(d) *Butterfat differential to handlers.* If the weighted average butterfat test of producer milk which is classified, respectively, in Class I milk or Class II milk for a handler, pursuant to § 903.4 (g), is more or less than 3.5 percent, there shall be added to, or substracted from, as the case may be, the price for such class of utilization, for each 1/10 of 1 percent that such weighted average butterfat test is above or below 3.5 percent, a butterfat differential calculated for each class of utilization as follows:

(1) *Class I milk.* Multiply by 1.4 the average daily wholesale price per pound of 92-score butter in the Chicago market, as reported by the Department of Agriculture during the delivery period, and divide the result by 10.

(2) *Class II milk.* Multiply by 1.2 the average daily wholesale price per pound of 92-score butter in the Chicago market, as reported by the Department of Agriculture during the delivery period, and divide the result by 10.

§ 903.6 *Application of provisions*—(a) *Producer-handlers.* Sections 903.4, 903.5 903.7, 903.8, 903.9, and 903.10 shall not apply to a producer-handler.

§ 903.7 *Determination of uniform prices to producers*—(a) *Computation of the value of milk for each handler.* For each delivery period the market administrator shall compute the value of milk received from producers by each handler, by multiplying the quantity in each class, computed pursuant to § 903.4 (g), by the price applicable to such class, subject to the differentials set forth in paragraphs (c) and (d) of § 903.5, and adding together the resulting values of each class: *Provided*, That if a handler, after subtracting receipts of other source milk and receipts from other handlers, has disposed of more skim milk or butterfat than, on the basis of his report for the delivery period pursuant to § 903.3 (a), has been credited to producers as having been received from them, there shall be added an amount computed by multiplying the pounds in each class as subtracted pursuant to subparagraphs (1) (viii) and (2) of § 903.4 (f) by the applicable class price adjusted by the butterfat differential to handlers.

(b) *Computation of the uniform price for each handler.* For each delivery period, the market administrator shall compute for each handler the uniform price per hundredweight of milk, of 3.5 percent butterfat content, f. o. b. the marketing area, received by such handler from producers as follows:

(1) Add to the value computed pursuant to paragraph (a) of this section the amount of any location adjustment to be made pursuant to § 903.8 (c);

(2) Subtract, if the average butterfat content of milk received from producers by such handler is more than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential to producers, and multiply the result by the total hundredweight of such milk;

(3) If, in the verification of the reports of such handler of his receipts and utilization of skim milk and butterfat, respectively, for any previous delivery period, the market administrator discovers errors in such reports which would have resulted in a different uniform price per hundredweight, including reclassification of skim milk and butterfat pursuant to § 903.4 (c) (2), there shall be added or subtracted, as the case may be, an amount of money necessary to correct such errors; and

(4) Divide the resulting amount by the total hundredweight of milk received from producers by such handler. The result, computed to the nearest full cent, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content, f. o. b. St. Louis, Missouri, marketing area.

§ 903.8 *Payment for milk*—(a) *Time and method of payment.* On or before the 15th day after the end of each delivery period, each handler shall make payment to each producer, for the total value of milk received from such producer during such delivery period, at not less than the uniform price per hundredweight computed for such handler pur-

suant to § 903.7 (b), subject to the location and butterfat differentials computed pursuant to paragraphs (b) and (c) of this section.

(b) *Butterfat differential to producers.* If any handler has received from any producer, during the delivery period, milk having an average butterfat content other than 3.5 percent, such handler, in making payments pursuant to paragraph (a) of this section, shall add to the uniform price for each 1/10 of 1 percent that the average butterfat content of such milk is above 3.5 percent not less than, or shall deduct from the uniform price for each 1/10 of 1 percent that the average butterfat content of such milk is below 3.5 percent not more than, the following amount: Multiply by 1.2 the average daily wholesale price per pound of 92-score butter in the Chicago market, as reported by the Department of Agriculture during the delivery period, and divide the resulting sum by 10.

(c) *Location differentials to producers.* In making payments pursuant to paragraph (a) of this section, each handler shall deduct with respect to milk received from producers at a plant located outside the market area, the amount per hundredweight of milk set forth in the schedule below for the airline distance from the City Hall in St. Louis within which is located the plant where the milk is first received:

Mileage zone	Amount per hundredweight of milk (cents)
Not more than 10 miles	6
More than 10 but not more than 20 miles	12
More than 20 but not more than 30 miles	14
More than 30 but not more than 40 miles	16
Within each 10-mile zone thereafter—an additional 1 cent.	

(d) *Errors in payment.* Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by this section, the handler shall pay such balance to such producer not later than the time of making payment to producers next following such disclosure.

(e) *Additional payments.* Any handler may make payments to producers in addition to the payments made pursuant to paragraph (a) of this section: *Provided,* That such additional payments should be made on a uniform basis to all producers from whom milk meeting special quality, volume production, or evenness of production standards has been received.

§ 903.9 *Expense of administration.* As his pro rata share of the expense of administration hereof, each handler shall pay to the market administrator, on or before the 15th day after the end of each delivery period, 2½ cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to receipts, during such delivery period, of milk from producers (including such handler's own production). Each handler, which is a cooperative association of producers, shall pay such pro rata share of expense on only that milk received from producers at a plant of such association.

§ 903.10 *Marketing service*—(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 903.8 (a), shall deduct 5 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 delivery period and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys 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 associations.* In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing the services set forth in paragraph (a) of this section, each handler, in lieu of the deductions specified in paragraph (a) of this section, shall make the deductions from the payments made pursuant to § 903.8 (a) which are authorized by such producers, and, on or before the 15th day after the end of each delivery period, pay over such deductions to the cooperative associations rendering such services of which such producers are members.

§ 903.11 *Unfair methods of competition.* Each handler shall refrain from acts which constitute unfair methods of competition by way of indulging in any practices with respect to the transportation of milk for, and the supplying of goods and services to, producers from whom milk is received, which tend to defeat the purpose and intent of the terms and provisions hereof.

§ 903.12 *Market advisory committee*—(a) *Representation, selection, approval, and removal.* Subsequent to the effective date hereof, representatives of producers, handlers, and consumers, respectively, may certify to the Secretary the selection of three individuals by each group for membership on the market advisory committee. Upon approval of the Secretary, the nine individuals so selected shall constitute the market advisory committee. Each member of the market advisory committee shall serve for a term of one year unless sooner removed by the Secretary. After the market advisory committee has been constituted, vacancies in the membership thereof shall be filled in the same manner as the original selections were made.

(b) *Powers.* The market advisory committee shall have the power to recommend to the Secretary amendments hereto originating within itself or submitted to it by interested parties, after a study of the facts available to the market advisory committee.

§ 903.13 *Effective time, suspension, and termination*—(a) *Effective time.* The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to paragraph (b) of this section.

(b) *Suspension and termination.* Any or all provisions hereof, or any amendment hereto, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing power and duty.* (1) If, upon the suspension or termination pursuant to paragraph (b) of this section, there are any obligations arising hereunder the final accrual or ascertainment of which requires further acts by any handler, by 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, persons, or agency as the Secretary may designate.

(2) The market administrator, or such other person as the Secretary may designate shall (i) continue in such capacity until discharged, (ii) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (iii) 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 hereto.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination pursuant to paragraph (b) of this section, 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 and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, 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.

§ 903.14 *Separability of provisions.* If any provision hereof, or its application to any person or circumstance is held invalid, the application of such provision, and of the remaining provisions hereof, to other persons or circumstances shall not be affected thereby.

§ 903.15 *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 hereof.

§ 903.16 *Termination of obligations.* The provisions of this section shall apply to any obligation under this order for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c (15)(A) of the act or before a court.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 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 order, to make available to the market administrator or his representatives all books and records required by this order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the 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 wilful 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 order 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 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.

Issued at Washington, D. C., this 25th day of May 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator.

[F. R. Doc. 49-4312; Filed, May 31, 1949; 8:48 a. m.]

[7 CFR, Part 910]

[Docket No. AO-13 A2]

HANDLING OF FRESH PEAS, CAULIFLOWER, AND CABBAGE GROWN IN COUNTIES OF ALAMOSA, RIO GRANDE, CONEJOS, COSTILLA, AND SAGUACHE, COLORADO

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED FURTHER AMENDMENTS TO MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Supps. Part 910; 13 F. R. 8585), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to proposed amendments to Marketing Agreement No. 67, as amended, hereinafter referred to as the "marketing agreement," and Order No. 10, as amended (7 CFR, Cum. Supp., Part 910), hereinafter referred to as the "order," regulating the handling of fresh peas and cauliflower grown in the counties of Alamosa, Rio Grande, Conejos, Costilla and Saguache in the State of Colorado, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. and Sup. I, 601 et seq.). Interested parties may file exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 1846 South Building, Washington 25, D. C., not later than the close of business on the fifteenth day after publication hereof in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The public hearing on the record of which the proposed further amendments to the marketing agreement and order are formulated, was initiated by the Production and Marketing Administration as a result of proposed amendments received from the Administrative Committee, established pursuant to the marketing agreement and order as the agency to administer the terms and provisions thereof, and from cabbage producers and handlers.

In accordance with the applicable provisions of the aforesaid rules of practice and procedure, a notice that a public hearing would be held at Alamosa, Colorado, beginning on February 23, 1949, to consider the proposed amendments, was published in the FEDERAL REGISTER (14 F. R. 483) on February 4, 1949.

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

(1) The existence of the right to exercise Federal jurisdiction with respect to cabbage in this instance.

(2) The need for the proposed regulatory program with respect to cabbage in order to effectuate the declared purpose of the Agricultural Marketing Agreement Act of 1937, as amended.

(3) The provisions which should be incorporated into the amended marketing agreement and order, such as:

(a) The defining, as applied to cabbage, of such terms as "Secretary," "act," "person," "production area," "cabbage," "producer," "handler," "handle," and "fiscal year";

(b) The revision of the composition of the Administrative Committee so as to give adequate representation thereon to cabbage producers, and the granting of powers and prescribing of duties of the committee with respect to cabbage and providing for the manner in which the committee may conduct its business;

(c) Providing, with respect to cabbage, for operational expenses and assessments to be imposed for defraying such expenses;

(d) Requiring that the committee expand its annually submitted marketing policy to include its policy regarding the handling of cabbage during the applicable fiscal year;

(e) Providing, in the case of cabbage, for the regulation by grades and sizes (including the mixing of sizes), inspection and certification, and, in the case of peas, cauliflower, and cabbage, the establishment and maintenance in effect of minimum standards of quality and maturity, and the granting of exemptions;

(f) Providing for exclusion of shipments of cabbage for consumption by charitable institutions or for distribution by relief agencies from the regulatory provisions of the marketing agreement and order, and from the collection of assessments;

(g) Providing for reports which handlers should make upon request of the committee; and

(h) Providing, in the case of cabbage, for certain additional provisions, as set forth in §§ 910.26 to 910.28, and §§ 910.39 to 910.48, inclusive, as published in the FEDERAL REGISTER (14 F. R. 483) which are presently included in the marketing agreement and order, namely, use of funds, possession of funds, books, records, and other property, right of the Secretary, effective time, termination, proceedings after termination, effect of termination or amendment, duration of immunities, agents, derogation, personal liability, separability, and amendments, and additional provisions which are in the marketing agreement, such as hearing and approval, counterparts, additional parties, and order with marketing agreement.

(4) Deleting from the committee's duties with respect to peas and cauliflower the reference to section 32 of the act of 1935 (49 Stat. 774);

(5) Restricting the matters with respect to which committee members may vote;

(6) Eliminating voting by members who are not in attendance at assembled meetings;

(7) Deleting from the marketing agreement the provisions governing termination thereof at the request of the handlers; and

(8) Making conforming changes such as revising the headings and numbering of the different sections of the marketing agreement and order.

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

(1) It is intended that the handling of all cabbage in the current of interstate commerce or commerce with Canada, or as directly burdens, obstructs, or affects such commerce, be subject to regulation.

Nearly all of the cabbage produced in the San Luis Valley, i. e., the Counties of Alamosa, Rio Grande, Conejos, Costilla and Saguache, which leaves the Valley either by rail or by truck generally leaves the State. Some shippers operating in Denver bring to that city a large number of cars of cabbage and other vegetables grown in the Valley to be loaded into mixed cars for out-of-State shipment. Illustrative of the significance of this traffic is the fact that during 1948, 115 cars of cabbage, or 72 percent of all cars of cabbage loaded on the Denver and Rio Grande Western Railroad in the San Luis Valley, were billed to Denver as the primary destination. In the same year 2,167 cars of mixed vegetables, including cabbage, were loaded at Denver. This represents 73 percent of all cars of mixed vegetables loaded in the entire State during the year. Recent years have shown an increasing proportion of the State's mixed vegetable carlot movement originating in Denver and, therefore, the importance of that city as a potential interstate commerce gateway for Valley-grown cabbage.

A large number of truckloads of Valley-grown cabbage also moves to similar assembly points outside the Valley but in the State of Colorado, where the cabbage is unloaded and subsequently reloaded with other vegetables to form truckloads of mixed vegetables moving to out-of-State destinations. The principal, but not the only, such truckload assembly point is Pueblo. Occasionally, some of the cabbage in a carload or truckload may, after the unloading at Denver, Pueblo, or other assembly points, be disposed of locally for consumption. However, the aggregate quantity of cabbage thus disposed of is relatively very small, since most consuming centers in the State are largely supplied from home gardens, nearby market gardens, or from commercial producing areas more readily accessible to them than is the San Luis Valley. It is impossible to tell at the time cabbage is loaded or leaves the Valley which lots, if any, will ultimately be consumed within the State. On leaving the Valley, lots destined for consumption within the State are so indistinguishably intermingled with the much greater quantity destined for shipment to points outside the State that the entire movement of cabbage constitutes a single homogeneous current of commerce.

Sales or deliveries of cabbage grown in the Valley by the producers thereof to packing houses to be packed for shipment should not be subject to regulation because it is administratively desirable and most effective to subject such cabbage to regulation in the possession of handlers subsequent to such sales or deliveries. In those instances when the producer sells cabbage to a purchaser, such as a trucker, for shipment directly from the Valley to a destination outside thereof, such handling of the cabbage by the grower should be subject to regulation. The act prohibits the application of any such regulations to a retailer of cabbage in his capacity as such retailer, or to a producer of such cabbage in his capacity as a producer. Since all handling, except as just indicated, is in the current of interstate commerce or commerce with Canada or directly burdens, obstructs, or affects such commerce, as hereinbefore found, it is concluded that the handling of all such cabbage, except as previously noted, should be subject to such regulation; and provision therefor should be made in the marketing agreement and order.

(2) Grade and size regulation during seasons when the average price is not above parity and regulation on the basis of minimum standards of quality and maturity when the average price is above parity are necessary and would tend to effectuate the purpose of the act with respect to cabbage grown in the San Luis Valley. Marketing problems have assumed increasing importance with the growth of the industry. Cabbage acreage in the Valley has grown from seven acres in 1928 to 1,100 in 1938 and to 2,150 in 1948.

