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## TITLE 7—AGRICULTURE

### Chapter I—Production and Marketing Administration (Standards, Inspections, Marketing Practices), Department of Agriculture

#### PART 52—PROCESSED FRUITS, VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOODS PRODUCTS

#### SUBPART B—UNITED STATES STANDARDS

##### U. S. STANDARDS FOR GRADES OF CANNED SWEET CHERRIES; CORRECTION

In F. R. Doc. 53-3177, appearing on page 2073 of the issue for Tuesday, April 14, 1953, the following correction has been made:

In § 52.243, (i) (2) (ii) (a) (1) and (i) (2) (iii) (a) (1) and (i) (2) (iv) (a) (1) change the parenthetical reference of "(2.54 grams)" to "(2.84 grams)"

Done at Washington, D. C., this 20th day of May 1953.

[SEAL] GEORGE A. DICE,  
Deputy Assistant Administrator  
Production and Marketing  
Administration.

[F. R. Doc. 53-4565; Filed, May 22, 1953; 8:52 a. m.]

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

#### PART 904—MILK IN THE GREATER BOSTON MARKETING AREA

#### PART 934—MILK IN THE LOWELL-LAWRENCE, MASSACHUSETTS, MARKETING AREA

#### PART 947—MILK IN THE FALL RIVER, MASSACHUSETTS, MARKETING AREA

#### PART 996—MILK IN THE SPRINGFIELD, MASSACHUSETTS, MARKETING AREA

#### PART 999—MILK IN THE WORCESTER, MASSACHUSETTS, MARKETING AREA

##### DETERMINATION OF EQUIVALENT FACTOR

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.),

and the applicable provisions of the orders, as amended, regulating the handling of milk in the Greater Boston, Lowell-Lawrence, Springfield, Worcester, and Fall River, Massachusetts, marketing areas, §§ 904.45, 934.44, 936.44, 999.44, and 947.55, respectively, it is hereby found and determined as follows:

1. The latest revised figure released by the Department of Commerce shows the annual rate of total personal disposable income in the United States to be 245.6 billions of dollars during the first quarter of 1953 which divided by the estimated population of 158,758 thousands in the United States indicates a per capita disposable income rate of \$1,547 whereas the latest per capita figure released by the Council of Economic Advisers to the President, to wit \$1,543, is based on a preliminary estimate of total personal income of 245.0 billions. The apparent conflict in these results is due to the timing of the releases from each of these agencies and the revised figure of 245.6 which indicates a per capita rate of \$1,547 will appear in subsequent releases of the Council.

2. For the purpose of computing the New England basic price formula pursuant to section 48 of each of the aforesaid orders, it is found that the applicable per capita disposable income figure has not been released and the figure of \$1,547 determined from the latest release of the Department of Commerce showing total personal disposable income in the United States is hereby determined to be the equivalent factor.

3. Notice of proposed rule making, public procedure thereon, and 30 days prior notice of the effective date hereof are impracticable, unnecessary, and contrary to the public interest in that §§ 904.46, 934.45, 936.45, 999.45, and 947.56 of the orders, as amended, regulating the handling of milk in the Greater Boston, Lowell-Lawrence, Springfield, Worcester, and Fall River, Massachusetts, marketing areas require the market administrators of the respective orders to announce the Class I price based on the New England basic price formula for the June 1953 delivery period on or before the 25th day of May

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1953, and such determination does not require of persons affected substantial or extensive preparation prior to the effective date hereof.

Issued at Washington, D. C., this 20th day of May 1953, to become effective immediately.

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

[F. R. Doc. 53-4570; Filed, May 22, 1953;  
8:55 a. m.]

[Grapefruit Reg. 181]

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

LIMITATION OF SHIPMENTS

§ 933.628 *Grapefruit Regulation 181—*  
(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, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication 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 of this section effective not later than May 25, 1953. Shipments of grapefruit, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, and will so continue until May 25, 1953; the recommendation and supporting information for continued regulation subsequent to May 24 was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on May 19; 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 of this section, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to

effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time of this section.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., May 25, 1953, and ending at 12:01 a. m., e. s. t., June 15, 1953, no handler shall ship:

(i) Any white seeded grapefruit, grown in the State of Florida, which do not grade at least U. S. No. 2;

(ii) Any white seeded grapefruit, grown in the State of Florida, that grade U. S. No. 1 Russet, U. S. No. 1 Bronze, U. S. No. 1 Golden, U. S. No. 1, U. S. No. 1 Bright or U. S. Fancy, which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iii) Any white seeded grapefruit, grown in the State of Florida, that grade U. S. No. 2 Bright or U. S. No. 2, which are (a) of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box, or (b) of a size larger than a size that will pack 46 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iv) Any pink seeded grapefruit, grown in the State of Florida, which do not grade at least U. S. No. 2;

(v) Any pink seeded grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(vi) Any seedless grapefruit, grown in the State of Florida, which do not grade at least U. S. No. 2 Russet; or

(vii) Any seedless grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 126 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, "handler," and "ship" shall have the same meaning as when used in said amended marketing agreement and order; and "U. S. Fancy," "U. S. No. 1 Bright," "U. S. No. 1," "U. S. No. 1 Golden," "U. S. No. 1 Bronze," "U. S. No. 1 Russet," "U. S. No. 2 Bright," "U. S. No. 2," "U. S. No. 2 Russet," "standard pack," and "standard nailed box" shall have the same meaning as when used in the revised United States Standards for Florida Grapefruit (§ 51.193 of this title; 17 F. R. 7408)

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

Done at Washington, D. C., this 20th day of May 1953.

[SEAL] FLOYD F. HEDLUND,  
Acting Director, Fruit and  
Vegetable Branch, Production  
and Marketing Administration.

[F. R. Doc. 53-4583; Filed, May 22, 1953;  
8:55 a. m.]

[Orange Reg. 236]

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

LIMITATION OF SHIPMENTS

§ 933.629 *Orange Regulation 236—*  
(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, 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 oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions of this section effective not later than May 25, 1953. Shipments of oranges, grown in the State of Florida, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, and will so continue until May 25, 1953; the recommendation and supporting information for continued regulation subsequent to May 24 was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on May 19, 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 of this section, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges; 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 of this section.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., May 25, 1953, and ending at 12:01 a. m., e. s. t., June 15, 1953, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in the State of Florida,

which do not grade at least U. S. No. 1 Russet; or

(ii) Any oranges, except Temple oranges, grown in the State of Florida, which are of a size larger than a size that will pack 126 oranges, packed in accordance with the requirements of a standard pack in a standard nailed box.

(2) As used in this section, the terms "handler," "ship," and "Growers Administrative Committee" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 1 Russet," "standard pack," "container" and "standard nailed box" shall each have the same meaning as when used in the revised United States Standards for Florida Oranges (§ 51.302 of this title; 17 F. R. 7879).

(3) Shipments of Temple oranges, grown in the State of Florida, are subject to the provisions of Orange Regulation 225 (§ 933.596; 17 F. R. 10438)

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

Done at Washington, D. C., this 20th day of May 1953.

[SEAL] FLOYD F HEDLUND,  
Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 53-4584; Filed, May 22, 1953; 8:55 a. m.]

[Lemon Reg. 485, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

*Findings.* 1. Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953) regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, 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 and engage in public rule-making procedure, and postpone the effective date of this regulation 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 amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and this amendment relieves restriction on the handling of lemons grown in the State of California or in the State of Arizona.

*Order as amended.* The provisions in paragraph (b) (1) (ii) of § 953.592 (Lemon Regulation 485, 18 F. R. 2842), are hereby amended to read as follows:

(ii) District 2, 650 carloads.

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

Done at Washington, D. C., this 21st day of May 1953.

[SEAL] FLOYD F HEDLUND,  
Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 53-4607; Filed, May 22, 1953; 8:57 a. m.]

[Lemon Reg. 486]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 953.593 *Lemon Regulation 486—*

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 14 F. R. 3612) regulating the handling of lemons grown in the State of California or in the State of Arizona, 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 recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, 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, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions of this section effective as hereinafter set forth. Shipments of lemons, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified in this section was promptly submitted to the Department after an open meeting of the Lemon Administrative Committee on May 20, 1953; such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to

submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time of this section.

(b) *Order* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., May 24, 1953, and ending at 12:01 a. m., P. s. t., May 31, 1953, is hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 650 carloads.

(iii) District 3: Unlimited movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is attached to Lemon Regulation 485 (18 F. R. 2842) and made a part of this section by this reference.

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

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

Done at Washington, D. C., this 21st day of May 1953.

[SEAL] FLOYD F HEDLUND,  
Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 53-4608; Filed, May 22, 1953; 8:57 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

Subchapter B—Farm Ownership Loans

PART 311—BASIC REGULATIONS

SUBPART B—LOAN LIMITATIONS

AVERAGE VALUES OF FARMS AND INVESTMENT LIMITS; MINNESOTA, PUERTO RICO, AND VERMONT

For the purposes of title I of the Bankhead-Jones Farm Tenant Act, as amended, average values of efficient family-type farm-management units and investment limits for the counties identified below are determined to be as herein set forth. The average values and investment limits heretofore established for said counties, which appear in the tabulations of average values and investment limits under § 311.30, Chapter III, Title 6 of the Code of Federal Regulations, are hereby superseded by the average values and investment limits set forth below for said counties.

MINNESOTA		
County	Average value	Investment limit
Beltrami	\$9,500	\$9,500
Carlton	9,000	9,000
Kanabec	12,000	12,000

PUERTO RICO		
Arecibo	\$16,000	\$12,000
Barranquitas	12,000	12,000
Camuy	15,000	12,000
Carolina	16,000	12,000
Ciales	12,000	12,000
Comerio	10,500	10,500
Jayuya	12,000	12,000
Juana Diaz	12,000	12,000
Lares	14,000	12,000
Mayaguez	18,000	12,000
Orocovis	10,000	10,000
San Lorenzo	12,500	12,000
San Sebastian	12,000	12,000

VERMONT		
Rutland	\$12,000	\$12,000

(Sec. 41 (i), 60 Stat. 1066; 7 U. S. C. 1015 (i). Applies secs. 3 (a), 44 (b), 60 Stat. 1074, 1069; 7 U. S. C. 1003 (a), 1018 (b))

Issued this 19th day of May 1953.

[SEAL] E. T. BENSON,  
Secretary of Agriculture.

[F. R. Doc. 53-4534; Filed, May 22, 1953; 8:47 a. m.]

**TITLE 16—COMMERCIAL PRACTICES**

**Chapter I—Federal Trade Commission [Docket 4878]**

**PART 3—DIGEST OF CEASE AND DESIST ORDERS**

**CHAIN INSTITUTE, INC., ET AL.<sup>1</sup>**

Subpart—Combining or conspiring: § 3.400 To discriminate or stabilize prices through basing point or delivered price systems; § 3.425 To enhance, maintain or unify prices. Subpart—Selling and quoting on systematic, price matching basis: § 3.2190 Basing points and delivered price systems; § 3.2193 Zone, freight equalization and other delivered price systems. I. In or in connection with the offering for sale, sale, and distribution of chain or chain products in commerce, and on the part of respondent Institute, and respondent corporations and their respective officers, etc., and on the part of respondent individuals, and their respective representatives, etc., entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to (1) establish, fix, or maintain prices, terms, or conditions of sale for chain or chain products or adhere to any prices, terms, or conditions of sale so fixed or maintained; (2) directly or indirectly investigate or check the prices, terms, or

conditions of any sale of, or offer to sell, chain or chain products to any purchaser or prospective purchaser for the purpose or with the effect of aiding or assisting in maintaining uniform prices, terms, or conditions in the sale of chain or chain products; (3) exchange or distribute among the corporate respondents, or any of them, price lists or other information showing current or future prices, terms, or conditions of sale, for the purpose, or with the effect, of fixing or of aiding or assisting in maintaining uniform prices, terms, or conditions of sale in the sale of chain and chain products; (4) adopt, use, or in any way follow any price quotation announced by particular respondents, or any of them, whereby quotations are made uniform or matched; (5) collect, compile, circulate, or exchange information concerning common carrier transportation charges used or to be used as a factor in computing the price of chain or chain products; or use, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of chain or chain products; (6) quote or sell chain or chain products at prices calculated or determined pursuant to or in accordance with the single basing point delivered-price system, the freight equalization delivered-price system, or the zone delivered-price system; or quote or sell chain or chain products at prices calculated or determined pursuant to or in accordance with any other plan or system which results in identical price quotations or prices for chain or chain products at points of quotation or sale or to particular purchasers by any two or more sellers of chain or chain products using such plan or system or which prevents purchasers from finding any advantage in price in dealing with one or more as against another seller or (7) do or cause to be done any of the things forbidden in the preceding paragraphs of this order through respondents Chain Institute, Dennis A. Merriman, or any other corporation, organization, or individual; and, II, in or in connection with the offering for sale, sale, and distribution of chain or chain products in commerce, and on the part of respondent American Chain & Cable Company, Inc., and of the other respondent corporations, and their officers, etc., quoting or selling chain or chain products at prices calculated or determined pursuant to or in accordance with a single basing point delivered-price system, a freight equalization delivered-price system, or a zone delivered-price system, for the purpose or with the effect of systematically matching the delivered-price quotations or the delivered prices of other sellers of chain or chain products and thereby preventing purchasers from finding any advantage in price in dealing with one or more sellers as against another; prohibited, subject to the provision, however, that nothing above contained in Part I of the instant order shall be construed as prohibiting the establishment or maintenance of bona fide agreements, understandings, or other relations between any corporate respondent and its

officers, directors, and employees, or between any corporate respondent and any of its subsidiaries or affiliates, relating to the sole and separate business of said corporation and its subsidiaries or affiliates, when not for the purpose or with the effect of unlawfully restricting competition.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Chain Institute, Inc., et al., Chicago, Ill., Docket 4878, February 16, 1953]

In the Matter of Chain Institute, Inc., an Incorporated Trade Association, Its Directors, Officers, and Members; American Chain & Cable Company, Inc., The Bridgeport Chain & Manufacturing Company; The McKay Company; Pyrene Manufacturing Company; Hodell Chain Company; St. Pierre Chain Corporation; S. G. Taylor Chain Company; Cleveland Chain & Manufacturing Company; Columbus McKinnon Chain Corporation; International Chain & Manufacturing Company; Nixdorf-Krein Manufacturing Company; Peerless Chain Company; Round California Chain Company; J. M. Russell Manufacturing Company; Seattle Chain & Mfg. Company; Turner & Seymour Manufacturing Company; Western Chain Products Company; Woodhouse Chain Works; and Dennis A. Merriman; Walter S. McCann; Wm. D. Kirkpatrick; Frank A. Bond, George J. Campbell, Jr., Alfred Peter Shirley, Floyd Bronson Olcott, and Forrest C. Nichols, Copartners Trading as Shirley, Olcott & Nichols

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of said amended complaint taken before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner, with exceptions thereto, and briefs and oral argument of counsel; and the Commission having issued its order disposing of the exceptions to the recommended decision and having made its findings as to the facts<sup>2</sup> and its conclusion that the respondents, except Walter S. McCann, Alfred Peter Shirley, Floyd Bronson Olcott, and Forrest C. Nichols, have violated the provisions of section 5 of the Federal Trade Commission Act:

It is ordered, That the corporate respondents Chain Institute, Inc., American Chain & Cable Company, Inc., The Bridgeport Chain & Manufacturing Company, The McKay Company, Pyrene Manufacturing Company, Hodell Chain Company, St. Pierre Chain Corporation, S. G. Taylor Chain Company, Cleveland Chain & Manufacturing Company, Columbus McKinnon Chain Corporation, Campbell Chain Company, Nixdorf-Krein Manufacturing Company, Peerless Chain Company, Round California Chain Company, The John M. Russell Manufacturing Company, Inc., Seattle

<sup>1</sup> On April 20, 1953, petitions to review the Commission's order were filed in the Court of Appeals for the Eighth Circuit.

