

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

PART 728—WHEAT

SUBPART—1958-59 MARKETING YEAR

EXEMPTION OF CERTAIN WHEAT PRODUCERS FROM LIABILITY FOR MARKETING QUOTA PENALTIES WHERE ALL OF THE WHEAT CROP IS FED OR USED FOR SEED OR FOOD ON THE FARM; EXTENSION OF TIME FOR FILING APPLICATION

The amendment herein is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and is for the purpose of extending the final date for filing applications for an exemption under the regulations.

Since farmers in many areas have already seeded, or are preparing to seed, their 1958 crop of wheat it is imperative that they be notified of the amendment herein as soon as possible. Accordingly, it is hereby found that compliance with the public notice, procedure, and 30-day effective date provisions of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest. Therefore, the amendment shall become effective upon the date of its publication in the FEDERAL REGISTER.

Section 728.842 is amended by striking out in the second sentence thereof the language "October 15" and inserting in lieu thereof "October 25".

(Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interprets or applies sec. 335, 52 Stat. 54, as amended; 7 U. S. C. 1335)

Done at Washington, D. C., this 22d day of October 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 57-8803; Filed, Oct. 23, 1957; 10:21 a. m.]

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

[Tangerine Reg. 193]

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

LIMITATION OF SHIPMENTS

§ 933.866 *Tangerine Regulation 193—(a) Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Florida tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on October 22, 1957, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810 to 51.1836 of this title).

(2) *Tangerine Regulation 192* (§ 933.863; 22 F. R. 8251) is hereby terminated effective at 12:01 a. m., e. s. t., October 25, 1957.

(3) During the period beginning at 12:01 a. m., e. s. t., October 25, 1957, and ending at 12:01 a. m., e. s. t., November 18, 1957, no handler shall ship:

(i) Any tangerines, grown in the State of Florida, that do not grade at least U. S. No. 1; or

(ii) Any tangerines, grown in the State of Florida, that are of a size smaller than the size that will pack 176 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions $9\frac{1}{2}$ x $9\frac{1}{2}$ x $19\frac{1}{8}$ inches; capacity 1,726 cubic inches).

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

Dated: October 22, 1957.

[SEAL] FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 57-8811; Filed, Oct. 23, 1957; 11:23 a. m.]

Chapter XI—Agricultural Conservation Program Service, Department of Agriculture

PART 1105—AGRICULTURAL CONSERVATION; HAWAII

SUBPART 1958

The protection and conservation of the soil and water resources of farm and ranch lands is essential in order that these lands will continue to produce sufficient food and other raw materials to meet future needs. All people, not farmers and ranchers alone, have a stake in, and a part of the responsibility for, protecting and conserving our farm and ranch lands. Recognizing this, the Congress appropriates funds to share with farmers and ranchers the cost of carrying out needed soil and water conservation measures. The Agricultural Conservation Program is a means of making this Federal cost-sharing available to farmers and ranchers.

INTRODUCTION

Sec. 1105.700 Introduction.

GENERAL PROGRAM PRINCIPLES

1105.701 General program principles.

DEFINITIONS

1105.702 Definitions.

ALLOCATION OF FUNDS

1105.703 Allocation of funds.

STATE AGRICULTURAL CONSERVATION PROGRAM

1105.704 Agencies participating in development of State program.

APPROVAL OF CONSERVATION PRACTICES

1105.705 Method and extent of approval.

1105.706 Selection of practices.

1105.707 Pooling agreements.

1105.708 Prior request for cost-sharing.

1105.709 Program year and technical aid.

1105.710 Practice specifications and approval.

1105.711 Completion of practices.

1105.712 Practices substantially completed during program year.

1105.713 Practices requiring more than one program year for completion.

1105.714 Initial establishment or installation of practices.

1105.715 Repair, upkeep, and maintenance of practices.

FEDERAL COST-SHARES

1105.717 Division of Federal cost-shares.

1105.718 Increase in small Federal cost-shares.

1105.719 Maximum Federal cost-share limitation.

GENERAL PROVISIONS RELATING TO FEDERAL COST-SHARING

1105.721 Maintenance of practices.

1105.722 Practices defeating purposes of programs.

- Sec.
1105.723 Depriving others of Federal cost-share.
1105.724 Filing of false claims.
1105.725 Federal cost-shares not subject to claims.
1105.726 Assignments.
1105.727 Practices carried out with State or Federal aid.
1105.728 Compliance with regulatory measures.

APPLICATION FOR PAYMENT OF FEDERAL COST-SHARES

- 1105.730 Persons eligible to file application.
1105.731 Time and manner of filing application and required information.

APPEALS

- 1105.733 Appeals.

AUTHORITY, AVAILABILITY OF FUNDS, AND APPLICABILITY

- 1105.735 Authority.
1105.736 Availability of funds.
1105.737 Applicability.

CONSERVATION PRACTICES AND MAXIMUM RATES OF COST-SHARING

- 1105.741 Practice 1: Constructing terraces and/or diversion ditches to control the flow of runoff water and check soil erosion on sloping farmland.
1105.742 Practice 2: Constructing interception ditches and/or outlet channels for disposing of, diverting, or collecting water to control erosion or for impounding livestock water to obtain proper distribution of livestock and encourage rotation grazing and better grazing land management as a means of protecting established vegetative cover, and for irrigation.
1105.743 Practice 3: Establishing a protective sod lining in waterways to dispose of excess water without causing erosion.
1105.744 Practice 4: Constructing erosion control dams or stone or vegetative barriers to prevent or heal the gulying of farmland or reduce runoff of water.
1105.745 Practice 5: Initial planting of orchards on the contour to help prevent erosion.
1105.746 Practice 6: Establishment of leguminous crops for use as stubble mulch, cover, or green manure for protection of soil from erosion.
1105.747 Practice 7: Establishment of adapted nonlegumes for stubble mulch, cover, filter strip, or green manure for protection of soil from erosion.
1105.748 Practice 8: Initial establishment of permanent pasture or initial improvement of an established permanent grass or grass-legume cover for soil or watershed protection by seeding, sodding, or sprigging adapted perennial grasses and/or legumes.
1105.749 Practice 9: Initial treatment of cropland, orchardland, or pasture for correction of soil acidity and addition of needed calcium to permit best use of legumes and/or grasses for soil improvement and protection.
1105.750 Practice 10: Initial controlling of competitive shrubs to permit growth of adequate grass cover for soil protection on range or pasture land by poisoning, gyromowing, or hand grubbing.

- Sec.
1105.751 Practice 11: Initial application of organic mulch material to any cropland, orchardland, or eroded pasture areas for soil protection and moisture conservation.
1105.752 Practice 12: Installation of pipelines for livestock water to obtain proper distribution of livestock and encourages rotation grazing and better grassland management as a means of protecting established vegetative cover.
1105.753 Practice 13: Construction of permanent artificial watersheds for accumulating water to be used to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover.
1105.754 Practice 14: Construction of permanent artificial water tanks for accumulating water to be used to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover.
1105.755 Practice 15: Construction of permanent fences to obtain better distribution and control of livestock grazing on range or pasture land and to promote proper management for protection of established forage resources, or to protect farm woodland from grazing.
1105.756 Practice 16: Constructing or sealing dams, pits, or ponds for livestock water, including the enlargement of inadequate structures.
1105.757 Practice 17: Constructing or sealing dams, pits, or ponds for irrigation water.
1105.758 Practice 18: Constructing or enlarging permanent ditches, dikes, or laterals in reorganization of farm irrigation system to conserve water and prevent erosion.
1105.759 Practice 19: Lining ditches in reorganization of farm irrigation system to conserve water and prevent erosion.
1105.760 Practice 20: Constructing or installing permanent structures such as siphons, flumes, drop boxes or chutes, weirs, diversion gates, and permanently located pipe in reorganization of farm irrigation system to conserve water and prevent erosion.
1105.761 Practice 21: Installation of portable sprinklers or gated pipes in reorganizing farm irrigation system to conserve water and prevent erosion.
1105.762 Practice 22: Construction or enlargement of permanent open drainage systems to dispose of excess water on farmland under cultivation or on pastureland.
1105.763 Practice 23: Initial establishment of a stand of trees or shrubs on farmland for purposes other than the prevention of wind or water erosion.
1105.764 Practice 24: Initial establishment of a shrub windbreak hedge to prevent wind or water erosion.

- Sec.
1105.765 Practice 25: Installation of facilities for sprinkler irrigation of permanent pasture for developing forage resources to encourage rotation grazing and better pasture management for protection of all grazing land in the farm against overgrazing and erosion.
1105.766 Practice 26: Constructing wells or developing seeps or springs for livestock water as a means of protecting established vegetative cover through proper distribution of livestock, rotation grazing, or better grassland management.
1105.767 Practice 27: Shaping or land grading to permit effective surface drainage.
1105.768 Practice 28: Leveling or grading land for more efficient use of irrigation water and to prevent erosion.
1105.769 Practice 29: Streambank or shore protection, channel clearance, enlargement or realignment, or construction of floodways, levees, or dikes, to prevent erosion or flood damage to farmland.
1105.770 Practice 30: Initial establishment of contour operations on nonterraced unirrigated land to protect soil from wind or water erosion.
1105.771 Practice 31: Initial establishment of cross-slope strip-cropping to protect soil from water or wind erosion.
1105.772 Practice 32: Establishment of permanent vegetative strips between tree rows in young (less than 5 years old) coffee orchards as a protection against erosion.
1105.773 Practice 33: Subsurface tillage of cropland and/or orchardland protected by organic mulch, to avoid plowing under the surface cover of mulch which has been applied for soil protection and moisture conservation.
1105.774 Practice 34: Constructing channel lining, chutes, drop spillways, pipe drops, drop inlets, or similar structures for the protection of outlets and water channels that dispose of excess water.

AUTHORITY: §§ 1105.700 to 1105.774 issued under sec. 4, 49 Stat. 164; 16 U. S. C. 590d. Interpret or apply secs. 7-17, 49 Stat. 1148, as amended, 71 Stat. 329; 16 U. S. C. 590g-590q.

INTRODUCTION

§ 1105.700 *Introduction.* (a) The United States Department of Agriculture offers every farmer and rancher in the Territory of Hawaii an opportunity to conserve and improve the productivity of their land through participation in the 1958 Agricultural Conservation Program.

(b) Under this program, part of the costs of the conservation practices is borne by the Government, and this represents the Nation's interest in what happens to its basic land and water resources.