Marketing problems for Valley-grown cabbage, which manifested themselves during the past several years, became acute in 1948 when prices were substantially below parity. The most important problem is the prevailing lack of uniformity of sizes and grades of cabbage handled. Some buyers, such as hotels and restaurants, prefer large heads because of the lower cost and less waste and labor involved in preparation for use. Other cabbage buyers, particularly retailers, prefer only small or medium-size heads of desirable quality since such heads are preferred by most consumers. There is a strong incentive for some growers to attempt to dispose of large heads, which generally command a lower price, at the same price as small or medium-size heads by mixing them in the same container with the latter. When this is done, the buyer receives containers of cabbage of mixed sizes (including unwanted sizes) and is dissatisfied; and he may thereupon either offer a discounted price with respect to future purchases to cover possible financial loss due to the lack of proper grading and sizing, or go to handlers in other producing areas for his next purchase. In any case, the practice of such mixing of sizes in the same container tends to destroy the confidence of buyers in the grade and uniformity of sizing of San Luis Valley cabbage and tends to lower prices received by all growers in the area, including those who properly grade and size their cabbage. Regulation by grades and sizes (including the mixing of sizes) would be beneficial to growers in the Valley regardless of competition from and absence of regulation in other areas of production.

Minimum standards of quality and maturity represent those standards below which, in the public interest, cabbage offered to consumers should not fall, regardless of price. The marketing agreement and order should provide for a continued program during periods when the seasonal average price for cabbage grown in the San Luis Valley exceeds the parity level set forth therefor in section 2 (1) of the Agricultural Marketing Agreement Act of 1937, as amended.

Public Law 305, 80th Congress (61 Stat. 707), approved August 1, 1947, permits minimum standards of quality and maturity to be established and maintained in effect even though the seasonal average price of the regulated commodity is above parity, if such action will effectuate orderly marketing in the public interest.

By shipping, during such seasons, stock of uniform grade and desirable sizes, confidence of distributors and consumers in the quality and proper sizing of San Luis Valley cabbage will tend to be built up. When the seasonal average price is above parity, the urge to ship low quality merchandise is stronger than when the price is at or below parity. Not only would the shipment of very inferior quality cabbage during periods of relatively high prices tend to destroy much of the confidence that may have been built up during periods of strict regulation but in the absence of minimum standards of quality and maturity, the consumer would receive a smaller percentage of usable food per unit purchased than during periods of low prices.

The criterional factors which should be considered in connection with the establishment of minimum standards of quality and maturity are hereinafter discussed in paragraph (3) (c) of this section.

(3) The provisions of this paragraph apply not only to the terms and conditions to be made applicable to cabbage but also to the amendments dealing with peas and cauliflower; and they will be treated accordingly. Certain terms that apply to individuals, legislation, concepts, or things are used repeatedly in the text of the marketing agreement and order. Such terms should be defined so as to fix their respective meanings and obviate the necessity of repeated definement whenever used.

(a) The definition of "Secretary" is realistic in that it recognizes the fact that it is physically impossible for the Secretary personally to perform all of the functions and duties which are imposed on him by law, and that the functions of the Secretary, as set forth in the marketing agreement and order, may in fact be performed by officers or employees of the Department who are au-

thorized to act in his stead. The definition of "act" merely sets forth the most recent statutory citation of the act, including its amendments, pursuant to which the proposed regulatory program is to be operative.

The definition of "person" closely follows the one set forth therefor in the act.

"Production area" means the counties of Alamosa, Rio Grande, Conejos, Costilla and Saguache in the State of Colorado. This is identical with the production area covered by the present marketing agreement and order for peas and cauliflower. These five counties constitute a geographical unit known as the San Luis Valley, are separated from other parts of the State by mountains, and have fairly homogeneous conditions of climate, soil and water supply. This is the smallest practicable area for operating this marketing agreement and order program.

"Cabbage" should be defined so as to include all types and varieties of cabbage including the red and Savoy types, for fresh use that are grown in the San Luis Valley. The problems of the cabbage in the Valley, as discussed above, apply to all varieties now grown in that area. If any types or varieties of cabbage not now grown commercially should in the future be grown there, the same problems would probably also be found to apply to such types and varieties. It would not be practicable to exclude from regulation any types of cabbage which may subsequently be grown commercially in the area and to restrict the applicability of regulation only to those types and varieties presently in production.

The term "producer" should be defined as "any person engaged in growing peas, cauliflower or cabbage for market." Except for the addition of cabbage this definition is identical with that in the present order. The term should not include a handler who purchases the crop in an unharvested field, even though he thereby assumes the responsibility for dusting, irrigating, and other cultural practices between the time of purchase and the time of harvest. The purchase of unharvested fields is a common practice in the production area in the case of peas, but less common in the case of cauliflower and cabbage. To consider a handler who purchases an unharvested field as a producer would entitle him to vote in the election of nominees for grower members of the Administrative Committee and would be inconsistent with these provisions of this program.

The term "handler" should be made synonymous with "shipper" and should include every person who ships or causes to be shipped, peas, cauliflower or cabbage. The term "shipper" is more commonly used and generally understood than "handler" and may include such factors as the local packer who deals directly with the grower, purchasing the commodity from the latter or handling it for his account on a consignment basis; a local representative of a produce distributor located in Denver or elsewhere outside the area; an itinerant trucker who purchases in the area; a cash carlot buyer, or a shipping point broker. A producer should be subject to regulation in the same manner as a handler when functioning as such with respect to commodities of his own production.

The definition in the present marketing agreement and order limits the meaning of the term to the "first" handler. This is too restrictive, in that it exempts from liability for non-compliance all handlers except the first. All handlers should be made liable, thus reducing the probability of violations and facilitating prosecution in cases of violation. These considerations apply equally to peas, cauliflower, and cabbage.

In the interest of consistency with the definition of "handler," the term "handle" should be made synonymous with "ship." In the present marketing agreement and order, the definition of "handle" lists four specific acts covered by the term, namely, "transport," "offer for transportation," "sell," and "ship." The term "ship" is automatically eliminated from the body of the definition by being made synonymous with "handle."

The act of "transporting" or "offering for transportation" might be performed by such factors as a carlot shipper, a grower or shipper who ships by a trucking line acting as a common carrier, an itinerant trucker, a grower who sells to an itinerant trucker, or occasionally a cash carlot buyer or a shipping point broker acting as agent for a shipper principal.

The act of "selling" or "offering for sale" might be performed by any handler or producer including any of the above mentioned factors. The term "offer for sale" is not included in the definition of "handle" in the present marketing agreement and order. It should be included, however, since it is both a necessary preliminary to, and an integral part of, the act of sale.

The term "handle" applies by definition only to peas, cauliflower, and cabbage "in the current of interstate commerce or commerce with Canada or so as directly to burden, obstruct or affect such commerce." In the discussion of Federal jurisdiction under (1) in this recommended decision, it has been shown that cabbage which leaves the production area is in the current of interstate commerce or commerce with Canada, or directly burdens, obstructs or affects such commerce. Effective regulation of interstate shipments would be impossible if an attempt were made, before a shipment left the Valley, to distinguish between the portion destined for points outside the State and that destined for consumption within the State.

The definition of "fiscal year" has been left unchanged from that in the present marketing agreement and order. There are certain advantages in having the same fiscal year for cabbage as for peas and cauliflower. Nominees for cabbage producer members of the committee may be selected at the same time as nominees for pea and cauliflower members. Also, the work of auditing the committee's records each year is simplified. The harvesting period and marketing season for cabbage are entirely within the described fiscal year.

(b) Under the present marketing agreement and order, the Administrative Committee consists of 12 members, including four handler members, four pea producer members, and four cauliflower producer members. Since cabbage is of roughly comparable importance with peas and cauliflower in the Valley, the number of cabbage producer members on the committee should be the same as for the other crops. This would involve two practical alternatives, namely, (i) adding four cabbage producer members, making a total committee membership of 16, or (ii) reducing the number of representatives of each constituent group. A committee of 16 members would tend to be unwieldy, increasing the difficulty of getting a quorum to attend meetings. A committee of 12 members, including three from each constituent group, would give adequate representation to each group and at the same time facilitate the work of the committee.

Cabbage producer members should be selected by districts in order to insure the selection of members familiar with the problems of each district. Since cabbage is grown in approximately the same areas and frequently by the same growers as cauliflower, the districting should be the same as for the latter.

Reduction of the number of pea and cauliflower producer members to three for each crop necessitates redistricting. Under the present marketing agreement order, there are one pea producer member for Rio Grande and Saguache Counties, one for Conejos County, one for Alamosa and Costilla Counties, and a fourth member-at-large to represent a district consisting of all of the aforesaid counties. The reduction should be accomplished by eliminating the member-at-large. This would leave each pea producing area adequately represented.

The present program provides for one cauliflower producer member for Alamosa, Rio Grande, and Saguache Counties, one for Conejos County and two for Costilla County. The latter County has declined in relative importance in production of cauliflower in recent years. In 1948 Costilla County shipped fewer than half of the cars loaded in the Valley, as compared with 1940 when it shipped more than 80 percent. By giving Costilla County only one cauliflower producer member instead of two, the County will be adequately represented and there will be only three cauliflower producer members on the committee.

In order to assure continuity of operation, the committee established under the present marketing agreement and order should continue to function with respect to the regulation of peas and cauliflower until the initial members of the committee appointed pursuant to the proposed marketing agreement and order have been selected and have qualified.

Alternate cabbage producer members should be selected in order to insure a full attendance at committee meetings in the event that the regular member is unable to attend. Since the alternate member acts in the place of the regular member, he should possess the same qualifications as the latter.

The general meeting of cabbage producers and the general meeting of handlers for the selection of nominees for committee members should be held on or before May 15 of each year. This is practically the latest date on which nominees can be chosen and still allow time for appointment by the Secretary by the beginning of the new fiscal year. It is also about the earliest date on which a full attendance of handlers can be assured. Prior to that time, many handlers are still shipping vegetables from Arizona and elsewhere.

The vote of each producer should be of equal value and effect with that of every other producer present and voting at a nominating meeting. The alternative to the one-producer-one-vote principle would be a vote weighted by each producer's acreage or production. Small producers may be as much interested as large producers in the welfare of the industry; consequently, each producer's vote should be unweighted. In order to vote at a nominating meeting a producer should attend in person. The foregoing applies with equal cogency to handlers voting for handler nominees.

A grower who functions as a handler with respect to cabbage of his own production should be eligible to serve as a producer-member, but not if he handles cabbage grown by another person. Since many handlers are also growers, it could happen that, in the absence of this restriction, a committee would be chosen composed entirely of members whose interests were predominantly those of handlers.

The handler groups and the producer groups should select nominees equal to twice the number of members and alternate members to be selected. In order that the Secretary may have some leeway in selecting the most qualified nominees, he should be empowered to appoint either of the two nominees for a given position. In order that the industry may have some independent authority with respect to the choosing of committee members, the Secretary should be restricted in his selection to the nominees chosen, providing the latter are qualified and are nominated in accordance with the provisions of the marketing agreement and order.

Residence in the production area should not be a required qualification for handler members and alternates. Such a requirement may, at times, disqualify able handlers whom other handlers might desire to nominate. The qualifications of individual nominees with respect to residency, should be left to the nominating handlers. Individual handler members need not be handlers of all three commodities covered by the marketing agreement and order. In order that a full committee may be assured, even though nominees have not been chosen in the prescribed manner, the Secretary should have authority in such cases to select members and alternates without regard to nominations and without waiting for nominations to be made.

Each member and alternate selected by the Secretary should be required to file a written acceptance of appointment within 15 days after being notified of his selection. Without such provision, the Secretary would not know which appointees were willing to serve, or whether any vacancies existed which would need to be filled.

The term of office of members should begin on June 1 or the date of qualification, whichever is later, and should continue for the remainder of the fiscal year. In order to provide continuity of operation, however, the current members of the committee should continue to serve until their successors have been selected and have qualified.

Vacancies on the committee from any cause may leave one or more groups inadequately represented. In order to insure full representation at all times, provision should be made for the filling of vacancies, including a provision whereby the Secretary may fill any vacancy in case the committee fails to take the necessary initiating steps.

Payment of compensation to committee members has not proven necessary in order to induce able men to serve. It is only fair, however, that members should be reimbursed for expenses necessarily incurred in the performance of their duties as members.

The sections authorizing the Secretary to appoint members of the committee without regard to nominations in the event of failure to make nominations pursuant to and within time specified in the marketing agreement and order; requiring the filing of written acceptance by appointees; prescribing the duties of alternate members; providing for the filling of vacancies on the committee; and providing for reimbursement of committee members for expenses necessarily incurred in the performance of their duties are identical in their provisions with the corresponding sections in the present marketing agreement and order for peas and cauliflower. The section entitled "Term of Office" has been reworded for greater clarity without changing its essential meaning.

The powers of the committee should be those which are set forth in section 8c (7) (C) of the act as being necessary and appropriate for an administrative agency of this nature to perform its duties and functions. These powers are identical with the powers listed in the present marketing agreement and order for peas and cauliflower.

The committee's duties, as set forth in the marketing agreement and order, are necessary and incidental to the discharge of its responsibilities. It should act as intermediary between the Secretary and any producer or handler; keep minutes, books, and records which will clearly reflect all of its acts and transactions, and such minutes, books, and records should be subject at any time to examination by the Secretary; investigate the growing, shipping, and marketing conditions with respect to peas, cauliflower, and cabbage, and assemble data in connection therewith; furnish the Secretary such available information as the Secretary may request; prepare each year a budget of proposed expenditures and recommend to the Secretary proposed rates of assessments; cause the books of the committee to be audited by one or more competent accountants at least once each fiscal year, and at such other times as the committee may deem necessary or the Secretary may request, and file with the Secretary a copy of each such report; appoint any employees deemed necessary, and determine their salaries and define their duties; select a chairman and such other officers as it may deem advisable; and give the Secretary the same notice of meetings of the committee as is given to the members of the committee.

The duty requiring the preparation, annually, of a budget of proposed expenditures and the recommendation to the Secretary of proposed rates of assessment should be expressly set forth rather than be inferred, as at present, by implication. Marketing agreements and orders, generally, contain such duty explicitly stated. Except for this duty, all of the duties mentioned above are provided for in the present marketing agreement and order for peas and cauliflower.

The duty prescribed in the present marketing agreement and order for peas and cauliflower, namely, "to perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the Act to Amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress (August 24, 1935) as amended" should be deleted. One task that might be assigned to the committee under the provisions mentioned in this paragraph is the allocation of Government purchases of surplus commodities. At present, execution by the committee of any such assignment is mandatory, even though special circumstances may make it undesirable for the committee to carry out such assignment. Deletion of this provision, however, would not necessarily prevent the Secretary from requesting the committee to accept such an assignment; but acceptance would be optional with the committee.

Only handler members and cabbage producer members should be entitled to vote on any matter with respect to regulating the shipment of cabbage. This is similar to the provisions with respect to peas and cauliflower in the present marketing agreement and order. This is reasonable in that it reserves decision in such matters to the members representing persons directly interested. A quorum for the consideration of such matters should consist of any four of the six members concerned, or one more than half the number; and any decision of the committee with respect to such matters should require four affirmative votes. This provision is analogous to that of the present program with respect to peas and cauliflower which requires a quorum of five of the eight members concerned with five concurring votes required for decision.

In overall matters concerning all growers and handlers of peas, cauliflower, and cabbage, a quorum of seven of the twelve members of the committee is required; and seven concurring votes are necessary for decision. This is the same as the corresponding provision currently in effect which provides for decisions to be made by majority vote.