<sup>2</sup> Filed as part of the original document.

Chain & Mfg. Company, Turner & Seymour Manufacturing Company, Western Chain Products Company, and Woodhouse Chain Works, their respective officers, representatives, agents, and employees, and the individual respondents, Dennis A. Merriman, Wm. D. Kirkpatrick, Frank A. Bond, and George J. Campbell, Jr., their respective representatives, agents and employees, in or in connection with the offering for sale, sale, and distribution of chain or chain products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following things:

(1) Establish, fix, or maintain prices, terms, or conditions of sale for chain or chain products or adhere to any prices, terms, or conditions of sale so fixed or maintained.

(2) Directly or indirectly investigate or check the prices, terms, or conditions of any sale of, or offer to sell, chain or chain products to any purchaser, or prospective purchaser for the purpose or with the effect of aiding or assisting in maintaining uniform prices, terms, or conditions in the sale of chain or chain products.

(3) Exchange or distribute among the corporate respondents, or any of them, price lists or other information showing current or future prices, terms, or conditions of sale, for the purpose, or with the effect, of fixing or of aiding or assisting in maintaining uniform prices, terms, or conditions of sale in the sale of chain and chain products.

(4) Adopt, use, or in any way follow any price quotation announced by particular respondents, or any of them, whereby quotations are made uniform or matched.

(5) Collect, compile, circulate, or exchange information concerning common carrier transportation charges used or to be used as a factor in computing the price of chain or chain products; or use, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of chain or chain products.

(6) Quote or sell chain or chain products at prices calculated or determined pursuant to or in accordance with the single basing point delivered-price system, the freight equalization delivered-price system, or the zone delivered-price system; or quote or sell chain or chain products at prices calculated or determined pursuant to or in accordance with any other plan or system which results in identical price quotations or prices for chain or chain products at points of quotation or sale or to particular purchasers by any two or more sellers of chain or chain products using such plan or system or which prevents purchasers from finding any advantage in price in dealing with one or more as against another seller.

(7) Do or cause to be done any of the things forbidden in the preceding paragraphs of this order through respondents Chain Institute, Dennis A. Merriman, or any other corporation, organization, or individual.

*It is further ordered,* That nothing contained herein shall be construed as prohibiting the establishment or maintenance of bona fide agreements, understandings, or other relations between any corporate respondent and its officers, directors, and employees, or between any corporate respondent and any of its subsidiaries or affiliates, relating to the sole and separate business of said corporation and its subsidiaries or affiliates, when not for the purpose or with the effect of unlawfully restricting competition.

*It is further ordered,* That each of the corporate respondents American Chain & Cable Company, Inc., The Bridgeport Chain & Manufacturing Company, The McKay Company, Pyrene Manufacturing Company, Hodell Chain Company, St. Pierre Chain Corporation, S. G. Taylor Chain Company, Cleveland Chain & Manufacturing Company, Columbus McKinnon Chain Corporation, Campbell Chain Company, Nixdorff-Krein Manufacturing Company, Peerless Chain Company, Round California Chain Company, The John M. Russell Manufacturing Company, Inc., Seattle Chain & Mfg. Company, Turner & Seymour Manufacturing Company, Western Chain Products Company, and Woodhouse Chain Works, its officers, representatives, agents, and employees, in or in connection with the offering for sale, sale, and distribution of chain or chain products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from quoting or selling chain or chain products at prices calculated or determined pursuant to or in accordance with a single basing point delivered-price system, a freight equalization delivered-price system, or a zone delivered-price system, for the purpose or with the effect of systematically matching the delivered-price quotations or the delivered prices of other sellers of chain or chain products and thereby preventing purchasers from finding any advantage in price in dealing with one or more sellers as against another.

*It is further ordered,* For reasons appearing in the findings as to the facts in this proceeding, that the allegations of Count I of the amended complaint herein be, and they hereby are, dismissed as to respondents Walter S. McCann, Alfred Peter Shirley, Floyd Bronson Olcott, and Forrest C. Nichols.

*It is further ordered,* That the allegations of Count II of the amended complaint be, and they hereby are, dismissed as to all of the respondents.

*It is further ordered,* That the respondents, except Walter S. McCann, Alfred Peter Shirley, Floyd Bronson Olcott, and Forrest C. Nichols, shall, within sixty (60) days from service upon them of this order, file with the Commission a report in writing showing in detail the

manner and form in which they have complied with this order.

Issued: February 16, 1953.

By the Commission.<sup>3</sup>

[SEAL]

D. C. DANIEL,  
Secretary.

[F. R. Doc. 53-4569; Filed, May 22, 1953; 8:55 a. m.]

[Docket 5817]

PART 3—DIGEST OF CEASE AND DESIST ORDER

MODERN SEWING MACHINE CO.

Subpart—*Advertising falsely or misleadingly:* § 3.130 *Manufacture or preparation.* Subpart—*Using misleading name—Goods:* § 3.2310 *Manufacture or preparation.* In connection with the offering for sale, sale, and distribution of rebuilt sewing machines in commerce, representing (1) through use of the words "factory rebuilt" or any expression of like import, that such sewing machines are rebuilt by or at the factories of the original manufacturers thereof, and (2) through the use of the words "factory rebuilt" or otherwise, that new parts installed in such rebuilt machines were made by the original manufacturers of the machines, contrary to the fact, prohibited.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 40. Interprets or applies sec. 5, 38 Stat. 710, as amended; 15 U. S. C. 45) [Cease and desist order, Irving Epstein et al. d. b. a. Modern Sewing Machine Company, Brooklyn, N. Y., Docket 5817, February 16, 1953]

*In the Matter of Irving Epstein, Rita Epstein and Sam Epstein, Copartners Doing Business as Modern Sewing Machine Company*

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 16, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel sup-

<sup>3</sup> Commissioner Mason's dissenting opinion filed as part of the original document and Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

porting the complaint, and said hearing examiner, on August 2, 1951, filed his initial decision.

Within the time permitted by the Commission's rules of practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal, no oral argument having been requested; and the Commission, having issued its order granting said appeal in part and denying it in part and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes thus its findings as to the facts<sup>1</sup> and its conclusions<sup>2</sup> drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

*It is ordered.* That the respondents, Irving Epstein, Rita Epstein and Sam Epstein, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rebuilt sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, (1) through use of the words "factory rebuilt" or any expression of like import, that such sewing machines are rebuilt by or at the factories of the original manufacturers thereof, and (2) through the use of the words "factory rebuilt" or otherwise, that new parts installed in such rebuilt machines were made by the original manufacturers of the machines, contrary to the fact.

*It is further ordered.* That with respect to the issues raised by the complaint other than those to which this order relates, the complaint be, and the same hereby is, dismissed.

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

Issued: February 16, 1953.

By the Commission.

[SEAL] D. C. DANIEL,  
Secretary.

[F. R. Doc. 53-4568; Filed, May 22, 1953;  
8:53 a. m.]

## TITLE 32—NATIONAL DEFENSE

### Chapter V—Department of the Army

#### Subchapter G—Procurement

#### PART 597—TERMINATION OF CONTRACTS

Part 597 is revised to read as follows:

##### SUBPART A—INTRODUCTION

Sec.	
597.100	Scope of part.
597.101	Applicability of this part.
597.104	Special purpose clauses.

<sup>1</sup> Filed as part of the original document.

##### SUBPART D—DEFINITION OF TERMS

Sec.	
597.250	Original cost, original acquisition cost.

SUBPART C—TERMINATION FOR CONVENIENCE

597.302	Authority of contracting officers.
597.310	Fraud or other criminal conduct.
597.311	Settlement of two or more claims jointly.

SUBPART D—GENERAL PRINCIPLES APPLICABLE TO THE SETTLEMENT OF TERMINATED FIXED-PRICE CONTRACTS [RESERVED]

SUBPART E—SETTLEMENT OF CONTRACTS TERMINATED FOR CONVENIENCE; GENERAL

597.503	Fixed-price contracts; settlement proposals.
597.503-2	Bases for settlement proposals.
597.503-3	Forms for settlement proposals.
597.512	Cost-type contracts; negotiated settlement including costs; general provisions for settlement.
597.512-2	Cost which may be included.
597.515	Audit of settlement proposals and of subcontract settlements.
597.517	Review of proposed settlements.
597.517-4	Submission of information.
597.517-6	Action by settlement review board.
597.518	Settlement of subcontract claim.
597.518-10	Delay in settlement of subcontractor claims.
597.518-11	Direct settlement of subcontracts.
597.521	Payment.
597.521-2	Settlement by determination.
597.522	Partial payments upon termination.
597.522-4	Security for partial payments.

##### SUBPART F—TERMINATION INVENTORY

597.604	Plant clearance period.
597.604-1	Rejection of inadequate schedules.
597.605	Scrap and salvage.
597.605-1	Scrap warranty.
597.605-2	Release of scrap warranty.
597.608	Sale or other disposition of termination inventory.
597.608-2	Competitive sales.
597.616	Accounting for termination inventory.

##### SUBPART G—FORMS

597.750	Fixed-Price Supply Contracts of \$1,000 or less.
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**AUTHORITY:** §§ 597.100 to 597.750 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup. 161-161.

**SOURCE:** Sec. VIII, APP. January 1933.

##### SUBPART A—INTRODUCTION

§ 597.100 *Scope of part.* (a) Part 407 of this title established uniform policies relating to the termination of contracts entered into under the Armed Services Procurement Act of 1947. It sets forth: (1) The policies and methods to be followed in connection with the termination of contracts for the convenience of the Government; (2) provisions as to settlement of contracts so terminated, including disposition of property incident to termination; and (3) approved forms for use in terminating contracts for the convenience of the Government and in the settlement of such contracts.

(b) Part 407 of this title is considered to need only limited implementation for use by the Department of the Army. Therefore, the provisions of this part will be supplemental to Part 407 of this title, and reference will be made in this part to only those sections of Part 407 of this

title in which it is considered that supplementation is necessary.

§ 597.101 *Applicability of this part.* (a) Subparts C, D, and E of Part 407 of this title do not apply to lump sum or unit price architect-engineer contracts terminated for the convenience of the Government. Such contracts, which are for professional services, contain a clause which permits termination for the convenience of the Government and the payment of that proportion of the contract consideration which the work actually performed bears to the total work required. The termination and settlement of such contracts is to be in strict accordance with the termination clause contained therein. Any other contracts containing a special type of termination clause will, if terminated, be settled in strict accordance therewith.

(b) While this part does not apply to any modification of a contract pursuant to the provisions of the clause therein entitled "Changes," except as may be prescribed by the Head of the Procuring Activity, any exercise of rights provided in the "Change" clause is to be restricted to the purposes for which such clause is intended and the policies and procedures established in this part are not to be circumvented by the use of the "Changes" clause in lieu of completely or partially terminating a contract pursuant to the clause "Termination for the Convenience of the Government."

§ 597.104 *Special purpose clauses.* Special purpose clauses will be submitted for approval to the Assistant Chief of Staff, G-4, Department of the Army (Chief, Purchases Branch).

##### SUBPART E—DEFINITION OF TERMS

§ 597.250 *Original cost, original acquisition cost.* The original cost or original acquisition cost of contractor-owned material is the cost to the contractor as stated in its inventory schedule, provided that such cost is computed upon a reasonably acceptable basis. Generally, such cost will be the actual or estimated cost of raw material, purchased parts, and supplies plus direct labor and the factory overhead costs applicable to work in process and manufactured parts.

##### SUBPART C—TERMINATION FOR CONVENIENCE

§ 597.302 *Authority of contracting officers.* The Head of the Procuring Activity shall prescribe procedures under which contracting officers may terminate contracts for the convenience of the Government.

§ 597.310 *Fraud or other criminal conduct.* Reports of allegations or suspicions of fraud or other criminal conduct in connection with the settlement of a terminated contract will be made by contracting officers in accordance with the requirements of § 590.303 of this subchapter.