(c) Costs will be shared on the performance of recommended practices at approved rates to the extent of available funds. Developed under the provisions of the Soil Conservation and Domestic Allotment Act, the program is designed to meet local conservation needs.

(d) The information contained in this subpart outlines the general provisions of the 1958 Agricultural Conservation Program for Hawaii and the general specifications and rates of Federal cost-sharing for practices.

GENERAL PROGRAM PRINCIPLES

§ 1105.701 *General program principles.* The 1958 Agricultural Conservation Program for Hawaii has been developed and is to be carried out on the basis of the following general principles:

(a) The program is confined to the conservation practices on which Federal cost-sharing is most needed in order to achieve the maximum conservation benefit in the Territory.

(b) The program is designed to encourage those soil and water conservation practices which provide the most enduring conservation benefits practically attainable in 1958 on the lands where they are to be applied.

(c) Costs will be shared with a farmer or rancher only on satisfactorily performed soil and water conservation practices for which Federal cost-sharing was requested by the farmer or rancher before the conservation work was begun.

(d) Costs should be shared only on soil and water conservation practices which it is believed farmers or ranchers would not carry out to the needed extent without program assistance. In no event should costs be shared on practices except those which are over and above those farmers or ranchers would be compelled to perform in order to secure a crop.

(e) The rates of cost-sharing in the program are to be the minimum required to result in substantially increased performance of needed soil and water conservation practices within the limits prescribed.

(f) The purpose of the program is to help achieve additional conservation on land now in agricultural production rather than to bring more land into agricultural production. The program is not applicable to the development of new or additional farmland by measures such as drainage, irrigation, and land clearing. Such of the available funds that cannot be wisely utilized for this purpose will be returned to the public treasury.

(g) If the Federal Government shares the cost of the initial application of soil and water conservation practices which farmers and ranchers otherwise would not perform but which are essential to sound soil and water conservation, the farmers and ranchers should assume responsibility for the upkeep and maintenance of those practices through their life span. Cost-shares are not applicable, after they are initially utilized, to undertake a practice during its normal life span unless the practice has failed to serve for its normal life span due to conditions beyond the control of the farm or ranch operator.

DEFINITIONS

§ 1105.702 *Definitions.* For the purposes of the 1958 program:

(a) "Secretary" means the Secretary of the United States Department of Agriculture 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.

(b) "Administrator, ACPS," means the Administrator of the Agricultural Conservation Program Service.

(c) "State" means the Territory of Hawaii.

(d) "State Office" means the Hawaii Agricultural Stabilization and Conservation Office in Honolulu, Territory of Hawaii.

(e) "Person" means an individual, partnership, association, corporation, estate, or trust, or other business enterprise, or other legal entity (and, wherever applicable, the Territory of Hawaii or a political subdivision or agency thereof) that, as landlord, tenant, or sharecropper, participates in the operation of a farm or ranch.

(f) "Farm" or "ranch" means (1) all adjoining or nearby and easily accessible farm, wood, or range land under the same ownership which is operated by one person, and (2) all additional farm, wood, or range land under different ownership operated by such person which the State Office determines (i) is nearby and easily accessible, (ii) is approximately equally productive, and (iii) for the past 2 years has been operated by such person and will be so operated during the current year, or has been operated by such person for 1 year with proof satisfactory to the State Office that it will be operated by such person for at least 2 more years. Notwithstanding the conditions set forth in subparagraphs (1) and (2) of this paragraph, fields and subdivisions of fields which are part of a farm or ranch shall remain a part of such farm or ranch when operated under a short term agreement by another operator, unless and until such fields or subdivisions of fields may be properly constituted as a separate farm or ranch or part of another farm or ranch under this definition. Land which is properly constituted as a farm or ranch shall not be reconstituted when a change of farm or ranch operators is the only basis for such action.

(g) "Cropland" means farmland which in 1957 was tilled or was in regular crop rotation, including also land which was established in permanent vegetative cover, other than trees, since 1953 and which was classified as cropland at the time of seeding, but excluding (1) bearing orchards and vineyards (except the acreage of cropland therein), (2) plowable noncrop open pasture, and (3) any land which constitutes, or will constitute if tillage is continued, an erosion hazard to the community.

(h) "Orchardland" means the acreage in planted fruit trees, nut trees, coffee trees, papaya trees, banana plants, or vineyards.

(i) "Pastureland" means farmland, other than rangeland, on which the predominant growth is forage suitable for grazing and on which the spacing of any trees or shrubs is such that the land

could not fairly be considered as woodland.

(j) "Rangeland" means land which produces, or can produce, forage suitable for grazing by range livestock without cultivation or general irrigation.

(k) "Merchantable timber" means any processed or unprocessed timber which is sold for cash by the producer.

(l) "Forest Service" means the Division of Forestry, Territorial Board of Agriculture and Forestry.

ALLOCATION OF FUNDS

§ 1105.703 *Allocation of funds.* The amount of funds available for conservation practices under this program is \$188,000. This amount does not include the amount set aside for administrative expenses and the amount required for increases in small Federal cost-shares in § 1105.718.

STATE AGRICULTURAL CONSERVATION PROGRAM

§ 1105.704 *Agencies participating in development of State program.* This program was developed within the pattern of the national program authorized by the Congress under the provisions of the Soil Conservation and Domestic Allotment Act of 1938, as amended. Adaptation to Hawaii's needs has been accomplished over a period of years through the cooperative assistance and advice of interested farmers and ranchers, as well as Government agency representatives from the Extension Service, Farmers Home Administration, Soil Conservation Service, Board of Agriculture and Forestry, and Agricultural Stabilization and Conservation Office. The program has been approved by the Administrator, ACPS, in Washington.

APPROVAL OF CONSERVATION PRACTICES

§ 1105.705 *Method and extent of approval.* The State Office will determine the extent to which program funds will be made available to share the cost of each approved practice on each farm or ranch, taking into consideration the available funds, the conservation problems of the individual farm or ranch and other farms and ranches, and the conservation work for which requested Federal cost-sharing is considered as most needed in 1958. The notice of approval shall show for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the Federal cost-share for the performance of that number of units of the practice. No practice may be approved for cost-sharing except as authorized by the program contained in this subpart, or in accordance with procedures incorporated therein. Available funds for cost-sharing shall not be allocated on a farm or acreage-quota basis, but shall be directed to the accomplishment of the most enduring conservation benefits attainable.

§ 1105.706 *Selection of practices.* (a) The practices included in the program are only those practices for which cost-sharing is essential to permit accomplishment of needed conservation work which would not otherwise be carried out.

(b) Each farmer or rancher shall be given an opportunity to request that the Federal Government share in the cost of those practices on which he considers he needs such assistance in order to permit their performance on his farm or ranch. The State Office, taking into consideration the farmer's or rancher's request and any conservation plan developed by the farmer or rancher with the assistance of any State or Federal agency, shall direct the available funds for cost-sharing to those farms and ranches and to those practices where cost-sharing is considered most essential to the accomplishment of the basic conservation objective of the Department—the use of each acre of agricultural land within its capabilities and the treatment of each acre in accordance with its needs for protection and improvement.

§ 1105.707 *Pooling agreements.* Farmers or ranchers in any local area may agree in writing, with the approval of the State Office, to perform designated amounts of practices which, by conserving or improving the agricultural resources of the community, will solve a mutual conservation problem on the farms of the participants. For purposes of eligibility for cost-sharing, practices carried out under such an approved written agreement will be regarded as having been carried out on the farms or ranches of the persons who performed the practices.

§ 1105.708 *Prior request for cost-sharing.* Costs will be shared only for those practices, or components of practices, for which cost-sharing is requested by the farmer or rancher before performance thereof is started. For practices for which (a) approval was given under the 1957 Agricultural Conservation Program, (b) performance was started but not completed during the 1957 program year, and (c) the State Office believes the extension of the approval to the 1958 program is justified under the 1958 program regulations and provisions, the filing of the request for cost-sharing under the 1957 program may be regarded as meeting the requirement of the 1958 program that a request for cost-sharing be filed before performance of the practice is started.

§ 1105.709 *Program year and technical aid.* (a) Costs will be shared at the rates specified and within the limitations set forth in this subpart for carrying out during the period from October 1, 1957, through December 31, 1958, the conservation practices, or components thereof, included in this subpart which are approved for a farm or ranch, except that for practices performed during the period October 1, 1957, through December 31, 1957, for which specifications and requirements are identical with those for comparable practices under the 1957 Agricultural Conservation Program, cost-share rates shall be those prescribed for the 1957 program.

(b) The Soil Conservation Service is responsible for the technical phases of the practices contained in §§ 1105.741, 1105.742, 1105.744, 1105.753, 1105.754,

1105.756 to 1105.762, 1105.764 to 1105.770, 1105.773, and 1105.774 (practices 1, 2, 4, 13, 14, 16 to 22, 24 to 30, 33, and 34). This responsibility shall include (1) a finding that the practice is needed and practicable on the farm, (2) necessary site selection, other preliminary work, and layout work of the practice, (3) necessary supervision of the installation, and (4) certification of performance. For the practice contained in § 1105.743 (practice 3), the Soil Conservation Service is responsible (1) for determining that the practice is needed and practicable on the farm, and (2) for necessary site selection, other preliminary work, and layout work of the practice. For the practices contained in §§ 1105.745 and 1105.752 (practices 5 and 12), the Soil Conservation Service is responsible for determining that the practice is needed and practicable on the farm. In addition, upon agreement of the State Office and the Territorial Conservationist of the Soil Conservation Service, responsibility for all or part of the unassigned technical phases of these or other practices may be assigned to the Soil Conservation Service. The Territorial Conservationist of the Soil Conservation Service may utilize assistance from private, State, or Federal agencies in carrying out these assigned responsibilities. The Soil Conservation Service will utilize to the full extent available resources of the Territorial forestry agency in carrying out its assigned responsibilities for the practice contained in § 1105.764 (practice 24).

(c) The Forest Service (Forestry Division, Territorial Board of Agriculture and Forestry) is responsible for the technical phases of the practice contained in § 1105.763 (practice 23). This responsibility shall include (1) providing necessary specialized technical assistance, (2) development of specifications for the practice, and (3) working through the State Office, determining compliance in meeting these specifications. The Forest Service may utilize assistance from private, State, or Federal agencies in carrying out these assigned responsibilities.

§ 1105.710 *Practice specifications and approval.* (a) Minimum specifications which practices must meet to be eligible for Federal cost-sharing are set forth in this subpart. Additional specifications may be secured from the State Office or the Soil Conservation Service Territorial Office in Honolulu.