Only members present at an assembled meeting of the committee should be entitled to vote. This should tend to encourage fuller attendance and opportunity for fuller discussion. It eliminates the possibility of decisions being reached by a few members, short of a quorum, who may have an opportunity for discussion, plus votes by telephone of absent members who have not had such opportunity. At the same time, provision should be made for voting by telephone or telegraph in cases of emergency. Emergencies may arise, such as a sudden hail storm or a freeze, when prompt action is required and it is impracticable to assemble the committee quickly enough to meet the emergency. For the sake of the record, all votes by telephone should be confirmed in writing by the members thus voting. Provision for voting by mail, however, is unnecessary, since the committee could be assembled in less time than it would take to arrange for voting by mail.

The provisions of § 910.26 *Use of funds*, § 910.27 *Possession of funds, books, records, and other property*, and § 910.28 *Right of the Secretary*, as hereinafter set forth, are generally common to marketing agreements and orders now in operation, and are contained in the marketing agreement and order regulating the handling of peas and cauliflower. These provisions are incidental to, and not inconsistent with, the act, and are necessary to effectuate the other provisions of this regulation. They should be made applicable to cabbage.

(c) The committee should be authorized to incur such expenses as the Secretary finds may be necessary for the maintenance and functioning of the committee during the applicable fiscal year. The list of itemized anticipated expenses should cover only one fiscal year and should include only those items which the Secretary finds necessary for the proper functioning of the program.

The necessary expenses should be defrayed by an assessment to be paid by handlers on shipments of peas, cauliflower, and cabbage. The assessment paid by each handler should be in the same proportion to total expenses as the total quantity of peas, cauliflower, or cabbage shipped by such handler during the fiscal year is of the total quantity of peas, cauliflower, or cabbage shipped by all handlers during the same year. The Secretary should have the right to increase or decrease, during or after a fiscal year, the rate of assessment to cover any later findings of the Secretary with respect to the estimated or actual expenses of the committee during said fiscal year.

The imposition of an assessment at a stated rate per car or per package is the logical way of accomplishing the required result. This is the method which has been employed each season in the past under the present pea and cauliflower marketing agreement and order, the provisions of which are, with respect to the incurring of expenses and the levying of assessments, the same as in the proposed marketing agreement and order.

Since most of the expenses of the committee are of an overall nature, not chargeable more to one commodity than to another, it is impossible to determine a precisely equitable division of expenses among the three commodities. At the same time, assessment rates should be so fixed as to apportion the cost of the program as equitably as is practicable among the three commodities. This will allow adequate flexibility in establishing realistic rates of assessment for the various commodities regulated.

At the end of each fiscal year, the committee should credit each handler with any amount paid by him in excess of his pro rata share of the expenses, or debit him his pro rata share of any deficit. Since assessment collections may be used only for authorized expenses, any sums so collected in excess of the actual expenses should be credited or distributed to eligible handlers on a pro rata basis. The proportionate amount of the surplus should be determined and credited to each handler's account.

Handlers are obligated to pay their pro rata share of any expenses, and thus of any deficit. The committee should have authority, when approved by the Secretary, to enforce payment of assessment by means of a lawsuit. The foregoing provisions pertaining to handler accounts are identical with the corresponding provisions in the present marketing agreement and order for peas and cauliflower.

(d) The establishment of a marketing policy for cabbage at the beginning of each season should prove of benefit to cabbage growers and handlers, by enabling them to plan their season's operations in view of the nature of the regulations which the committee proposes to recommend to the Secretary. The marketing policy should be adopted and a report of such policy submitted to the Secretary prior to recommendation for any regulation. Such policy statement should contain, among other things, information relative to the estimated total production or shipments of Valley-grown cabbage; information as to the expected general quality and size; possible or expected demand conditions of different market outlets; supplies of competitive commodities, with such analysis of the foregoing factors and conditions as the committee deems appropriate; and the type of regulation of shipments expected to be recommended. The proposed provision with respect to a marketing policy for cabbage is identical with the current requirements for a marketing policy with respect to peas and cauliflower.

(e) Whenever the committee deems it advisable to regulate the shipment of cabbage by grade or size, or both, it should be authorized to recommend to the Secretary the regulation which it considers desirable. It should at the same time furnish the Secretary with the pertinent information on which it acted in making such recommendation, and such other information as the Secretary may request. If the Secretary finds, from the recommendation and information submitted by the Committee, or from other available information, that so to limit the shipment of cabbage would tend to effectuate the declared policy of the act, he should so limit the shipment of cabbage for a specified period or periods. He should immediately notify the committee of the issuance of each such regulation, and the committee should promptly give adequate notice to handlers and producers.

Most shipments of cabbage leaving the production area in recent seasons have been inspected for grade and size by the Federal-State inspection service. Such inspection has been on the basis of the official cabbage standards of the United States (14 F. R. 583). The industry has thus become accustomed to thinking of the grade and quality of cabbage in terms of the United States standards. A grade regulation may, if deemed desirable, include some specific modification of these standards. The terms of the present marketing agreement and order make similar provision for regulation of shipments of peas and cauliflower by grade or size, or both.

The provision of the present marketing agreement and order requiring the committee to give notice to handlers and producers of any recommendation made by it to the Secretary, for a grade or size regulation for peas or cauliflower, should be deleted. Such notice might result in confusion if the regulation issued by the Secretary should differ in any important respect from the committee's recommendation.

Provision should be made to permit continued operation of the regulatory program for peas, cauliflower, and cabbage during seasons when the seasonal average price exceeds the parity level, as authorized in section 2 (3) of the act. During such periods restriction of shipments should be on the basis of minimum standards of quality and maturity. Such minimum standards should represent a lower quality than the grade and size regulations authorized when seasonal average prices are at or below parity. Grade and size regulations are designed to restrict shipments to the better grades and more desirable sizes, while minimum standards of quality and maturity are designed to prevent the shipment of merchandise so poor that its sale would not be in the public interest.

Recommendations for the establishment of such minimum standards should be in terms of (i) freedom of the commodity from material impairment of edible quality; (ii) freedom from serious impairment of shipping or keeping quality; (iii) freedom from serious damage to appearance; (iv) freedom from material excess waste in preparation for use; (v) degree of maturity; or (vi) any combination of the foregoing.

The structure of the provisions authorizing the Administrative Committee to recommend and the Secretary to establish on the basis of such recommendation or other available information minimum standards of quality and maturity, affords the maximum flexibility in the establishment, modification, suspension or termination of such minimum standards which would be absent if the specific standards were detailed in the provisions. It is impracticable to anticipate with precision the varying climatic and other conditions which may prevail during a particular marketing season and

have a direct bearing on any prefigured, mandatory specifications of minimum standards of quality and maturity to be in effect during such season. In a large proportion of cases, however, such minimum standards for peas and cabbage should exclude seriously damaged specimens, as serious damage is defined in the United States standards[1] for those respective commodities. As experience in the operation of these provisions demonstrates the exact needs, appropriate adjustments in the standards can be made readily.

The marketing of fresh peas, cauliflower, or cabbage which fails to meet the governing terms enumerated above is clearly not in the best interest of the consumer. The continued shipment of such low grade merchandise would, because of the increasing consumer resistance thereto, the decreased tendency to make repeat purchases, and the destruction of the confidence of consumers in the quality of the respective commodities grown in the San Luis Valley, tend to result in direct financial loss to all elements of the industry. Such a development is not conducive to such orderly marketing of Valley-grown peas, cauliflower, and cabbage as will be in the public interest.

Material impairment of edible quality may be directly related to maturity of peas or cauliflower. Overmature peas, or excessively ricey, or fuzzy heads of cauliflower resulting from overmaturity, are materially less palatable than the younger, less mature specimens. Cabbage which is seriously damaged by yellow discoloration, or which has been badly frozen or is stale from long storage, is materially impaired as to edible quality.

Serious impairment of shipping or keeping quality by reason of decay, freezing, bruising or other cause, may result in excessive loss in transit or in distributive channels, and may result in undue loss by the consumer after purchase.

Serious damage to appearance reduces the desire of the consumer to purchase in the first place and to make repeat purchases. It may be related to excess waste in preparation for use, as in the case of cabbage with burst heads, badly wormeaten leaves, badly frozen or badly discolored heads, or, in the case of cauliflower, having a soiled or dirty curd. It may be correlated with materially impaired edible quality as in the case of cauliflower or cabbage heads infested with aphis.

Material excess waste in preparation for use is waste materially in excess of that which normally occurs in the preparation of good quality specimens for use. It may be directly related to maturity, as in the case of flat pea pods with immature, undeveloped seeds, or cabbage with long seed stems; to seriously damaged appearance, as in the case of badly wormeaten heads of cabbage, or to seriously impaired shipping or keeping quality, as in cases where the presence of decay necessitates excessive sorting or trimming by the consumer.

[1] United States Standards for Fresh Peas (14 F. R. 564); and United States Standards for Cabbage (14 F. R. 563).

The committee should adopt, subject to the approval of the Secretary, procedure pursuant to which certificates of exemption will be issued. Exemption certificates should be issued to permit the shipment of peas, cabbage, or cauliflower, as the case may require, of a lower grade than otherwise permitted under a grade regulation whenever a grower's crop, or unharvested crop purchased by a handler, has been damaged by causes beyond his control to the extent that he would suffer undue hardship if held strictly to the grade regulation then in effect.

Where a large number of exemptions are granted, the resultant shipment of lower grade merchandise injures the reputation of the area for quality of shipments and tends to nullify the beneficial effect of grade regulation on the industry as a whole. A fair balance should be achieved between the interests of the industry as a whole on the one hand, and the interests of the individual whose crop has been damaged, on the other.

In the past, exemption certificates have rarely been issued for cauliflower; but an increasing proportion of peas have been shipped from the San Luis Valley under exemption certificates. In 1946, 40,056 bushels of peas, representing 4.5 percent of the total production for the State of Colorado, were shipped from the Valley under exemption certificates. In 1948, 45,434 bushels, representing 7.1 percent of the State's production, were shipped from the Valley under exemption. This latter amount was harmful to the reputation of the Valley for shipping well-graded peas of uniformly high quality. Exemption certificates should be issued to producers, and to handlers who have purchased unharvested crops. The purchase of unharvested crops is a common practice in the Valley in the case of peas, but less common in the case of cauliflower and cabbage. Unless exemption certificates are issued to such handlers, they will find ways to pass back to the growers any losses from causes for which exemptions would otherwise be issued. However, the quality of the commodity exempted for shipment should be such as to meet prescribed requirements, as hereinafter discussed.

Exemption certificates should be issued only in instances of damage due to causes, such as hail or frost damage, which are beyond the control of the owner of the crop. Of such causes, hail damage is of the most frequent occurrence. The issuance of exemption certificates for conditions within the owner's control, such as improper cultural practices or failure to harvest at the proper stage of maturity, would tend to encourage improper cultural and harvesting practices.

Exemption certificates should not, however, be issued where the damage is only slight. In such cases, the crop can be made to meet requirements of the regulation by somewhat heavier sorting out of defective specimens.

Exemption certificates should be issued in cases where it is impracticable so to sort the commodity that it will meet the grade requirements of the regulation. Although the crop from slightly damaged fields may be graded to meet the requirements of the regulation, it would be impracticable where the damage is severe because of the higher labor cost involved in the heavy sorting that would be required, the greater difficulty of accomplishing adequate sorting, and the smaller resulting shipment. An owner who found it impracticable for the reasons given to grade the commodity from a damaged field to conform to the requirements of a grade regulation would automatically be prevented by regulation in the absence of any exemption, in practically all, if not all cases, from shipping as large a proportion of the crop from such fields as the average of all producers. The committee is the proper agency to ascertain, impartially and fairly, whether damage to a given field is severe enough to warrant the issuance of an exemption certificate.

Exemption certificates should in no case permit the shipment of any lot of peas grading less than 80 percent U. S. No. 1 quality, or of any lot of cauliflower or cabbage grading less than 75 percent U. S. No. 1 quality.[2] Establishment of such floor grades is based on the following considerations: (a) Such floor grades assure buyers that all lots shipped under exemption will be of at least fair quality, thus tending to promote more confident buying and more orderly marketing; (b) unless such floor grades are established, the number of shipments of poor quality merchandise may, in the future as in the past, go far toward nullifying the beneficial effects to the industry of grade regulation; (c) in most cases no material hardship will result from the prohibition of shipments which fall below the floor grades; and experience in the past has shown that when the seasonal price is not above parity, the shipment of lots of lower grade than the proposed floor grades is likely to result in financial loss to the shipper or grower; (d) except where damage is unusually severe, it is possible to meet the requirements of the floor grade by heavier sorting; and (e) in the case of unusually severe and widespread damage, the committee could recommend suspension or termination of any grade regulation in effect.

An exemption certificate should be issued for the production of a particular field, or of the portion of a field which has suffered damage. It should permit the shipment of peas, cauliflower, or cabbage harvested from the damaged area, insofar as the lots of the respective commodities meet the requirements of the applicable floor grade.

The committee should have the authority to make a thorough investigation, at any time, of any application pertaining to exemptions. In the event additional information on which to base a proper determination should be needed, the committee should have the authority to make such investigation and request such additional information as it deems necessary.

Provision should be made for an appeal from any determination of the committee with respect to exemption. Such an appeal should be taken promptly after the determination of the committee in order to avoid undue loss from deteriora-

[2] The United Standards for Cauliflower are set forth in 13 F. R. 2249.

tion of the crop pending the outcome of the appeal. The appellant should furnish evidence satisfactory to the committee for determination on the appeal. The committee should thereupon reconsider the application and notify the appellant of its final determination. The Secretary should have the right to modify, change, alter, or rescind any procedure and any exemptions granted.

The committee should maintain adequate records of all applications for exemption certificates issued and denied, the quantity of peas, cauliflower, or cabbage covered by the respective exemption certificates, the amounts shipped under exemption certificates, a record of all appeals, and such other information as may be requested by the Secretary. Such data should be compiled and submitted to the Secretary, from time to time, in order to assure proper administration of these exemption provisions.

Exemption certificates should not be issued when minimum standards of quality or maturity are in effect because such standards represent the lowest quality that may be marketed consistent with orderly marketing in the public interest.

During any period in which peas, cauliflower, or cabbage is under regulation, each handler should cause each shipment thereof to be inspected by an authorized representative of the Federal-State Inspection Service; and a copy of the inspection certificate issued should be promptly submitted to the committee. Such inspection requirement is necessary for the proper enforcement of the regulation. The Federal-State Inspection Service is the customary agency for making such inspections and is presently utilized under the marketing agreement and order for peas and cauliflower.

The provision of the present marketing agreement and order with respect to so-called "loading holidays" for peas and cauliflower should not be made applicable to cabbage. Because of the competition of other producing areas, both within the State and in other States, any loading holiday for cabbage would principally benefit growers and shippers in such competing areas. Itinerant truckers, who provide an important outlet for cabbage grown in the area, may be permanently diverted to other producing areas if they should come to the area and find it impossible to purchase a load of cabbage because of a loading holiday. Since cabbage can be left in the field unharvested for several days without material deterioration, after reaching the stage for harvesting, a loading holiday would not appreciably reduce the total quantity harvested and shipped.

(f) The marketing agreement and order should not impose any limitation on the right of any handler to ship cabbage for consumption by charitable institutions or for distribution by relief agencies, nor should any assessment be levied or collected with respect thereto. The number of such shipments is expected in any case to be small; and their subjection to regulation may be a deterrant to the making of such shipments. The committee should be authorized, however, to prescribe adequate safeguards to prevent such shipments from entering the commercial channels of trade contrary to the provisions of this regulatory program. Similar provisions relating to shipments of peas and cauliflower for relief are contained in the present marketing agreement and order.