§ 597.311 *Settlement of two or more claims jointly.* With the consent of the contractor, the contracting officer or officers concerned may mutually agree to the joint settlement of two or more termination claims of the contractor under

several contracts with one or more military departments. The Contracting Officer or officers concerned, as a part of any such undertaking, will agree among themselves as to the division of responsibility for the performance of the audit, inventory, property disposal, and other functions. Copies of each such settlement agreement will be furnished to all contracting officers concerned. Each copy will clearly identify the contracts involved and have attached thereto and incorporated therein a schedule showing apportionment of the total amount among the contracts involved.

**SUBPART D—GENERAL PRINCIPLES APPLICABLE TO THE SETTLEMENT OF TERMINATED FIXED-PRICE CONTRACTS [RESERVED]**

**SUBPART E—SETTLEMENT OF CONTRACTS TERMINATED FOR CONVENIENCE; GENERAL**

§ 597.503 *Fixed-price contracts; settlement proposals.*

§ 597.503-2 *Bases for settlement proposals.* (a) See § 407.503-2 (a) of this title.

(b) See § 407.503-2 (b) of this title.

(c) *Other bases.* The Assistant Chief of Staff, G-4, Department of the Army (Chief, Purchases Branch) is the designated representative of the Secretary of the Army for approving the submission of termination claims on other than the inventory or total cost basis. If a special purpose clause (§ 597.104) has been authorized for use and a termination claim has been submitted in conformity with such clause no further approval is required.

§ 597.503-3 *Forms of settlement proposals.* Contracting Officers will maintain an adequate supply of settlement proposal forms for use by contractors. Such forms are to be obtained from the Adjutant General Publication Deposits.

§ 597.512 *Cost-type contracts; negotiated settlements including costs; general provisions for settlement.*

§ 597.512-2 *Cost which may be included.* Claims by the contractor against the Government for items of cost which are the subject of reclaim vouchers (of other items of cost of the same nature) not waived by the contractor are to be listed as exclusions to the settlement. Such exclusions may only be removed after approval by the General Accounting Office.

§ 597.515 *Audit of settlement proposals and of subcontract settlements.* (a) Referral of settlement proposals and requests for audit by the contracting officer to the Army Audit Agency under this section will be governed by the provisions of § 590.607 of this subchapter.

(b) The contracting officer and the prime contractor may agree that any audit or substantiation of subcontractor costs will be undertaken by the Government instead of the prime contractor or higher tier subcontractor.

§ 597.517 *Review of proposed settlements.*

§ 597.517-4 *Submission of information.* All submissions of proposed settlements to the Settlement Review Board

by the Contracting Officer shall be in accordance with procedures prescribed by the Head of the Procuring Activity.

§ 597.517-6 *Action by Settlement Review Board.* All determinations of the Settlement Review Board shall be made at duly constituted meetings of such Board and the written opinion of the Board setting forth its approval or disapproval of the proposed settlement shall be signed by each Board member present. Such written opinion approving the proposed settlement need not be a repetition of the contracting officer's memorandum but should clearly state that the proposed settlement is reasonable from the standpoint of protecting the Government's interest and that the negotiations have been conducted competently and are based upon adequate information.

§ 597.518 *Settlement of subcontract claims.*

§ 597.518-10 *Delay in settlement of subcontractor claims.* Where it is necessary to exclude the claim of a subcontractor from the settlement with a prime contractor such exclusions will be reported as an Unassumed Exclusion in the manner prescribed by the Head of the Procuring Activity. Each such settlement agreement will be clearly marked as follows: "This Settlement Agreement contains an Unassumed Exclusion."

§ 597.518-11 *Direct settlement of subcontracts.* When such action is in the interests of the Government the policy set forth in § 597.515 (b) may, by agreement between the parties, be extended to include settlement. Payment to the subcontractor is to be accomplished through the prime contractor as part of the over-all settlement with the latter.

§ 597.521 *Payment.*

§ 597.521-2 *Settlement by determination.* (a) See § 407.521-2 (a) of this title.

(b) See § 407.521-2 (b) of this title.

(c) The following certificates shall support the invoice or voucher prepared under § 407.521-2 (a) or (b) of this title.

I certify that Contract No. DA ----- has been completely terminated for the convenience of the Government and that the parties thereto have failed to reach a settlement by agreement with respect to the whole amount to be paid to the contractor by reason of such termination. Therefore, in addition to the sum of \$----- previously paid on account of work or services performed or articles delivered under the completed portion of the contract, which sum the contractor is to retain, I have determined that the contractor shall be paid the additional sum of \$----- less partial or progress payments of \$----- and less disposal credits of \$-----, resulting in a net payment of \$----- by reason of the complete termination of said contract. The contractor has (has not) appealed from this determination.

S -----  
Contracting Officer.

If the contract has been terminated in part, appropriate revisions are to be made in the certificate.

§ 597.522 *Partial payments upon termination.*

§ 597.522-4 *Security for partial payments.* Other means of protecting the interests of the Government in connection with partial payments shall be prescribed by the Head of the Procuring Activity.

**SUBPART F—TERMINATION INVENTORY**

§ 597.604 *Plant clearance period.* The Contracting Officer shall require the contractor to designate as "final" any inventory schedule which the latter submits for the purpose of starting the final phase of a plant clearance period, as defined in § 407.217 of this title.

§ 597.604-1 *Rejection of inadequate schedules.* Wherever Government furnished property is involved in connection with the terminated portion of the contract the contracting officer will verify the status of such property with the property Administrator prior to acceptance of the contractor's inventory schedule to insure the adequacy of such schedules.

§ 597.605 *Scrap and salvage.* The acquisition by the Government of contractor-acquired property which has been determined to be scrap shall be avoided to the greatest extent consistent with proper settlement of the contractor's claim, the plant clearance period, the contractor's rights pursuant to § 407.612-3 of this title, or special laws or regulations governing disposition of critical or hazardous materials.

§ 597.605-1 *Scrap warranty.* There shall be incorporated in the scrap warranty, by appropriate language, adequate identification and description of the material as to which the scrap warranty is applicable. Where advisable for brevity or other reasons, this may be accomplished by reference to appended schedules or to properly identified inventory schedules which cannot conveniently be appended.

§ 597.605-2 *Release of scrap warranty.* (a) The contracting officer in acting upon any request for release of a scrap warranty shall observe the requirement of prior review by a Property Disposal Review Board pursuant to § 407.613-2 (b) of this title.

(b) A release of scrap warranty pursuant to § 407.605-2 (c) of this title shall be set forth in writing by the contracting officer.

§ 597.608 *Sale or other disposition of termination inventory.*

§ 597.608-2 *Competitive sales.* The contractor, if desiring to bid, shall submit a bid to the Contracting Officer prior to receipt of other bids.

§ 597.616 *Accounting for termination inventory.* (a) Accounting for Government property and property title to which has passed to the Government by possession is continued in the contractor will be subject to applicable provisions of Part 412 of this title.

(b) Property disposed of, in effecting settlement, by transfer of title to the Government through means of a storage agreement will, with respect to applicable accountability provisions of Part

412 of this title, be handled in the following manner:

(1) A conformed copy of the storage agreement, including any schedules thereof, shall be furnished the Property Administrator as the final document for property so covered for the terminated contract.

(2) A second conformed copy of the storage agreement, including any schedules thereof, shall be furnished the Property Administrator as the initial document for the establishing of a property file for the storage agreement.

#### SUBPART G—FORMS

§ 597.750 *Fixed-price supply contracts of \$1,000 or less.* The short form termination clause § 407.705-1 of this title may be inserted in fixed-price supply contracts of \$1,000 or less. However, any such contract of \$1,000 or less which has within its provisions the Default clause set forth in § 406.103-11 of this title, or one of similar intent the use of which has been authorized, shall include such short form termination clause. The heads of procuring activities are authorized, subject to the condition stated in this section, to establish limits or minimum contract value, or otherwise, as may be appropriate.

[SEAL] WM. E. BERGEN,  
Major General, U. S. Army,  
The Adjutant General.

[F. R. Doc. 53-4536; Filed, May 22, 1953;  
8:47 a. m.]

## Chapter VII—Department of the Air Force

### Subchapter C—Claims and Accounts

#### PART 836—CLAIMS AGAINST THE UNITED STATES

##### PERSONNEL CLAIMS

Sections 836.90 to 836.108 replace §§ 836.90 to 836.108 (15 F. R. 1511, 32 CFR 836.90 to 836.108)

Sec.	
836.90	Purpose.
836.91	Effective date.
836.92	Claims payable.
836.93	Claims not payable.
836.94	Type, quantity, and ownership of property; requirements.
836.95	Depreciation; appreciation; expensive articles; barter—policy.
836.96	Statute of limitations.
836.97	Demand on carrier.
836.98	Demand on insurer.
836.99	Failure to make demand on carrier or insurer.
836.100	Transfer of rights against carrier or insurer.
836.101	Proration of recovery from carrier or insurer.
836.102	Proration in event of excess weight.
836.103	Claims within provisions of other regulations.
836.104	Investigation procedure.
836.105	Action by claimant.
836.106	Investigation and processing of claims.
836.107	Replacement in kind.
836.108	Approval and payment or disapproval.

AUTHORITY: Sections 836.90 to 836.108 issued under sec. 1, 59 Stat. 225, as amended; 31 U. S. C. 222c.

DERIVATION: AFR 112-7.

No. 100—2

§ 836.90 *Purpose.* Sections 836.90 to 836.108 outline the procedure for administrative settlement of claims of military and civilian personnel of the Department of the Air Force or of the United States Air Force for personal property damaged, lost, destroyed, captured, or abandoned incident to their service.

§ 836.91 *Effective date.* Any such claim presented to the Department of the Air Force or the United States Air Force which is cognizable under the Military Personnel Claims Act of 1945, as amended (sec. 1, 59 Stat. 225, 66 Stat. 321; 31 U. S. C. 222c) will be considered and settled by the Department of the Air Force, in accordance with the provisions of §§ 836.90 to 836.103: *Provided*, That it accrued on or after September 26, 1947, the effective date of the transfer of the Army Air Forces to the Department of the Air Force and the United States Air Force pursuant to the National Security Act of 1947 and Transfer Order No. 1, September 26, 1947 (12 F. R. 6616). Claims arising out of Army Air Forces activities which accrued prior to September 26, 1947 will be forwarded to The Judge Advocate General, United States Air Force, for reference to the Department of the Army. (See § 836.105 (e).)

§ 836.92 *Claims payable*—(a) *General.* Any claim falling within the statutory provisions of the Military Personnel Claims Act of 1945, as amended, not hereinafter excluded, may be submitted for consideration and in proper cases approved for payment in an amount not in excess of \$2,500.

(b) *Examples.* The principal types of claims payable under the provisions of §§ 836.90 to 836.108, when damage, loss, destruction, capture, or abandonment of personal property occurs incident to the service of the claimant are as follows:

(1) *Property located at quarters or other authorized places.* Where property is damaged or destroyed by fire, flood, hurricane, or other serious occurrence while located at:

(i) Quarters wherever situated, occupied by the claimant, which were assigned to him or otherwise provided in kind by the Government; or

(ii) Quarters not within the continental United States, occupied by the claimant, but not assigned to him or otherwise provided in kind by the Government. However, where the claimant, if a civilian employee, is a local inhabitant or a national of a country other than the United States, the claim is not payable. For the purposes hereof, Alaska is deemed to be not within continental United States.

(iii) Any warehouse, hospital, baggage dump, storeroom, or other place (except quarters; see subdivisions (i) and (ii) of this subparagraph designated by competent authority for the reception of the property.

(2) *Transportation losses.* Where property, including baggage checked, is damaged, lost or destroyed incident to

transportation by a carrier, or an agent or agency of the Government, as follows:

(i) When shipped under orders; or

(ii) In connection with travel under orders; or

(iii) In connection with travel in performance of military duty with or without troops.

However, such claims may be approved only to the extent that the shipment conforms to the provisions of Joint Travel Regulations (effective April 1, 1951) as amended.

(3) *Marine or aircraft disaster.* Where property is damaged, lost, destroyed, or abandoned in consequence of perils of the sea or hazards in connection with the operation of aircraft.

(4) *Enemy action or public service.* Where property is damaged, lost, destroyed, captured, or abandoned as a result of enemy action or threat thereof, combat or activities incident thereto, belligerent activities or unjust confiscation by a foreign power or its nationals, civil disturbances, public disasters, or the saving of Government property or human life.

(5) *Money.* (i) When commercial facilities are not available and personal funds are accepted by personnel acting with authority of the unit or detachment commanding officer for safekeeping, soldiers' deposit, transmission by personal transfer account, or other authorized disposition, and such personal funds are neither applied as directed by the owner nor returned to him, such losses are reimbursable when established by satisfactory evidence (see § 836.105 (d) (5)).

(ii) A claim for loss of personal funds under this subparagraph may not be approved in an amount greater than that which it was clearly reasonable for the claimant to have in his possession under the circumstances existing at the time of loss (see § 836.94 (a)).

§ 836.93 *Claims not payable.* Claims otherwise within the scope of §§ 836.90 to 836.108 are nevertheless not payable under its provisions when the damage, loss, destruction, capture, or abandonment incident to service involves any of the following:

(a) *Unserviceable property.* Worn out or unserviceable property.

(b) *War trophies.* War trophies and similar items, whether acquired by capture, abandonment, gift or purchase.

(c) *Articles acquired for other persons.* Articles intended directly or indirectly for persons other than the claimant or members of his immediate family, such as articles, acquired at the request of others, or to be disposed of as gifts or for sale.

(d) *Jewelry.* Jewelry (except costume jewelry; also identification bracelets, school, lodge, wedding or academy rings)

(e) *Intangible property.* Choses in action, or evidence thereof, such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and travelers' checks.

(f) *Government property.* Property owned by the United States, including

property furnished through the Armed Forces Clothing Monetary Allowance System or through issue.

(g) *Motor vehicles and boats.* Claims for boats, automobiles, and other motor vehicles and parts thereof, including tools, ordinarily will not be paid. However, under special or unusual circumstances such claims may be recommended to the approving authority for consideration (see § 836.92 (b) (4)).