(b) For those practices in this subpart which authorize Federal cost-sharing for minimum required applications of liming materials and commercial fertilizers, the minimum required application on which cost-sharing is authorized shall in each case be determined on the basis of current soil tests: *Provided, however,* That if the State Office determines available facilities are inadequate to provide the necessary tests, the minimum required applications of these materials shall be those recommended for the area by the Agricultural Extension Service. Liming materials contained in commercial fertilizers, phosphate rock, or basic slag will not qualify for Federal cost-sharing.

(c) Practice specifications shall provide minimum performance requirements which will qualify the practice for cost-sharing and, where applicable, may also provide maximum limits of performance which will be eligible for cost-sharing. The minimum performance requirements established for a practice shall represent those levels of performance which are necessary to assure a satisfactory practice. The maximum limits of performance for cost-sharing established for a practice shall represent those levels of performance which are needed in order for the practice to be most effective in meeting the conservation problem and which are not in excess of levels for which cost-sharing can be justified.

(d) Costs for the practices contained in §§ 1105.743, 1105.746 to 1105.748, 1105.763, 1105.764, and 1105.772 (practices 3, 6 to 8, 23, 24, and 32) may be shared even though a good stand is not established, if the State Office determines, in accordance with approved standards, that the practices were carried out in a manner which would normally result in the establishment of a good stand, and that failure to establish a good stand was due to weather or other conditions beyond the control of the farm or ranch operator. The State Office may require as a condition of cost-sharing in such cases that the area be reseeded or replanted, or that other needed protective measures be carried out.

§ 1105.711 *Completion of practices.* Federal cost-sharing for the practices contained in this subpart is conditioned upon the performance of the practices in accordance with all applicable specifications and program provisions. Except as provided in §§ 1105.712 and 1105.713, practices must be completed during the program year in order to be eligible for cost-sharing.

§ 1105.712 *Practices substantially completed during program year.* Approved practices may be deemed, for purposes of payment of cost-shares, to have been carried out during the 1958 program year, if the State Office determines that they are substantially completed by the end of the program year. However, no cost-shares for such practices shall be paid until they have been completed in accordance with all applicable specifications and program provisions, except as provided in § 1105.713.

§ 1105.713 *Practices requiring more than one program year for completion.* Cost-shares approved under the 1958 program will not be considered as earned until all components of the approved practices are completed in accordance with all applicable specifications and program provisions. Cost-shares for completed components may be paid only after the practice is substantially completed, and only on the condition that the farmer or rancher will complete the remaining components of the practice within the time prescribed by the State Office which will afford the farmer or rancher a fair and reasonable opportunity to complete them, unless prevented from doing so for reasons beyond his

control and regardless of whether cost-sharing therefor is offered, or refund the cost-shares paid to him. If an approved practice is not substantially completed by the end of the 1958 program year, the practice may be considered for reapproval under the 1959 program.

§ 1105.714 *Initial establishment or installation of practices.* Under the initial establishment principle as it applies to the 1958 program, Federal cost-sharing may be authorized for the first establishment or installation of a practice with cost-sharing since the 1953 program on a particular piece of land while under the control of the current operator. Federal cost-sharing may also be authorized for replacement, enlargement, or restoration of practices for which cost-sharing has been allowed since the 1953 program if the practice has served for its normal life span, or if all of the following conditions exist:

(a) Replacement, enlargement, or restoration of the practice is needed to meet the conservation problem.

(b) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(c) The State Office believes that the replacement, enlargement, or restoration of the practice merits consideration under the program to an equal extent with other practices for which cost-sharing has not been allowed under a previous program.

§ 1105.715 *Repair, upkeep, and maintenance of practices.* Federal cost-sharing is not authorized for repairs or for normal upkeep or maintenance of any practice.

FEDERAL COST-SHARES

§ 1105.717 *Division of Federal cost-shares.*—(a) *Federal cost-shares.* The Federal cost-share attributable to the use of conservation materials or services shall be credited to the person to whom the materials or services are furnished. Other Federal cost-shares shall be credited to the person who carried out the practices by which such other Federal cost-shares are earned. If more than one person contributed to the carrying out of such practices, the Federal cost-share shall be divided among such persons in the proportion that the State Office determines they contributed to the carrying out of the practices. In making this determination, the State Office shall take into consideration the value of the labor, equipment, or material contributed by each person toward the carrying out of each practice on a particular acreage, and shall assume that each contributed equally unless it is established to the satisfaction of the State Office that their respective contributions thereto were not in equal proportion. The furnishing of land or the right to use water will not be considered as a contribution to the carrying out of any practice.

(b) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any person, any Federal share of the cost due him shall be paid to his successor, determined in accordance with the provisions of the regulations in ACP-122, as amended (Part 1108 of this chapter).

§ 1105.718 *Increase in small Federal cost-shares.* The Federal cost-share computed for any person with respect to any farm or ranch shall be increased as follows: *Provided, however,* That in the event legislation is enacted which repeals or amends the authority for making such increases, the Secretary may, in such manner and at such time as is consistent with such legislation, discontinue such increases:

(a) Any Federal cost-share amounting to \$0.71 or less shall be increased to \$1.

(b) Any Federal cost-share amounting to more than \$0.71, but less than \$1, shall be increased by 40 percent.

(c) Any Federal cost-share amounting to \$1 or more shall be increased in accordance with the following schedule:

Amount of cost-share computed:	Increase in cost-share
\$1 to \$1.99	\$0.40
\$2 to \$2.99	.80
\$3 to \$3.99	1.20
\$4 to \$4.99	1.60
\$5 to \$5.99	2.00
\$6 to \$6.99	2.40
\$7 to \$7.99	2.80
\$8 to \$8.99	3.20
\$9 to \$9.99	3.60
\$10 to \$10.99	4.00
\$11 to \$11.99	4.40
\$12 to \$12.99	4.80
\$13 to \$13.99	5.20
\$14 to \$14.99	5.60
\$15 to \$15.99	6.00
\$16 to \$16.99	6.40
\$17 to \$17.99	6.80
\$18 to \$18.99	7.20
\$19 to \$19.99	7.60
\$20 to \$20.99	8.00
\$21 to \$21.99	8.20
\$22 to \$22.99	8.40
\$23 to \$23.99	8.60
\$24 to \$24.99	8.80
\$25 to \$25.99	9.00
\$26 to \$26.99	9.20
\$27 to \$27.99	9.40
\$28 to \$28.99	9.60
\$29 to \$29.99	9.80
\$30 to \$30.99	10.00
\$31 to \$31.99	10.20
\$32 to \$32.99	10.40
\$33 to \$33.99	10.60
\$34 to \$34.99	10.80
\$35 to \$35.99	11.00
\$36 to \$36.99	11.20
\$37 to \$37.99	11.40
\$38 to \$38.99	11.60
\$39 to \$39.99	11.80
\$40 to \$40.99	12.00
\$41 to \$41.99	12.10
\$42 to \$42.99	12.20
\$43 to \$43.99	12.30
\$44 to \$44.99	12.40
\$45 to \$45.99	12.50
\$46 to \$46.99	12.60
\$47 to \$47.99	12.70
\$48 to \$48.99	12.80
\$49 to \$49.99	12.90
\$50 to \$50.99	13.00
\$51 to \$51.99	13.10
\$52 to \$52.99	13.20
\$53 to \$53.99	13.30
\$54 to \$54.99	13.40
\$55 to \$55.99	13.50
\$56 to \$56.99	13.60
\$57 to \$57.99	13.70
\$58 to \$58.99	13.80
\$59 to \$59.99	13.90
\$60 to \$185.99	14.00
\$186 to \$199.99	1
\$200 and over	2

1 Increase to \$200.

2 No increase.

§ 1105.719 *Maximum Federal cost-share limitation.* (a) The total of all Federal cost-shares under the 1958 program to any person with respect to farms, ranching units, and turpentine places in the United States (including Alaska, Hawaii, Puerto Rico, and the Virgin Islands) for approved practices which are not carried out under pooling agreements shall not exceed the sum of \$2,500, and for all approved practices, including those carried out under pooling agreements, shall not exceed the sum of \$10,000.

(b) All or any part of any Federal cost-share which otherwise would be due any person under the 1958 program may be withheld, or required to be refunded, if he has adopted, or participated in adopting, any scheme or device, including the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, trust, or any other means, designed to evade, or which has the effect of evading, the provisions of this section.

GENERAL PROVISIONS RELATING TO FEDERAL COST-SHARING

§ 1105.721 *Maintenance of practices.* The sharing of costs, by the Federal Government, for the performance of approved conservation practices on any farm or ranch under the 1958 program will be subject to the condition that the person with whom the costs are shared will maintain such practices throughout their normal life span in accordance with good farming practices as long as the land on which they are carried out is under his control.

§ 1105.722 *Practices defeating purposes of programs.* If the State Office finds that any person has adopted or participated in any practice which tends to defeat the purposes of the 1958 or any previous program, including, but not limited to, failure to maintain, in accordance with good farming practices, practices carried out under a previous program, it may withhold, or require to be refunded, all or any part of the Federal cost-share which otherwise would be due him under the 1958 program.

§ 1105.723 *Depriving others of Federal cost-share.* If the State Office finds that any person has employed any scheme or device (including coercion, fraud, or misrepresentation), the effect of which would be or has been to deprive any other person of the Federal cost-share due that person under the program, it may withhold, in whole or in part, from the person participating in or employing such a scheme or device, or require him to refund in whole or in part, the Federal cost-share which otherwise would be due him under the 1958 program.

§ 1105.724 *Filing of false claims.* If the State Office finds that any person has knowingly filed claim for payment of the Federal cost-share under the 1958 program for practices not carried out, or for practices carried out in such a manner that they do not meet the required specifications therefor, such person shall not be eligible for any Federal cost-share under the 1958 program and shall refund

all amounts that may have been paid to him under the 1958 program. The withholding or refunding of Federal cost-shares will be in addition to and not in substitution of any other penalty or liability which might otherwise be imposed.

§ 1105.725 *Federal cost-shares not subject to claims.* Any Federal cost-share, or portion thereof, due any person shall be determined and allowed without regard to questions of title under State law; without deduction of claims for advances (except as provided in § 1105.726, and except for indebtedness to the United States subject to setoff under orders issued by the Secretary (Part 1109 of this chapter)); and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

§ 1105.726 *Assignments.* Any person who may be entitled to any Federal cost-share under the 1958 program may assign his right thereto, in whole or in part, as security for cash loaned or advances made for the purpose of financing the making of a crop in 1958, including the carrying out of soil and water conservation practices. No assignment will be recognized unless it is made in writing on Form ACP-69 and in accordance with the regulations issued by the Secretary (Part 1110 of this chapter).