(g) Handlers should be required to furnish the committee upon request, and with the approval of the Secretary, in such manner and at such times as it prescribes, such information as will enable the committee to perform its duties. Copies of inspection certificates furnished to the committee give it certain information with respect to the operations of each handler. In cases where this information is not sufficient for the committee to carry out its duties properly, however, it should be authorized to obtain the necessary additional information. Such requests should be approved by the Secretary, however, in order to prevent the imposition of undue, or improper burdens upon handlers. The present marketing agreement and order contain comparable provisions regarding the rendering of similar reports by handlers with respect to peas and cauliflower.

(h) The provisions of §§ 910.39 to 910.48, inclusive, as hereinafter set forth, are generally common to marketing agreements and orders now operating and are contained in the marketing agreement and order regarding the handling of peas and cauliflower. The provisions of §§ 910.49 to 910.52, inclusive, as hereinafter set forth, are also generally common to marketing agreements now in operation and are contained in Marketing Agreement No. 67, as amended. All such provisions are incidental to, and not inconsistent with the act, and are necessary to effectuate the other provisions of this regulatory program. They should be made applicable to cabbage. The provisions which are applicable to both the proposed marketing agreement and order, identified by section number and heading, are as follows:

§ 910.39 *Effective time;* § 910.40 *Termination;* § 910.41 *Proceedings after termination;* § 910.42 *Effect of termination or amendment;* § 910.43 *Duration of immunities;* § 910.44 *Agents;* § 910.45 *Derogation;* § 910.46 *Personal liability;* § 910.47 *Separability;* and § 910.48 *Amendments.*

The provisions which are applicable to the proposed marketing agreement only, identified by section number and heading, are as follows:

§ 910.49 *Hearing and approval;* § 910.50 *Counterparts;* § 910.51 *Additional parties;* and § 910.52 *Order with marketing agreement.*

The provisions in the existing marketing agreement requiring its termination with respect to peas and cauliflower, when such termination is favored by signatory handlers who handled not less than 67 percent of the volume of the respective crop handled by the signatory handlers during the then preceding fiscal year, should be deleted. This should be so in view of the facts that such provisions have never been utilized heretofore, that those provisions of the agreement are binding only upon signatory handlers, and the act furnishes adequate authority for the termination of the agreement.

(4) In the interest of easier reference, the sections of the marketing agreement and order should be renumbered. The renumbering of sections and some of the proposed changes in the provisions of the marketing agreement and order, have necessitated appropriate changes in some of the headings. In a few instances, the language of the marketing agreement and order has been changed slightly in the interest of greater clarity without any intended change in meaning.

Cabbage should be included in the same marketing agreement and order program with peas and cauliflower rather than be covered by a separate marketing agreement and order. The area where cabbage is grown is largely co-extensive with the area where peas and cauliflower, principally cauliflower, are grown. The interests of all three industries are closely integrated, as indicated by the fact that nearly all shippers handle all three commodities, while the same growers in many cases produce at least two of these crops.

The operation of a single program for all three commodities, with one Administrative Committee and one office staff, would be more economical than the operation of a separate program for cabbage.

It is hereby found and proclaimed that (1) the parity price for Valley-grown cabbage cannot be satisfactorily determined from available statistics of the United States Department of Agriculture on the August 1909–July 1914 base period specified in section 2 (1) of the act, but (2) the parity price for cabbage can be satisfactorily determined on the August 1921–July 1929 base period specified in section 8e of the act. On January 15, 1949, the parity price for Valley-grown cabbage was $19.70 per ton, whereas the 1948 season average price received by the growers thereof was $13.75 per ton, or 69 percent of parity.

Based on acreage estimates of the United States Department of Agriculture, a slightly larger production of Valley-grown cabbage in 1949 may reasonably be expected. This is expected to result in prices which will not be above parity.

General. It is hereby found and determined that the marketing agreement and order program if expanded to include cabbage, including provisions for regulation of cabbage by grade and size in seasons when the average price for cabbage is at or below parity, and provisions for minimum standards of quality and maturity for peas, cauliflower, or cabbage in seasons when the average price of the respective commodity is above parity, and if amended as proposed with respect to peas and cauliflower, would tend to effectuate the declared purposes of the act.

Rulings on proposed findings and conclusions. The date, March 17, 1949, was set by the presiding officer at the hearing as the last day on which briefs, proposed findings, and proposed conclusions must be filed by interested parties with respect to the evidence adduced at the hearing.

No brief, or proposed finding, or conclusion was filed, and therefore, no ruling is necessary.

Recommended marketing agreement and order. The proposed amended marketing agreement and order hereinafter set forth are recommended as the detailed means by which the aforesaid conclusions may be carried out. The provisions followed by an asterisk (*) apply only to the proposed marketing agreement and not to the proposed order.

DEFINITIONS

As used herein the following terms have the following meanings:

§ 910.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

§ 910.2 *Act.* "Act" means the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. and Sup. I, 601 et seq.).

§ 910.3 *Person.* "Person" means any individual, partnership, corporation, association, legal representative, or any other business unit.

§ 910.4 *Production area.* "Production area" means the counties of Alamosa, Rio Grande, Conejos, Costilla, and Saguache in the State of Colorado.

§ 910.5 *Peas.* "Peas" means all varieties of peas, for sale for consumption in fresh form, grown in the production area.

§ 910.6 *Cauliflower.* "Cauliflower" means all varieties of cauliflower, for sale for consumption in fresh form, grown in the production area.

§ 910.7 *Cabbage.* "Cabbage" means all varieties of cabbage, for sale for consumption in fresh form, grown in the production area.

§ 910.8 *Producer.* "Producer" means any person engaged in growing peas, cauliflower, or cabbage for market.

§ 910.9 *Handler; shipper.* "Handler" or "shipper" means any person (except a common carrier of peas, cauliflower, or cabbage owned by another person) who, as owner, agent, or otherwise, ships or causes to be shipped, peas, cauliflower, or cabbage.

§ 910.10 *Handle; ship.* "Handle" or "ship" means to transport, offer for transportation, sell, or offer for sale, peas, cauliflower, or cabbage in the current of interstate commerce or commerce with Canada, or so as directly to burden, obstruct, or affect such commerce.

§ 910.11 *Fiscal year.* "Fiscal year" means the twelve-month period beginning June 1 of any year and ending May 31 of the following year, both dates inclusive.

ADMINISTRATIVE COMMITTEE

§ 910.12 *Establishment and membership.* There is hereby established an Administrative Committee consisting of twelve members. Three members of said committee shall represent pea producers; three members of said committee shall represent cauliflower producers; three members of said committee shall represent cabbage producers; and three members of said committee shall represent handlers. For each member of the Administrative Committee there shall be an alternate member who shall be selected in the same manner and shall have the same qualifications as the member for whom such person serves as alternate. The members representing producers of peas shall be selected from the following districts: One member shall be a producer of peas in the district consisting of Rio Grande and Saguache Counties; one member shall be a producer of peas in the district consisting of Conejos County; and one member shall be a producer of peas in the district consisting of Alamosa and Costilla Counties. The members representing producers of cauliflower shall be selected from the following districts: One member shall be a producer of cauliflower in the district consisting of Alamosa, Rio Grande and Saguache Counties; one member shall be a producer of cauliflower in the district consisting of Conejos County; and one member shall be a producer of cauliflower in the district consisting of Costilla County. The members representing producers of cabbage shall be selected from the following districts: One member shall be a producer of cabbage in the district consisting of Alamosa, Rio Grande and Saguache Counties; one member shall be a producer of cabbage in the district consisting of Conejos County, and one member shall be a producer of cabbage in the district consisting of Costilla County.

§ 910.13 *Nomination and selection of producer members.* On or before May 15 of each year, there shall be held a general meeting of producers, at such time and place as may be designated by the Administrative Committee; and at such general meeting of producers the nominees shall be designated, in accordance with the provisions set forth herein, and the Secretary shall select, from among the nominees thus designated, the members and alternates of the Administrative Committee to represent producers for the following fiscal year. At each of such meetings, the producers shall select a chairman and a secretary; and thereupon such producers shall designate the nominees to represent, by districts as aforesaid, the producers of peas, cauliflower, and cabbage, respectively. Each producer of cauliflower who is present at said general meeting shall be entitled to cast one vote, and only one vote, on behalf of himself, his agents, partners, and representatives in designating each nominee for each of the aforesaid districts to represent the producers of cauliflower. Each producer of peas who is present at said general meeting shall be entitled to cast one vote, and only one vote, on behalf of himself, his agents, partners, and representatives in designating each nominee for each of the aforesaid districts to represent the producers of peas. Each producer of cabbage who is present at said general meeting shall be entitled to cast one vote, and only one vote, on behalf of himself, his agents, partners, and representatives in designating each nominee for each of the aforesaid districts to represent the producers of cabbage. Producers shall designate two nominees for each producer member of the Administrative Committee from each of the aforesaid districts, and two nominees for each alternate from each district; and the Secretary shall select, from among the nominees designated by the producers, one producer member and his respective alternate for each of the said districts. Only producers who are present at said general meeting may participate in designating nominees. No producer shall be allowed to vote by proxy. The chairman of each meeting shall announce at the respective meeting the name of each person for whom a vote has been cast, whether as member or as alternate, and the number of votes cast for each such person; and the chairman or the secretary of said general meeting shall forthwith transmit such information to the Secretary. No person engaged in handling peas, cauliflower, or cabbage, other than of his own production shall be eligible to serve as a producer member of the Administrative Committee.

§ 910.14 *Nomination and selection of handler members.* On or before May 15 of each year, there shall be held a general meeting of handlers, at such time and place as may be designated by the Administrative Committee; and at such general meeting of handlers the nominees shall be designated, in accordance with the provisions set forth herein, and the Secretary shall select, from among the nominees thus designated, the members and alternates of the Administrative Committee to represent handlers for the following fiscal year. At each of such meetings the handlers shall select a chairman and secretary; and thereupon such handlers shall designate six nominees for membership on the Administrative Committee and six nominees for alternate membership on the Administrative Committee to represent the handlers. The Secretary shall select, from among the nominees designated by the handlers, three members of the Administrative Committee and their respective alternates. Each handler present at said general meeting shall be entitled to cast one vote, and only one vote, on behalf of himself, his agents, partners, affiliates, subsidiaries and representatives. Only handlers who are present at said general meeting may participate in designating nominees. No handlers shall be allowed to vote by proxy. The chairman of each such meeting shall announce at the respective meeting the name of each person for whom a vote has been cast, whether as member or alternate, and the number of votes cast for each such person; and the chairman or the secretary of said general meeting shall forthwith transmit such information to the Secretary. Each member of the Administrative Committee, selected as aforesaid by the Secretary to represent handlers, shall be a handler of peas, cauliflower, or cabbage in the production area.

§ 910.15 *Failure to nominate.* In the event nominations are not made by producers pursuant hereto, and within the

time specified herein, the Secretary may select, without regard to nominations and without waiting for any nominations to be made, the members and alternate members of the Administrative Committee to represent producers. In the event nominations are not made by handlers pursuant to, and within the time specified in, the provisions hereof, the Secretary may select, without regard to nominations and without waiting for any nominations to be made, the members and alternate members of the Administrative Committee to represent handlers.

§ 910.16 *Acceptance.* Any person selected by the Secretary as a member or as an alternate member of the Administrative Committee shall qualify, within fifteen days after being notified of such selection, by filing with the Secretary a written acceptance of such appointment.

§ 910.17 *Term of office.* The term of office of each member and each alternate of the Administrative Committee shall begin on the first day of June or on the date said member or alternate qualifies, whichever is later, and shall continue for the remainder of the fiscal year: *Provided,* That said members and alternates shall continue to serve until their respective successors have been selected and have qualified.

§ 910.18 *Duties of alternate members.* The alternate for a member of the Administrative Committee shall, in the event of such member's absence, act in the place and stead of such member; and in the event of such member's removal, resignation, disqualification, or death, the alternate for said member shall, until a successor for the unexpired term of said member has been selected, act in the place and stead of said member.

§ 910.19 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Administrative Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate member of the Administrative Committee, a successor for his unexpired term shall be selected by the Secretary from nominations made in the manner heretofore specified. If nominations to fill such vacancy are not made and the names of such nominees submitted to the Secretary within twenty days after such vacancy occurs, the Secretary may, without waiting for such nominees to be designated or the names thereof submitted, fill such vacancy.

§ 910.20 *Compensation and expenses.* The members of the Administrative Committee, and their respective alternates when acting as members, shall serve without compensation, but they shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder.

§ 910.21 *Powers.* The Administrative Committee shall have the following powers:

(a) To administer, as herein provided, the terms and provisions hereof;

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

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

(d) To recommend to the Secretary amendments hereto.

§ 910.22 *Duties.* It shall be the duty of the Administrative Committee:

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

(b) To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the committee, and such minutes, books and records shall be subject at any time to examination by the Secretary;

(c) To investigate the growing, shipping, and marketing conditions with respect to peas, cauliflower, and cabbage, and to assemble data in connection therewith;

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

(e) To prepare each year and submit to the Secretary, a proposed budget of expenses and proposed rates of assessment;

(f) To cause the books of the Administrative Committee to be audited by one or more competent accountants at least once each fiscal year and at such other times as the committee may deem necessary or as the Secretary may request, and to file with the Secretary a copy of each such report;

(g) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;

(h) To select a chairman of the Administrative Committee and, from time to time, such other officers as it may deem advisable; and

(i) To give the Secretary the same notice of meetings of the Administrative Committee as is given to the members of the committee.

§ 910.23 *Marketing policy.* Each season prior to making any recommendation to the Secretary for regulation of shipments of peas, cauliflower, or cabbage, the Administrative Committee shall determine the marketing policy to be followed during the ensuing season and submit a report of such policy to the Secretary; and said policy report shall contain, among other provisions, information relative to the estimated total production or shipments of the applicable commodity; information as to the expected general quality and size of the applicable commodity; possible or expected demand conditions of different market outlets; supplies of competitive commodities; such analysis of the foregoing factors and conditions as the committee deems appropriate; and the type of regulation of shipments of the applicable commodity expected to be recommended.

PROCEDURE

§ 910.24 *Quorum and voting requirements.* Only members of the Administrative Committee representing handlers and members representing producers of peas shall be entitled to vote on any matter with respect to peas or the handling of peas pursuant to § 910.32 to § 910.36, inclusive. Any four such members shall constitute a quorum insofar as regulating the handling of peas pursuant to § 910.32 to § 910.36, inclusive, is concerned; and any decision of the Administrative Committee with respect thereto shall require four concurring votes. Only members of the Administrative Committee representing handlers and members representing producers of cauliflower shall be entitled to vote on any matter with respect to cauliflower or the handling of cauliflower pursuant to § 910.32 to § 910.36, inclusive. Any four such members shall constitute a quorum insofar as regulating the handling of cauliflower pursuant to § 910.32 to § 910.36, inclusive, is concerned; and any decision of the Administrative Committee with respect thereto shall require four concurring votes. Only members of the Administrative Committee representing handlers and representing producers of cabbage shall be entitled to vote on any matter with respect to cabbage or the handling of cabbage pursuant to § 910.32 to § 910.36, inclusive. Any four such members shall constitute a quorum insofar as regulating the handling of cabbage pursuant to § 910.32 to § 910.36, inclusive, is concerned; and any decision of the Administrative Committee with respect thereto shall require four concurring votes. Any seven members of the Administrative Committee representing handlers or representing producers shall, with regard to any action by the committee under any section hereof other than § 910.32 to § 910.36, inclusive, constitute a quorum of said committee; and any decision of the Administrative Committee pursuant to any of the provisions hereof other than § 910.32 to § 910.36, shall require seven concurring votes by the members of said committee.

