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TITLE 6—AGRICULTURAL CREDIT

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

Subchapter D—Regulations Under Soil Bank Act

PART 485—SOIL BANK

SUBPART—CONSERVATION RESERVE PROGRAM

MISCELLANEOUS AMENDMENTS

Pursuant to the authority vested in the Secretary of Agriculture pursuant to the Soil Bank Act (70 Stat. 188) the regulations for the conservation reserve program issued August 16, 1956 (21 F. R. 6289), as amended, are hereby amended as follows:

1. Section 485.164 is renumbered as § 485.164 (a).

2. Section 485.164 is amended by adding a paragraph (b) as follows:

(b) For purposes of applying the payment limitation prescribed in paragraph (a) of this section, the rules contained in subparagraphs (1) through (6) of this paragraph shall be effective to determine whether certain individuals interested in farming operations as landowners, landlords, tenants or sharecroppers are to be treated as one producer or as separate producers. In cases in which more than one rule would appear to be applicable, the rule which is most restrictive on the number of producers shall apply.

(1) A partnership shall be considered as a producer. Individual members of the partnership may be considered as separate producers or recognized in another capacity as landowners, landlords, tenants, or sharecroppers, on the same farm or on another farm only if (i) the individual members operating in a separate capacity are not identical with the membership of the partnership, and (ii) the individual members also operated as separate producers or in a separate capacity as producers on the farm during the year preceding the first year of the contract period.

(2) A corporation or association shall be considered as a producer. A stockholder who owns a majority of the stock of a corporation shall not be considered as a separate producer on the same farm nor recognized in any other capacity on the same farm as a landowner, landlord, tenant, or sharecropper.

(3) An estate or trust shall be considered as a producer unless the estate has only one heir or the trust has only one beneficiary, in which case only the sole heir or the sole beneficiary shall be considered as a producer. Subject to the provisions of paragraph (a) of this section, an individual who is not the sole heir of the estate or the sole beneficiary of the trust may be considered as a separate producer or recognized in a different capacity as landlord, landowner, tenant, or sharecropper, on the same farm or on another farm, provided such separate producer status is established to the satisfaction of the county committee.

(4) Two or more individuals operating as a group under an arrangement which, although lacking the legal elements of a partnership or corporation, is in the nature of a joint undertaking shall be considered as a producer. (Clubs, societies, fraternal and religious organizations, as well as informal arrangements between two or more individuals, are examples of such groups.) Individual members of the group shall not be considered as separate producers on the same farm nor recognized on the same farm in any other capacity as landowners, landlords, tenants, or sharecroppers.

(5) Husband and wife shall not be considered as separate producers nor recognized in any other capacity as landowners, landlords, tenants, or sharecroppers, on the same farm or on different farms. Other individuals having any family relationship may be considered as separate producers if they are participating on different farms. Such individuals may be considered as separate producers on the same farm or recognized in different capacities on the same farm as landlords, landowners, tenants, or sharecroppers only if such individuals operated as separate producers or in separate capacities during the year preceding the first year of the contract period.

(6) Individuals having a joint or common interest arising out of their interests in the ownership of the farm as joint tenants, tenants by the entirety

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FEDERAL REGISTER

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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.

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or tenants in common shall not be considered as separate producers on the same farm nor recognized in any other capacity on the same farm as landlords, landowners, tenants or sharecroppers.

(Sec. 124, 70 Stat. 198; 7 U. S. C. 1812)

Done at Washington, D. C., this 25th day of April, 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-3272; Filed, Apr. 30, 1958; 8:56 a. m.]

TITLE 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 730—RICE

SUBPART—RICE MARKETING QUOTA REGULATIONS FOR 1958 AND SUBSEQUENT CROP YEARS

GENERAL

AUTHORITY: §§ 730.950 to 730.995 issued under sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 351–356, 362–368, 372–374, 376, 52 Stat. 38, as amended; 52 Stat. 41, as amended; sec. 106, 70 Stat. 191, 7 U. S. C. 1301, 1351–1356, 1362–1368, 1372–1374, 1376, 1824.

GENERAL

§ 730.950 *Basis and purpose.* The regulations contained in §§ 730.950 to 730.995, inclusive, are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and govern the following provisions for the 1958 and subsequent crops of rice: The measurement of farms and the final dates for the disposal of excess acreage; the amount, adjustment, and review of the farm marketing quota and farm marketing excess; the issuance of marketing cards and certificates; the identification of marketings of rice as subject to or not subject to the penalty and lien for the penalty; the rate of the penalty and the manner in which penalties shall be paid by producers and buyers; the refunding of penalty overpayments; the postponement or avoidance of penalty on excess rice by storage, by delivery to the Secretary of Agriculture, or, in a subsequent year, by underplanting the allotment or producing a less than normal crop; the records and reports required to be made by rice producers and handlers; and special provisions and exemptions applicable to farms on which the acreage of nonirrigated (dry land) rice is 3 acres or less, rice produced by publicly-owned experiment stations, and rice planted for wildlife feed. The regulations in §§ 730.950 to 730.995 will remain in effect until amended, superseded, or suspended. Prior to preparing §§ 730.950 to 730.995, inclusive, public notice (23 F. R. 1095) of the Secretary's intention to formulate and issue the regulations was given in accordance with the Administrative Procedure Act (5 U. S. C. 1003). No data, views, or recommendations pertaining to the regulations in §§ 730.950 to 730.995, inclusive, were received pursuant to such notice.

§ 730.951 *Definitions.* As used in this subpart and in all forms and documents in connection therewith, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

(a) "Acts" means the Agricultural Adjustment Act of 1938 and any amendments or supplements thereto.

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

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

(d) "Director" means the Director of the Grain Division, Commodity Stabilization Service, United States Department of Agriculture.

(e) "State administrative officer" means the person employed to execute the policies of the State committee and to be responsible for the day-to-day operations of the office of the State committee, or the person acting in such capacity.

(f) "Committees":

(1) "State committee" means the persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State Committee under section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended.

(2) "County committee" means the persons elected within a county as the county committee, pursuant to regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees under section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended.

(3) "Community committee" means the persons elected within a community as the community committee, pursuant to the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and

community committees under section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended.

(4) "Review committee" means the committee appointed by the Secretary of Agriculture to review farm marketing quotas as provided in section 363 of the act.

(g) "County office manager" means the person employed by the county committee to execute the policies of the county committee and be responsible for the day-to-day operations of the ASC county office, or the person acting in such capacity.

(h) "Treasurer of the county committee" means the county office manager or the person designated by him to act as treasurer of the ASC county committee.

(i) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, political subdivision of a State, the Federal Government, or any agency thereof.

(j) "Producer" means any person engaged in the production of rice as landlord, tenant, or sharecropper, and includes a person owning and operating his own farm; a tenant operating a farm rented for cash; a tenant operating a farm under a crop-share lease, contract, or agreement; a landlord leasing to share tenants; and a person or irrigation company furnishing water for a share of the crop, or the proceeds thereof. For purposes of the regulations in this subpart, the term "tenant" shall be deemed to include a person or irrigation company furnishing water for a share of the rice crop.

(k) "Landlord" or "owner" means a person who owns land.

(l) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(m) "Tenant" means a person other than a sharecropper who rents land from another person, whether or not he rents such land or part thereof to another person.

(n) "Sharecropper" means a person who works a farm in whole or in part under the general supervision of the operator and is entitled to receive for his labor a share of a crop produced thereon or of the proceeds thereof.

(o) "Buyer" means a person who buys rice.

(p) "Intermediate buyer" means any buyer or transferee who purchases or acquires any rice prior to the time the rice so purchased or acquired has been marketed either (1) to a warehouseman, mill operator, or processor, or (2) to any other grain dealer who conducts his business in a manner substantially the same as a warehouseman or mill operator.

(q) "Transferee" means a person who acquires rice from a producer or any other person by barter, exchange or gift.

(r) "Crop year" means the calendar year in which the rice crop is produced.

(s) "Marketing year" means the period beginning August 1, and ending July 31 of the following year, both dates inclusive.

(t) "Farm" means a farm as defined in the regulations governing determination of acreage and performance (Part 718 of this chapter), and any amendments thereto.

(u) "Farm acreage allotment" means the rice acreage allotment established for the farm in accordance with applicable regulations.

(v) "Rice acreage" means the acreage planted to rice and the acreage of volunteer rice which reaches maturity, excluding any acreage of (1) nonirrigated rice produced on any farm on which such acreage is three acres or less, (2) sweet, glutenous, or candy rice commonly known as Mochi Gomi, (3) rice grown for experimental purposes only by or under contract to a publicly-owned agricultural experiment station, (4) any acreage of rice grown by any Federal or State Wildlife refuge farm where all rice on the farm is produced solely for wildlife feed or seed for the production of wildlife feed on such wildlife refuge farm, and (5) any acreage planted to rice in excess of the farm rice acreage allotment, or when applicable, the permitted acreage or rice under an acreage reserve agreement or conservation reserve contract under the soil bank program, which is destroyed or otherwise handled or treated (by the producer or from some cause beyond his control) not later than the final date for the disposal of excess acreage as provided in § 730.955 (b) of this subpart so that rice cannot be harvested therefrom.

(w) "Excess rice acreage" means the rice acreage determined for the farm which is in excess of the farm rice acreage allotment.

(x) "Rice" as used in the regulations of this subpart means rough rice with a maximum moisture content of 14 percent. Rice with a moisture content in excess of 14 percent will be adjusted to the equivalent of 14 percent moisture content.

(y) "Normal yield" means the number of pounds per acre of rice established as the normal yield per acre for the farm under § 730.953.

(z) "Normal production" of any number of acres of rice on a farm means the normal yield of rice for the farm times such number of acres.

(aa) "Farm marketing quota" means the rice marketing quota established for the farm under § 730.958.

(bb) "Farm marketing excess" means the amount of rice determined for any farm under § 730.959 or § 730.962, whichever is applicable.

(cc) "Penalty" means the penalty referred to in § 730.972.

(dd) "Actual yield" means the number of pounds of rice determined by dividing the number of pounds of rice produced on the farm by the rice acreage on the farm.

(ee) "Actual production" of any number of acres of rice on a farm means the actual average yield per acre for the farm times such number of acres.

(ff) "Market" means to dispose of rice, in raw or processed form, by voluntary or involuntary sale, barter, or exchange, or by gift.

(1) The terms "marketed", "marketing", and "for market" shall have meaning corresponding to the term "market" in the connection in which they are used.

(2) The term "sale" means any transfer of title to rice by a producer by any means other than barter, exchange or gift. The penalty on excess rice is due regardless of what use is made of the excess rice.

(3) The terms "barter" and "exchange" mean transfer of title to rice by a producer in return for rice or any other commodity, service, or property, in cases where the value of the rice or such other commodity, service, or property is not considered in terms of money, or the transfer of title to rice by a producer in payment of a fixed rental or other charge for land, or the payment of an amount of rice in lieu of a cash charge for harvesting or milling rice (commonly called "toll rice").

(4) The term "gift" means any transfer of title to rice accompanied by delivery of the rice by a producer which takes effect immediately and irrevocably and is made without any consideration or compensation therefor.

§ 730.952 *Instructions and forms.* The Director shall cause to be prepared and issued such forms as are necessary and shall cause to be prepared such instructions with respect to internal management as are necessary for carying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator for Production Adjustment, Commodity Stabilization Service.

§ 730.953 *Normal yields*—(a) *Farms for which normal yields will be determined.* The county committee will determine a normal yield for each farm for which a farm marketing excess is required to be determined for any crop year, for each farm for which a request is made to the county committee by the operator, either prior to or after seeding, and for each farm as required for the purposes of the provisions of § 730.980 (h) and (i). Determination of farm normal yields shall be documented in a manner approved by the State committee and such determination shall be subject to review and revision by the State committee or on behalf of the State committee by the State administrative officer, program specialist, or farmer fieldman. No notice of a farm normal yield shall be mailed to a producer until the yield has been approved by or on behalf of the State committee.

(b) *Yields based on reliable records.* Where reliable records of the actual average yield in pounds per harvested acre for all of the five calendar years immediately preceding the calendar year for which the yield is determined are available to the county committee, the normal yield per acre of rice for the farm shall be determined to be the average of such yields adjusted for abnormal weather conditions and for trends in yields.

(c) *Appraised yields.* If for any year of such 5-year period data are not available or there was no actual yield, then

the normal yield (per harvested acre of rice) for the farm shall be appraised by the county committee taking into consideration abnormal weather conditions during such 5-year period, trends in yields, the normal yield for the county, the yields obtained on adjacent farms during such year and the yield in years for which data are available. If on the account of drought, flood, insect pests, plant disease, or other uncontrollable natural cause, the yield for any year of such period is less than 75 per centum of the average, 75 per centum of such average shall be substituted therefor in calculating the normal yield per acre for the farm. If, on account of abnormally favorable weather conditions, the yield for any year of such period is in excess of 125 per centum of the average, 125 per centum of such average shall be substituted therefor in calculating the normal yield per acre for the farm.

MEASUREMENT OF FARMS AND FINAL DATES FOR DISPOSAL OF EXCESS ACREAGE

§ 730.954 *Measurement of farms*—(a) *Identification of farms.* Each rice farm shall be identified by a farm serial number, assigned by the county committee, and all records pertaining to rice marketing quotas for the crop year shall be identified by the farm serial number.

(b) *Farms which are to be measured.* The county committee shall provide for the measurement of all farms in the county having a rice acreage allotment and any other farm in the county on which the committee has reason to believe there is rice which could be available for harvest, regardless of its intended use, for the purpose of ascertaining with respect to each of such farms the acreage of rice and whether such acreage is in excess of the farm acreage allotment. Measurement shall be made under the general supervision of the county committee in accordance with Part 718 of this chapter (22 F. R. 3747), and any amendments thereto.

(c) *Reporter.* The measurement on the farm shall be made by an employee of the county committee who has been designated as a reporter and determined to be qualified to carry out the duties of a reporter by the county office manager. In addition, upon request of the county committee, the State administrative officer may designate an employee of the State committee to serve as a reporter.

(d) *Measurement of rice acreage.* Upon his first visit to the farm for purposes of measurement, the reporter assigned thereto shall measure all fields on the farm growing rice. All farms measured which are found to have acreage on which rice is growing in excess of the farm rice acreage allotment shall be revisited by the reporter for the purpose of a second measurement after the period for adjusting excess acreage prior to harvest has expired, except that a revisit shall not be made to any such farm if the farm operator or his representative fails to notify the ASC county office by the dates specified on the notice of excess acreage (Form CSS–590) of his intention to adjust the excess acreage on the farm and pay the cost of remeasurement. On this visit all acreage devoted to rice and which has not been adjusted prior to harvest so as not to qualify as rice acreage in accordance with these regulations shall be measured. In making such measurements, the data acquired on the first visit may be utilized.

(e) *Water company measurements.* Notwithstanding other provisions of this section, acreage measurements made by employees of water or irrigation companies to determine water charges may be used in lieu of or in connection with measurements by a reporter, subject to the following conditions: (1) The State and county committees determine that such measurements are accurate and meet the standards for measurements set out in such regulations; (2) a visual inspection is made by a representative of the State or county committee in order to ascertain that all rice acreage on the farm has been included; (3) a spot check of at least 10 per centum of the farms so measured is made; and (4) the water or irrigation company does not share in the rice crop on the farm.

(f) *Prior measurements.* Measurements made prior to the effective date of the regulations in this subpart and in accordance with procedures then in effect may be utilized where pertinent for the purpose of ascertaining with respect to any farm the rice acreage and the rice acreage in excess of the farm rice acreage allotment.

§ 730.955 *Notice of excess acreage and final dates for disposal of excess acreage*—(a) *Notice of excess acreage.* (1) If the county committee determines that the rice acreage on any farm is in excess of the farm rice acreage allotment, the operator shall be mailed a written notice on Form CSS–590 showing the rice acreage and the final date for adjusting such acreage to the farm rice acreage allotment. The date shown on such notice shall be the applicable date as established under paragraph (b) of this section, except that if the notice is not mailed at least 15 days prior to such date, the period during which the excess rice acreage may be adjusted to the rice acreage allotment shall be extended to a date which is 15 days from the date the notice is mailed. Form CSS–590 original or revised shall bear the actual or facsimile signature of the county office manager or a member of the county committee. Such facsimile signature may be affixed by a county office employee.

(2) If the producer on the farm is unable, because of conditions beyond his control, to dispose of the excess acreage within the time limit prescribed on the notice, a request for additional time may be filed in writing at the county office by any producer on the farm who has an interest in the crop. In order to be considered, the request for additional time must be filed prior to the expiration of the final date for disposition of the excess as shown on the notice. The reason the producer on the farm is unable to dispose of the excess acreage within the prescribed time limit shall be set forth in the request for additional time. If the county committee or the county office manager determines from the facts available that the producer is unable to dispose of the excess acreage within the prescribed time because of conditions beyond his control, the county committee or county office manager may grant an extension of such time sufficient to afford a fair and reasonable opportunity for such disposal: *Provided*, That such extended period shall not exceed 15 days from the time prescribed in the notice from which relief is sought. If an extension is granted, the operator shall be mailed a revised notice on Form CSS–590 showing the extended disposition date. If a request for an extension is denied, the county office manager shall notify the operator by letter of the denial.

(3) If the producer is unable to dispose of the excess rice acreage because of conditions beyond his control and the producer failed to apply for an extension by the county committee prior to the disposal date referred to in subparagraphs (1) or (2) of this paragraph, a request for additional time may be filed in writing at the county office for consideration by the State committee, by any producer on the farm who has an interest in the crop. In order to be considered he must file the request in writing and show the reason he was unable to comply with the expiration date of which he was notified. If the State committee, or State administrative officer on behalf of the State committee, determines that the producer was unable, because of conditions beyond his control, to dispose of the excess acreage within the time limit, the county office may be authorized to extend the expiration date. Upon receipt of such authorization, the county committee or county office manager shall extend the previous date for disposition to provide the producer a reasonable opportunity to dispose of the excess acreage. If any extension of time is granted pursuant to this subparagraph, the farm operator shall be mailed a revised notice showing the extended disposition date. If a request for an extension is denied, the county office manager shall notify the operator by letter of the denial.

(4) Extensions also, may be granted in accordance with subparagraphs (2) or (3) of this paragraph, if it is determined that an extension is reasonable because of the physical condition of the rice acreage.

(5) Notwithstanding the provisions of subparagraphs (2) and (3) of this paragraph, in no case shall a disposition date be later than the time the harvesting of rice begins on the farm, except where it may be necessary to issue a delayed notice in accordance with subparagraph (1) of this paragraph.

(6) The rice acreage determined for any farm and shown on Form CSS–590 original or revised which was mailed to the operator of the farm under paragraph (a) of this section, shall be considered the rice acreage on such farm, unless the operator or his representative notifies the county office on or before the applicable date for disposal of excess acreage of his intention to adjust such acreage to the farm allotment and pays the estimated cost of checking the adjusted acreage in accordance with the regulations governing determination of acreage and performance (Part 718 of

this chapter) and any amendments thereto.

(b) *Final date for the disposal of excess acreage.* The final dates determined by the Secretary, upon recommendation of the county and State committees, for the disposal of excess rice acreage are considered to be not later than 30 days prior to the date rice harvest normally begins in the county or State. The dates for each crop year in each county or area of a county by which excess rice must be destroyed or otherwise handled or treated (by the producer or from some cause beyond his control) so that rice cannot be harvested therefrom, unless extended as provided in paragraph (a) of this section, are as follows:

Arkansas: August 1—All counties.
California: September 1—All counties.
Florida: October 15—All counties.
Illinois: September 15—All counties.
Louisiana: August 1—All counties.
Mississippi: August 15—All counties.
Missouri: August 15—All counties.
North Carolina: August 31—All counties.
Oklahoma: August 15—All counties.
South Carolina: August 1—All counties for rice planted on or about March 15; September 15—All counties for rice planted on or about May 15; October 15—All counties for rice planted on or about June 15.
Tennessee: August 31—All counties.
Texas: July 15—All counties except Bowie County; September 1—Bowie County.

§ 730.956 *Reports and records of farm measurements.* A record shall be kept in the ASC county office of the measurements made on all farms. There shall be filed with the ASC State office a written report setting forth for each farm for which a farm marketing excess is determined (a) the farm serial number, (b) the name of the operator, (c) name of each producer, (d) the total acreage in cultivation, (e) the farm acreage allotment, (f) the rice acreage, (g) the farm normal yield, and (h) the farm marketing excess in pounds.

FARM MARKETING QUOTA AND FARM MARKETING EXCESS

§ 730.957 *Marketing quotas in effect.* Marketing quotas when effective with respect to a particular crop of rice shall be applicable in the continental United States. Such quotas shall be applicable to any rice of that crop notwithstanding that it may be available for market prior to the beginning of the marketing year or subsequent to the end of the marketing year.

§ 730.958 *Farm marketing quota.* The farm marketing quota for any farm for any crop of rice shall be that number of pounds of rice produced less the amount of the farm marketing excess for the farm.

§ 730.959 *Farm marketing excess.* The farm marketing excess for any crop of rice for any farm shall be the normal production of the rice acreage on the farm in excess of the farm acreage allotment therefor: *Provided,* That the farm marketing excess for any crop shall not be larger than the amount by which the actual production of such crop of rice on the farm exceeds the normal production of the farm rice acreage allotment if the producer establishes such actual production to the satisfaction of the Secretary.

§ 730.960 *Notice of farm marketing excess.* Written notice of the farm marketing quota and farm marketing excess for a farm shall be mailed to the operator of each farm for which a farm marketing excess is determined. Notice so given shall constitute notice to each producer having an interest in the rice crop produced or to be produced on the farm. A copy of such notice shall also be mailed on the same day to each other rice producer on the farm as shown on ASC county office records. Each notice shall contain a brief statement of the procedure whereby application for a review of the farm marketing quota, farm marketing excess, or any determination made in connection therewith may be had in accordance with section 363 of the act. A record of each notice containing the date of mailing the notice to the operator of the farm shall be kept among the permanent records in the ASC county office and upon request a copy thereof shall be furnished without charge to any person who as operator, landlord, tenant, or sharecropper is interested in the rice produced on the farm for which the notice is given. Each notice shall be on a Form MQ–93—Rice and shall contain the information necessary in each case to inform the producer as to the basis for the determinations set forth in the notice and the effect thereof and shall be signed by a member of the county committee on behalf of the county committee.

§ 730.961 *Farms for which proper notice of the farm marketing quota and farm marketing excess of rice was not issued.* Where, for any reason, proper notice of the farm marketing quota and farm marketing excess and of the producer's right to obtain a downward adjustment in the farm marketing excess for his farm on account of actual production, and of his right to store or deliver to the Secretary the farm marketing excess of rice established for the farm, was not issued to the producer in sufficient time to allow him 30 days prior to the time in which he was required to make application for a downward adjustment, or to store or deliver to the Secretary the farm marketing excess, as prescribed by §§ 730.960, 730.962, 730.980, and 730.981, the producer shall be so notified by the county committee on Form MQ–93—Rice and the producer may, within 30 days from the date such notice is mailed to him, apply to the county committee for a downward adjustment in the amount of the farm marketing excess and may, within 30 days from the date such notice is mailed, store or deliver to the Secretary the farm marketing excess as provided in §§ 730.962, 730.980, and 730.981. In the event application for downward adjustment in the farm marketing excess is made by the producer, a revised notice on Form MQ–93—Rice with a copy of the determination of the county committee as provided in § 730.962 (b) shall be mailed to the operator of the farm, to the applicant if he is not such operator, and to all other interested producers.

§ 730.962 *Farm marketing excess adjustment*—(a) *Adjustment in the amount of the farm marketing excess.* (1) Any producer having an interest in the rice produced on any farm for which there is an excess may (i) within 60 days after the harvesting of rice is normally substantially completed in the county or area in the county in which the farm is situated or within 30 days after a late notice of farm marketing quota and farm marketing excess is mailed, as provided in § 730.961, apply to the county office for a downward adjustment in the amount of the farm marketing excess on the basis of the amount of rice produced on the farm in the applicable crop year, or (ii) apply to the county office at any time prior to the institution of court proceedings to collect the penalty for a determination that there was no farm marketing excess for the farm because the actual production of rice on the farm was not in excess of the normal production of the acreage allotment.

(2) The date on which the harvesting of rice is normally substantially completed in the county or area in the county shall be determined by the Secretary taking into consideration recommendations which the State and county committees may make. Unless application for an adjustment in the farm marketing excess is made prior to the expiration of 60 calendar days next succeeding that date or within 30 days after a late notice of farm marketing quota and farm marketing excess is mailed as provided in § 730.961 or unless prior to the institution of court proceedings to collect the penalty with respect to the farm it is determined that there was no farm marketing excess for the farm, the farm marketing excess for any farm in the county as determined on the basis of the normal production of the excess rice acreage for the farm shall be final as to the producers on the farm. The county office shall keep a record of each application so made and the date thereof. The county committee shall establish a time and a place at which each application will be considered and shall notify the applicant of the time and place of the hearing. Insofar as practicable, applications shall be considered in the order in which made.

(3) The established date on which rice harvest is normally substantially completed has been determined as aforesaid in rice-producing counties to be as follows:

Arkansas: November 15—All counties.
California: November 30—All counties.
Florida: November 30—All counties.
Illinois: October 15—All counties.
Louisiana: November 3—All counties.
Mississippi: October 31—All counties.
Missouri: October 1—All counties.
North Carolina: November 1—All counties.
Oklahoma: November 15—All counties.
South Carolina: November 1—All counties.
Tennessee: November 1—All counties.
Texas: October 20—All counties.

(b) *Procedure in connection with an application for an adjustment in the farm marketing excess.* (1) The county committee shall consider each application on the basis of facts known by or made available to it and on the basis of

such evidence as may be presented to it by the applicant.

(2) The actual production of any farm shall be determined in view of the relevant facts, including the past production on the farm; the actual yields during the same year of other farms in the community; the actual and normal yields of other farms in the community which are similar with regard to farming practices followed, type of soil, and productivity; the harvesting, processing, sales, and storage of the commodity produced on the farm; farming practices followed on the farm; and weather and other factors affecting the production of rice on the farm and in the locality in which the farm is situated. In determining actual production, the county committee shall include, in addition to the actual production of the harvested acreage, the estimated production of any unharvested acreage which has been classified as rice acreage, unless the county committee determines that no rice could be harvested in any manner from the unharvested excess acreage after approval of the downward adjustment.

(3) In the consideration of any application for an adjustment in the farm marketing excess, the producer shall have the burden of proof. The evidence presented by the applicant may be in the form of written statements or other documentary evidence, or of oral testimony in a hearing before the county committee during its consideration of the application. In order to expedite the consideration of applications, the county committee shall receive, in advance of the time fixed for consideration of the application, any written statement or documentary evidence offered by or on behalf of the applicant, and the application may be disposed of upon the basis of such statement or evidence, together with other information bearing on or establishing the facts which are available to the county committee, unless the applicant appears before the county committee at the time fixed for considering the application and requests a hearing for the purpose of offering documentary evidence or oral testimony in support of the application. Every such hearing shall be open to the public.

(4) The county committee shall make its determination in connection with each application not later than five calendar days next succeeding the day on which the consideration was concluded. The determination of the county committee shall be in writing and shall contain (i) a concise statement of the grounds upon which the applicant sought an adjustment in the amount of the farm marketing excess, (ii) a concise statement of the findings of the county committee upon the questions of fact, and (iii) the determination of the county committee as to the farm marketing quota and the farm marketing excess. A revised notice on Form MQ–92—Rice with a copy of the determination made as aforesaid shall be mailed to the operator of the farm, to the applicant if he is not such operator, and to all other interested producers.

(5) All county committee determinations made in connection with applications for adjustment in the farm marketing excess shall be subject to review and revision by the State committee or on behalf of the State committee by the State administrative officer, program specialist, or farmer fieldman. No notice of the determination shall be mailed to the operator until the determination has been approved by or on behalf of the State committee.

(c) *Adjustment where no rice is produced.* Notwithstanding the foregoing provisions of this section, whenever the county committee determines that no rice has been or will be produced in a particular crop year on a farm for which a farm marketing excess has been determined, the county committee may adjust the farm marketing excess and notify the operator of such adjustment as provided in paragraph (b) of this section, without the necessity of an application by the producer.

§ 730.963 *Publication of the farm acreage allotments, marketing quotas, and marketing excesses.* A record of the farm acreage allotments, farm marketing quotas, and farm marketing excesses established for farms in the county shall be made and kept freely available for public inspection in the ASC county office.

§ 730.964 *Marketing quotas not transferable.* A farm marketing quota established for a farm may not be assigned or otherwise transferred in whole or in part to any other farm.

§ 730.965 *Successors in interest.* Any person who succeeds to the interest of a producer in a farm or in a rice crop produced on a farm for which a farm marketing quota and farm marketing excess were established shall, to the same extent as his predecessor, be entitled to all the rights and privileges incident to such marketing quota and marketing excess and be subject to the restrictions on the marketing of rice. However, a successor to a deceased producer shall not be personally liable for an unpaid marketing quota penalty incurred by the producer prior to his death, but a suit may be brought to enforce the lien for the penalty against the rice. If a successor in interest should acquire from a deceased producer rice subject to lien for the penalty, no marketing card or marketing certificate shall be issued to permit the successor in interest to market the rice penalty free until the penalty has been satisfied.

§ 730.966 *Review of quotas*—(a) *Right to review by review committee.* Any producer who is dissatisfied with the farm acreage allotment, normal yield, farm marketing quota, farm marketing excess, or other determination for his farm in connection with marketing quotas may, within 15 calendar days after the notice thereof was mailed to him, apply in writing for a review by a review committee of such acreage allotment, normal yield, farm marketing quota, farm marketing excess or other determination in connection therewith: *Provided*, That if a review hearing has been held and determination made by a review committee with respect to the acreage allotment, normal yield, farm marketing quota, farm marketing excess, or other determination in connection therewith, no application by a producer for further review by a review committee with respect to such determination may be filed. Unless application for review is made within such period, the acreage allotment, normal yield, farm marketing quota, farm marketing excess, or other determination, as the case may be, shall be final as to the producers on the farm. Application for review and the review committee proceedings shall be in accordance with the review regulations (Part 711 of this chapter) as issued by the Secretary (21 F. R. 9365), and any amendments thereto.

(b) *Action by county committee prior to review hearing.* Action shall be taken by the county committee prior to the review hearing in accordance with § 711.14 of this chapter.

(c) *Court review.* If the producer is dissatisfied with the determination of the review committee he may, within 15 days after notice of such determination is mailed to him by registered mail, institute proceedings against the review committee to have the determination of the review committee reviewed by a court in accordance with section 365 of the act.

MARKETING CARDS AND MARKETING CERTIFICATES

§ 730.967 *Issuance of marketing cards*—(a) *Producers eligible to receive marketing cards.* The operator and all other producers on a farm shall be eligible to receive a marketing card (MQ–76—Rice) for the applicable year if (1) no farm marketing excess is determined for the farm, (2) an amount equal to the penalty on the farm marketing excess has been received from the producer or any buyer as provided in § 730.975 or § 730.976, (3) the farm marketing excess is stored, as provided in § 730.980, or (4) the amount of the farm marketing excess has been delivered to the Secretary, as provided in § 730.981. A marketing card shall not be issued until the performance report (CSS–578) has been signed by the operator or his representative. Marketing cards will be delivered to producers at the office of the county committee, except that if the county committee determines that it would facilitate the administration of the act, and the committee has reason to believe that the marketing card will be used, marketing cards may be mailed to the producers entitled thereto: *Provided*, That the producers are instructed in writing to sign the card in the appropriate space thereon prior to its use. Each marketing card shall be serially numbered and shall show the names of the State and county and the serial number of the farm, the actual or facsimile signature of the county office manager or a member of the county committee, the date of issuance, the name and address of the producer to whom issued, and the signature of the producer to whom the card is issued, or his duly authorized agent, or a statement by the county office manager or a member of the county

committee giving an explanation of the reason the signature of the producer cannot be made. The facsimile signature provided for herein may be affixed by a county office employee.

(b) *Producers ineligible to receive marketing cards.* The producers on a farm shall be ineligible to receive marketing cards: (1) if any producer on the farm owes any penalty for excess rice in any preceding crop year, (2) if determination of the rice acreage has not been made and has been prevented by any producer on the farm, and (3) if the farm marketing excess determined under § 730.959 is adjusted under § 730.962. A producer shall not be considered to owe any penalty under subparagraph (1) of this paragraph if he has avoided or postponed payment of the penalty through storage of excess rice in accordance with applicable regulations.

(c) *Multiple farm producers eligible to receive marketing cards.* Any producer who is a rice producer on more than one farm in a county shall not be eligible to receive a marketing card for any such farm in the county until, in accordance with the provisions of paragraphs (a) and (b) of this section, he is eligible to receive a marketing card for each of such farms. However, only one rice marketing card need be issued to a producer who has an interest in the rice crop on more than one farm in the county, provided (1) the farm serial numbers of all such farms are entered on the marketing card, (2) the producer is eligible to receive a marketing card on each farm in the county in which he has an interest in the rice crop, and (3) the producer's liability has not been reduced to a proportionate share on any such farm. The other producers on a farm for which the multiple farm producer would otherwise be eligible to receive a marketing card shall receive marketing certificates with respect to the farm notwithstanding the ineligibility of the multiple farm producer. Where a producer is engaged in the production of rice in more than one county (in the same State or in two or more States), the regulations outlined in this section for issuing marketing cards for multiple farms in a county may be followed with respect to all such farms, wherever situated, if the county committees of the respective counties or the State committee determines that the procedure would be necessary to enforce the provisions of the act. The State committee may require any multiple farm producer to file with it a list of all farms on which he is engaged in the production of rice, together with any other information deemed necessary to enforce the act.

(d) *Use of marketing cards.* The serial number of the farm or farms for which a marketing card is issued shall be entered on the marketing card. A marketing card shall not be used to identify rice produced on any farm the serial number of which is not entered on the card. A marketing card shall not be used to market any rice which was not produced on a farm the serial number of which appears on the marketing card.

(e) *Producers to whom marketing cards will not be issued to enforce the provisions of the act.* Notwithstanding any other provisions of this section, the county committee shall deny any producer a marketing card if it determines that such action is necessary to enforce the provisions of the act. A marketing certificate may be issued in such cases for any proved production.

§ 730.968 *Issuance of marketing certificates*—(a) *Producers to whom marketing certificates may be issued.* The county office manager or a member of the county committee shall upon request issue a marketing certificate, Form MQ–94—Rice, to any producer (1) who is eligible to receive a marketing card and who desires to market rice by telegraph, telephone, mail, or by any means or method other than directly to and in the presence of the buyer or transferee; (2) whose liability has been reduced to a proportionate share of the entire penalty and such liability discharged in accordance with the provisions of § 730.975 (c); (3) who is ineligible to receive a marketing card solely because of penalties owed by him or by any producer on the farm for excess rice for any preceding crop year; (4) who is ineligible to receive a marketing card solely because of excess rice produced on another farm as provided in § 730.967 (c); (5) who is otherwise eligible to receive a marketing card but who has an interest in the rice crop on a farm for which a multiple producer is ineligible to receive a marketing card; (6) who is ineligible to receive a marketing card because the farm marketing excess determined under § 730.959 was adjusted under § 730.962; (7) who has eligible rice produced in a prior year but is ineligible to receive a marketing card for the current crop year; or (8) who is ineligible to receive a marketing card under § 730.967 (e).

(b) *Completion of marketing certificate.* Each marketing certificate shall show (1) the name and address of the producer to whom issued, (2) the names of the State and county, and the serial number of the farm, (3) the number of pounds of rice eligible to be sold, (4) the serial number of the marketing card assigned to the producer for the farm if applicable, or the word "none" if no card has been assigned, and (5) the actual or facsimile signature of the county office manager or a member of the county committee, and the date of issuance. Such facsimile signature provided for herein may be affixed by a county office employee. The original and first copy of the marketing certificate shall be issued to the producer for delivery to the buyer or transferee and the triplicate copy shall be retained in the ASC county office. A marketing certificate shall not be used to identify rice produced on any farm the serial number of which is not entered on the certificate. When the rice is marketed the buyer or transferee shall enter both on the original and copy of the marketing certificate (i) the number of pounds of rice marketed, (ii) the date marketed and (iii) the name and address of the buyer or transferee. Both the buyer or transferee and the producer shall sign the original and copy of the marketing certificate. The original shall be retained by the buyer or transferee and the copy shall be returned to the producer. If all of the rice eligible to be marketed was not marketed in one transaction, or if the producer desires to market part of the eligible rice to another buyer or transferee, he shall request the county office manager or his designee or the county committee to issue a marketing certificate for the balance of the unmarketed eligible rice. Such request shall be accompanied by the completed producer's copy of the marketing certificate showing the amount of rice previously marketed. The completed producer's copy of the marketing certificate shall be retained in the county office and a marketing certificate for the balance of the unmarketed eligible rice shall be issued to the producer. Notwithstanding the foregoing, the producer may request, and the county office shall issue, more than one marketing certificate at one time, provided the total number of pounds of rice shown on all the marketing certificates as eligible to be marketed does not exceed the number of pounds eligible to be marketed for the farm.

§ 730.969 *Lost, destroyed, or stolen marketing cards, marketing certificates, or soil bank delivery orders*—(a) *Report of loss, destruction, or theft.* In case a marketing card, marketing certificate, or producer's copy of soil bank delivery order (CCC Form 382 or CCC Form 103) delivered to a producer is lost, destroyed, or stolen, any person having knowledge thereof shall, insofar as he is able, immediately notify the ASC county office of the following: (1) The name of the operator of the farm for which such marketing card, marketing certificate, or soil bank delivery order, was issued; (2) the name of the producer to whom the marketing card, marketing certificate or soil bank delivery order was issued, if someone other than the operator; (3) the serial number of the marketing card, marketing certificate or soil bank delivery order; and (4) whether in his knowledge or judgment it was lost, destroyed, or stolen and by whom.

(b) *Investigation and findings of county committee.* The county committee shall make or cause to be made a thorough investigation of the circumstances of such loss, destruction, or theft. If the county committee finds, on the basis of its investigation, that such marketing card, marketing certificate, or producer's copy of soil bank delivery order, was in fact lost, destroyed, or stolen it shall cause to be cancelled such marketing card, marketing certificate or producer's copy of soil bank delivery order, and instruct the county office manager to give notice to the producer to whom the marketing card, marketing certificate, or soil bank delivery order was issued that it is void and of no effect. The notice to that effect shall be in writing, addressed to the producer at his last known address, and deposited in the United States mails. If the county committee also finds that there has been no collusion in connection therewith on the part of the producer to or for whom the marketing card, marketing certificate or soil bank delivery order was issued, it shall cause to be issued to or for him a marketing

card, marketing certificate or producer's copy of soil bank delivery order to replace the lost, destroyed or stolen marketing card, marketing certificate or producer's copy of soil bank delivery order. Each marketing card, marketing certificate, or producer's copy of soil bank delivery order issued under this section shall bear across its face in bold letters the word "Duplicate." In case a marketing card, marketing certificate or producer's copy of soil bank delivery order is cancelled, as provided in this section, the county office manager or his designee shall immediately notify the buyers, mill operators, or warehousemen who serve the county or the immediate vicinity of the farm, that the marketing card, marketing certificate or producer's copy of soil bank delivery order is cancelled and of the issuance of any duplicate. Any person coming into possession of a cancelled marketing card, marketing certificate or producer's copy of soil bank delivery order shall immediately return it to the ASC county office from which it was issued.

§ 730.970 *Cancellation of marketing cards and marketing certificates issued in error.* Any marketing card or marketing certificate erroneously issued shall, immediately upon discovery of error, be cancelled by the county office manager. The producer to whom such marketing card or marketing certificate was issued shall be notified in the manner prescribed in § 730.969 (b) that the marketing card or marketing certificate is void and of no effect and that it shall be returned to the ASC county office. Upon the return of such marketing card or marketing certificate, the county office manager shall cause to be endorsed thereon the notation "Cancelled." In the event that such marketing card or marketing certificate is not returned immediately, the county office manager shall immediately notify the mill operators, warehousemen, and buyers who serve the county or are in the immediate vicinity that the marketing card or marketing certificate is cancelled. A copy of each notice provided for in this section containing a notation thereon of the date of mailing shall be kept among the records of the ASC county office.

IDENTIFICATION OF RICE

§ 730.971 *Time and manner of identification.* Each producer of rice and each intermediate buyer shall, at the time he markets any rice, identify the rice to the buyer or transferee in the manner hereinafter provided as being subject to or not subject to the penalty or the lien for the penalty, as follows:

(a) *Identification by marketing card.* A marketing card (MQ–76—Rice) for the applicable crop year shall, when presented to the buyer by the producer to whom it was issued, the evidence to the buyer that the rice for which the marketing card was issued may be purchased without the payment of any penalty by him and that such rice is not subject to the lien for the penalty.

(b) *Identification by marketing certificate.* A marketing certificate (MQ–94—Rice) properly executed shall, when delivered to the buyer by the producer, be evidence that the amount of rice shown thereon may be purchased without the payment of any penalty by him and that such rice is not subject to the lien for penalty.

(c) *Identification by intermediate buyer's record and report.* The original and copy of an intermediate buyer's record and report (MQ–94—Rice), properly executed by the first intermediate buyer and the producter of the rice and any subsequent buyer in the manner outlined in § 730.984 (d) or § 730.985, shall be evidence to any buyer that the rice covered thereby is not subject to the lien for penalty and may be purchased by him without payment of any penalty in the event either (1) the MQ–94—Rice shows the serial number of the marketing card, marketing certificate or soil bank delivery order by which the rice was identified and the signatures of the producer and intermediate buyer, or (2) the original MQ–95—Rice bears the endorsement "Penalty Satisfied" and the signature and title of the treasurer of a county committee and the date thereof.

(d) *Identification by soil bank delivery order.* The quantity of rice obtained by redemption of soil bank certificates, CCC Form 379, by a producer, if offered for sale, shall be taken by the buyer as penalty free if identified by the producer's copy of the soil bank delivery order, Form CCC–382 or CCC–103, completely filled in by the county committee.

(e) *Rice sweepings, spillage, or accumulation of samples.* A person other than a producer or immediate buyer offering rice swepings or spillage for sale shall obtain a certification from the elevator operator, warehouseman or processor, or other grain dealer, who conducts his business in a manner substantially the same as an elevator operator or warehouseman, stating that the rice had previously been marketed to the person executing the certificate, if such is the fact. Such certification shall be kept as part of the records of the buyer who buys the sweepings or spillage. Any person other than a producer or intermediate buyer offering rice accumulated from samples taken for grading and testing purposes shall obtain a certification from the grader or tester certifying that the rice was an accmmulation of samples. Such certification shall be kept as part of the records of the buyer who buys the samples.

(f) *Rice identified as subject to the penalty and lien for the penalty.* All rice marketed by a producer or by an intermediate buyer which is not identified in the manner prescribed in this section shall be taken by the buyer thereof as rice subject to penalty and the lien for the penalty and the buyer of such rice shall pay the penalty thereon at the rate prescribed in § 730.972.

PENALTY

§ 730.972 *Rate of penalty.* The rate of penalty shall be 50 percent of the parity price per pound of rice as of June 15 of the calendar year in which the crop is produced. The rate of penalty in cents per pound will be published by amendment as soon as it can be determined.

§ 730.973 *Lien for penalty.* The entire amount of rice produced in any year on any farm for which a farm marketing excess is determined shall be subject to a lien in favor of the United States for the amount of the penalty until the penalty is paid in accordance with § 730.975 or § 730.976, or the farm marketing excess is stored in accordance with § 730.980, or delivered to the Secretary in accordance with § 730.981.

§ 730.974 *Interest on unremitted penalty.* The person liable for the payment or collection of the penalty shall be liable also for interest on the amount of penalty which is not remitted in accordance with § 730.975 (b) or § 730.976 (c), as the case may be, at the rate of 6 percent per annum from the final date for remitting the penalty until the date such penalty is remitted. The computation of interest on any penalty due shall be made beginning with the day following the final date for remitting the penalty.

§ 730.975 *Payment of penalties by producers*—(a) *Producers liable for payment of penalties.* Each producer having an interest in the rice produced on any farm for which a farm marketing excess is determined shall be liable to pay the amount of penalty on the farm marketing excess as provided in this section. The amount of the penalty which any producer shall pay shall nevertheless be reduced by the amount of the penalty which is paid by another producer or a buyer of rice produced on the farm.

(b) *Time when penalties become due.* To the extent collection has not been made prior thereto, the amount of the penalty with respect to the farm marketing excess for any farm shall be remitted by the producer not later than 60 calendar days after the date on which the harvesting of rice is normally substantially completed in the county or area in the county in which the farm is situated, as determined in accordance with § 730.962 (a) (3), or not later than 30 calendar days after notice of farm marketing quota and farm marketing excess is mailed as provided for in § 730.961: *Provided, however,* That the penalty on that amount of the farm marketing excess delivered to the Secretary pursuant to § 730.981 or § 730.961 shall not be remitted: *And provided further,* That the penalty on that amount of the farm marketing excess which is stored pursuant to § 730.980 or § 730.961 shall not be remitted until the time, and to the extent, of any depletion in the amount of rice so stored not authorized as provided in § 730.980 (g).