§ 1105.727 *Practices carried out with State or Federal aid.* The total extent of any practice performed shall be reduced for the purpose of computing cost-shares by the percentage of the total cost of the items of performance on which costs are shared which the State Office determines was furnished by a State or Federal agency. Materials or services furnished through the 1958 program, materials or services furnished by any agency of a State to another agency of the same State, or materials or services furnished or used by a State or Federal agency for the performance of practices on its land shall not be regarded as State or Federal aid for the purposes of this section.

§ 1105.728 *Compliance with regulatory measures.* Persons who carry out conservation practices for cost-sharing under the 1958 program shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations. The person with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because he infringes on the rights of others or fails to comply with applicable laws and regulations.

APPLICATION FOR PAYMENT OF FEDERAL COST-SHARES

§ 1105.730 *Persons eligible to file application.* Any person who, as landlord, tenant, or sharecropper on a farm or ranch, bore a part of the cost of an approved conservation practice is eligible to file an application for payment of the Federal cost-share due him.

§ 1105.731 *Time and manner of filing application and required information.*

(a) It shall be the responsibility of persons participating in the program to submit to the State Office forms and information needed to establish the extent of the performance of approved conservation practices and compliance with applicable program provisions. Time limits with regard to the submission of such forms and information shall be established where necessary for efficient administration of the program. Such time limits shall afford a full and fair opportunity to those eligible to file the forms or information within the period prescribed. At least 2 weeks' notice to the public shall be given of any general time limit prescribed. Such notice shall be given by mailing notice to each farm inspector and making copies available to the press. Other means of notification, including radio announcements and individual notices to persons affected, shall be used to the extent practicable. Notice of time limits which are applicable to individual persons, such as time limits for reporting performance of approved practices, shall be issued in writing to the persons affected. Exceptions to time limits may be made in cases where failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the farmer or rancher.

(b) Payment of Federal cost-shares will be made only upon application submitted on the prescribed form to the State Office. Any application for payment may be rejected if any form or information required of the applicant is not submitted to the State Office within the applicable time limit.

(c) If an application for a farm or ranch is filed within the time prescribed, any producer on the farm or ranch who did not sign the application may subsequently apply for his share of the cost-share, provided he does so on or before December 31, 1959.

APPEALS

§ 1105.733 *Appeals.* (a) Any person may, within 15 days after notice thereof is forwarded to or made available to him, request the State Office in writing to reconsider its recommendation or determination in any matter affecting the right to or the amount of his Federal cost-shares with respect to the farm or ranch. The State Office shall notify him of its decision in writing within 15 days after receipt of written request for reconsideration. If the person is dissatisfied with the decision of the State Office, he may, within 15 days after the decision is forwarded to or made available to him, request the Administrator, ACPS, to review the decision of the State Office. The decision of the Administrator, ACPS, shall be final. Written notice of any decision rendered under this section by the State Office shall also be issued to each other landlord, tenant, or sharecropper on the farm or ranch who may be adversely affected by the decision.

(b) Appeals considered under this section shall be decided in accordance with the provisions of this subpart on the basis of the facts of the individual case: *Provided*, That the Secretary, upon the recommendation of the Administrator,

ACPS, and the State Office, may waive the requirements of any such provision, where not prohibited by statute, if, in his judgment, such waiver under all the circumstances is justified to permit a proper disposition of an appeal where the farmer, in reasonable reliance on any instruction or commitment of any member, employee, or representative of the State Office, in good faith performed an eligible conservation practice and such performance reasonably accomplished the purpose of the practice.

AUTHORITY, AVAILABILITY OF FUNDS, AND APPLICABILITY

§ 1105.735 *Authority.* The program contained in this subpart is approved pursuant to the authority vested in the Secretary of Agriculture under sections 7-17 of the Soil Conservation and Domestic Allotment Act, as amended (49 Stat. 1148, 16 U. S. C. 590g-590q), and the Department of Agriculture and Farm Credit Administration Appropriation Act, 1958.

§ 1105.736 *Availability of funds.* (a) The provisions of the 1958 program are necessarily subject to such legislation as the Congress of the United States may hereafter enact; the paying of the Federal cost-shares provided in this subpart is contingent upon such appropriation as the Congress may hereafter provide for such purpose; and the amounts of such Federal cost-shares will necessarily be within the limits finally determined by such appropriation.

(b) The funds provided for the 1958 program will not be available for paying Federal cost-shares for which applications are filed in the State Office after December 31, 1959.

§ 1105.737 *Applicability.* (a) The provisions of the 1958 program contained in this subpart are not applicable to (1) any department or bureau of the United States Government or any corporation wholly owned by the United States; (2) grazing lands owned by the United States which were acquired or reserved for conservation purposes, or which are to be retained permanently under Government ownership, including, but not limited to, grazing lands administered by the Forest Service of the United States Department of Agriculture, or by the Bureau of Land Management (including lands administered under the Taylor Grazing Act) or the Fish and Wildlife Service of the United States Department of the Interior; (3) nonprivate persons for performance on any land owned by the United States or a corporation wholly owned by it; and (4) farmlands, the use of which the State Office determines will probably change within 2 years to nonagricultural use.

(b) The program is applicable to (1) privately owned lands; (2) lands owned by the Territory of Hawaii or a political subdivision or agency thereof; (3) lands owned by corporations which are partly owned by the United States, such as production credit associations; (4) lands temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farmers Home Ad-

ministration, the Federal Farm Mortgage Corporation, the United States Department of Defense, or by any other Government agency designated by the Administrator, ACPS; and (5) any cropland farmed by private persons which is owned by the United States or a corporation wholly owned by it.

CONSERVATION PRACTICES AND MAXIMUM RATES OF COST-SHARING

§ 1105.741 Practice 1: Constructing terraces and/or diversion ditches to control the flow of runoff water and check soil erosion on sloping farmland. Cost-sharing will be allowed, provided the structures are properly laid out and constructed in accordance with specifications contained in Soil Conservation Service Technical Standards on file in the State Office. If the land terraced is planted to clean-tilled crops, the crop rows should follow contour or suitable grade lines. Diversion ditches should be used on slopes between 16 percent and 20 percent and bench-type terraces on land of 20 percent or more slope. Necessary protective outlets must be provided.

Maximum Federal cost-share. (a) \$0.30 per cubic yard of earth moved in terrain permitting normal operations of tillage equipment.

(b) \$0.40 per cubic yard of earth moved in other terrain (rocky, broken, steep, or with exposed substratum).

§ 1105.742 Practice 2: Constructing interception ditches and/or outlet channels for disposing of, diverting, or collecting water to control erosion or for impounding livestock water to obtain proper distribution of livestock and encourage rotation grazing and better grazing land management as a means of protecting established vegetative cover, and for irrigation. This practice does not apply to infield surface water interception on farmlands. (See § 1105.741 (practice 1) for infield interception of runoff water.) Channels having an erosive grade must be protected against erosion damage by adequate sod or other lining. Outlets must be protected to discharge water without gully. Cost-sharing will be allowed only once and that for the year of construction. Specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of \$0.40 per cubic yard of material moved, other than by dynamiting.

(b) 50 percent of the cost of materials and labor in dynamiting rock.

§ 1105.743 Practice 3: Establishing a protective sod lining in waterways to dispose of excess water without causing erosion. This practice is to prevent erosion in permanent waterways and is applicable only to waterways built or reshaped in the program year for use in removing excess water from farmland that is contoured, terraced, and/or trash-mulched. Satisfactory sod lining (dense enough to prevent soil cutting) must be established before cost-sharing may be allowed for this practice. Maximum width of waterway for which cost-sharing will be approved is 50 feet. Detailed

specifications on species, seeding rates, sprig spacings, soil preparation, and irrigation are contained in Soil Conservation Service Technical Standards on file in the State Office. Bermuda, Giant Bermuda, Kikuyu, or any other locally adapted species approved by the State Office may be used.

Maximum Federal cost-share. (a) \$2 per 1,000 square feet of surface established by shaping and seeding, sodding, or sprigging.

(b) 50 percent of the average cost at the farm of the minimum required application of approved liming materials and commercial fertilizers, including nitrogen, for establishment of the cover. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.744 Practice 4: Constructing erosion control dams or stone or vegetative barriers to prevent or heal the gully-ing of farmland or reduce runoff of water. Receipts or invoices showing purchase of pipe and/or flume material and receipts or records showing payment for labor will be required by inspectors as evidence of accomplishment under (d) and (f) of this section. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 75 percent of the cost, but not in excess of \$0.40 per cubic yard of earth moved in the construction of dams, wings, and walls.

(b) \$20 per cubic yard of concrete used.

(c) \$13 per cubic yard of rubble masonry used.

(d) 75 percent of the average cost of pipe and/or flume material delivered to the farm.

(e) \$3 per cubic yard of rock used, for rock or rock-and-brush dams.

(f) 75 percent of the cost of constructing stone barriers for diverting and spreading surface runoff.

(g) \$0.50 per 100 linear feet for planting single line vegetative barriers to impede the flow of surface runoff.

(h) \$3 per 1,000 square feet for planting suitable permanent massed vegetative barriers.

§ 1105.745 Practice 5: Initial planting of orchards on the contour to help prevent erosion. This practice is to conserve water and reduce erosion from irrigation or storm water, with orchard rows running on nonerosive grades across the main slope. Cost-sharing will be allowed for planting orchards on the contour on land having more than 2 percent slope. The land must be protected during the rainfall season by cover crops, stubble mulch, or mulch and terraces or diversion ditches.

Maximum Federal cost-share. \$7.50 per acre.

§ 1105.746 Practice 6: Establishment of leguminous crops for use as stubble mulch, cover, or green manure for protection of soil from erosion. In order to qualify, a good stand and a good growth of the leguminous crops must be grown and left on the land as cover or turned under for green manure during the program year. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing purchase of seed, or records of collecting, will be required by inspectors as evidence of seed used. In case of mixed seeding

with acceptable nonlegumes (see § 1105.747 (practice 7)), the ratio of one-third of the required poundage of legume seed for unmixed plantings to two-thirds of the required poundage of nonlegume seed for unmixed plantings shall provide the basis for determining eligibility and cost-share. Any of the following crops or any other locally adapted crops approved by the State Office may be used.