§ 910.25 *Voting.* Only members present at an assembled meeting of the Administrative Committee may vote: *Provided,* That in the absence of an assembled meeting of the committee provision may be made for the members thereof to vote, with regard to committee action, by telegraph or telephone; and any such vote cast by telephone shall be confirmed promptly in writing by each member thus voting by telephone.

§ 910.26 *Use of funds.* All funds received by the Administrative Committee pursuant to any of the provisions hereof shall be used solely for the purposes herein specified, and the Secretary may require the committee and its members to account for all receipts and disbursements.

§ 910.27 *Possession of funds, books, records, and other property.* On the death, resignation, removal or expiration of the term of office of any member of the Administrative Committee, all books, records, funds, and other property in his possession shall be delivered to his successor in office or to the committee, and such assignments and other instruments shall be executed as may be necessary to vest in his successor or in the committee full right to all the books, records, funds,

and other property in the possession or under the control of such member pursuant hereto.

§ 910.28 *Right of the Secretary.* The members of the Administrative Committee (including successors and alternates) and any agent or employee appointed or employed by said committee shall be subject to removal or suspension at any time by the Secretary. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time; and upon such disapproval the action of said committee thus disapproved shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

EXPENSES AND ASSESSMENTS

§ 910.29 *Expenses.* The Administrative Committee is authorized to incur such expenses as the Secretary finds may be necessary for the maintenance and functioning hereunder during each fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided hereinafter.

§ 910.30 *Assessments.* Each handler who first handles peas, cauliflower, or cabbage shall pay to the Administrative Committee, upon demand, such handler's pro rata share of the expenses that the Secretary finds will be necessarily incurred by the committee for the maintenance and functioning of the committee during each fiscal year. Each such handler's pro rata share shall be based upon a rate of assessment fixed by the Secretary and shall be that proportion of such expenses which the total quantity of peas, cauliflower, or cabbage, as the case may be, first shipped by such handler during the fiscal year is of the total quantity of peas, cauliflower, or cabbage so shipped by all handlers during such shipping season. The rate of assessment may be increased or decreased, during or after a fiscal year, by the Secretary in order to cover any later findings of the Secretary of the estimated expenses or the actual expenses of the committee during said fiscal year.

§ 910.31 *Handler accounts.* At the end of each fiscal year the Administrative Committee shall credit each handler with any amount paid by such handler in excess of his pro rata share of the expenses or shall debit such handler with the amount by which his pro rata share exceeds the amount paid by him. Any such debits shall become due and payable upon demand of the committee. The Administrative Committee may, with the approval of the Secretary, maintain a suit in its own name or in the names of its members for the collection of any handler's pro rata share of expenses.

REGULATION OF SHIPMENTS BY GRADES, SIZES AND MINIMUM STANDARDS; PROHIBITION OF LOADING

§ 910.32 *Recommendation of the Administrative Committee.* Whenever the Administrative Committee deems it advisable to regulate the shipment of peas, cauliflower, or cabbage by grades or sizes (including, with respect to cabbage, the mixing of sizes), or both, or to establish and maintain in effect minimum standards of quality or maturity, or both, during any specified period or periods, in order to effectuate the declared policy of the act, it shall so recommend to the Secretary. At the time of submitting each such recommendation, the committee shall furnish the Secretary the pertinent data and information upon which it acted in making such recommendation, and such other data and information as the Secretary may request.

§ 910.33 *Issuance of regulations.* Whenever the Secretary finds, from the recommendation and information submitted by the Administrative Committee or from other available information, that to limit the shipment of peas, cauliflower or cabbage to particular grades or sizes (including, with respect to cabbage, the mixing of sizes), or both, or to establish and maintain in effect minimum standards of quality or maturity, or both, would tend to effectuate the declared policy of the act, he shall so limit the shipment of such peas, cauliflower or cabbage or so establish and maintain in effect such minimum standards during a specified period or periods. The Secretary shall immediately notify the committee of the issuance of each such regulation, and the committee shall promptly give adequate notice thereof to handlers and producers.

§ 910.34 *Exemption certificates.* (a) The committee shall adopt, subject to approval of the Secretary, the procedural rules pursuant to which certificates of exemption will be issued.

(b) Except as otherwise provided in this section, the committee shall issue certificates of exemption to any producer, or to any handler who has purchased an unharvested field of peas, cauliflower, or cabbage, who applies for such exemption and who furnishes evidence satisfactory to the committee that by reason of conditions beyond his control he will be prevented from shipping as large a percentage of the peas, cauliflower, or cabbage as the case may be, from a designated unharvested field, which will meet the requirements of the then current regulation issued pursuant hereto for such commodity as the average percentage of all producers. The exemption provisions shall not be applicable during periods when minimum standards of quality or maturity are in effect. An exemption certificate issued pursuant hereto shall; (1) with respect to peas, permit the shipment of such quantity of peas harvested from the designated field as grades not less than 80 percent U. S. No. 1 quality; and (2) with respect to cauliflower and cabbage permit the shipment of such quantity of cauliflower or cabbage, as the case may be, harvested from the designated field as grades not less than 75 percent U. S. No. 1 quality. U. S. No. 1 quality of peas, cauliflower, and cabbage shall be determined in accordance with the United States Standards for Fresh Peas (14 F. R. 564), United States Standards for Cauliflower (13 F. R. 2249), or the United States Standards for Cabbage (14 F. R. 563) or as such standards may be subsequently amended, as the case requires.

(c) The committee is authorized at any time to make a thorough investigation with respect to any application for exemption.

(d) If any applicant for an exemption certificate is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, make a final determination concerning the certificate of exemption to be granted, and notify the appellant of such final determination.

(e) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to this section.

(f) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of peas, cauliflower or cabbage covered by such exemption certificates, a record of the amount of peas, cauliflower, and cabbage shipped under exemption certificates, a record of appeals for reconsideration of applications for exemption certificates, and such other information as may be requested by the Secretary. Periodic reports on such records shall be compiled and submitted by the committee upon request of the Secretary.

§ 910.35 *Inspection and certification.* During any period in which shipments of peas, cauliflower, or cabbage are regulated pursuant hereto, each handler shall, prior to making each such shipment cause such shipment to be inspected by an authorized representative of the Federal-State Inspection Service; and promptly thereafter each such handler shall submit or cause to be submitted to the Administrative Committee a copy of the Federal-State inspection certificate showing the grade and size of the vegetable contained in the respective shipment.

§ 910.36 *Prohibition of loading.* (a) Whenever the Administrative Committee deems it advisable, in order to effectuate the declared policy of the act, to prohibit the loading of peas or cauliflower for a period of not to exceed 96 hours, it shall so recommend to the Secretary. At the time of submitting such recommendation, the committee shall furnish the Secretary the pertinent data and information upon which it acted in making such recommendation, and such other information as the Secretary may request.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Administrative

Committee or from other available information, that to prohibit the loading of peas or cauliflower during a period of not to exceed 96 hours would tend to effectuate the declared policy of the act, he shall so prohibit the loading of peas, or cauliflower: *Provided*, That not less than 72 hours shall elapse from the termination of such period to the commencement of a subsequent period during which such loading would be prohibited. The Secretary shall immediately notify the committee of the issuance of such regulation, and the committee shall promptly give adequate notice thereof to producers and handlers.

§ 910.37 *Compliance and exceptions*—(a) *Compliance.* No handler shall ship peas, cauliflower, or cabbage in violation of the provisions hereof or of any order or regulation issued pursuant hereto; and no handler shall load peas or cauliflower during any period when such loading has been prohibited by the Secretary pursuant hereto.

(b) *Shipments for relief.* Nothing contained herein shall be construed to authorize any limitation of the right of any handler to ship peas, cauliflower or cabbage for consumption by charitable institutions or for distribution by relief agencies; and no assessment shall be levied or collected on such shipments. The Administrative Committee may prescribe adequate safeguards to prevent such shipments from entering the commercial channels of trade contrary to the provisions hereof.

§ 910.38 *Reports.* At the request of the Administrative Committee, made with the approval of the Secretary, each handler shall furnish such committee, in such manner and at such times as it prescribes, such information as will enable the committee to perform its duties hereunder.

EFFECTIVE TIME AND TERMINATION

§ 910.39 *Effective time.* The provisions hereof shall become effective at such time as the Secretary may declare above his signature attached hereto, and shall continue in force until terminated in any of the ways hereinafter specified.

§ 910.40 *Termination.* (a) The Secretary may, at any time, terminate the provisions hereof by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions hereof whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions hereof, with respect to peas, cauliflower, or cabbage at the end of any fiscal year whenever he finds that such termination is favored by a majority of the producers of the respective vegetable, who, during the then preceding fiscal year have been engaged in the production for market of such vegetable: *Provided*, That such majority has, during such period, produced for market more than fifty percent of the volume of the respective vegetable produced for market; but such termination shall be effective only if announced on or before April 30 of the then current fiscal year.

(d) The provisions hereof shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 910.41 *Proceedings after termination.* (a) Upon the termination of the provisions hereof, the then functioning members of the Administrative Committee shall continue as trustees, for the purpose of liquidating the affairs of the said committee, of all the funds and property then in the possession of or under control of such committee, including but not being limited to the claims for any funds unpaid or property not delivered at the time of such termination; and the procedural rules governing the activities of said trustees, including but not being limited to the determination as to whether action shall be taken by a majority vote of the trustees, shall be prescribed by the Secretary.

(b) The said trustees shall continue in such capacity until discharged by the Secretary, and shall, from time to time, account for all receipts and disbursements or deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Administrative Committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon the said trustees.

§ 910.42 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination hereof or the termination of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision hereof or any regulation issued hereunder, or (b) release or extinguish any violation hereof or of any regulation issued hereunder, or (c) affect or impair any right or remedy of the Secretary or of any other person with respect to any such violation. The provisions hereof shall not affect or waive any right, duty, obligation, or liability which may have arisen in connection with any provision of the amended marketing agreement and order regulating the handling of fresh peas and cauliflower grown in the counties of Alamosa, Rio Grande, Conejos, Costilla and Saguache in the State of Colorado, effective on and after April 13, 1942; or release or extinguish any violation of said marketing agreement and order or of any regulation issued thereunder or affect or impair any right or remedy of the Secretary or of any person with respect to any such violation.

MISCELLANEOUS

§ 910.43 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue hereof shall cease upon the termination hereof, except with respect to acts done hereunder and during the existence hereof.

§ 910.44 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions hereof.

§ 910.45 *Derogation.* Nothing contained herein is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act, or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 910.46 *Personal liability.* No member or alternate member of the Administrative Committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty.

§ 910.47 *Separability.* If any provision hereof is declared invalid, or the applicability thereof to any person, circumstance, or thing, is held invalid, the validity of the remainder hereof, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 910.48 *Amendments.* Amendments hereto may be proposed, from time to time, by the Administrative Committee or by the Secretary.

§ 910.49 *Hearing and approval.* After due notice and hearing, and upon the execution of the proposed amendment by handlers who, during the then preceding calendar year, handled not less than 50 percent of the peas, cauliflower, and cabbage handled during such period, the Secretary may approve such amendment and it shall become effective at such time as the Secretary may designate.*

§ 910.50 *Counterparts.* This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.*

§ 910.51 *Additional parties.* After the effective date hereof, any handler who has not prior thereto become a party hereto may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. The marketing agreement shall take effect as to such new contracting party at the time such is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this marketing agreement shall then be effective as to such new contracting party.*

§ 910.52 *Order with marketing agreement.* Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for the regulating of the handling of peas, cauliflower, and cabbage in the same manner as is provided for herein.*

Filed at Washington, D. C., this 26th day of May 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator.

[F. R. Doc. 49-4336; Filed, May 31, 1949; 8:53 a. m.]

NOTICES

NATIONAL MILITARY ESTABLISHMENT

Secretary of Defense

[Transfer Order 39]

ORDER TRANSFERRING CERTAIN PERSONAL PROPERTY AND FUNCTIONS PERTAINING THEREOF FROM DEPARTMENT OF THE ARMY TO DEPARTMENT OF THE AIR FORCE AND CERTAIN PROPERTY FROM DEPARTMENT OF THE AIR FORCE TO DEPARTMENT OF THE ARMY

Correction

In FEDERAL REGISTER Document 49-4283, appearing at page 2836 of the issue for Saturday, May 28, 1949, paragraph 2 www should read as follows:

www. Executive Order 9630, Part II, sec. 8, September 27, 1945 (10 F. R. 12245).

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[1219674-1271967-1459691-1600327-1646292-1646295]

UTAH

NOTICE OF FILING OF PLATS OF SURVEY

MAY 23, 1949.

Notice is given that the plats of survey of the following described lands, accepted December 23, 1943, June 27, 1947, June 20, 1944, June 27, 1941, and March 8, 1944, will be officially filed in the Land and Survey Office at Salt Lake City, Utah, effective at 10:00 a. m. on the 35th day after the date of this notice:

SALT LAKE MERIDIAN

T. 15 S., R. 17 E.,
Sec. 7, lots 1 to 6 inclusive, NE¼NE¼, W½E½, E½W½, SE¼SE¼;
Sec. 8, lots 1, 2, 3, 4, 5, N½NW¼, NW¼NE¼;
T. 30 S., R. 19 E.,
Secs. 25 to 29 inclusive;
Sec. 30, lots 1, 2, 3, 4, E½W½, E½;
Sec. 31, lots 1, 2, 3, 4, E½W½, E½;
Secs. 32 to 36 inclusive.
T. 1 S., R. 21 E.,
Secs. 1 to 17 inclusive;
Sec. 18, lots 2 to 10 inclusive, E½W½, W½NE¼, SE¼NE¼, SE¼;
Sec. 19, lots 8 to 13 inclusive, NW¼NE¼, E½NE¼, NE¼SE¼;
Secs. 20 to 29 inclusive;
Sec. 30, lots 5 to 13 inclusive, SE¼NE¼, E½SW¼, SE¼;
Secs. 31 to 36 inclusive.
T. 2 S., R. 21 E.,
Secs. 1 to 12 inclusive;
Sec. 13, lots 1, 2, 3, 4, N½N½;
Sec. 14, all;
Sec. 15, lots 1, 2, N½, N½SE¼, SW¼;
Secs. 16 to 21 inclusive;
Sec. 22, lots 1 to 5 inclusive, NW¼NW¼;
Sec. 23, lots 1 to 7 inclusive, NE¼NW¼, NW¼NE¼;
Sec. 24, lots 1 to 8 inclusive;
Sec. 25, lot 1;
Sec. 26, lots 1, 2, 3, 4;
Sec. 27, lots 1, 2, 3, 4, 5, SW¼SE¼, S½SW¼;
Secs. 28 to 35 inclusive;
Sec. 36, lots 1, 2, 3, 4, 5, 6, S½NW¼, SW¼, W½SE¼, SE¼SE¼.
T. 1 N., R. 22 E.,
Secs. 1 to 36 inclusive.
T. 2 N., R. 22 E.,
Sec. 7, lots 9, 10, 11;
Sec. 9, lots 5, 6;
Sec. 10, lots 2, 3;
Sec. 13, lot 3;
Sec. 14, lots 4, 5, 6;
Sec. 15, lots 5 to 12 inclusive, S½NW¼, SW¼, S½SE¼;
Sec. 16, lots 2 to 8 inclusive, S½N½, S½;
Sec. 17, lots 4 to 8 inclusive, SE¼NW¼, SW¼SW¼, E½SW¼, S½NE¼, SE¼;
Sec. 18, lots 6 to 12 inclusive, SE¼SW¼;
Sec. 19, lots 1 to 9 inclusive, N½NE¼, E½W½;
Sec. 20, lots 1 to 4 inclusive, N½, N½SE¼, NE¼SW¼, SE¼SE¼;
Secs. 21 and 22;
Sec. 23, lots 2 to 8 inclusive, S½N½, S½;
Sec. 24, lots 3 to 8 inclusive, S½N½, S½;
Secs. 25 to 28 inclusive;
Sec. 29, lots 1 to 8 inclusive, SE¼NW¼, E½SW¼, SE¼;
Sec. 30, lots 1 to 13 inclusive, NE¼NW¼, SE¼SW¼;
Sec. 31, lots 1 to 4 inclusive, E½W½, E½;
Secs. 32 to 36 inclusive.
T. 1 S., R. 22 E.,
Secs. 1 to 36 inclusive.
T. 2 S., R. 22 E.,
Secs. 1 to 8 inclusive;
Sec. 9, lots 1, 2, 3, 4;
Sec. 10, lots 1, 2, 3, 4;
Sec. 11, lots 1, 2, 3, 4;
Sec. 12, lots 1 to 7 inclusive;
Sec. 13, lots 1, 2, 3, 4;
Sec. 17, lots 1, 2, 3, 4, 5, NW¼NE¼, N½NW¼;
Sec. 18, lots 1 to 5 inclusive, NE¼NW¼, N½NE¼;
Sec. 22, lot 1;
Sec. 23, lots 1 to 6 inclusive;
Sec. 24, lots 1 to 9 inclusive, SE¼SW¼, SW¼SE¼;
Sec. 25, lots 1 to 12 inclusive, NW¼NE¼, SW¼SW¼;
Sec. 26, all;
Sec. 27, lots 1, 2, 3, 4, S½N½, S½;
Sec. 28, lots 1, 2, 3, 4, 5, S½S½;
Sec. 29, lots 1, 2, 3;
Sec. 31, lots 1 to 9 inclusive;
Sec. 32, lots 1 to 8 inclusive, N½SE¼, NE¼;
Sec. 33, lots 1, 2, 3, 4, N½S½, N½;
Sec. 34, lots 1, 2, 3, 4, N½S½, N½;
Sec. 35, all;
Sec. 36, lots 1 to 6 inclusive, W½NW¼, SE¼NW¼, SW¼;
T. 14 S., R. 13 W.,
Secs. 1 to 36 inclusive.
T. 15 S., R. 14 W.,
Secs. 1 to 36 inclusive.
T. 29 S., R. 15 W.,
Secs. 1 to 36 inclusive.
T. 30 S., R. 16 W.,
Secs. 1 to 36 inclusive.

The area described exclusive of segregations aggregates 215,126.05 acres.

All the lands described in T. 1 N., R. 22 E.; T. 2 N., R. 22 E.; T. 1 S., R. 21 E.; T. 1 S., R. 22 E.; T. 2 S., R. 22 E., S. L. M., except those lands in secs. 25 to 29 inclusive. Sections 31 to 36 inclusive are within the exterior boundaries of the Asley National Forest established, enlarged and name changed by Executive Orders of February 22, 1897, July 14, 1905, January 16, 1906, May 29, 1906, October 6, 1906, July 1, 1908 and February 18, 1933.

Any one having a valid settlement or other right to any of the lands described within the Asley National Forest, initiated prior to the date of the withdrawal of the lands should assert same within three months from the date on which the plats are officially filed by filing an application under the appropriate public land law, setting forth all facts relative thereto.

Available data indicates that the character of these lands is as follows:

SALT LAKE MERIDIAN

T. 15 S., R. 17 E., T. 30 S., R. 19 E. Generally rough, rocky and mountainous.
T. 1 S., R. 21 E., T. 2 S., R. 21 E. Very broken area of the Unitah Plateau.
T. 1 N., R. 22 E., T. 2 N., R. 22 E., T. 1 S., R. 22 E., T. 2 S., R. 22 E. Topography is rough and mountainous cut by deep canyons. The soil is rocky clay loam.
T. 14 S., R. 13 W., T. 15 S., R. 14 W. The surface is level to rolling in the western portion where the soil is a tight clay loam. In the eastern part the land is hilly to rough with a rocky soil.
T. 29 S., R. 15 W., T. 30 S., R. 16 W. The land has a rough surface. The soil is rocky clay loam.

No applications for these lands may be allowed under the homestead, small tract, desert land, or any other non-mineral public land laws unless the land has already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application.

The field notes show springs on lot 1, sec. 31, T. 2 S., R. 22 E; the SW¼NE¼ sec. 28, T. 29 S., R. 15 W; the NW¼SE¼ sec. 13, T. 30 S., R. 16 W., and the SW¼SW¼ sec. 25, SE¼SE¼ sec 27, T. 30 S., R. 19 E., S. L. M.

The legal subdivision containing each of the springs and the lands within one-quarter of a mile of each spring may be affected by the general withdrawal made by Executive Order of April 17, 1926 (43 CFR 291.1), creating Public Water Reserve No. 107, but the question of whether each spring is of such size or value or so needed by the public as to bring the lands within the scope of the withdrawal is left for future determination.

At the hour and date specified above the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this notice shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this notice shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this notice, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this notice, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land and Survey Office, Salt Lake City, Utah, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that Title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that Title.

Inquiries concerning these lands shall be addressed to the Manager, Land and Survey Office, Salt Lake City, Utah.

ROSCOE E. BELL,
Associate Director.

[F. R. Doc. 49-4308; Filed, May 31, 1949; 8:47 a. m.]

[2141216]

ARIZONA

NOTICE OF FILING OF PLAT OF SURVEY

MAY 25, 1949.

Notice is given that the plat of extension survey of Section 5, T. 6 S., R. 28 E., G. & S. R. M., Arizona will be officially filed in the District Land Office at Phoenix, Arizona, effective at 10:00 a. m. on the 35th day after the date of this notice.

By act of the Congress, approved, March 6, 1946 (60 Stat. 33) the following described lands were granted to and the Secretary of the Interior was authorized and directed to patent them to the Town of Safford, Arizona, subject to the conditions and reservations specified therein, for the use of its municipal water system:

GILA AND SALT RIVER MERIDIAN

T. 6 S., R. 28 E.,
Sec. 5, SE¼NW¼, SW¼NE¼, W½SE¼.

The area described aggregates 160 acres.

The remaining lands hereinafter described will become subject to the general public land laws:

GILA AND SALT RIVER MERIDIAN

T. 6 S., R. 28 E.,
Sec. 5, Lots 1, 2, 3, 4, SW¼NW¼, SW¼, SE¼NE¼, E½SE¼.

The area described aggregates 475.92 acres.

Available data indicates that the character of the land is mountainous desert.

No application for these lands may be allowed under the homestead, small tract, desert land, or any other non-mineral public land laws unless the land has already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application.

At the hour and date specified above the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this notice shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this notice shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this notice, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this notice, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in The District Land Office, Phoenix, Arizona, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that Title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in

Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that Title.

Inquiries concerning these lands shall be addressed to The Manager, District Land Office, Phoenix, Arizona.

MARION CLAWSON,
Director.

[F. R. Doc. 49-4307; Filed, May 31, 1949; 8:46 a. m.]

[1760979]

ARIZONA

NOTICE OF FILING PLATS OF SURVEY

MAY 24, 1949.

Notice is given that the plats of survey of lands hereinafter described will be officially filed in the District Land Office at Phoenix, Arizona, effective at 10:00 a. m. on the 35th day after the date of this notice:

GILA AND SALT RIVER MERIDIAN

T. 35 N., R. 13 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., SE¼NW¼, E½SW¼, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Secs. 8 to 17, incl.;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Secs. 20 to 29, incl.;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Secs. 32 to 36, incl.

T. 36 N., R. 13 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., SE¼NW¼, E½SW¼, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Secs. 8 to 17, incl.;
Secs. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Secs. 20 to 29, incl.;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Secs. 32 to 36, incl.

T. 34 N., R. 14 W.,
Sec. 1., lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., SE¼NW¼, E½SW¼, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Secs. 8 to 17, incl.;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20;
Sec. 21, lots 1, 2, W½SE¼, SW¼, N½;
Sec. 22, lots 1, 2, E½SW¼, SE¼, N½;
Secs. 23 to 29, incl.;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Secs. 32 to 36, incl.

T. 35 N., R. 14 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., SE¼NW¼, E½SW¼, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Secs. 8 to 17, incl.;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Secs. 20 to 29, incl.;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Secs. 32 to 36, incl.

The area described aggregates, exclusive of segregations, 92,017.53 acres.

Available data indicates that the lands are extremely rough and rocky and include several intervening plateaus.

No applications for these lands may be allowed under the homestead, small tract, desert-land, or any other nonmineral public-land laws unless the lands have already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application.

Lot 3, SE¼NW¼ sec. 3, T. 35 N., R. 13 W.; E½NE¼ sec. 22, W½NW¼ sec. 23, NW¼NW¼, SW¼SW¼ sec. 26, N½NW¼ sec. 35, SE¼SE¼ sec. 36, T. 36 N., R. 13 W., G. & S. R. M., are included in Public Water Reserve No. 34, Group 213, Arizona, as conformed April 7, 1945—1760979.

As shown on the plat of T. 35 N., R. 13 W., there are springs in sections 1 and 4 and the plat of T. 36 N., R. 13 W., G. and S. R. M., shows springs in sections 20, 28, 33, 35 and 36.

The legal subdivision containing each of the springs and lands within a quarter of a mile of each spring may be affected by the general withdrawal made by Executive Order of April 17, 1926 (43 CFR, 292.1), creating Public Water Reserve No. 107, but the question of whether each spring is of such size or value or so needed by the public as to bring the lands within the scope of the withdrawal is left for future determination. At the hour and date specified above the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this notice shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279-284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this notice shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this notice, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this notice, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office, Phoenix, Arizona, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that Title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that Title.

Inquiries concerning these lands shall be addressed to the Manager, District Land Office, Phoenix, Arizona.

ROSCOE E. BELL,
Associate Director.

[F. R. Doc. 49-4306; Filed, May 31, 1949; 8:46 a. m.]

DEPARTMENT OF COMMERCE

Office of International Trade, Bureau of Foreign and Domestic Trade

[Case No. 51]

MILTON BERK ET AL.

ORDER DENYING LICENSE PRIVILEGES

In the matter of Milton Berk, Export International, Robrook Trading Co., Inc., American Delta Trading Co., Inc., Export Commerce, Yankee Traders, Yankee Industries.

This proceeding was begun on February 9, 1949 by the mailing of a charging letter to the above-named respondents, wherein the Office of International Trade charged respondents with having violated section 6 of the act of July 2, 1940 (54 Stat. 714), as amended, and the regulations promulgated thereunder. The violation alleged consisted of having exported or attempting to export from the United States to Cuba, in each of three calendar weeks during the months of May and June 1948, quantities of streptomycin having a value in excess of $100, under the pretended authority of General License GLV. It was alleged that, whereas such exportations were represented as constituting separate and independent shipments, each not exceeding $100 in value, by the various respondents as consignors to various named consignees in Cuba, in truth and effect, as respondents well knew, all of the corporate respondents were mere nominees of respondent Milton Berk, and all of the consignees were mere nominees of a single importer in Cuba. It was charged that, in consequence, all of said exportations were in reality made or attempted to be made by and for the benefit of respondent Milton Berk and to and for the benefit of such single importer in Cuba.

A hearing was held on said charges in New York City on March 17, 1949, pursuant to notice duly given, before the Compliance Commissioner of the Office of International Trade. Respondent Milton Berk did not appear at the hearing but filed a written answer in the nature of a general denial. Respondents Export International, Yankee Traders, Robrook Trading Co., Inc., and American Delta Trading Co., Inc., were represented by counsel, as was the Office of International Trade. The Compliance Commissioner, after receiving the evidence and after due consideration of the record, on May 24, 1949 filed his report in the matter.

It appears from the record and the report of the Compliance Commissioner that the charge that the various shipments of streptomycin were made or attempted to be made to and for the benefit of a single importer in Cuba was withdrawn at the hearing. It accordingly does not enter into this order.

It further appears from the record and the report of the Compliance Commissioner that all of the corporate respondents are or were New Jersey corporation; that respondent Berk was an officer, stockholder and active participant in the management of all of them; that respondents Export International, Yankee Traders, Robrook Trading Co., Inc., and American Delta Trading Co., Inc., were incorporated in or about February 1947 and, although now in liquidation, still have corporate existence; that respondents Export Commerce and Yankee Industries were incorporated in April 1948 but were dissolved in or about November 1948; and that the latter two corporations were, upon their dissolution, succeeded by other corporations of similar name but owned and controlled by new and independent individuals to whom respondent Berk had sold his interest.

It further appears from the record and the report of the Compliance Commissioner that the four respondent corporations other than Export Commerce and Yankee Industries, having been engaged in export trade since their incorporation, determined in March 1948 to liquidate; that respondent Berk was thereupon placed in charge of the affairs of said four corporations for the sole purpose of completing outstanding commitments and those resulting from pending negotiations and collecting the accounts and other assets of the corporations and making appropriate distribution of the proceeds; that the other officers and stockholders of said four corporations withdrew from all participation in management in March 1948 and have since engaged exclusively in other pursuits; that during the period of May and June 1948, when the shipments of streptomycin herein involved were made or attempted to be made, respondent Berk was consequently the only individual having control or authority over such corporations; and that during such period of May and June 1948 respondent Berk, together with an associate not connected with any of the four liquidating corporations, was likewise in control and authority in the management of the affairs of respondents Export Commerce and Yankee Industries.

It further appears from the record and the report of the Compliance Commissioner that, during the calendar week of May 16–22, 1948, four shipments of streptomycin, each having a stated value of $99.50, were made to Cuba, one by respondent American Delta Trading Co., Inc., one by respondent Robrook Trading Co., Inc., and two by respondent Export International; that, during the calendar week of May 23–29, 1948, two shipments of streptomycin, each having a stated value of $99.50, were made to Cuba by respondent Yankee Traders; that, during the calendar week of June 13–19, 1948 four shipments of streptomycin, each having a stated value of $99.50, were attempted to be made to Cuba, one each by respondents Export Commerce, American Delta Trading Co., Inc., Robrook Trading Co., Inc., and Yankee Industries, all of which four shipments were, however, seized and confiscated by the Collector of Customs at Miami, Florida; and that all of said shipments above described were made or attempted to be made under the purported authority of General License GLV, as separate and independent shipments by the named consignors and pursuant to the written representation that the shipper had not exported more than $100 worth of streptomycin under such general license during the current calendar week.

It further appears from the record and the report of the Compliance Commissioner that the ten shipments made or attempted to be made as described above were so made or attempted to be made in the names of the respective respondents as consignors by and for the benefit of respondent Berk as his mere nominees, without authority and without the knowledge and consent of the other officers and stockholders of the respondent corporations other than Export Commerce and Yankee Industries; that, in making or attempting to make such shipments, respondent Berk acted only on his own behalf and for his own benefit and made no accounting to the corporate respondents for the proceeds of such shipments and in no respect treated said corporate respondents as beneficial participants in such transactions; and that respondent Berk thereby made shipments of more than $100 worth of streptomycin in each of two calendar weeks, and attempted to make similar shipments in a third calendar week, in violation of the export control regulations relating to shipments under General License GLV and in violation of section 6 of the act of July 2, 1940 (54 Stat. 714), as amended, and the regulations promulgated thereunder.