(c) *Apportionment of the penalty.* The county committee may, upon application of any producer made (1) within 60 days after the harvesting of rice is normally substantially completed in the county or area in the county in which the farm is situated (as established in accordance with § 730.962), or (2) in the case of a delayed notice of the farm marketing excess within 30 days from the date such notice is mailed to him, determine his proportionate share of the penalty on the farm marketing excess if,

pursuant to the application, the producer establishes the fact that he is unable to arrange with the other producers on the farm for the payment of the penalty on the entire farm marketing excess or for the disposition of the farm marketing excess in accordance with § 730.980 or § 730.981, that his share of the rice crop produced on the farm is marketed or disposed of by him separately, and that he exercises no control over the marketing or disposition of the shares of the other producers in the rice crop. The producer's proportionate share of the penalty on the farm marketing excess shall be that proportion of the entire penalty on the farm marketing excess which his share in the rice produced on the farm bears to the total amount of rice produced on the farm. When the producer pays his proportionate share of the penalty, or, in accordance with § 730.980 or § 730.981, stores or delivers to the Secretary the number of pounds required to postpone or avoid the payment of the penalty on his proportionate share, he shall not be liable for the remainder of the penalty on the farm marketing excess and he shall be entitled to receive marketing certificates issued in accordance with § 730.968 to be used by him only in the marketing of his proportionate share of the rice crop produced on the farm.

§ 730.976 *Payment of penalties by buyers or transferees*—(a) *Buyers or transferees liable for payment of penalties.* Each person within the United States who buys or acquires from the producer any rice subject to the lien for the penalty shall be liable for and shall pay the penalty thereon. Rice shall be taken as subject to the lien for the penalty unless the producer presents to the person who buys or acquires such rice a marketing card (MQ–76—Rice), marketing certificates (MQ–94—Rice) or a completed producer's copy of soil bank delivery order (CCC Form 382 or CCC Form 103) as prescribed in §§ 730.971 (a), (b), or (d).

(b) *Payment of penalties on account of the lien for the penalty.* Each person within the United States who buys or acquires rice which is subject to the lien for the penalty shall pay the amount of the penalty on each pound thereof in satisfaction of the lien thereon. Rice purchased or acquired from any intermediate buyer shall be taken as subject to the lien for the penalty unless, at the time of sale or transfer, the intermediate buyer delivers to the purchaser or transferee the original and a copy of an intermediate buyer's record and report, MQ–95—Rice, properly executed by the producer of the rice and the first intermediate buyer, which show (1) the serial number of the marketing card, marketing certificate, or soil bank delivery order by which the rice covered thereby was identified when marketed, or (2) on the reverse side the statement "Penalty Satisfied" and the signature and title of the treasurer of a county committee and the date thereof.

(c) *Time when penalties become due.* The penalty to be paid by any person who buys or acquires rice pursuant to paragraph (a) or (b) of this section shall be due at the time the rice is purchased or acquired and shall be remitted not later than 15 calendar days thereafter.

(d) *Manner of deducting penalties and issuance of receipts.* The person who buys or acquires rice may deduct from the price paid for any rice an amount equivalent to the amount of the penalty to be paid by the person who buys or acquires rice pursuant to paragraph (a) or (b) of this section. Any person who buys or acquires rice who deducts an amount equivalent to the penalty shall issue to the person from whom the rice was purchased or acquired a receipt for the amount so deducted which shall be in the case of rice purchased or acquired from the producer by an intermediate buyer, on MQ–95—Rice, and in all other cases, on MQ–81—Rice.

§ 730.977 *Remittance of penalties to the treasurer of the county committee.* The penalty shall be delivered or mailed to the county committee. The penalty shall be remitted only in legal tender, or by check, draft or money order drawn payable to the order of the Commodity Stabilization Service, USDA. All checks, drafts, and money orders tendered in payment of the penalty shall be received by the treasurer of the county committee subject to collection and payment at par. If the penalty is remitted by an intermediate buyer, it shall be accompanied by the original and first copy of MQ–95—Rice, and the treasurer of the county committee shall show that the penalty is paid by entering on the reverse side of both copies the statement "Penalty Satisfied" and his signature and title and the date thereof before returning the first copy to the intermediate buyer.

§ 730.978 *Deposit of funds.* All funds received in the office of the county committee in connection with penalties for rice shall be scheduled and transmitted by the treasurer of the county committee on the day received or not later than the next succeeding business day, to the State committee, which shall cause such funds to be deposited to the credit of a deposit fund account with the Treasurer of the United States in the name of the Chief Disbursing Officer of the Treasury Department (referred to in this subpart as "deposit fund account") to be held in escrow. In the event the funds so received are in the form of cash, the treasurer of the county committee shall deposit such funds in the ASC county committee bank account and issue a check in the amount thereof, payable to the order of the Commodity Stabilization Service, USDA. The treasurer of the county committee shall make and keep a record of each amount received in the county office, showing the name of the person who remitted the funds, the identification of the farm or farms in connection with which the funds were received, and the name of the person who marketed the rice in connection with which the funds were remitted.

§ 730.979 *Refunds of money in excess of the penalty*—(a) *Determination of refunds.* The county committee and the treasurer of the county committee, upon their own motion or upon the request of any interested person, shall review the amount of money received in connection with the penalty for any farm to determine for each producer the amount thereof, if any, which is in excess of the security required for stored excess rice or the penalty due. Any excess amount shall be refunded. Any refund shall be made only to persons who bore the burden of the payment and who have not been reimbursed therefor. The excess amount shall first be applied, insofar as the sum will permit, so as to make refunds to eligible persons other than producers and the remainder, if any, shall be applied so as to make refunds to the eligible producers. The amount to be refunded to each producer shall be either (1) the amount determined by apportioning the excess amount among the producers on the farm in the proportion that each contributed toward the payment, avoidance, or security of the penalty on the farm marketing excess, or (2) the amount which is in excess of the security required for stored excess rice and the penalty due on that portion of the farm marketing excess for which the producer is separately liable. No refund shall be made to any buyer or transferee of any amount which he collected from the producer or another, deducted from the price or consideration paid for the rice or for which he was liable.

(b) *Certification of refunds.* The county office manager or the treasurer of the county committee shall notify the State committee of the amount which the county committee and its treasurer determine may be refunded to each person with respect to the farm, and the State committee shall cause to be certified to the Chief Disbursing Officer of the Treasury Department for payment such amounts as are approved by it. No refund of money shall be certified under this section unless the money has been remitted to the county committee and transmitted by the treasurer of the county committee to the State committee.

§ 730.980 *Stored farm marketing excess*—(a) *Amount of rice to be stored.* The number of pounds of rice in connection with any farm which may be stored in order to postpone the payment of the penalty or with a view to avoiding such penalty shall be that portion of the farm marketing excess which has not been delivered to the Secretary or on which the penalty has not been paid. The amount of the farm marketing excess for the purpose of storage shall be the amount of the farm marketing excess as determined at the time of storage under § 730.959 or § 730.962, whichever is applicable.

(b) *Kinds of storage; commingling and substitution.* Excess rice shall be stored either in an elevator or warehouse duly licensed and authorized to issue warehouse receipts under Federal or State laws, hereinafter referred to as "licensed storage," or in any other place adapted to the storage of rice, hereinafter referred to as "non-licensed storage." Commingling and substitution shall be permissible in the case of licensed storage. In the case of non-

licensed storage, excess rice may, with the prior written approval of the county committee, be commingled with stored excess rice from any other year and any or all stored excess rice may be replaced by rice produced by the same producer from any other year on the same or any other farm if (1) the county committee gives prior written approval of such replacement; (2) the county committee determines that the rice which is to be used for substitution is of a quality equal to or better than the rice in storage and for which substitution is to be made; (3) the stored excess rice which is removed from storage is replaced by an equivalent amount of rice within 30 days after such removal; and (4) the requirements of this section with respect to furnishing a bond or depositing funds in escrow are complied with. The removal of stored excess rice from storage without compliances with all conditions precedent or subsequent to such removal shall constitute unauthorized depletion of the storage amount and shall be subject to penalty as provided in paragraph (g) of this section. Rice in which the producer has an interest produced on any farm may be stored in any location to postpone the penalty on any excess rice in which the same producer has an interest, provided the rice so stored is determined by the county committee to be of a quality equal to or better than the rice produced on the farm with the excess. The storage of rice in non-licensed storage shall be effective only if the producer submits a written statement showing the exact location of the stored rice by quarter section or other comparable descriptive location in areas where description is not by quarter section. Excess rice for any year which was properly stored in non-licensed storage in order to postpone the payment of a penalty or with a view to avoiding such penalty may be moved to licensed storage if, prior to the movement of the rice, a written request to do so is filed with the county committee and approval of such committee is granted in writing, and if the rice is moved and stored in licensed storage in accordance with paragraph (c) of this section within 15 days after approval is granted. When all requirements for licensed storage have been met in accordance with the foregoing provisions, the bond or escrow funds held in connection with the non-licensed storage may be released. The penalty on any stored rice removed from non-licensed storage without the prior written authorization from the county committee shall be due on such removal. Rice produced on a farm by any producer may be placed in non-licensed storage and substituted for excess rice for any year which was properly stored in licensed storage in order to postpone the payment of a penalty or with a view to avoiding such penalty if a written request to do so is filed with the county committee and approval of such committee is granted in writing upon the determination of the county committee that the rice to be stored in non-licensed storage is of a quality equal to or better than the rice in licensed storage, and the rice in an amount equal to the amount in licensed storage for which substitution is desired is stored in non-licensed storage in accordance with paragraphs (b) and (d) of this section and is secured by a good and sufficient bond of indemnity or the deposit of funds in escrow, as provided in paragraph (d) of this section. When all requirements for non-licensed storage have been met in accordance with this section, the warehouse receipt covering the rice in licensed storage shall be returned to the person who deposited it. Rice stored in non-licensed storage shall be subject to inspection at all times by officers or employees of the Department, or members, officers or employees of the appropriate State or county committee.

(c) *Licensed storage; deposit of warehouse receipts in escrow.* The storage of excess rice in licensed storage in order to postpone the payment of the penalty or with a view to avoiding such penalty shall be effective for such purposes only when a warehouse receipt covering the amount of rice so stored is deposited with the treasurer of the county committee to be held in escrow. The warehouse receipt shall be an endorsed negotiable receipt or a non-negotiable receipt as to which the warehouseman or elevator operator has been notified in writing by the owner of such receipt and the treasurer of the county committee that it is being so deposited in escrow and that delivery of the rice covered thereby is to be made under the terms of the deposit in escrow while such receipt remains so deposited. Any warehouse receipt so deposited shall be accepted only upon the condition that the producers by or for whom the rice is stored shall be and shall remain liable for all charges incident to the storage of the rice and that the county committee and the United States in no way shall be liable for such charges. Whenever the penalty with respect to rice covered by the warehouse receipt(s) is paid or otherwise satisfied in accordance with law, the warehouse receipt(s) shall be returned to the person who deposited it.

(d) *Non-licensed storage bonds.* The storage of excess rice in non-licensed storage in order to postpone the payment of the penalty or with a view to avoiding such penalty shall be effective only when a good and sufficient bond of indemnity, on a form prescribed for the purpose, is executed and filed with the treasurer of the county committee in an amount not less than the amount of the penalty on that portion of the farm marketing excess so stored, or funds are deposited in escrow as hereinafter provided. Each bond given pursuant to this paragraph shall be executed as principal by the producer storing the rice and either by two persons as sureties who are not producers on the farm and who own real property with an unencumbered value of double the principal sum of the bond, exclusive of homestead exemptions, or by a corporate surety authorized to do business in the State in which the farm is situated and listed by the Secretary of the Treasury of the United States as an acceptable surety on bonds to the United States. Each bond of indemnity shall be subject to the conditions that the penalty on the amount of rice stored shall be paid at the time, and to the extent, of the depletion of any amount stored which is not authorized under this subpart, and that if at any time any producer on the farm prevents the inspection of rice so stored, the penalty on the entire amount stored shall be paid forthwith. Whenever the penalties secured by the bond of indemnity are paid or reduced from any cause, the treasurer of the county committee shall furnish the principal and the sureties with a written statement to that effect. Unless the bond in effect permits the commingling or substitution of rice in storage, a new bond covering all excess rice of the producer stored in non-licensed storage and not covered by funds in escrow shall be required as a condition for commingling rice or permitting substitution of any other year stored excess rice. In such case, upon approval and acceptance of the new bond, the old bond may be released. The bond of indemnity provided for in this paragraph may be waived by the county committee with the approval of the State committee if the excess was produced by a State or State institution or other agency of a State or by a Federal institution or Federal agency: *Provided*, That as a condition of the waiver the head of the State or Federal institution or State or Federal agency shall agree in writing to comply with all the other provisions of this subpart with respect to stored farm marketing excess.

(e) *Non-licensed storage; deposit of funds in escrow.* The storage of excess rice in non-licensed storage in order to postpone the payment of the penalty or with a view to avoiding such penalty, if a bond is not furnished in compliance with the regulations contained in this subpart shall be effective for such purpose only when an amount of money equal to the penalty on that portion of the farm marketing excess so stored is deposited with the Treasurer of the United States to be held in escrow to secure the payment of such penalty and the right of inspection during the period of storage. The treasurer of the county committee shall receive all checks, drafts, and money orders, subject to collection and payment at par. Funds in escrow shall be subject to the condition that the penalty on the amount of rice stored shall be paid at the time, and to the extent, of any depletion of the amount stored which is not authorized and that, if at any time any producer on the farm prevents inspection of any rice so stored, the penalty on the entire amount stored shall be paid forthwith. In case approval is granted to commingle rice or to substitute rice of any crop for excess rice in storage, there shall be on deposit in escrow, pursuant to the provisions of this paragraph, funds which cover all excess rice for any year stored by the producer in non-licensed storage pursuant to this section which is not covered by a bond given pursuant to paragraph (d) of this section. Whenever the penalty with respect to rice covered by funds in escrow is paid or otherwise satisfied in accordance with law, the amount of funds covering such rice

shall be released to the person who made the escrow deposit.

(f) *Time of storage.* Storage of rice in connection with any farm in order to postpone the payment of the penalty or with a view to avoiding such penalty shall not be effective unless the provisions of paragraphs (a) and (b), and (c), (d), or (e), of this section are complied with prior to the expiration of the period allowed in accordance with § 730.975 (b), for the remittance of the penalty with respect to the farm marketing excess for the farm.

(g) *Depletion of stored excess rice.* The penalty on the amount of excess rice stored shall be paid by the producers on the farm at the time and to the extent of any depletion in the amount of rice stored except as provided in paragraphs (h) and (i) of this section and except to the extent of the following: (1) The amount by which the stored excess rice exceeds the farm marketing excess for the farm as determined in accordance with § 730.959 or § 730.962, (2) the amount by which the stored excess rice exceeds the amount of the farm marketing excess as determined by a review committee or as a result of a court review of the review committee determination, (3) the amount of any rice destroyed by fire, weather conditions, theft, or any other cause beyond the control of the producer, provided the producer shows beyond a reasonable doubt that the depletion resulted from such cause and not from his negligence nor from any affirmative act done or caused to be done by him, and (4) the amount of any rice delivered to the Secretary under the provisions of § 730.981. The penalty on the amount of any unauthorized depletion in the storage amount shall be at the rate applicable to the marketing year in which the stored excess rice was produced, except that if the storage amounts of two or more crops are commingled or if the storage amount of one crop is replaced by rice of another crop, as provided in paragraph (b) of this section, the penalty shall be computed first at the rate applicable to the marketing year for the oldest crop involved in the storage amount until the entire penalty for the storage amount of such crop is satisfied and thereafter in turn at the rate applicable to the marketing year for each of the next oldest crops involved in the storage amount until the entire penalty for the storage amount of each such crop is satisfied.

(h) *Underplanting the farm acreage allotment for a subsequent crop.* Whenever the rice acreage on any farm for any subsequent crop of rice is less than the farm acreage allotment therefor, the producers on the farm who stored excess rice in accordance with the foregoing provisions of this section shall, upon application made by them to the county committee, be entitled to remove from storage without penalty any rice so stored by them, whether produced in a prior year on the farm or another farm, to the extent of the normal production of the number of acres by which the acreage planted to rice is less than the farm acreage allotment. The amount of rice which would otherwise be authorized to be removed from storage in connection with the farm under this paragraph shall be reduced to the extent that stored excess rice from any other crop is authorized to be removed from storage in connection with the farm. The amount of rice authorized to be removed from storage shall be apportioned among the several producers on the farm who have stored excess rice to the extent of their need therefor in accordance with their shares in the acreage which was or could have been planted to rice or in accordance with their agreement as to the apportionment to be made. A producer shall not be entitled to remove rice from storage under this paragraph in connection with any farm unless, at the time the determination is made under this paragraph, the rice is stored and owned by the producer and, at the end of the rice seeding season for the crop for the area in which the farm is situated, the producer is entitled to share in the rice crop which was or could have been planted on the farm. For the purpose of this paragraph, the acreage planted to rice shall be the rice acreage on the farm plus the acreage diverted from the production of rice under the Soil Bank Acreage Reserve Program or Conservation Reserve Program.

(i) *Producing a subsequent crop which is less than the normal production of the farm acreage allotment.* Whenever in any subsequent year the rice acreage does not exceed the farm acreage allotment and the actual production of rice on the farm is less than the normal production of the farm acreage allotment therefor, the producers on the farm who stored excess rice in accordance with the foregoing provisions of this section shall, upon application made by them to the ASC county office, be entitled to remove from storage, without penalty, any rice so stored by them, whether produced in the prior year on the farm or another farm, to the extent of the amount by which the normal production of the farm acreage allotment, less the normal production of the underplanted acreage for the farm which was or could have been determined under paragraph (h) of this section, exceeds the amount of rice produced on the farm in that year. The actual production of rice on the farm shall include, in addition to the rice actually produced on the farm, the production of rice attributed to the soil bank acreage reserve for the farm on the basis of the yield that would be indicated from the productivity index used for determining the rate of payment per acre for the acreage reserve program. The amount of rice which would otherwise be authorized to be removed from storage in connection with the farm under this paragraph shall be reduced to the extent that stored excess rice from any other crop is authorized to be removed from storage in connection with the farm. The amount of rice which is authorized to be removed from storage shall be apportioned among the several producers on the farm who have stored excess rice, to the extent of their need therefor, in accordance with their proportionate shares in the rice crop planted on the farm, or in accordance with their agreement as to the apportionment to be made. The determination of the amount of rice produced on the farm shall be made in accordance with the marketing quota regulations applicable to the crop. A producer shall not be entitled to remove rice from storage under this paragraph for any farm unless, at the time the determination is made under this paragraph, the rice is stored and owned by the producer and, at the time of harvest, the producer is entitled to a share in the rice crop planted on the farm.

§ 730.981 *Delivery of the farm marketing excess to the Secretary*—(a) *Amount of the rice to be delivered.* The amount of rice delivered to the Secretary in order to avoid the payment of the penalty in connection with any farm shall not exceed the amount of the farm marketing excess as determined at the time of delivery, in accordance with § 730.959 or § 730.962, whichever is applicable.

(b) *Conditions and methods of delivery.* For and on behalf of the Secretary, the treasurer of the county committee for the county in which the farm for which the marketing excess is determined is situated shall accept the delivery of any rice tendered to avoid the payment of the penalty. The delivery of the rice for this purpose shall be effective only when the producers having an interest in the rice to be so delivered convey to the Secretary all right, title, and interest in and to the rice by executing a form provided for this purpose and (1) deliver the rice to an elevator or warehouse and tender to the treasurer of the county committee the elevator or warehouse receipt for the amount of the rice, or (2) if the producer shows to the satisfaction of the county committee that it is impracticable to deliver the rice to an elevator or warehouse and receive an elevator or warehouse receipt therefor, deliver the rice at a point within the county or nearby and within such time or times as may be designated by the county office manager. None of the rice so delivered shall be returned to the producer. Insofar as practicable, the rice so delivered shall be delivered to the Commodity Credit Corporation of the United States Department of Agriculture, and any rice which it is impracticable to deliver to such Corporation shall be distributed to such one or more of the following classes of agencies or organizations as the State committee selects, which delivery the Secretary hereby determines will divert it from the normal channels of trade and commerce: Any Federal relief organization, the American Red Cross, State or county or municipal relief organization, Federal or State wildlife refuge project or any voluntary relief organization registered with the Advisory Committee on Voluntary Foreign Aid of the International Cooperation Administration for shipment for relief overseas.

(c) *Time of delivery.* Excess rice may be delivered to the Secretary at any time within 60 calendar days after the date on which the harvesting of rice is normally substantially completed in the county as determined in accordance with

§ 730.962 (a) or pursuant to § 730.961. Excess rice may be delivered to the Secretary after such period only if the excess rice was stored in accordance with the provisions of § 730.980 (a) to (f), and the rice has not gone out of condition through any fault of the producer.

§ 730.982 *Refund of penalty erroneously, illegally, or wrongfully collected.* Whenever, pursuant to a claim filed with the Secretary within two calendar years after payment to him of the penalty collected from any person, pursuant to the act, the Secretary finds that the penalty was erroneously, illegally, or wrongfully collected, and the claimant bore the burden of such penalty, he shall certify to the Secretary of the Treasury of the United States for payment to the claimant, in accordance with regulations prescribed by the Secretary of the Treasury of the United States, such amount as the claimant is entitled to receive as a refund of all or a portion of the penalty. Any claim filed pursuant to this section shall be made in accordance with regulations prescribed by the Secretary.

§ 730.983 *Report of violations and court proceedings to collect penalty.* It shall be the duty of the county office manager to report in writing to the State administrative officer each case of failure or refusal to pay the penalty or to remit the same as provided in §§ 730.975 to 730.977. It shall be the duty of the State administrative officer to report each such case in writing to the Office of the General Counsel of the Department which shall have authority to refer such cases for the institution of proceedings by the United States Attorney for the appropriate district under the direction of the Attorney General of the United States to collect the penalties, as provided in section 376 of the act.

RECORDS AND REPORTS

§ 730.984 *Records to be kept and reports to be made by warehousemen, mill or elevator operators, other processors, or transferees and buyers other than intermediate buyers*—(a) *Necessity for records and reports.* Each warehouseman, mill or elevator operator, processor, or transferee and each buyer other than an intermediate buyer, who buys, acquires, or receives rice from the producer or intermediate buyer thereof shall, in conformity with section 373 (a) of the act, keep the records and make the reports prescribed by this section, which the Secretary hereby finds to be necessary to enable him to carry out with respect to rice the provisions of the act.

(b) *Nature and availability of records.* Each warehouseman, mill or elevator operator, processor, or transferee, and each buyer other than an intermediate buyer, shall keep as part of or in addition to the records maintained by him in the conduct of his business a record which shall show with respect to the rice purchased, acquired or received by him from the producers or the intermediate buyers thereof the following information: (1) The name and address of the producer of the rice or the name and address of the person who acquired the rice through redemption of a soil bank certificate, (2) the date of the transaction, (3) the amount of the rice, (4) the serial number of the marketing card (MQ–76—Rice), or marketing certificate (MQ–94—Rice), or intermediate buyer's record and report (MQ–95—Rice), or soil bank delivery order (CCC Form 382 or CCC Form 103), by which the rice was identified, or the report and penalty receipt (MQ–81—Rice), and (5) the amount of any lien for the penalty or of any penalty incurred in connection with the rice purchased, acquired, or received by him. The record so made and all business records of such persons required to keep such records shall be kept available for examination by the county office manager or any authorized representative of the State administrative officer or investigators and accountants (special agents) or other authorized representatives of the Director, Compliance and Investigation Division, Commodity Stabilization Service, U. S. Department of Agriculture, for two calendar years beyond the calendar year in which the marketing year ends. Such records shall include relevant books, papers, records, accounts, correspondence, contracts, documents and memoranda, but shall be examined only for the purpose of ascertaining the correctness of any report made or record kept pursuant to the regulations in this subpart, or of obtaining the information required to be furnished in this subpart but not so furnished. The county office manager shall furnish, without cost, blank copies of MQ–97—Rice which may be used for the purpose of keeping the record required under this section.

(c) *Records and reports in connection with rice subject to penalty.* Each warehouseman, mill or elevator operator, processor, or transferee, and each buyer other than an intermediate buyer, who purchases any rice from the producer or intermediate buyer which is not identified at the time the rice is purchased in the manner provided in § 730.971 (a), (b), (c), and (d), shall, with respect to each such transaction, execute the report and penalty receipt on MQ–81—Rice and report to the treasurer of the county committee the following information: (1) The name and address of the producer or intermediate buyer from whom the rice was purchased or acquired, (2) the names of the county and State, and the address of the ASC county office in which the rice was produced, (3) the date of the transaction, (4) the amount of the rice, (5) the year harvested, (6) the amount of the penalty incurred in connection with the transaction, and (7) whether an amount equivalent to the penalty was deducted from the price or consideration paid for the rice. Each record and report on MQ–81—Rice shall be executed in triplicate. The person who executes MQ–81—Rice shall retain one copy, give the original to the producer or intermediate buyer, as the case may be, which shall be the receipt to him for the amount of the penalty in connection with rice, and mail or deliver the remaining copy to the treasurer of the county committee. It shall be presumed that rice was not identified by MQ–76—Rice, as provided in § 730.971 (a), or MQ–94—Rice, as provided in § 730.971 (b), or MQ–95—Rice, as provided in § 730.971 (c), or CCC 382 or CCC 103, as provided in § 730.971 (d), if the serial number of the marketing card, marketing certificate, intermediate buyer's record and report, or soil bank delivery order, does not appear on the records required to be kept pursuant to paragraph (b) of this section.

(d) *Records and reports in connection with rice identified by intermediate buyer's records and reports and soil bank delivery orders.* Whenever rice is identified by the intermediate buyer's record and report (MQ–95—Rice) executed in accordance with § 730.985, the warehouseman, mill or elevator operator, processor, or transferee, or the buyer other than an intermediate buyer, who purchases or acquires the rice covered thereby shall retain the first copy as a record of the transaction and forward the original to the treasurer of the county committee as a report on the transaction in every case where he purchases or acquires all or the remainder of the rice covered by the record and report. In all other cases, where the warehouseman, mill or elevator operator, processor, or transferee, or the buyer other than an intermediate buyer, purchases or acquires only a portion of the rice covered by the intermediate buyer's record and report, he shall make a record and report of the transaction by endorsing on the reverse side of both the original and first copy his name and signature, the amount of rice purchased or acquired, and the date of the transaction and return the forms so endorsed to the intermediate buyer to be delivered to the person who finally purchases or acquires the remainder of the rice. The provisions of this paragraph for endorsing the intermediate buyer's record and report when only a portion of the rice covered by the report is purchased shall also be followed when only a portion of the rice covered by a soil bank delivery order is purchased.

(e) *Records in connection with rice identified by marketing certificates.* Whenever rice is identified by a marketing certificate (MQ–94—Rice), the warehouseman, mill or elevator operator, processor, or transferee, or the buyer other than an intermediate buyer, who purchases the rice so identified shall retain the original of the marketing certificate as a record of the transaction completed as provided in § 730.968 (b).

(f) *Time and place of submitting reports.* Each report required by this section shall be submitted not later than 15 calendar days next succeeding the day on which the rice was marketed to a warehouseman, mill or elevator operator, processor, or transferee, or a buyer other than an intermediate buyer, to the treasurer of the county committee for the county in which the rice was produced.

§ 730.985 *Records to be kept and reports to be made by intermediate buyers*—(a) *Necessity for records and reports.* Each intermediate buyer shall, in conformity with section 373 (a) of the act, keep the records and make the reports prescribed by this section, which

the Secretary hereby finds to be necessary to enable him to carry out, with respect to rice, the provisions of the act.

(b) *Form of record and report in connection with rice purchased or acquired from producers.* Each intermediate buyer who purchases or acquires any rice from the producer thereof shall, with respect to each such transaction, keep a record and make a report on the intermediate buyer's record and report (MQ–95—Rice) of the following information: (1) The name and address of the producer from whom the rice was purchased or acquired, (2) the names of the county and State and the address of the ASC county office of the county in which the rice was produced, (3) the date of the transaction, (4) the number of pounds of rice, (5) the serial number of the marketing card, marketing certificate or soil bank delivery order, by which the producer identified the rice at the time it was marketed, or if the rice is not so identified, the amount of the penalty, and whether an amount equivalent to the penalty was collected or deducted from the price or consideration paid for the rice, and (6) the year in which the rice was harvested. The record and report shall be executed in quadruplicate and, after the entries described above are made, the intermediate buyer and producer shall certify to the correctness of the entries by signing the MQ–95—Rice. One copy of the MQ–95—Rice so executed shall be retained by the producer as a record of the transaction and as a receipt for the amount equivalent to the penalty, if any, which was deducted from the price or consideration paid for the rice. One copy of MQ–95—Rice so executed shall be retained by the intermediate buyer as his record in connection with the transaction. Whenever rice is identified by a marketing certificate (MQ–94—Rice), the intermediate buyer and the producer shall complete the original and copy of the marketing certificate in accordance with the provisions of § 730.968 (b). The copy shall be retained by the producer and the intermediate buyer shall attach the original of the marketing certificate to the first copy of MQ–95—Rice to be delivered to the warehouseman, mill or elevator operator, processor, or transferee or buyer other than an intermediate buyer, who finally acquires the rice covered by MQ–95—Rice, and marketing certificate (MQ–94—Rice). Whenever the intermediate buyer markets or delivers a portion of the rice covered by a single MQ–95—Rice to another and retains a portion of the rice, the intermediate buyer shall obtain from the person to whom the portion of the rice is marketed or delivered an endorsement on the reverse side of both the original and first copy of MQ–95—Rice showing the name and signature of the person, the number of pounds of rice marketed or delivered to him, and the date of the transaction.

(c) *Manner of making reports.* The intermediate buyer shall deliver the original and copy of the intermediate buyer's record and report MQ–95—Rice to the warehouseman, mill or elevator operator, processor, or transferee, or the buyer other than an intermediate buyer, to whom all of the remainder of the rice covered thereby is marketed. When rice is marketed or delivered by one intermediate buyer to another intermediate buyer, the original and first copy of MQ–95—Rice shall be transmitted by one intermediate buyer to another and the last intermediate buyer shall deliver them to the warehouseman, mill or elevator operator, processor, or transferee, or buyer other than an intermediate buyer. If all or the remainder of the rice is not marketed or delivered to a warehouseman, mill or elevator operator, processor, or transferee, or buyer other than an intermediate buyer, the last intermediate buyer shall, within 15 days, mail or deliver the original and first copy of the intermediate buyer's record and report to the treasurer of the county committee.

(d) *Reports to the treasurer of the county committee.* Each intermediate buyer shall, within 15 days after all Forms MQ–95—Rice contained in a book have been executed, or by February 28, of each calendar year, whichever is the earlier, mail or deliver to the treasurer of the county committee from whom the book was obtained the executed copies and unexecuted sets of Form MQ–95—Rice which were retained by him. Books of Form MQ–95—Rice shall be reissued to any intermediate buyer upon request. In the event that the county committee or State committee has reason to do so, any or all intermediate buyers to whom books of Form MQ–95—Rice were issued or reissued after the end of the calendar year may be requested to mail or deliver on or before the end of the marketing year to the treasurer of the county committee from whom the book was obtained the executed copies and unexecuted sets of Form MQ–95—Rice. In the event that the county or State committee has reason to believe that any intermediate buyer has failed or refused to comply with the regulations in this subpart, the county office manager or State administrative officer shall notify the intermediate buyer in writing that he is considered to be an intermediate buyer under the provisions of the rice marketing quota regulations and that he is requested to furnish a report within 15 days to the treasurer of the county committee on Form(s) MQ–95—Rice of all rice purchased or acquired by him during the period of time as specified in the request. The notice shall advise the intermediate buyer that the information required to be reported on Form MQ–95—Rice is in accordance with the rice marketing quota regulations and he shall be advised of the penalty for failure or refusal to keep the records and make the reports as provided in § 730.986. The intermediate buyer shall make the report for the period specified as requested by the county office manager or State administrative officer.

§ 730.986 *Buyer's special reports.* In the event that the county committee or State committee has reason to believe that any buyer has failed or refused to comply with the regulations in this subpart, the buyer shall, within 15 days after a written request therefor made by the county office manager or State administrative officer and deposited in the United States mails, registered and addressed to him at his last known address, make a report, verified as true and correct by affidavit on MQ–97—Rice to such person with respect to all rice purchased or acquired by him during the period of time as specified in the request. The report shall include the following information for each lot of rice purchased or acquired from the persons specified or during the period specified: (a) The name and address of the producer of the rice, (b) the date of the transaction, (c) the amount of the rice, (d) the serial number of the marketing card (MQ–76—Rice), marketing certificate (MQ–94—Rice), soil bank delivery order (CCC Form 382 or CCC Form 103), or intermediate buyer's record and report (MQ–95—Rice), or the report and penalty receipt (MQ–81—Rice), and (e) the amount of the lien for the penalty or the amount of penalty incurred in connection with the rice purchased or acquired.

§ 730.987 *Penalty for failure or refusal to keep records and make reports.* Any person required to keep the records or make the reports specified in § 730.984, § 730.985, or § 730.986, and who fails to keep any such record or make any such report, or who makes any false report or keeps any false record shall, as provided in section 373 (a) of the act, be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than $500 for each such offense.

§ 730.988 *Records to be kept and reports to be made by producers.* Each producer with respect to any rice crop shall keep the records and make the reports prescribed by this section, which the Secretary hereby finds to be necessary to enable him to carry out, with respect to rice, the provisions of the act. Upon written request of the county committee or county office manager any producer shall, within 15 days from the date the request was mailed to him, file with the treasurer of the county committee for the county in which the farm is situated, a farm operator's report on MQ–98—Rice showing for the farm the following information: (a) The total number of pounds of rice produced thereon in the applicable crop year, (b) the name and address of each buyer or transferee of any rice, (c) the amount of rice sold to each buyer, (d) the amount equivalent to the penalty which was deducted from the price of consideration for the rice, (e) the amount of unmarketed rice of the applicable crop on hand, (f) the disposition of any rice not otherwise accounted for, and (g) rice acreage for the applicable crop year.

§ 730.989 *Data to be kept confidential.* Except as otherwise provided herein, all data reported to or acquired by the Secretary pursuant to and in the manner provided in this subpart shall be kept confidential by all officers and employees of the United States Department of Agriculture, members of county committees, other local committees, and State committees, county agents, and officers and employees of such committees or county agents' offices, and shall not be disclosed to anyone not having an

interest in or responsibility for any rice, farm, or transaction covered by the particular data, such as records, reports, forms, or other information, and only such data so reported or acquired as the Secretary deems relevant shall be disclosed by them to anyone not having such an interest or not being employed in the administration of the act and then only in a suit or administrative hearing under Title III of the act.

§ 730.990 *Enforcement.* It shall be the duty of the county office manager to report in writing to the State administrative officer forthwith each case of failure or refusal to make any report or keep any record as required by §§ 730.984 to 730.988 and to so report each case of making any false report or record. It shall be the duty of the State administrative officer to report each such case in writing in quintuplicate to the Office of the General Counsel of the Department which shall have authority to refer such cases for the institution of proceedings by the United States Attorney for the appropriate district, under the direction of the Attorney General of the United States, to enforce the provisions of the act.

SPECIAL PROVISIONS AND EXEMPTIONS

§ 730.991 *Farms on which the only acreage of rice is nonirrigated rice not in excess of three acres*—(a) *Conditions of exception.* The farm marketing quota of rice for any crop shall not be applicable to any nonirrigated (dry land) farm on which the rice acreage for such crop is not in excess of three acres.

(b) *Issuing marketing cards.* The county office manager or his designee or a member of the county committee shall, for each farm to which the provisions of this section are applicable, issue marketing cards and marketing certificates to the producers on the farm in the manner and subject to the conditions specified in §§ 730.967 to 730.970, inclusive.

§ 730.992 *Experimental rice farms*—(a) *Conditions of exemption.* The penalty shall not apply to the marketing of any rice of any crop grown for experimental purposes only on land owned or leased by any publicly-owned agricultural experiment station, and which is produced at public expense by employees of the experiment station, or to rice produced for experimental purposes only by farmers pursuant to an agreement with a publicly-owned experiment station whereby the experiment station bears the costs and risks incident to the production of the rice and the proceeds from the crop inure to the benefit of the experiment station: *Provided,* That such agreement is approved by the State committee prior to the planting of the rice crop on the farm. The production of foundation, registered or certified seed rice will not be considered produced for experimental purposes only.

(b) *Issuing marketing cards.* The county office manager or his designee, or a member of the county committee shall, upon written application of a responsible executive officer of any publicly-owned agricultural experiment station to which the exemption referred to in paragraph (a) of this section is applicable, issue a marketing card for the experiment station in the manner and subject to the conditions specified in §§ 730.967 to 730.970, inclusive.

§ 730.993 *Rice produced on a wildlife refuge farm.* The penalty shall not apply to any rice produced on any farm operated by any Federal or State wildlife refuge farm when all the rice on the farm is produced solely for wildlife feed or seed for the production of wildlife feed on such wildlife refuge farm. No marketing card or marketing certificate shall be issued to any producer on any such farm except under the provisions of §§ 730.967, 730.968, 730.991, and 730.992, but the exemption from penalty shall be granted by the county office manager upon the written application of the operator or responsible executive officer on any such farm stating that all the rice produced on the farm will be used solely for wildlife feed and for seed for the production of wildlife feed on such wildlife refuge farm.

§ 730.994 *Erroneous notices*—(a) *Erroneous notice of acreage allotment.* In any case where through error in a county or State office the producer was officially notified in writing of a rice acreage allotment for a crop year which was larger than the finally-approved acreage allotment and the State and county committees find that the producer, acting solely on the information contained in the erroneous notice, planted an acreage to rice in excess of the finally-approved acreage allotment, the producer will not be considered to have exceeded the acreage allotment unless he overplanted the allotment shown on the erroneous notice. The farm marketing quota and the farm marketing excess for the farm under the foregoing circumstances will be based on the acreage allotment contained in the erroneous notice, and if the acreage planted to rice on the farm is adjusted to the allotment contained in the erroneous notice within the time limits for disposal of excess acreage as provided in § 730.955 (b), the farm will not be considered to be overplanted. Before a producer can be said to have relied upon the erroneous notice, the circumstances must have been such that the producer had no cause to believe that the acreage allotment notice was in error. To determine this fact, the date of any corrected notice in relation to the time of planting; the size of the farm; the amount of rice customarily planted; and all other pertinent facts should be taken into consideration. If the county committee determines that the produced was justified in relying on the erroneous notice of rice acreage allotment for the farm, such determination shall be subject to review and approval by the State committee or on behalf of the State committee, by the State administrative officer before the erroneous allotment is used by the county committee to determine the marketing quota and farm marketing excess for the farm.

(b) *Erroneous notice of measured acreage.* If it is determined that any farm is out of compliance for marketing quota purposes, the farm nevertheless shall be deemed in compliance for marketing quota purposes, if the county committee, with the approval of the State administrative officer determines from the facts and circumstances that: (1) The lack of compliance was caused by reliance in good faith by the farm operator on an erroneous notice of measured acreage issued hereunder; (2) neither the farm operator nor any producer on the farm had actual knowledge of the error in time to adjust the excess acreage in accordance with applicable regulations; (3) the incorrect notice was the result of an error made by an employee of the county or State office in reporting, computing, or recording the allotment crop acreage for the farm; (4) neither the farm operator nor any producer on the farm was in any way responsible for the error; and (5) the extent of the error in the erroneous notice was such that the farm operator would not reasonably be expected to question the acreage of which he was erroneously notified.

§ 730.995 *Approval of reporting and record-keeping requirements.* The reporting and record-keeping requirements contained herein have been approved by, and subsequent reporting and record-keeping requirements will be subject to the approval of the Bureau of Budget in accordance with the Federal Reports Act of 1942.

Issued this 25th day of April 1958.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-3219; Filed, Apr. 30, 1958; 8:45 a. m.]

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas

[Sugar Reg. 812, Amdt. 1]

PART 812 — SUGAR REQUIREMENTS AND QUOTAS: HAWAII AND PUERTO RICO

PRORATION OF DEFICIT IN QUOTA FOR HAWAII

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended) and the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1001), these regulations are hereby made, prescribed, and published to be in force and effect for the calendar year 1958 or until amended or superseded by regulations hereafter made during the calendar year 1958.

Basis and purpose. The regulations in this part which were published at 22 F. R. 11026 established requirements for local consumption in Hawaii during 1958 amounting to 45,000 short tons, raw value, and established a quota equal to such local requirements. Similar requirements and quotas have been established each year under the act and through 1957 Hawaii has been able to fill the quota for local consumption. Currently, however, processors in the Territory of Hawaii have no sugar available

for marketing and will have no such sugar available until the harvest of sugarcane, which was suspended about the end of January, is resumed and sufficient time has elapsed to process and refine sugar therefrom. For the most part, consumption of sugar is not deferrable. A requirement for sugar to be consumed today cannot be met by sugar that will not become available until some future date. Thus, the Territory of Hawaii will be unable to fill a portion of its quota for local consumption of 45,000 tons for 1958.

When such a deficit in the quota for any domestic area is recognized, section 204 of the act requires that quotas be revised by prorating such deficit to other domestic areas and Cuba on the basis of the quotas then in effect. Whenever the Secretary finds that any area will be unable to fill its proration of any such deficit, section 204 provides that he may apportion such unfilled amount on such basis and to such areas as he determines is required to fill such deficit.

Quotas for "other domestic areas and Cuba" for consumption in the Territory of Hawaii during 1958, in effect, heretofore have been zero, and, therefore, equal. Puerto Rico and the Virgin Islands will be unable to supply any quantities in addition to the quotas already established for such areas for consumption in the continental United States and in Puerto Rico. Accordingly, the deficit in the quota for consumption in Hawaii is prorated equally among the Domestic Beet and Mainland Cane Sugar Areas and Cuba.

The reallocation, to be effective in making supplies available, must be of sufficient size to make it practical to fill the allocation to each area. A deficit of 15,000 short tons, raw value, is hereby declared.

The provision of § 816.5 (c) that "A marketing of mainland sugar which is consigned by the processor to points outside the continental United States shall not be effective for the purpose of filling a qouta established for the Mainland Cane Sugar Area or the Domestic Beet Sugar Area, or allotments thereof" was intended to apply to the quotas for mainland areas established on the basis of section 202 (a) of the act. Allotment proceedings applicable to such areas have dealt only with quotas for consumption in the continental United States. Therefore, in order to give the provisions of § 816.5 (c) and §§ 814.25 and 814.34 the intended effect such regulations are made inapplicable to quotas for mainland areas for consumption in the Territory of Hawaii.

Thus, marketings for consumption in Hawaii shall have effect for filling the respective area's quota for consumption in Hawaii.

Any delay in the effective date of this amendment is likely to cause a shortage of sugar for consumption in the Territory of Hawaii inconsistent with the objectives of the act. Therefore, the notice and 30-day effective date provisions of the Administrative Procedure Act are impracticable and not in the public interest and this amendment shall be effective when published in the FEDERAL REGISTER.

Pursuant to the authority vested in the Secretary by sections 203, 204 and 403 (a) of the Act, §§ 812.22 and 812.23 are hereby added to Part 812 to read as follows:

§ 812.22 *Deficit in quotas.* A deficit in the quota for Hawaii established in § 812.21 amounting to 15,000 short tons, raw value, is hereby established.

§ 812.23 *Proration of deficit.* (a) The deficit in the quota for sugar to be marketed for consumption in Hawaii determined in § 812.22 is hereby prorated as follows:

Area	Short tons, raw value
Domestic Beet Sugar Area	5,000
Mainland Cane Sugar Area	5,000
Cuba	5,000

(b) The provisions of §§ 814.25, 814.34 and 816.5 (c) of this chapter shall not apply to quotas for domestic areas established in this section.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interpret or apply secs. 201, 203, 209, 210; 61 Stat. 923, as amended, 925, 928; 7 U. S. C. 1111, 1113, 1119, 1120)

Done at Washington, D. C., this 25th day of April 1958.

[SEAL] TRUE D. MORSE, *Acting Secretary.*

[F. R. Doc. 58-3273; Filed, Apr. 30, 1958; 8:56 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6528]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

SPECIALTY HOUSE, INC., ET AL.

Subpart—*Importing, selling, or transporting flammable wear:* § 13.1057 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, 67 Stat. 111; 15 U. S. C. 45, 1191) [Cease and desist order, The Specialty House, Inc., et al., New York, N. Y., Docket 6528, Mar. 11, 1958]

In the Matter of The Specialty House, Inc., a Corporation, and Samuel Davis, Mortimer L. Taylor, Philip Kures, and William Yanoff, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging importers in New York City with selling silk scarves manufactured in Japan which were so highly flammable as to be dangerous when worn.