	Minimum seeding rate (pounds per acre)
(a) Pigeon peas.....	30
(b) Velvetbeans.....	50
(c) Field beans.....	30
(d) Purple vetch.....	50
(e) Clover:	
Large like Kalmi.....	10
Small like Alsike.....	5
(f) Kudzu.....	8
(g) Crotalaria juncea.....	10
(h) Crotalaria spectabilis.....	10
(i) Cowpeas.....	30

Maximum Federal cost-share. (a) 75 percent of the cost of seed at the farm, but not in excess of \$7.50 per acre of area planted.

(b) \$7.50 per acre planted to sprigs or cuttings.

(c) 75 percent of the average cost of the minimum required application of fertilizer, but not in excess of \$18 per acre of area fertilized. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.747 Practice 7: Establishment of adapted nonlegumes for stubble mulch, cover, filter strip, or green manure for protection of soil from erosion. Para grass (*Panicum purpurascens*), molasses grass, Rhodes grass, feather fingergrass, acceptable small grains, and other nonlegumes determined by the State Office as suitable for this purpose, are eligible for cost-sharing. In order to qualify, a good stand and a good growth must be secured during the program year and be left on the land if for cover or turned under before year-end if for green manure. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Acreage harvested for seed or hay is not eligible for Federal cost-sharing. Receipts or invoices showing purchase of seed, or records of collecting, will be required by inspectors as evidence of seed used. In case of mixed seeding with acceptable legumes, see § 1105.746 (practice 6) for ratio specifications.

Maximum Federal cost-share. (a) 75 percent of the cost of seed at the farm, but not in excess of \$7.50 per acre actually planted.

(b) \$7.50 per acre planted to sprigs, stools, or cuttings.

(c) 75 percent of the average cost of the minimum required application of fertilizer, but not in excess of \$18 per acre of area fertilized. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.748 Practice 8: Initial establishment of permanent pasture or initial improvement of an established permanent grass or grass-legume cover for soil or watershed protection by seeding, sodding, or sprigging adapted perennial grasses and/or legumes. All equipment used to prepare land for seeding shall operate across the slope as near to the contour as practicable. In areas where long slopes are to be broken out of native vegetation, the land preparation

shall be done in contour strips and established to improved pasture before the intermediate strips shall be broken out. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. The seed must be well distributed over the area sown to insure a good stand at maturity. Any locally adapted crops approved by the State Office may be used but must be seeded at not less than the minimum seeding rates per acre prescribed by the State Office. In order to meet minimum requirements, slips or stools of grasses may be planted in continuous rows. Grass and legume charts are available in the State Office. Costs will be shared only if a satisfactory stand of the seeded grass or legume-grass mixture is established within 6 months after clearing, unless natural circumstances recognized by the State Office as being beyond control of the farmer affect growth results adversely. No area seeded shall be grazed until grass and legume-grass mixtures are well established. This practice is not applicable to land occupied by a merchantable stand of timber or pulpwood, or to land which, if cleared, would be suitable for continued production of crops. Receipts or invoices showing purchase of seed, or records of collecting, will be required as evidence of cost. If liming materials must be applied in the quantity determined to be needed for successful establishment of the cover, cost-sharing for the minimum required application of liming materials may be authorized under § 1105.749 (practice 9).

Maximum Federal cost-share. (a) 75 percent of the cost of seed in straight grass or legume seedings, but not in excess of \$10 per acre, for seeding after land preparation.

(b) 75 percent of the cost of seed in mixed grass-legume seedings, but not in excess of \$12.50 per acre seeded.

(c) \$7.50 per acre planted to slips or stools.

(d) 75 percent of the average cost at the farm of the minimum required application of approved commercial fertilizers, including nitrogen, for the establishment of the cover, but not in excess of \$18 per acre. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.749 Practice 9: Initial treatment of cropland, orchardland, or pasture for correction of soil acidity and addition of needed calcium to permit best use of legumes and/or grasses for soil improvement and protection. This practice is applicable to land which is devoted in 1958 to grasses or legumes or which will be devoted to grasses or legumes in the planned rotation for the farm. Treatment of land which is in pasture and which is to remain in pasture will be eligible for cost-sharing only if recent soil analysis and Agricultural Extension Service recommendations justify the use of lime and all measures needed to assure an improved vegetative cover which will provide adequate and extended soil protection are carried out. Liming material must contain at least 80 percent calcium carbonate equivalent and be fine enough to pass through a 20-mesh screen (unless the Agricultural Extension Service of the University of Hawaii recommends otherwise) and must be evenly applied to the land. Except as

provided in § 1105.714, cost-sharing may not be authorized for this practice on land on which this practice or another practice involving the application of liming material was carried out in 1954 or a subsequent year, unless a current soil test shows a need for a substantial application of liming material. Receipts or invoices showing the purchase of lime, properly dated and signed by the vendor, will be required as evidence by the farm inspector at the time of inspection.

Maximum Federal cost-share. (a) 50 percent of the cost of liming material delivered to the farm on an island having locally produced lime available.

(b) 75 percent of the cost of liming material delivered to the farm on an island without locally produced lime available.

§ 1105.750 Practice 10: Initial controlling of competitive shrubs to permit growth of adequate grass cover for soil protection on range or pasture land by poisoning, gyro-mowing, or hand grubbing. Costs will be shared for each treatment, but not in excess of three treatments during the year, made according to accepted practices. Receipts or invoices showing purchase of poisons used or grubbing labor employed will be required by inspectors as evidence of cost. Analysis of poisons will also be required. Competitive shrubs eligible under this practice are as listed below and described in Extension Bulletin 62, University of Hawaii, available at the State Office.

Guava (*Psidium guajava*).
Opiuma (*Pithecellobium dulce*).
Emex (*Emex spinosa*).
Melastoma (*Melastoma malabathricum*).
Firebush (*Myrica faya*).
Pepper tree (*Schinus molle*).
Cactus (*Opuntia megaxantha*).
Java plum (*Eugenia cumini*).
Christmas berry (*Schinus terebinthifolius*).
Cat's claw (*Caesalpinia sepiaria*).
Aalii (*Dodonaea eriocarpa*).
Joea (*Stachytarpheta cayennensis*).
Lantana (*Lantana camara*).
Walawi (*Psidium cattleianum* var. *lucidum*).
Pamakani (*Eupatorium adenophorum*).
Puakeawe (*Styphelia tameiameia*).
Sacramento bur (*Triumfetta semitriloba*).
Staghorn fern (*Gleichenia linearis*).
Apple of Sodom (*Solanum sodomaeum*).
Black wattle (*Acacia decurrens*).
Gorse (*Ulex europaeus*).
Blackberry (*Rubus penetrans*).

Maximum Federal cost-share. (a) 50 percent of the average cost of State Office approved chemicals, but not in excess of \$2 per acre per application.

(b) 50 percent of the cost of grubbing labor, but not in excess of \$3 per acre per treatment.

(c) 50 percent of the cost of gyro-mowing, but not in excess of \$2 per acre for each mowing.

§ 1105.751 Practice 11: Initial application of organic mulch material to any cropland, orchardland, or eroded pasture areas for soil protection and moisture conservation. Organic material must be of a fibrous nature and shredded, chopped, or crushed. Material such as sugarcane bagasse, cane leaf trash, pineapple trash, tree fern stumps, coarse grasses, coffee husks, sawdust, and wood shavings or chips, as well as macadamia nut husks and shells, will be eligible. At

time of application, finely shredded material like bagasse and sawdust should lie at least 2 inches thick, medium fine material like coffee husks and wood shavings should lie at least 3 inches thick, and coarse material like pineapple trash and cane leaf trash should lie at least 6 inches thick. Receipts or invoices showing purchase of materials and cost of transportation will be required by inspectors as evidence of compliance. For protection of mulch cover from damage by flowing water, terraces and/or diversion ditches must be installed where necessary and feasible.

Maximum Federal cost-share. (a) 50 percent of the cost of organic material at the farm, but not in excess of \$50 per acre treated with materials secured from outside the farm.

(b) \$2.50 per acre treated with material produced on the farm.

(c) 50 percent of the cost of acceptable organic material grown for the purpose on the farm, but not in excess of \$50 per acre.

§ 1105.752 Practice 12: Installation of pipelines for livestock water to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover. Installations in corrals, feed lots, and holding pens are not eligible. Receipts or invoices showing purchase of pipe used will be required to determine cost.

Maximum Federal cost-share. 35 percent of the average cost of pipe at the farm, except that the cost-share for pipe in excess of 2 inches in diameter may not exceed the cost which may be shared for 2-inch pipe.

§ 1105.753 Practice 13: Construction of permanent artificial watersheds for accumulating water to be used to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover. No cost will be shared if the water supplied is primarily for irrigation or domestic purposes. Construction for purposes of starting new grazing operations is not eligible. The practice is not applicable for corrals, feed lots, and holding pens alone. Receipts or invoices showing purchase of materials used will be required to determine cost. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 35 percent of the cost of material used, other than concrete and rubble masonry.

(b) \$12 per cubic yard of concrete used.

(c) \$7 per cubic yard of rubble masonry used.

§ 1105.754 Practice 14: Construction of permanent artificial water tanks for accumulating water to be used to obtain proper distribution of livestock and encourage rotation grazing and better grassland management as a means of protecting established vegetative cover. No cost will be shared if the water supplied is primarily for irrigation or domestic purposes. Construction for purposes of starting new grazing operations is not eligible. The practice is not applicable for corrals, feed lots, and holding pens alone. Receipts or invoices showing purchase of materials used will be required to determine cost.

Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 35 percent of the cost of material used, other than concrete and rubble masonry.

(b) \$12 per cubic yard of concrete used.
(c) \$7 per cubic yard of rubble masonry used.

§ 1105.755 Practice 15: Construction of permanent fences to obtain better distribution and control of livestock grazing on range or pasture land and to promote proper management for protection of established forage resources, or to protect farm woodland from grazing. No cost may be shared for the maintenance or repair of existing fences or for the construction of boundary fences including road fences. Required fencing of forest reserve land is not eligible. Any fencing necessary to the working of cattle (including pens, corrals, and feed lots) is ineligible. Receipts or invoices showing purchase of materials will be required to determine cost.

Maximum Federal cost-share. (a) 35 percent of the average cost at the farm of posts, wire, poles, lumber, staples, or other similar fencing materials used.