The Compliance Commissioner has accordingly recommended that respondent Berk be denied the privilege of obtaining or using or participating directly or indirectly in the obtaining or using of export licenses, including general licenses, until such time, except upon such terms and conditions as the Office of International Trade may, upon application, reinstate such privileges, but that no such application to be permitted to be filed sooner than six months from the date of this order, and, further, that such denial extend not only to respondent Berk personally but also to any trade name, firm, corporation or other business association in or with which he may hereafter engage in export trade. The Compliance Commissioner has further recommended that, respondent Berk having acted without the knowledge or consent of the other officers and stockholders of the four corporations in liquidation and the other two corporations having since been dissolved and succeeded by new and independent corporations, no order denying license privileges be issued against the corporate respondents.

The findings and recommendations of the Compliance Commissioner have been carefully considered together with the record in this matter and it appears that such findings are supported by the record and that such recommendations should be adopted.

Now, therefore, it is ordered, As follows:

(1) Respondent Berk is hereby denied the privilege of obtaining or using or participating directly or indirectly in the obtaining or using of export licenses, including general licenses, until such time and except upon such terms and conditions as the Office of International Trade may, upon application, reinstate such privileges: *Provided, however*, That no such application may be filed sooner than six months after the date of this order.

(2) Such denial of export license privileges shall extend not only to respondent Berk personally but also to any trade name, firm, corporation or other business association in or with which he may hereafter engage in export trade.

(3) All outstanding export licenses held by or issued in the name of respondent Berk are hereby revoked and shall be

forthwith returned to the Office of International Trade for cancellation.

Dated: May 25, 1949.

LORING K. MACY,
Acting Director,
Commodities Division.

[F. R. Doc. 49-4321; Filed, May 31, 1949; 8:49 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-1181]

OHIO FUEL GAS CO.

ORDER FIXING DATE OF HEARING

On March 22, 1949, The Ohio Fuel Gas Company (Applicant), an Ohio Corporation having its principal place of business at Columbus, Ohio, filed an application (a) for a certificate of public convenience and necessity authorizing the construction and operation of certain natural-gas transmission facilities, and (b) for approval of abandonment and removal of certain natural-gas facilities, both pursuant to section 7 of the Natural Gas Act, as amended. The facilities are more particularly described in the application on file with the Commission and open to public inspection.

Applicant has requested that its application be heard under the shortened procedure provided by §§ 1.32 (a) and 1.32 (b) of the Commission's rules of practice and procedure. No request to be heard or protest has been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on April 9, 1949 (14 F. R. 1719-20).

The Commission finds: This proceeding is a proper one for disposition under the provisions of §§ 1.32 (a) and 1.32 (b) of the Commission's rules of practice and procedure.

The Commission orders:

(A) 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, as amended, and the Commission's rules of practice and procedure, a hearing be held on June 8, 1949, at 9:30 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the said rules of practice and procedure.

Date of issuance: May 25, 1949.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-4309; Filed, May 31, 1949; 8:47 a. m.]

FEDERAL TRADE COMMISSION

[Docket No. 5509]

KNOX CO.

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 24th day of May A. D. 1949.

In the matter of Warren W. Burgess, Linn D. Johnson, and Richard T. Aldworth, co-partners doing business as The Knox Company.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission,

It is ordered, That Everett F. Haycraft, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony and the receipt of evidence begin on Thursday, July 28, 1949, at ten o'clock in the forenoon of that day P. s. t., in Room 535, United States Post Office and Court House, Los Angeles, California.

Upon completion of the taking of testimony and receipt of evidence in support of the allegations of the complaint, The trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondents. The trial examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission.

[SEAL] D. C. DANIEL,
Secretary.

[F. R. Doc. 49-4314; Filed, May 31, 1949; 8:48 a. m.]

[Docket No. 5645]

JOSEPH WINKLER & CO. ET AL.

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 25th day of May A. D. 1949.

In the matter of Joseph Winkler & Company, a corporation, and Jack Winkler, and Jules Winkler, individually and as officers of Joseph Winkler & Company.

This matter being at issue and ready for the taking of testimony and the receipt of evidence, and pursuant to authority vested in the Federal Trade Commission,

It is ordered, That John L. Horner, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony and the receipt of evidence begin on Friday, June 10, 1949, at ten o'clock in the forenoon of that day (c. d. s. t.), in Room 1103, New Post Office Building, Chicago, Illinois.

Upon completion of the taking of testimony and receipt of evidence in support of the allegations of the complaint, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondents. The trial examiner will then close the taking of testimony and evidence and, after all intervening procedure as required by law, will close the case and make and serve on the parties at issue a recommended decision which shall include recommended findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and an appropriate recommended order; all of which shall become a part of the record in said proceeding.

By the Commission.

[SEAL] D. C. DANIEL,
Secretary.

[F. R. Doc. 49-4315; Filed, May 31, 1949; 8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 37-59, 70-2126]

COMMONWEALTH & SOUTHERN CORP (DELAWARE) ET AL.

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C. on the 24th day of May 1949.

In the matter of the Commonwealth & Southern Corporation (Delaware), the Commonwealth & Southern Corporation (New York), the Southern Company, Southern Services, Inc., Consumers Power Company, Central Illinois Light Company, Ohio Edison Company, Pennsylvania Power Company, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, File No. 70-2126; Southern Services, Inc., File No. 37-59.

The Commonwealth & Southern Corporation (of Delaware), hereinafter referred to as "Commonwealth", a registered holding company, and member companies of the Commonwealth holding company system, having filed applications and/or declarations herein pursuant to sections 6, 7, 9 (a), 10, 12 (f) and 13 (b) of the Public Utility Holding Company Act of 1935 (the "act"), and Rules U-43 and U-88 promulgated thereunder relating to, among other things, the transformation of the Commonwealth & Southern Corporation (of New York), the present Commonwealth system service company ("Present Service Company"), into an independent service

company, which transaction includes a proposal by Commonwealth to acquire all of the 4,500 outstanding shares of capital stock of Present Service Company from the public utility subsidiaries of Commonwealth at a price of $100 per share in cash; and

The Commission by its notice and order dated May 17, 1949 (Holding Company Act Release No. 9082), having set said applications and/or declarations down for hearing, but, with respect to the aforesaid proposal by Commonwealth to purchase the shares of capital stock of Present Service Company, the Commission having issued its notice of filing subject to Rule U-23, in which it was provided that any interested person may request the commission in writing that a hearing be held on such proposal; and

Alfred J. Snyder, a common stockholder of Commonwealth who purports to represent other holders of Commonwealth's common stock and option warrants, having requested that a hearing be held on such proposal; and

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors or consumers to grant said request, that the hearing scheduled on the aforesaid applications-declarations should also be held with respect to the proposal by Commonwealth to purchase the outstanding capital stock of Present Service Company and that said proposal should not be permitted to become effective except pursuant to further order of this Commission;

It is ordered, That the hearing with respect to the aforesaid applications and/or declarations ordered by our order of May 17, 1949, in the instant proceedings to be held at 10:00 a. m., e. d. s. t., on June 7, 1949, at the offices of this Commission, 425 Second Street NW., Washington 25, D. C., in such room as may be designated on that day by the hearing room clerk in room 101, shall also be held with regard to the proposal of Commonwealth to purchase the capital stock of Present Service Company.

The Division of Public Utilities of the Commission having advised the Commission that it has made a preliminary examination of the said proposal and that, upon the basis thereof, there is presented for consideration without prejudice, however, to the presentation of additional matters and questions upon further consideration, the question whether the proposal is in all respects consistent with all applicable requirements of the Act and the Rules thereunder and particularly sections 9 (a), 10, and 12 (f),

It is further ordered, That at said hearing evidence shall be adduced with respect to the foregoing question.

It is further ordered, That a copy of this notice and order shall be mailed by registered mail to the Federal Power Commission, to the Public Service Commission of the States of Michigan, Georgia, and Alabama, the Illinois Commerce Commission, the Ohio Public Utilities Commission, the Public Utility Commission of Pennsylvania, to Commonwealth, and to all other companies in the Commonwealth holding company system joining in the applications and/or declarations herein, to all persons who have participated in the proceedings on Commonwealth's plan of reorganization dated July 20, 1947, as amended (File No. 54-75, et al.); that notice shall be given to all other persons by general release of this Commission, which shall be distributed to the press and mailed to the mailing list for releases under the act; and that further notice shall be given to all persons by publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-4322; Filed, May 31, 1949; 8:50 a. m.]

[File No. 70-2130]

PUBLIC SERVICE CO. OF OKLAHOMA

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 25th day of May A. D. 1949.

Public Service Company of Oklahoma ("Public Service"), a public utility subsidiary of Central and South West Corporation ("South West"), a registered holding company, has filed an application, and amendments thereto, pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 and Rule U-50 promulgated thereunder, with respect to the following transactions:

Public Service proposes to issue and sell, at competitive bidding pursuant to Rule U-50, 50,000 shares of a new series of __% Preferred Stock, Cumulative, par value $100 per share. The price of the preferred stock to the company, which shall be not less than $100 nor more than $102.75 per share, and the dividend rate, which shall be a multiple of 1/20 of 1%, will be determined by competitive bidding.

The net proceeds to be received by Public Service from the sale of the preferred stock will be used to finance, in part, the company's construction program through the year 1951 aggregating $23,285,000. The proposed issuance of securities is a part of an over-all program for financing the construction requirements of the South West system for this period. In connection with this program the parent company, South West, represents that, during the year 1949, it will raise approximately $6,600,000 through the issue and sale of its common stock and will invest the proceeds thereof in the common stock equity of certain subsidiaries other than Public Service.

Public Service estimates its total expenses in connection with the proposed transactions at $39,000, including service company charges of $14,000. The fee of independent counsel for the underwriters, to be paid by the successful bidder or bidders, is stated to be $6,000.

The said application having been filed on May 5, 1949, and the last amendment thereto having been filed on May 20, 1949, and notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to said application within the period specified, or otherwise, and not having ordered a hearing thereon; and

The Commission finding that Public Service is entitled to an exemption from the provisions of sections 6 (a) and 7 of the act pursuant to the provisions of section 6 (b) thereof, it appearing that the issuance and sale of said preferred stock are solely for the purpose of financing the business of Public Service, and have been expressly authorized by the Corporation Commission of the State of Oklahoma, the State commission of the State in which Public Service is organized and doing business, and the Commission deeming it appropriate to grant said application, as amended, without the imposition of terms and conditions other than those specified below, and further deeming it appropriate to grant applicant's request that the ten-day period for inviting bids provided by Rule U-50 be shortened to a period of not less than six days and that the order herein be accelerated and become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said application, as amended, of Public Service be, and the same hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule U-24 and to the additional condition that the proposed issuance and sale of preferred stock by Public Service shall not be consummated until the results of competitive bidding, pursuant to Rule U-50, have been made a matter of record in these proceedings and a further order shall have been entered by the Commission in the light of the record so completed, which order may contain such further terms and conditions as may then be deemed appropriate, jurisdiction being reserved for such purpose.

It is further ordered, Pursuant to the request of Public Service, that the ten-day period for inviting bids as provided by Rule U-50, be, and the same hereby is, shortened to a period of not less than six days.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-4323; Filed, May 31, 1949; 8:50 a. m.]

UNITED STATES TARIFF COMMISSION

[List No. 7 (E)]

AMERICAN RATTAN AND REED MFG. CO.

APPLICATION FOR INVESTIGATION

MAY 26, 1949.

Application as listed below for investigation under the escape clause of trade agreements has been filed with the United States Tariff Commission under the provisions of Part 111, Executive Order 10004 of October 5, 1948.

Name of article	Purpose of request	Date received	Name and address of applicant
Reeds wrought or manufactured from rattan or reeds, whether round, flat, split, oval, or in whatever form, cane wrought or manufactured from rattan, cane webbing, and split or partially manufactured rattan, not specially provided for (Item 409, Schedule XX, General Agreement on Tariffs and Trade).	To determine whether articles are being imported in such increased quantities as to cause or threaten serious injury to domestic producers.	May 20, 1949	American Rattan & Reed Manufacturing Co., corner Norman and Kingsland Aves., Brooklyn 22, N. Y.

The application listed above is available for public inspection at the office of the Secretary, Tariff Commission Building, Eighth and E Streets NW., Washington, D. C., where it may be read and copied by persons interested.

[SEAL] SIDNEY MORGAN,
Secretary.

[F. R. Doc. 49-4335; Filed, May 31, 1949; 8:52 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616, E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

VITO CARNEVALI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Vito Carnevali, Viale del Re 246, Rome, Italy; 33860; Property to the extent owned by claimant immediately prior to the vesting thereof, described in Vesting Order No. 1758 (9 F. R. 13773, November 17, 1944), relating to 42 musical compositions (listed in Exhibit A attached hereto and made a part hereof), including royalties pertaining thereto in the amount of $2,217.59.

Executed at Washington, D. C., on May 23, 1949

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Missa Stella Matutina, Soprano & Alto Score.
Missa Stella Matutina, Voice Part.
Come Love With Me, High F.
Come Love With Me, Medium, Eb.
Come Love With Me, Low, DB.
Missa Rosa Mystica.
Missa Rosa Mystica, Voice Part.
Tantum Ergo, 4 Male Voices.
Tantum Ergo, 4 Mixed Voices.
O Salutaris, 2 Voices.
Ave Maria, High, Ab.
Ave Maria, Low, F.
Thou Art Loves Own Flower, High.
Thou Art Loves Own Flower, Low.
Missa Rosa Mystica, 3 Women Voices Score.
Missa Rosa Mystica, Voice Part.
Missa Rosa Mystica, 4 Mixed Score.
Missa Rosa Mystica, Voice Part.
Missa Rosa Mystica, Tenor & Bass.
Missa Stella Matutina, 4 Mixed Voice, Score.
Missa Stella Matutina, Soprano & Alto.
Missa Stella Matutina, Tenor & Bass.
Spanish Serenade.
Dream On To My Song of Love, High.
Dream On To My Song of Love, Low.
O Sole Mio, High.
Missa Maria Mater Gratiae, 4 Mixed Score.
Missa Maria, Soprano & Alto Parts.
Missa Maria, Tenor & Bass.
Venetian Nights, High.
The Bobolink & the Chickadee, High.
A Naiad's Dream.
Missa Ave Verum, 4 Mixed.
Missa Ave Verum, Soprano & Alto Voice Parts.
Missa Ave Verum, Tenor & Bass.
Missa Auxilium Christianorum, 4 Mixed Voices Score.
Missa Ave Verum, 3 Male Voice, Score.
Missa Ave Verum, Chorus Part.
Missa Ave Verum, Tenor & Bass.
Sero te Amavi, 4 Unison Voices.
Missa Auxilium Christianorum, Soprano & Alto Parts.
Missa Auxilium Christianorum, Tenor & Bass Parts.

[F. R. Doc. 49-4302; Filed, May 27, 1949; 8:51 a. m.]