Following acceptance of an agreement between the parties for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on March 11 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent The Specialty House, Inc., a corporation, and its officers, and respondents Samuel Davis, Mortimer L. Taylor, Philip Kures, and William Yanoff, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel, which, under the provisions of section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: March 11, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 58-3246; Filed, Apr. 30, 1958; 8:51 a. m.]

[Docket 6687]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

HARSAM DISTRIBUTORS, INC., ET AL.

Subpart—*Advertising falsely or misleadingly:* § 13.155 *Prices:* Exaggerated as regular and customary; fictitious marking; § 13.235 *Source or origin:* Place: *Domestic product as imported.* Subpart—*Furnishing means and instrumentalities of misrepresentation or deception:* § 13.1056 *Preticketing merchandise misleadingly.* Subpart—*Misbranding or mislabeling:* § 13.1280 *Price;* § 13.1325 *Source or origin:* Place: *Domestic product as imported.* Subpart—*Misrepresenting oneself and goods—* Prices: § 13.1805 *Exaggerated as regular and customary;* § 13.1811 *Fictitious preticketing.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Harsam Distributors, Inc., et al., New York, N. Y., Docket 6687, Mar. 21, 1958]

In the Matter of Harsam Distributors, Inc., a Corporation; and Harry Wagonfeld and Louis Wagonfeld, Individually and as Officers of Said Corporation

This case was heard by a hearing examiner on the complaint of the Commission charging sellers in New York City of their domestically blended "White

Christmas" perfume which contained some imported ingredients, with representing falsely in advertising and on labels that the perfume sold at nationally advertised fictitious prices greatly in excess of the customary prices; and, through use of French words and otherwise, that the perfume was a French product.

On the basis of the record made at the usual proceedings, the hearing examiner made his initial decision and order to cease and desist from which respondents appealed. The Commission denied the appeal, modified the order, and on March 21 adopted it as modified as its own decision.

The order to cease and desist, as modified, is as follows:

It is ordered, That respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of "White Christmas" perfume, or any other cosmetic, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement:

(a) Represents that the usual or customary price of any such product is in excess of the price at which such product is regularly or customarily sold in the normal course of business, or that any price which is no lower than the price at which the same product has been regularly or customarily sold in the recent normal course of business is a reduced price;

(b) Represents that any particular figure is a nationally advertised price of such products, when such figure is in excess of the usual and customary selling price of said products;

(c) Includes the words "Concentré Fabriqué avec Essences de France," or "Parfum" or a replica of the tricolor of France, or any other word, term, symbol or depiction indicative of foreign origin, as descriptive of or in connection with products manufactured or compounded in the United States, unless it is clearly and conspicuously revealed in immediate conjunction therewith that such products are manufactured or compounded in the United States;

(d) Otherwise represents that products which are manufactured or compounded in the United States are manufactured or compounded in France, or in any other foreign country; provided, however, that in cases where certain of the ingredients of any products are imported into the United States such fact may be stated if accompanied by a clear and conspicuous statement that such ingredients were blended with domestic ingredients and that the resulting product was bottled and packaged in the United States.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 of this order.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Louis Wagonfeld.

By "Final Order", report of compliance was required as follows:

It is further ordered, That respondents, Harsam Distributors, Inc., a corporation, and Harry Wagonfeld, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the initial decision, as modified.

Issued: March 21, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 58-3247; Filed, Apr. 30, 1958; 8:52 a. m.]

[Docket 6930]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

MASONEK & BLOOM, INC., ET AL.

Subpart—*Advertising falsely or misleadingly:* § 13.155 *Prices:* Exaggerated as regular and customary; fictitious marking. Subpart—*Furnishing means and instrumentalities of misrepresentation or deception:* § 13.1056 *Preticketing merchandise misleadingly.* Subpart—*Invoicing products falsely:* § 13.1108 *Invoicing products falsely:* Fur Products Labeling Act. Subpart—*Misbranding or mislabeling:* § 13.1280 *Price.* Subpart—*Misrepresenting oneself and goods—Prices:* § 13.1805 *Exaggerated as regular and customary:* § 13.1811 *Fictitious preticketing.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U. S. C. 45, 69f) [Cease and desist order, Masonek & Bloom, Inc., et al., San Francisco, Calif., Docket 6930, Mar. 20, 1958]

In the Matter of Masonek & Bloom, Inc., a Corporation, Sanford Masonek, Individually and as President of Said Corporation, and Charles L. Bloom, Individually and as Secretary and Treasurer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging furriers in San Francisco with violating the Fur Products Labeling Act by false advertising, invoicing, and labeling in connection with the sale of fur products at auction by others pursuant to arrangements under which they furnished price lists and other invoice memoranda and affixed labels to fur products containing purported insurance valuations greatly in excess of their usual prices which were used as the basis of public announcements and other forms of advertising.

Following acceptance of an agreement between the parties containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on March 20 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That Respondents, Masonek & Bloom, Inc., a corporation, and its officers, and Sanford Masonek and Charles L. Bloom, individually and as officers of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertisement, offer for sale, transportation, or distribution in commerce of any fur product, or in connection with the sale, advertisement, offer for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding and falsely or deceptively advertising and invoicing fur products through the use of any label, advertisement, public announcement, notice, invoice, or other memorandum, which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which contains any representation as to value in excess of the price at which such products are usually sold by respondents in the regular course of their business;

2. Making use of any pricing claims or representations of the type referred to in paragraph (1) above unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims are based;

3. Falsely or deceptively invoicing fur products by failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is a fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is a fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is a fact;

(e) The name and address of the person issuing such invoice;

(f) The name of the country of origin of any imported fur contained in a fur product;

(g) The item number or mark assigned to such products.

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

It is ordered, That respondents Masonek & Bloom, Inc., a corporation; Sanford Masonek, individually and as president of said corporation; and Charles L. Bloom, individually and as secretary and treasurer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: March 20, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 58-3248; Filed, Apr. 30, 1958; 8:52 a. m.]

[Docket 6710]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

BLACK MANUFACTURING CO.

Subpart—*Discriminating in price under section 2, Clayton Act, as amended*—Payment for services or facilities for processing or sale under 2 (d): § 13.824 *Advertising expenses.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interprets or applies sec. 2, 38 Stat. 730, as amended; 15 U. S. C. 13) [Cease and desist order, Black Manufacturing Company, Seattle, Wash., Docket 6710, Mar. 20, 1958]

This case was heard by a hearing examiner on the complaint of the Commission charging a manufacturer with principal place of business in Seattle, Wash.—a substantial factor in the work clothes and sportswear industry in the Pacific Northwest and Alaska—with discriminating in price in violation of section 2 (d) of the Clayton Act by paying allowances for cooperative advertising to some, but not all, of its customers, which payments, additionally, followed no particular pattern but were determined by personal negotiation; and in violation of section 2 (a) of the Clayton Act through use of an annual users discount and freight allowances.

After the usual proceedings, the hearing examiner made his initial decision and order to cease and desist violating section 2 (d) and dismissing the charges of violation of section 2 (a) for failure to sustain them, which became on March 20 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent Black Manufacturing Company, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device in, or in connection with, the sale of work clothes and sportswear, including jackets and trousers of whipcord and denim, or any other similar products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondent, or its successors and assigns, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

It is further ordered, That the charges of the complaint set out in Count I thereof be, and the same are hereby, dismissed.

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

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: March 20, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 58-3249; Filed, Apr. 30, 1958; 8:52 a. m.]

[Docket 6984]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

IRIE MANUFACTURING CO., INC., ET AL.

Subpart—*Misbranding or mislabeling:* § 13.1190 *Composition:* Wool Products Labeling Act. Subpart—*Neglecting, unfairly or deceptively, to make material disclosure:* § 13.1852 *Formal regulatory and statutory requirements:* Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U. S. C. 45, 68-68 (c) [Cease and desist order, Irie Manufacturing Company, Inc., et al., New York, N. Y., Docket 6984, Mar. 19, 1958]

In the Matter of Irie Manufacturing Company, Inc., U. S. Blanket Corporation, Corporations, and Nat Nasshorn, David Nasshorn and Larry Curtis, Individually and as Officers of Said Corporations

This proceeding was heard by a hearing examiner on the complaint of the Commission charging importers in New York City with violating the Wool Products Labeling Act by labeling blankets as "50 percent reprocessed wool, 50 percent cotton and artificial fibers" when they contained substantially less wool than so claimed, and with failing in other respects to comply with the requirements of the act.

Following acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on March 19 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Irie Manufacturing Company, Inc., and U. S. Blanket Corporation, corporations, and their officers, and respondents Nat Nasshorn, David Nasshorn and Larry Curtis, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of blankets or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool", "reprocessed wool" or "reused wool", as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to securely affix to, or place on each such product, a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

a. The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

b. The maximum percentage of the total weight of such wool product, of any non-fibrous loading, filling, or adulterating matter;

c. The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

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

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: March 19, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 58-3250; Filed, Apr. 30, 1958; 8:53 a. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

Subchapter B—Bureau of the Public Debt

[1958 Dept. Cir. 1008]

PART 338—REGULATIONS GOVERNING TREASURY SAVINGS STAMP AGENTS FOR THE SALE OF UNITED STATES SAVINGS STAMPS AT SCHOOLS [1]

APRIL 25, 1958.

Sec.

AUTHORITY: §§ 338.1 to 338.12 issued under sec. 22, 49 Stat. 21, as amended; 31 U. S. C. 757c.

§ 338.1 *Authority for circular.* The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended (49 Stat. 21, as amended, 31 U. S. C. 757c), hereby prescribes the regulations in this part for the qualification and control of Treasury Savings Stamp Agents.

§ 338.2 *Eligibility for applying for agency.* Any individual is eligible to apply for qualification as a Treasury Savings Stamp Agent to sell United States Savings Stamps (hereinafter referred to as stamps) at a specific school or schools in the United States, its territories and possessions and the Canal Zone, upon being recommended for qualification by (a) the principal or superintendent, or other person in charge of a school, (b) a duly constituted school board, or (c) with the consent of the appropriate school official or board to the sale of stamps at the subject school, an organization, association or a unit of a state or nationally federated civic, parents', parent-teachers', service, teachers', veterans', or women's organization.

§ 338.3 *Qualification of agents.* An eligible applicant seeking qualification as a Treasury Savings Stamp Agent (hereinafter referred to as an agent) shall file a duly completed Application-Agreement, Treasury Form PD 2949 (original and two copies), with the local State Director of the Treasury's U. S. Savings Bonds Division. The term "State Director" shall include any director appointed by the U. S. Savings Bonds Division for the District of Columbia or for any territory or possession of the United States or the Canal Zone. If such Application-Agreement is accepted, the State Director will certify it and distribute a copy bearing his certification to (a) the postmaster of the post office, branch or station designated in the application, and (b) the agent. Upon receipt of such copies, the postmaster and the agent are authorized to perform the functions necessary to effect the sale of stamps as provided in this part. An applicant is not authorized to act as or to represent himself to be a Treasury Savings Stamp Agent unless and until he receives a completed copy of his Application-Agreement bearing the certification of the State Director.

§ 338.4 *Responsibility of agents.* Each agent will be responsible for the faithful performance of his duties and functions and for fully accounting for all stamps received without prepayment, as provided in this part.

§ 338.5 *Scope of authority of Treasury Savings Stamp Agent.* An agent qualified pursuant to this part is authorized to sell stamps only at the school or schools designated in the agent's Application-Agreement, and in accordance with the provisions of this part. Agents may sell stamps only for cash and at their face value. Qualification as a Treasury Savings Stamp Agent does not authorize an individual to act in any other agency capacity for or on behalf of the Treasury Department.

§ 338.6 *Supplying stamps to agents*—(a) *Agents.* Each agent is authorized to obtain stamps without prepayment in denominations and amounts sufficient to meet the agent's anticipated sales for the day of a school week designated by the appropriate school official as the day when U. S. Savings Stamps may be purchased by students of the school, provided that the agent has properly accounted for stamps previously obtained without prepayment. Each agent shall call at the post office designated in his Application-Agreement to obtain the stamps and in exchange therefor shall sign a Post Office Department receipt form covering the full amount of the stamps. The stamps may be obtained by the agent on the day they are to be sold or on the preceding business day. The post office from which an agent obtains stamps shall be kept advised by the agent of his stamp requirements.

(b) *Post Offices.* The post office, branch, or station designated in an agent's Application-Agreement (hereinafter referred to as the post office) is authorized to supply such agent with stamps without prepayment in accordance with the provisions and limitations of this section. The receipt which the agent is required to sign shall be retained by the post office subject to return to the agent when all of the stamps covered by the receipt have been fully accounted for.

§ 338.7 *Accounting for stamps by agents*—(a) *General.* All stamps obtained by an agent without prepayment, and the proceeds of sales thereof, are the property of the United States and shall be held in trust by the agent for the United States until duly accounted for. The total value of such stamps must be accounted for by the agent not later than the second business day following the day the stamps were to be sold at the school served by the agent. The accounting shall be in the form of unsold stamps or cash, or both, and shall be made at the post office from which the stamps were obtained. If sickness or other disability prevents the agent from making a timely accounting, he shall cause the appropriate post office to be notified of the reasons for his failure to make such accounting.

(b) *Accounting made in full.* When the stamps are fully accounted for the postal employee to whom the accounting is made shall mark "canceled" over his signature and the current date on the receipt covering the stamps (see § 338.6), and shall immediately return the receipt to the agent. If such receipt is not available for any reason the postal employee shall, over his signature and current date, appropriately record the facts of the accounting and the unavailability of the receipt on Treasury Form PD 2950 (see § 338.8 (b)) for the agent's record.

(c) *Accounting not made in full.* If the agent does not fully account for the stamps, the postal employee to whom the accounting is made shall appropriately note the facts, under the current date, on the agent's receipt and require the agent to endorse such notation. The receipt will be retained by the post office until a full accounting is made. A similar notation of the facts shall be made and endorsed by the postal employee on Treasury Form PD 2950 for the agent's record.

§ 338.8 *Records and reports, preparation, maintenance and destruction by agents*—(a) *Receipts by agents for stamps obtained without prepayment.* Sections 338.6 and 338.7 cover the preparation and distribution of receipts for stamps obtained by agents without prepayment. A receipt duly canceled and returned to an agent shall be retained by him one calendar month after the month in which it is returned after which the agent may retain or destroy the receipt as he may elect.

(b) *Record of transportation of stamps and proceeds thereof to post office.* Each agent shall keep a record, in duplicate, by calendar month, of unsold stamps and/or the proceeds of stamp sales shipped or otherwise delivered during the month to the post office. A Treasury Form PD 2950 is provided for this purpose. Entries shall be made on Form PD 2950 at the time each shipment or delivery is made. The agent shall take the duplicate copy of Form PD 2950 with him each time he makes an accounting to the post office for stamps that he obtained without prepayment. The original and the duplicate copy of this form shall be retained one calendar month after the date of the last shipment recorded thereon, after which the agent may retain or destroy them: *Provided, however,* That when (1) unsold stamps or the proceeds of stamp sales are

[1] This is to facilitate the carrying out of the Treasury's School Savings Program as administered by the Savings Bonds Division of the Treasury Department.

lost, stolen or destroyed in transit, or (2) the agent does not account in full for stamps covered by a receipt, the Form PD 2950 (both copies) shall be retained by the agent until one calendar month after the deficiency is removed, unless the form is delivered to the Treasury.

(c) *Other.* Other records prepared and maintained by and for the agent's own use may be disposed of at the discretion of the agent: *Provided, however,* That any records, affidavits, etc., that are prepared in connection with a loss which may be the subject of a claim to the Treasury for relief shall be retained as provided in § 338.9 (d).

§ 338.9 *Losses in transportation*—(a) *General.* The Government Losses in Shipment Act, as amended, (5 U. S. C. 134–134h) provides protection against losses arising from shipments of valuables made at the risk of the United States, if the shipments are made in accordance with prescribed regulations. The term "shipment" as used in this part is defined (in the same manner as provided in the Government Losses in Shipment Act, as amended) to mean "the transportation or the effecting of transportation of valuables without limitation as to the means or facilities used * * *." The transportation of stamps from the post office to the school and of unsold stamps and/or cash from the school to the post office by or in the possession of a Treasury Savings Stamp Agent are shipments of valuables at the risk of the United States. Accordingly, an agent may be relieved of his accountability for stamps if they are lost, stolen or destroyed in shipment (see paragraph (d) of this section).

(b) *Preparation for transportation.* The amount of stamps and/or proceeds thereof being transported from or to the post office must be established, prior to transportation, by actual count by the agent. The agent's receipt given at the post office for stamps obtained without prepayment will constitute an adequate record of the amount of stamps being transported by the agent to the school.

(c) *Procedure for transportation and delivery.* An agent must transport and deliver the stamps and/or the proceeds thereof in person, using due care to prevent loss, theft or destruction in transit. The agent's trip may be made on foot or by private or public transportation facilities.

(d) *Report of losses and presentation of claims for relief.* Losses occurring during the transportation by an agent of stamps or the proceeds thereof shall be promptly reported by the agent to (1) the State Director who certified the agent's Application-Agreement and (2) the post office. Local police authorities should also be notified if the loss is occasioned by theft. If prompt recovery of the loss does not seem possible, the agent should supplement the report of loss by presenting his claim for relief to the State Director who, in turn, will present it for consideration by the Treasury Department. The agent's claim should be supported by the appropriate duplicate copy of Form PD 2950; the report of any investigation made; action taken or expected to be taken and of any results obtained or expected; statements by the agent as to the circumstances and cause of the loss; and, if available, statements or affidavits of any witnesses to the incident causing the loss. The foregoing data need not be furnished if it has previously been furnished to or obtained by the Treasury's Secret Service. Stamp agents should bear the foregoing requirements in mind so that in the event of a loss, they may be in a position to obtain data for justifying a claim for relief from the loss. Unless the records referred to in this part have been turned over to the Treasury they should be retained, notwithstanding the provisions of § 338.8, until one calendar month after the claim is settled. An agent will be relieved of liability for a loss occurring during his transportation of stamps or the proceeds therof, unless it arose as a result of his failure to comply with the provisions of this part and instructions issued hereunder.

§ 338.10 *Action by postmasters in connection with an agent's failure to account.* Postmasters should promptly report any failure of an agent to account, in whole or in part, for stamps supplied to the agent without prepayment. Such reports should be made to the State Director of the U. S. Savings Bonds Division who certified the respective agent's Application-Agreement.

§ 338.11 *Termination of an agent's qualification.* The Secretary of the Treasury, the Fiscal Assistant Secretary of the Treasury, the National Director or a State Director of the U. S. Savings Bonds Division may terminate the qualification of a Treasury Savings Stamp Agent at any time, by written notice to the agent, in which event a copy of such notice will be sent to the post office concerned. A qualified agent may withdraw from and discontinue his agency by giving an appropriate written notice to the office of the State Director of the U. S. Savings Bonds Division who certified the agent's Application-Agreement: *Provided, however,* That the agent will be obligated to make a full accounting for all stamps received by him without prepayment.

§ 338.12 *Miscellaneous.* The Secretary of the Treasury reserves the right, in his discretion, to waive or modify any provision or provisions of this part and to provide supplementary instructions for operations hereunder. Information as to any such actions shall be promptly furnished to agents concerned.

Compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong.; 60 Stat. 237) is found to be unnecessary with respect to this document.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F. R. Doc. 58-3242; Filed, Apr. 30, 1958; 8:50 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter XVIII—National Shipping Authority, Maritime Administration, Department of Commerce

[NSA Order No. 64 (OPR-4, Revised)]

OPR-4—Authority and Responsibility of General Agents To Undertake To Decommission Ships To Be Withdrawn From Operation and Placed in a Reserve Fleet

OPR-4 (NSA Order No. 64) is hereby revised to read as follows:

Sec.
1. What this order does.
2. General Agents' responsibilities.
3. General Agents' duties.
4. General provisions.

Authority: Sections 1 to 4 issued under sec. 204, 49 Stat. 1987, as amended; 46 U. S. C. 1114.

Section 1. *What this order does.* This order outlines General Agents' responsibilities in connection with the work required for the proper stripping and deactivation of ships assigned to reserve fleets, whenever advice is received that a ship is to be withdrawn from operation. Generally, this order also defines the nature and extent of the work required to properly prepare a ship for layup.

Sec. 2. *General Agents' responsibilities.* It shall be the responsibility of the general agent to perform the following:

(a) Reduce the ship's personnel to only those necessary to perform or supervise the work involved, as soon as practicable after receipt of instructions to prepare the ship for layup and to remove unnecessary supplies and material from the ship to segregate and hold, deliver, or otherwise dispose of supplies and materials as directed.

(b) Prepare specifications covering deactivation work. The District Office will furnish the general agent with a standard sample specification for guidance, which is to be amended as necessary after the agent has surveyed the vessel to meet conditions existing on each individual vessel.

(c) Properly supervise the work outlined herein and assure that copies of all specifications are furnished to the local Maritime Administration office and to all department heads and ships' officers employed on board during the deactivation period.

(d) Obtain a United States Coast Guard towing permit when required for a vessel which is to be towed.

Sec. 3. *General Agents' duties.* The general agent for the account of the Maritime Administration shall have the following items of work performed prior to delivering the ship to the reserve fleet:

(a) *Holds and 'tween decks*—(1) *Grain fittings, ammunition fittings, special fittings and dunnage.* All dunnage, grain fittings and ammunition fittings shall be removed from the ship, unless

otherwise directed by the Coast Director.

(2) *'Tween deck hatches and beams.* All 'Tween Deck hatch beams shall be properly in place. All wooden 'tween deck hatch covers shall be spread over hatches, leaving a three-inch air space between hatch covers. A piece of dunnage is to be nailed 'thwartships to each hatch cover to prevent movement of covers. Steel pontoon and folding type hatch covers shall be securely wedged in a partially open position to permit proper circulation of air. 'Tween deck hatches shall be properly and entirely roped off.

(3) *Weather deck hatches.* All weather deck hatches shall be closed and secured to ensure water-tightness.

(4) *Cleaning.* All holds and 'tween decks to be left free of any debris and swept clean. This includes limber spaces, channels and overhead beams accumulating cargo residue and other debris.

(5) *Bilges.* All cargo hold bilges and bilge wells shall be cleaned and drained. Cargo hold bilge strainer plates shall be removed and stowed adjacent to the bilge wells. All sounding pipes are to be proven free and clear.

(6) *Ventilators.* All ventilator cowls shall be unshipped, stowed and secured in the nearest 'tween deck. Ventilator trunks shall be plugged with wood and canvas covered.

(7) *Storerooms.* All storerooms, deck, engine and stewards, including magazines, are to be swept clean and free of debris.

(8) *Smokestack.* Close all skylights, doors and hatches to the engine room and fidley. When so directed by Maritime Administration representative, furnish and install cover for stack. Same to be constructed of one-inch tongue and groove kiln-dried pressure-treated boards or equal with proper strengthening on underside, to fit into stack and covered on weather side with substantial waterproof material made watertight. Cover shall be fitted with access hatch about 24 inches square, located over centerline baffle to permit entry of man during stack preservation. Secure cover by means of sufficient wire lashing attached to the stack stays. This item to be completed immediately after the boilers are cleaned.

(b) *Lifeboats and life rafts.* Lifeboats shall be completely stripped of all gear, and equipment except tanks, ridge poles, spreaders, rudders, oars and masts. The tanks are to be unfastened but remain in their respective boats. The lifeboats on Liberty ships shall be stowed in the wings of the 'tween decks of No. 2 and No. 4 holds, and on Victory ships in No. 3 and No. 4 holds. On other type vessels, if possible the boats should be stowed in the 'tween decks of the nearest hold. The Maritime Administration local representative may make determinations on ships where lifeboats cannot be stowed below decks that the lifeboats may be warehoused, left on board, or otherwise disposed of. Boats stowed in 'tween decks shall be properly chocked and secured in an upright position at least two feet inboard of the skin of the ship and six inches off the deck. Boats left on board but not stowed in 'tween decks shall be secured and covered with suitable wooden covers built over each boat. Worm gears on lifeboat davits shall be thoroughly greased. Wire boat falls on gravity davits and boat winches shall be removed, tagged, greased and stowed in sheltered area. When an unstripped lifeboat is required to be left on board in davits for use of a riding crew accompanying the ship to a reserve fleet, the boat shall be left in either port or starboard after davits. Life rafts shall be removed from the vessel. The boat deck in way of removed boats shall be roped off with wire rope or chain securely fastened to welded flat bar stanchions.

(c) *Lifeboat motors.* If lifeboats are stowed on weather decks, the motors are to be removed from the boats, properly drained, tagged, and stowed in a sealed compartment. The motors on lifeboats which have been stowed below decks are to be drained. The gasoline is to be removed from tanks, after which the system is to be flushed with carbon tetrachloride.

(d) *Accommodation ladders and brow type gangways.* Wooden accommodation ladders and wooden brow type gangways shall be unshipped from present locations, together with all gear, including stanchions, platforms, davits, tackle, etc., and stowed in a convenient 'tween deck two feet from the skin of the ship and six inches from the deck.

(e) *Booms and masts.* All booms shall be stripped without burning shackles or fittings, and all gear coiled, tagged and stowed below in the respective 'tween decks. Heavy lift blocks, purchase and topping lift, shall be unshipped and neatly stowed in the 'tween decks, on the deck, clear of the hatch and skin of the ship so as to permit preservation without further handling. Heavy lift blocks shall be secured with lashings. All booms except the heavy lift shall be lowered into the cradles properly wedged to prevent them from resting on the metal of the cradle and properly wedged under the goosenecks to prevent them from freezing in sockets. Goosenecks are to be coated with preservative compound. Heavy lift booms are to be jacked up and lowered vertically in place on wood blocks to allow gooseneck pins to be preserved. All telescopic topmasts shall be lowered and housed. Signal and antenna masts where hinged shall be lowered to the deck and properly secured as directed.

(f) *Radio antenna.* Radio antenna and insulators shall be rigged down, carefully coiled, secured, and stowed in a sealed storeroom.

(g) *Mooring wires and rope hawsers.* A total of eight lengths of wire, each with a 6-foot eye, minimum ⅞-inch diameter, each 250 feet minimum length, shall be coiled and left on deck, four forward and four aft, ready for use at the reserve fleets for mooring. Wire spring lines, topping lifts and purchases for heavy lifts may be used. Insurance wires also shall be ready fore and aft. All other wires shall be neatly coiled, tagged, and stowed in the 'tween decks. Rope hawsers and all other manila rope shall be removed from the ship and disposed of as directed by Maritime Administration representative.

(h) *Anchor windlass.* On steam operated windlasses remove section of steam line in way of steam valve and secure same with wire adjacent to windlass. Install flange with 1½-inch pipe connection for air. Remove exhaust valve completely and secure same with wire adjacent to exhaust line. Blank off sections of steam and exhaust lines going aft. Electric anchor windlasses are to be left ready for service. Exposed moving parts subject to deterioration are to be coated with preservative.

(i) *Sanitary bowls, sinks and wash basins.* All sanitary traps, toilet bowls, sinks and wash basins shall be dried out and trap plugs removed and wired adjacent. All head and washroom doors shall be locked after inspection of the vessel prior to departure for the fleet.

(j) *Narcotics.* All narcotics, including paragoric and morphine syrettes from abandoned ship kits, shall be removed and disposed of in accordance with General Services Administration regulations, Section 1–IV–102.00, Disposal of Surplus Narcotics, "Regulation of GSA" Title 1, Personal Property Management.

(k) *Subsistence stores.* All subsistence stores, including canned lifeboat rations and water, shall be removed from the ship and disposed of as directed by the local Maritime Administration representative.

(l) *Stripping.* All items constructed of wood, metal, glass, crockery and plastic shall remain aboard, with the exception of valuable equipment such as barometers, clinometers, clocks, binoculars, chronometers, sextants, tachometers, typewriters, adding machines, micrometers, firearms, silverware, etc. These valuable items shall be cleaned, repaired if necessary, properly tagged and packaged to assure against damage in handling, and returned to warehouse. The duty must be paid on all foreign-purchased instruments removed. The following items shall be removed, properly tagged, and disposed of as directed by local U. S. Maritime Administration representative:

(1) All slop chest items, medicines and surgical instruments.

(2) Remove lead-acid batteries only, and dispose of as directed by a Maritime Administration representative. Alkaline type batteries shall remain aboard and be prepared for storage as follows:

(i) Fill each cell with distilled water to the midpoint between top of plate and top of cell container.

(ii) Charge batteries to 1.75 volts per cell. When this voltage is reached continue charge for six hours.

(iii) Check specific gravity of each cell and ascertain that specific gravity is between 1.190 and 1.200. If not, correct to obtain reading within the aforementioned range. Electrolyte level, if low, should be restored to ¾ inch above plates.

(iv) Ensure that battery trays are clean and dry.

(v) Disconnect batteries and tag battery leads.

(vi) Remove inter-connectors to interrupt any stray current circuits. Place connectors and bolts in envelope and store with batteries.

(vii) Cell tops are to be cleaned.

(viii) Check steel cases of cells to ensure they have complete coating of (*a*) Nicadvar bitumastic maintenance coating or (*b*) Gaco neoprene maintenance coating N–700–1.

(ix) Insure all battery vent caps are closed.

(3) All entertainment radios, lifeboat radios, and lifeboat transmitters.

(4) All electric and pneumatic hand tools, A. C. fans, oxygen-breathing apparatus, fresh air hose mask, flame safety lamp, and other protective equipment.

(5) All cordage, scrap rope, net slings and rope ladders.

(6) All coal and forge coke.

(7) All inflammables, paints, greases and oil in containers, pyrotechnics such as Lyle gunpowder bags, rockets, flares, primers, pilot signals, etc.

(8) All freon, oxygen, hydrogen and acetylene gas cylinders, and all empty or partially empty drums and carboys to be returned to the suppliers for credit. All CO_2 cylinders shall remain aboard.

(9) All deck, engine and steward's consumable stores, except pipe, pipe fittings and plumbing supplies, electrical fittings and supplies, fire brick, hardware, metals, hand tools and packing.

(10) Mattresses and pillows selected for return to warehouse are to be cleaned, renovated and sterilized. Curtains, spreads and rugs so selected are to be laundered. All items to be counted, packaged by type, and properly tagged.

(11) Miscellaneous blocks and other deck equipment shall be neatly stowed on shelves in the bosun's storeroom. Blocks are to be separated from other equipment to allow preservation without further handling. All gear or equipment shall be removed from mast lockers. Loose equipment shall not be left laying about the decks but shall be neatly stowed in storerooms.

(12) All boiler water testing equipment and material, including water conditioning compounds.

(13) All canvas, signal flags, bunting, canvas windsails, life jackets, life rings, etc.

(14) Name boards and all electric navigation lights, unless permanently installed, shall be removed from locations and properly stowed. All weather-exposed binnacles and sounding machines to be removed from present locations and stored in sealed storerooms.

(15) Cargo floodlights, searchlights, daytime blinker signal searchlights, debarkation lights, etc., unless permanently installed, are to be removed from present locations and stowed in sealed storerooms.

(16) All sheet metal constructed storage boxes, such as lyle gun box, boat fall boxes, etc., which are exposed to the weather shall be removed from their present locations and stowed in 'tween decks.

(m) *Sealing up rooms.* All items remaining aboard of a pilferable, fragile or delicate nature, such as tools, galley gear, mess gear, and spare parts of small size, shall be placed in a storeroom behind a solid metal door. The door shall then be closed and, if a hasp and keeper is not provided, such hasp and keeper shall be installed and door shall be sealed with a numbered metal car seal to the satisfaction of the Maritime Administration representative. Expanded metal lockers shall not be used for the stowage of pilferable material.

(n) *Books, log books, blueprints and navigation books.* Merchant Marine Library books shall be removed by the Merchant Marine Library Association. All log books and bell books shall be listed in a covering letter and forwarded to the District Property and Supply Officer, Maritime Administration, 45 Broadway, New York 4, New York. Copies of the covering letter shall in each case be sent to the Chief, Division of Office Services, Office of Property and Supply, Maritime Administration, U. S. Department of Commerce, Washington 25, D. C., and to the cognizant Coast Director who shall check each list to ensure completeness of submissions. Blueprints, instruction books, ship's plans and ship's correspondence shall be properly sorted and stored in metal cabinets located in chief engineer's or master's office. Navigation charts are to remain in chart desk.

(o) *Rented equipment.* Owners of all rented equipment shall be requested to remove all such equipment before the ship departs for the fleet.

(p) *Main radio installation.* Main radio installation—to be serviced and prepared for layup as follows:

(1) Open all switches.

(2) Remove all spare radio tubes, fuses and spare parts, etc., and pack, mark and stow in spare parts box in sealed storeroom.

(3) Inspect equipment for fungus, mold, dampness, verdigris or any other deterioration. Where such conditions exist the affected surfaces are to be carefully dried and cleaned to prevent further damage. All weather deck openings to the radio room shall be closed prior to the start of the deactivating work to prevent moisture from entering.

(q) *Bunker fuel oil.* With the exception of diesel oil which may remain aboard in any quantity, bunker fuel oil must not be on board in excess of 1,000 barrels or less than 500 barrels unless otherwise directed by local Maritime Administration representative, and duty must be paid on all oil of foreign origin if removed, but not if transferred to another ship. Whenever possible, remaining fuel oil shall be pumped back to the settling tanks.

(r) *Peloruses and gyro compass repeaters and compasses.* Peloruses and gyro compass repeaters shall be properly disconnected (not cut), tagged, and stored face down, compasses (magnetic and gyro repeaters) shall be removed from binnacles and also stowed upside down; the radar, loran, direction finder, fathometer, and spare master gyro tubes, fuses, spare parts, shall be collected, tagged, wrapped and stowed in a spare parts box, all of which shall be placed in sealed storeroom. The master gyro compass room, if suitable, may be used.

(s) *Garbage and trash.* All garbage and trash shall be removed and the deck swept clean.

(t) *Keys and ship's documents.* All master keys, including head and washroom keys, shall be tagged and turned over to the fleet representative by the master upon arrival of the ship at the fleet. All other keys shall be tagged and locked in the master's safe. All the ship's documents and papers shall also be delivered by the master to the fleet representative, together with a list of these documents and papers in triplicate. The fleet superintendent will give the master a signed receipt for all papers and keys. The combination of the ship's safe shall be left among the ship's papers.

(u) *Securing the engine room and machinery components.* (1) The propulsion shaft or shafts on all ships shall be secured and locked by using a keeper plate on tailshaft coupling. Plate to be drilled for three coupling bolts and fitted to the coupling flange on topside using original coupling bolts. Keeper plate to be ¾-inch steel plate properly secured to steel frames by four 1-inch diameter fitted bolts, two on each side. Installation is to permit keeper plate to be removable. In no instance shall jacking gear be left engaged to act as a brake.

(2) Stern glands shall be tightened or repacked to prevent leakage.

(3) For ships going to fleets south of Astoria, Oregon and James River, Virginia, all sea valves are to be tightly closed and valve wheels securely wired to the valve body in a closed position to prevent accidental opening, except that, where blank flanges are installed against the skin valve, valve wheels need not be wired. Leaking sea valves below the light water line must be repaired or blanked off at the skin valve. In all cases where any piping or machinery is disconnected or opened, and the possibility exists that a leaky valve or the opening of a valve would permit access of sea water, all such valves below the light loadline are to be properly blanked off. For ships going to fleets north of Suisun Bay, California and north of Wilmington, North Carolina, break flanges, furnish and install blank flanges, minimum ⅜-inch steel plate, in way of all sea valves below light loadline. A ¾-inch extra heavy nipple is to be fitted and welded in center of blank flanges, and fitted with a cap. These blank flanges are to be tested and proven tight. Extreme care is to be taken in draining the systems so that all piping, fittings, etc., are fully drained.

(4) Specifications and uniform cold weather draining instructions have been prepared for all ships entering Pacific Northwest fleets and fleets north of Hatteras on the East Coast, which will be supplied by local Maritime Administration representatives. Strict compliance is required.

(5) Engine room bilges: Tank tops in engine room, fire room and shaft alley shall be thoroughly cleaned, all debris removed, and bilges left dry. Bilge strainer plates shall be removed and stowed alongside of bilge wells.

(6) Open all circuit breakers and switches on the main switchboard.

Switches energizing circuits in bad condition shall be tagged accordingly.

(7) The rudder shall be secured in a midship position as directed, to prevent shifting under tow.

(v) *Servicing propulsion machinery for reciprocating, turbine and diesel engines*—(1) *Reciprocating main engine cylinders and valve chests.* The main engine cylinders and valves are to be drained free of all water and all exposed parts coated lightly with rust preventive compound.

(2) *Main engine piston rod and valve stem packing.* The metallic packing assembly on each piston rod and valve stem is to be dropped; all boxes, segments, rings and springs are to be cleaned of all carbon or other foreign matter. At completion of cleaning, all boxes, packing segment rings and springs are to be coated with rust preventive compound. The packing assembly parts of each rod and valve stem are to be bundled in heavy oiled paper, tagged and stored in a sealed storeroom. The piston rods and valve stems are to be cleaned and coated with rust preventive compound. The packing box securing studs and nuts are to be coated with rust preventive compound, and all packing boxes replaced with securing nuts at half thread position. On ships going into cold weather fleets, the lower bull's eye on H. P., I. P. and L. P. cylinders are to be drained by lowering the cylinder neck bushings. Tags to be affixed stating that neck bushings are to be replaced as originally positioned upon reactivation of vessel.

(3) *Line shaft bearings, guides and thrust.* Water service lines are to be disconnected and drained. Connections to be released at lowest point to assure proper drainage.

(4) *Main thrust.* The main thrust bearing, when separately housed, shall be drained, cleaned and left dry.

(5) *Generators (steam end).* Cylinders to be drained through drain valves and valves left open. Piston rods and valve stems to be coated with rust preventive compound.

NOTE: Piston rod and valve stem packing not to be removed.

(6) *Generators (electrical end).* The commutator brush springs are to be released, the brushes removed and fastened firmly together and wired adjacent to, but clear of, rotating element.

(7) *Auxiliary machinery.* All steam cylinders and steam valve chests and water ends on all machinery throughout the ship are to be drained after the steam and exhaust lines leading thereto have been dealt with as required elsewhere in this directive. Special attention shall be paid to that portion of these lines between machinery and throttle valves or riser pipes in the immediate vicinity. It is not required that pump heads be raised or that cylinder heads and valve plates be removed or loosened to provide full drainage. Removal of plugs or drain valves during air blowing will suffice. Probe drainage opening with wire where no evidence of condensate can be seen. All exposed working parts are to be covered with rust preventive compound.

NOTE: Valve stem, piston rod and shaft seal packing need not be removed.

(8) *Main boilers.* The water side of all boilers shall be thoroughly flushed and cleaned of all loose scale, mud and other foreign material. This shall include economizers, superheaters and water walls. After cleaning, all parts shall be thoroughly drained. One manhole plate on steam drum and one handhole plate in each end of each boiler removed. Handhole plates are to be secured by wire to a stud adjacent to its respective location. Boiler casing doors shall be removed and stowed adjacent to respective boilers. Burners and tips shall be removed and stowed in engineroom storeroom. Fire side of all boilers shall be thoroughly cleaned, including fire sides of generating tubes, air heaters, stack, uptakes and superheaters. All debris and foreign matter shall be removed ashore. Under no circumstances shall water or steam be used in cleaning the fire side of any boiler, economizer, superheater or water wall. Boiler room area shall be swept and left in a clean, orderly condition. Foster Wheeler design boilers on Victory type vessels shall have the diaphragm plates removed in way of downcomer tubes. The inspection plate removed to accomplish this work shall be installed as a portable plate secured with dogs.

(9) *Main air pump and attached pump.* The main air pump and attached ram pumps are to be drained of all water by slacking back on inspection plate openings and removal of drain plugs where necessary. At completion of draining all removals made for the purpose are to be left open and drain plugs wired adjacent to openings.

(10) *Main condenser, auxiliary condenser, freon condenser and distiller.* All condensers and distillers are to be drained on the steam, liquid and salt water side, except freon side of reefer condenser, by the removal of drain plugs or breaking of joints where drain plugs are non-existent. Whatever method of drainage is employed, all removals are to be replaced as before with no outlets from the condensers left open.

(11) *Steam, exhaust and water lines.* The contractor is to open up all steam, exhaust and water lines throughout vessel, including tank heating coils at the lowest points and extremities, by the removal of drain plugs, valve bonnets, or other suitable means, and blow out by compressed air all water or condensation from such lines. At completion of draining all removals made for this purpose are to be left open and drain plugs wired adjacent to openings. Insulation blankets shall be removed from throttle and stop valves and flanged connections on boilers and large steam lines. Those found in good condition shall be tagged and stowed in a sealed storeroom.

(12) *Evaporator.* The evaporator is to be opened up, scaled, cleaned and drained. The cover studs and nuts are to be coated with rust preventive compound and the cover replaced slightly ajar to ensure circulation of air into the shell. All nuts are to be replaced hand tight on the studs.

(13) *Feed water heater.* The feed water heater is to be opened up, cleaned and drained. The cover studs and nuts are to be coated with rust preventive compound, cover replaced slightly ajar, and nuts placed on studs hand tight.

(14) *Filter box and inspection tank.* The filter box and inspection tank are to be drained and the drain plugs wired adjacent to openings.

(15) *Steam traps and manifolds.* All steam traps and manifolds are to be drained and the adjacent lines are also to be drained. At completion of draining, all removals made for the purpose are to be left open, and drain plugs wired adjacent to openings.

(16) *Grease extractors.* All grease extractors shall be cleaned and drained and loofa sponges and similar purpose material removed and disposed of off the ship.

(17) *Steam, exhaust and liquid valves.* All manifold and other valves throughout the vessel, including boiler valves and machinery operating valves, which do not affect seaworthiness, are to be left with the valve disc raised off the seat.

(18) *Reducing valves.* All reducing valves are to be drained and all removals made for this purpose are to be left open and drain plugs wired adjacent to openings.

(19) *Main throttle valves.* The main throttle valve is to be thoroughly drained and the drain plugs are to be left out and wired adjacent to valve.

(20) *Freon refrigeration system.* The freon refrigeration system shall be charged to full capacity of gas, after which the system is to be blanked off in such manner as to ensure that full charge is maintained. The condenser to be thoroughly drained.

(21) *Tools.* All tools of every description except those otherwise specified for removal are to be cleaned, coated with rust preventive compound, and placed in the storerooms. The doors leading to each storeroom are to be closed and sealed. Storerooms to be assigned by U. S. Maritime Administration Surveyor.

(22) *Main and all auxiliary turbine units.* Thoroughly drain all main and all auxiliary turbine units and their connections of all water and moisture by the removal of drain plugs and drain valve bonnets, or breaking of joints. At conclusion of draining, all openings made for the purpose of draining are to be left open. Drain plugs to be wired adjacent to openings.

NOTE: Main and auxiliary turbine shafting and packing assemblies are to remain intact.

(23) *Main and auxiliary turbines; lubricating oil systems and sumps.* Transfer all lubricating oil from each sump tank, both main sump and all auxiliary sumps to a reserve tank, after which open up and thoroughly clean all sumps and close up as before. Drop sufficient clean lubricating oil to each sump tank, after which circulate clean oil through each respective lubricating oil system. While the lubricating oil is being circulated, each turbine unit, both main and auxiliary, is to be jacked over

five (5) complete revolutions to ensure that clean oil has circulated through each bearing and gear of the respective units. At completion of jacking and oil circulating, the oil in the various sump tanks is to be pumped back to the reserve tank and all sumps left empty.

(24) *Turbine driven feed pump.* Drain all liquid from the lubricating oil sump tank. Open up and thoroughly clean, after which close up as before. Flush all bearings with clean lubricating oil.

(25) *Motors; deck winches, capstans and steering gear.* The commutator brush springs are to be released and the carbon brushes removed, wired and stored in controller boxes adjacent to motors. Take insulation resistance readings of all generators and motors on vessel except those of fractional horsepower. The results of those readings shall be included in the condition survey. On exposed motors all defective inspection plate gaskets are to be renewed to ensure that each motor is watertight.

(26) *Deck winch and capstan controller boxes and master switches.* Remove the covers from each controller box and master switch box of each deck winch and capstan, dry out any moisture and close up in watertight condition. Any and all defective gaskets are to be renewed to ensure that each box is watertight.

(27) *Diesel auxiliary generator.* Thoroughly drain all liquids from the water jacket, heat exchangers, lubricating oil system and sump. Thoroughly clean the sump tank and close up as before. By use of hand pump, flush the entire lubricating oil system with clean lubricating oil and, during the flushing operation jack the engine over five (5) revolutions to ensure that all bearings are well coated. At the conclusion of this operation, remove the oil from the sump and leave the system closed up and intact.

(28) *Steam boilers (heating).* Flush down the water sides with fresh water, after which thoroughly drain off all water. Remove one (1) manhole plate and one (1) handhole plate if such exists and secure the removed plates adjacent to their respective locations with wire. Thoroughly clean the fire sides including the uptakes and stack, and remove all debris ashore.