(b) \$0.25 per linear foot of rock wall, minimum dimensions of which shall be: Height, 4 feet; base width, 36 inches; top width, 24 inches.

§ 1105.756 Practice 16: Constructing or sealing dams, pits, or ponds for livestock water, including the enlargement of inadequate structures. The development must contribute to a better distribution of grazing or better pasture management. This practice is applicable only to livestock enterprises on lands established for grazing. Receipts or invoices showing purchase of material used in construction will be required by inspectors as evidence of cost. Earth fills must be constructed in accordance with supplemental specifications for "Small Earth Storage Dams," provided on request by SCS or ASC offices.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of \$0.40 per cubic yard of earth material moved.

(b) \$14 per cubic yard of concrete used.
(c) \$8.50 per cubic yard of rubble masonry used.

(d) 50 percent of the cost of fencing materials, pipe, and seeding or sodding the dam and filter strips.

(e) 50 percent of the cost at site of materials, other than concrete and rubble masonry, and including soil sealing.

§ 1105.757 Practice 17: Constructing or sealing dams, pits, or ponds for irrigation water. The purpose of this practice is to conserve agricultural water or to provide water necessary for the conservation of soil resources. No cost-sharing will be allowed for material moved in cleaning or maintaining a reservoir, or for dams, pits, or ponds, the primary purpose of which is to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Receipts or invoices showing purchase of materials used will be required by inspectors as evidence of cost. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of \$0.40 per cubic yard of earth material moved.

(b) \$14 per cubic yard of concrete used.
(c) \$8.50 per cubic yard of rubble masonry used.

(d) 50 percent of the cost of pipe and outlet gates.

(e) 50 percent of the cost of seeding or sodding dams or filter strips.

(f) 50 percent of the cost of materials, other than concrete and rubble masonry, used in permanent structures, including soil sealing.

§ 1105.758 Practice 18: Constructing or enlarging permanent ditches, dikes, or laterals in reorganization of farm irrigation system to conserve water and prevent erosion. The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing records of employment of equipment and/or labor will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for repairs or replacements of existing structures. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 50 percent of the cost, but not in excess of \$0.40 per cubic yard of earth material moved in the construction or enlargement of permanent ditches, dikes, or laterals.

§ 1105.759 Practice 19: Lining ditches in reorganization of farm irrigation system to conserve water and prevent erosion. The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing purchase of materials used will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for repairs or replacements of existing structures. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the average cost of approved material used, other than concrete and rubble masonry.

(b) \$14 per cubic yard of concrete used.
(c) \$8.50 per cubic yard of rubble masonry used.

§ 1105.760 Practice 20: Constructing or installing permanent structures such as siphons, flumes, drop boxes or chutes, weirs, diversion gates, and permanently

located pipe in reorganization of farm irrigation system to conserve water and prevent erosion. The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing purchase of material used will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for repairs or replacements of existing structures. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the average cost of material used in permanent structures, other than concrete and rubble masonry, but excluding forms.

(b) \$14 per cubic yard of concrete used.
(c) \$8.50 per cubic yard of rubble masonry used.

§ 1105.761 Practice 21: Installation of portable sprinklers or gated pipes in reorganizing farm irrigation system to conserve water and prevent erosion. The reorganization (a change for the better in style or method of conveying water to and in the fields) must be carried out in accordance with a reorganization plan approved by the responsible SCS technician. Receipts or invoices showing purchase of materials or equipment will be required by inspectors as evidence of installation costs. No cost-sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation, or for reorganizing a system which was not in use during at least 2 of the last 5 years. No cost-sharing will be allowed for repairs or replacements of existing structures. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 50 percent of the average cost of portable pipe and fittings or gated pipe used for reorganized irrigation. The total cost-share for portable pipe or gated pipe shall not exceed \$100 per acre of reorganized irrigation.

§ 1105.762 Practice 22: Construction or enlargement of permanent open drainage systems to dispose of excess water on farmland under cultivation or on pastureland. No cost will be shared for material moved in cleaning or maintaining a ditch, or for structures installed for crossings, or for other structures primarily for the convenience of the farm operator. Receipts or invoices showing purchase of seed or materials and records of labor employed and soil moved will be required by inspectors as evidence of construction work costs. No cost-sharing will be allowed for ditches, the primary purpose of which is to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area

during at least 2 of the last 5 years. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. (a) 50 percent of the cost, but not in excess of \$0.40 per cubic yard of material moved, other than by dynamiting.

(b) \$14 per cubic yard of concrete used.
(c) \$8.50 per cubic yard of rubble masonry used.

(d) 50 percent of the average cost of seed or planting materials for establishing suitable cover for protection against erosion on ditch banks and rights-of-way, plus 50 percent of the average cost at the farm of the minimum required application of approved liming materials and commercial fertilizers, including nitrogen, for the establishment of the cover.

(e) 50 percent of the cost of materials and labor in dynamiting rock.

(f) 50 percent of the average cost of material used, other than concrete and rubble masonry.

§ 1105.763 Practice 23: Initial establishment of a stand of trees or shrubs on farmland for purposes other than the prevention of wind or water erosion. Plantings must be protected from fire and grazing. Fencing newly planted trees or shrubs under this practice for protection against grazing is eligible for cost-sharing only if the construction specifications in § 1105.755 (practice 15) are employed. Acceptable plant species and spacing are those recommended by the Forestry Division of the Territorial Board of Agriculture and Forestry.

Maximum Federal cost-share. \$8 per 100 trees or shrubs planted.

§ 1105.764 Practice 24: Initial establishment of a stand of trees or shrubs to prevent wind or water erosion. Plantings must be protected from fire and grazing. Fencing newly planted trees or shrubs under this practice for protection against grazing is eligible for cost-sharing only if the construction specifications in § 1105.755 (practice 15) are employed. Acceptable plant species are those recommended by the Forestry Division of the Territorial Board of Agriculture and Forestry. The spacing of trees and shrubs shall be in accordance with specifications developed by the Soil Conservation Service.

Maximum Federal cost-share. \$8 per 100 trees or shrubs planted.

§ 1105.765 Practice 25: Installation of facilities for sprinkler irrigation of permanent pasture for developing forage resources to encourage rotation grazing and better pasture management for protection of all grazing land in the farm against overgrazing and erosion. Installation of sprinkler irrigation facilities must be solely for irrigation of permanent pasture or area being established in permanent pasture. The installation must be in accordance with a written plan approved by the responsible technician.

Maximum Federal cost-share. 50 percent of the cost at the farm of all necessary pipe and fittings, but not in excess of \$100 per acre irrigated by the installation. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.766 Practice 26: Constructing wells or developing seeps or springs for livestock water as a means of protecting established vegetative cover through proper distribution of livestock, rotation grazing, or better grassland management. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing payment for labor and/or purchase of materials used will be required by inspectors. Pumping equipment must be installed for wells, except artesian wells, and adequate storage facilities must be provided. Cost-sharing will be allowed only for constructing or deepening wells and for water storage facilities. No cost-sharing will be allowed for wells constructed primarily for the use of headquarters.

Maximum Federal cost-share. 50 percent of the cost of construction or development, excluding pumping equipment.

§ 1105.767 Practice 27: Shaping or land grading to permit effective surface drainage. No Federal cost-sharing will be allowed for shaping or grading performed through farming operations connected with land preparation for planting or cultivating crops. No Federal cost-sharing will be allowed for shaping or land grading on land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 50 percent of the cost of shaping or grading. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.768 Practice 28: Leveling or grading land for more efficient use of irrigation water and to prevent erosion. No Federal cost-sharing will be allowed for floating or restoration of grade. However, the leveling operation may be completed over a period of more than one program year on a component basis where the size and cuts of fills are such that a heavy leveling operation will be needed following settlement of the original fills. No Federal cost-sharing will be allowed for leveling land if the primary purpose of the leveling is to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Leveling or grading must be carried out in accordance with a plan approved by the responsible SCS technician. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing payment of labor and equipment will be required by inspectors.

Maximum Federal cost-share. 50 percent of the cost of earth moving.

§ 1105.769 Practice 29: Streambank or shore protection, channel clearance, enlargement or realignment, or construction of floodways, levees, or dikes, to pre-

vent erosion or flood damage to farmland. This practice shall not be approved in cases where there is any likelihood that it will create an erosion or flood hazard to other adjacent land, or where its primary purpose is to bring new land into agricultural production. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. 75 percent of the cost of construction and protective measures. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.770 Practice 30: Initial establishment of contour operations on non-terraced unirrigated land to protect soil from wind or water erosion. All cultural operations must be performed as nearly as practicable on the contour. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office.

Maximum Federal cost-share. \$5 per acre established in contour farming during the year.

§ 1105.771 Practice 31: Initial establishment of cross-slope stripcropping to protect soil from water or wind erosion. All cultural operations, including row crop planting, must be performed across the prevailing slope.

Maximum Federal cost-share. \$5 per acre established in cross-slope stripcropping during the year.

§ 1105.722 Practice 32: Establishment of permanent vegetative strips between tree rows in young (less than 5 years old) coffee orchards as a protection against erosion. Federal cost-sharing will be limited to the establishment of vegetative strips not less than 3 feet wide across the slope.

Maximum Federal cost-share. (a) 75 percent of the cost of seed at the farm, but not in excess of \$7.50 per acre of area planted to grasses and legumes listed in §§ 1105.756 and 1105.757 (practices 6 and 7). (Receipts, invoices, or other evidence of cost are required.)

(b) \$7.50 per acre planted to sprigs or cuttings.

(c) 50 percent of the average cost at the farm of the minimum required application of approved commercial fertilizer, including nitrogen, and liming material for the establishment of the vegetative strips, but not in excess of \$7 per acre of area treated. (Receipts, invoices, or other evidence of cost are required.)

§ 1105.773 Practice 33: Subsurface tillage of cropland and/or orchardland protected by organic mulch, to avoid plowing under the surface cover of mulch which has been applied for soil protection and moisture conservation. No cost-sharing will be allowed unless the soil surface is protected by a blanket of settled mulch not less than 1 inch thick.

Maximum Federal cost-share. \$5 per acre subtilled, but not in excess of two subtilled operations a year. The total cost-share shall not be in excess of \$300 per farm.

§ 1105.774 Practice 34: Constructing channel lining, chutes, drop spillways, pipe drops, drop inlets, or similar structures for the protection of outlets and

water channels that dispose of excess water. Detailed specifications are contained in Soil Conservation Service Technical Standards on file in the State Office. Receipts or invoices showing purchase of materials will be required by inspectors as evidence of material used. Federal cost-sharing will not be allowed for forms or repair of existing structures.