(h) *Enemy property.* Property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except as it is determined that the claimant is friendly and at the time of loss was friendly to the United States; and the property of prisoners of war detained or enemy aliens interned by the United States or its allies.

(i) *Losses at quarters.* Losses occurring at quarters occupied by the claimant within the continental United States (excluding Alaska) which are not assigned to him, or otherwise provided in kind by the Government. Also, claims of civilian employees, where the claimant is a local inhabitant or a national of a country other than the United States, for losses occurring at quarters not within the continental United States, occupied by the claimant, but not assigned to him or otherwise provided in kind by the Government (see § 836.92 (b) (1) (ii)).

(j) *Clothing being worn.* Clothing being worn except under any of the circumstances set out in the examples of claims payable (see § 836.92 (b)).

(k) *Losses of subrogees.* Losses of insurers and other subrogees.

(l) *Losses recoverable from insurer or carrier.* Losses, or any portion thereof, which have been recovered or are recoverable from an insurer or a carrier.

(m) *Contractual coverage.* Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

(n) *Negligence of claimant.* Where the damage to or loss, destruction, capture, or abandonment of property was caused in whole or in part by any negligent or wrongful act on the part of the claimant, or his agent or employee while acting within the scope of his employment.

(o) *Violation of directives.* No allowance will be made for any item where the evidence indicates that the acquisition, possession, or transportation thereof was in violation of the pertinent directives of any of the armed services.

§ 836.94 *Type, quantity and ownership of property; requirements—(a) Type and quantity.* Claims are payable under §§ 836.90 to 836.108 only for such types and quantities or amounts of tangible personal property, including money, as shall be determined by the approving authority to be reasonable, useful, necessary, or proper under the attendant circumstances existing at the time of the loss. In determining this

question, the approving authority will give consideration to the type and quantity involved and the circumstances attending its acquisition and use. Among these items of personal property is such property as by law or regulation that is required to be possessed or used by military personnel or civilian employees of the Department of the Air Force or of the Air Force incident to their service.

(b) *Ownership or custody.* Claims which are otherwise within the provisions of §§ 836.90 to 836.108 will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, destruction, capture, or abandonment, or for the sole reason that the claimant was not the legal owner of the property in relation to which the claim is made. For example, property may be the subject of a claim even though borrowed from others (see § 836.93 (c)).

§ 836.95 *Depreciation, appreciation, expensive articles; barter-policy—(a) Depreciation.* Claims processed under the provisions of §§ 836.90 to 836.108 will be subject to a reasonable depreciation in value, taking into consideration the type of article involved, its cost, condition when lost or destroyed, cost of repairs (if damaged only) and the time elapsed between the date of acquisition and the date of accrual of the claim.

(b) *Appreciation.* Allowance for replacement cost or appreciation in value of the property will not be made.

(c) *Expensive articles.* Allowance for expensive articles, including heirlooms and antiques, or for items purchased at unreasonably high prices, will be based upon fair and reasonable prices for substitute articles of a similar type.

(d) *Articles acquired by barter.* Allowance for articles acquired by barter will not exceed the cost of the articles tendered in barter. No reimbursement will be made for articles acquired in black market or other prohibited activities (see § 836.93 (o)).

§ 836.96 *Statute of limitations.* No claim may be paid under §§ 836.90 to 836.108 unless presented in writing within two years after the occurrence of the accident or incident out of which the claim arises or on or before July 3, 1953, whichever date is later. *Provided,* That if the accident or incident occurs during time of war, or if war intervenes within two years after its date of occurrence, a claim may on good cause shown, be presented within two years after such good cause ceases to exist, but not later than two years after peace is established. Good cause must be shown for any delay exceeding two years after the date of the accident or incident out of which the claim arose: *And provided further* That any claim cognizable under §§ 836.90 to 836.108 which has not heretofore been presented or which has been presented and denied because it was not presented seasonably or any claim cognizable hereunder of any survivor which has not heretofore been presented or which has been presented and

disapproved because such survivor has no right of recovery under then existing regulations, may be considered or reconsidered on the written request of the claimant, provided such request is made on or before July 3, 1953.

§ 836.97 *Demand on carrier—(a) General.* In all cases where property is damaged, lost, or destroyed while being transported by carrier, the claimant, since he was the shipper, must make a written demand upon the carrier in possession of the property when the loss, etc., occurred, if known, and/or if this cannot be determined, demand must be made upon the last such (delivering) carrier known or believed to have handled the shipment, for reimbursement for such damage, loss, or destruction in accordance with the provisions of the bill of lading or contract covering the shipment (see paragraph (c) of this section and § 836.99). If more than one bill of lading or contract was issued, a separate demand must be made upon the last carrier under each bill of lading or contract. Such demand or demands should be made prior to the filing of the claim against the Government under §§ 836.90 to 836.108 and within the period set out in paragraph (b) of this section. Copies of this demand and of any subsequent demands and related correspondence, as well as the originals of any replies, should be presented with any claims subsequently filed against the Government §§ 836.90 to 836.108. In any event, however, the claimant must file his claim against the United States within the statutory period (see § 836.96). It is also important that the claimant accept from the carrier any payment correctly determined in satisfaction of the carrier's liability as outlined in paragraph (c) of this section (see §§ 836.93 (l) and 836.99).

(b) *Time limit.* Demand for such reimbursement must be made within the period provided by statute, by regulations of the Interstate Commerce Commission, or by other applicable limitation and, in any event, within nine months subsequent to the date of delivery of the shipment, or, if no portion of the shipment is delivered, within nine months subsequent to the date when delivery would in the normal course have been made.

(c) *Liability of carrier.* The liability of a rail carrier with respect to property shipped on a Government bill of lading is normally limited to ten cents per pound for each article damaged, lost, or destroyed, the liability is normally limited to thirty cents per pound if shipped by motor carrier, the liability is normally limited to fifty cents per pound if shipped by railway express. Where property is shipped on the Uniform Bill of Lading the liability is governed by the terms of such bill of lading or contract.

(d) *Form of demand.* Demands on carriers will be accomplished by the claimant in substantially the following form. (Reproduction of this form at Government expense is prohibited.)

-----  
Demand on carrier  
-----

(Name of carrier) \_\_\_\_\_ (Date) \_\_\_\_\_  
 (Address) \_\_\_\_\_

GENTLEMEN:  
 Claim is presented by the undersigned for \_\_\_\_\_  
 (Loss or damage)

in connection with the following shipment:  
 from \_\_\_\_\_ (City, town or station) \_\_\_\_\_  
 (Consignor) \_\_\_\_\_  
 to \_\_\_\_\_ (City, town or station) \_\_\_\_\_  
 (Consignee) \_\_\_\_\_  
 in connection with \_\_\_\_\_, No. \_\_\_\_\_, dated \_\_\_\_\_  
 (Bill of lading, contract, or baggage check)  
 covering shipment of \_\_\_\_\_  
 (Household goods, footlocker, flight bag, etc.)  
 described as follows:

Description of container (or of article if uncrated)	Approximate weight (lbs.)	Nature and extent of damage	Amount claimed
-----	-----	-----	\$-----
-----	-----	-----	-----
-----	-----	-----	-----
Total amount of claim-----			\$-----

Detailed description of property lost or damaged, including identifying marks on containers:  
 -----  
 -----  
 -----

Remarks:  
 -----  
 -----

Sincerely,  
 -----  
 (Name)  
 -----  
 (Address)

cated to excess baggage and/or household effects.

§ 836.102 *Proration in event of excess weight.* Where claim is made under §836.92 (b) (2) for damage, loss, or destruction of property comprising a shipment, the total weight of which is in excess of the regulation allowance of baggage and/or household effects permitted to be shipped at Government expense, there may be approved for payment only that proportionate part of the total damage, loss, or destruction which the regulation allowance on the basis of weight bears to the total weight shipped. When two or more shipments are made under or in connection with the same orders and the regulation allowance is exhausted or exceeded by the first, or by the first and succeeding shipments, all further shipments will be deemed not to be within the provisions of §§ 836.90 to 836.108.

§ 836.103 *Claims within provisions of other regulations.* Claims within the scope of §§ 836.90 to 836.108 which are also within the scope of regulations governing claims arising out of activities of the Air Force, tort claims, claims under Article 139, UCMJ, claims arising in foreign countries, or maritime claims (17 F. R. 3320; 15 F. R. 867; 17 F. R. 8945) will be initially investigated and processed under the provisions of §§ 836.90 to 836.108 which is preemptive of other claims regulations. Such claims will be forwarded through channels to The Judge Advocate General, Headquarters United States Air Force, Washington 25, D. C. The determination of whether any such claims should be settled under other regulations will be made by the approving authority, Office of The Judge Advocate General, USAF.

§ 836.104 *Investigation procedure.* So far as consistent with the provisions of §§ 836.90 to 836.108, the procedure set forth in §§ 836.1 to 836.6 (17 F. R. 3320) will be followed with respect to the technique of investigation, the preparing of reports of investigation, and the forwarding of papers relating to the claim. (See §§ 836.105 and 836.106)

§ 836.105 *Action by claimant—(a) Claimants.* Only military personnel or civilian employees of the Department of the Air Force or of the United States Air Force or their duly authorized agents or legal representative (see § 836.3; 17 F. R. 3321) may be claimants under §§ 836.90 to 836.108. However, in the event of death of such military personnel or civilian employees subsequent to the accident or incident out of which the claim arose and prior to his filing a claim in person or by a duly authorized agent, the claim may be presented in the name of the decedent by a duly appointed executor or administrator or by any of the persons listed in paragraph (b) of this section, upon the submission of competent evidence of appointment and/or survivorship.

(b) *Survivors.* In the event of the death of such military personnel or civilian employee, regardless of whether the death occurred concurrently with or subsequent to the accident or incident out of which the claim arose, the claim

§ 836.98 *Demand on insurer.* In all cases where damaged, lost, destroyed, captured, or abandoned property was insured in whole or in part, the claimant must make a written demand upon the insurer for reimbursement under the terms and conditions of the insurance coverage (see §§ 836.93 (1) and 836.99). Such demand should be made prior to the filing of the claim against the Government under §§ 836.90 to 836.108 and within the time limit provided in the policy. Copies of such demand and of any subsequent demands and related correspondence, as well as the originals of any replies, should be presented with any claim subsequently filed against the Government under the provisions of §§ 836.90 to 836.108. In any event, however, the claimant must file his claim against the United States within the statutory period (see § 836.96). Insureds should not give an insurer a full release unless the insurance company pays the full amount of its liability (see § 836.99)

§ 836.99 *Failure to make demand on carrier or insurer.* In cases where, under the provisions of §§ 836.90 to 836.108, demand on a carrier or insurer is required (see §§ 836.97 and 836.98) and the claimant fails to make such demand seasonably, or fails to make reasonable efforts to collect the amount recoverable, the amount otherwise payable under the provisions of §§ 836.90 to 836.108 will be reduced by the maximum amount recoverable if claim therefor had been filed seasonably, except where it is specifically found by the approving authority that the circumstances of claimant's service were such as to preclude seasonable filing of the claim or that a demand in any event was impracticable.

§ 836.100 *Transfer of rights against carrier or insurer.* Whenever a carrier or insurer denies liability or fails to satisfy such liability and a claim for the property in relation to which the claim is made is approved under the provisions of §§ 836.90 to 836.108 without deduction of the amount for which the carrier or insurer is deemed liable, the claimant by the acceptance of payment of the claim under §§ 836.90 to 836.108 will be deemed to have assigned to the United States, to the extent of the deductions not so made, his right, title, and interest in and to any claim he may have against the carrier or insurer and to have agreed that he will, upon request, execute and deliver to the United States written assignment thereof together with the original or a copy of the bill of lading or contract, insurance policy, and all other papers which may be required to enable the United States to press the claim against the carrier or insurer. Upon satisfaction of his claim by the United States, the claimant will be considered to have agreed to refund to the Treasurer of the United States the amount of any subsequent recovery from the carrier or insurer. Such refund check or money order will be forwarded direct to the Claims Division, Office of The Judge Advocate General, United States Air Force, for appropriate action.

§ 836.101 *Proration of recovery from carrier or insurer.* When the amount recovered or recoverable by the claimant from a carrier or insurer is less than the total loss, the amount so recovered or recoverable will be prorated by the approving authority between the amount approved and the amount disapproved, including that portion of damage allo-

may be presented in the survivor's name upon submission of competent evidence of survivorship by any of the following in the order of precedence listed:

- (1) The surviving spouse of the decedent;
- (2) The child or children of the decedent;
- (3) The father and/or mother of the decedent;
- (4) The brothers and/or sisters of the decedent.

(c) *Form of claim.* The claim will be submitted by presenting a detailed statement, in triplicate, signed by or on behalf of the claimant, on the appropriate Air Force claim form (AF Form 529). However, any written claim conforming to the requirements of § 836.3 (17 F R. 3321) will be accepted for filing and consideration, provided it contains substantially the same information required by the appropriate claim form (see paragraph (e) of this section). In either event, the claim should always show the entire loss, supported by documentary evidence of any amount recovered or recoverable from an insurer, carrier, or tort-feasor, without crediting such amounts against any item or items, inasmuch as the approving authority is required to make an adjudication based on the entire loss (see §§ 836.101 and 836.102).

(d) *Evidence to be submitted by claimant.* Requirements as to evidence generally are covered by § 836.3. (17 F R. 3321). However, §§ 836.90 to 836.108 require certain specific types of evidence in particular classes of claims as follows:

(1) If claim is asserted under § 836.92 (b) (1) (property located at quarters or other authorized places). A statement in detail including, if the property was located at quarters, the geographical location thereof, whether such quarters were assigned or otherwise provided in kind by the Government, and whether the quarters were at the time regularly occupied by the claimant. If the claimant is a civilian employee, state whether a local inhabitant or a national of a country other than the United States. Also, if the property was located at an authorized place other than quarters, the claimant should state the geographical location thereof, the name and designation of the authority designating such place as a proper place for the property to be left or located. In either case, the actual facts and circumstances attending the damage or destruction should be stated.