SOCIETA PER AZIONI "ETERNIT" PIETRA ARTIFICIALE

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties arising out of the use thereof subsequent to December 31, 1945, and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Societa per Azioni "Eternit" Pietra Artificiale, Genoa, Italy, 33389; $453,444.35 in the Treasury of the United States. Property described in Vesting Order No. 201 (8 F. R. 625, January 16, 1943), relating to U. S. Letters Patent No. 1,627,104; property described in Vesting Order No. 3434 (9 F. R. 4658, May 3, 1944), relating to U. S. Letters Patent Nos. Re. 17,335; 1,786,215; 1,947,998 and 1,984,073. All interests and rights created in "Eternit", Pietra Artificiale, Societa Anonima (now known as Societa per Azioni "Eternit" Pietra Artificiale) to the extent owned by claimant immediately prior to the vesting thereof by Vesting Order No. 2353 (8 F. R. 14634, October 28, 1943), by virtue of an agreement dated January 5, 1929 (including all modifications thereof and supplements thereto) executed by "Eternit" Pietra Artificiale, L'Amministratore Delegato and Johns-Manville Corporation, relating, among other things, to U. S. Letters Patent No. 1,627,104. All interests and rights created in the Attorney General by virtue of (a) a license agreement (License No. 2287-F, dated July 28, 1947), entered into by the Attorney General and Johns-Manville Corporation, relating to U. S. Letters Patent Nos. 1,786,215; 1,947,998 and 1,984,073; and (b) a license agreement (License No. 2289-F, dated August 8, 1947), entered into by the Attorney General and Keasbey and Mattison Company, relating to U. S. Letters Patent No. 1,947,998. Any return of the property will be subject to the provisions and limitations of the Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals, dated August 14, 1947.

Executed at Washington, D. C., May 24, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-4304; Filed, May 27, 1949; 8:51 a. m.]

[Vesting Order 10494, Amdt.]

YUKI OSAKI

In re: Bank accounts owned by Yuki Osaki, also known as Mrs. Yuki Osaki, and Shigejiro Osaki.

Vesting Order 10494, dated January 14, 1948, is hereby amended as follows and not otherwise:

1. By deleting from subparagraph 2-a thereof, the word "and" which appears at the end of said subparagraph;

2. By deleting therefrom subparagraph 2-b in its entirety.

All other provisions of said Vesting Order 10494 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on May 17, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-4326; Filed, May 31, 1949; 8:50 a. m.]

ANTONIO AND FRANCESCO GIGLIOTTI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Antonio Gigliotti, Francesco Gigliotti, Catanzaro, Italy; 7514; $971.66 in the Treasury of the United States. $971.65 in the

Treasury of the United States. All right, title, interest and claim of any kind or character whatsoever of Antonio Gigliotti and Francesco Gigliotti and each of them in and to the estate of Vincenzo Gigliotti, deceased.

Executed at Washington, D. C., on May 25, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-4328; Filed, May 31, 1949; 8:51 a. m.]

ROBERT METZGER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Robert Metzger, Marseille, France, or Landau, Germany; 4741; $4,686.94 in the Treasury of the United States.

Executed at Washington, D. C., on May 25, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-4329; Filed, May 31, 1949; 8:51 a. m.]

[Vesting Order 13253]

RICHARD GUESSEFELDT

In re: Stock and personal property owned by Richard Guessefeldt. F-28-5958-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Richard Guessefeldt, whose last known address is Drake Str. Number 30, Berlin-Lichterfelde West, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. Those certain shares of stock described in Exhibit A, attached hereto and by reference made a part hereof, registered in the names of the persons set forth in Exhibit A, presently stored with the City Transfer Co., Ltd., Post Office Box 460, Honolulu, T. H., for and on behalf of Bishop Trust Company, Limited, Post Office Box 2390, Honolulu, T. H., as agent for the aforesaid Richard Guessefeldt, together with all declared and unpaid dividends thereon, and

b. Those certain articles of personal property more particularly described in Exhibit B, attached hereto and by reference made a part hereof, presently stored with City Transfer Co., Ltd., Post Office Box 460, Honolulu, T. H., for and on behalf of Bishop Trust Company Limited, Post Office Box 2390, Honolulu, T. H., as agent for the aforesaid Richard Guessefeldt,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on May 12, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

SHARES OF STOCK OWNED BY RICHARD GUESSEFELDT, IN CUSTODY OF BISHOP TRUST COMPANY, LIMITED, HONOLULU, T. H., AGENT, IN STORAGE WITH CITY TRANSFER CO., LTD., HONOLULU, T. H.

Name of issuer	Registered owner	Class of stock	Par value	Certificate No.	Number of shares
Norris Midway Oil Co	Richard Guessefeldt	Capital	$1.00	296	250
				213	500
				413	1,000
U. S. Mines Development Corp	R. Guessefeldt	do	1.00	639	3,000
				1,617	400
				1,254	300
Purissima Hills Oil Co	do	do	1.00	1,609	950
				1,598	910
				1,550	1,000
				1,053	500
Vallejo Brick & Tile Co., Consolidated	do	do	1.00	155	2,000
The Pi-Nectar Sales Co. of America	do	Common	1.00	17	1,500
		Preferred	1.00	14	150
Pinectar Sales Co., Ltd	do	Capital	20.00	170	35
	Richard Guessefeldt	do	20.00	110	15
Chiapas Coffee Co	R. Guessefeldt	Preferred	5.00	188	80
		Common	5.00	185	400
The I. X. L. Midway Oil Co	Richard Guessefeldt	Capital	1.00	204	500
				203	500

EXHIBIT B

PERSONAL PROPERTY OWNED BY RICHARD GUESSEFELDT, STORED BY BISHOP TRUST COMPANY, LIMITED, AGENT, WITH CITY TRANSFER CO., LTD., HONOLULU, T. H.

Schedule I. Household Cotton and Linen Goods.

Number of items	*Description*
12	Pillow cases, hand embroidered.
2	Pillows, standard size.
3	Pillows, infant's.
6	Pillow cases, infant's.
1	Table scarf, cotton.
67	Doilies, assorted.
1	Doily, crash linen.
2	Doilies, linen, initialed "G".
15	Hand towels.
3	Bath towels, small.
12	Bath towels, large.
2	Beach towels.
3	Tea towels, crash linen.
1	Tea towel, cotton.
12	Table cloths, large, damask, initialed "G".
56	Napkins, large, damask, initialed "G".
1	Table cloth, tan linen, embroidered.
1	Table cloth, white.
1	Table cloth, cotton, blue print, Japanese.
1	Napkin, cotton.
9	Napkins, linen.
8	Bedspreads, cotton.
2	Mattress pads.

Schedule I. Household Cotton and Linen Goods—Continued

Number of items	*Description*
2	Bed sheets, cotton.
8	Bed sheets, linen, initialed "G".
1	Blanket, cotton, infant's.
2	Lunch table cloths, linen.
2	Blankets, cotton, ¾ size.
8	Table runners, assorted sizes.
1	Table runner, raw silk, 24" x 72".
1	Table runner, linen, 18" x 72".
2	Table runners, lace edging.
1	Table runner, tan embroidered, red border.
2	Pillow covers, linen.
1	Bonnet, infant's.
2	Dresses, infant's.
1	Dress, infant's, white linen.
1	Assorted infant's and doll dresses, lot.
1	Bag, linen.
1	Bag, shopping, cord mesh.
1	Japanese canvas slippers (tabis), pair.
1	Clogs, Japanese, wood, cork sole, pair.
4	Rugs, rag.
2	Aprons, house.
1	Belt, white fabric, for swim suit.
1	Shirt, blue denim, old.
2	Tiebacks for drapes, linen.
3	Shawls, light.
1	Jacket, infant's, knitted.
2	Pennants, felt.
1	Cotton goods remnants, lot.

Schedule II. Crockery and glassware.

Number of items	*Description*
9	Piece Japanese Satsuma tea set with case.
4	Salt dishes, glass.
1	Perfume bottle, blue glass, flowered.
98	Piece dinner set, china, rose and gold borders.
5	Saucers, Chinese
13	Pieces, chinaware, blue flowered, incomplete set.
7	Tea cups, assorted patterns.
14	Saucers, china, assorted patterns.
36	Pieces, table china, incomplete set.
1	Water pitcher, glass, large.
4	Green demi-tasse cups.
1	Green cream pitcher.
3	Cosmetic jars, white and green china.
3	Fruit bowls, heavy crystal.
1	Tray, painted china.
1	Vase, Chinese, with cover.
4	Piece salad set, glass, cruets and shakers.
1	Mustard bowl, with silver lattice screen.
12	Bread and butter plates, Syracuse china, Canterbury design.
1	Flower vase, red glass with silver screen.
21	Pieces table crockery, odds and ends.
1	Ice bowl, glass, in silver basket.
1	Beer stein, glass, with pewter cover.
1	Ash tray, glass.

Schedule III. Silver and other metal ware.

Number of items	*Description*
1	Bread tray, "Sterling," initialed "G".
1	Ash tray (saucer) "Sterling," initialed "G".
1	Hair brush, ladies', "Sterling," initialed "G".
1	Hand mirror, ladies', "Sterling," initialed "G".
1	Teapot, "Sterling," initialed "G".
1	Sugar bowl, "Sterling," initialed "G".
1	Fingernail buffer, "Sterling," initialed "G".
1	Tray, 12" long, "Sterling," initialed "G".
6	Salt spoons, "Sterling," initialed "G".
1	Bread tray, silver.
2	Cream pitchers, silver.
3	Napkin rings, silver.
1	Sugar bowl, small, "Sterling".
6	Table knives, silver handles.
1	Fork, silver.
1	Knife, silver.
20	Butter knives, silver.
2	Gravy ladles, small, silver.
6	Dinner forks, silver.
1	Cake knife, silver
2	Serving spoons, silver.
1	Sugar spoon, silver.
1	Pickle fork, silver.
6	Soup spoons, silver.
12	Salad forks, silver.
5	Steak knives, silver handles.
7	Coffee spoons, silver.
6	Teaspoons, silver.
2	Olive forks, silver.
1	Corkscrew, silver, stag handle.
1	Bottle cap remover, silver, stag handle.
1	Cream pitcher, "Sterling."
1	Tea strainer, "Sterling."
1	Cream pitcher, "Sterling," small.
1	Dinner bell, "Sterling."
1	Saucer with cover, "Sterling."
1	Whisk broom, silver handle.
1	Tray, silver.
1	Bonbon jar, silver top.
1	Sugar tong, "1847 Rogers," silver.
1	Picture frame, silver, with child's photograph.
1	Powder jar, crystal, silver cover.
1	Tea caddy, silver.
1	Mustard jar, silver.
10	Souvenir coffee spoons, metal, assorted patterns.

Schedule III. Silver and other metal ware—Continued

Number of items	*Description*
1	Dish rest, ladder shaped, white metal.
1	Ash tray with saucer, white metal.
2	Ash trays, metal.
1	Tray, white metal.
1	Large coffee percolator with spirit lamp, white metal.
1	Letter box, white metal.
1	Cream pitcher, white metal.
1	Coffee pot, white metal.
1	Bread knife, white metal.
1	Cocktail shaker, pewter.
2	Flower pots, brass, Chinese.
1	Chinese chimes, 7 pieces, set.
2	Bowls, brass, small.
1	Bowls, brass, Chinese, 5 piece set.
1	Bas-relief in frame, 5" x 8", brass.

Schedule IV. Household furnishings and ornaments.

Number of items	*Description*
1	Cribbage board, wood.
1	Letter opener, wood, hand-carved.
1	Ukulele, toy size, "Koa" wood.
1	Watch charm, Ivory elephant.
1	Clothes chest, Camphor wood.
1	Tray, Chinese, wood, hand-carved.
1	Book ends, "Koa" wood, hand-carved, pair.
1	Bowl, 12" diameter, 8" high, "Koa" wood, hand-carved.
1	Stone carving of Taj Mahal, white, translucent.
40	Framed pictures, photographs, and prints.
1	Oil painting, castle, framed, 8" x 14", signed "A. Tamm."
1	Dressing table clock, white celluloid case.
2	Paper baskets, woven Lauhala (pandanus leaves).
1	Ivory dominoes, with case, set.

Schedule V. Miscellaneous personal property items.

Number of items	*Description*
1	Leather picnic case, with contents:
2	Aluminum thermos bottles, 2 qt. size.
1	Sandwich box, aluminum.
7	Pieces—6 cups with case, aluminum.
3	Carving set, stag handled, pieces.
1	Salad spoon, horn.
1	Salad fork, horn.
11	Assorted kitchen ware, old, pieces.
2	Dust or crumb brushes.
1	Electric connection, single socket.
1	Electric connection, double socket.
1	Clothes pins, lot.
1	Pliers, wire cutter, hammer, cold chisel, etc., set.
2	Electric Irons (old style), with cord.
1	Dust mop, "O-Cedar".
1	Stand for electric iron.
3	Crochet thread, spools.
1	Tape measure, dressmaker's.
1	Card case, leather.
1	Address book and memo pad, leather.
1	Hacksaw with blade.
2	German Red Cross Medals, with ribbons.
1	Envelope containing legal and personal papers and leters written in German.
1	Personal papers, German and Japanese photographs, picture post cards and photographs of German military officers and personnel, lot.
1	Photograph, German battleship.
1	Photograph negatives in tin case, indexed 1922–1934, inclusive, lot.
1	Envelope containing personal letters and brass personal card plates.
1	Assortment of family and other photographs.

Schedule V. Miscellaneous personal property items—Continued

Number of items	*Description*
1	Various odds and ends, pieces of cloth, lot.
1	Glass ring, green, for drapes or curtains.
1	Sewing basket with thread and old buttons.
1	German hymnal.
1	Book, paper cover, "Herman Göring."
1	Book, paper cover, "Hitler Regiert."
1	Small scale, metric, counter-balanced.
2	"Koa" wood, small strips.
1	Bathroom soap dish and glass holder.
2	Envelopes containing 27 lithographs or etchings.
1	Kitchen utensils, old, assortment.
1	Varnish brush.
1	Dish cloth.
1	Graphite, can, partly filled.
1	China doll, small.
1	China doll, large, one limb missing.
1	Stamp album, beginner's, with small assortment of stamps.
1	Tool chest, small, with pliers, files and other household tools.
1	Bisecting instruments, child's set.
1	Infant's toys, miscellaneous, small lot.
1	German coin, aluminum, 3 marks.
1	German coin, aluminum, 50 pfenning.
1	German mark note, M. 8,000,000.
1	German mark note, M. 100,000,000.
2	German mark notes, M. 200,000,000.
1	German mark note, M. 1,000,000.
1	German mark note, M. 200,000.
2	German mark notes, M. 1,000.
1	German mark note, M. 500.
1	German mark note, M. 1.
1	German mark note, M. 5,000,000.

[F. R. Doc. 49–4324, Filed, May 31, 1949; 8:50 a. m.]

MARINO SCARDIGLI ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Marino Scardigli, Porcari, Italy; 35796; $100.00 in the Treasury of the United States. Odoacre Scardigli, Porcari, Italy; 35796; $100.00 in the Treasury of the United States. Efrem Scardigli, Porcari, Italy; 35796; $100.00 in the Treasury of the United States. Rosina Scardigli, Porcari, Italy, 35796; $16,577.65 in the Treasury of the United States. All right, title, interest and claim of any kind or character whatsoever of Rosina Scardigli, in and to the estate of Julius Scott, also known as Giulio Scardigli, deceased.

Executed at Washington, D. C., on May 25, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49–4331; Filed, May 31, 1949; 8:51 a. m.]