Maximum Federal cost-share. 75 percent of the cost of material used.

Done at Washington, D. C., this 21st day of October 1957.

[SEAL]

E. L. PETERSON,
Assistant Secretary.

[F. R. Doc. 57-8751; Filed, Oct. 23, 1957;
8:47 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 231—INTERPRETATIVE RELEASES RELATING TO SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

STATEMENT OF COMMISSION RELATING TO PUBLICATION OF INFORMATION PRIOR TO OR AFTER EFFECTIVE DATE OF REGISTRATION

§ 231.3844 *Statement of the Commission relating to publication of information prior to or after the effective date of a registration statement.*

Questions frequently are presented to the Securities and Exchange Commission and its staff with respect to the impact of the registration and prospectus requirements of section 5 of the Securities Act of 1933 on publication of information concerning an issuer and its affairs by the issuer, its management, underwriters and dealers. Some of the more common problems which have arisen in this connection and the nature of the advice given by the Commission and its staff are outlined herein for the guidance of industry, underwriters, dealers and counsel.

A basic purpose of the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 is to require the dissemination of adequate and accurate information concerning issuers and their securities in connection with the offer and sale of securities to the public, and the publication periodically of material business and financial facts, knowledge of which is essential to an informed trading market in such securities.

There has been an increasing tendency, particularly in the period since World War II, to give publicity through many media concerning corporate affairs which goes beyond the statutory requirements. This practice reflects a commendable and growing recognition on the part of industry and the investment community of the importance of informing security holders and the public generally with respect to important business and financial developments.

This trend should be encouraged. It is necessary, however, that corporate management, counsel, underwriters, dealers and public relations firms recognize that the Securities Acts impose certain responsibilities and limitations upon persons engaged in the sale of securities and that publicity and public relations activities under certain circumstances may involve violations of the securities laws and cause serious embarrassment to issuers and underwriters in connection with the timing and marketing of an issue of securities. These violations not only pose enforcement and administrative problems for the Commission, they may also give rise to civil liabilities by the seller of securities to the purchaser.

Absent some exemption, section 5 (c) of the Securities Act of 1933 makes it unlawful for any person directly or indirectly to make use of any means or instruments of interstate commerce or of the mails to offer to sell a security unless a registration statement has been filed with the Commission as to such security.

Section 5 (a) of the act makes it unlawful to sell a security unless a registration statement with respect to such security has become effective. Section 5 (b) makes it unlawful to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to transmit a prospectus with respect to any security as to which a registration statement has been filed unless such prospectus contains the information specified by section 10 of the act.

A prospectus is defined to include any notice, circular, advertisement, letter or communication, written or by radio or television, which offers any security for sale except that any communication sent after the effective date of a registration statement shall not be deemed a prospectus if, prior to or at the same time with such a communication, a written prospectus meeting the requirements of section 10 of the act was sent or given.

Stated otherwise, it is illegal to offer a security prior to the filing of a registration statement.¹ A security may be offered legally after filing and before the effective date of a registration statement, provided that any prospectus employed for this purpose meets the standards of section 10 of the act.² Thus, in general during this period (after the filing and before the effective date), no written communication offering a security may be transmitted through the mails or in interstate commerce other than a prospectus authorized or permitted by the statute or relevant rules thereunder.³ After the effective date, sales literature in addition to the prospectus may be employed legally, provided the section 10 (a) prospectus precedes or accompanies the supplemental literature.⁴

¹By virtue of internal procedural standards, or agreements with stock exchanges on which securities are listed, managements wish, or are required, to advise security holders promptly of important decisions which may affect materially their interests as security holders. In recognition of the propriety of such action, Rule 230.135 permits a brief announcement, which does not "offer a security," of a forthcoming rights offering.

²Rule 230.433 permits the use of a "preliminary" prospectus which contains substantially all of the information in the registration statement which at this stage does not usually include the offering price, related and underwriting data. Rule 230.134 also permits a form of brief advertisement or written communication advising of the pendency of the offering and indicating where the preliminary prospectus may be obtained.

³Rule 230.434 provides in certain cases for the use of cards prepared by independent statistical organizations which fairly summarize the information contained in the prospectus filed with the Commission. Rule 230.434A permits the use in many cases of a similar summary prospectus prepared by or on behalf of the issuer.

⁴Rule 230.494 provides for the use, in addition, of the so-called "newspaper prospectus" in an offering by certain issuers.

These provisions with respect to the time and manner of offering and selling securities apply during the period of distribution of the security, i. e., the statutory prospectus must be employed by an underwriter or a dealer participating in the distribution so long as he is offering an unsold allotment. All underwriters and dealers must use the prospectus during the 40-day period following the effective date of a registration statement or the commencement of the public offering, whichever later occurs.

The terms "sale," "sell," "offer to sell" and "offer for sale" are broadly defined in section 2 (3) of the act and these definitions have been liberally construed by the Commission and the courts.

It follows from the express language and the legislative history of the Securities Act that an issuer, underwriter or dealer may not legally begin a public offering or initiate a public sales campaign prior to the filing of a registration statement. It apparently is not generally understood, however, that the publication of information and statements, and publicity efforts, generally, made in advance of a proposed financing, although not couched in terms of an express offer, may in fact contribute to conditioning the public mind or arousing public interest in the issuer or in the securities of an issuer in a manner which raises a serious question whether the publicity is not in fact part of the selling effort.

Nor is it generally understood that the release of publicity and the publication of information between the filing date and the effective date of a registration statement may similarly raise a question whether the publicity is not in fact a selling effort by an illegal means; i. e., other than by means of the statutory prospectus. Similar problems will arise from publicity and the release of information after the effective date, but before a distribution is completed.

Apart from the impropriety of such publicity under the Securities Act, a collateral problem is presented by reason of the fact that the dissemination of information, other than that contained in a prospectus, prior to or during a distribution may tend to affect the market price of the issuer's securities artificially.

Instances have come to the attention of the Commission in which information of a misleading character, gross exaggeration and outright falsehood have been published by various means for the purpose of conveying to the public a message designed to stimulate an appetite for securities—a message which could not properly have been included in a statutory prospectus in conformity with the standards of integrity demanded by the statute.

Many of the cases have reflected a deliberate disregard of the provisions and purpose of the law. Others have reflected an unawareness of the problems involved or a failure to exercise a proper control over research and public relations activities in relation to the distribution of an issue of securities.

Example 1. An underwriter-promoter is engaged in arranging for the public financing of a mining venture to explore for a mineral which has certain possible potentialities for use in atomic research and power. While preparing a registration statement for a public offering, the underwriter-promoter distributed several thousand copies of a brochure which described in glowing generalities the future possibilities for use of the mineral and the profit potential to investors who would share in the growth prospects of a new industry. The brochure made no reference to any issuer or any security nor to any particular financing. It was sent out, however, bearing the name of the underwriting firm and obviously was designed to awaken an interest which later would be focused on the specific financing to be pre-

sented in the prospectus shortly to be sent to the same mailing list.

The distribution of the brochure under these circumstances clearly was the first step in a sales campaign to effect a public sale of the securities and as such, in the view of the Commission, violated section 5 of the Securities Act.

Example 2. An issuer in the promotional stage intended to offer for public sale an issue of securities the proceeds of which were to be employed to explore for and develop a mineralized area. The promoters and prospective underwriter prior to the filing of the required registration statement or notification under Regulation A arranged for a series of press releases describing the activities of the company, its proposed program of development of its properties, estimates of ore reserves and plans for a processing plant. This publicity campaign continued after the filing of a registration statement and during the period of the offering. The press releases, which could be easily reproduced and employed by dealers and salesmen engaged in the sales effort, contained representations, forecasts and quotations which could not have been supported as reliable data for inclusion in a prospectus or offering circular under the sanctions of the act.

It is the Commission's view that issuing information of this character to the public by an issuer or underwriter through the device of the press release and the press interview is an evasion of the requirements of the act governing selling procedures, a violation of sections 5 and 17 (a) of the act, and that such activity subjects the seller to the risk of civil and penal sanctions and liabilities of the act.

Example 3. An issuer filed a registration statement for an issue of securities to be offered through underwriters. Following the effective date of the registration statement, efforts to market the issue were not wholly successful and a substantial amount of the securities remained in the hands of the underwriters and dealers. At this point the issuer published an advertisement which received wide newspaper and magazine circulation and which included data purporting to show reserves of raw materials in terms of estimated future dollar realization per share. The advertisement took the conventional form of a product advertisement except for the inclusion of calculations of per-share asset values.

The Commission brought an action to enjoin further publication of the advertisement on the theory that its content and use, at a time when the existence of unsold allotments in the hands of underwriters and dealers indicated clearly that the distribution of the registered securities had not been completed, involved a violation of sections 5 and 17 (a) of the Securities Act.

Example 4. An issuer negotiating with a prospective underwriter for a public offering of common stock supplied the underwriter with financial information concerning the issuer's operations for the first quarter of the fiscal year. The prospective underwriter incorporated this material in a brochure containing other information concerning the issuer and its prospects and distributed the brochure widely among the membership of the N. A. S. D. at a time when a registration statement was being prepared but prior to its filing. When the registration statement was filed it was discovered that the financial statements included therein reflected a history of operations and a current position much less favorable than suggested by the first quarter figures shown in the brochure.

In the view of the Commission the distribution of the brochure violated section 5 of the act and in addition raised questions as to violation of section 17 (a) of the act. The Commission also considered that these

activities of the underwriter justified denial of acceleration of the effective date of the registration statement pending a circulation of the prospectus co-extensive with the distribution of the brochure.

Example 5. Immediately preceding the filing of a registration statement for an issue of securities by a large industrial company, the research department of an investment banking firm distributed to a substantial number of the firm's institutional customers a brochure which referred specifically to the securities and described the business and prospects of the parent company of the prospective issuer. The business of the prospective issuer represented the principal part of the over-all operations of the total enterprise. The investment banking firm had been a principal underwriter of prior issues of securities by the parent and in accordance with policy of the firm from time to time distributed reports to its clients concerning securities of issuers which the firm had financed. It appeared, in this particular case, that the research department of the banking firm had prepared and distributed such a report to its clients without being fully aware of the activities of the underwriting department or the timing of the forthcoming offering.