(2) If claim is asserted under § 826.92 (b) (2) (transportation losses)

(i) Copy of orders authorizing the travel, transportation, or shipment. If such copies are not obtainable, there should be included in lieu thereof a certificate, corroborated if possible by a sworn statement of at least one person explaining the absence of the orders, stating the substance thereof and setting forth sufficient facts to establish the travel, if any, by the claimant and the transportation or shipment of the property.

(ii) If request for shipment of articles of gold or silver, paintings and other articles of extraordinary value which

may be shipped by railway express has been made, the facts and circumstances thereof and whether or not the goods were so shipped.

(iii) Statement specifying the weight limit of claimant's regulation allowance of baggage and/or household effects under the attendant circumstances and total weight of the shipment. Also a statement from the transportation officer at destination as to whether there were any other shipments on the same orders, setting forth the total weights, if any together with the method of transportation of each shipment, if any.

(iv) In cases of missing baggage or household effects, a statement of the steps taken by the claimant in an effort to locate the property. A check will be made with all agencies designated to receive lost or unidentified property. (Attach all correspondence to the statement.)

(v) Statement, in cases where property was turned over to a quartermaster, transportation or supply officer, or contract packer, setting forth the following:

- (a) Name (or designation) and address of quartermaster, transportation, or supply officer, or contract packer.
- (b) Date property was turned over.
- (c) Condition of property when turned over.
- (d) When and where property was packed.
- (e) Methods of packing and crating.
- (f) Date when property was shipped and reshipped.

(g) Copies of all manifests, bills of lading, and contracts.

(h) Date and place of delivery of property to claimant.

(i) Date property was unpacked.

(j) Statement by quartermaster, transportation, or supply officer on the condition of property when received and delivered; on handling and storage; on the reasons for and conditions of storage, whether property was handled by local carrier, and whether damage occurred during such handling; also whether shipment or storage was pursuant to Joint Travel Regulations.

(k) Inventory of items filed with the request for transportation in accordance with the provisions of Joint Travel Regulations.

(l) Whether, at the time the shipment was received from the last common carrier, a "clear" receipt was given, or any notation was made on the paper acknowledging receipt thereof, indicating any loss, damage or discrepancy.

(m) Whether, at the time the shipment was received from the local civilian carrier, a "clear" receipt was given, or any notation was made on the paper acknowledging receipt thereof, indicating any loss, damage, or discrepancy.

(3) If claim is asserted under § 836.92 (b) (3) (marine or aircraft disaster)

(i) Copy of orders or other available evidence to establish claimant's lawful right or that of his property, to be on board.

(ii) Statement in sufficient detail of the actual facts and circumstances of the disaster, within the bounds of security regulations, to show that the orders were being complied with, and that the

loss was incident to his service (see § 836.106 (b) )

(4) If claim is asserted under § 836.92 (b) (4) (enemy action or public service)

(i) Copy of orders or other available evidence to establish claimant's rightful entry into area or location involved.

(ii) Statement in detail of the actual facts and circumstances showing that the property was damaged, lost, destroyed, or captured by the enemy or was destroyed or abandoned to prevent its falling into the hands of the enemy, or that the loss was due to combat or activities incident thereto, or by reason of hostile or belligerent activities in the course of warfare to which the United States was not a party including but not limited to confiscation, guerrilla activity or organized brigandage, or in the case of public service, facts and circumstances in detail showing that the property involved was previously in a position of safety but was damaged, lost, destroyed, or abandoned as a direct consequence of claimant having given his attention to saving Government property or human life.

(5) If claim is asserted under § 836.92 (b) (5) (money) A statement in detail setting forth the geographical location of the unit, the lack of commercial facilities (including Government agencies) the name and designation of the authority who authorized such personnel to accept personal funds, and the disposition requested. Also state the actual facts and circumstances attending the damage, loss, destruction, capture or abandonment including receipts relating thereto, or an affidavit explaining the failure to present same, the names, grades, service numbers if any, and addresses of the Government agents or employees whose acts or omissions caused the loss, and the facts relied upon to establish that such agents or employees were acting within the scope of their employment.

(e) *Filing of claim.* All claims within the provisions of §§ 836.90 to 836.108 will be submitted to the commanding officer of the organization to which the claimant belongs or with which he is serving, if practicable; otherwise to the commander of any base or installation; if practicable, the one nearest the point where investigation of the facts and circumstances can be made most conveniently (see §§ 836.2 and 836.3 (e), 17 F R. 3321). Accordingly, if inquiry is made regarding the procedure for filing such a claim, that person will be furnished appropriate claim forms, if available, advised where they may be filed, and informed of the statute of limitations. In either case, however, acceptance of a claim for filing will not be refused even though the claim is not filed at the proper place, on the proper form, or appears not to be within the provisions of §§ 836.90 to 836.108 (see paragraph (c) of this section)

§ 836.106 *Investigation and processing of claims—(a) Reference to claims officer.* The commander responsible for the investigation of the claim will refer it, with all the available information relating thereto, to his claims officer for

investigation and report. (See § 836.2; 17 F. R. 3321.)

(b) *Form of report.* Report by the claims officer will be submitted on the appropriate Air Force form (AF Form 529) except where such forms are not available through normal distribution channels, in which case the report should set forth substantially the same information. However, classified documents, such as Air Force forms of the 14 series and supporting papers, should not be included unless required to show claimant's negligence. If the claims officer has any doubt as to whether an article is Government property he should obtain a statement from the claimant for insertion in the file. In this connection, B4 bags, flight jackets, etc., that are private property should be described as "B4 type bags," etc.

(c) *Settlement agreement.* No settlement or acceptance agreement by the claimant is necessary, and no such agreement will be required or included in the file at any stage in the processing of the claim.

(d) *Action by commander.* If the commander responsible for the investigation of the claim has a staff judge advocate, he will refer the claim file to such staff judge advocate for review and recommendation before taking any action thereon. If no judge advocate is available, another officer on his staff may be designated for such purposes. In either event, a determination will be made whether the findings of the claims officer are complete, whether the facts and evidence are clearly stated, and whether the recommendations of the claims officer are in accordance with the provisions of §§ 836.90 to 836.103 and supported by adequate evidence. In proper cases, the report will be referred again to the unit claims officer for further investigation and correction of deficiencies. The claims officer's report will, by first indorsement, be approved without qualification or with stated exceptions, or disapproved, in the name of the commander, either over his personal signature or as authorized by him, before the claim is forwarded pursuant to paragraph (f) of this section.

(e) *No opinion to be expressed to claimant.* Prior to final action on the claim by the approving authority, Office of The Judge Advocate General, United States Air Force, no recommendation will be revealed to the claimant and no opinion will be expressed to him on whether the claim will be approved or disapproved, except as authorized in § 836.107.

(f) *Forwarding of claim.* The commander will forward the original and two copies of the claims officer's report, the claim and supporting papers to The Judge Advocate General, Headquarters United States Air Force, Washington 25, D. C., through the proper Air Materiel area, oversea command and/or foreign claims commission, unless the claim is settled pursuant to § 836.107.

§ 836.107 *Replacement in kind.* Any claim cognizable under §§ 836.90 to 836.103 may be acted upon by the commander (acting in person or through his staff judge advocate or, if no judge ad-

vocate is available, another designated officer on his staff) of the organization to which the claimant belongs or with which he is serving, or at which he temporarily may be, to the extent of directing the replacement in kind, by a local quartermaster or supply officer from Government stocks then available, of personal property damaged, lost, destroyed, captured, or abandoned within the provisions of §§ 836.90 to 836.103; *Provided,* That the items for which claim is filed are not Government property, including property furnished through the Clothing Monetary Allowance System or through issue (§ 836.93 (f)). Accordingly, if it is determined that the claim may be settled under this section, it will then be processed in accordance with other provisions of §§ 836.90 to 836.103, but will not be forwarded to higher authority for action thereon. Such action by or for the commander in directing replacement in kind, and replacement in accordance with such action, will be final and conclusive for all purposes. If replacement in kind is made for all items claimed, all copies of the report, claim, and related papers will be retained for the property records of the organization making the replacement. If only part of the items claimed are replaced in kind, the claim will be processed and forwarded in accordance with § 836.103, including therein evidence of the value of the replacement in kind.

§ 836.108 *Approval and payment or disapproval—(a) Approving authorities.* Claims submitted under the provisions of §§ 836.90 to 836.103 will be considered, ascertained, adjusted, determined, settled and when substantiated in accordance with the provisions of §§ 836.90 to 836.103, will be approved or disapproved, by the officer or officers designated by the Secretary of the Air Force for that purpose.

(b) *Payment.* Upon approval of a claim in whole or in part, the claim, with related file, will be transmitted by the approving authority to the appropriate disbursing officer for payment. In the event that military personnel become deceased before or after approval of the claim filed in their name pursuant to § 836.105 (a) and no demand is presented by a duly appointed legal representative of the estate, the method of payment of the amount due such deceased claimant is governed by specific statute (34 Stat. 750, as amended; 10 U. S. C. 868). Accordingly, the determination of this question, as well as those relating to the claims of other persons in similar circumstances, will be made by personnel of Air Force Finance and/or the General Accounting Office after receipt of the claim approved in the name of such decedent.

(c) *Notice to claimant.* Upon disapproval of a claim by the approving authority, the claimant will be notified in writing of the action taken and the reason therefor.

(d) *Appeal; reconsideration of action.* The action of the approving authority in disapproving a claim in whole or in part will be final and conclusive for all purposes, as such settlements are not

subject to appeal to the Secretary of the Air Force or any other agent or agency of the Government. However, any claim may be reconsidered by the approving authority, upon the submission of evidence by the claimant showing errors or irregularities in the submission or settlement of the claim. Requests for such reconsideration or review will be written and will be submitted to The Judge Advocate General, Headquarters United States Air Force, Washington 25, D. C., within 60 days after receipt of notice, together with the newly discovered evidence, in triplicate, indicating such error of law, regulation, fact and/or calculation.

[SEAL]

K. E. THIBAUD,  
Colonel, U. S. Air Force,  
Air Adjutant General.

[F. R. Doc. 53-4525; Filed, May 22, 1953;  
8:45 a. m.]

## Chapter XIV—The Renegotiation Board

Subchapter B—Renegotiation Board Regulations  
Under the 1951 Act

### PART 1455—PERMISSIVE EXEMPTIONS FROM RENEGOTIATION CORRECTION

Section 1455.4 (b) (3) *Small Defense Plants Administration*, as published in the issue of May 15, 1953 (18 F. R. 2820), is hereby corrected by deleting the words "National Production Act of 1950" and inserting in lieu thereof the words "Defense Production Act of 1950"

(Sec. 103, 65 Stat. 22; 59 U. S. C. App. Sup. 1219)

Dated: May 20, 1953.

NATHAN BASS,  
Secretary.

[F. R. Doc. 53-4551; Filed, May 22, 1953;  
8:49 a. m.]

### PART 1459—COSTS ALLOCABLE TO AND ALLOWABLE AGAINST RENEGOTIABLE BUSINESS

#### SALARIES, WAGES AND OTHER COMPENSATION

Section 1459.2 *Salaries, wages, and other compensation* is amended by deleting the word "will" in the last sentence of paragraph (b) and substituting therefor the word "may" and by adding at the end of paragraph (b) the following: "The Board will not make such an allowance when the renegotiable business of a partnership or an individual proprietorship consists of contracts for the performance of services of the type commonly performed by brokers and manufacturers' agents (see Part 1490 of this subchapter) or other personal services."

(Sec. 103, 65 Stat. 22; 59 U. S. C. App. Sup. 1219)

Dated: May 20, 1953.

NATHAN BASS,  
Secretary.

[F. R. Doc. 53-4559; Filed, May 22, 1953;  
8:49 a. m.]

## TITLE 32A—NATIONAL DEFENSE, APPENDIX

### Chapter VI—National Production Authority, Department of Commerce

[CMP Regulation No. 1, Direction 23 of May 22, 1953]

#### CMP REG. 1—BASIC RULES OF THE CONTROLLED MATERIALS PLAN

##### DIR. 23—EX-ALLOTMENT ACQUISITION AND USE OF CERTAIN CONTROLLED MATERIALS AND CLASS A PRODUCTS

This direction under CMP Regulation No. 1 is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this direction, consultation with industry representatives has been rendered impracticable due to the need for immediate action and because the direction affects many different industries.

##### Sec.

1. What this direction does.
2. Exception of nickel-bearing stainless steel.
3. Definitions.
4. Applicability of other regulations and orders.
5. Use of controlled materials and Class A products for a purpose other than for which acquired.
6. Sales of controlled materials against unrated orders.
7. Sales of surplus and other controlled materials by distributors.
8. Acquisition and use of controlled materials and Class A products by persons who place unrated orders.
9. Application to certain rated orders.

**AUTHORITY:** Sections 1 to 9 issued under sec. 704, 64 Stat. 816, Pub. Law 429, 82d Cong.; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, Pub. Law 429, 82d Cong.; 50 U. S. C. App. Sup. 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp., sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61; 3 CFR, 1951 Supp., secs. 402, 405, E. O. 10281, Aug. 28, 1951, 16 F. R. 8789; 3 CFR, 1951 Supp.

**SECTION 1. What this direction does.** This direction establishes a procedure by which certain persons may accept unrated orders for controlled materials (except nickel-bearing stainless steel) and Class A products. It also explains how persons may obtain and use such controlled materials and Class A products without charging allotment authority.

**SEC. 2. Exception of nickel-bearing stainless steel.** The provisions of this direction do not apply to nickel-bearing stainless steel.