NOTE: Neither steam nor water shall be used for cleaning fire sides of boiler.

(29) *Heat exchangers, oil coolers and distiller.* All heat exchangers, including lube oil coolers and the distiller, with the exception of fuel oil heaters, are to be drained on the steam, liquid and salt water sides by the removal of drain plugs or breaking of joints where plugs are non-existent. At the completion of draining, all removals made for this purpose are to be left open, plainly marked, and drain plugs wired adjacent to openings.

(30) *Diesel main engine and generators.* Remove all oil from the crank cases and sumps of main engine and generators by pumping such oil into the settling tank. Thoroughly clean the sump tanks and all crank cases, and close up as before. Fill each sump tank with sufficient clean lubricating oil to circulate the lubricating systems of each engine. Circulate the clean lubricating oil through each system under pressure and, while the oil is being circulated, each engine is to be jacked over five (5) complete revolutions. At the conclusion of this operation the clean oil left in the sump tanks is to be pumped back to the reserve tanks. The daily service fuel oil tank is to be pumped out dry, tank thoroughly cleaned, and closed up as before. The water jackets of main engine and for auxiliaries are to be thoroughly drained, and all openings made for draining are to remain open. Open up and clean the exhaust manifolds and exhaust stack including silencer, which also shall remain open. Remove all debris ashore.

(31) *Lubricating oil and fuel oil centrifuges.* Open up and thoroughly clean the centrifuges of the lubricating oil and fuel oil systems. Sediment drain tanks to be opened, thoroughly cleaned, and left open upon completion.

(w) *Steering engine gears and steering engine room.* All rods and gears of the steering engine are to be coated with rust preventive compound and steering engine room is to be broom-cleaned and left in an orderly condition. Any and all resultant debris to be removed ashore.

(x) *Inventory.* Inventory shall be effected in accordance with instructions issued by the local Maritime Administration office.

(y) *Certificates of inspection, registry, enrollment, and radio license.* Ship's Certificate of Inspection shall be turned in to the United States Coast Guard, and the Ship's Radio License shall be sent to the Federal Communications Commission, Washington 25, D. C. The general agent shall deposit the Certificate of Registry or Enrollment in office of Collector of Customs of the District in the area where the ship is to be laid up, and noted on the Certificate of Redelivery, Form No. MA2–104, the place and date of deposit of either or both certificates if used.

(z) *Property transfer notice.* Material removed to another Maritime Administration activity shall be covered by Property Transfer Notice, in accordance with Management Order No. 538. Property Transfer Notices must accompany all material to a U. S. Maritime Administration warehouse. All other material removed for disposition must be covered by listing, as directed by local Maritime Administration office.

(aa) *Drydocking.* Drydocking will be required when records indicate underwater repairs are necessary, or that period since last drydocking was greater than six (6) months. When drydocking is required, the following items of work shall be accomplished:

(1) *Anchor chains.* While vessel is on drydock, range both chains and wash off clean; drain and clean chain locker and hand pump system. Chains and chain locker to be coated with metal conditioning compound. At completion restow chains in lockers.

(2) *Peak tanks, void tanks and double bottom fresh water tanks.* While vessel is on drydock remove bleeder plugs and flush out to remove mud and muck. Upon completion replace plugs as before.

(3) *Stern gland.* The stern gland is to be completely repacked with approved packing.

(4) *Hull cleaning and painting.* Sandblast to bare metal a 4-foot band all around from 2 feet above to 2 feet below flotation line. Apply one coat of vinyl wash primer and two coats of anticorrosive paint to bare surface.

(bb) *Condition surveys.* A condition survey shall be prepared reflecting the condition of all parts of the vessel, its equipment and appurtenances, such survey to be effected jointly by representatives of the Division of Ship Repair and Maintenance, the Division of Operations, and the general agent. In preparing condition survey, items requiring corrective action contained in repair lists, American Bureau of Shipping reports, notes of protest, or U. S. Coast Guard citations, are to be included and specifically referred to. Wherever possible, estimated costs for corrective repairs are to be shown. There should also be included in survey report special structural information involving type, volume and location of ballast, booms, gyro compasses, radar, and other specific installations that would provide valuable information in determining condition of vessels for withdrawal preference. Copies of condition survey are to be distributed in accordance with existing procedures, similar to redelivery surveys effected on vessels from BBC operation. When condition surveys disclose safety hazards such as defective ladders, handrails, etc., or where items of work are required to prevent deterioration in reserve fleet, they shall be repaired prior to sending the ship to the fleet.

(cc) *Ballast.* Liquid ballast not essential for stability purposes shall be removed unless otherwise directed. Sand and loose rock ballast shall also be removed, but poured concrete or block ballast shall not be removed unless specifically directed by the local Maritime Administration representative. Valuable metallic ballast shall be reported in the condition survey report.

(dd) *Electrical receptacles.* All weather-exposed electrical receptacles are to be closed to prevent leakage. Missing caps and vapor globes are to be replaced on weather decks.

(ee) *Fore peak tank, after peak tank No. 1 and No. 2 deep tanks; port and starboard; and void tanks.* These tanks are to be opened, drained, and all covers are to be replaced watertight.

(ff) *Fresh water double bottom tanks.* Prior to delivery to fleet, the fresh water double bottom tanks are to be pressed up with fresh water.

(gg) *Domestic fresh water tanks and service water tanks.* Domestic tanks and all hot and cold water service tanks throughout the vessel are to be drained by removing drain plugs, removing valve bonnets, or breaking joints. At completion of draining, all removed or disturbed parts are to be left open and plainly marked. Drain plugs shall be wired adjacent to openings.

(hh) *Cleanliness of quarters.* Drawers and lockers shall be thoroughly cleaned

and no equipment shall be left in quarters unless otherwise specified in these instructions. Rooms shall be stripped of all linen, wearing apparel or other articles. Rooms shall be swept clean and doors locked. All staterooms, galleys, messrooms, refrigerated spaces, shall be stripped and cleaned. Portholes shall be dogged and chart room windows securely closed.

Food: Food shall not be left in refrigerators, messrooms, or storerooms, and those spaces shall be thoroughly cleaned. Reefer spaces shall be thoroughly cleaned and the gratings stowed on end and the doors secured in an open position. No food shall be left on board by riding crews. Galley stoves shall be disconnected and moved out approximately 2 feet from bulkhead in order to expose all areas for preservation. Canopies, fans and air ducts above the galley range shall be thoroughly cleaned of all grease, ash, carbon, etc., and made ready for preservation. Burner, furnace and range to be cleaned. Galley stack to be cropped approximately 4 feet above deck and trunk plugged with wood and canvas covered. Stack shall be stowed in tween deck.

(ii) *CO_2 controls.* Master CO_2 controls shall be disconnected, all CO_2 bottle stop valves tightly closed, and CO_2 rooms shall be locked. These requirements must be strictly observed.

(jj) *Fire fighting equipment.* All portable fire extinguishers shall be removed except CO_2 extinguishers, which shall be left in place aboard ship. All fire fighting hoses shall be removed from vessel and disposed of as directed. The semi-portable foamite fire extinguishers in engine room shall be emptied, cleaned, and loosely re-assembled.

(kk) *Riding crews.* (1) Unvented oil stoves for heating quarters shall not be furnished riding crews for ships under tow.

(2) The riding master shall at all times maintain full control over the riding crew. Upon the arrival of the ship at the reserve fleet, fleet officers will inspect the ship along with the riding master to determine that satisfactory conditions exist relative to sanitation, security and safety.

(3) The riding master shall receive from the fleet representative a receipt upon delivery of the keys and ship documents after the joint inspection. A sample format is set forth below as Exhibit A.

(ll) *Limiting drafts.* It shall be the responsibility of the agent delivering the ship to reduce the draft to the minimum practical for the type. In any case, the draft shall not be in excess of the draft limit allowable for the fleet site to which the ship has been ordered. The draft limits for the various reserve fleet sites are as follows:

	Feet
Hudson River	25
James River	24
Wilmington, N. C.	16
Mobile, Ala.	15½
Beaumont, Tex.	16
Suisun Bay, Calif.	18
Astoria, Oreg.	24
Olympia, Wash.	25

The foregoing are maximum drafts and not mean drafts. If a ship's draft when ready for delivery to a fleet site exceeds the maximum draft listed for that site, the master shall immediately contact the local Maritime Administration office for further instructions.

(mm) *Greases and preservatives.* Where this order requires preservatives to be used, they shall comply with the following specifications: Compound, Metal Conditioning, Spec. No. MIL–M–15205a, Grade II Compound, Rust Preventive, Type B, Medium Grade, USMC Specification No. 52–MC–602A.

(nn) *Navigational equipment for towing.* In order that the vessels will comply with all regulatory requirements of the U. S. Coast Guard and rules of the road while being towed to a reserve fleet, the following items of equipment are required to be aboard. They have been assembled in the form of a "kit" which is available from the local Maritime Administration office.

1 red side light (kerosene).
1 green side light (kerosene).
1 fixed stern light (kerosene).
2 anchor lights (kerosene) 360°/3 mi. white light.
2 "Not under command" lights, red (kerosene) with 6-foot tack line on each.
3 black balls (2 feet diameter) with 6-foot tack line on each.
1 ea. International Code flags "N" and "C".
1 signal pistol with 12 red parachute flares in watertight container.
1 hand-operated fog horn.
1 ship's bell forward.
1 fog gong aft.
1 pilot ladder, 40 feet (chain and aluminum construction).
1 supply of kerosene in can.
1 life jacket per member of riding crew, plus 25 percent spares.

In addition, the following halyards shall be left in place:

Bridge—For "Not under command" lights, ship's, and International Code flags.

Forward—For anchor ball and light, not less than 20 feet above the deck.

Aft—For anchor light, not less than 15 feet lower than forward anchor light or other accessible device for suspending the light.

Upon delivery of the vessel to the reserve fleet this equipment is to be turned over to Fleet Superintendent for his disposal.

(oo) *Tags.* Wherever tagging is mentioned throughout this order, tags supplied shall be of non-ferrous metal or plastic, impervious to oil, water and weather.

SEC. 4. *General provisions.* (a) The General Agent's Completion Report shall be filled out and signed by a responsible member of the general agent's operating department, preferably the master of the ship, and given to the fleet representative of the fleet to which the ship is delivered. A copy of this report shall be forwarded to the local Maritime Administration office, where the ship was prepared for layup. A sample format is set forth below as Exhibit B.

(b) A "Cost of Preparation for Layup Report" shall be filled out in triplicate and two copies forwarded to the National Shipping Authority, Chief, Division of Operations, Washington 25, D. C., and one copy forwarded to the respective Coast Director, as soon as possible after delivery of the ship to the fleet site. A sample format is set forth below as Exhibit C.

(c) Detailed instructions will be issued by the local Maritime Administration representative wherever mentioned in the foregoing.

(d) Copies of all layup specifications are to be made available to the local Maritime Administration office for screening and approval before submitting to contractors. Before awards are made, the local office representative must review and approve the award. General Agents will make the award designated by the local office. Copies of all bid tenders to be made available to the local office.

(e) An authorized Certificate of Redelivery furnished by the NSA shall be processed and filled out by the respective Coast Director and forwarded to the General Agent for execution and return. Five copies of the executed certificate shall be forwarded by the Coast Director to the National Shipping Authority, Chief, Division of Operations, Washington 25, D. C. The disposition of the ship's marine documents (Certificate of Registry or Enrollment or Temporary Enrollment if used) shall be stated on the Certificate of Redelivery showing place and date of deposit.

Approved: April 23, 1958.

[SEAL] WALTER C. FORD,
Deputy Maritime Administrator.

Exhibit A

U. S. DEPARTMENT OF COMMERCE MARITIME ADMINISTRATION NATIONAL SHIPPING AUTHORITY

SHIP CONDITION RECEIPT

Date.....

To:.....General Agent of the SS.....

This will certify that the subject ship arrived at.....(time) (date)

at the.....Fleet and was found to conform with the acceptance requirements, except as noted below.

1. Stability and watertight integrity
2. Cleanliness and sanitation
3. Storerooms
4. Inventory of ship's documents
5. Keys
6. Remarks:

.....
Fleet Superintendent

cc: Local Maritime Administration office where ship prepared for layup, Coast Director, comm–dc

Exhibit B

U. S. DEPARTMENT OF COMMERCE MARITIME ADMINISTRATION NATIONAL SHIPPING AUTHORITY

GENERAL AGENT'S COMPLETION REPORT

S. S. or M. S.....
Prepared for layup at.....

Date.....
General Agent.....
Delivered to Reserve Fleet at.....
Date of Delivery.....

The above ship was prepared for layup in full accordance with U. S. M. A., NSA Order No. ..... (OPR–.....).

Signed.....
Title.....

Exhibit C

U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
NATIONAL SHIPPING AUTHORITY

COST OF PREPARING FOR LAYUP AND STRIPPING

Name of ship ..... Operator .....
Taken over on GAA—Date ..... Time ..... Port .....
Date ordered to prepare for layup .....
Date and place commenced preparations for layup ..... Finished .....
Date departed for R. F ..... Date entered R. F .....
Was preparation done by contractor or crew? .....
Name of contractor .....
Expense incurred from time delivered under GAA for layup to time delivered to Reserve Fleet

Ship expenses (itemize)		Cost of other preparation work—stripping, trucking, etc. (itemize)	
Wages of crew (exclusive of riding crew)	$		$
Subsistence			
Lodgings			
Consumable stores			
Fuel consumed			
Wharfage			
Pilotage			
Night watchman (guards)			
GAA fees			
Other miscellaneous expenses			
Duty on foreign-purchased equipment			

Cost of harbor tugs—shifting ship (itemize)	$
Cost of local towage to fleet	
Cost of deep sea towage	
Total	$
Handling lines	$
Riding crew expenses:	
Wages	
Subsistence	
Return Transportation	
Total	$

Summary of Expenses

Ship expenses	$
Contractor's costs for preparing vessel for layup	
Cost incidental to cleaning ship, packaging and removal of ship material	
Cost of tugs	
Handling lines	
Riding crew expenses	
Grand Total	$

NOTE: Name of ship and operator must appear on each sheet.

[F. R. Doc. 58-3245; Filed, Apr. 30, 1958; 8:51 a. m.]

TITLE 46—SHIPPING

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

Subchapter C—Regulations Affecting Subsidized Vessels and Operators

[General Order 20, 2d Revision]

PART 272—POLICY AND PROCEDURE REGARDING CONDUCTING OF SUBSIDY CONDITION SURVEYS AND ACCOMPLISHMENT OF SUBSIDIZED VESSEL MAINTENANCE AND REPAIRS

Part 272 is hereby revised to read as follows:

Sec.
272.1 Purpose.
272.2 Subsidy condition survey requirements.
272.3 Subsidy condition survey instructions; general.
272.4 Execution of subsidy condition survey reports.
272.5 Distribution.
272.6 Subsidy maintenance and repair procedure.
272.7 Subsidy repair summaries.
272.8 Categorizing and allocating charges.
272.9 Modifications, alterations, additions and betterments.
272.10 Maintenance (upkeep) and repairs; definition.
272.11 Examples of expenses ineligible for subsidy participation at the maintenance (upkeep) and repair rate.
272.12 Definition of "consumables," "expendables" and "expandable equipment".
272.13 Effective date.

AUTHORITY: §§ 272.1 to 272.13 issued under sec. 204, 49 Stat. 1987, as amended; 46 U. S. C. 1114.

§ 272.1 *Purpose.* The purpose of this part is to establish the policy and procedure to be followed by the Maritime Administration, and by the subsidized steamship operators in conducting subsidy condition surveys and accomplishment and reporting of maintenance and repairs on vessels approved for operation under the Federal Maritime Board Operating-Differential Subsidy Agreements.

§ 272.2 *Subsidy condition survey requirements.* (a) Condition surveys of vessels approved for subsidized operation shall be conducted in the following instances:

(1) At the commencement of the first subsidized voyage of each vessel placed in subsidized operation, except newly constructed vessels which enter subsidized service immediately upon completion of building and for which there is a survey report made by the Trial and Guarantee Survey Boards of the Maritime Administration or any other condition report satisfactory to the United States.

(2) At the commencement of the first voyage of each vessel after resumption of subsidized operation following temporary withdrawal from subsidized operation. For the purposes of the surveys required by this subparagraph and subparagraph (5) of this paragraph a vessel which is not withdrawn from the agreement, shall not be considered as temporarily withdrawn if it performs unsubsidized voyages in a subsidized service of the same operator.

(3) At the commencement of the first voyage of each vessel following the effective date of the establishment of a maintenance (upkeep) and repair subsidy rate, if such subsidy rate was not established as of subparagraph (1) of this paragraph.

(4) Upon the discontinuance of a maintenance (upkeep) and repair subsidy rate.

(5) Upon the withdrawal of each vessel from subsidized service, either temorarily or permanently. For the purposes of the surveys required by this subparagraph and subparagraph (2) of this paragraph a vessel which is not withdrawn from the Agreement, shall not be considered as temporarily withdrawn if it performs unsubsidized voyages in a subsidized service of the same operator.

(6) Upon the termination of the last voyage of each vessel within each recapture period or at the end of such recapture period with respect to subsidized vessels in idle status at that time.

(7) Upon the termination of the last voyage of each vessel under the operating-differential subsidy contract or at the end of the contract period with respect to subsidized vessels in idle status at that time, unless such contract is immediately superseded by a new operating-differential subsidy contract with the same operator.

(b) A vessel commencing subsidized operation outside the continental limits of the United States shall be surveyed immediately at her first port of call in the United States, and it shall be incumbent upon the operator to make arrangements with the appropriate Ship Repair and Maintenance Field Office for the conducting of such survey.

§ 272.3 *Subsidy condition survey instructions; general.* Instructions and information relative to conducting subsidy condition surveys as outlined in § 272.2 will be furnished the respective Coast Directors by the Office of Government Aid with informative copies of the notifications to the Department Office of the Division of Ship Repair and Maintenance; however, the Ship Repair and Maintenance Field Offices are authorized when requested by subsidized operators, to conduct condition surveys specified in § 272.2. At the time a subsidy condition survey is to be conducted, the operator is to be invited to arrange for attendance of his representative; however, such representative is not required to be present.

(a) Condition surveys conducted in conformance with requirements of subparagraphs (1), (2) and (3) of paragraph (a) of § 272.2 will be reported on Form MA–58 and shall be prepared in sufficient detail to readily reveal a comprehensive picture of the conditions noted and shall contain indication of the "Record", "Deferred", "Unsighted", and "Builder's and/or Repair Contractor's Responsibility" items. Forms MA–55 Condition Report—Turbine and Gears, MA–56 Tooth Contact Report, MA–57 Drydock Report and MA–59 Diesel Engine Report are to be used as applicable.

(1) *Record items.* This classification shall be indicated in the survey beside all items revealing conditions which, in conformance with good commercial practice do not require immediate repairs.

(2) *Deferred item.* This classification shall be indicated in the survey beside all items which, in accordance with good commercial practice, require repairs, but which are postponed, or items which are classification and/or Coast Guard requirements carrying a grace period for performance thereof.

(3) *Unsighted items.* This classification shall be indicated in the survey beside all items not opened up for internal inspection and those items of the vessel's underwater body which could not be inspected due to the vessel being afloat.

(4) *Builder's and/or repair contractor's responsibility.* This classification shall indicate those items which have been determined to be the builder's or repair contractor's responsibility.

(b) The condition surveys prescribed in subparagraphs (4), (5), (6), and (7) of paragraph (a) of § 272.2 shall be accomplished as follows:

(1) The subsidized operator shall prepare and furnish the appropriate Ship Repair and Maintenance Field Office detailed repair specifications covering all work outstanding on the vessel after completion or repairs for the voyage immediately preceding the survey requirement. The Ship Repair and Maintenance Field Office shall conduct an inspection of the vessel prior to its next sailing for the purpose of assuring that the operator's specifications cover outstanding defects which require attention and which are attributable to subsidized operation. These specifications, together with the findings of the Ship Repair and Maintenance Field Office regarding the contents thereof, shall constitute the subsidy condition survey report required by the Operating-Differential Subsidy Contract.

(2) The Operator shall furnish the Ship Repair and Maintenance Field Office with sufficient copies of the specifications, perpared pursuant to subparagraph (1) of this paragraph, to meet the latter's needs.

(3) In those cases involving discontinuance of a maintenance and repair rate, permanent withdrawal from subsidized service, or contract termination without simultaneous renewal, the work contained in these specifications and verified by the Ship Repair and Maintenance Field Office as defects attributable to subsidized operation, will not be considered for subsidy participation unless it is accomplished not later than the next drydocking period (periodical or otherwise) and providing ownership is retained by the particular operator.

(4) No work except the correction of such defects as are detailed in the specifications will be considered for subsidy participation.

(5) When and as any outstanding items noted in Recapture Condition Surveys are subsequently repaired without termination of contract, they are chargeable to the period covered by the Survey Report.

(c) The operator shall make arrangements with the appropriate Ship Repair and Maintenance Field Office for the conducting of surveys required by this part. The operator shall assist the representative of the Ship Repair and Maintenance Field Office, and shall permit access to all parts of the vessel, its log books and official records.

§ 272.4 *Execution of subsidy condition survey reports.* All survey reports are to be signed by an authorized representative of the operator of the vessel involved, if such representative was in attendance, as well as by the Marine Surveyor who conducted the survey, and by the appropriate representative of the Division of Ship Repair and Maintenance under whose jurisdiction the survey was conducted.

§ 272.5 *Distribution.* It shall be the responsibility of the respective Maritime Administrative Field Office to compile sufficient copies of the subsidy surveys in order to make distribution as follows:

(a) One copy to the Departmental Office Division of Ship Repair and Maintenance, Washington, D. C.

(b) One copy to the operator of the subsidized vessel involved.

(c) One copy to be retained in the files of the Field Office of the Division of Ship Repair and Maintenance under whose jurisdiction the survey was conducted.

§ 272.6 *Subsidy maintenance and repair procedure.* (a) The preparation of specifications, the awarding of maintenance and repair contracts, the inspection and approval of maintenance and repairs as to workmanship, quality, materials and satisfactory completion are all the responsibility of the subsidized operator.

(b) Subsidized operators shall in sufficient time, notify the representative of the Division of Ship Repair and Maintenance in the appropriate Maritime Administration Field Office as to the contemplated date and port of arrival of a subsidized vessel, so that a Marine Surveyor of the Division of Ship and Maintenance may make an inspection of proposed maintenance and repairs, and check repair lists as to the necessity for the work involved.

(c) Subsidized maintenance and repairs shall be awarded on a competitive bid basis whenever practicable or advantageous. However, work awarded on a negotiated basis shall be considered for subsidy participation if the operator furnishes satisfactory reasons for the necessity of awarding the work on other than a competitive bid basis. The Division of Ship Repair and Maintenance shall be invited to have a representative present at the negotiation of price for such work and it shall be his responsibility to determine the justification for performance of maintenance and/or repairs by the subsidized operators on a non-competitive basis, as well as reasonableness of negotiated prices. Findings in this respect shall be incorporated in the letters prepared by the Chief, Ship Repair and Maintenance Branch, transmitting to the Departmental Office in Washington, D. C., the maintenance and repair summaries covering the work involved. However, if the operator has given the district representative advance notice of his intention to negotiate the cost of repairs, the absence of such representative during the negotiations, shall not, in itself, prejudice the right of the operator to receive subsidy on such repairs.

(d) The repairing and maintenance upkeep of subsidized vessels by any subsidiary company, holding company, affiliate company, or associate company of the operator, as differentiated from directly hired shore gang labor, is subject to written approval by the Maritime Administration pursuant to section 803, Merchant Marine Act, 1936, as amended. Requests for such approval shall be addressed to Division of Contracts, Office of Government Aid, Maritime Administration, Washington, D. C. When such work is performed on subsidized vessels by any subsidiary company, holding company, affiliate company, or associate company of the operator, the specifications shall be itemized in detail and item priced.

(e) Maintenance and repair specifications, including those covering work to be performed by operator's shore gang are to be prepared in sufficient detail to permit determination of the reasonableness of prices, and are to include the items necessary for maintaining the vessel in a seaworthy condition, and in an efficient state of maintenance and repair. Contractor's invoices shall contain the contractor's price on each individual item contained in the specifications, and, whenever applicable, the item numbers contained in the applicable subsidy survey shall be indicated against the respective corrective items in the maintenance and repair specifications. Itemized prices shall be furnished for work performed by shore gangs and such item prices shall be further segregated between labor and material charges.

(f) Completion Certificates: A responsible official of the subsidized operator's engineering staff or the vessel's appropriate officers having knowledge of the work involved, shall certify on the Completion Certificate that the work involved was necessary, was satisfactorily completed, and the prices for the work covered thereby are fair and reasonable, or state any exceptions thereto. Form MA–139, "Certificate For Completion of Work", shall be utilized for this purpose and it shall be the responsibility of each subsidized operator to reproduce and furnish his own required supply of these forms. The signature of the Marine Surveyor, Maritime Administration, is not required on this form. The work covered by any Completion Certificate not ex-

ecuted in accordance with the foregoing provisions of this paragraph will not be eligible for subsidy until such deficiency is corrected.

(g) There must be attached one Form MA–139 to each repair specification submitted by the operator for subsidy consideration with the exception that if more than one repair specification is issued to the same contractor, one Completion Certificate may be prepared in detail to cover all specifications issued to that contractor during one repair period.

(h) In all cases where the operator furnishes material to the contractor from (1) ship's stores, (2) operator's warehouse, or (3) direct purchase for a specified job, he shall note on the invoice, requisition slip, expenditure voucher, or other form of transfer memorandum, the contract number and item number on which said material was used. The following form is suggested:

Requisitioned Materials—Received and Installed in connection with:

Voyage No. ------ Item No. ------
Order No. ------

(Operator's representative)

(i) A priced copy of the certified invoice, requisition slip, expenditure voucher, or other form of transfer memorandum shall be attached by operator to the contract referred to and submitted in support of the "Subsidy Repair Summary" (Form MA–140).

(j) Where a requisition covers work in the nature of services such as boiler water treatment, compass adjusting, ship's radio servicing, survey fees, etc., involving a total expenditure of less than $1,000.00, no Completion Certificate is required—an item priced copy of the invoice will suffice.

§ 272.7 *Subsidy repair summaries.* (a) The subsidized operators shall prepare a Repair Summary (Form MA–140) for each terminated voyage, including the voyages of vessels which have been temporarily withdrawn from subsidized service. This summary must be carefully prepared and executed, and must cover all expenditures both domestic and foreign made on requisitions for maintenance and repairs. On vessels which have been permanently withdrawn from the Operating-Differential Subsidy Contract, the operators shall submit repair summaries properly supported by the documents referred to in paragraph (b) of this section, covering only the correction of defects noted in off-subsidy survey reports. Each operator shall furnish his own required supply of this form.

(b) The subsidized operator shall submit the Repair Summary, as well as supplements thereto, supported by copies of all documents pertinent thereto, such as repair specifications, requisitions, completion certificates, invoices, underwriters and classification society surveys, property transfer notice, scrap credit or other forms of credit memoranda, etc., to the appropriate Ship Repair and Maintenance Field Office upon completion of repairs charged to the terminating voyage, and within 120 days after the vessel involved has sailed from her last United States port of call on the next outward voyage.

(c) The appropriate field representative of the Division of Ship Repair and Maintenance shall make a review of the Repair Summary for the purpose of ascertaining that all pertinent and required information and data are attached and in order, and shall transmit the Repair Summary with all supporting data to the Chief, Division of Ship Repair and Maintenance, Washington, D. C.

(d) After review of the Repair Summary and supporting papers, the Departmental Office of the Division of Ship Repair and Maintenance, Washington, D. C., shall furnish the operator with a letter (one copy of which shall be forwarded to the Division of Audits), setting forth determinations as to eligibility of those costs for subsidy participation which are claimed in the "Subsidizable" Total of the MA–140. This letter will also contain qualified approvals on Marine Loss items as outlined in paragraphs (e) and (f) of this section. The operator is to retain this letter with his copy of the repair summary for reference when audit is made of the repair accounts of the respective vessel. Such repair summary, together with the said letter, shall be retained for two years after final release or settlement agreement is completed between the Federal Maritime Board/Maritime Administration and the operator.

(e) To eliminate the necessity of the operators resubmitting domestic repair costs incident to marine losses for technical review and approval by the Departmental Office of the Division of Ship Repair and Maintenance, such repair costs shall be listed on the MA–140 under a separate column headed "Marine Loss", and not included in either the "Subsidizable" or "Non-Subsidizable" totals. The letter referred to in paragraph (d) of this section will contain the determinations as to approval of such marine loss items for subsidy participation; such approvals will be qualified to cover the items providing they are not recoverable from insurance.

(f) Within 120 days after all damage applicable to the "policy voyage" as defined in the operator's insurance policy is repaired, in the case of franchise or deductible not being reached, or within 120 days from the date of underwriters' rejection of insurance claim, the subsidized operator shall advise the respective District Comptroller, by letter, of those costs previously reported on Form MA–140 as Marine Losses which have been qualifiedly approved by the Departmental Office of the Division of Ship Repair and Maintenance and which are not recoverable from insurance. The respective District Comptrollers will verify that such costs have not been recovered.

(g) Within 90 days from the date of the Division of Ship Repair and Maintenance letter mentioned in paragraph (d) of this section, the subsidized operator shall refer to the Chief, Division of Ship Repair and Maintenance, Washington, D. C., for reconsideration any and all cases in which he does not agree with the decisions that a particular maintenance or repair expense shall not participate in subsidy. All decisions, unless appealed to the Division of Ship Repair and Maintenance, Washington, D. C., within the prescribed 90 days, shall be final. In his response to such appeals the Chief, Division of Ship Repair and Maintenance will indicate whether the decision rendered therein is final. Such "final determination" letters will have the concurrence of the Chief, Office of Ship Operations.

(h) The operator may appeal to the Federal Maritime Board pursuant to the provisions of section 6 of Administrator's Order No. 184, if after exercising the appeal provisions stipulated above he does not accept the "final determination" of the Chief, Division of Ship Repair and Maintenance.

(i) The subsidized operator shall prepare an Annual Repair Summary, utilizing Form MA–140A, covering all voyages of subsidized vessels terminating during the current calendar year. This Annual Repair Summary is to be prepared separately for each type of vessel (Cargo, Combination Passenger and Cargo, and Passenger), and further segregated between Maritime Administration types, i. e., C1A steam, C1A diesel, etc., and submitted in duplicate to the Chief, Division of Operating Costs and one copy to the Chief, Division of Ship Repair and Maintenance, at the same time as the voyage repair summary covering the final voyage terminated in the calendar year is submitted. It shall be the responsibility of the subsidized operator to reproduce and furnish his own required supply of this form. These forms are to reflect in their respective totals, all adjustments required pursuant to paragraphs (d), (e), (f) and (g) of this section, which are at hand when the Forms MA–140A are prepared.

§ 272.8 *Categorizing and allocating charges.* (a) The operator shall exercise due diligence and accuracy in categorizing and identifying, both in specifications and in Form MA–140, those items on which subsidy is requested. The categories of work listed on the Form MA–140 are as follows:

(1) *Drydocking and underwater repairs (A–1 and A–2).* To include all expenditures for drydocking and underwater repairs including tailshaft, rudder, sea valves, sea chests, bottom painting, hull repairs and any other work that requires drydocking of vessel.

(2) *Boiler and machinery repairs (B–1).* To include all expenditures for repairs to main and auxiliary machinery, boilers, distilling units, compressors, pumps, piping, etc., and all appurtenances thereto.

(3) *Hull and deck repairs (B–2).* To include all expenditures for repairs other than electrical work, to hull (shell plating above light load line), decks, superstructures, bulkheads, access openings, hull fittings, cargo handling machinery, standing rigging, masts, kingposts, booms, steering and anchor engines and gear, holds, tanks, piping systems, cargo refrigeration, machinery and appurtenances, lifeboats, etc.

(4) *Electrical repairs (B–3).* To include all expenditures for electrical re-

pairs, such as motors, armatures, electrical wiring, lighting, ship's radio, radar, fixed loud speaker and telephone systems, searchlights, fathometer, etc.

(5) *Exterior painting (C–1).* To include the cost of preparation of surfaces for, and painting exterior surfaces of hull (from light load line), decks and deck equipment, superstructure, cargo booms, masts, etc.

(6) *Interior painting (C–2).* To include cost of preparation of surfaces for, and painting interior surfaces of vessel, including public spaces, cabins, machinery spaces, cargo holds, tanks, etc.

(7) *Tank cleaning (C–3).* To include cost of cleaning domestic fresh water and feed water tanks, ballast tanks, fuel oil and lube oil tanks, removal of all dirt and debris from bilges, preparation of surfaces and application of prescribed coating to same.

(8) *Boiler cleaning (C–4).* To include expenditures for cleaning fire and/or watersides of boilers.

(9) *Miscellaneous subsidized repairs and maintenance not classified.* To include cost of recurring inspection fees and repairs and maintenance not classifiable under the above subsidizable subclassifications (subparagraphs (1) to (8) of this paragraph).

(10) *Improvements.* To include costs properly subsidizable in accordance with § 272.9.

(11) *Marine losses.* To include all domestic costs attributable to marine losses, regardless of franchise or deductible, and whether or not recoverable from underwriters (stevedore damage not to be included in this category).

(b) In the event a vessel to which this part is applicable shall have terminated voyages during the calendar year which:

(1) Were made in more than one subsidized service, or

(2) Were made in subsidized service, as well as unsubsidized service while under the Operating Subsidy Agreement, or

(3) Were made in services requiring a reduction of subsidy due to operations in domestic trades, or

(4) Were made in a subsidized service which was affected by subsidy rate changes,

the operator shall be required to allocate the total maintenance (upkeep) and repair costs of the vessel which have been approved by the Division of Ship Repair and Maintenance to all voyages terminating during the calendar year on the ratio which the number of days in each such voyage (determined in accordance with Part 281 of this chapter) bears to the total of the voyage days of the vessel during the year.

(c) During any such year or shorter period, the operator shall be entitled to receive payments on account of Operating-Differential Subsidy on repairs charged to each voyage at the rates determined by the Federal Maritime Board as applicable to the service and on the basis authorized by the Operating-Differential Subsidy Agreements; necessary adjustments shall be made following the close of the year or shorter period, after giving effect to the adjustments required by paragraph (b) of this section.

§ 272.9 *Modifications, alterations, additions and betterments.* (a) Any modifications, alteration, addition or betterment (work of such nature being herein called "improvements") effected during any one or a series of repair periods, whether or not in conjunction with other repairs, the aggregate cost of which does not exceed $50,000, if otherwise eligible, shall be considered for operating-differential subsidy participation, in accordance with the provisions set forth in paragraphs (b) and (c) of this section, provided the vessel is not permanently withdrawn from its subsidy contract within a period of one (1) year after completion of the work.

(b) Any improvement which does not exceed in the aggregate $10,000 is to be treated as operating expenses entitled to operating-differential subsidy participation at the rate in effect at the time that the contract for such improvement is awarded.

(c) Any improvement involving an aggregate cost in excess of $10,000 but not in excess of $50,000, shall be set up as deferred charges, and a proportionate amount charged as operating expenses of succeeding voyages, subsidized and/or non-subsidized. The operating-differential subsidy rate in effect at the time the work is contracted for is to apply on the cost of the proportionate amounts as and when charged to operating expenses of succeeding subsidized voyages. The length of time over which such charges shall be spread, shall be determined by the Departmental Office of the Division of Ship Repair and Maintenance. In determining the length of time over which these charges are to be spread, there shall be taken into consideration the remaining life of the vessel based on a 20-year life expectancy from date of build, or any extension of said period made pursuant to section 607 (b), Merchant Marine Act, 1936, as amended, the probable length of time during which the vessel will be operated in subsidized services, and the probable useful life of such improvements.

(d) Any improvement effected during any one or series of repair periods involving an aggregate cost in excess of $50,000 shall ordinarily be considered capital expenditures. However, consideration will be given to applications, in particular instances, for the treatment of expenditures of this nature in excess of $50,000 as deferred charges entitled to operating-differential subsidy participation in accordance with paragraph (c) of this section, provided such applications are made to the Chief, Division of Ship Repair and Maintenance, Washington, D. C., prior to award of the work involved, who shall, over the signature of the Chief, Office of Ship Operations, refer all such cases to Office of Government Aid with full information and recommendations thereon sufficiently in advance of commencement of the work to permit determination as to the treatment thereof.

(e) Subject to findings in each instance that the work involved constitutes reconditioning or reconstruction expenditures of this nature in excess of $50,000 will be given consideration for construction-differential subsidy, if application is made for such subsidy under the provisions of Title V, Merchant Marine Act, 1936, as amended, and the Federal Maritime Board grants such subsidy prior to the award of such work.

(f) Any contract or work order involving an improvement, the aggregate cost of which is in excess of $5,000.00, shall be supported in its respective repair summary with an explanation by the operator as to the reason for or purpose of, such improvements, and anticipated benefits.

(g) When the operator desires to spread the work incident to any improvement over more than one repair period, he shall make application to the Chief, Division of Ship Repair and Maintenance in writing, outlining the expected benefits of the improvement, the scope of work involved, number of voyages over which the work will be spread and the estimated total cost, and if such application is approved, the operator shall report the actual total cost of such work in the Repair Summary, covering the repair period in which it is finally completed, and shall attach a copy of the approval to the appropriate Summary (Form MA–140).

(h) The provisions of this section shall not be applicable to improvements required to alter, outfit, or otherwise equip a vessel for its intended subsidized service which in the opinion of the Administration should have been effected prior to the initial entry of the vessel into subsidized service. Such improvements shall not be subsidizable, except in accordance with section 501 (c), Merchant Marine Act, 1936, as amended.

(i) The procurement cost of furniture, furnishings, fixtures or any other item in the category of expendable or portable equipment utilized in connection with alterations or additions to a vessel is not eligible for subsidy participation at the maintenance and repair rate.

§ 272.10 *Maintenance (upkeep) and repairs; definition.* (a) All costs not compensated by insurance, if deemed fair and reasonable by the Federal Maritime Board, and otherwise eligible under the provisions of this part, or as it may be subsequently amended, applicable to work performed by domestic ship repair yards or other domestic independent contractors, including work performed by shore gang labor to the extent set forth hereinafter under subparagraphs (2), (3) and (4) of this paragraph, which are necessary to the maintenance, repair or replacement by duplication of, or restoration to satisfactory condition of, damaged or worn parts of vessels, their machinery and equipment (including spare parts) installed as integral parts of vessels, as distinguished from items of a portable or removable nature, shall be eligible for subsidy at the maintenance (upkeep) and repair subsidy rate. (The word "domestic" as used herein, is defined as meaning within the continental limits of the United States.)

(1) Spare propellers and tailshafts, self-contained operable units of machinery or equipment as distinguished

from items of a portable or removable nature, and spare parts purchased to be installed as integral parts of the vessel, shall be eligible for subsidy at the applicable maintenance (upkeep) and repair subsidy rate when placed aboard a subsidized vessel, provided reimbursement therefor be made by the operator to the Government in the event such items are not eventually utilized or installed in the subsidized vessel.

(2) Expenses eligible for subsidy under the maintenance (upkeep) and repair category for work performed by shore gang labor shall be limited to direct labor charges, spare parts, materials, and/or supplies as indicated in subparagraph (3) of this paragraph, and other costs incurred as the result of the payment of direct wages, such as payroll taxes and workmen's compensation insurance required by law, and welfare, pension and vacation fund payments required as a result of collective bargaining, if deemed fair and reasonable by the Federal Maritime Board. Such expenses shall be limited to those directly attributable to items of work that would be eligible for subsidy at the maintenance (upkeep) and repair subsidy rate if performed by an independent contractor aboard or for the subsidized vessel(s).

(3) Materials and/or supplies issued by the operator from ship's inventory, warehouse, or direct purchase to domestic ship repair yards, other domestic independent contractors, or shore gangs which are necessary to the maintenance, repair or replacement by duplication of or restoration to satisfactory condition of, damaged or worn parts of vessels, their machinery and equipment installed as integral parts of vessels, as distinguished from items of a portable or removable nature, shall be eligible for subsidy.

(4) Spare parts issued by the operator from his warehouse or direct purchase to domestic ship repair yards, other domestic independent contractors or shore gangs, shall be eligible for subsidy.

§ 272.11 *Examples of expenses ineligible for subsidy participation at the maintenance and repair rate.* The following are primary examples of expenses (but not limited to), which are ineligible for subsidy participation at the maintenance and repair rate:

(a) "Unsighted," "Deferred," and "Record" items: Repair items correcting conditions noted in "On-Subsidy Surveys" as "Unsighted," "Deferred" and/or "Record," where repairs clearly should have been made prior to the departure from last U. S. Continental port on the first voyage in subsidized service, or prior to the first voyage upon resumption of operation under the respective Operating-Differential Subsidy Agreement, are not eligible for participation in subsidy. The Chief, Division of Ship Repair and Maintenance, Washington, D. C., shall determine whether repairs performed in connection with an item unsighted in the initial "On-Subsidy Survey" are due to attrition after commencement of subsidized operation, or to prior non-subsidized operation, which determination shall be final. It is not the intent to pro-rate, between the periods before and after a vessel initially commences subsidized operation, the cost of individual repairs made or materials supplied.

(b) Overdue classification and inspection requirements: These are items required by the Classification Society or a Government Bureau which were due (grace periods not included) and not completed prior to the first voyage in subsidized service, or prior to the first voyage upon resumption of operation under the respective Operating-Differential Subsidy Agreement.

(c) Foreign repairs: Items of maintenance or repair of whatsoever nature, including insurance repairs, performed outside the continental limits of the United States.

(d) Marine loss: Repairs recoverable from insurance.

(e) Cargo expense: Special cargo fittings of a temporary nature (as differentiated from installations of a permanent nature), dunnage, ceiling, battens, cleaning cargo holds and tanks for cargo, reading and certification of temperatures for refrigerated cargoes, etc.

(f) Stevedore damage: Any damage to the vessel or cargo gear directly attributable to the stevedore proper. (Damage occurring during stevedoring operations, but due to ship's personnel or equipment for which the stevedore is not liable, will, if satisfactorily supported by documentary evidence and if otherwise acceptable, be considered for subsidy participation.)

(g) Special trade requirements: Initial installation of (other than replacement of existing worn or damaged) equipment necessary for the vessel's particular trade route, such as Suez Canal Davit, etc. New requirements coming into effect after vessel's entry into the particular subsidized service, as differentiated from previously established requirements shall be considered for subsidy participation.

(h) Procurement cost of any consumables, expendables or portable equipment when used or installed by crew, or furnished for inclusion in ship's inventory.

(i) Procurement costs, maintenance and repair costs, or replacement costs, incident to portable or expendable equipment.

(j) Apparent excessive maintenance and/or repair costs after operator has had an opportunity to lay before the Administration all relevant facts pertinent thereto. Any such costs determined to be excessive shall not be taken into account for reserve fund or recapture purposes as provided under Part 286 of this chapter as amended from time to time.

(k) Costs included in shore gang labor charges which the Comptroller of the Maritime Administration determines to be "overhead" as prescribed in § 282.900 of this chapter.

(l) Rental of equipment; e. g., compressors, paint floats, etc., for use by shore gangs or ship's crew in carrying out repairs or other work.

(m) Items included in repair summaries and/or supplements not submitted to Ship Repair and Maintenance Field Offices within 120 days after vessel's sailing from her last United States port of call, unless such non-submittal can be proven conclusively by the Operator to be due to circumstances beyond his control.

(n) Items included in appeals to an original determination not submitted by the operator to the Chief, Division of Ship Repair and Maintenance within 90 days of the date of the original determination.

(o) Items included in appeals to the Federal Maritime Board which are not submitted by the operator within 60 days after the date of the "final determination" of the Chief, Division of Ship Repair and Maintenance.

(p) Operational: In general, the types of items disallowed from repair and maintenance subsidy participation under this classification are those where no actual maintenance or repairs in the literal sense of the words are involved, e. g., loading stores, landing and sorting laundry, pilot service, tug charges, removing surplus equipment to warehouse, etc.

(q) Builder's and/or Repair Contractor's liability: Those items adjudged or noted as being builder's and/or repair contractor's guarantee items.

(r) Items of repair that can be definitely and entirely attributed to non-subsidized operation.

(s) Work incident to an improvement spread over more than one repair period for which application to the Chief, Division of Ship Repair and Maintenance was not submitted as required by § 272.9 (g).

(t) Costs incident to Marine Loss not compensated by insurance which are not reported to the District Comptroller in the manner and within the time specified in § 272.7 (f).

§ 272.12 *Definition of "consumables", "expendables", and "expendable equipment."* The words "consumables", "expendables", and/or "expendable equipment", as used in this part are defined in section 3, Part I of Maritime Administration Inventory Manual, Vessel Inventories (issued July–1957 under Authority Management Order No. 627) and as implemented by Maritime Administration Inventory Books—Deck Department Consumable Stores and Expendable Equipment (Form MC 4736A—May 1, 1947), Engine Department Consumable Stores (Form MA 4736B—March 1951), Engine Department Expendable Equipment (Form MA 4736C—March 1951), Steward Department Consumable Stores and Expendable Equipment (Form MA 4736D—March 1951). In case of any conflict between this definition and the other provisions of this order the other provisions shall control.