The Commission advised the representatives of the issuer and the prospective underwriters that under all the circumstances, including the content, timing and distribution given to the brochure, participation of the firm in the distribution of the securities would pose difficulties from the point of view of the enforcement of the provisions of section 5 of the Securities Act. In order to avoid any question as to violations of this provision of the act, the banking firm did not participate in the distribution.

Example 6. In recognition of the problems presented, the Commission's staff frequently receives inquiries from company officials or their counsel with respect to circumstances such as the following:

The president of a company accepted, in August, an invitation to address a meeting of a security analysts' society to be held in February of the following year for the purpose of informing the membership concerning the company, its plans, its record and problems. By January a speech had been prepared together with supplemental information and data, all of which was designed to give a fairly comprehensive picture of the company, the industry in which it operates and various factors affecting its future growth. Projections of demand, operations and profits for future periods were included. The speech and the other data had been printed and it was intended that several hundred copies would be available for distribution at the meeting. In addition, since it was believed that stockholders, creditors, and perhaps customers might be interested in the talk, it was intended to mail to such persons and to a list of other selected firms and institutions copies of the material to be used at the analysts' meeting.

Later in January, a public financing by the company was authorized, preparation of a registration statement was begun and negotiation with underwriters was commenced. It soon appeared that the coming meeting of analysts, scheduled many months earlier, would be at or about the time the registration statement was to be filed. This presented the question whether, in the circumstances, delivery and distribution of the speech and the supporting data to the various persons mentioned above would contravene provisions of the Securities Act.

It seemed clear that the scheduling of the speech had not been arranged in contemplation of a public offering by the issuer at or about the time of its delivery. In the cir-

cumstances, no objection was raised to the delivery of the speech at the analysts' meeting. However, since printed copies of the speech might be received by a wider audience, it was suggested that printed copies of the speech and the supporting data not be made available at the meeting nor be transmitted to other persons.

Example 7. Two weeks prior to the filing of a registration statement the president of the issuer had delivered, before a society of security analysts, a prepared address which had been booked several months previously. In his speech the president discussed the company's operations and expansion program, its sales and earnings. The speech contained a forecast of sales and referred to the issuer's proposal to file with the Commission later in the month a registration statement with respect to a proposed offering of convertible subordinated debentures. Copies of the speech had been distributed to approximately 4,000 security analysts.

The Commission denied acceleration of the registration statement and requested that the registrant distribute copies of its final prospectus to each member of the group which had received a copy of the speech.

Example 8. A registration statement had become effective for the purpose of competitive bidding. Prior to the opening of the bids, it was learned that an investment banking member of one of the bidding groups had published a brochure discussing the prospects of the company and forecasting a rise in the market price of its stock. It appeared that neither the company nor other members of the bidding group had received advance information as to the publication of the brochure. In the circumstances, counsel for the proposed underwriters' group was advised that publication and distribution of the brochure must be deemed to contravene the provisions of Section 5 of the Securities Act if the firm publishing it was a member of the underwriting or selling group. This group was the successful bidder. However, the firm publishing the brochure was not included either as an underwriter or as a member of the selling group.

Example 9. An issuer was about to file a registration statement for a proposed offering on behalf of a controlling person. The timing of the issue was fixed in accommodation to the controlling person. It appeared, however, that registration would coincide with the time when the company normally distributed its annual report to security holders and others. In recognition of the problem posed, inquiry was made whether such publication and distribution of the report at such time would create any problems. The issuer was advised that, if the annual report was of the character and content normally published by the company and did not contain material designed to assist in the proposed offering, no question would be raised.

Example 10. A report concerning a registrant had been prepared by an engineering firm for use by prospective underwriters. The report contained a 5-year projection of earnings. It appeared that, in addition to the distribution of the report among prospective underwriters, copies of the report had been made available, after the filing of a registration statement but before it became effective, to broker-dealers, to salesmen who would be engaged in the offering and sale of the securities and to certain investors. One broker-dealer firm had made available to salesmen excerpts from the report. The Commission advised the persons responsible for the distribution of the report that in its view distribution of the report to persons other than to persons bona fide concerned with the question of considering and under-

taking an underwriting commitment, contravened the provisions of section 5.

This release becomes effective October 4, 1957.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

OCTOBER 4, 1957.

[F. R. Doc. 57-8748; Filed, Oct. 23, 1957;
8:47 a. m.]

PART 231—INTERPRETATIVE RELEASES RELATING TO SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

STATEMENT OF COMMISSION CONCERNING INTERPRETATION AND APPLICATION OF RULE 133

§ 231.3846 *Statement of the Commission concerning the interpretation and application of § 230.133 (Rule 133).*

Rule 133. Rule 133 under the Securities Act of 1933 provides that, for the purpose of determining the application of the registration and prospectus provisions of section 5 of the act, no "offer" or "sale" shall be deemed to be involved, so far as stockholders of a corporation are concerned, where, pursuant to statutory provisions or provisions contained in a certificate of incorporation, there is submitted to the vote of such stockholders a plan involving a statutory merger, consolidation, reclassification of securities or transfer of assets of the corporation in consideration of the issuance of the securities of the acquiring corporation.

On October 2, 1956, in Release No. 3698 under the Securities Act, the Commission invited comment upon a proposal, the effect of which would have been to repeal Rule 133 and to provide that transactions of the character referred to in the rule involve an "offer" and "sale" of a security subject to the registration and prospectus provisions of the act. The Commission received numerous comments and a public hearing was held on January 17, 1957. On March 15, 1957, in Securities Act Release No. 3761, the Commission announced deferral of action upon the proposal pending further study of the problems and questions which had been raised and that any future modification of Rule 133 would be undertaken only after ample opportunity for further public comment thereon.

The staff of the Commission is continuing its study of the proposal and related matters.

A number of inquiries have been presented to the Commission and staff concerning the application of Rule 133. To assist issuers, their counsel and others, the Commission has determined to publish an opinion recently expressed concerning the interpretation and application of Rule 133.

A merger of two companies had been authorized by the Boards of Directors of the respective corporations, over the objections of one director of the company to be merged who represented the largest single stockholder, a trust holding a substantial block of stock of that company. It was understood that upon receipt of shares in consummation of the merger, this trust might effect a distribution of such shares. In response to a request for a ruling as to the applicability of Rule 133 to the proposed merger, the Commission authorized that counsel be advised that:

*** no question will be raised by the Commission with respect to the applicability of Rule 133 concerning the issuance of the

shares of [the surviving company] to the security holders of [the company to be merged] in consummation of the merger. I am also authorized to advise you, however, that in the opinion of the Commission, Rule 133 would provide no exemption from the registration and prospectus provisions of section 5 of the act with respect to any subsequent public distribution of the shares received by any security holder of [the company to be merged] who might be deemed a statutory underwriter. Under the circumstances of this case it would appear that the trust referred to above would be a statutory underwriter if it acquires shares of [the surviving company] in the merger with a view to a distribution of such shares. In this event, there would be no exemption under the first clause of section 4 (1) either for the issuer or an underwriter participating in a public offering.

"Rule 133 merely provides that a transaction authorized by a vote of shareholders does not for the purpose of section 5 involve an offer or sale to them so as to require prior registration of the securities and the presentation of a prospectus to such security holders in connection with the submission of the plan of merger and the receipt of shares in consummation. The definition of 'offer' and 'sale' contained in Rule 133 is, as appears on the face of the rule, so limited.

"The Commission stated in the Great Sweet Grass case (Securities Exchange Act Release No. 5483, April 8, 1957) at pages 10 and 11 of the mimeograph copy of its Findings and Opinion (a copy of which is enclosed) that:

"The theory of Rule 133 is that no sale to stockholders is involved where the vote of stockholders as a group authorizes a corporate act such as a transfer of assets for stock of another corporation, a merger or a consolidation because there is not present the element of individual consent ordinarily required for a 'sale' in the contractual sense. However, this does not mean that the stock issued under such a plan is 'free' stock which need not be registered insofar as subsequent sales are concerned. Unless the Securities Act provides an exemption for a subsequent sale of such non-registered stock, registration would be required. Of course, subsequent casual sales of such stock by non-controlling stockholders which follow the normal pattern of trading in the stock would be deemed exempt from the provisions of section 5 of that act as transactions not involving an issuer, underwriter or dealer under the first clause of section 4 (1) of the Securities Act. However, if the issuer or persons acting on its behalf participate in arrangements for a distribution to the public of any of the stock issued to stockholders or have knowledge of a plan of distribution by, or concerted action on the part of, such stockholders to effect a public distribution in connection with the transaction, a section 4 (1) exemption would not be available since an underwriting within the meaning of the statute would be involved."

Following receipt of the foregoing advice, a registration statement was filed on Form S-1 to cover the shares issuable in consummation of the merger. The prospectus included in the registration statement consisted essentially of the information contained in the definitive proxy statement of the surviving company which had been prepared previously in accordance with the Commission's proxy rules (Regulation X-14 under the Securities Exchange Act of 1934) and which had been forwarded to security holders of the surviving company in connection with the solicitation of proxies to be voted upon the plan of merger. Upon request of the issuer, the Commission, acting under section 8 (a) of the act, declared the registration statement effective.

This release becomes effective October 8, 1957.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

OCTOBER 8, 1957.

[F. R. Doc. 57-8749; Filed, Oct. 23, 1957;
8:47 a. m.]

TITLE 21—FOOD AND DRUGS

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

Subchapter B—Food and Food Products

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

TOLERANCES FOR RESIDUES OF 2,4-DICHLORO-6-(O-CHLOROANILINO)-TRIAZINE

A petition was filed with the Food and Drug Administration requesting the establishment of tolerances for residues of 2,4-dichloro-6-O-chloroanilino-triazine in or on celery, tomatoes, and potatoes. Subsequently, the request with respect to a tolerance for residues of this pesticide chemical on celery was withdrawn without prejudice to a future filing.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (2), 68 Stat. 512; 21 U. S. C. 346a (d) (2)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 120.7 (g)), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR Part 120) are amended by adding thereto the following new section:

§ 120.158 *Tolerances for residues of 2,4-dichloro-6-(O-chloroanilino)-triazine.* Tolerances for residues of 2,4-dichloro-6-(O-chloroanilino)-triazine in or on raw agricultural products are established as follows:

(a) 10 parts per million in or on tomatoes.

(b) 1 part per million in or on potatoes.

Any person who will be adversely affected by the foregoing order may, at any time prior to the thirtieth day from the effective date thereof, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by this order, specify with particularity the provisions of the order deemed objection-