**SEC. 3. Definitions.** As used in this direction: (a) "Controlled materials distributor" means (1) a steel distributor as defined in, and who operates under the provisions of, NPA Order M-6A, (2) a foundry copper and copper-base alloy products or powder mill products distributor as defined in, and who operates under the provisions of, Direction 5 to NPA Order M-11, (3) a brass mill products distributor as defined in, and who operates under the provisions of, NPA Order M-82; (4) a copper wire mill products distributor as defined in, and who operates under the provisions of,

NPA Order M-86; or (5) an aluminum distributor as defined in, and who operates under the provisions of, NPA Order M-88.

(b) "Surplus controlled materials" means controlled materials acquired by a controlled materials distributor pursuant to paragraph (d) of section 17 of CMP Regulation No. 1 or paragraph (f) of section 17 of Revised CMP Regulation No. 6.

(c) "Unrated order" means a delivery order for controlled materials or Class A products which is not an authorized controlled material order or a rated order, but which may be placed and accepted pursuant to the provisions of this direction.

**SEC. 4. Applicability of other regulations and orders.** The provisions of all CMP regulations and of all other NPA regulations and orders, including the directions and amendments thereto, as heretofore issued, are superseded to the extent to which they are inconsistent with the provisions of this direction. In all other respects, the provisions of all NPA regulations and orders heretofore issued shall remain in full force and effect.

**SEC. 5. Use of controlled materials and Class A products for a purpose other than for which acquired.** A person who has acquired controlled materials or Class A products for a particular purpose other than resale pursuant to any regulation or order of NPA and who cannot use them for such purpose, may use such controlled materials or Class A products for any other purpose not prohibited by any regulation or order of NPA. Except as provided in section 9 of this direction, he need not charge such controlled materials, or the controlled material content of such Class A products, against any allotment or authority to place orders for controlled materials (including automatic allotment, self-authorization, and quota)

**SEC. 6. Sales of controlled materials against unrated orders.** A person who has acquired controlled materials or Class A products for a particular purpose other than resale pursuant to any regulation or order of NPA and who cannot use them for such purpose, may sell such controlled materials or Class A products against unrated orders.

**SEC. 7. Sales of surplus and other controlled materials by distributors.** A controlled materials distributor may sell against unrated orders controlled materials acquired pursuant to section 6 of this direction, and surplus controlled materials.

**SEC. 8. Acquisition and use of controlled materials and Class A products by persons who place unrated orders.** (a) Except as provided in section 9 of this direction, any person may place unrated orders for controlled materials or Class A products with a person who is authorized to sell such controlled materials or Class A products pursuant to this direction.

(b) Any person who acquires controlled materials or Class A products in accordance with the provisions of para-

graph (a) of this section, may use such controlled materials or Class A products for any purpose not prohibited by any regulation or order of NPA. Except as provided in section 9 of this direction, he need not charge such controlled materials, or the controlled material content of such Class A products, against any allotment or authority to place orders for controlled materials (including automatic allotment, self-authorization, and quota)

**SEC. 9. Application to certain rated orders.** Notwithstanding the provisions of this direction, any person who acquires any controlled material, including controlled material acquired or used pursuant to this direction, for filling a rated order bearing a program identification consisting of the letter A, B, C, or E, and one digit (including the program identification B-5 where it appears as a suffix), must charge such controlled material against the related allotment or authority to place orders for controlled materials (including automatic allotment, self-authorization, and quota) Notwithstanding the provisions of this direction, any person who acquires any Class A product, including a Class A product acquired or used pursuant to this direction, for filling a rated order bearing a program identification consisting of the letter A, B, C, or E, and one digit (including the program identification B-5 where it appears as a suffix), must charge the controlled material content of such Class A product against the related allotment or authority to place orders for controlled materials (including automatic allotment, self-authorization, and quota)

This direction shall take effect May 22, 1953.

NATIONAL PRODUCTION  
AUTHORITY,  
By GEORGE W. AUXIER,  
Executive Secretary.

[F. R. Doc. 53-4626; Filed, May 22, 1953;  
11:50 a. m.]

[Revised CMP Regulation No. 6, Direction 13  
of May 22, 1953]

#### CMP REG. 6—CONSTRUCTION

##### DIR 13—EX-ALLOTMENT ACQUISITION AND USE OF CERTAIN CONTROLLED MATERIALS AND CLASS A PRODUCTS

This direction under Revised CMP Regulation No. 6 is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this direction, consultation with industry representatives has been rendered impracticable due to the need for immediate action and because the direction affects many different industries.

##### Sec.

1. What this direction does.
2. Exception of nickel-bearing stainless steel.
3. Applicability of other regulations and orders.
4. Acquisition and use of controlled materials and Class A products by persons who place unrated orders.
5. Application to certain authorized construction schedules.

**AUTHORITY:** Sections 1 to 5 issued under sec. 704, 64 Stat. 816, Pub. Law 429, 82d Cong.; 50 U. S. C. App. Sup. 2154. Interpret or apply sec. 101, 64 Stat. 799, Pub. Law 429, 82d Cong.; 50 U. S. C. App. Sup. 2071; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp., sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61; 3 CFR, 1951 Supp., secs. 402, 405, E. O. 10281, Aug. 28, 1951, 16 F. R. 8789; 3 CFR, 1951 Supp.

**SECTION 1. What this direction does.** This direction establishes a procedure by which certain persons may accept unrated orders for controlled materials (except nickel-bearing stainless steel) and Class A products. It also explains how persons may obtain and use such controlled materials and Class A products without charging allotment authority.

**SEC. 2. Exception of nickel-bearing stainless steel.** The provisions of this direction do not apply to nickel-bearing stainless steel.

**SEC. 3. Applicability of other regulations and orders.** (a) All of the provisions of Direction 23 to CMP Regulation No. 1, issued May 22, 1953, are hereby incorporated in this direction with the same force and effect as if they were here set forth in full, and are made applicable to this direction and to Revised CMP Regulation No. 6.

(b) The provisions of all CMP regulations and of all other NPA regulations and orders, including the directions and amendments thereto, as heretofore issued, are superseded to the extent to which they are inconsistent with the provisions of this direction. In all other respects, the provisions of all NPA regulations and orders heretofore issued shall remain in full force and effect.

**SEC. 4. Acquisition and use of controlled materials and Class A products by persons who place unrated orders.** (a) Except as provided in section 5 of this direction, any person may place unrated orders for controlled materials or Class A products with a person who is authorized to sell such controlled materials and Class A products pursuant to this direction or to Direction 23 to CMP Regulation No. 1.

(b) Any person who acquires controlled materials or Class A products in accordance with the provisions of paragraph (a) of this section may use such controlled materials and Class A products to commence or continue construction of his construction project without an authorized construction schedule, and need not, except as provided in section 5 of this direction, charge such controlled materials, or the controlled material content of such Class A products, against any allotment or authority to place orders for controlled materials.

**SEC. 5. Application to certain authorized construction schedules.** Notwithstanding the provisions of this direction and of Direction 23 to CMP Regulation No. 1, any person who acquires any controlled material or any Class A product, including any controlled material and any Class A product acquired or used pursuant to this direction or to Direction 23 to CMP Regulation No. 1, for filing an authorized construction or pro-

duction schedule bearing a program identification consisting of the letter A, B, C, or E, and one digit, must charge such controlled material, or the controlled material content of such Class A product, against the related allotment or authority to place orders for controlled materials.

This direction shall take effect May 22, 1953.

NATIONAL PRODUCTION  
AUTHORITY,  
By GEORGE W. AUXIER,  
Executive Secretary.

[F. R. Doc. 53-4626; Filed, May 22, 1953;  
11:50 a. m.]

## Chapter XXI—Office of Rent Stabilization, Economic Stabilization Agency

[Rent Regulation 3, Amdt. 21 to Schedule B]

### RR 3—HOTELS

#### SCHEDULE B—SPECIFIC PROVISIONS RELATING TO INDIVIDUAL DEFENSE-RENTAL AREAS OR PORTIONS THEREOF

##### ALASKA

Effective May 23, 1953, Rent Regulation 3 is amended as set forth below.

(Sec. 234, 61 Stat. 197, as amended; 59 U. S. C. App. Sup. 1834)

Issued this 20th day of May 1953.

GLENWOOD J. SHEPARD,  
Director of Rent Stabilization.

A new item 25 is added to Schedule B of Rent Regulation 3—Hotels, reading as follows:

25. Provisions relating to the Anchorage, Alaska Defense-Rental Area (Item 3703 of Schedule A)

In accordance with the provisions of section 204 (c) of the Housing and Rent Act of 1947, as amended, the application of this regulation is terminated with respect to rooms in any hotel which on January 1, 1953, (a) had eighty percent or more of its rooms rented or offered for rent on a daily basis, and (b) provided to persons occupying its rooms customary hotel services such as room service, telephone and switchboard service, maid service, use and upkeep of furniture, and the furnishing and laundering of linens.

All provisions of this regulation insofar as they are applicable to the territory to which this item of Schedule B relates are hereby amended to the extent necessary to carry into effect the provisions of this item of Schedule B.

[F. R. Doc. 53-4537; Filed, May 22, 1953;  
8:47 a. m.]

## PROPOSED RULE MAKING

### DEPARTMENT OF AGRICULTURE

#### Production and Marketing Administration

##### [ 7 CFR Part 903 ]

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

##### NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT, AND TO THE ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 800) notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to proposals to amend the tentative marketing agreement and the order, as amended, regulating the handling of milk in the St. Louis, Missouri, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D. C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

**Preliminary statement.** The hearing, on the record of which the following findings and conclusions were formulated, was conducted at St. Louis, Missouri, on March 2-6, 1953, pursuant to notice thereof which was issued on February 26, 1953 (18 F. R. 1114)

The material issues of record related to:

1. Whether the pooling of returns from the sales of producer milk should be changed from the present individual handler basis to a market-wide basis;
2. The establishment of standards which a city or country plant must meet in order to be recognized as a regulated plant, fully subject to the order;
3. The need for order provisions which are necessary to prevent unregulated and unpriced milk from supplanting the milk of pool producers in Class I;
4. The level of the Class II price;
5. The level of the Class II butterfat differential;
6. The differential to be added to the basic formula price during different months in establishing the Class I price;
7. The level of the Class I butterfat differential;
8. The level of the producer butterfat differential;
9. The sequence in which Class I sales of ungraded other source milk outside the marketing area shall be assigned to producers and other source milk;
10. Circumstances under which diversion of producer milk should be recognized;
11. The status of cooperatives as handlers under the order in connection with milk diverted by them to unregulated plants;

12. The assignment of cream transferred between regulated plants for manufacturing purposes;

13. The priority to be given Federally regulated other source milk in the assignment of Class I sales;

14. The base and rate of the administrative assessment;

15. Miscellaneous administrative and conforming changes in the order.

*Findings and conclusions.* The following findings and conclusions on the material issues are based upon the evidence introduced at the hearing and the record thereof.

1. *Basis of pooling.* Returns from the sale of milk in various classes should be distributed to producers on the basis of a market-wide equalization pool. Such a pool will provide that each producer supplying the market will receive a return based on his pro rata share of the Class I sales of the entire market.

Since the order was first promulgated, it has provided that the Class I sales of each handler be shared only among the producers delivering milk to that handler. This method of distributing returns has meant that each handler's minimum blend price to his producers depended upon the proportion of his milk sold in each class. The blend prices of handlers having a high proportion of Class II milk were low in comparison with those who were short of milk in relation to their Class I sales. Producers were attracted to those handlers having the greatest need for milk for Class I use. This system was necessary and it worked well for many years as a means for moving producer milk to the handlers who were in a position to use it in the highest valued outlets. Rationing of milk to handlers according to their Class I requirements was a paramount need while the supplies available in the St. Louis milkshed were short in relation to the demand.

Changes in the relationship between supply and demand have altered this situation, however, and different measures are now required to insure orderly marketing of milk. The primary problem of the St. Louis market is no longer one of apportioning a limited quantity of milk among handlers, but is one of providing a means under the order for facilitating the establishment and maintenance of adequate and regular sources of milk for the market needs. Evidence in the record indicates that, generally speaking, adequate milk to supply Class I needs is available in the milkshed area.

There are important reasons why the milk supply picture in St. Louis has changed in recent years. One is the general increase in fluid milk production throughout the milkshed area. Milk supplies have advanced in relation to demand. Other markets in the general area have acquired ample supplies of milk. Since the end of World War II, the general shortages of fluid milk have largely disappeared. More recently, an increasing number of producers have become qualified by health departments to supply the St. Louis marketing area. Still more could be qualified if needed. Increased commercialization of dairying,

improved methods of handling milk, adoption of uniform ordinances and increased use of reciprocal arrangements between health departments, State Grade A labeling laws, and court decisions which have discouraged possible exclusions under the guise of sanitary regulations, all have combined to extend the eligibility of milk to enter the St. Louis marketing area. Improved transportation facilities have made it easier for this milk to be moved. In spite of these changes, however, the St. Louis market has been short of milk, as evidenced by the importation of substantial outside supplies. The handler pool has not worked well in St. Louis as a long-run measure to assure that the increased supplies of milk would become associated with and available to the market. Indications are, in fact, that such a pool has been an obstacle to obtaining and holding a full supply of milk for the market.

The obvious reason for this is the inability of the market under a handler pool to provide for the equitable sharing among producers, during the flush production season, of the lower returns on an adequate volume of reserve milk. Many handlers under the St. Louis order are not equipped to process surplus or reserve milk in their plants. The operations of these plants are geared primarily to the distribution of fluid milk, and they depend on supplemental milk to fill out their needs during periods of seasonal shortages. The volume of milk in some of these plants is insufficient, in fact, to permit the establishment of an efficient surplus disposal operation. Under the handler pool such plants operating on a fluid milk basis pay a higher blend price than plants which carry reserve supplies of milk. As a result, handlers who might otherwise carry enough reserve milk for their own Class I needs, and perhaps for the needs of other handlers, are unable to do so. The acquisition of extra milk immediately lowers their blend prices and acts as an automatic deterrent to producers who would be in a position to produce and sell the handler the additional quantities of milk needed to assure adequate supplies. Thus, the maintenance of a year-round market for producer milk which might otherwise be needed only on a seasonal basis is impeded.