§ 272.13 *Effective date.* The provisions of this part are applicable to all voyages of subsidized vessels terminating on or after January 1, 1958.

The reporting requirements of this part have been approved by the Bureau of the Budget in accordance with the Federal Report's Act of 1942.

Dated: April 28, 1958.

By order of the Federal Maritime Board/Maritime Administrator.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-3243; Filed, Apr. 30, 1958; 8:50 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 58-396]

[Rules Amdts. 1-2 and 21-13]

PART 1—PRACTICE AND PROCEDURE

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 23d day of April 1958;

The Commission, having under consideration amendments of §§ 1.106, 21.24 and 21.26 of its rules, which concern the consolidation of mutually exclusive applications for hearing; and

It appearing that the amendments herein ordered would conduce to the more orderly and efficient dispatch of Commission business; and

It further appearing that the amendments herein ordered set forth a general statement of policy relative to the consolidation of mutually exclusive common carrier applications for hearing and are procedural in nature, and, therefore, proposed rule-making is not required pursuant to the provisions of section 4 (a) of the Administrative Procedure Act;

It is ordered, That, pursuant to section 4 (i) of the Communications Act of 1934, as amended, §§ 1.106, 21.24 and 21.26 of the Commission's rules are amended, as set forth below, effective the 2d day of June 1958.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Released: April 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

I. Section 1.106 (b) is amended by substituting the following subparagraphs (2), (3) and (4) for present subparagraphs (2) and (3):

(2) In non-broadcast cases, other than common carrier cases, any application that is mutually exclusive with another application or applications already designated for hearing will be consolidated for hearing with such other application or applications only if the later application in question has been filed within 5 days after public notice has been given in the FEDERAL REGISTER of the Commission's order which first designated for hearing the prior application or applications with which such application is in conflict.

(3) In common carrier cases, any application that is mutually exclusive with another previously filed application or applications which may require designation for hearing will be consolidated with such prior filed application or applications at any hearing scheduled thereon only if the later filed application is substantially complete and tendered for filing prior to the close of the business day preceding the date of transmittal of the Commission's notice, pursuant to section 309 (b) of the Communications Act of 1934, as amended, why such prior filed application or applications cannot be granted without a hearing, or within 30 days of the date of public notice of filing of the first prior filed application, whichever date is later. Such section 309 (b) notice will generally not be sent to any party until at least 30 days after public notice is given of the filing of the earliest of the involved prior filed applications. However, when the public interest necessitates that such section 309 (b) notice be sooner transmitted, the Commission will so state in such notice and will take such action at such earlier time as it deems necessary and appropriate.

(4) Any mutually exclusive application filed after the date prescribed in subparagraphs (1), (2), or (3) of this paragraph will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

II. Part 21 of the Commission's rules is amended in the following particulars:

1. Section 21.24 is amended by the addition of a new paragraph (d) to read as follows:

(d) Any mutually exclusive application filed after the date prescribed in § 21.27 (e) will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

2. Section 21.27 is amended by the addition of a new paragraph (e) to read as follows:

(e) An application filed with the Commission that is mutually exclusive with another previously filed application or applications which may require designation for hearing will be consolidated with such prior filed application or applications at any hearing scheduled thereon only if the later filed application is substantially complete and tendered for filing prior to the close of the business day preceding the date of transmittal of the Commission's notice, pursuant to section 309 (b) of the Communications Act of 1934, as amended, why such prior filed application or applications cannot be granted without a hearing, or within 30 days of the date of public notice of filing of the first prior filed application, whichever date is later. Such section 309 (b) notice will generally not be sent to any party until at least 30 days after public notice is given of the filing of the earliest of the involved prior filed applications. However, when the public interest necessitates that such section 309 (b) notice be sooner transmitted, the Commission will so state in such notice and will take such action at such earlier time as it deems necessary and appropriate. An application filed after the date specified herein will be disposed of in accordance with the provisions of § 21.24 (d).

[F. R. Doc. 58-3256; Filed Apr. 30, 1958; 8:54 a. m.]

[FCC 58-399]

[Rules Amdt. 3-112]

PART 3—RADIO BROADCAST SERVICES

REMOTE CONTROL OPERATIONS

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on 23d day of April 1958.

The Commission has under consideration several requests for relief from the requirements of § 3.66 (c) (4) of its rules and regulations which states that: "The station, if authorized to operate with a directional antenna and/or with a power in excess of 10 kw will be equipped so that it can be satisfactorily operated, * * *, on a CONELRAD frequency with a power of 5 kw or not less than 50 percent of the maximum licensed power whichever is the lesser * * *."

It appears that there are instances where the power limitation imposed by this rule would work an undue hardship upon those stations presently engaged in CONELRAD operation as well as other stations wishing to operate by remote control. A number of stations use their auxiliary transmitters for CONELRAD while other stations have purchased and installed separate CONELRAD transmitters. The transmitter power for CONELRAD use has been determined by CONELRAD Field Supervisors on a case-to-case basis and is in several cases less than 50 percent of the authorized power. For example, the present rule would require a 5 kw directional station wishing to operate by remote control to install a 2.5 kw transmitter for CONELRAD use even though it might be authorized to operate with a CONELRAD power of 1 kw. It is believed this would work an undue hardship by requiring in many instances an extra transmitter especially for those stations presently capable of operating with satisfactory CONELRAD power.

We believe that it would be in the public interest to amend the rule so that the determination of the necessary CONELRAD power can be made by the CONELRAD Field Supervisor on a case-to-case basis. A certified statement from the Field Supervisor would be submitted with the application for remote control. This statement would set forth the power that would provide satisfactory service under CONELRAD.

It is administratively convenient and in the public interest to amend the rule and the amendment adopted herein is procedural in nature, and, therefore, prior publication of the notice of proposed rule making pursuant to the provisions of section 4 (a) of the Administrative Procedure Act is unnecessary.

The amendment adopted herein is issued pursuant to authority contained in sections 4 (i) and 303 (r) of the Communications Act of 1934, as amended.

In view of the above: *It is ordered*, That effective May 26, 1958, § 3.66 of the Commission's rules and regulations is amended by the addition of the following provision to paragraph (c) (4): "*Provided, however*, That the power may be less than 50 percent upon certification by the CONELRAD Field Supervisor that such power will provide satisfactory service under CONELRAD."

Section 3.66 (c) (4) as amended reads as follows:

(4) The station, if authorized to operate with a directional antenna and/or with power in excess of 10 kw, will be equipped so that it can be satisfactorily operated in accordance with Subpart G of this part, on a CONELRAD frequency with a power of 5 kw or not less than 50 percent of the maximum licensed power whichever is the lesser and that the necessary switching from the licensed frequency to the CONELRAD frequency can be accomplished from the remote control position: *Provided, however*, That the power may be less than 50 percent upon certification by the CONELRAD Field Supervisor that such a power will provide satisfactory service under CONELRAD.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Released: April 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3257; Filed, Apr. 30, 1958; 8:54 a. m.]

[Docket No. 11374; FCC 58-387]

PART 7—STATIONS ON LAND IN THE MARITIME SERVICES

PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

AVAILABILITY OF FREQUENCIES

Appearances. Joseph E. Keller and Thomas H. Wall, on behalf of the Central Committee on Radio Facilities of the American Petroleum Institute; John Eisenhart, Jr.; and A. L. Stein, on behalf of the American Waterways Operators, Inc.; Leonard W. Tuft and Howard R. Hawkins, on behalf of Radio Corporation of America Communications, Inc.; Norman E. Jorgensen, on behalf of Warner & Tamble Radio Service, Inc.; Byron E. Harrison, on behalf of the Common Carrier Bureau of the Federal Communications Commission; Anne Mooney, on behalf of the General Counsel's Office of the Federal Communications Commission; Irving Brownstein, on behalf of the Safety and Special Radio Services Bureau of the Federal Communications Commission.

PRELIMINARY STATEMENT

1. On April 27, 1955, the Commission adopted a notice of proposed rule making (FCC 55-505; released April 29, 1955) in the above designated docket looking toward amending Parts 7 and 8 of the Commission's rules by deleting the frequencies 6240 and 6455 kilocycles[1] (sometimes hereinafter referred to as "6 megacycle frequencies") from use on the Mississippi River and connecting inland waters (excluding the Great Lakes) and by making the frequency 4372.4 kilocycles available on a full-time basis for ship and coast stations using radiotelephony on the above waters (sometimes hereinafter referred to as the "Rivers" or the "Rivers System"). At the request of several interested parties, the final date for filing comments, originally set at August 5, 1955, was extended to October 31, 1955. Comments were filed by the Central Committee on Radio Facilities of the American Petroleum Institute, the American Waterways Operators, Inc., the Radiomarine Corporation of America (predecessor to Radio Corporation of America Communications, Inc.)[2] and Warner & Tamble Radio Service, Inc. These organizations are sometimes hereinafter referred to as API, AWO, RCAC, and Warner & Tamble, respectively. The comments filed by RCAC and Warner & Tamble also incorporated by reference their respective comments previously filed in closed Dockets 10377 and 10724; dockets which also pertained to changes in radiotelephone frequencies assignable for use by coast and ship stations of the Mississippi River System. All of the aforesaid commenting parties objected to the deletion of the two six megacycle frequencies, contending that the deletion of these frequencies would deprive the Mississippi commercial transportation system of a means of communication which is essential to the efficient operation of the system.

2. After considering all comments, the Commission, on July 6, 1956, adopted a report and order (21 F. R. 5361; FCC 56-648, released July 11, 1956) which amended Parts 7 and 8 of its rules by making the frequency 4372.4 kilocycles available on a full-time basis for ship and coast stations using radiotelephony on the Rivers System, effective August 14, 1956; and by deleting the frequencies 6240 and 6455 kilocycles from the complement of frequencies available for assignment for maritime telephone under Parts 7 and 8, effective February 1, 1957 (the expiration date of the existing licenses then held by the coast stations involved).

3. Timely petitions objecting to the Commission's report and order of July 6, 1956, and requesting a public hearing, a rehearing and/or reconsideration of the action ordered, and a stay of the order in the interim, were filed by AWO, Warner & Tamble, API, G. W. Gladders Towing Co., Inc., Union Barge Line Corporation, Ashland Oil and Refining Co., American Barge Line Company and Southland Towing Company, The Ohio River Company, Ohio Barge Line, Inc., and Radiomarine Corporation of America, on July 31 and August 10, 1956.

4. On January 17, 1957, the Commission adopted an order (FCC 57-68, released January 18, 1957) wherein, after referring to the above-mentioned petitions, it stated that it appeared that additional information with respect to the interference which may be caused to other services by the continued use of the 6 megacycle frequencies for ship-shore public radiotelephony on the Mississippi River System, and with respect to the justification for permitting such use of these frequencies in derogation of the Table of Allocations in the Radio Regulations adopted at Atlantic City in 1947 (63 Stat. 1401 at 1621-1713), would aid the Commission in reaching a decision as to whether the public interest would be best served by a grant or a denial of the above-mentioned petitions. Accordingly, the Commission designated the petitions for hearing on specified issues. The order further provided that that part of the July 6th order which went into effect on August 14, 1956 (removal of daytime only limitation on the use of 4372.4 kc) should remain in force, and that that part of the July 6th order which would have become effective on February 1, 1957 (deletion of 6240 kc and 6455 kc from the Rivers System assignable frequencies), should be stayed pending final determination by the Commission on the said petitions, further action on which was deferred.

5. In response to a petition of AWO, which was supported by API, the Commission, by memorandum opinion and order adopted March 27, 1957 (FCC 57-317, released April 1, 1957), clarified and enlarged the issues as set forth in its January 17, 1957 order of designation. Subsequently, in response to a petition filed by API on May 8, 1957, the Commission adopted a memorandum opinion and order on May 29, 1957 (FCC 57-579, released June 4, 1957), which further amended the issues. As finally amended the issues read as follows:

(a) Whether the continued use of 6240 kc and 6455 kc for ship-shore public telephony on the Mississippi River System is capable of causing, or does in fact cause, harmful interference and if so, to what extent, to stations or other services of the United States or other countries, operating in accordance with said Atlantic City Table of Frequency Allocations. Evidence adduced in response to this issue shall include, but not be limited to, data based upon (1) computed delivered median field strength vs distance data for coast radiotelephony stations of the Rivers System for authorized hours of operation (for all seasons and sunspot conditions), (2) the range of usable field strengths from ship radiotelegraph stations, normally encountered under actual operating conditions at coast radio-

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[1] Sections 7.304 (d) (4) and 8.351 (d) (9) of the Commission's rules provide that use of the frequencies 6240 kc and 6455 kc by ship and coast stations of the Mississippi River System is authorized upon the express condition that interference shall not be caused to the service of any station which may have priority on the frequency or frequencies used for the service to which interference is caused. In order to avoid such interference, transmission on these frequencies during the period from 8:00 p. m. until 5:00 a. m., c. s. t., is prohibited.

[2] On August 31, 1956, RCA Communications, Inc., assumed the communications operations theretofore conducted by Radiomarine Corporation of America.

telegraph stations, and (3) the minimum acceptable desired-to-undesired signal ratios for telegraphy-vs.-telephony; and

(b) What facts, if any, indicate that the Commission would be warranted in issuing an order to permit use of frequencies in derogation of said Atlantic City Table of Frequency Allocations; and

(c) Whether the deletion of the 6 mc frequencies would require an installation of a new system of radio communications for the River and the cost of such system; and

(d) What facts, if any, indicate that such continued use of the frequencies 6240 kc and 6455 kc, and other 6 megacycle frequencies, is distinctively justified, in comparison with other services or systems which have been and have not been required to operate on frequencies which are in accordance with the said Table of Frequency Allocations; and

(e) Whether the utility of a maritime mobile band would be seriously impaired by continued use of these frequencies by these petitioners; and

(f) Whether the utility of a maritime mobile band would be seriously impaired by an accumulation of this and other multiple low power out of band operations, both domestic and international; and

(g) Whether in the light of the evidence adduced pursuant to the foregoing issues it would best serve the public interest, convenience and necessity to authorize the continued use of the presently assigned 6 megacycle frequencies for ship-shore public telephony on the Mississippi River System in derogation of the said Atlantic City Table of Frequency Allocations.

6. As a means of providing ample time in which to make necessary equipment changes, in the event the decision required such changes, the Commission, by order of April 17, 1957 (FCC 57-389, released April 23, 1957), directed the Hearing Examiner to certify the record in the proceeding to the Commission for final decision without preparing either a recommended or initial decision. A petition by AWO for rehearing and reconsideration of the foregoing order was denied by Commission order of June 20, 1957 (FCC 57-668, released June 24, 1957).

7. A pre-hearing conference was held on April 23, 1957, and hearings were held on July 8-10, 15-18, 22-25, and 31, 1957. Proposed findings of fact and conclusions were timely filed by API, AWO, RCAC, Warner & Tamble, and the Commission Staff.[3] Reply findings were filed by API, AWO, RCAC, and the Commission Staff. Oral argument, in which representatives of API, AWO, RCAC, Warner & Tamble, and the Commission's General Counsel participated, was held before the Commission en banc on September 26, 1957. We have examined the disputed rulings of the Examiner and herewith approve them.

FINDINGS OF FACT; ATLANTIC CITY INTERNATIONAL TELECOMMUNICATION CONVENTION (1947); EXTRAORDINARY ADMINISTRATIVE RADIO CONFERENCE (GENEVA, 1951)

8. The Atlantic City International Telecommunication Convention (1947) and the Radio Regulations, to which the United States is signatory,[4] adopted, in general, the concept of exclusive allocations of blocks of frequencies for particular radio services, providing exclusive bands for the Aeronautical Mobile Service, the Maritime Mobile Service, the Amateur Service, the Broadcasting Service, and the Fixed Service, in the radio frequency spectrum between 4 and 25 megacycles. As a result of this new agreement on spectrum allocations, some services gained space and some services lost space. Many of the active on-the-air stations at the time of the Convention were operating on frequencies which were out-of-band under the new Atlantic City Agreement. Specialized studies were made for each of the services other than Amateur, with a view to adopting plans and lists of assignments which could be agreed upon, on an engineered basis. These studies took several years, culminating in the Extraordinary Administrative Radio Conference Agreement (Geneva, 1951,[5] which provided for a world-wide program of frequency adjustments throughout the radio spectrum below 27.5 megacycles. Briefly, this Agreement provided that frequency assignments which were either "out-of-band", or "out-of-plan", or both, would be reassigned to new frequencies in accordance with the Atlantic City allocations and such lists and plans for particular services as the Extraordinary Administrative Radio Conference (EARC) was able to adopt.

9. The Atlantic City Table of Allocations, set forth in Chapter III, Article 5 of the Radio Regulations, makes a world-wide allocation of the frequency band 6200-6525 kilocycles to the Maritime Mobile services. No provision is made therein for the assignment of a 6 megacycle frequency to ship or coast stations for radiotelephony. The Special Rules Relating to Particular Services appear in Chapter III, Article 9, of the Radio Regulations. Section IV therein, entitled Maritime Mobile Service, provides (par. 263) as follows:

The frequency bands allocated to the maritime mobile service between 4,000 and 23,000 kc/s (see article 5), are sub-divided into the following categories:

(a) Ship stations, telephony:
4,063- 4,133 kc/s
8,195- 8,265 kc/s
12,330-12,400 kc/s
16,460-16,530 kc/s
22,000-22,070 kc/s

(b) Coast stations, telephony:
4,368- 4,438 kc/s
8,745- 8,815 kc/s
13,130-13,200 kc/s
17,290-17,360 kc/s
22,650-22,720 kc/s

(c) Ship stations, telegraphy:
4,133- 4,238 kc/s
6,200- 6,357 kc/s
8,265- 8,476 kc/s
12,400-12,714 kc/s
16,530-16,952 kc/s
22,070-22,400 kc/s

(d) Coast stations, telegraphy:
4,238- 4,368 kc/s
6,357- 6,525 kc/s
8,476- 8,745 kc/s
12,714-13,130 kc/s
16,952-17,290 kc/s
22,400-22,650 kc/s

Chapter XIII, Article 33, of the Atlantic City Radio Regulations, Section V, provides (par. 738) that the frequency 6240 kilocycles is included in the passenger shipworking band, and (par. 774) that the frequency 6455 kilocycles is included in the coast station working band. The EARC Agreement, being based upon the Atlantic City Regulations, necessarily continued the international restriction to maritime radiotelegraph of the frequency band 6200-6525 kilocycles. However, the EARC Agreement did provide frequencies for radiotelephone service on the Rivers in the 2, 4, and 8 megacycle bands.

PROVISIONS FOR DEROGATION

10. Chapter III, Article 3, of the Atlantic City Radio Regulations, entitled "General Rules for the Assignment and Use of Frequencies," contains in § 1 and § 3 (paragraphs 86 and 88 of the Regulations) the following provisions for the assignment of frequencies in derogation of the Table of Allocations or other provisions of the regulations:

86 § 1. The countries, members of the Union, adhering to these Regulations, agree that in assigning frequencies to stations which, by their very nature, are capable of causing harmful interference to the services rendered by the stations of another country, they will make such assignments in accordance with the table of frequency allocations and other provisions of this chapter.

88 § 3. A country, member of the Union, shall not assign to a station any frequency in derogation of either the table of frequency allocations given in this chapter or the other provisions of these Regulations, except on the express condition that harmful interference shall not be caused to services carried on by stations operating in accordance with the provisions of the Convention and these Regulations.[6]

Even since the Radio Regulations which were written at the Washington Conference in 1927, provision has been

[3] The Common Carrier Bureau, the General Counsel's Office, and the Safety and Special Radio Services Bureau of the Federal Communications Commission are sometimes hereinafter referred to as "Commission Staff" or "FCC."

[4] 87 countries are bound by the Atlantic City Radio Regulations.

[5] 68 countries have signed the Agreement (hereinafter sometimes referred to as EARC Agreement); 44 have ratified and are bound by the EARC Agreement.

[6] Harmful interference is defined as follows in Article I, Section IV (paragraph 69) of the Atlantic City Radio Regulations:

Harmful Interference: Any radiation or any induction which endangers the functioning of a radionavigation service or of a safety service (2) or obstructs or repeatedly interrupts a radio service operating in accordance with these Regulations.

(2) Any radio service, the operation of which is directly related, whether permanently or temporarily, to the safety of human life and the safeguard of property, shall be considered as a safety service.

made for derogation. Such a provision was not necessary prior to that time because the Regulations prior to 1927 did not include an allocations table as it is known today.

11. Concerning the authorization of station operation under the derogation provisions of the above paragraph 88, the Commission, in its above July 6, 1956, report and order, noted that under some conditions the authorization of station operation at variance with either the Atlantic City Table of Frequency Allocations, or other provisions of the related Radio Regulations, but in accordance with paragraph 88, would not be inconsistent with law. Emphasizing that the effective functioning of the vast and complicated communications system of the United States is dependent in substantial measure upon continued international cooperation, the Commission stated that the derogation provision should be used only if the provisions of international agreement are met and there exists some compelling domestic need for such derogation.

12. The Commission has made no derogation assignments in the radio frequency spectrum between 1800 kilocycles and 25,600 kilocycles. Since the signing of the EARC Agreement, the Commission has pursued a program which is designed to carry out its portion of the EARC program by bringing its own licensees in band. In its effort to carry out this international program, the Commission has cooperated with, and received the cooperation of, other countries. The number of frequency assignment changes required of Commission licensees is indicated by the fact that in the small portion of the spectrum between 6140 kilocycles and 6555 kilocycles licensees of aircraft, coast telegraph, ship telegraph, coastal telephone, ship telephone, Great Lakes coast and ship telephone, aeronautical fixed and aeronautical stations, all had to move to appropriate bands in order to be in-band under the provisions of the EARC Agreement.

RADIOTELEPNONE SERVICE ON THE RIVERS SYSTEM

13. The Mississippi River and connecting inland waters (excluding the Great Lakes) comprise a vast network of waterways, totaling in excess of 5,000 navigable river miles. The existing radiocommunication system on the rivers is substantially as described below.

14. Public coast stations at five primary locations are licensed for radiotelephone communication with ship stations on the rivers:

Call sign	Location	Licensee
WAY	Lake Bluff and Chicago, Ill.	Illinois Bell Telephone Co.
WFN	Louisville, Ky.	Warner & Tamble.
WGK	St. Louis, Mo.	RCAC.
WCM	Pittsburgh, Pa.	RCAC.
WJG[7]	Memphis, Tenn.	Warner & Tamble.

[7] Commission records show that Station WBN also is licensed to Warner & Tamble at Memphis to be operated as a substitute for the normal transmitting facilities for Class II-B Public Coast Station WJG at any time such normal transmitting facilities are inoperative as a result of either an actual emergency or preventive maintenance work.

With the exception of WFN at Louisville, Kentucky, these stations operate on a 24 hour-a-day basis.[8]

15. All of the above-listed stations have available for assignment to them, for ship-shore communications on the Rivers, the following frequencies:

Channel 1—4067 kilocycles.
Channel 2—6455 kilocycles.
Channel 5—2782 kilocycles.
Channel 6—8205.5 kilocycles.
Channel 7—4372.4 kilocycles.
Channel 8—6240 kilocycles.
Channel 9—2182 kilocycles (calling and distress).

Station WCM, Pittsburgh, licensed to RCAC, uses 2182 kc, 2782 kc, 4067 kc, 6240 kc, and 8205.5 kc. The WCM station manager testified that although WCM is also licensed to use 4372.4 kc and 6455 kc, because of received interference, little use is made of 6455 kc as compared to the use made of 6240 kc; and that WCM makes no use of 4372.4 kc because no ships on the inland waterways are equipped to operate on that frequency.

Station WGK, St. Louis, also licensed to RCAC, uses 2782 kc, 4067 kc, 6240 kc, and 6455 kc for scheduling operations.

Of the two Warner & Tamble radiotelephone stations, WJG, at Memphis, uses all of the above-listed frequencies. WFN, at Louisville, uses 8205.5 kc most of the time, but also uses 2782 kc and 2182 kc and, at times 6240 and 6455 kc.

The Illinois Bell Telephone Co. station at Chicago, WAY, makes use of all the above-listed frequencies with the exception of 4372.4 kc.

16. There are more than 4,000 towboats on the Mississippi River System, ranging in size from small push boats of 100 horsepower to boats of more than 5,000 horsepower. An estimated 500 or more of these vessels (one witness estimated 800) are radiotelephone equipped. The following frequencies are available for assignment to these ship stations:

Channel 1—4067 kc.
Channel 2—6455 kc.
Channel 3—2206 kc.[9]
Channel 4—2738 kc (intership).
Channel 5—2782 kc.
Channel 6—8205.5 kc.
Channel 7—4372.4 kc.
Channel 8—6240 kc.
Channel 9—2182 kc (calling and distress).

A ten channel, amplitude-modulated, medium to high-frequency radiotelephone transmitter with 150 watts input and 85 watts output is the equipment used most extensively by towboats on the Inland Waterways. Of the vessels so equipped, about 90 percent would be able to transmit on Channels 1, 3, 4, 5, 6, 8, and 9, whereas about 10 percent would have some variation from this list.

[8] There is, in addition, a public coast station licensed to the Southern Bell Telephone Co., located at New Orleans, La., which uses two megacycle frequencies which are not assigned to the Rivers System, but rather, to the coastal area. Moreover, this section does not use the simplex system in use on the Rivers System. However, the station is used by some river boats which are equipped to communicate on the New Orleans frequencies.

[9] For communication with coast stations located in the vicinity of New Orleans.

17. In general, two types of service are provided by coastal stations on the Mississippi River System. These are "general service," and "dispatch service." General service refers to communications in which the calls are made to a specific boat, or, in the other direction, from a boat to a specific person, or to a specified telephone number via the coastal station. In dispatch service, a shore-to-ship message is received at the coastal station by telegram, TWX, telephone call, or from some person directly, and is delivered to the addressee aboard ship by radiotelephone. In the reverse direction, a message is transmitted from a ship to the coastal station by radiotelephone and is forwarded from that point by land line telephone, TWX (Teletypewriter Exchange Service) or telegram to the addressee without direct communications between the boat and the office ashore.

18. Four of the five above-listed coast stations offer both a "general service" and a "dispatch service." Station WAY, Chicago, offers only a "general service." In addition, the four coast stations (other than WAY, Chicago), periodically broadcast bulletins containing information pertaining to weather conditions, river stages, and data on changes in navigational aids.

19. The fact that the radiotelephone operations on the Rivers System, as here considered, use a simplex system [10] of operation, combined with the availability of a dispatch service, has contributed to the growth of the scheduling technique now in use on the Rivers. Utilizing this technique, the barge lines each make arrangements with a particular coast station to call all of the vessels operated by that barge line on schedules which have been prescribed in advance. Under this system, all of the vessels operated by one company stand by on the same channel at a pre-arranged time. The simplex operation permits each ship to listen in on calls to its sister ships. Each vessel in turn reports regularly its position, as well as routine information with respect to such matters as crew requirements, payroll data, information relative to delivery and pick-up of barges en route, and arrival schedules. Thus, the coast station rapidly obtains reports for the entire fleet, and these can then be passed on to the operating company by landline communication. At the same time, the coast station delivers dispatch messages which the operating company has forwarded to the coast station for delivery at the time of the next schedule. Dispatch messages are forwarded from the operating company to the coast station, or vice versa, by teletype, telegram, or by telephone.

20. The advantage of the above-described method of radiotelephone communication is that it prevents the confusion, loss of time, and needless

[10] A simplex system of operation is one in which both the ships and the coast stations transmit on the same frequency, as contrasted with a duplex operation in which the ships transmit on one frequency, and the coast stations transmit on another frequency. In the latter case two frequencies would be required to maintain one two-way conversation.

congestion of frequencies which would be caused by unscheduled methods of communication. It permits the gathering and evaluation of all information pertinent to a company's operations at one time, assisting in the intelligent and economic direction of those operations. By permitting directions affecting more than one vessel (for example, the exchanging of tows) to be given to all the tows concerned at one time, it lessens the possibility of misunderstanding. It also permits a vessel to discover which of its sister ships in the vicinity cannot be reached because of atmospheric or other conditions, and to assume, with the knowledge of its home office, the responsibility of relaying necessary information to such a ship. The value and efficiency of scheduled type of operations is demonstrated by the fact that RCAC's Pittsburgh station normally communicates on one daily schedule with some 46 vessels, handling 65 or 70 messages within a thirty minute period.

21. Although, as described above, the ships and coast stations on the Rivers System transmit many of their messages during scheduled periods of operation, there are other, or nonscheduled, messages which require an immediate radiotelephone connection between ship and shore at other than the scheduled periods of operation. These include unavoidable emergency messages, concerning such matters as changes in delivery of barges, crew changes, weather conditions, illness, accidents, and the necessity for crew members to contact their homes.

22. Commercial transportation on the Rivers System is an expanding industry which is important to the national economy, and an effective ship-shore radiotelephone system contributes to the efficiency and safety of this transportation system. During 1956 the RCAC stations at Pittsburgh and St. Louis, combined, handled a total of 120,590 dispatch and general messages; a fifty percent increase over the 81,386 such messages handled by these stations in 1952. On the Mississippi River alone (from Minneapolis to the Gulf of Mexico) the total annual traffic in net tons increased from 66,922,954 in 1954 to 94,041,765 in 1955. Fifty percent of this net tonnage was devoted to petroleum and petroleum products. The total ton mileage of all cargo on the Mississippi River alone has increased from 19,351,628,418 in 1950 to 29,318,584,396 in 1955.

23. In general (but subject to seasonal, sunspot, and weather variations), the ranges covered by the two, four, six, and eight megacycles frequencies may be described as follows:

2 Mc—Limited range during daylight hours. Testimony as to the usefulness of these frequencies at night varied from "good" to testimony that at night 2782 kc was effective only in the immediate vicinity of a coast station.

4 Mc—Satisfactory service for distances ranging from 30 to 250 miles from point of transmission during daylight hours; 60 to 800 miles at night; comparatively high noise level.

6 Mc—Satisfactory service for distances ranging from 50 to 800 miles from point of transmission during daylight hours; low noise level.

8 Mc—Satisfactory service for distances ranging from 350 to 500 miles from point of transmission during daylight hours, and over 1300 miles at night; exceptionally low noise level; large skip distance.

CAPACITY OF THE RIVERS USE OF 6 MEGACYCLE FREQUENCIES TO CAUSE HARMFUL INTERFERENCE

24. As indicated in footnote 1, supra, the use of 6240 kilocycles and 6455 kilocycles on the Rivers System is authorized upon the express condition that interference shall not be caused to the service of any station which may have priority on the frequency or frequencies used for the service to which interference is caused. In order to avoid such interference, transmission on these frequencies by radiotelephone stations of the Rivers system is prohibited during the period from 8:00 p. m., until 5:00 a. m., c. s. t.

25. The frequency of 6240 kilocycles, in the band assigned to ship stations for telegraphy, is designated as a passenger ship working frequency. The frequency of 6455 kilocycles is in the coast telegraph station working band. The assignments closest to 6455 kc in terms of geography and frequency separation are 6453 kc at New York (Annapolis), giving a separation of two kilocycles between the two frequencies, and 6456.5 kc at Martinique, giving a separation of 1.5 kc between that frequency and 6455 kc.

26. As compared to the use of the 6 megacycle frequencies on the ocean, there is relatively heavy use of these frequencies by the radiotelephone stations of the Rivers System. The Commission, however, has received no complaints of interference to stations of other countries, the U. S. Government, or other Commission licensees, resulting from the use of 6240 kc and 6455 kc on the Rivers System.

27. The Commission Staff introduced evidence concerning the capability of the continued use of the two 6 megacycle frequencies on the Rivers System to cause harmful interference to stations or other services of the United States or other countries which operate in accordance with the Atlantic City Table of Frequency Allocations. A number of tangible and intangible factors that are relevant in determining whether harmful interference exists, or is being caused, were listed. Important among these factors is the desired-to-undesired signal ratio between A1 radiotelegraphy operating in the presence of A3 radiotelephony. Such signal-to-interference ratios have not been adopted by the Commission or by any other telecommunications organization on an international basis. The only technical standards of this type are the standards adopted by the International Frequency Registration Board in carrying out its duties under Article II of the Atlantic City Radio Regulations. Based on signal ratios contained therein and on theoretical calculations, the Commission Staff gave its opinion that the continued use of 6240 kc and 6455 kc for ship-to-shore public radiotelephony on the Rivers System is capable of causing harmful interference to stations or services operating in accordance with the Atlantic City Table of Frequency Allocations.

28. It was the opinion of an engineering witness for RCAC that there are several factors which militate against the possibility of interference to the reception by passenger ships at sea in the areas specified by the Commision Staff (off the East or Gulf Coasts of the United States) of the above coast radiotelegraph stations operating on 6453 and 6456.5 kilocycles. These factors include: receiver selectivity and the frequency separation between the 6455 kc Rivers frequency and the 6453 and 6456.5 kc coast station frequencies; the fact that the above coast radiotelegraph stations may radiate more power than either the coast or ship stations of the Rivers System; and the geographical separation which may exist as a result of the location of the coast radiotelegraph stations and the possible locations of the passenger ship radiotelegraph stations.

29. RCAC, licensee of stations in both the coastal radiotelegraph and the Rivers radiotelephone services, introduced evidence in support of its contention that there is effective time sharing existing between the above services—that the 6 megacycle river frequencies are used almost exclusively during the daytime, whereas, for operational reasons, the 6 megacycle band is rarely used in the passenger ship radiotelegraph service during the day.

RADIOTELEPHONE COVERAGE ON THE RIVERS SYSTEM WITH AND WITHOUT THE 6 MEGACYCLE FREQUENCIES

30. With the existing complement of 2, 4, 6, and 8 megacycle frequencies, there are some areas on the Rivers System where none of the available frequencies provide satisfactory daytime service at some times of the year. The record evidence concerning radiotelephone operation on the Rivers System with and without the 6 megacycle frequencies may be separated into data derived from theoretical calculations and that derived from actual operating experience.

31. Propagation analysts of the Commission's Staff and RCAC testified that, during certain sunspot, seasonal and hourly conditions, the deletion of the 6 megacycle frequencies would result in the creation of additional gap areas in the coverage of the radio telephone service of the Rivers System. There was differences in the methods of calculation and in the time periods used in the engineering studies upon which this testimony is based. However, seven of the twelve time periods analyzed by the Commission's Staff, and seven of the twenty time periods analyzed by the RCAC, showed that additional gap areas would result from the deletion of the 6 megacycle frequencies from the Rivers System.

32. A study by the Commission staff, which considered the coverage for each of the five Rivers coast stations listed in paragraph 12 above, shows that deletion of the 6 megacycle frequencies from the Rivers complement would, under some conditions, result in additional gaps in the existing coverage of the Rivers radiotelephone system. This study shows

that the additional river miles which would not be covered by the individual coast stations, for the conditions of time, season and sunspot activity cited, would vary from a minimum of 38 river miles to a maximum of 4,078 river miles. The Commission's engineering witness testified that in his belief, in general, the 4 megacycle frequencies cannot close the gaps which would result from the deletion of the 6 megacycle frequencies.

33. Based on data in FCC Exhibits 16 and 18, RCAC demonstrated in its Exhibit 14 that at 0600 c. s. t. of a typical summer day, during a high sunspot year (in June, 1947) no service could be provided without a 6 megacycle frequency on approximately 525 miles of the Ohio River—that, under those conditions, a 6 megacycle frequency is the only frequency which ships on this portion of the Ohio River could use to communicate with the four Rivers System coast radiotelephone stations which are open for service at 0600 c. s. t. It was testified that a portion of the above river-mile distance would receive service from the Louisville radiotelephone station if that station were in operation at 0600 c. s. t. Based on data in its Exhibit 7, RCAC demonstrated in its Exhibit 8 that deletion of the 6 megacycle frequencies from the Rivers complement would result in additional gaps in the existing coverage of the Rivers radiotelephone system which, for the conditions of time, season and sunspot activity concerned, would vary from a minimum of 29 river miles to a maximum of 2164 river miles.

34. Testimony, based on actual operating experience, as to the utility of the 6 megacycle frequencies was given by industry witnesses who communicate by means of the Rivers radiotelephone system. Among other things, these witnesses, who include master pilots, marine superintendents, and managers of Rivers coast radio stations, testified that the 6 megacycle frequencies provide the only available communications in certain dead or gap areas on the Rivers System.

35. Among the gap areas cited by the above witnesses, were the following which a master pilot testified were locations where Channels 1, 4067 kc, and 5, 2782 kc, cannot be used to communicate with any of the Rivers coast radiotelephone stations; where Channel 6, 8205.5 kc, is of extremely limited usefulness; and where a 6 megacycle frequency is of major importance in maintaining communications:

Grand Tower, Ill., to St. Genevieve, Mo. (mile 76–128).
Ohio River (mile 625–700).
Greenville to Natchez, Miss. (mile 360–540).
Cincinnati, Ohio, to Pt. Pleasant, W. Va.
Illinois River near Beardstown, Ill. (mile 35–90).
Burlington, Iowa, to Minneapolis, Minn. (mile 400–853).

This witness stated that the stretch of the Mississippi River from Greeneville, Mississippi to Natchez, Mississippi happens to be a particularly bad spot for most all the channels during the daylight hours and sometimes at night; that occasionally a ship in that area could communicate on Channel 2 (6455 kc); but that, without Channel 2, there would be a period of approximately two days of upstream travel, depending on the speed of the boat, and from 12 to 18 hours traveling downstream, when a ship would be out of radiotelephone communication with any land station.

36. The manager of coast radiotelephone station WCM, Pittsburgh, testified that an area extending from the junction of the Kanawha and Ohio Rivers at Point Pleasant, West Virginia, to Cincinnati, Ohio, was an area wherein vessels cannot be heard by WGM with any degree of consistency on 2782 kc, 4067 kc, or 8205.5 kc between the hours of approximately 8:00 a. m. and 4:00 p. m. due to extremely weak or unreadable signals.

37. Union Barge Line Corporation, a common carrier in interstate and foreign commerce, operates 11 owned towboats, a variety of other towage services furnished by other owners, and more than 300 barges, over more than 3500 miles on the inland waterways of the Mississippi River System and the Intracoastal Waterway. During April, May and June of 1953, Union conducted a test wherein the 6 megacycle frequencies were deleted from, and the frequency 4372.4 kc was installed in, the radiotelephone equipment on board the Union towboat "Beaver." Due to the deletion, direct comparison of the 6 and 4 megacycle frequencies was not possible. However, Union concluded, as a result of the test, that the transmitting characteristics of the new 4 megacycle frequency were the same as those of the 4 megacycle frequency which already was available for Rivers use, and not those more desirable characteristics associated with the 6 megacycle frequencies.

USE OF THE 6 MEGACYCLE FREQUENCIES

38. Evidence as to the use of the 6 megacycle frequencies for nonscheduled communications by Station WAY, Chicago, a Rivers coast station which does not furnish dispatch service, was introduced in FCC Exhibit No. 20. This exhibit shows that during the month of June, 1956, 300 calls were completed on 2782 kc, 81 on 4067 kc, none on 4372.4 kc, 6 on 6240 kc, 40 on 6455 kc, and 2 on 8205.5 kc. The above figures reflect daytime use only of the 6 megacycle frequencies, whereas they reflect 24 hours use of the other frequencies mentioned. The witness who introduced the exhibit expressed his opinion that the daytime use of 6455 kc in comparison with 4067 kc "would be very close." An analysis of tabulations compiled from the logs of Station WJG, Memphis, for the period January 1, 1956, through June 19, 1957, shows an average of over 100 nonscheduled daytime calls for each of the dates tabulated, and that approximately 87 percent of these calls were made on 6 megacycles.

39. With respect to the use of the 6 megacycle frequencies in the scheduling operations of the four stations which offer this service, no tabulated data was introduced concerning the operations of Station WJG at Memphis, or Station WFN at Louisville. RCAC exhibits, listing the schedules of Station WCM, Pittsburgh, and Station WGK, St. Louis, show that WGK uses 4067 kc as its primary frequency for all of its schedules and one or both of the 6 megacycle frequencies as an alternate for all but one of the 39 schedules listed. 2782 kc is the alternate frequency for that one schedule. WCM, Pittsburgh, uses 4067 kc as its primary frequency for 11 of its 16 schedules, 6240 kc for 3, and 2782 kc and 8205.5 kc each for one schedule. #1 alternate frequencies are 8205.5 kc for 8 schedules, 2782 kc for 4 schedules, and 6240 kc for 2 schedules. One schedule has no #1 alternate frequency listed. For #2 alternate frequencies WCM uses 6240 kc for 5 schedules, 8205.5 kc for two schedules, and 2782 kc for one schedule. No #2 alternate frequency is listed for 7 schedules.

40. The Ohio River Company, an authorized common carrier, operates 21 towboats, 12 of which operate in the Ohio Valley and are radiotelephone-equipped, and 519 cargo barges. The Port Captain for The Ohio River Company testified that since August, 1956, 95 percent of that company's morning and afternoon scheduled radiotelephone messages in the Ohio Valley (an estimated 36 messages daily) have been handled on the 6 megacycle frequencies; that these are the only reliable frequencies for communication in the area over which the company operates. He further stated that previously the company had tried using 2, 4, and 8 megacycle frequencies, but these were not adequate for complete coverage and necessitated switching from one frequency to another in conflict with schedules of the St. Louis, Louisville, Memphis, and Chicago stations. The witness testified that this doubled the on-the-air time and caused confusion in the shore stations and on the boats. The foregoing testimony was paralleled by that of the manager of Station WCM, Pittsburgh, who testified that prior to the installation of 6240 kilocycles on the boats of The Ohio River Company WCM used 2782 kc, 4067 kc, and 8205.5 kc in order to contact all of that company's boats during daily schedules at 8:15 a. m. and 3:30 p. m. Considerable frequency shifting was necessary, and the total time consumed during each of the two daily schedules was approximately thirty minutes. Subsequent to the time that all of the above vessels were equipped with 6240 kc, the total elapsed time of each of these schedules seldom is more than fifteen minutes. Eleven of The Ohio River Company boats are equipped with Bell Telephone very high frequency radiotelephones for use in the areas within range of the Telephone Company's shore stations. This equipment provides adequate radiotelephone communication in certain heavy traffic areas, but, because the range of the equipment is limited, The Ohio River Company must depend on the 6 megacycle frequencies for the twice daily position reports, and other daytime calls.

41. The American Barge Line Company, a common carrier on the inland waterways system, operates 24 radiotelephone-equipped boats, and approximately 500 barges. The Port Captain for this company testified that an estimated 75 percent of the traffic handled with company boats during daylight

hours is handled on the 6 and 8 megacycle frequencies, with the use of 8 megacycles limited by its skip characteristics.

42. Some of the user-witnesses testified as to instances when communications had been effected on the 6 megacycle frequencies during emergencies. A towboat grounded near Natchez and damaged, was unable to communicate with the nearest vessel by means of Channels 4 and 5. The witness testified that this location is in the above-listed Greenville-Natchez dead spot area. Finally, by relaying the message for help through a land station, using Channel 2 (6455 kc), the towboat established contact with the vessel and received aid. Another situation involved a collision, with resultant fire on barges and a towboat. After failure to reach shore stations on Channels 1, 6, and 5, firefighting assistance was obtained through the use of Channel 2.

AVAILABILITY OF OTHER RADIOTELEPHONE COMMUNICATION SYSTEMS

43. Several witnesses testified in behalf of Rivers organizations which use or have used very high frequency mobile radiotelephone equipment in their operations. Among these organizations are Federal Barge Lines, Inc., The Ohio River Company, Warner & Tamble Radio Service, Inc., and Coyle Lines, Incorporated. These witnesses reported that such VHF equipment was useful up to 30 to 50 miles at points where VHF facilities are available, but that such facilities are limited, and that even where VHF service exists the operating frequencies are not uniform.

CONCLUSIONS

1. This proceeding stems from the Atlantic City International Telecommunications Convention (1947), to which the United States is signatory, and the provisions therein which necessitate the reassignment of certain radio frequencies. The background of the proceeding, and the hearing issues, are set forth in paragraphs 1–5 of the Preliminary Statement, above. Briefly, the primary matter here presented is whether the Commission should withdraw authorization for use of the frequencies 6240 and 6455 kilocycles between the hours of 5:00 a. m. and 8:00 p. m., c. s. t., for radiotelephone service on the Mississippi River and connecting inland waters (except the Great Lakes), and to substitute therefor the frequency of 4372.4 kilocycles. In implementing the Atlantic City Convention, the signatories have agreed that the assignment of frequencies to stations will be made in accordance with the table of frequency allocations and other provisions of the Regulations attached to the Convention, and that the assignment to the station of any frequency in derogation of the table of frequency allocations or other provisions of the Regulations will not be made, except on the express condition that harmful interference shall not be caused to services carried on by stations operating in accordance with the Convention and the applicable Regulations. Thus, the said operation may be authorized under the provisions of Chapter III, Article 3, § 3, of the Atlantic City Radio Regulations (paragraph 88 thereof) provided harmful interference [11] will not be caused to the services of other stations operating in accordance with said Convention and Regulations.