The effects of these gradual changes have recently been brought into sharp focus. An unusual upsurge in the production of milk in early 1953 brought milk supplies to a more nearly adequate level than has prevailed for many years. Receipts of producer milk have been less than Class I sales during each of the months of October through December for many years. In October and November 1952, producer milk was still short, but in December 1952 local production had increased to the point where supplies exceeded Class I sales by about 6 percent. Supplemental milk required in January 1953 amounted to less than one-tenth of that required in January of the two preceding years. Nevertheless, 380 thousand pounds of milk and skim milk were imported during January from sources other than producers.

Even though the market was still short of its needs on an annual basis, handlers felt that they were carrying more milk than they could afford to keep. Three of the 12 country plants under the order have recently been turned over to producer organizations. Other producers have been threatened with the loss of their market. These threats to producers' markets are, at least in part, a manifestation of the competitive characteristics of the handler pool which make it necessary for each handler to keep supplies tailored rather closely to Class I needs in order to keep his producer pay price at a suitable level. Producers whose milk is not retained by handlers are faced with the loss of any share of the Class I market. There is no reason to expect that producers will maintain Grade A production in the summertime while selling to milk manufacturing plants in order to sell Grade A milk in the winter. This would not result in an orderly market or a dependable supply of milk.

To the extent that a handler pool interferes with the establishment and maintenance of adequate milk supplies for the St. Louis market, it does not effectuate the declared policy of the marketing agreement act. The Secretary is required under this act to fix prices which will reflect various economic factors and insure a sufficient quantity of pure and wholesome milk. Evidence in the record indicates that handlers are not willing to accept the quantity of milk which producers are willing to supply with present order prices, yet all of this milk is needed in the market for the operations of handlers' Class I business. At the present level of supply, many handlers still are not fully supplied with milk on a year-round basis. It is considered necessary, therefore, in order to effectuate the declared policy of the act, that a market-wide pool be adopted in the St. Louis market for the distribution of returns to producers.

Under a market-wide pool the prices set by the order would be more effective in determining the level of milk supplies since the price incentive to producers to supply milk will be allowed to operate more freely. Those producers producing milk most efficiently would serve as the source of supply. Additional producers could readily be added if they cared to produce milk at the prices prevailing under the order. This will avoid an undesirable situation where producers might be selectively dropped from the market or others would be denied a market, even though they might be willing to produce and ship milk at the prices being paid.

Evidence in the record indicates producers themselves are aware of the change in market supply conditions and recognize to a greater extent a need to share Class I sales equally among all producers in order to maintain a stable market for all producers whose milk is regularly needed each year.

2. *Pool plant standards.* The operation of a market-wide pool requires that an equalization fund be established as a clearing house for receiving money from handlers according to their utiliza-

tion of producer milk and for disbursing money back to handlers for payment at a uniform rate to all producers. This process, although it is an essential part of a market-wide pool, is accompanied by some problems which must be dealt with in order to insure the satisfactory operation of the pool.

Since the market-wide pool results in payment to all producers on an average utilization for the market, individual handlers are relieved of any responsibility for maintaining a high Class I utilization in order to support their pay rates to producers. Whatever utilization of milk a handler may have, his rate of pay to producers will be the same as that of all other handlers in the market. An order with a market-wide pool must be drafted, therefore, in such a way as to insure that producer milk will be available for Class I use as needed.

It is essential, also, that the rules for distributing the returns from Class I sales be such that the differentials over manufacturing milk values paid by users of Class I milk will serve the purpose for which they are intended. Class I milk prices of the order are fixed at a level which exceeds the value of the milk for manufacturing uses by a varying amount. This premium, or differential, over the manufactured milk price is essential as an incentive to producers for producing milk of the quality required and at the time needed by consumers. Extra costs are involved in providing sanitary surroundings for the dairy herd, and in maintaining milk production during the fall and winter months when feed and housing costs are high. Extra costs are involved also in handling milk for fluid use since it must be refrigerated, handled through sanitary utensils and facilities, and marketed promptly.

The extra costs thus involved to Grade A or fluid milk producers must be borne by that share of the milk which is marketed as Class I. Excess or surplus milk, although an essential part of a fluid milk business, cannot be expected to return more to producers than a manufactured milk value. The only outlet for reserve milk not needed for fluid use is in the form of manufactured products.<sup>6</sup> Such products must be marketed in competition with similar products made from ungraded milk.

Since the production of high quality milk involves extra expenses, it is important that the amount of milk produced under Grade A standards be no more than the minimum necessary to provide the market with an adequate and dependable supply of quality milk. To encourage more than enough production of such milk would represent an economic waste, since the expenditures involved in producing Grade A milk not an essential part of the market supply would result in no extra value to consumers.

One of the primary problems, then, in setting up a market-wide pool is to establish rules which will provide for the sharing of Class I sales (Class I differentials) among the producers who are an essential and regular part of the

St. Louis market. Class I prices must first be set as nearly as possible at the minimum levels which will encourage the necessary amount of milk production and the resulting returns should be distributed in such a way as to assure the market of the maximum dependable supply of quality milk which can be obtained at these prices. In order to do this, provision is made that equalization of market sales should be only to plants meeting reasonable performance standards with respect to supplying milk to the market.

Performance standards should apply uniformly to all plants. Any plant, regardless of its location, should have equal opportunity to comply with the standards and thereby to participate in the market-wide pool and have its producers share in the Class I sales of the market. Any producer who meets the appropriate health department requirements should be permitted, under the order, to sell his milk to plants meeting the standards of qualification. Whether or not plants and producers choose to supply the St. Louis market will depend on the economic circumstances with which they are confronted, such as prices, transportation costs, and alternative outlets.

Performance standards should be such that any plant which has as its major function the supplying of milk to the market would pool its sales and share in the market-wide equalization. On the other hand, plants only casually, or incidentally, associated with the market should not be subject to complete regulation, nor should they be permitted or required to equalize their sales with all handlers in the St. Louis market. If a milk plant were to be permitted to share on a pro rata basis the Class I utilization of the entire market without being genuinely associated with the market, then the premiums or differentials paid by users of Class I milk would be subject to dissipation without accomplishing their intended purpose. If a plant were to be qualified and fully regulated merely by making a token shipment of milk or cream into the market for sale as Class I milk, then any milk plant which found itself in a position where it was selling a smaller share of its milk in Class I than the average for all St. Louis handlers might make such shipment and receive equalization payments from the pool. The only qualification such a plant would be required to meet would be compliance with the health department standards.

The mere circumstance of having obtained health department approval is not sufficient justification for equalizing the sales of such plant with the market. There are many plants having milk of suitable quality for sale in the marketing area which are in no way, or are only incidentally, associated with the market. There are at least 5 different health authorities having jurisdiction in various parts of the marketing area. In the absence of performance standards, approval by any one of these authorities would entitle a plant to participate in the equalization pool. There is no reason to assume that each of these health departments would refuse an application for approval because they had deter-

mined that the milk from an applicant plant was not entitled to pool with the market, or that the basis for such refusal would be uniform for each health authority, or that such standards as might be applied for this purpose would be appropriate to effectuate the declared policy of the act. It is concluded that these health authorities should not be placed in a position of determining which plants should share in equalization. As pointed out previously in this decision, the extension of uniform health department ordinances and other factors which have extended the eligibility of milk to enter the market have brought about a situation in which health department approvals may not be relied upon as a standard for determining which plants and which producers are primarily associated with the St. Louis market.

Since reserve milk is an essential part of any fluid milk business there will always be some excess milk in the plants of handlers supplying other markets. This will be particularly true in the months of flush production. Plants selling primarily to other markets, or plants shipping milk on an opportunity basis to any market where supplies happen to be short, do not represent reliable sources of milk on which the St. Louis market may depend. If such plants were allowed to sell a token quantity of milk in the St. Louis marketing area whenever their Class I sales were low, and then withdraw as their Class I sales were high, the results would be that the in-and-out handler would be able to gain advantage in paying producers. During unregulated periods when his utilization was largely in Class I, he might retain a larger share of the proceeds from his sales, since he would be selling at Class I prices and paying producers at a competitive blend price. Whenever his utilization dropped below average, he could fall back on to the pool and draw equalization payments to maintain his paying prices to producers.

The St. Louis market would have no compensating gain from the payment of equalization to such a handler. Such a distribution of equalization payments would, in fact, reduce the blend price to producers regularly supplying the market, and thereby have an adverse effect on the milk supplies upon which the market depends. This could result in the need for higher Class I prices than would otherwise be required.

Performance standards must be flexible enough to allow a plant which is primarily associated with the St. Louis market to maintain its association with the pool under the changing conditions which occur from year to year, and yet not permit undesirable distribution of equalization payments to plants not part of the essential supply. The performance standards herein provided are designed to accomplish these various objectives as set forth. On the basis of evidence available, it appears that they should accomplish such objectives. If actual operating experience proves them inadequate, they should be revised on the basis of such experience.

Because of the difference in the marketing practices and demands upon the

supply of milk from city distributing and country supply plants, two sets of performance standards have been provided. These standards and reasons therefor are set forth below.

(a) *Distributing plants.* In order to qualify as a pool plant, a city plant should be required to distribute at least 20 percent of its approved milk during the month as Class I on retail or wholesale routes to customers in the marketing area. Distribution of milk through vendors or plant stores should be included to the extent that sales through such outlets are in the marketing area. Most distributing plants dispose of more than 20 percent of their milk as route sales. All of the city plants now regulated under Order No. 3 appear to have route sales amounting to considerably more than 20 percent of their approved milk. A number of these plants are operating routes on the fringes of the marketing area, however, and an important share of the route sales from such plants are outside the marketing area. If the minimum percentage were increased above 20, a number of plants whose businesses are an important part of the marketing area supply might not be qualified as pool plants. Also, these plants tend to be closely competitive with St. Louis handlers from the standpoint of both purchases and sales of milk, and should be brought under full regulation.

A city plant having more than 80 percent of its business outside the marketing area or in other outlets should not be considered as essentially associated with the market as a distributing plant. Such a plant is selling primarily to an unregulated market. It is not considered advisable to bring such a plant under full regulation in order to control the minor share of its business which is in the marketing area. Full regulation would not be necessary to accomplish the purposes of the order and might well place such a plant at a competitive disadvantage in relation to other dealers supplying the unregulated market.

Few, if any, of the city plants now regulated under Order No. 3 would be excluded from equalization as a result of the performance standards herein provided. Such a minimum percentage is considered necessary, however, to avoid full regulation in the future of plants operating primarily outside the marketing area which might sell a minor quantity of milk to customers located in the fringes of the marketing area. Such a minimum is necessary also to avoid the possibility that a plant otherwise not associated with the market might qualify itself for equalization payments to its own advantage, and to the disadvantage of the market, by means of minor sales in the marketing area.

It is contemplated that only plants primarily engaged in route distributions of fluid milk and Class I products should be qualified as pool plants under this definition. In order to preserve this distinction, a further condition is placed on city plants that their total distribution of Class I milk on routes to wholesale or retail outlets, both inside and outside the marketing area, must amount to at least 50 percent of their receipts

during the month of milk from producers and from country plants. Any plant which does not qualify on this basis should be deemed to be primarily a reserve supply plant and its status under the pool should be judged by the standards applied to such plants.

No seasonal variation is provided in the minimum percentage since distributing plants do not undergo the wide seasonal variation in demand for Class I milk that are experienced by supply plants. Also, plants which are primarily in the distributing business, as assumed under this definition, ordinarily maintain themselves primarily in the Class I business throughout the year. Wintertime supplemental milk is usually obtained as required from reserve supply plants.

(b) *Supply plants.* In order to qualify as a pool plant, a supply plant should dispose of at least 50 percent of its receipts of milk from producers in the form of supplemental supplies needed by distributing plants for Class I use, including any milk distributed on routes from the supply plant to wholesale or retail outlets in the marketing area. It is concluded that a plant should not be qualified as a pool plant and equalize in the sales of the market unless a majority of the milk from such plant is made available for distribution in this manner.

It is recognized, however, that the demands for milk from supply plants is rather seasonal. The primary function of most country plants, particularly those on the fringes of the milkshed, will be to furnish milk to distributing plants during the season of low production. In the months of flush production, supplies of milk received at plants located in or near the marketing area may be sufficient to supply the Class I outlets. During this part of the year, it would be more economical to leave the most distant milk in the country for manufacture, and use local supplies for Class I use. The performance provisions should not force milk to be transported to distributing plants in the summertime where it must be manufactured in order to maintain the eligibility of country plants to pool.

To avoid this, a proviso has been incorporated into the supply plant standards which allows a country plant to maintain pool status throughout the year if it supplies certain proportions of its milk to distributing plants needing the milk for their own Class I use in the months when milk production tends to be lowest. These percentage standards should require that a supply plant furnish such distributing plants with needed milk to the extent of approximately two-thirds of its producer milk received in each of two different months within the six-month period from August through January. During three additional months of the period, the plant must furnish approximately one-third of its producer milk received during the month to distributing plants needing the milk. During one of the six months, the plant will not be required to supply milk to the market. Percentage figures would be determined

for each month on the basis of receipts and shipments during the month.

This provision allows considerable flexibility to supply plants since they may vary their shipments throughout the low production season according to the time when the market has the greatest need for the milk. On the other hand, it is considered that, unless the foregoing percentages of producer milk are required from a country plant, such plant cannot be considered to be primarily associated with the St. Louis market.

Special standards should be provided for determining whether supplemental milk is needed or how much is needed by distributing plants for their own Class I business. For this purpose, it should be assumed that the milk received directly from producers will be distributed first and reserve supplies will not be required until producer milk has largely been exhausted. Credit for reserve supplies of needed milk should not be extended to supply plants until the requirements of the distribution plant for milk to be distributed as Class I on routes exceed 85 percent of producer milk received at the distributing plant. The pounds of Class I milk distributed on routes in excess of 85 percent of the receipts of producer milk should be known as reserve supply credit. The distributing plant would be permitted to pass this credit back to supply plants to be applied toward their qualification as pool plants.