2. The Rivers System comprises a vast network of waterways, totaling in excess of 5,000 navigable river miles. Commercial transportation on this system is an expanding industry which is important to the national economy, and an effective ship to shore radiotelephone communications system contributes to the efficiency and safety of this transportation industry. There are more than 4,000 towboats on the Rivers System. An estimated 500 or more of these vessels are radiotelephone equipped. Public coast radiotelephone stations at five primary locations are licensed for radiotelephone communication with ship stations on the Rivers.

3. Evidence introduced in this proceeding does not establish that the use of 6240 kilocycles and 6455 kilocycles for ship to shore public radiotelephony on the Mississippi River System, as now authorized between the hours of 5:00 a. m. and 8:00 p. m., c. s. t., has in fact caused harmful interference to stations or other services of the United States or other countries operating in accordance with the Atlantic City Table of Frequency Allocations. Evidence based on a theoretical analysis of signal-to-interference ratios for a radiotelegraph signal in the presence of an interfering radiotelephone signal, was introduced to demonstrate the capability of the Rivers radiotelephone communications system to cause harmful interference. Apart from any disagreement among the parties as to the basis for the calculations involved, this capability is considered in the light of the facts that for operational reasons, the 6 megacycle band is rarely used at present in the passenger ship radiotelegraph service during the hours that the Rivers radiotelephone system is authorized to operate in that band, and that the Commission has received no complaints of interference resulting from the existing Rivers operation. The factual conditions which have been revealed as existing at the time of this proceeding do not support a conclusion that the radiotelephone operations now conducted by the ship and coast stations of the Rivers System on the 6 megacycle frequencies seriously impair the utility of the 6 megacycle maritime mobile band designated in the Atlantic City Table of Frequency Allocations.

4. With the existing complement of 2, 4, 6, and 8 megacycle frequencies, there are some areas of the Rivers System wherein none of the available frequencies provide satisfactory daytime service at some times of the year. The deletion of the 6 megacycle frequencies would create additional gap areas. Evidence based on theoretical calculations establishes that the additional river miles which would not be covered by the individual coast stations, for the period of time, season of the year and sunspot activity cited, would vary from a minimum of 29 river miles to a maximum of 4,078 river miles. Testimony based on the practical experience of user-witnesses also establishes that the proposed deletion would create additional gap areas varying from 55 to 453 river miles in length with respect to which a 6 megacycle frequency is of major importance in maintaining radiotelephone communications. The 4 megacycle frequencies cannot provide service to or from these additional gap areas.

5. The coast radiotelephone stations of the Rivers System, in general, provide two types of service termed "general service," and "dispatch service," which are described in paragraph 17 of our findings of fact above. The availability of the dispatch service and a simplex system of operation has contributed to the growth of the scheduling technique, which, as now in use on the Rivers System, provides a method for the rapid and efficient exchange of communications between vessels operating on that system and the companies which operate those vessels. Between the hours of 5:00 a. m. and 8:00 p. m., c. s. t., the period of time during which their use is authorized on the Rivers System, the 6 megacycle frequencies are important factors in the scheduling operation, both as primary and alternate frequencies. Their deletion, by creating additional gap areas to which neither the 4 megacycle Rivers frequencies nor other existing radio communications systems can provide service, would adversely affect the scheduling technique and the efficient exchange of communications which that technique provides. Similarly, the creation of additional gap areas would adversely affect nonscheduled and emergency communications on the Rivers. It does not appear that an increase in the nighttime communications, utilizing the 2, 4, and 8 megacycle frequencies authorized to the Rivers System, would provide a satisfactory substitute for the type of service which would be lost as a result of the deletion of the 6 megacycle frequencies from that system.

6. The record herein would not support a conclusion that deletion of the 6 megacycle frequencies would require installation of a new method of radio communications for the Rivers System. It does establish, however, that their deletion would adversely affect both the scheduling method now utilized and the transmission of unscheduled messages due to the inability to effectively establish contact between ships in the gap areas and coast stations. The number of individual calls would increase with an overall loss of efficiency and effectiveness as compared with the existing method. There is no evidence establishing a similarity of circumstances between the instant service and other services or systems which have been and have not been required to operate on frequencies

[11] Harmful interference is defined in footnote 6 above.

which are in accordance with the Atlantic City Table of Frequency Allocations.[32]

7. In view of the foregoing, and the entire record in this proceeding, we conclude that it would best serve the public interest, convenience and necessity to authorize the continued use of the frequencies 6240 and 6455 kilocycles for ship-to-shore radiotelephony on the Mississippi River and connecting inland waters (excluding the Great Lakes) between the hours of 5:00 a. m. and 8:00 p. m., c. s. t., in derogation of the Atlantic City Table of Frequency Allocations. So that there will be no misunderstanding as to the conditions under which such derogation is allowed, we emphasize that the said operation, as provided in Chapter III, Article 3, § 3 of the Atlantic City Radio Regulations (par. 88 of the Regulations) is allowed only on the basis that harmful interference [33] will not be caused to services carried on by stations operating in accordance with the provisions of the Atlantic City Convention and the attached Radio Regulations. In this connection, our conclusion here pertains only to the Rivers operation as it exists at the time of this decision. It is not, nor may it be so construed, a conclusion that circumstances may not at some future date warrant discontinuance of the derogation here permitted.

8. During oral argument before the Commission en banc, the counsel appearing on behalf of the Central Committee on Radio Facilities of the American Petroleum Institute stated that the actions of the Commission Staff in this proceeding constituted "* * * a vicious pressure on the use of these 6 megacycle frequencies on the river * * *." Subsequently, counsel modified his language and, finally, in response to the query of a Commissioner, affirmed that he was not casting any aspersions on the integrity of the staff. The Commission previously has had ocassion (KTBS, Inc., 10 Pike & Fischer RR 876c, 877; Station WSOC, Inc., 23 FCC 5 323, 327) to condemn the use of Commission procedures as a vehicle for unsupported, reckless, or unwarranted attacks. We re-emphasize that we will allow vigorous and zealous advocacy, but that counsel should avoid, in Commission proceedings, indulgence in unrestrained and intemperate language, or offensive personalities. As we relate in detail in paragraphs 8–12 of our findings of fact above and summarize in paragraph 1 of our conclusions, this proceeding stems from the Atlantic City International Telecommunications Convention to which the United States is signatory, and the provisions therein which necessitate the re-assignment of certain radio frequencies. The Communications Act of 1934, as amended, places upon the Federal Communications Commission the responsibility for effecting this re-assignment within its jurisdiction. Since the Atlantic City Treaty came into force, the Commission's staff, under Commission instruction and in cooperation with users of the frequencies involved, has commendably carried on a continuing and effective program to bring the extensive radio operations of this country into compliance with the provisions of that international treaty.

Accordingly, it is ordered, This 23d day of April 1958, that: (1) The above-named petitions for rehearing and/or reconsideration are granted to the extent that that part of our order of July 6, 1956 (FCC 56–648; Mimeo No. 30368) which would have become effective on February 1, 1957, and which would have deleted the frequencies of 6240 and 6455 kilocycles from use on the Mississippi River and connecting inland waterways (except the Great Lakes), is cancelled; (2) the above frequencies may be used, under the conditions set forth in paragraph 7 of our conclusions above, in derogation of the Atlantic City Table of Frequency Allocations; and (3) the proceeding in this docket is terminated.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Released: April 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,[34]

[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 58-3258; Filed, Apr. 30, 1958; 8:54 a. m.]

[32] The Commission's Staff offered evidence to show that other services have changed frequencies in compliance with the requirements of the said Table of Allocations. This evidence was disallowed as not being meaningfully responsive to issue (d). The testimony adduced, however, was permitted to stand as an offer of proof. Review of the testimony discloses that it consisted solely of a showing that certain other services have changed frequencies to conform to the Table of Allocations. We have sustained the ruling of the Examiner on this point. No showing was made as to the circumstances surrounding or effects of these changes; whether interference would have existed if not made, whether the changes adversely affected, had no effect, or were beneficial to the service involved. Accordingly, such evidence if admitted, would have established no basis for comparative consideration of those services with that here involved.

[33] Harmful interference is defined in footnote 6 above.

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 916]

[Docket No. AO-247-A5]

MILK IN UPSTATE MICHIGAN MARKETING AREA

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Park Place Hotel, Traverse City, Michigan, beginning at 10:00 a. m., local time, on May 20, 1958, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Upstate Michigan marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposals set forth below have not received the approval of the Secretary of Agriculture.

Proposed by the Michigan Milk Producers' Association:

Proposal No. 1. That § 916.51 (a) be amended by deleting the words "Through June 30, 1958".

Proposal No. 2. That § 916.11 be amended to read as follows:

§ 916.11 *Producer.* "Producer" means any qualified dairy farmer whose milk is received directly from the farm at a pool plant or is diverted to a nonpool plant for the account of a handler or a cooperative association. Milk so diverted for the account of the operator of a pool plant shall be deemed to have been received at the pool plant from which diverted.

Proposal No. 3. That § 916.43 (b) be amended to read as follows:

(b) Skim milk and butterfat disposed of by a handler from a pool plant to a nonpool plant in the form of milk or skim milk shall be Class I utilization if so reported by the handler, or unless the market administrator is permitted to audit the records of receipts and utilization at such nonpool plant, in which case the classification of all skim milk and butterfat at such nonpool plant shall be determined and the skim milk and butterfat transferred from the pool plant shall be allocated to the lowest use during the months of April, May or June and to the highest use during any other month. If all or a portion of the milk so transferred is retransferred to a second nonpool plant, the same conditions of audit, classification and allocation shall apply.

Proposal No. 4. That § 916.74 be amended so that the 5 cent per hundredweight administration assessment will be applicable only to milk utilized in Class I.

[34] Commissioner Lee dissenting.

Proposed by Dairyland Cooperative Creamery Company:

Proposal No. 5. Amend the order to provide for an individual handler pool instead of a marketwide pool, make all necessary changes for the operation of an individual handler pool and delete all provisions with reference to a marketwide pool.

Proposal No. 6. Change the provision with reference to a pool plant as follows:

Pool plant. "Pool plant" means a plant from which either (a) 30 percent or more of the total milk received at such plant during the month with the exception of the months of "July and August" is disposed of in the marketing area as Class I, other than to another pool plant provided that the total quantity distributed on routes operated inside or outside the marketing area is equal to 50 percent or more of producers receipts, or (b) 20 percent or more of the total milk received from dairy farmers at such plant during the month is moved to a pool plant(s) as described in paragraph (a) of this section.

Proposed by Jordan Valley Cooperative Creamery:

Proposal No. 7. That § 916.8 (b) (2) be amended to read:

(2) A supply plant shall be a pool plant in any month in which 30 percent of its receipts from regularly qualified producers are transferred to a pool plant as described in paragraph (a) of this section provided that any supply plant so transferring an average of 30 percent of such receipts during the months of July thru November inclusive shall be a pool plant thru the following November.

Proposed by Inverness Dairy, Karstens Dairy, Nelson's Cloverdale Dairy and Rice's Dairy:

Proposal No. 8. Review the allocation provisions (§§ 916.46 and 916.47) with respect to allocation of producer milk and other source milk in Class II and Class III utilization.

Proposed by Karstens Dairy:

Proposal No. 9. That the pricing structure remain as is.

Proposed by Nelson's Cloverdale Dairy:

Proposal No. 10. Replace present marketwide pooling with individual-handler pools.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 11. Make such changes as may be required to make the entire order, as amended, conform with any amendments thereto which may result from this hearing.

Copies of this notice may be procured from Market Administrator, 916 East Front Street, Traverse City, Michigan, or the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Issued at Washington, D. C., this 25th day of April 1958.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 58-3235; Filed, Apr. 30, 1958; 8:49 a. m.]

[7 CFR Part 968]

[Docket No. AO-173-A9]

MILK IN WICHITA, KANS., MARKETING AREA

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Wichita, Kansas, on November 19, 1957, pursuant to notice thereof issued on October 30, 1957 (22 F. R. 8853).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on March 19, 1958 (23 F. R. 1932) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. Increasing the price of milk used to produce cottage cheese;
2. Modifying the base-rating provisions;
3. Revising the rate of butterfat differentials to producers; and
4. Reducing the in-area sales percentages contained in the pool plant standards.

Proposals to alter the Class I price differential, provide an automatic supply-demand adjustment to the Class I price, increase the Class I butterfat differential, and enlarge the marketing area were included in the notice of hearing. However, no evidence was introduced in support of any of these proposals and no further reference to them is made herein.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Cottage cheese.* Skim milk and butterfat used to produce cottage cheese curd or in creaming the curd should be classified as a separate class, and the price per hundredweight, 3.8 percent basis, should be increased by 80 cents per hundredweight. The butterfat differential in the new class would be the same as in the present Class I, namely 20 percent over the butter value. Under the present order, milk used to produce curd is Class II, at the same price as applies to other manufacturing uses. The cream dressing for cottage cheese, however, is in Class I and the Class I price and butterfat differential apply both to the butterfat and skim milk content of such cream dressing.

In 1956 supplies of producer milk in the Wichita market were adequate to cover the production of both the curd and cream dressing produced by the regulated handlers. However, in July through October 1957 supplies of producer milk were substantially lower in relation to Class I sales than in the same months of 1956. At times during these months some handlers had insufficient supplies of milk to satisfy their Class I requirements. The cooperative association investigated the possibility of shifting Grade A milk from handlers who needed it only for the manufacture of cottage cheese to the handlers who needed it for Class I purposes. Their investigation included the possibility of substituting manufacturing grade milk for the production of cottage cheese. Such substitution was specifically prohibited by the health authorities having jurisdiction in the city of Wichita and a zone extending 3 miles beyond city limits. In the circumstances, the association arranged for the importation of approved supplies of Grade A milk from distant sources in preference to attempting to develop additional permanent supplies of producer milk in the local milkshed. The territory in which cottage cheese is required to be produced from Grade A milk covers virtually all of the Wichita marketing area as defined in the order. It is estimated that approximately 60 percent of the cottage cheese curd manufactured by regulated handlers in recent months is distributed within the marketing area, the remaining 40 percent being distributed outside of the area.

In view of the clear requirement that cottage cheese curd be produced from Grade A milk, such milk should bear as much of the extra cost of producing Grade A milk as circumstances will permit. It is not feasible however, to apply Class I prices to the skim milk used to produce curd because of the great increase in product cost which would be involved. For example, in October 1957 the value per hundredweight of skim milk in Class II was only $0.574 whereas the Class I value of skim milk was $2.249.

In the circumstances, it is appropriate that the price of cottage cheese ingredients be 80 cents above the present Class II price, and that the butterfat differential be the same as the present Class I differential. At the average class prices during November 1956 through October 1957, the last 12 months preceding the hearing, the 80 cents is equal to the producer proposal for a 60-cent increase in the price of skim milk used to produce cottage cheese curd while leaving the cream dressing in Class I. By placing both the curd and dressing in a new Class II, the complete market data on the product will be reflected in one class and the value of the skim milk will be the same in the curd as in the dressing. During the 12-month period the Class I price averaged $5.072, the fat differential was 7.2 cents and the resulting fat value was 74.3 cents per pound and the skim value was $2.336 per hundredweight. The comparable Class II figures were $3.231, 6.9 cents, 69.6 cents, and 60.9 cents. The new Class II figures would have been $4.031, 7.2 cents, 73.3 cents, and $1.295, respectively.

The 80 cents will raise the ingredient cost per pound of creamed cottage cheese by 2.5 cents (from 6.19 to 8.69 cents) at the average prices which prevailed during the 12-month period. (This calculation assumes that the cream dressing contains 12 percent butterfat. This in turn would require using

one-third pound of dressing with two-thirds pound of curd to make a pound of creamed cottage cheese containing 4 percent butterfat. The two-thirds pound of curd at the standard figure of 6.25 pounds of skim milk per pound of curd could be made from 4.167 pounds of skim milk.) The 2.5 cents represents a 40 percent increase in the ingredient cost of creamed cottage cheese, but would represent a smaller percentage increase in the price to consumers if manufacturing and selling margins are not increased.

The attached order places skim milk used in the cream dressing or to produce cottage cheese curd in a new Class II and assigns all other manufacturing uses (which presently constitute Class II) in Class III. The new Class III price would be the same as the present Class II price and the new Class II price, as indicated above, would be 80 cents per hundredweight above the Class III price, using the same butterfat differential as in the present Class I. The closing inventory should be left in Class III milk with the other former Class II uses. Any inventory reclassification charge which might be payable pursuant to § 968.70 (c) would then be at a rate equal to the difference between the new Class II and the Class III prices on inventory reclassified as Class II and to the difference between the Class I and Class III prices on inventory reclassified as Class I.

Related modifications: These revisions affect other provisions of the order. Perhaps the most fundamental effect involves the possible regulation of plants selling cottage cheese curd in the marketing area but having no fluid milk sales. Such an operation was described in the record. It was indicated that cottage cheese would be sold in the market from the plant of the Marion Creamery Company and that, if so, the dairy farmers would have to obtain Grade A permits. Under the type of operation contemplated by this firm, or similar operations by any other firm, the dairymen would be "approved dairy farmers" as presently defined in the order. The plant would also be an "approved plant" since the Grade A approval of plant and farms would permit the sale of fluid milk even though cottage cheese might be the only item actually so sold. The plant operator would be a handler but the operation would not qualify as a pool plant, since no Class I sales would be made in the marketing area. (The Marion Creamery Company indicated the possible development of fluid milk sales in the area and these would, of course, affect the pool plant status.) As a handler operating a nonpool plant, a seller of cottage cheese would be principally concerned with § 968.62 of the Wichita order which provides for compensatory payments. Paragraph (a) now prescribes payment of the difference between Class I and manufacturing (present Class II) prices on other source milk classified as Class I. The reference to Class II should be changed to Class III. Furthermore the paragraph must be applied to sales of cottage cheese if the higher price is to be made fully effective and equitable as between all handlers. The payment on the butterfat and skim milk equivalent used to produce cottage cheese should be at the difference between the Class II and Class III prices. Paragraph (b) of § 968.62 is stated in general terms and needs no conforming change.

The provisions relating to compensatory payments by handlers subject to other Federal orders, § 968.61 (b) require similar changes as described above for § 968.62 (a), and for similar reasons.

Under the terms of the present order, a handler operating a nonpool plant would also be subject to the administrative assessment on his entire supply of milk from approved dairy farmers. If such a nonpool plant was also a nonpool plant under another Federal order, it could be subject to some administrative expense thereunder. Such duplicate charging of administrative expense should be avoided. This problem can be met by specifying that administrative expenses due under the Wichita order from the operator of a nonpool plant can be offset by any administrative fund payments under other Federal orders.

Class II should be defined to include reconstituted skim milk, as well as that used in fluid form. Any nonfat dry milk or condensed skim milk used to produce cottage cheese would have to come from sources approved for fluid use, and the producers supplying the original skim milk should receive the Class II price for the original weight of skim milk rather than for the weight of the concentrated product.

The revised classification also affects the base-rating plan. Under the usual circumstances prevailing in the market, the quantity of base milk exceeds the Class I sales and the price of excess milk is equal to the Class II price. However, it is provided that in the event the quantity of excess milk is greater than the Class II sales, the remainder is valued at the Class I price. Under the three classes of use provided herein, the same principle can be followed by assigning excess milk first to Class III, then Class II, and finally to Class I.

2. *Base-rating plan.* During the months of June and July of 1958 and 1959 payments to producers should be made at a single uniform price rather than at base and excess prices also, producers delivering to newly qualified pool plants should have their bases computed on the same basis as at established pool plants. In all other respects the present base-rating plan should remain unchanged.

The base-rating plan is designed to encourage producers to level out the seasonality of production. Producers establish their bases during the months of normally lowest production and are then discouraged from over-production during the following base-using months by the fact that they are paid only a manufacturing price for milk produced in excess of their established bases. Under the present order, the four months of August through November constitute the base-forming period and the bases established during these months are used in paying producers during the following calendar year.

In the Wichita market, producers have responded to the base-rating plan to the extent that deliveries per producer per day are comparatively high during the base-forming months. During the past several years, the principal problem relative to seasonality of production is that production has been seasonally lowest during June and July, the two months immediately preceding the base-making period. For example, in 1957, daily production per producer averaged only 510 pounds during June and July as compared with 585 pounds for the four base-forming months of August through November. (Official notice is hereby taken of the daily average production for November 1957.) Stated another way, daily average production in June and July averaged only 87 percent of production during the following base-forming months. In 1956, the corresponding percentage was 84, in 1955 it was 88, and in 1954 it was 88.

The pattern of lowest production during June and July seems clearly established. It is reasonable to assume that the base-rating plan is a major factor contributing to this pattern, but the extreme variations in temperature, rainfall, crop yields and pasture conditions may also have affected seasonality of production during recent years. In recognition of the numerous factors involved, producers proposed that changes in the base-rating provisions be limited to a two-year period.

The two principal changes considered at the hearing were to suspend the operation of the base and excess plan during the months of June and July and to include July as one of the base-forming months. The principal problem in connection with the inclusion of July as a base-forming month is the production difficulties encountered in freshening cows during hot weather and the shorter average period of lactation of cows freshened at this time of year. Also, deliveries per producer have averaged lower in each month of August through November 1957 than in the corresponding months of 1956. This indicates a possible change in producer reactions to the base-rating plan, and other factors. On the other hand, elimination of the base-paying provisions during the months of June and July would encourage increased output by heavier feeding, or the purchase of dairy cows, particularly on the part of new shippers or those who may have failed to establish an adequate base for one reason or another. It is concluded that elimination of base-paying provisions for the months of June and July 1958 and 1959 will furnish an appropriate incentive to expand output during these months. The two-year experience will give ample opportunity to restudy the problem and reconsider the base-rating provisions by amendment action. This can be accomplished by amending § 968.16, the definition of base milk, to provide that all deliveries of milk during the specified months be considered as base milk. It follows that for such months there will be no excess milk; the computation prescribed in paragraphs (d), (e), and (f) of § 968.71 will be zero, and the announced uniform price for base milk will actually be the price for all milk.

Plants may become newly qualified as pool plants in any month of the year. In such event the producers supplying the new plant should have their bases computed from their deliveries to such plant during the previous base-making period rather than being required to form discounted bases as new producers, pursuant to § 968.90 (b) (2) of the present order. The essential difference is that the shippers to the new pool plant would have become Wichita producers by handler action whereas single new shippers at established pool plants become producers by their own choice. The bases can be computed from plant records or other evidence acceptable to the market administrator.

Bulk tank milk is picked up on an every-other-day schedule in this market. The base-setting provision should be clarified to apply to days of production rather than delivery days.

3. *Butterfat differential to producers.* The butterfat differential to producers for milk containing more or less than 3.8 percent butterfat should correspond to the weighted average values of the butterfat and skim milk in producer milk utilized by handlers in each class.

At present, the Class I butterfat differential is 20 percent over the Chicago butter price, the Class II differential 15 percent over, and the producer differential 20 percent over. The change would, therefore slightly reduce the producer differential. The use of a weighted differential follows the same plan as the payment of a uniform price to all producers. Each producer shares equally in the total value of the handlers' Class I and Class II utilization, at the basic test of 3.8 percent butterfat. It is equally appropriate that each should receive the average utilization value of the butterfat and skim milk components for milk testing above or below 3.8 percent.

4. *Pool plants.* The minimum percentage of total receipts which must be sold in the marketing area as Class I to qualify as a pool plant should be reduced to 10 percent in the months of April, May, June, and July and to 15 percent in the other months of the year.

Under the present order, Class I sales in the defined marketing area must be at least 20 percent of the receipts during April, May, June, and July and 25 percent in the other months of the year. In addition, at least 40 percent of plant receipts must be sold for Class I purposes, either within or outside the marketing area, during the months of April, May, June, and July and 50 percent in the other months. It was not proposed that these latter percentages be modified.

The principal reasons for lowering the in-area percentages is that sales territories of milk distributors have increased substantially. In Wichita and other markets in the region and throughout the United States, fluid milk processing and bottling plants have grown larger and the sales territories covered by each have been greatly expanded. A Wichita handler might continue to sell a substantial volume of Class I milk within the defined marketing area but might lose status as a pool plant if the volume of out-of-area sales increased. Thus, without any significant change in his association with the market, the plant might lose status as a pool plant. It is concluded, therefore, that the percentage of in-area sales should be reduced.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing agreement regulating the handling of milk in the Wichita, Kansas, marketing area", and "Order amending the order regulating the handling of milk in the Wichita, Kansas, marketing area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of February 1958 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order regulating the handling of milk in the Wichita, Kansas, marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington, D. C., this 25th day of April 1958.

[SEAL] DON PAARLBERG,
Assistant Secretary.

Order[1] Amending Order Regulating Handling of Milk in Wichita, Kansas, Marketing Area

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Sec.
968.45 Computation of the skim milk and butterfat in each class.
968.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

968.50 Basic formula price to be used in determining Class I prices.
968.51 Class prices.
968.52 Handler butterfat differential.

APPLICATION OF PROVISIONS

968.60 Producer-handlers.
968.61 Handlers subject to other orders.
968.62 Handler operating an approved plant which is not a pool plant.

DETERMINATION OF UNIFORM PRICE OF PRODUCERS

968.70 Net pool obligations of handlers operating pool plants.
968.71 Computation of uniform prices for base milk and excess milk.

PAYMENTS

968.80 Time and method of payment.
968.81 Producer butterfat differential.
968.82 Producer-settlement fund.
968.83 Payments to the producer-settlement fund.
968.84 Payments out of the producer-settlement fund.
968.85 Adjustment of errors in payments.
968.86 Marketing services.
968.87 Expense of administration.
968.88 Termination of obligation.

BASE RATING

968.90 Determination of daily base.
968.91 Base rules.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

968.100 Effective time.
968.101 Suspension or termination.
968.102 Continuing power and duty of the market administrator.
968.103 Liquidation after suspension or termination.

AGENTS

968.110 Agents.

AUTHORITY: §§ 968.1 to 968.110 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c.

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

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

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

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

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

DEFINITIONS

§ 968.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

§ 968.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 968.3 *Wichita, Kansas, marketing area.* "Wichita, Kansas, marketing area" means all the territory within the corporate limits of the City of Wichita, Kansas, and the territory within Delano, Kechi, Minneha, Riverside, Waco, Gypsum, Park, Payne and Wichita Townships, and the City of Eastborough, all in Sedgwick County, Kansas.

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

§ 968.5 *Approved dairy farmer.* "Approved dairy farmer" means any person who holds a currently valid permit or license issued by the Health Department of the City of Wichita or of Sedgwick County for the production of milk to be disposed of as Grade "A" milk, or produces milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases as Type II, No. 1, or Type III, No. 1 which is received at a plant supplying Class I milk to such an institution or base in the marketing area.

§ 968.6 *Producer.* "Producer" means any approved dairy farmer, other than a producer-handler, whose milk is received at a pool plant or is diverted from a pool plant by the handler who operates such pool plant, or by a cooperative association, to a plant which is not a pool plant for the account of such handler or cooperative association. "Producer" does not mean any approved dairy farmer with respect to milk received by a handler who is partially exempted from the provisions of this part pursuant to § 968.61.

§ 968.7 *Approved plant.* "Approved plant" means any plant (a) approved by the health authorities of the City of Wichita, Kansas, or of Sedgwick County, Kansas, for the handling of milk to be disposed of for fluid consumption as milk in the marketing area at which milk is received from approved dairy farmers, or (b) supplying to any agency of the United States Government located within the marketing area Class I milk products accepted as meeting the requirements of Type II, No. 1 or Type III, No. 1.

§ 968.8 *Pool plant.* "Pool plant" means any approved plant other than that of a producer-handler.

(a) During any of the months of March, April, May, or June within which such plant disposes of as Class I milk an amount equal to 40 percent or more of such plant's total receipts of milk from approved dairy farmers and disposes of as Class I milk on routes in the marketing area an amount equal to 10 percent or more of such plant's total receipts from approved dairy farmers;

(b) During any of the other months within which such plant disposes of as Class I milk an amount equal to 50 percent or more of such plant's total receipts of milk from approved dairy farmers and disposes of as Class I milk on routes in the marketing area an amount equal to 15 percent or more of such plant's total receipts from approved dairy farmers; and

(c) For the purpose of this definition the following shall apply:

(1) Milk diverted from an approved plant for the account of the handler operating such approved plant shall be considered a receipt at the approved plant from which it was diverted;

(2) Milk for which a cooperative association which does not operate a plant is defined as the handler pursuant to § 968.9 (b) shall be deemed to have been received by such cooperative association at a pool plant; and

(3) Milk transferred as Class I milk from an approved plant to another approved plant shall be credited as a Class I disposition as follows:

(i) Except as provided in subdivision (ii) of this subparagraph, milk so transferred will be credited as a Class I disposition of the transferring plant only to the extent that classification as Class I milk is required pursuant to § 968.44 (a) (2);

(ii) In any case in which the entire quantity of Class I milk disposed of in packages of a particular size and form is received in such packages from another approved plant all such Class I disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate Class I disposition of the receiving plant.

§ 968.9 *Handler.* "Handler" means: (a) Any person in his capacity as the operator of an approved plant; and

(b) Any cooperative association with respect to:

(1) The milk of any producer which such cooperative association causes to be diverted to an unapproved plant for the account of such cooperative association;

(2) The milk of any producer delivered to the approved plant of another handler during the same month in which such cooperative association is the handler pursuant to subpagaraph (1) of this paragraph with respect to any milk of such producer; and

(3) The milk of any member producer delivered for the account of such cooperative association to the approved plant of another cooperative association.

§ 968.10 *Cooperative association.* "Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

§ 968.11 *Producer-handler.* "Producer-handler" means any approved dairy farmer who operates an approved plant, but who receives no milk from other approved dairy farmers.

§ 968.12 *Market administrator.* "Market administrator" means the person designated pursuant to § 968.20 as the agency for the administration of this part.

§ 968.13 *Producer milk.* "Producer milk" means all skim milk and butterfat produced by a producer, which is received at a pool plant either directly from such producer or from other handlers.

§ 968.14 *Other source milk.* "Other source milk" means all skim milk and butterfat other than that contained in producer milk.

§ 968.15 *Route.* "Route" means any delivery (including delivery by a vendor or a sale from a plant or a plant store) of milk or any milk product classified as Class I milk pursuant to § 968.41 (a), other than a delivery to any milk processing plant.

§ 968.16 *Base milk.* "Base milk" means producer milk received by handlers from a producer which is not in excess of such producer's daily base determined pursuant to § 968.90 multiplied by the number of days during the month for which milk was received from such producer: *Provided*, That during the months of June and July of 1958 and 1959 all producer milk received by handlers from a producer shall be considered as base milk: *And provided further*, That with respect to any producer "on every-other-day" delivery to a pool plant the days of nondelivery shall be considered as days of delivery for the purposes of this section and of § 968.90.

§ 968.17 *Excess milk.* "Excess milk" means producer milk received by handlers from a producer which is in excess of base milk received from such producer during the month.

MARKET ADMINISTRATOR

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

§ 968.21 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

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

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

(d) To recommend to the Secretary amendments thereto.

§ 968.22 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date upon which he enters upon his duties execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in the amount and with surety thereon satisfactory to the Secretary;

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

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

(d) Pay out of funds provided by § 968.87 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 968.86) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties.

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

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

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

(h) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who within 10 days after the date upon which he is required to perform such acts, has not:

(1) Made reports pursuant to §§ 968.30 to 968.32, or

(2) Made payments pursuant to §§ 968.80 to 968.86.

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

(1) On or before the 5th day of each month the minimum price for Class I milk computed pursuant to § 968.51 (a) and the Class I butterfat differential pursuant to § 968.52 both for the current month; and the minimum prices for Class II and Class III milk computed pursuant to § 968.51 (b) and (c) and the Class II and Class III butterfat differentials pursuant to § 968.52 (b) and (c), all for the previous month;

(2) On or before the 10th day of each month the uniform price computed pursuant to § 968.71 and the butterfat differential computed pursuant to § 968.81 both for the previous month;

(j) Prepare and disseminate such statistics and information as he deems advisable and as do not reveal confidential information; and

(k) On or before the 12th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers in each class by each handler who in the previous month received milk from members of such cooperative association.

REPORTS, RECORDS, AND FACILITIES

§ 968.30 *Periodic reports.* On or before the 7th day after the end of each month each handler, except a producer-handler, shall, with respect to milk or milk products which were received or produced by such handler during such month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(a) The quantities of skim milk and butterfat contained in milk received from each producer or approved dairy farmer, and the number of days for which milk was received from each producer;

(b) The quantities of skim milk and butterfat contained in receipts of milk, and milk products from other handlers;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk (except Class III products disposed of in the form in which received without further processing or packaging by the handler);

(d) The utilization of all skim milk and butterfat the receipt of which is required to be reported pursuant to this section;

(e) The pounds of skim milk and butterfat contained in all milk, skim milk, and cream and other Class I products on hand at the beginning and at the end of the month;

(f) Such other information with respect to the receipts and use of milk as the market administrator may request, including a separate statement of skim milk and butterfat disposed of as Class I milk on routes within the marketing area.

§ 968.31 *Payroll reports.* On or before the 20th day after the end of each month each handler shall submit to the market administrator his producer payroll for such month which shall show for each producer and each approved dairy farmer:

(a) His total deliveries of base milk and total deliveries of milk in excess of base milk;

(b) The average butterfat content of his milk; and

(c) The net amount of such handler's payments to such producer or approved dairy farmer with the prices, deductions, and charges involved.

§ 968.32 *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 shall require.

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

(a) The receipts of producer milk and other source milk and the utilization of such receipts;

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

(c) Payments to producers and cooperative associations; and

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

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

CLASSIFICATION

§ 968.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received within the month by a handler which is required to be reported pursuant to § 968.30 shall be classified by the market administrator pursuant to the provisions contained in § 968.41 to § 968.46.

§ 968.41 *Classes of utilization.* Subject to conditions set forth in §§ 968.43 and 968.44, classes of utilization shall be:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of in the form of milk, skim milk, butterfat, flavored milk, flavored milk drinks, yogurt, cream, cultured sour cream, any mixture (except bulk ice cream mix) of cream and milk or skim milk, (2) used to produce concentrated (including frozen) milk, flavored milk or flavored milk drinks disposed of for fluid consumption neither sterilized nor in hermetically sealed cans, and (3) all other skim milk and butterfat not specifically accounted for as Class II or Class III milk.

(b) Class II milk shall be all skim milk (including the skim milk equivalent of concentrated products) and butterfat used to produce cottage cheese.

(c) Class III milk shall be all skim milk and butterfat: (1) Used to produce butter, cheese, plain or sweetened condensed or evaporated milk, spray or roller process nonfat dry milk solids, powdered whole milk, ice cream, ice cream mix, frozen desserts, aerated cream, eggnog, casein or margarine; (2) in cream frozen and stored; (3) used for starter churning, wholesale baking and candy making; (4) disposed of as livestock feed; (5) in skim milk dumped after prior notification to and opportunity for verification by the market administrator; (6) in shrinkage up to 2 percent of producer receipts to be prorated pursuant to § 968.42; (7) in shrinkage of other source milk; and (8) in inventory at the end of the month as milk, skim milk, cream (except frozen) or any product specified in paragraph (a) of this section.

§ 968.42 *Shrinkage.* If producer milk and other source milk are both received at a pool plant, the shrinkage of skim milk and butterfat at such plant shall be prorated between the producer milk and other source milk. For the purpose of prorating shrinkage, skim milk and butterfat in milk delivered directly from producers' farms to another handler shall be included as a receipt of the handler to whom such milk and butterfat was delivered, and excluded from receipts of the originating handler.

§ 968.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 968.44 *Transfers.* Skim milk and butterfat transferred or diverted from an approved plant shall be classified:

(a) At the class mutually indicated in writing to the market administrator by both handlers on or before the 7th day after the end of the month which such transaction occurred, otherwise as Class I milk, if transferred or diverted in the form of milk, skim milk or cream to the approved plant of another handler, subject in either event to the following conditions:

(1) The receiving handler has utilization in such class of an equivalent amount of skim milk and butterfat, respectively; and

(2) Such skim milk or butterfat shall be classified so as to allocate to producer milk the highest-priced possible utilization in the two plants.

(b) As Class I milk if transferred in the form of milk, skim milk, or cream to a producer-handler.

(c) As Class I milk if transferred or diverted in the form of milk, skim milk or cream to an unapproved plant located more than 250 miles from the approved plant by the shortest highway distance as determined by the market administrator, except that (1) cream so transferred may be classified as Class III milk if its utilization as Class III milk is established through the operation of another Federal order for another milk marketing area; or (2) cream so transferred with prior notice to the market administrator, and with each container labeled or tagged with a certificate of the transferor that such cream is sold as "Grade C cream for manufacturing only", may be classified as Class III milk, subject to such verification of alternative utilization as the market administrator may make.

(d) As Class I milk, if transferred or diverted in the form of milk, skim milk or cream to an unapproved plant distributing fluid milk, cream or cottage cheese and located less than 250 miles from the pool plant from which transferred, unless the market administrator is permitted to audit the records of receipts and utilization at such unapproved plant, in which case the classification of all skim milk and butterfat received at such unapproved plant shall be determined and the skim milk and butterfat transferred from the approved plant shall be allocated to the highest use remaining after subtracting, in series beginning with Class I milk, receipts of skim milk and butterfat at such unapproved plant direct from dairy farmers who the market administrator determines constitute the regular source of supply for fluid usage of such unapproved plant in markets supplied by such plant.

(e) As Class III milk, if transferred or diverted in the form of milk, skim milk or cream to an unapproved plant, located not more than 250 miles from the approved plant, and which does not distribute fluid milk, fluid cream, or cottage cheese, except that where such unapproved plant is operated by a person who is also a handler or an affiliate of a handler, (1) the market administrator shall be permitted to audit the records of receipts and utilization at such unapproved plant, and (2) to the extent that skim milk or butterfat is disposed of from such unapproved plant to any other milk plant in the form of milk, skim milk or cream, skim milk or butterfat so transferred or diverted to such unapproved plant shall be classified as if moved directly from the approved plant to such other milk plant.

(f) Skim milk or butterfat transferred to a nonpool plant from which fluid milk, skim milk or cream is transferred to a pool plant shall be subject to reclassification to the extent of the amount so transferred from such nonpool plant.

§ 968.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator

shall correct for mathematical and for other obivous errors the report of receipts and utilization submitted by each handler and shall compute the pounds of skim milk and butterfat in each class for such handler.

§ 968.46 *Allocation of skim milk and butterfat classified.* After making the computation pursuant to § 968.45 the market administrator shall determine the classification of milk received from producers as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk determined pursuant to § 968.41 (c) (6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received from other pool plants in a form other than milk, skim milk or cream according to its classification pursuant to § 968.41;

(3) Subtract from the remaining pounds of skim milk, in series beginning with the lowest priced utilization the pounds of skim milk in receipts of other source milk;

(4) Subtract from the remaining pounds of skim milk in series beginning with the lowest priced utilization, the pounds of skim milk in inventory at the beginning of the month in the form of milk, skim milk, cream (except frozen) or any product specified in § 968.41 (a);

(5) Subtract from the remaining pounds of skim milk in each class the skim milk received from other handlers in the form of milk, skim milk or cream according to its classification as determined pursuant to § 968.44 (a);

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

(7) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk received from producers, subtract such excess from the remaining pounds of skim milk in series beginning with the lowest priced utilization. Any amount so subtracted shall be called "overage."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

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

MINIMUM PRICES

§ 968.50 *Basic formula price to be used in determining Class I prices.* The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section.

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department divided by 3.5 and multiplied by 3.8:

Present Operator and Location

Borden Company, Mount Pleasant, Michigan.
Carnation Company, Sparta, Michigan.
Pet Milk Company, Wayland, Michigan.
Pet Milk Company, Coopersville, Michigan.
Borden Company, Orfordville, Wisconsin.
Borden Company, New London, Wisconsin.
Carnation Company, Richland Center, Wisconsin.
Carnation Company, Oconomowoc, Wisconsin.
Pet Milk Company, New Glarus, Wisconsin.
Pet Milk Company, Belleville, Wisconsin.
White House Milk Company, Manitowoc, Wisconsin.
White House Milk Company, West Bend, Wisconsin.

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

(1) From the simple average as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the United States Department of Agriculture during the month, subtract 3 cents, add 20 percent thereof and multiply by 3.8.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray, and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the United States Department of Agriculture, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.962.

§ 968.51 *Class prices.* Subject to the provisions of § 968.52, the minimum prices per hundredweight to be paid by each handler for milk received at his plant from producers during the month shall be as follows:

(a) *Class I milk.* The basic formula price for the preceding month plus $1.65.

(b) *Class II milk.* The price per hundredweight shall be the Class III price for the month, plus 80 cents.

(c) *Class III milk.* The price per hundredweight shall be the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph.

(1) The average of the prices reported to have been paid or to be paid for ungraded milk of 3.8 percent butterfat content received from farmers during the month at the following plants for which prices have been reported to the market administrator or the United States Department of Agriculture.

Present Operator and Location

Arkansas City Cooperative Milk Association, Arkansas City, Kansas.
Bennett Creamery Co., Ottawa, Kansas.
Page Milk Company, Coffeyville, Kansas.
Pet Milk Company, Iola, Kansas.

(2) The average price reported by the United States Department of Agriculture for the current month for milk for manufacturing purposes, f. o. b. plant, United States, adjusted to a 3.8 percent butterfat basis by direct ratio.

§ 968.52 *Handler butterfat differential.* If the average butterfat test of Class I, Class II or Class III milk as calculated pursuant to § 968.46 is more or less than 3.8 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization for each one-tenth of one percent that such average butterfat test is above or below 3.8 percent, a butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale selling price per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the United States Department of Agriculture during the month specified below by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) *Class I milk.* Multiply such price for the preceding month by 0.120;

(b) *Class II milk.* Multiply such price for the current month by 0.120;

(c) *Class III milk.* Multiply such price for the current month by 0.115.

APPLICATION OF PROVISIONS

§ 968.60 *Producer-handlers.* Sections 968.40 to 968.46, 968.50 to 968.52, 968.61, 968.62, 968.70, 968.71 and 968.80 to 968.88 shall not apply to a producer-handler.

§ 968.61 *Handlers subject to other orders.* In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another milk marketing agreement or order issued pursuant to the act, the provisions of this part shall not apply except as follows:

(a) The handler shall, with respect to his total receipts of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) If the price which such handler is required to pay under the other Federal order to which he is subject, for skim milk and butterfat which would be classified as Class I or Class II milk under this part is less than the price provided by this part, such handler shall pay to the market administrator for deposit into the producer-settlement fund with respect to all skim milk and butterfat so disposed of (except to other handlers) within the marketing area, an amount equal to the difference between the value of such skim milk or butterfat as computed pursuant to this part and its value as determined pursuant to the other order to which he is subject. Such payments shall be made on or before the 12th day after the end of each delivery period.

§ 968.62 *Handler operating an approved plant which is not a pool plant.* Each handler who operates an approved plant which is not a pool plant during a month, shall in lieu of the payments required pursuant to § 968.80 to § 968.85, pay to the market administrator, for the producer-settlement fund, on or before the 25th day after the end of such

month, the amount resulting from the computations of either paragraph (a) or (b) of this section, whichever is less.

(a) The product of the quantity of milk received by such handler which was (1) disposed of during the month in the marketing area on routes as Class I milk by the difference between the Class I and the Class III prices or (2) used to produce cottage cheese so disposed of by the difference between the Class II and Class III prices.

(b) Any plus amount resulting from the following computation: From an amount equal to the net pool obligation which would be computed pursuant to § 968.70 for such handler for such month if such handler operated a pool plant deduct the gross payments made by such handler to approved dairy farmers for milk received during such month.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 968.70 *Net pool obligations of handlers operating pool plants.* The net pool obligation for milk received during each month by each handler from producers at pool plants shall be a sum of money computed as follows:

(a) Multiply the pounds of milk in each class computed pursuant to § 968.46 (c) by the applicable respective class prices (adjusted pursuant to § 968.52) and add together the resulting amounts;

(b) Add an amount computed by multiplying the pounds of overage deducted from each class pursuant to § 968.46 (a) (7) by the applicable respective class prices;

(c) Add a reclassification charge equal to the difference between the Class I and Class III prices or the Class II and Class III prices, respectively, for the current month for skim milk and butterfat in inventory which is subtracted from Class I or Class II pursuant to § 968.46 (a) (4) and the corresponding step of § 968.46 (b) which is not in excess of the skim milk and butterfat remaining in Class III milk in the previous month pursuant to § 968.46 (a) (5) and the corresponding step of § 968.46 (b);

(d) For any other source skim milk or butterfat subtracted from Class I milk pursuant to § 968.46 (a) (3) and the corresponding step of § 968.46 (b) add an amount equal to the difference between the value of such skim milk and butterfat at the Class I price and at the Class III price and for any skim milk or butterfat so subtracted from Class II, add an amount equal to the difference in values of such skim milk and butterfat at the Class II price and the Class III price, unless the handler can prove to the satisfaction of the market administrator that such other source skim milk and butterfat was used only to the extent that producer milk was not available either directly from producers or at the plant of another handler at the applicable class price.

§ 968.71 *Computation of uniform prices for base milk and excess milk.* For each month, the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk as follows:

(a) Combine into one total the values computed pursuant to § 968.70 for all handlers who made the reports prescribed in § 968.30 and who made the payments pursuant to §§ 968.80 and 968.83 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated cash balance in the producer-settlement fund;

(c) Subtract if the average butterfat content of the milk included in these computations is greater than 3.8 percent; or add if such average butterfat content is less than 3.8 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.8 percent by the butterfat differential computed pursuant to § 968.81 and multiplying the resulting figure by the total hundredweight of such milk;

(d) Compute the total value on a 3.8 percent butterfat basis of the excess milk included in these computations by assigning such milk in series beginning with the lowest-priced utilization, multiplying the quantity so assigned to each use classification by the applicable class price, and adding together the resulting amounts;

(e) Divide the total value of excess milk obtained in paragraph (d) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.8 percent butterfat content received from producers;

(f) Subtract the value of excess milk obtained in paragraph (d) of this section from the value of all milk obtained in paragraph (c) of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(g) Divide the amount obtained in paragraph (f) of this section by the total hundredweight of base milk included in these computations;

(h) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (g) of this section. The resulting figure shall be the uniform price for base milk of 3.8 percent butterfat content received from producers.

PAYMENTS

§ 968.80 *Time and method of payment.* Each handler operating a pool plant shall make payment as follows:

(a) On or before the second working day following the 10th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the applicable uniform prices computed pursuant to § 968.71 (h) and (e) for such producers' deliveries of base milk and excess milk, respectively, adjusted by the butterfat differential computed pursuant to § 968.81, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date, such handler has not received full payment pursuant to § 968.84 he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 27th day of each month, to each producer (1) to whom payment is not made pursuant to paragraph (c) of this section, and (2) who is still delivering Grade A milk to such handler, an advance payment with respect to milk received from him during the first 15 days of such month computed at not less than 110 percent of the Class III price for 3.8 percent milk for the preceding month, without deduction for hauling.

(c) On or before the 11th day after the end of each month and on or before the 24th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 11th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 968.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer.

(d) On or before the 10th day after the end of each month, to each cooperative association, with respect to receipts of milk for which such cooperative association is defined as the handler pursuant to § 968.9 (b) (2) or (3), not less than the value of such milk as classified pursuant to § 968.44 (a) at the applicable respective class price(s).

§ 968.81 *Producer butterfat differential.* In making payments pursuant to § 968.80 (a) the uniform prices per hundredweight shall be adjusted for each one-tenth of one percent that the average butterfat content is above or below 3.8 percent by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a), (b), and (c) of § 968.52, weighted by the pounds of butterfat in producer milk in each class, the result being rounded to the nearest tenth of a cent.

§ 968.82 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 968.83, 968.85, 968.61 and 968.62, and out of which he shall make all payments to handlers pursuant to §§ 968.84 and 968.85: *Provided*, That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform price for each month, the market administrator shall compute the amount by which each handler's net pool obligation is greater or less than the sum

obtained by multiplying the hundredweight of milk of producers by the appropriate prices required to be paid producers by handlers pursuant to § 968.80 and adding together the resulting amounts, and shall enter such amount on each handler's account as such handler's pool debit or credit, as the case may be, and render such handler a transcript of his account.

§ 968.83 *Payments to the producer-settlement fund.* On or before the 11th day after the end of each month, each handler shall pay to the market administrator for payment to producers through the producer-settlement fund, the amount by which the net pool obligation of such handler is greater than the sum required to be paid producers by such handler pursuant to § 968.80.

§ 968.84 *Payments out of the producer-settlement fund.* (a) On or before the 12th day after the end of each month, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid producers by such handler pursuant to § 968.80 is greater than the net pool obligation of such handler.

(b) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 968.85 *Adjustment of errors in payments.* (a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 968.83, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 968.84, the market administrator shall, within 5 days make payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure.

(b) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation payment to such producer was in an amount more than was required to be paid pursuant to § 968.80, no handler shall be deemed to be in violation of § 968.80 if he reduces his payment to such producer next following discovery of such error by not more than such overpayment.

§ 968.86 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler shall deduct 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 968.80 (a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 12th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 968.80 (a) as are authorized by such producers, and, on or before the 12th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

§ 968.87 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler with respect to all milk received from approved dairy farmers during the month, shall pay to the market administrator, on or before the 12th day after the end of such month, an amount not exceeding 4 cents per hundredweight, which amount shall be determined by the market administrator subject to review by the Secretary. In the case of any handler operating a nonpool plant which is also subject to the assessment of administrative expense under another order, the payments due under this section shall be reduced by the amount of administrative expense payments under the other order.

§ 968.88 *Termination of obligation.* The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the 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 contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

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

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

BASE RATING

§ 968.90 *Determination of daily base.* (a) The daily average base of each producer who regularly delivered milk to a handler for 60 days or more during August through November of the next preceding calendar year shall be computed by the market administrator by dividing the total pounds of milk received by a handler from such producer during such months by the number of days within the period during which such producer made regular deliveries of milk in such months, or 90, whichever is greater: *Provided*, That in the case of producers delivering milk to a pool plant which was not a pool plant during all of the preceding months of August through November a daily average base for each such producer shall be computed pursuant to this paragraph on the basis of his verifiable deliveries of milk to such plant during the period August through November preceding the month in which the plant became a pool plant.

(b) The daily average base of each producer for whom no daily base may be established pursuant to paragraph (a) of this section shall be computed by the market administrator as follows:

(1) Multiply such producer's daily average deliveries of milk during the current month by the percentage that total deliveries of base milk in the current month by producers for whom daily bases are computed pursuant to paragraph (a) of this section are to total deliveries of milk in the current month by all producers; and

(2) For the months of January through July only, divide the result obtained in subparagraph (1) of this paragraph by 2.

§ 968.91 *Base rules.* (a) Any producer who ceases to deliver milk to a

handler for a period of more than 30 consecutive days shall forfeit his base. In the event such producer thereafter commences to deliver milk to a handler he shall be allotted a daily base computed in the manner provided in § 968.90 (b).

(b) A landlord who rents on a share basis shall be entitled to the entire daily base to the exclusion of the tenant if the landlord owns the entire herd. A tenant who rents on a share basis shall be entitled to the entire daily base to the exclusion of the landlord, if the tenant owns the entire herd. If the cattle are jointly owned by the tenant and landlord, the daily base shall be divided between the joint owners according to ownership of the cattle when such share basis is terminated.

(c) A producer, whether landlord or tenant, may retain his base when moving his entire herd of cows from one farm to another: *Provided*, That at the beginning of a tenant and landlord relationship the base of each landlord and tenant may be combined and may be divided when such relationship is terminated.

(d) Base may be transferred only under the following conditions: (1) In case of the death of a producer, his base may be transferred to a surviving member or members of his family who carry on the dairy operations, and (2) on the retirement of a producer, his base may be transferred to an immediate member of his family who carries on the dairy operations.

(e) The base of two producers may be combined in the case of forming a partnership, or may be divided in the case of the dissolution of a partnership.

(f) For the purposes of this section and § 968.90 only, the term "producer" shall include any person who has been a producer as defined in § 968.6 but whom the City of Wichita or Sedgwick County has suspended temporarily for failure to produce milk in conformity with the applicable health regulations of the City of Wichita or Sedgwick County, Kansas.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 968.100 *Effective time.* The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to § 968.101.

§ 968.101 *Suspension or termination.* Any or all of the provisions of this part, or any amendment to this part, may be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary shall give and shall, in any event, terminate whenever the provisions of the act cease to be in effect.

§ 968.102 *Continuing power and duty of the market administrator.* (a) If, upon the suspension or termination of any or all provisions of this part there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any handler, 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.

(b) The market administrator or such other person as the Secretary may designate, shall (1) continue in such capacity until removed, (2) from time to time account for all receipts and disbursements and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary execute 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 thereto.

§ 968.103 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds shall be distributed to the contributing handlers and producers in an equitable manner.

AGENTS

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

[F. R. Doc. 58-3237; Filed, Apr. 30, 1958; 8:49 a. m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 20]

[Draft Release No. 58-2A]

KNOWLEDGE, EXPERIENCE, AND SKILL REQUIREMENTS FOR APPLICANTS FOR PRIVATE AND COMMERCIAL PILOT CERTIFICATES

SUPPLEMENTAL NOTICE OF PROPOSED RULE MAKING

The Bureau of Safety circulated as Civil Air Regulations Draft Release No. 58-2 on February 15, 1958 (23 F. R. 1014) proposed amendments to Part 20 of the Civil Air Regulations on the subject: "Knowledge, Experience, and Skill Requirements for Applicants for Private and Commercial Pilot Certificates." Reference is made to the draft release for a full explanation of the purpose and background of the proposed rules.

The draft release stated that all persons desiring to participate in the making of the proposed rules should submit comment to the Civil Aeronautics Board prior to April 18, 1958.

The Bureau has been requested by interested persons to extend the date for return of comment so that they may have additional time to secure certain data necessary to support their comment on the proposed amendments. They have raised certain questions relating to particular aspects of the proposal which they would like to explore with the aviation industry. Such questions concern the availability of flight instructors, the availability of training aircraft equipped with a minimum of instruments necessary to maintain proper attitude of the aircraft, and any additional cost and the extent of such additional cost for equipment to provide at least one such training aircraft. Since such data will greatly aid in giving proper considerations to the issues raised by the proposals, it appears that the requested extension for the return date of comment will serve a useful purpose.

Accordingly, the Bureau is extending the time for submission of comment with respect to Civil Air Regulations Draft Release No. 58-2, and the Bureau will consider written comment submitted not later than July 15, 1958. Comments should be submitted in duplicate and addressed to the Civil Aeronautics Board, Bureau of Safety, Washington 25, D. C.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601-610, 52 Stat. 1007-1012, as amended; 49 U. S. C. 551-560)

Dated at Washington, D. C., April 23, 1958.

By the Bureau of Safety.

[SEAL] OSCAR BAKKE, *Director.*

[F. R. Doc. 58-3254; Filed, Apr. 30, 1958; 8:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 16]

[Docket No. 12406; FCC 58-407]

LAND TRANSPORTATION RADIO SERVICES

NOTICE OF PROPOSED RULE MAKING

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission proposes to amend its rules governing the Land Transportation Radio Services to delete the exception provided applicants who are associations of owners of private automobiles to the requirements of frequency coordination contained in § 16.9. At the time § 16.9 was adopted there was only one frequency available to such applicants on a regular basis and it was, therefore, not necessary for them to coordinate their frequency selection.

3. However, with the adoption of the rule changes in Docket Nos. 11992, 11993 and 12169, which provide additional fre-

quencies for the use of associations of owners of private automobiles, it becomes necessary that applicants for those frequencies coordinate their frequency selection as provided in § 16.9. Accordingly, it is proposed to amend §16.9 by deleting the following words from the first paragraph: "Except for applications in the Automobile Emergency Radio Service proposing to use a frequency made available under provisions of § 16.503 (b) * * *"

4. The foregoing proposed amendment is issued under authority of sections 4 (i) and 303 of the Communications Act of 1934, as amended.

5. Any interested person who is of the opinion that the proposed amendment should not be adopted or should not be adopted in the form set forth herein, and any person desiring to support this proposal, may file with the Commission on or before May 26, 1958, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments in reply to the original comments may be filed within 10 days from the last day for filing said original data, views, or arguments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established. The Commission will consider all such comments prior to taking final action in this matter, and if comments are submitted warranting oral argument, notice of the time and place of such oral argument will be given.

6. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: April 23, 1958.

Released: April 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3259; Filed, Apr. 30, 1958; 8:54 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Foreign Assets Control

IMPORTATION OF CERTAIN MERCHANDISE DIRECTLY FROM HONG KONG

AVAILABLE CERTIFICATES BY THE GOVERNMENT OF HONG KONG

Notice is hereby given that certificates of origin issued by the Department of Commerce and Industry of the Government of Hong Kong under procedures agreed upon between that Government and the Foreign Assets Control are now available with respect to the importation into the United States directly, or on a through bill of lading, from Hong Kong of the following additional commodity:

Garden peas.

[SEAL] ELTING ARNOLD,
Acting Director,
Foreign Assets Control.

[F. R. Doc. 58-3287; Filed, Apr. 30, 1958; 8:56 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The Department of the Air Force has filed an application, Serial No. Fairbanks 019378, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. The applicant desires the land for an addition to the Tatalina Air Force Station.

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P. O. Box 1050, Fairbanks, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

Tatalina River-Takotna Area

Beginning at a point on the west boundary of an area withdrawn by Public Land Order No. 731 which is also the northeast corner of an area withdrawn by Public Land Order No. 815, at approximate Latitude 62°55'44" N., Longitude 156°01'12" W.; thence by metes and bounds,

West, 600 feet;
North, 538.1 feet;
East, 600 feet;
South, 538.1 feet to the point of beginning.

Containing 7.41 acres, more or less.

RICHARD L. QUINTUS,
Operations Supervisor.

[F. R. Doc. 58-3251; Filed, Apr. 30, 1958; 8:53 a. m.]

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The National Park Service has filed an application, Serial Number A. 042044 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws including the mining and the mineral leasing laws. The applicant desires the land for an Administrative and Headquarters Site for the Katmai National Monument.

For a period of 60 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

KING SALMON AREA

Parcel 1

From USC and GS monument B6 being on the center line of NS Runway Station 0+36.5 go S. 3°25' E 1147.05 feet to a point which is identical with the NE corner of the reserve created for the U. S. Fish and Wildlife Service by Public Land Order No. 309 of January 5, 1946; thence S 27°00' W on the easterly boundary of said reserve 400 feet to the Point of Beginning;

thence S 62°59' E 450 feet;
thence S 27°01' W 450 feet;
thence N 62°59' W 450 feet to the easterly line of said withdrawal;
thence N 27°01' E on said easterly line 450 feet to the point of beginning, provided there shall be reserved therefrom an easement 20 feet in width for an existing road along the westerly boundary of the said described land.

Containing approximately 4.65 acres.

Parcel 2

From USC and GS monument B6, being on the center line of NS Runway Station 0+36.5, go S 3°25' E 1147.05 feet to a point which is identical with the NE corner of the reserve created for the U. S. Fish and Wildlife Service by Public Land Order No. 309 of January 5, 1946; thence S 27°00' W on the easterly boundary of said reserve 400 feet to the Point of Beginning;

Thence S 27°01' W. 1191.24 ft to right bank of Naknek River;
Thence N 58°53' W 250.80 ft. along the right bank of Naknek River;
Thence N 27°01' E 1173.30 ft.;
Thence S 63°00' E 250.00 ft. to the point of beginning.

Containing 6.78 acres more or less.

DONALD T. GRIFFITH,
Acting Operations Supervisor,
Anchorage.

[F. R. Doc. 58-3220; Filed, Apr. 30, 1958; 8:45 a. m.]

Bureau of Reclamation

MINIDOKA PROJECT, IDAHO

ORDER OF REVOCATION

Pursuant to the authority delegated by Departmental Order No. 2765 of July 30, 1954 (19 F. R. 5004), I hereby revoke the Departmental order of March 18, 1908, insofar as said order affects the following-described lands provided, however, that such revocation shall not affect the withdrawal of any other lands by said order or affect any other orders withdrawing or reserving the lands hereinafter described:

BOISE MERIDIAN

T. 8 S., R. 22 E.,
Sec. 31, SE¼SE¼SW¼.

The area described contains 10 acres.

N. B. BENNETT, Jr.,
Acting Assistant Commissioner.

[Idaho 09025]

APRIL 25, 1958.

I concur.

1. The lands lie about six miles southwest of Kimama Butte, at an elevation of approximately 4,600 feet. Vegetation consists of big sage, cheat grass, native blue grass, Idaho fescue and weeds. The soil is a moderately deep lava ash quite free of rocks.

2. No application for the lands may be allowed under the homestead, desert-land, small tract, or any other nonmineral public-land law unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon the consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

3. Subject to any valid existing rights and the requirements of applicable law, the lands are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public-land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the Act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284 as amended), presented prior to 10:00 a. m. on May 31, 1958, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on August 30, 1958, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public-land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on August 30, 1958, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

4. The lands have been open to applications and offers under the mineral-leasing laws. They will be open to location under the United States mining laws beginning at 10:00 a. m. on August 30, 1958.

5. Persons claiming veterans preference rights must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

EDWARD WOOZLEY,
Director,
Bureau of Land Management.

[F. R. Doc. 58-3221; Filed, Apr. 30, 1958; 8:45 a. m.]

NEWLANDS PROJECT, CALIFORNIA-NEVADA

ORDER OF REVOCATION

APRIL 3, 1958.

Pursuant to the authority delegated by Departmental Order No. 2515 of April 7, 1949 (14 F. R. 1937), I hereby revoke Departmental orders of July 2, 1902, August 26, 1902, July 9, 1904, June 27, 1907, August 13, 1908 (two orders), July 9, 1910, June 24, 1912, and October 18, 1940, insofar as said orders affect the following described lands; provided, however, that such revocation shall not affect the withdrawal of any other lands by said orders or affect any other orders withdrawing or reserving the lands hereinafter described:

MOUNT DIABLO MERIDIAN

T. 19 N., R. 14 E.,
Sec. 20, E½SE¼;
Sec. 21, lots 1 and 2, N½SW¼ and SE¼;
Sec. 23, SE¼;
Sec. 24, 25 and 26: All;
Sec. 27, W½NW¼;
Sec. 28, lots 1 to 12, inclusive, SW¼SW¼ and E½SE¼;
Sec. 29, E½;
Sec. 32, E½ and E½NW¼;
Sec. 33, W½NE¼ and W½.

T. 17 N., R. 15 E.,
Sec. 12, S½SE¼;
Sec. 13, lots 1 to 8, inclusive;
Sec. 14, lots 1 to 9, inclusive;
Sec. 15, All.

T. 18 N., R. 15 E.,
Sec. 2, lots 1, 2, 3, and 4 and S½N½;
Sec. 3, lots 1, 2, 3, and 4, SE¼NE¼, NE¼SW¼, S½SW¼ and SE¼;
Sec. 4, lots 1 to 10, inclusive, and SW¼NW¼;
Sec. 5, SE¼;
Sec. 8, NE¼ and N½SE¼;
Sec. 9, lots 1 and 2, W½NE¼; S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 13, S½SW¼;
Sec. 14, S½SE¼;
Sec. 23, NE¼;
Sec. 24, All;
Sec. 25, N½NE¼.

T. 19 N., R. 15 E.,
Secs. 16 and 17: All;
Sec. 20, lot 1, N½NE¼ and NE¼NW¼;
Sec. 21, N½N½;
Sec. 33, lot 1, N½SE¼ and SW¼SE¼;
Sec. 34, lots 1, 2, 3, and 4, N½ and N½SW¼;
Sec. 35, lots 1 and 2, N½, E½SW¼, and SE¼.

T. 16 N., R. 16 E.,
Sec. 32, NW¼NW¼, S½NW¼, and N½S½.

T. 17 N., R. 16 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and SW¼;
Sec. 7, S½ of lot 2 SW¼, and SE¼SW¼;
Sec. 11, S½;
Sec. 12, All;
Sec. 14, N½;
Sec. 15, All;
Sec. 16, SE¼;
Sec. 17, All;
Sec. 18, lots 1 to 7, inclusive, lots 1 and 2 of SW¼, and SE¼.

T. 18 N., R. 16 E.,
Sec. 19, S½ lot 2 NW¼ and lot 2 SW¼;
Sec. 30, N½ lot 2 NW¼.

T. 19 N., R. 16 E.,
Sec. 7, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Secs. 8 and 17: All;
Sec. 18, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 20, N½.

T. 13 N., R. 17 E.,
Sec. 16, E½;
Sec. 36, All.

T. 14 N., R. 17 E.,
Sec. 16, lots 1, 2, and 3: All;
Sec. 20, lots 1, 2, and 3, N½ and SW¼: All.

T. 15 N., R. 17 E.,
Sec. 7, lots 1 to 9, inclusive, E½NW¼ and NE¼SW¼: All.

T. 20 N., R. 17 E.,
Sec. 24, S½N½ and S½;
Sec. 25, N½ and N½SW¼.

T. 18 N., R. 18 E. (California),
Sec. 6, lots 2, 3, and 4, S½ of lot 5, S½ of lot 17, and lots 18 to 21, inclusive;
Sec. 18, lots 7 to 18, inclusive;
Sec. 19, lots 9 to 12, inclusive.

T. 19 N., R. 18 E.,
Sec. 8, NE¼ and N½NW¼;
Sec. 14, E½SE¼;
Sec. 18, lots 4, 5, and 6 in N½, lot 6 in S½, and lots 11 and 14;
Sec. 31, N½ of lot 2 in S½, lot 3 in S½, and lot 8.

T. 20 N., R. 18 E.,
Sec. 30, lots 2, 3, 4, and 5, S½ of lot 6, S½ of lot 7, and lots 8, 9, 10, 11, 13, and 16;
Sec. 31, lots 1, 2, 6, 7, 11, and 12, N½ of lot 13, N½ of lot 16, and lots 17 and 18.

The above described areas aggregate 23,517.38 acres.

FLOYD E. DOMINY,
Associate Commissioner.

[67611]

APRIL 25, 1958.

I concur.

1. The following-described lands are within the Tahoe, Tolyabe, and El Dorado National Forests and have been

open to applications and offers under the mineral-leasing laws. They will be open to such other applications, selections, and locations as are permitted on national forest lands effective at 10:00 a. m. on May 31, 1958.

CALIFORNIA

MOUNT DIABLO MERIDIAN

T. 19 N., R. 14 E.,
Sec. 24, W½ and SW¼;
Sec. 32, E½NW¼.
T. 17 N., R. 15 E.,
Sec. 12, S½SE¼.
T. 18 N., R. 15 E.,
Sec. 2, lots 1, 2, 3, and S½N½;
Sec. 4, lots 3, 4, and 6;
Sec. 8, NE¼ and N½SE¼;
Sec. 24, NE¼NW¼, SE¼NE¼, and SW¼ SE¼.
T. 19 N., R. 15 E.,
Sec. 16;
Sec. 20, N½NE¼;
Sec. 34, SW¼NW¼.
T. 16 N., R. 16 E.,
Sec. 32, S½NW¼ and N½S½.
T. 17 N., R. 16 E.,
Sec. 2, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, and SW¼;
Sec. 12, N½.
T. 19 N., R. 16 E.,
Sec. 8, N½, N½SW¼, and E½SE¼.
T. 14 N., R. 17 E.,
Sec. 20, S½SW¼.
T. 20 N., R. 17 E.,
Sec. 24, SW¼NW¼.
T. 18 N., R. 18 E.,
Sec. 18, lots 7 and 8.

The areas described aggregate approximately 3,680 acres.

NEVADA

MOUNT DIABLO MERIDIAN

T. 19 N., R. 18 E.,
Sec. 14, E½SE¼.

The area described contains 80 acres.

2. Approximately 19,197 acres have been patented without a reservation of minerals to the United States. The NW¼NW¼, sec. 32, T. 16 N., R. 16 E., M. D. M., California, which is within the Tahoe National Forest, was withdrawn from all forms of entry for use as a ranger station on January 3, 1907. Lots 4, 5, and 6 in the N½ and lot 6 in the S½ of sec. 18, and lot 8, sec. 31, T. 19 N., R. 18 E., and lots 2 and 3, sec. 30, T. 20 N., R. 18 E., M. D. M., California, were withdrawn in aid of classification by Executive order of April 14, 1925, for possible inclusion in a national forest, under the act of February 20, 1925.

3. The NE¼ and the N½NW¼, sec. 8, T. 19 N., R. 18 E., M. D. M., is vacant public land located about ten miles west of Reno, in Washoe County, Nevada. Vegetation consists chiefly of big sage, rabbitt brush, bitter brush, desert peach, cheat grass, and some scattered conifers of no commercial value. The land is not valuable for agriculture due to the steepness of the terrain and the character of the soil.

4. No application for land described in paragraph 3 may be allowed under the homestead, desert-land, small tract, or any other nonmineral public-land law unless the land has already been classified as valuable or suitable for such type of application, or shall be so classified upon the consideration of an application. Any application that is filed will be considered on its merits. The land will not be subject to occupancy or disposition until it has been classified.

5. Subject to any valid existing rights and the requirements of applicable law, the land described in paragraph 3 is hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public-land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–281 as amended), presented prior to 10:00 a. m. on May 31, 1958, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on August 30, 1958, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public-land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on August 30, 1958, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral-leasing laws. They will be open to location under the United States mining laws beginning at 10:00 on August 30, 1958.

6. Persons claiming veterans preference rights must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the land described shall be addressed to the Manager, Bureau of Land Management, Reno, Nevada.

EDWARD WOOZLEY,
Director,
Bureau of Land Management.

[F. R. Doc. 58-3222; Filed, Apr. 30, 1958; 8:45 a. m.]

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service

SPANISH TYPE PEANUTS

SUPPLY FOR 1958–59 MARKETING YEAR

The Secretary of Agriculture has had under consideration increasing the acreage allotted for 1958 for States producing Spanish type peanuts under provisions of section 358 (c) of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1358 (c)), and in connection therewith held a hearing on March 14, 1958 after giving due notice of such hearing (23 F. R. 1662).

It has been determined, after giving full consideration to the views and data presented at the said hearing and all other facts available, that no increase can be granted under provisions of section 358 (c) of the Act in the acreage allotted for 1958 for States producing Spanish type peanuts.

Done at Washington, D. C. this 25th day of April 1958.

[SEAL] CLARENCE L. MILLER,
Acting Administrator.

[F. R. Doc. 58-3274; Filed, Apr. 30, 1958; 8:56 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

WEST COAST LINE, INC. AND AMERICAN STEVEDORES, INC.

NOTICE OF AGREEMENTS FILED FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U. S. C. 814):

(1) Agreement No. 8295, between West Coast Line, Inc., and American Stevedores, Inc., provides that the latter company, operator of Pier 44, Brooklyn, New York, will give preferential terminal service at said pier to vessels employed in the West Coast Line joint service and will furnish no such service at said pier to any vessel which is operated in competition with the West Coast Line, and further records the undertaking of the West Coast Line, Inc. to use said pier for all vessels operated in the West Coast Line service which are regularly or usually loaded or discharged at its terminal in the Port of New York rather than at railroad or similar berths.

(2) Agreement No. 8295–1, modifies the above agreement to provide that West Coast Line, Inc. will perform the clerking, checking and watching (excluding gatemen) services for the West Coast Line vessels at said Pier 44.

Interested parties may inspect these agreements and obtain copies thereof at

the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to either of the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: April 28, 1958.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-3244; Filed, Apr. 30, 1958; 8:50 a. m.]

CIVIL AERONAUTICS BOARD

[Public Notice PN 12]

DELEGATIONS OF FINAL AUTHORITY RELATED TO SUBSTANTIVE PROGRAM MATTERS

MAY 1, 1958.

Recent changes in the organization and procedures of the Civil Aeronautics Board and subsequent revisions in the delegations of authority require that Public Notice PN 8 be revoked and that, pursuant to section 3 (a) (1) of the Administrative Procedure Act, the following delegations of final authority by the Board to the staff be published.

Sec.
1. Officers and employees.
2. Presiding officers and hearing examiners.
3. Chief Examiner.
4. Director, Bureau of Air Operations.
5. Chief, Office of Carrier Accounts and Statistics.
6. Director, Bureau of Safety.
7. Chief, Office of Compliance.
8. General Counsel.
9. The Secretary.
10. Special agents and auditors.
11. Redelegation of authority.

SECTION 1. *Officers and employees.* All officers and employees of the Board are authorized to request such information from, or make such contact with, the public or agencies of Government as may be necessary to the proper discharge of assigned duties.

SEC. 2. *Presiding officers and hearing examiners.* Presiding officers, hearing examiners, individual members of the Board or any other representative assigned to hold a hearing in a proceeding is authorized to:

.01 Give notice concerning and hold hearings.

.02 Examine witnesses.

.03 Issue subpenas and take or cause depositions to be taken.

.04 Rule upon offers of proof and receive relevant evidence.

.05 Regulate the course and conduct of the hearing.

.06 Hold conferences, before or during the hearing, for the settlement or simplification of issues.

.07 Rule on motions and dispose of procedural requests or similar matters.

.08 Within his discretion, or upon the direction of the Board, certify any question to the Board for its consideration and disposition.

.09 Issue initial decisions in proceedings for the suspension or revocation of airman or other safety certificates and for the review of the Administrator's refusal to issue an airman certificate.

.10 Render an initial decision orally on the record, or in writing if, before the close of the hearing any party so requests in cases relating to rates, fares or charges, classification rules or regulations or practices affecting such matters or value of service, or mail compensation.

.11 Render a recommended decision orally on the record or in writing in cases where the action of the Board is subject to the approval of the President pursuant to section 801 of the Civil Aeronautics Act of 1938, as amended.

.12 Render an initial decision orally on the record or in writing in cases relating to economic proceedings other than those covered by Subsections 2.10 and 2.11 above.

SEC. 3. *Chief Examiner.* The Chief Examiner is authorized to:

.01 Approve or disapprove requests for changes in procedural requirements in economic cases for good cause shown, providing that an extension of time for filing documents shall not be granted within three days of the date originally set for the filing except in cases involving unusual hardship on the requesting party or parties.

.02 Consolidate, upon recommendation of the Director, Bureau of Air Operations (or such staff member of the Bureau of Air Operations as he may designate), into one proceeding, cases involving the investigation of a tariff or of complaints concerned with related tariffs.

.03 With the concurrence of the Director, Bureau of Air Operations (or such staff member of the Bureau of Air Operations as he may designate): Grant intervention in formal proceedings; deny intervention in formal proceedings to cities or Chambers of Commerce representing cities which are off-line points; dismiss applications or complaints when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint, provided that in the case of complaints involving the Office of Compliance, the Chief of such office concurs; consolidate into one proceeding for the purpose of hearing and decision, and approve applications for such consolidation, of cases arising under sections 401, 402, 408, 409, and 412 of the Civil Aeronautics Act, as amended; approve or deny any request for the severance of a previous application consolidated in accordance with the preceding authority; and dismiss proceedings upon his finding that the proceeding has become moot or that no further basis for continuation exists.

SEC. 4 *Director, Bureau of Air Operations—.01 Delegations with respect to route and carrier relationship matters.* The Director, Bureau of Air Operations, is authorized to:

A. Approve applications for an operating authority filed pursuant to Parts 296 and 297 of the economic regulations, when such approval does not involve novel or substantial questions of policy.

B. Dismiss, by letter, applications for such operating authorities, provided that each such applicant is given notice that his application will be dismissed if, in appropriate cases he does not, within 30 days, file information necessary to complete the processing of his application, or file a tariff.

C. Cancel an operating authority upon the filing by a Domestic or International Air Freight Forwarder of a written notice with the Board indicating the discontinuance of common carrier activities.

D. Issue revised operating authorities and exemption orders when revisions thereof are made necessary due to a change in name of the carrier specified in the document, provided that no issue of substance concerning the operating authority of a carrier is involved.

E. Approve relationships prohibited by §§ 296.45 and 297.13 of the economic regulations, when such approval does not involve novel or substantial questions of policy.

F. Issue the permits provided for in Part 190 of the civil air regulations if he finds that applications for such permits are in order and meet the requirements of Part 190.

G. Approve Airport Notices which indicate an intention to serve regularly a point through any airport not regularly used by a holder of a certificate of public convenience and necessity.

H. Approve Nonstop Notices which indicate an intention to inaugurate a scheduled nonstop service between any two points not consecutively named in the certificate of public convenience and necessity.

I. Dispose, without action, of contracts and agreements which, prior to review thereof, have expired, been terminated or been superseded.

J. Approve or disapprove applications of air carriers for exemptions permitting a carrier to serve a point certificated on one segment of its route in place of a point certificated on another segment of a route whenever no substantial competition to other lines will result or when no new policy is involved.

K. Approve interchange schedules which appear to conform to the service plan contemplated by the Board's orders approving the basic interchange agreements.

L. Approve in whole or in part or deny applications for a Letter of Registration filed pursuant to Part 292 of the economic regulations which do not involve new or substantial questions of policy.

.02 *Delegations with respect to rate and tariff matters.* The Director, Bureau of Air Operations, is authorized to:

A. Reject any tariff, supplement, or revised page which is filed by any air carrier, or by any foreign air carrier, and which is subject to rejection under section 403 (a) of the Civil Aeronautics Act of 1938, as amended, because it is not consistent with section 403 of the act or with Part 221 of the economic regulations, as amended.

B. Approve or disapprove any application for permission to make tariff changes upon less than statutory notice,

filed pursuant to § 221.190 of the economic regulations which (a) has as its only purpose the correction of mechanical, clerical, or administrative errors; or (b) does not involve new or substantial questions of policy.

C. Permit cancellation of a tariff in instances when an investigation of a tariff is pending, or the tariff is under suspension, or where a complaint requesting investigation or suspension of a tariff has been filed.

D. Approve or disapprove methods for indicating cancellation of existing rate or rule in the publication stating the new rate or rule, in a manner other than that specifically required by Subpart I of Part 221 of the economic regulations.

E. Determine the form and manner in which a supplement is to be prepared whenever the operation of any provision of a tariff, supplement, or looseleaf page is suspended by the Board, in accordance with Subpart I of Part 221 of the economic regulations.

F. Authorize the issuance of supplements to looseleaf tariffs in accordance with § 221.112 of the economic regulations.

G. Approve or disapprove applications for waiver of the provisions of Part 221 of the economic regulations in accordance with § 221.201.

H. Approve or disapprove applications filed under section 403 (b) of the act and § 223.8 of the economic regulations for permission to furnish free or reduced rate overseas or foreign air transportation, when such applications do not involve new and substantial questions of policy.

I. Waive or modify the requirements of paragraph 2 (a) of Order No. E–6390 with respect to any document covered thereby for such period as he deems proper, and revoke any such waiver or modification.

SEC. 5. *Chief, Office of Carrier Accounts and Statistics.* The Chief, Office of Carrier Accounts and Statistics, is authorized to:

.01 Waive, modify or interpret any of the accounting and reporting requirements of Parts 241, 242, 243 and 244 of the economic regulations and establish detailed uniform practices in connection with the submission of the reports required therein: *Provided*, That upon application by any air carrier affected by such action, the Chief shall submit any waiver, modification, interpretation or established practice to the Board for review.

.02 Authorize air carriers to substitute photographic reproductions for specified categories of records; and approve or disapprove an "application for substitution" filed by an air carrier pursuant to § 249.1 (d) of the economic regulations.

.03 Grant or deny, upon good cause shown, individual requests for extension of time for filing reports or for waiver of the form or content of such reports to conform to the particular operation of the individual requesting such waiver.

SEC. 6. *Director, Bureau of Safety.* The Director, Bureau of Safety, is authorized to:

.01 Publish notice of proposed changes in the civil air regulations. Such notice shall indicate clearly that the proposed changes are those of the Bureau and have not been approved by the Board.

.02 Approve, with the concurrence of the General Counsel (or his staff designee) on legal aspects, applications for waiver of the civil air regulations, under such conditions and limitations as he may deem necessary or desirable, where he finds that no new policy question is involved.

.03 Approve, with the concurrence of the General Counsel (or his staff designee) on legal aspects, requests for waiver of specific requirements of the civil air regulations, under such conditions and limitations as he may deem necessary or desirable, where he finds that the granting of the request will be in the interest of national defense and that it will not create a hazard to air safety. However, no waiver granted under the authority of this delegation shall be for a period longer than six months.

.04 Order an inquiry into the facts, conditions, circumstances and probable cause of an accident involving aircraft whenever he deems it necessary in the public interest; and designate, in writing, a presiding officer to conduct the inquiry and appoint additional persons, who, together with the presiding officer and the Investigator-in-Charge of the field investigation, constitute the Board of Inquiry.

.05 Designate one or more hearing officers to sign and issue subpenas, administer oaths and affirmations, and take or cause depositions to be taken in connection with aircraft accident investigations.

.06 Designate a hearing officer to conduct special studies and investigations on matters pertaining to safety in air navigation, sign and issue subpenas, administer oaths and affirmations and take and cause depositions to be taken.

SEC. 7. *Chief, Office of Compliance.* The Chief, Office of Compliance, is authorized to institute and prosecute in the proper court, as agent of the Board, all necessary proceedings for the enforcement of subpenas and for the enforcement of the provisions of the act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof.

SEC. 8. *General Counsel.* The General Counsel is authorized to:

.01 Issue revised certificates of public convenience and necessity and foreign air permits when revisions thereof are made necessary due to a change in name of the carrier or of points specified in the certificate or permit, provided that no issue of substance concerning the operating authority of a carrier is involved.

.02 Approve, disapprove, or request further information concerning, in accordance with the provisions of Part 311 of the Board's procedural regulations, requests for testimony of Board employees, with respect to their participation in the investigation of aircraft accidents.

.03 Approve or disapprove for good cause shown requests for changes in procedural requirements in safety enforcement cases subsequent to the Initial Decision; grant or deny requests to file additional briefs pursuant to § 301.32 of the procedural regulations; raise any issue on appeal, the resolution of which he deems important to the proper disposition of proceedings under § 301.31 of the procedural regulations; dismiss appeals or other requests for review by the Board of Initial Decisions upon his finding that the appellant has failed to file a timely specification of error, the appellant has requested dismissal of the appeal, or the matter has otherwise become moot.

.04 Approve or disapprove for good cause shown requests to extend the time for filing comments on proposed new or amended economic or procedural regulations.

SEC. 9. *The Secretary.* The Secretary is authorized to certify, as true and correct copies, transcripts of records required by section 1006 (c) of the Civil Aeronautics Act to be filed with the Appellate Court.

SEC. 10. *Special agents and auditors.* Special agents and auditors are authorized to inspect and examine lands, buildings, equipment, accounts, records and memoranda of air carriers and to make notes and copies thereof. The terms "special agent" and "auditor" are respectively construed to mean (1) any employee of the Office of Compliance, any employee of the Bureau of Safety, and any other employee of the Board specifically designated by it or the Secretary of the Board; and (2) any employee of the Audits Division, Office of Carrier Accounts and Statistics.

SEC. 11. *Redelegation of Authority.* .01 Staff members holding the following offices have the power to redelegate as follows:

A. Chief Examiner—The authority cited in section 3.02.

B. Director, Bureau of Air Operations—The authorities recited in section 4, except subsection 4.01 J, the recommendation authority cited in section 3.02, and the concurrence authority cited in section 3.03.

C. Chief, Office of Carrier Accounts and Statistics—The authorities recited in section 5.

D. Director, Bureau of Safety—The authorities cited in section 6.02 and 6.03.

E. General Counsel—The authorities cited in section 8 and the concurrence authorities cited in section 6.

.02 Pursuant to the authority cited in subsection 11.01, the following redelegations have been made:

A. By the Director, Bureau of Air Operations.

1. To the Associate Director (Domestic)—The authorities recited in section 4, except subsection 4.01 J.

2. To the Associate Director (International)—The authorities recited in section 4, except subsection 4.01 J.

3. To the Chief, Carrier Relations Division—The authorities recited in subsections 4.01 A, 4.01 B, 4.01 C, 4.01 E, 4.01 F and 4.01 I.

4. To the Chief, Routes Division—The authorities recited in Sections 4.01 G, 4.01 H and 4.01 K.

5. To the Alaska Liaison Representative—The authorities cited in subsections 4.01 L, 4.02 A, 4.02 B, 4.02 F and 4.02 G insofar as they relate to Alaskan carriers.

6. To the Chief, Tariffs Section—The authorities cited in section 4.02 A (except for Alaska carriers), and B through G.

B. By the General Counsel.

1. To the Assistant General Counsel, Rules and Legislation—The authority cited in sections 6.02, 6.03 and 8.02.

2. To the Assistant General Counsel, Opinion Writing—The authority cited in section 8.01 and section 8.03.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 58-3255; Filed, Apr. 30, 1958; 8:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 11710 etc.; FCC 58-384]

KNORR BROADCASTING CORP. ET AL.

ORDER AMENDING ISSUES

In the matter of Knorr Broadcasting Corporation, Lansing, Michigan, Docket No. 11710, File No. BP-10391; Capitol Broadcasting Company, East Lansing, Michigan, Docket No. 11848, File No. BP-10604; W. A. Pomeroy, Tawas City-East Tawas, Michigan, Docket No. 11849, File No. BP-10629; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 23d day of April 1958;

The Commission having under consideration (1) the Petition To Enlarge Issues, filed by the Chief, Broadcast Bureau on March 11, 1958; and (2) the Comments on Petition To Enlarge Issues, filed by Capitol Broadcasting Company on March 21, 1958;

It appearing, that good cause is shown for failure to file the instant petition not later than 15 days after the issues were first published in the FEDERAL REGISTER in view of the facts that issues were first designated in this proceeding by order released October 22, 1956, and that the Commission's Memorandum Opinion and Order in Broadcasters, Inc., et al., 23 FCC 705, upon an issue like that raised in the instant petition, was not adopted until November 27, 1957, and that petitioner now relies upon this memorandum opinion and order as authority for the instant petition;

It further appearing that no applicant in this proceeding has filed an opposition to the instant petition, and the time within which such oppositions might have been filed has passed;

It is ordered, That the issues in the above-entitled proceeding designated by Order, released October 22, 1956, as amended by order dated November 20, 1957, are enlarged by renumbering the present Issue 9 so it is Issue 10, and by adding the following as new Issue 9:

9. To determine on a comparative basis, in the event that Lansing or East Lansing, Michigan, or that Lansing and East Lansing, Michigan, are considered to have the greater need for a new radio facility under Issue 8, which of the operations proposed by Knorr Broadcasting Corporation and Capitol Broadcasting Company would better serve the public interest, convenience, and necessity in the light of the evidence adduced under the foregoing issues and record made with respect to the significant differences between the two applicants as to:

(a) The background and experience of each having a bearing on its ability to own and operate the proposed standard broadcast station.

(b) The proposals of each with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of said applications.

Released: April 25, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3260; Filed, Apr. 30, 1958; 8:54 a. m.]

[Docket No. 11978 etc.; FCC 58-419]

CHARLES R. BRAMLETT ET AL.

ORDER CONTINUING HEARING CONFERENCE

In re applications of Charles R. Bramlett, Torrance, California, Docket No. 11978, File No. BP-9833; Latin-American Broadcasting Corporation, Monterey Park, California, Docket No. 11981, File No. BP-10811; Radio Orange County, Inc., Anaheim, California, Docket No. 12218, File No. BP-11236; Anaheim-Fullerton Broadcasting Co., Inc., Anaheim-Fullerton, California, Docket No. 12219, File No. BP-11242; for construction permits.

The Hearing Examiner having under consideration a petition for continuance of prehearing conference filed by Radio Orange County, Inc., on April 23, 1958;

It appearing that the date for prehearing conference is currently scheduled for May 1, 1958, but that the recent addition of a number of issues makes it feasible to allow the parties further time for preparation of their cases; and

It further appearing that an industry convention in Los Angeles conflicts with the present conference date; and

It further appearing that counsel for all other parties have consented to the present request and to immediate consideration;

It is ordered, This 25th day of April 1958, that the petition of Radio Orange County, Inc., is granted and that the conference is continued from May 1 to May 12, 1958.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3261; Filed, Apr. 30, 1958; 8:54 a. m.]

[Docket No. 12366; FCC 58M-423]

FLORENCE & LEE, INC.

ORDER SCHEDULING HEARING

In the matter of Florence & Lee, Inc., 3 Bruce Place, Gloucester, Massachusetts, Docket No. 12366; order to show cause why there should not be revoked the license for Radio Station WA-5039 aboard the vessel "Florence & Lee".

It is ordered, This 25th day of April 1958, that Annie Neal Huntting will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 25, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3262; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12367; FCC 58M-424]

HARRY V. BAKER & CO.

ORDER SCHEDULING HEARING

In the matter of Harry V. Baker & Company, 301 South 80th Street, Houston, Texas, Docket No. 12367; order to show cause why there should not be revoked the license for Radio Station WB-3043 aboard the vessel "East Bay".

It is ordered, This 25th day of April 1958, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 26, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3263; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12368; FCC 58M-420]

WILLIAM J. SHEPPARD

ORDER SCHEDULING HEARING

In the matter of William J. Sheppard, P. O. Box 728, Aransas Pass, Texas, Docket No. 12368; order to show cause why there should not be revoked the license for Radio Station WF-6605 aboard the vessel "Cherokee".

It is ordered, This 25th day of April 1958, that Herbert Sharfman will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 24, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3264; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12369; FCC 58M-421]

JAMES C. VEAZEY

ORDER SCHEDULING HEARING

In the matter of James C. Veazey, P. O. Box 369, Aransas Pass, Texas, Docket No. 12369; order to show cause why there should not be revoked the license for Radio Station WA-3266 aboard the vessel "Dorcas."

It is ordered, This 25th day of April 1958, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 24, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3265; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12370; FCC 58M-422]

WILLARD MOBLEY

ORDER SCHEDULING HEARING

In the matter of Willard Mobley, P. O. Box 266, Aransas Pass, Texas, Docket No. 12370; order to show cause why there should not be revoked the license for Radio Station WE-3796 aboard the vessel "Charles Schreiner".

It is ordered, This 25th day of April 1958, that Elizabeth C. Smith will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 24, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3266; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12371; FCC 58M-427]

W. R. WILKINSON

ORDER SCHEDULING HEARING

In the Matter of W. R. Wilkinson, Townsend, Georgia, Docket No. 12371; order to show cause why there should not be revoked the license for Radio Station WE-6054 aboard the vessel "Anna Lee".

It is ordered, This 25th day of April 1958, that J. D. Bond will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 27, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3267; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12372; FCC 58M-425]

RAYMOND G. GLADDING

ORDER SCHEDULING HEARING

In the matter of Raymond G. Gladding, P. O. Box 324, Key West, Florida, Docket No. 12372; order to show cause why there should not be revoked the license for Radio Station WH-6198 aboard the vessel "Saltsea."

It is ordered, This 25th day of April 1958, that Basil P. Cooper will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 26, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3268; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12374; FCC 58M-428]

HERNDON MARINE PRODUCTS, INC.

ORDER SCHEDULING HEARING

In the matter of Herndon Marine Products, Inc., P. O. Box 2167, Corpus Christi, Texas, Docket No. 12374; order to show cause why there should not be revoked the license for Radio Station WF-3923 aboard the vessel "Southern Maid".

It is ordered, This 25th day of April 1958, that James D. Cunningham will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 27, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3269; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket No. 12375; FCC 58M-426]

JOSEPH ELDRIDGE

ORDER SCHEDULING HEARING

In the matter of Joseph Eldridge, Main Street, Buzzards Bay, Massachusetts, Docket No. 12375; order to show cause why there should not be revoked the License for Radio Station WC-9954 aboard the vessel "Striper."

It is ordered, This 25th day of April 1958, that Hugh B. Hutchison will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 26, 1958, in Washington, D. C.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3270; Filed, Apr. 30, 1958; 8:55 a. m.]

[Docket Nos. 12407, 12408; FCC 58-409]

ANGELO TOMASSO, INC., AND NEW HAVEN REGISTER

MEMORANDUM OPINION AND ORDER SCHEDULING ORAL ARGUMENT

In the matter of the applications of Angelo Tomasso, Incorporated, New Britain, Connecticut, Docket No. 12407, File Nos. 13636-IS-P/L-M, 13637-IS-ML-M, 13638-IS-ML-M, for radio station authorizations in the Special Industrial Radio Service; New Haven Register, New Haven, Connecticut, Docket No. 12408, File No. 12779-P/L-IY-M; for radio station authorization in the Relay Press Radio Service.

1. The Commission has before it for consideration two separate Protests and Petitions for Review and Other Relief of Andrew W. Knapp, d/b as Radio Communications Service Company (hereafter called Service Company), West Haven, Connecticut, both filed March 31, 1958, seeking relief under sections 5 (d) and 309 (c) of the Communications Act of 1934, as amended, concerning grants by the Commission to two applicants for radio station authorizations. Inasmuch as the facts alleged to show status as a party in interest and the facts relied upon to show that the applications specified should not have been granted are substantially the same in both protests, they have been consolidated for consideration herein.

2. One of the protests is directed against the Commission's action of February 28, 1958, granting without hearing the above-described applications of Angelo Tomasso, Inc. (hereafter called Tomasso) for authorizations in the Special Industrial Radio Service. Such authorizations permit Tomasso to operate one base transmitter at Plainville, Connecticut (call sign KCD 451), one base transmitter at Branford, Connecticut (call sign KCF 706); and fifteen mobile transmitters (call sign KD 5877) for operation in the State of Connecticut.[1] These licenses authorized modifications of and additions to a communications system (call sign KCD 451, File No.

[1] The applications and associated materials in the Commission's files indicate that the communications equipment and the maintenance thereof will be obtained from The Southern New England Telephone Company (hereafter called SNET) under a contract dated December 4, 1957.

14176–D4–P/L–I) which had been authorized by a license granted May 12, 1954, subsequently modified (File No. 15552–D4–ML–I) on May 19, 1954, and renewed on August 24, 1956. Such system consisted of one base transmitter at Plainville, Connecticut, and twenty-five mobile transmitters for operation in the State of Connecticut.[2]

3. The other protest is directed against the Commission's action on March 3, 1958, granting without hearing the above-described application of the New Haven Register (hereafter called Register) for an authorization in the Relay Press Radio Service. The license issued permits the operation of one base transmitter at Hamden, Connecticut and eleven mobile transmitters in New Haven County and vicinity, Connecticut (call sign KCF 775).[3]

4. On April 10, 1958, Oppositions and Answers to the protests were filed with the Commission by Tomasso and Register, as well as by SNET. Service Company filed Replies thereto on April 16, 1958.

5. Service Company states that it is an independent service organization, whose principal place of business is located at West Haven, Connecticut, doing business in and around New Haven, including Branford and Hamden, Connecticut. It states further that for about two years it has been engaged in furnishing maintenance services for private radio communications systems, such as that contemplated by the protested authorizations, and, at the present time, services numerous communications systems. The basis of Service Company's claim to be a party in interest within the meaning of sections 5 (d) and 309 (c) of the Communications Act is economic injury which it asserts is of sufficient magnitude to have a significant bearing upon its economic survival. In general, the facts alleged to support the claim of economic injury are twofold:

(a) In any given area, there is available at any point in time only a limited number of potential customers in a position to take the communications equipment maintenance and repair services offered by Service Company. The lease-maintenance contracts between SNET and the respective applicants are conditioned upon grant by the Commission of licenses, a fact known to the Commission. Thus, Service Company asserts, the Commission's action in issuing the protested licenses resulted in channeling away from Service Company potential service and maintenance business to its competitor, SNET, to the economic detriment of Service Company.

(b) In addition to the alleged fact that the protested grants channels potential business away from Service Company to a competitor, Service Company alleges further that the competition thus facilitated is illegal competition on the grounds that the lease-maintenance contracts involved are in violation of a Consent Decree[4] and the Clayton Act.[5] Thus, it is asserted, it is the Commission's action which has set such illegal competition into motion, albeit the Commission has a duty, in the public interest, not to facilitate a violation of the Consent Decree; and a specific duty by reason of section 602 (d) of the Communications Act to enforce the provisions of the Clayton Act as it pertains to common carriers engaged in wire or radio communication or radio transmission of energy.

6. The facts relied upon by Service Company to show that the grants protested were made improperly or otherwise would not be in the public interest are summarized as follows:

(a) *Consent Decree Violation.* SNET is a subsidiary of A. T. & T. and, therefore, is enjoined under Section V of the Consent Decree from leasing and maintaining facilities for private communications systems to persons who were not lessees of such systems as of March 9, 1956; the contract between Register and SNET violates the Decree because Register was not the lessee of SNET of facilities for such communications system as of March 9, 1956; that even though Tomasso was a lessee of SNET of facilities for a communications system as of March 9, 1956, the Consent Decree does not permit SNET to lease equipment to a particular lessee after March 9, 1956, which is in excess of and additional to equipment being leased thereto as of March 9, 1956, and, therefore, the contract between SNET and Tomasso, dated December 4, 1957, covering additional equipment, subject to the issuance of licenses therefor by the Commission, violates the Decree; and that it is the protested grants by the Commission to Tomasso which finally facilitated such alleged violation, and, therefore, such grants are not in the public interest.

(b) *Clayton Act Violation.* Service Company alleges that the lease-maintenance contracts between SNET and the respective applicants violate the Clayton Act, "on their face," because they effect "a forced 'tie-in' of receivers, transmitters, private line channels and associated equipment for remote control and operation of the base station, and similar equipment, which are leased and maintained only as a complete unit by the Telephone Company, and the Telephone Company refuses to furnish equipment, facilities, and maintenance on any other basis." Therefore, to grant applications which would facilitate such violation of the Clayton Act is not in the public interest.

(c) *Grants Contravene Section 309 of the Communications Act.* Service Company argues that, since the Commission considered substantially the same matters as those raised herein in its Memorandum Opinion and Order in Dockets Nos. 12323 and 12324, released February 24, 1958 (FCC 58–146, 24 FCC Rep. 119), it could not grant the instant applications, or any others involving similar factual situations, under section 309 (a) of the act without a hearing. It argues that the Commission must follow the procedures outlined in section 309 (b) of the Act and, having failed to do so, the instant grants were not in the public interest.

7. Based on the foregoing, Service Company requests that the Commission:

(a) Set aside the instant grants issued by the staff under delegated authority as contrary to law and the public interest.

(b) Institute proceedings under section 309 (b) of the act with respect to "all license applications which raise serious questions under the Consent Decree".

It also appears that Service Company suggests that the Commission should institute action under section 11 of the Clayton Act[6] to enforce compliance with section 3 of that act by SNET.

8. Protestant also requests that, in the event that the Commission deems hearings or arguments appropriate to aid in the disposition of this matter, such consideration should focus on the following issues:

(1) Whether the Consent Decree does not now prohibit A. T. & T., directly or through its subsidiaries such as Southern New England Telephone Company, from leasing and maintaining new facilities which extend private communications systems beyond such systems existing as of March 10, 1956;

(2) Whether section 309 (b) and the public interest whose vindication is entrusted to the Commission require the cessation of routine grants of licenses based on arrangements which raise serious questions under the Western Electric decree.[7]

9. Both Tomasso and Register, in Opposition and Answer to the respective protests of Service Company, state that they have been informed by SNET that it will answer the antitrust arguments concerning their lease-maintenance contracts with SNET. They also claim that there is a distinct public interest need for the continued effectiveness of their respective licenses to operate radio stations.

10. The Opposition and Answer of SNET to each protest contain substantially the same assertions. SNET claims that the protests allege "no facts," showing that Service Company is a party in interest. Furthermore, SNET argues that it is not a subsidiary of A. T. & T. and that the protests show no adequate basis to support the contention that the lease-maintenance contracts between it and the applicants violate section V of the Consent Decree; that contentions concerning a Clayton Act violation are unfounded in fact and law; and that a "casual examination" of the contracts in issue will demonstrate the falseness of Service Company's allegations. SNET argues that the grants should re-

[2] The equipment for this system was leased from and maintained by SNET under a contract dated May 24, 1954.

[3] Register's application and associated materials show that the equipment and maintenance thereof is to be obtained from SNET under a contract dated December 5, 1957.

[4] Final Judgment, United States of America v. Western Electric Co., Inc., and American Telephone and Telegraph Co., Civil Action No. 17–49, United States District Court for the District of New Jersey, dated January 24, 1956. See Section V thereof.

[5] Act of October 15, 1914, sec. 3, 38 Stat. 731; 15 U. S. C., 1952 ed., sec. 14.

[6] 15 U. S. C. sec. 21.

[7] The protest relating to Register's application requests that consideration should include only the "paramount issue" regarding section 309 (b) procedures and the public interest.

main in effect for public interest reasons, if a hearing should be found necessary. With respect to Protestant's request for the application of section 309 (b) procedures, SNET contends that Service Company has shown no reason "why section 309 (c) does not afford adequate protection to any legitimate party in interest".

11. The factors alleged by Service Company to show standing to protest or seek relief under sections 5 (d) and 309 (c) of the act are substantially the same as, or identical to, the matters alleged by the protestants in In the Matter of the Applications of The Connecticut Water Company and Wooldridge Bros., Inc., Docket Nos. 12323 and 12324, wherein standing was found under sections 5 (b), 309 (c), and 405 of the act and an oral argument on points of law scheduled. (Memorandum Opinion & Order, release Feb. 24, 1958, FCC 58-146, 24 FCC Rep. 119.) In view of the detailed discussion therein concerning standing to protest, it is unnecessary to repeat here. Accordingly, the discussion set forth in paragraphs 11 through 13 of such Memorandum Opinion and Order is hereby incorporated by reference in the instant Memorandum Opinion and Order as applicable to the protests of Service Company.

12. It is concluded, therefore, that Service Company is a party in interest in this matter and has stated with particularity the facts and law relied upon to show why the grants being protested were made improperly or otherwise are not in the public interest.

13. We turn then to the question as to whether we should stay the effectiveness of the above-described grants under section 309 (c) of the act. It should be noted that Tomasso was the licensee of a radio comunications system consisting of one base transmitter and twenty-five mobile transmitters at the time the Commission made the subject grants to it on February 28, 1958. Such grants authorized it to alter its radiocommunication system to consist of two base transmitters and fifteen mobile transmitters. We are of the opinion, therefore, that the authorizations are necessary for the maintenance and conduct of an existing service. On the other hand, it is clear that the grant to Register does not involve an existing service and applicant has shown no compelling reason why the public interest requires that such grant remain in effect. In view of these facts, we are unable to determine that the public interest requires that the grant to Register be continued in effect during the pendency of this proceeding.

14. Protestant has requested, under section 5 (d) of the act, that the Commission review the action of the staff, under applicable delegations of authority, in granting the above-described applications. Subject to the action herein ordered with respect to providing oral argument on the issues raised by protestant, we hereby affirm the action of the staff in making such grants.

15. The Protestant further requests disposition of these and similar applications under the provisions of section 309 (b) of the act. Protestant's request in this regard is apparently based on the Commission's action in the aforementioned Connecticut Water—Wooldridge case and upon the assumption that, in that case, "the Commission ruled that vital public interest questions required consideration by the Commission en banc to ascertain whether or not the grants should be set aside as contrary to the public interest". However, the petitioner misconstrues the nature of the previous Commission action in the Connecticut Water case in that the Commission's rulings therein were confined, simply stated, to findings that protestants therein were parties in interest and that there had been sufficient allegations by such parties in interest to entitle them, under the provisions of section 309 (c) of the act, to oral argument on issues raised thereby.

16. Finally, Protestant suggests that the Commission should institute action, under section 11 of the Clayton Act, against SNET. We believe that this suggestion is premature and superfluous at this time in view of the Clayton Act issue set forth below to be heard in the proceeding designated herein.

17. It appears to us that the questions raised by Protestant concerning the Consent Decree and the Clayton Act are essentially matters of law which may be resolved on the basis of oral argument and the filing of briefs on the questions of law presented. If it should subsequently appear that there is a need for an evidentiary hearing with respect to any factual matter, an appropriate order will be entered at that time.

In view of the foregoing: *It is ordered*, Pursuant to the provisions of section 309 (c) of the Communications Act of 1934, as amended, That, effective immediately, the effective date of the grant of the above-designated application of the New Haven Register is postponed pending a final determination by the Commission in this proceeding; that the request for postponement of the effective date of the grant of the above-designated applications of Angelo Tomasso, Inc., is denied; that the petitions of the Protestant are granted to the extent herein provided and denied in all other respects; and that oral argument be held before the Commission en banc, at a time and place to be specified by subsequent order, on the following issues:

(1) Whether the lease-maintenance arrangements between The Southern New England Telephone Company and the respective applicants specified above are in violation of the Consent Decree.

(2) Whether the lease-maintenance arrangements between The Southern New England Telephone Company and the respective applicants specified above are per se in violation of section 3 of the Clayton Act.

(3) Whether, in light of the determinations reached in the foregoing issues, the public interest, convenience, and necessity would be served by the grant of the above-described applications of Angelo Tomasso, Inc., and the New Haven Register.

It is further ordered, That the protestant and applicants herein and The Southern New England Telephone Company are hereby made parties to this proceeding; and that

(1) Each such party intending to participate in oral argument shall file a statement of intention to appear not later than May 9, 1958; and

(2) The parties to the proceeding shall have until 30 days prior to the date of oral argument to file briefs or memoranda of law, and 15 days after the date for filing of such briefs or memoranda of law to file a reply thereto.

It is further ordered, That the Secretary shall notify the United States Department of Justice of this matter by sending to the Department a copy of this memorandum opinion and order; and that the Department is hereby granted leave to intervene in this proceeding upon filing a statement of intention to participate herein as provided in subpararagraph (1) above.

Adopted: April 25, 1958.

Released: April 28, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3271; Filed, Apr. 30, 1958; 8:56 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-8130]

JOHNSON & APPLING ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

APRIL 25, 1958.

In the matters of Johnson & Appling, et al.,[1] Docket No. G-8130; Leland Davison,[2] Docket No. G-8373; South Texas Oil and Gas Company, Docket Nos. G-8425, G-8426, G-8427; Charles F. DeBardeleben, Jr., Operator,[3] Docket No. G-8495; M. M. Argo, Operator,[4] Docket No. G-8496; Natural Gas Distributing Corporation, et al.,[5] Docket No. G-8556; Midstates Oil Corporation,[6] Docket No. G-8795; Sinclair Oil & Gas Co.,[7] Docket No. G-8801; Siboney Petroleum Corporation,[8] Docket No. G-13933; Cities Service Oil Company,[9] Docket No. G-14529; Keating Drilling Company,[10] Docket No. G-14581.

Take notice that each of the above-designated parties, hereinafter referred to as Applicants, has filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the sale of natural gas as hereinafter described, subject to the jurisdiction of the Commission, all as more fully presented in the respective applictaions which are on file with the Commission and open to public inspection.

Applicants will produce and propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Docket No.; Location of Field; and Purchaser

G-8130: West Hutchins Field, Wharton County, Tex.; Tennessee Gas Transmission Company.

G-8373: Sprayberry Trend Area, Upton County, Tex.; El Paso Natural Gas Company.

G–8425; Morales Area, Jackson County, Tex.; Tennessee Gas Transmission Company.
G–8426; Nursery Area, Victoria County, Tex.; Tennessee Gas Transmission Company.
G–8427; Bentonville Field, Jim Wells County, Tex.; Tennessee Gas Transmission Company.
G–8495; Bethany Area, Carthage Field, Panola and Harrison Counties, Tex.; Tennessee Gas Transmission Company.
G–8496; Bethany Area, Carthage Field, Panola and Harrison Counties, Tex.; Tennessee Gas Transmission Company.
G–8556; Bethany Field, Panola County, Tex.; Tennessee Gas Transmission Company.
G–8795; Waskom Field, Harrison County, Tex.; Arkansas Louisiana Gas Company.
G–8801; Southeast Tomball Field, Harris County, Tex.; Tennessee Gas Transmission Company.
G–13933; Morales Field, Jackson County, Tex.; Tennessee Gas Transmission Company.
G–14529; West Panhandle, Moore County, Tex.; Phillips Petroleum Company.
G–14581; Pawnee Hill Field, Logan County, Colo.; Kansas Nebraska Natural Gas Company, Inc.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 28, 1958, at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before May 16, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[1] Johnson & Appling, a partnership, is filing for itself and for Guy F. Stovall, co-owner, for production from the Kainer 160-acre Gas Unit.

[2] Leland Davison is filing for himself and for Ralph Pembroke, co-owner. Both are signatory parties to the contract with El Paso.

[3] DeBardeleben is filing for himself as co-owner and operator and for M. M. Argo, W. C. Feazel, Lallage Feasel, G. M. Anderson and G. F. Anderson, co-owners of the Roberts Unit; and for himself as co-owner and operator and for W. C. Feazel, Lallage Feasel, G. M. Anderson and G. F. Anderson, co-owners of the Timmons Unit. DeBardeleben is the only signatory party to the sale contract with Tennessee.

[4] M. M. Argo is filing, in his application filed February 18, 1955, as supplemented July 28, 1955, for himself as co-owner and operator and for Charles F. DeBardeleben, Jr., co-owner, for sales of production from the McJimpsey Unit and the Argo and DeBardeleben Timmons Unit No. 3. Argo is the only signatory party to the contract with Tennessee.

[5] Natural Gas Distributing Corporation, co-owner and operator, is filing for itself and for Tex-Mex Drilling Company and Hudnall & Pirtle, co-owners of the working interest, for sales of production from the George Cooper Estate Gas Unit. All are listed as sellers in the sales contract with Tennessee. According to the application Hunt Oil Company is also a co-owner but will file separately.

[6] Midstates Oil Company is filing for itself as co-owner and operator of the Henry Hagerty, et al., No. 1 Unit and for itself as co-owner of the Anita Bookout Unit No. 2 and W. H. Hinton Unit No. 1, and for itself as owner of certain other leases exclusive of those in the above operating units. All these properties are more fully set out and described in Exhibit A to the contract between Midstates and Arkansas Louisiana dated August 11, 1954, which contract is on file with the Commission as Midstates Oil Company's FPC Rate Schedule No. 48.

[7] The application requests authorization for sale of gas produced from the C. G. Kaiser Well No. 1 and the R. D. Williams Well No. 1, more specifically described in the application.

[8] The application requests authorization for sale of gas produced from the L. R. Hollingsworth lease, more specifically described in the application.

[9] The application requests authorization for sale of gas produced from the leases on which the Castleman "A" Well and the Castleman "B" Well are located, being more specifically described in the application.

[10] Keating Drilling Company is filing for its 3.4091 percent interest in the 440 acre Arnold State "A" Unit, more specifically described in the application.

[F. R. Doc. 58–3223; Filed, Apr. 30, 1958; 8:46 a. m.]

[Docket No. G–14926]

SHELL OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

APRIL 25, 1958.

Shell Oil Company (Shell) on March 27, 1958, tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, dated March 25, 1958.
Purchaser: Texas Eastern Transmission Corporation.
Rate schedule designation: Supplement No. 10 to Shell's FPC Gas Rate Schedule No. 4, Supplement No. 11 to Shell's FPC Gas Rate Schedule No. 5.
Effective date: April 27, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed redetermined rate increases, Shell submits a copy of a letter from Texas Eastern Transmission Corporation advising Shell that the rates have been redetermined to those shown. In addition, Shell states that the contracts resulted from arm's-length negotiations and that the price provisions were brought about in order to insure it of receiving the fair market value over the life of the contracts.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 10 (only insofar as it proposes a redetermined rate increase of 14.3733 cents per Mcf) to Shell's FPC Gas Rate Schedule No. 4 and Supplement No. 11 to Shell's FPC Gas Rate Schedule No. 5, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 10 (only insofar as it proposes a redetermined rate increase of 14.3733 cents per Mcf) to Shell's FPC Gas Rate Schedule No. 4, and Supplement No. 11 to Shell's FPC Gas Rate Schedule No. 5.

(B) Pending such hearing and decision thereon, proposed supplement No. 10 (insofar as it proposes a redetermined rate increase of 14.3733 cents per Mcf) to Shell's FPC Gas Rate Schedule No. 4, and Supplement No. 11 to Shell's FPC Gas Rate Schedule No. 5, be and they are each hereby suspended and the use thereof deferred until September 27, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58–3224; Filed, Apr. 30, 1958; 8:46 a. m.]

[Docket No. G–14927]

HUMBLE OIL AND REFINING CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

APRIL 25, 1958.

Humble Oil and Refining Company (Humble) on March 27, 1958, tendered

for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, dated March 20, 1958.

Purchaser: Texas Eastern Transmission Corporation.

Rate schedule designation: Supplement No. 14 to Humble's FPC Gas Rate Schedule No. 12. Supplement No. 12 to Humble's FPC Gas Rate Schedule No. 14. Supplement No. 13 to Humble's FPC Gas Rate Schedule No. 22. Supplement No. 15 to Humble's FPC Gas Rate Schedule No. 10.

Effective date: April 27, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed redetermined rate increases, Humble submits a copy of a letter from Texas Eastern Transmission Corporation advising Humble that the rates have been redetermined to the amounts shown. In addition, Humble states that the contracts resulted from arm's-length negotiations, and that the prices are reasonable and in line with going contract prices in the Gulf Coast area of Texas.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 14 to Humble's FPC Gas Rate Schedule No. 12; Supplement No. 12 to Humble's FPC Gas Rate Schedule No. 14; Supplement No. 13 to Humble's FPC Gas Rate Schedule No. 22, and Supplement No. 15 to Humble's FPC Gas Rate Schedule No. 10, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 14 to Humble's FPC Gas Rate Schedule No. 12; Supplement No. 12 to Humble's FPC Gas Rate Schedule No. 14; Supplement No. 13 to Humble's FPC Gas Rate Schedule No. 22, and Supplement No. 15 to Humble's FPC Gas Rate Schedule No. 10.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until September 27, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3225; Filed, Apr. 30, 1958; 8:46 a. m.]

[Docket No. G-14928]

TIDEWATER OIL CO. ET AL.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

APRIL 25, 1958.

Tidewater Oil Company (Operator), et al., (Tidewater), on April 3, 1958, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated April 1, 1958.

Purchaser: Texas Eastern Transmission Corporation.

Rate schedule designation: Supplement No. 10 to Tidewater's FPC Gas Rate Schedule No. 51.

Effective date: May 4, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed redetermined rate increase, Tidewater submits a copy of a letter from Texas Eastern Transmission Corporation advising Tidewater that the rate had been redetermined to the amount shown. In addition, Tidewater states that the contract resulted from arm's-length negotiations, and that the price consideration of the contract was for the entire volume of gas sold during the contract life.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 10 to Tidewater's FPC Gas Rate Schedule No. 51 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 10 to Tidewater's FPC Gas Rate Schedule No. 51.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 4, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3226; Filed, Apr. 30, 1958; 8:46 a. m.]

[Docket No. G-14929]

GULF OIL CORP.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

APRIL 25, 1958.

Gulf Oil Corporation (Gulf Oil) on March 31, 1958, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, undated.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: Supplement No. 5 to Gulf Oil's FPC Gas Rate Schedule No. 118.

Effective date: May 1, 1958 (effective date is the effective date proposed by Gulf Oil).

In support of the proposed favorednation rate increase, Gulf Oil submits a copy of a letter from El Paso Natural Gas Company notifying Gulf Oil that the price of the gas increased to 10.5 cents per Mcf effective January 1, 1958, and offering to pay the increased price contingent upon Commission action. Gulf Oil states that the contract was negotiated at arm's-length under competitive conditions with the understanding that the producer was to be paid a certain minimum total over the life of the contract.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 5 to Gulf Oil's FPC Gas Rate Schedule No. 118 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 5 to Gulf Oil's FPC Gas Rate Schedule No. 118.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 1, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by sections 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioner Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3227; Filed, Apr. 30, 1958; 8:46 a. m.]

[Docket No. G-14930]

PHILLIPS PETROLEUM CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

APRIL 25, 1958.

Phillips Petroleum Company (Operator), (Phillips), on March 31, 1958, tendered for filing a proposed change in its presently effective rate schedule [1] for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated March 27, 1958.

Purchaser: Consolidated Gas Utilities Corporation.

Rate schedule designation: Supplement No. 15 to Phillips' FPC Gas Rate Schedule No. 19.

Effective date: May 12, 1958 (effective date is the effective date proposed by Phillips).

In support of the proposed renegotiated rate increase, Phillips submits a copy of a letter from Consolidated Gas Utilities Corporation (Consolidated) agreeing to the increased price. In addition, Phillips states that had there not been agreement between the parties as to the increased price, Consolidated could only (under the favored-nation provision of the contract) have prevented termination of the contract by paying the highest price received for similar volumes of similar gas by any seller within a radius of 150 miles of Pampa, Texas, and that within such radius similar gas is being sold as high as 16.0 cents per Mcf. Phillips further states that this is evidence that the proposed price of 13.5 cents per Mcf plus taxes is fair and just, and that the indicated rate for this gas in order to yield its cost plus a fair return shown by Exhibit No. 324, in Docket No. G-1148, et al., is 18.75 cents per Mcf.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 15 to Phillips' FPC Gas Rate Schedule No. 19 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 15 to Phillips' FPC Gas Rate Schedule No. 19.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 12, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3228; Filed, Apr. 30, 1958; 8:46 a. m.]

[Docket No. G-14931]

SUNRAY MID-CONTINENT OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

APRIL 25, 1958.

Sunray Mid-Continent Oil Company (Sunray) on April 2, 1958, tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: (1) Supplemental Agreement,[1] dated March 1, 1958. (2) Notice of Change, dated March 31, 1958. (3) Supplemental Agreement,[1] dated March 1, 1958. (4) Notice of Change, dated March 31, 1958.

Purchaser: Northern Natural Gas Company.

Rate schedule designation: (1) Supplement No. 5 to Sunray's FPC Gas Rate Schedule No. 58. (2) Supplement No. 6 to Sunray's FPC Gas Rate Schedule No. 58. (3) Supplement No. 5 to Sunray's FPC Gas Rate Schedule No. 65. (4) Supplement No. 6 to Sunray's FPC Gas Rate Schedule No. 65.

Effective date: May 3, 1958 (effective date is the effective date proposed by Sunray).

In support of the proposed redetermined rate increases, Sunray filed copies of the agreements whereby Sunray and Northern Natural Gas Company (Northern Natural) agree to the increased price as a result of the price being arbitrated to 12.0 cents per Mcf between Northern Natural and Cities Service Oil Company (Cities Service). Sunray also incorporates by reference the support submitted by Cities Service for its increase to the effect that the 12.0 cents per Mcf price is just and reasonable and is lower than the present market value of equivalent gas.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement Nos. 5 and 6 to Sunray's FPC Gas Rate Schedule No. 58, and supplement Nos. 5 and 6 to Sunray's FPC Gas Rate Schedule No. 65, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement Nos. 5 and 6 to Sunray's FPC Gas Rate Schedule No. 58, and Supplement Nos. 5 and 6 to Sunray's FPC Gas Rate Schedule No. 65.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until October 3, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension

[1] Present rate previously suspended and is in effect subject to refund in Docket No. G-12460.

[1] Parties agree to redetermined increase by arbitration of base rate from 9.8262 cents to 12.0 cents per Mcf.

have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3229; Filed, Apr. 30, 1958; 8:47 a. m.]

[Docket No. G-14936]

LAMAR HUNT

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

APRIL 25, 1958.

Lamar Hunt (Hunt) on March 28, 1958, tendered for filing a proposed change in his presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated March 25, 1958.
Purchaser: H. L. Hunt.
Rate schedule designation: Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6.
Effective date: April 28, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed rate increase, Hunt states that the seller and buyer under the contract agreed to such in good faith and as a result of arm's length bargaining, that the installment schedule of prices is a single price, that the instant "change" merely fulfills the contractual obligations, and that should the Commission disallow such prices, he would be deprived of property without due process of law.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until September 28, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3230; Filed, Apr. 30, 1958; 8:47 a. m.]

[Docket No. G-14937]

WILLIAM HERBERT HUNT TRUST ESTATE

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

APRIL 25, 1958.

William Herbert Hunt Trust Estate (Hunt), on March 28, 1958, tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, dated March 25, 1958.
Purchaser: H. L. Hunt.
Rate schedule designation: Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 8. Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 9.
Effective date: April 28, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed rate increase, Hunt states that the seller and buyer under the contract agreed to such in good faith and as a result of arm's length bargaining, that the installment schedule of prices is a single price, that the instant "change" merely fulfills the contractual obligations, and that should the Commission disallow such prices, it would be deprived of property without due proces of law.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 8, and Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 9, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 8, and Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 9.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until September 28, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3231; Filed, Apr. 30, 1958; 8:47 a. m.]

[Docket No. G-14938]

LAMAR HUNT TRUST ESTATE

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

APRIL 25, 1958.

Lamar Hunt Trust Estate (Hunt), on March 28, 1958, tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, dated March 25, 1958.
Purchaser: H. L. Hunt.
Rate schedule designation: Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 5. Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6.
Effective date: April 28, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed rate increase, Hunt states that the seller and buyer under the contract agreed to such in good faith and as a result of arm's length bargaining, that the installment schedule of prices is a single price, that the instant "change" merely fulfills the contractual obligations, and that should the Commission disallow such prices it would be deprived of property without due process of law.

The increased rates and charges so proposed have not been shown to be

justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 5 and Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 5 and Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until September 28, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3232; Filed, Apr. 30, 1958; 8:47 a. m.]

[Docket No. G-14939]

NELSON BUNKER HUNT TRUST ESTATE

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

APRIL 25, 1958.

Nelson Bunker Hunt Trust Estate (Hunt), on March 28, 1958, tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change, dated March 25, 1958.

Purchaser: H. L. Hunt.

Rate schedule designation: Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 5. Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6.

Effective date: April 28, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed rate increase, Hunt states that the seller and buyer under the contract agreed to such in good faith and as a result of arm's length bargaining, that the installment schedule of prices is a single price, that the instant "change" merely fulfills the contractual obligations, and that should the Commission disallow such prices it would be deprived of property without due process of law.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 5 and Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 5 and Supplement No. 5 to Hunt's FPC Gas Rate Schedule No. 6.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until September 28, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure 18 CFR 1.8 and 1.37 (f).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 58-3233; Filed, Apr. 30, 1958; 8:47 a. m.]

OFFICE OF DEFENSE MOBILIZATION

HAROLD M. BOTKIN

APPOINTEE'S STATEMENT OF CHANGES IN BUSINESS INTERESTS

The following statement lists the names of concerns required by subsection 710 (b) (6) of the Defense Production Act of 1950, as amended.

No change since last submission of Form ODM-163.

This supersedes statement previously published in the FEDERAL REGISTER November 7, 1957 (22 F. R. 8972).

Dated: April 24, 1958.

HAROLD M. BOTKIN.

[F. R. Doc. 58-3241; Filed, Apr. 30, 1958; 8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24S-1586]

TEXAS-AUGELLO PETROLEUM EXPLORATION CO.

NOTICE OF AND ORDER FOR HEARING

APRIL 25, 1958.

I. Texas-Augello Petroleum Exploration Co., an Alaska corporation, with an office at Room 7, 4th Building, P. O. Box 859, Anchorage, Alaska, filed with the Commission on January 2, 1958, a notification on Form 1-A and an offering circular, and subsequently filed amendments thereto, relating to an offering of 1,222,000 shares of its common stock, par value 10 cents a share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder.

II. The Commission on March 3, 1958 issued an order pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, as amended, temporarily suspending the conditional exemption under Regulation A, and affording to any person having an interest therein an opportunity to request a hearing pursuant to Rule 261. A written request for hearing was received by the Commission.

The Commission, deeming it necessary and appropriate to determine whether to vacate the temporary suspension order or to enter an order permanently suspending the exemption,

It is hereby ordered, That a hearing under the applicable provisions of the Securities Act of 1933, as amended, and the rules of the Commission be held in the Seattle Regional Office of the Commission, Room 304, 905 Second Avenue Building, Seattle, Washington at 10:00 a. m., May 23, 1958, with respect to the following matters and questions without prejudice, however, to the specification of additional issues which may be presented in these proceedings:

A. Whether the conditional exemption provided by Regulation A is not available for the securities purported to be offered in that:

1. The notification and offering circular, as amended, contain untrue statements of material fact and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading concerning, among other things,

(a) The failure to disclose the identity of the lessor of the Augello lease and any material interest of Carlo Augello, the company's secretary-treasurer, in said lease;

(b) The failure to disclose in the "Use of Proceeds" the provisions, if any, made for payment of the $100 monthly rental due on the La Salle lease commencing February 7, 1958, or to show other arrangements for payment of this obligation;

(c) The failure to disclose that the Augello lease as well as the Grillo and Mence leases, has only a remote chance of producing at all from the horizon in which the Prather well and Palermo well have been productive;

(d) The failure to disclose that the La Salle lease has only a remote chance of yielding a profitable recovery of natural gas and distillate;

(e) The failure to disclose with regard to the Alaska acreage the distance from the company's lease to the Richfield producing well near Anchorage;

(f) The failure to disclose that the relatively small amount of acreage is not commensurate with the risks involved in such an expensive deep test well;

(g) The failure to disclose that the Mann well on the Augello lease described as abandoned was drilled after completion of the Prather and Palermo wells;

(h) Detailed data for an 8,500-foot-well, whereas there appears to be no reasonable basis for drilling a well to that depth on any of the leases now owned by the company; and

(i) The reference in the financial statements under "Cash Disbursements" of an item, "Purchase of Treasury Stock (W. N. Johnson, $1,000.00—Charles Johnson, $750.00)—$1,750.00," and the failure to disclose such shares, the number of which is not indicated, as treasury stock in the "Statement of Capital Shares" or the disposition of such shares.

B. Whether the order dated March 3, 1958, temporarily suspending the exemption under Regulation A should be vacated or made permanent.

III. *It is further ordered*, That William Swift, Sr., or any officer or officers of the Commission designated by it for that purpose shall preside at the hearing, and any officer or officers so designated to preside at any such hearing are hereby authorized to exercise all of the powers granted to the Commission under sections 19 (b), 21 and 22 (c) of the Securities Act of 1933, as amended, and to hearing officers under the Commission's Rules of Practice.

It is further ordered, That the Secretary of the Commission shall serve a copy of this order by registered mail on Texas-Augello Petroleum Exploration Co., that notice of the entering of this order shall be given to all other persons by general release of the Commission and by publication in the FEDERAL REGISTER. Any person who desires to be heard or otherwise wishes to participate in such hearing shall file with the Secretary of the Commission on or before May 17, 1958, a request relative thereto as provided in Rule XVII of the Commission's Rules of Practice.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-3234; Filed, Apr. 30, 1958; 8:48 a. m.]

[File No. 70-3697]

GRANITE STATE ELECTRIC CO. ET AL.

NOTICE OF FILING REGARDING ISSUE AND SALE OF PROMISSORY NOTES BY SUBSIDIARIES TO PARENT COMPANY

APRIL 24, 1958.

In the matter of Granite State Electric Company, Northern Berkshire Electric Company, New England Electric System; File No. 70-3697.

Notice is hereby given that a joint application-declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("act") by New England Electric System ("NEES"), a registered holding company, and its public-utility subsidiaries, Granite State Electric Company ("Granite"), and Northern Berkshire Electric Company ("Northern"). The applicants-declarants have designated sections 7, 10, and 12 of the act and Rules 42 (b) (2) and 43 thereunder as applicable to the proposed transactions, which are summarized as follows:

Granite and Northern propose to issue and sell to NEES up to $1,100,000 and $1,245,000, respectively, of unsecured promissory notes from time to time through June 30, 1958. The proceeds derived from the proposed issue and sale are to be used to pay notes due to banks (outstanding at present in the amounts of $1,000,000 and $1,180,000 for Granite and Northern, respectively) and to provide new money for construction expenditures or to reimburse the treasury therefor. The notes proposed to be issued will mature in less than one year from date of issuance and will bear the same interest rate (4 percent per annum) to the date of maturity as the notes being prepaid or the prime interest rate at the time the notes are issued, whichever is lower, and thereafter at the prime interest rate on the issue date of the notes.

The filing states that upon the Commission's granting the authority requested in this application-declaration, Granite and Northern will make no further bank borrowings under authority heretofore granted by the Commission in File No. 70-3671, (Holding Company Act Release No. 13694). Granite and Northern propose further that if any permanent financing is done by them prior to the maturity of the notes to be issued hereunder, they will respectively apply the proceeds therefrom in reduction of, or in total payment of, their note indebtedness then outstanding; that the balance of note indebtedness then unissued hereunder, if any, will be reduced by the amount, if any, by which the proceeds of such permanent financing exceeds note indebtedness at the time outstanding; and that the maximum amount of note indebtedness proposed to be outstanding hereunder will be reduced by the amount of the proceeds of such permanent financing.

Incidental services in connection with the proposed note issuances will be performed at cost by New England Power Service Company, an affiliated service company, such cost being estimated at not exceeding $300 for each applicant-declarant.

No further action by any regulatory commission, other than this Commission, is necessary to carry out the proposed transactions. The Public Utilities Commission of New Hampshire has issued an order authorizing the notes proposed to be issued by Granite.

Notice is further given that any interested person may, not later than May 12, 1958, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reason for such request, and the issues of fact or law, if any, raised by said joint application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the joint application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule 23 of the rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20 (a) and 100 under the act, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 58-3235; Filed, Apr. 30, 1958; 8:48 a. m.]

[File No. 812-1115]

MCPHAIL CANDY CORP.

ORDER PERMITTING WITHDRAWAL OF APPLICATION

APRIL 24, 1958.

McPhail Candy Corporation ("McPhail") on October 28, 1957 filed a Notification of Registration under the Investment Company Act of 1940 ("Act") as a closed-end management investment company, and concurrently therewith filed an application pursuant to section 3 (b) (2) of the act for an order declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. In the alternative the application requested exemption from all the provisions of the act pursuant to sections 6 (c) and 6 (d) thereof.

Notice of and Order for hearing on said application having been issued by the Commission on December 18, 1957 (Investment Company Act Release No.

2644); and while said hearing was in progress, McPhail having requested the withdrawal of said application; and

The Commission having considered the matter and it appearing that withdrawal of said application is not contrary to the policy and provisions of the act:

It is ordered, That the application of McPhail Candy Corporation pursuant to sections 3 (b) (2), 6 (c) and 6 (d) of the act be, and hereby is, permitted to be withdrawn, effective forthwith.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 58-3236; Filed, Apr. 30, 1958; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

PAUL BRINKMANN

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, 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

Paul Brinkmann, Sessenheim, Bas-Rhin, France; Claim No. 66387; $2,376.21 in the Treasury of the United States. Vesting Order No. 8711.

Executed at Washington, D. C., on April 24, 1958.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 58-3252; Filed, Apr. 30, 1958; 8:53 a. m.]

H. VAN EENENAAM

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, 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

H. van Eenenaam, Prins Hendrikkade 107b, Rotterdam-C, The Netherlands; Claim No. 60493; $918.78 in the Treasury of the United States. Vesting Order No. 17950.

Executed at Washington, D. C., on April 24, 1958.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 58-3253; Filed, Apr. 30, 1958; 8:53 a. m.]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 212]

INCREASED FREIGHT RATES, 1958

MISCELLANEOUS AMENDMENTS

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 25th day of April A. D. 1958.

It appearing, that by order dated February 25, 1958, as modified by order dated March 14, 1958, the division prescribed special rules of practice and procedure to govern the further conduct of this proceeding and fixing certain dates for the submission of verified statements and other matters;

And it further appearing, that respondents, the State of Washington Public Service Commission et al., the Public Utility Commissioner of Oregon et al., and the Florida Citrus Commission et al., have filed petitions requesting a change in such dates or further modification of the Special Rules in other respects, and that the National Industrial Traffic League, National Coal Association and Upper Lake Iron Ore Shippers, have filed replies to respondents' petition;

Upon consideration of such requests and replies and good cause appearing therefor: *It is ordered*,

(1) That paragraph (e) of such special rules as modified by paragraph (2) of said order of March 14, 1958, providing for verified statements in opposition to, or not in support of petitioners or respondents, or of said schedules be, and it is hereby, further modified as follows: The June 9, 1958, date for the filing of such verified statements shall remain unchanged, but the parties shall advise the Commission and opposing counsel on or before June 20, 1958, which witness or witnesses submitting such verified statements they desire to cross-examine, with an estimate of the time required for such examination. The hearing heretofore set for July 7, 1958, for such cross-examination is canceled.

(2) That paragraph (f) of such special rules as modified by paragraph (3) of said order of March 14, 1958, be, and it is hereby, further modified to provide for verified statements in rebuttal of evidence submitted under paragraph (e) of the special rules as modified; that the date for filing such verified statements be, and it is hereby, changed from July 12, 1958, to June 30, 1958; and that the hearing heretofore set for August 4, 1958, for cross-examination on such statements be, and it is hereby, canceled.

(3) That a hearing for the purpose of cross-examination of witnesses submitting verified statements under paragraphs (e) and (f) of the special rules as modified, be, and it is hereby, assigned at the offices of the Commission in Washington, D. C., beginning at 9 a. m., United States standard time, or 10 a. m., daylight saving time, July 21, 1958; *Provided*, That if there are any matters in the rebuttal statements which cannot be dealt with by any party on cross-examination and as to which such party was not previously apprised, such party will have the right to rebut such matters, at such hearing, in a manner (either by oral testimony or by the filing of further statements) as the Commission may determine.

(4) And that the hearings heretofore provided beginning May 19, and July 21, 1958, will be before Division 2, except that, if it appears desirable for the convenience of the parties and the Commission, separate hearings covering one or more of the subjects embraced in this investigation, will be arranged before a designated hearing officer or officers who shall have the usual powers of a hearing officer in the conduct of such separate hearing.

And it is further ordered, That the above-mentioned petitions be, and they are hereby, denied in all other respects, and our order of February 25, as modified by our order of March 14, 1958, except to the extent further modified herein, be, and it is hereby, continued in full force and effect;

And it is further ordered, That a copy of this order be filed with the Director, Division of the Federal Register, and served upon respondents and on each party heretofore filing an appearance in this proceeding;

By the Commission, Division 2.

[SEAL] HAROLD D. MCCOY,
Secretary

[F. R. Doc. 58-3239; Filed, Apr. 30, 1958; 8:49 a. m.]