Such credit would be extended to country plants on a pro-rata basis up to the amount of milk, skim milk or cream actually supplied by the country plants unless the distributing plant specifies a different allocation of such credit. In no case, however, should the credit extended to any plant exceed actual pounds of milk, skim milk or cream received during the month from such plant. Calculation of percentages for supply plant qualification would be based then on a comparison of such reserve supply credit from distributing plants plus route sales in the marketing area with the volume of producer milk received at the reserve supply plant.

The requirement that reserve supply credit not be extended to supply plants unless milk is needed for Class I use is essential in order to avoid uneconomic movements of milk to city plants. A 15 percent cushion of Class II is allowed before a city plant loses eligibility to give full credit to the country plant for having supplied necessary reserve milk. This should allow for any reasonable fluctuations in the city plant's business, and not deny it country plant milk when needed.

If a supply plant sends in milk not needed by a distributing plant, such milk may be transferred and priced as Class I under the applicable provisions, but it will not provide a basis for pool plant eligibility. As explained at a later point in this decision, the cost of transportation will be borne by the plant operator and not by the pool when milk is moved unnecessarily. These measures should provide adequate safeguards against uneconomic shipments of milk from the

country for the purpose of establishing pool plant status and still allow adequate freedom for necessary movements of Class I and reserve milk.

(c) *Continuation of status.* Evidence in the record indicates that, for the most part, plants regulated under the order during March 1953 should be considered as associated with the market and entitled to pool. Some of these handlers may need to watch their operations to insure continued eligibility. Minor adjustments may be necessary on the part of other handlers. In order to allow plant operators time for such adjustments and to observe the methods and means for qualification, provision is made that plants regulated under the order during March 1953 may, upon application, be designated as pool plants for a limited period after the effective date of any amendment issued pursuant to this decision. Each country plant would be designated as a pool plant until the end of a month in the next August through January period when it became obvious that it could not qualify under the special seasonal provision. Such disqualification might come, for example, if the plant received reserve supply credit amounting to less than 35 percent of its milk during each of the months of August and September. Under such circumstances, the plant would lose status as a pool plant at the end of September.

City plants under the order during March 1953 could, under the amended order herein provided, be designated as pool plants for two months after the effective date of such amendment without meeting the specified percentage standards, provided the operator of such plant submitted application to the market administrator on or before the effective date of such amendment.

These are merely transitional provisions, however. No plant should be given permanent status as a pool plant if it is not willing to meet the standards of qualification as required of all plants.

3. *Provisions relative to unpriced milk.* The order provisions described previously in this decision of necessity leave open channels by which unpriced milk might be disposed of for Class I use in the marketing area. If unpriced milk were allowed to be sold freely as Class I milk in the marketing area, the classified pricing system of the order would be seriously jeopardized.

Regulation of milk prices and enforcement of use classification by the government was considered necessary when regulation was first instituted in the St. Louis market, because producers were unable to assure that all milk used for fluid purposes would be paid for at a price commensurate with such use. The inevitable existence of excess or surplus Grade A milk in the market provided the seeds of price instability. That portion of the milk supply which had to be marketed as surplus returned only a manufactured milk value. Any handler who could purchase such milk at surplus prices and sell it for fluid or Class I use enjoyed a marked competitive advantage over handlers paying a full Class I price for such milk.

In the absence of any competitive or regulatory force which compelled all

handlers to pay producers for milk used in fluid outlets at a rate commensurate with its value for such use, the position of any handler who paid Class I prices was insecure, if not untenable, whenever there was surplus milk available to the market. In the absence of conditions which insure payments according to use, the prices paid producers for milk tend to be forced through competition toward the rate of returns obtainable from marginal outlets. Experience indicates that the marginal outlets are ordinarily butter or cheese. This is particularly true in the seasons of flush milk production. Prices resulting from such competition do not create orderly marketing nor assure an adequate supply of fluid milk.

Under the regulations of the order, producers are assured that if their milk is used for Class I purposes it will be paid for at Class I prices. Such prices are set at levels which reflect the price of feeds and other economic conditions, and insure consumers of a sufficient supply of pure and wholesome milk.

A classified pricing program under regulation cannot hope to be successful in insuring returns to producers at rates contemplated by the act, however, if it is possible for some handlers to purchase milk which costs less than producer milk and sell it for Class I use. Any handler who finds himself in a situation where his competitors are paying less for Class I milk than he is paying will be compelled to resort to the same methods, if possible. This could result in the partial or complete displacement of producer milk in the Class I market.

Sale of unpriced milk and consequent displacement of producer milk could be brought about if plants distributing milk in the marketing area would simply shift their purchases of milk to unregulated sources. Any regulated milk in the plant would be assigned to Class I sales first, but all remaining sales would be assigned to unpriced milk. By restricting or discontinuing purchases of milk from regulated sources, a handler could distribute unpriced milk as Class I. Alternative supplies of milk for this purpose might be obtained from any unregulated source which was acceptable to the appropriate health authority in the marketing area. Such sources would not become regulated unless they met the pooling requirements for supply plants.

Producer milk might also be displaced to the extent that handlers not qualified under the performance standards of the order distributed milk directly to consumers in the marketing area. This would be possible to some extent since, under the provisions of the order attached hereto, a plant must distribute at least 20 percent of its milk in the marketing area in order to qualify for pooling.

It is concluded, therefore, that a provision is necessary in the order which will insure against the displacement of producer milk for the purpose of cost advantage. This is essential to preserve the integrity of the classified pricing program of the order. There is no choice as to what type of provision can be used. Since minimum class prices cannot be fixed for handlers who do

not participate in market-wide equalization, the only alternative is to levy a charge against unpriced milk to the extent it is necessary to remove any advantage there may be in using unregulated milk in Class I instead of regulated producer milk.

Several problems are involved in establishing rules for any charge or payment designed to bring about the removal of the advantage of using unregulated milk. The rate of a compensation payment for this purpose must not be so low that it will permit a handler to gain temporary or permanent advantage through sale of unpriced milk as Class I in the marketing area. It should also not be so high that it penalizes a supplier of unpriced milk who is offering milk needed by the market and who is not in a position of gaining an unfair advantage by such sale of milk. The payment must be provided for in a manner which is administratively feasible and which does not bring about unjustified administrative inconvenience or expense.

Several methods were suggested on the hearing record for determining what rate of payment would be appropriate. One of these is to ascertain the actual cost to the regulated handler of milk which he purchases from unregulated plants and charge as a compensation payment any amount by which the Class I price exceeded the cost of the unregulated milk used in Class I. Such a scheme is not sound from the standpoint of administrative feasibility and it would not necessarily remove the advantage in using unregulated milk even though it were feasible. Billing prices between dealers may not represent actual cost. In the case of a firm which owns pool plants under the St. Louis order as well as unregulated plants, the rate of payment from one plant to another would have little, if any, significance. If such a provision were to be adopted, the billing rate might be deliberately set in each instance at a level which would avoid any payments without regard to the value of the milk. There are a number of firms with plants under the St. Louis order which also have unregulated plants.

A handler having no unregulated plants, would no doubt find it possible to arrange a billing price on purchased milk which would avoid any compensatory payments. If a handler had the choice of paying money to the market-wide pool or to a person from whom he was buying milk, he would probably choose the latter. A kick-back arrangement or offsetting purchase and sale might readily be arranged, perhaps through a third party. Since the billing price for milk would be a self-serving figure for both parties to the transaction, it would be virtually impossible to ascertain that it represented true cost to the purchaser.

If the stated purchase price were a true cost, it would still not fulfill the purpose of removing the advantage to unregulated milk to base compensation payments on the difference between such price and the Class I price. The record discloses that sales of priced milk be-

tween regulated handlers ordinarily take place at the class price plus a handling charge. This handling charge varies according to circumstances, but is deemed to be a payment to the receiver of the milk to offset his purchasing and receiving costs, such as receiving, weighing, testing and cooling the milk, paying producers, and so on. The record indicates that the cost of receiving the milk in bulk form is somewhat less than receiving it from producers. Thus, in order to remove the advantage to unregulated milk, it would be necessary to provide that the cost of bulk unregulated milk be somewhat more than the Class I price. It would be exceedingly difficult to determine what this excess rate should be, particularly in the case of products such as skim milk and cream, where additional processing costs that must be prorated between more than one end product are involved. Furthermore, the marketing agreement act does not give the Secretary authority to enforce prices other than producer prices. This scheme for removing the advantage in using unregulated milk is rejected for these reasons.

Another suggested method is to determine the price actually paid dairy farmers by the unregulated milk dealer who first received the milk, and base the compensation payment thereon. This method has several shortcomings. The various payment plans which might be and are used in paying farmers for milk would make the determination of pay rates to each farmer an extremely complicated task. For example, unregulated milk dealers may use varying rates of butterfat differentials, different types of base rating plans, various premium payments, and so on. These various schemes used by dealers for paying farmers could make it impossible to determine the actual rate of payment. Stated prices can be an illusion since actual cost of milk may be modified by items such as hauling subsidies or overcharges, and all kinds of supplies and services which might be overpriced or underpriced to the farmer. Whatever payment plan an unregulated milk dealer may use is a matter of his own choice. Determination of pay rates to farmers by unregulated dealers is handicapped also by the lack of verification of butterfat tests and weights. In the case of cooperatives, part of the proceeds from the sale of milk is often distributed at the end of a fiscal year.

Various types of premium payments are common in the purchase of milk from farmers both by regulated and by unregulated handlers. These include such items as quality premiums, volume premiums, special butterfat premiums, and perhaps others. The proposed plan for equalization on the basis of pay rates to farmers fails to recognize that order prices are minimum prices, and payments to producers under the order do not take into account various kinds of premiums paid producers. Regulated handlers would not be allowed to deduct premium payments from class prices. Neither should unregulated handlers, but there is no practical method of taking such payments into account under this suggested procedure.

Even though it were possible to establish with precision the actual cost of the milk purchased from farmers by unregulated handlers, this method would not provide a sound approach to the problem of establishing compensation payments. There would be the further question of what rate of payment should be required. If a payment were to be required on the unregulated milk based on the difference between prices paid farmers and some other price, the unregulated handler could avoid payments by increasing his prices to farmers. This would give an unregulated handler the advantage over regulated handlers in that regulated handlers have no choice as to what they are required to pay farmers nor how this money is to be distributed. Likewise, it would enable unregulated suppliers to dispose of Class I milk in the marketing area with no obligation to equalize their Class I sales with other suppliers of the market. A further disadvantage would be that even though the rate of payment to producers might be known, it would still be impossible to ascertain what was the true cost of milk disposed of in the marketing area. Since milk marketed outside the marketing area would represent a large fraction of the total supply in the unregulated plant, it would be necessary to determine costs of milk marketed to the various outlets. As pointed out subsequently in this decision, all handlers have both surplus as well as Class I milk in their plants and it is not realistic to assume that the purchase price for milk for each use is the same.

It has been suggested that in order to overcome this objection the plant of the unregulated handler be subject to audit and that the rate of compensation payment be based on the difference between the average utilization value in the unregulated plant and the average rate of payment to producers. This method has not only the disadvantages associated with other schemes based on actual pay rates to producers, but it would involve, in the case of the St. Louis market, an extremely complicated and administratively unfeasible system of accounting and determination in such plants. The unregulated plants from which the St. Louis handlers obtain supplemental milk are numerous and widely scattered. It would not be possible or desirable to limit the number of plants or area from which milk might be purchased. In order to determine the utilization value in each of the plants from which milk was purchased, it would be necessary to set up a complete new set of transfer and allocation rules, perhaps with individual tailoring according to plant location, markets, and supplies. It would be necessary to follow milk from these plants to its destination to determine classification. Also, it would be necessary to ascertain sources of supply other than receipts directly from farmers and determine what priority should be given such supplies in the allocation of Class I milk. In the case of a plant which made only an incidental shipment of milk, perhaps at the end of the month, or in the case of such items as storage cream, additional complications would

be involved. Earlier inventories as well as sales would have to be ascertained and classified. These measures would be expensive and difficult. Moreover, as pointed out above, it is not desirable to burden milk dealers who are not under regulation with the administrative procedures and bookkeeping that go with regulation. And yet, to make the detailed accounting necessary to establish classification, such unregulated dealers would need to maintain the same detailed records as wholly regulated handlers. But since such dealers would be unregulated, there would be no authority for doing so.

Another possible suggestion for determining the rate of compensation payments would be to base the rate of payment on the difference between blend prices prevailing in an area and the Class I price. This method has been suggested because it is assumed that unregulated handlers will be forced by competition to pay farmers approximately average blend prices. While this may be true in many instances, it is not necessarily always true, and a payment based on the difference between such prices could not be expected to insure that unregulated milk would not be used to displace regulated milk at all times throughout the year. Unregulated plants, as well as regulated plants, have some surplus milk at all times and particularly during the seasons of flush production. As a result, prices paid producers are, in fact, blend prices made up of returns from the sale of milk in Class I outlets, as well as sales to the surplus market. If an unregulated plant were in a position to sell its surplus milk for Class I use in the marketing area and maintain its own Class I outlets, it would have a competitive advantage over regulated handlers who found it necessary to dispose of part of their milk as surplus.

In the absence of a compensation payment, the unregulated plant might sell its milk for Class I use at substantial handling charges whenever fluid milk tended to be in short supply, and then dispose of milk for Class I use in the St. Louis market to maintain its blend price during the season of flush production when Class I sales elsewhere were difficult to make. A plant which could thus keep its disposition of milk largely as Class I and avoid qualification as a pool plant would be in a position to pay its farmers at a higher rate than that received from producers under the order, or it could retain the extra money as profits. In either case, however, pool milk would be at a disadvantage relative to unregulated milk.

Since none of these suggestions presents an acceptable approach to the problem of compensation payments, it is necessary to resort to a different procedure. The only sound method of dealing with this problem seems to be one based on a recognition of the economics involved as they affect producers and handlers. This approach resolves itself primarily into a question of market values for milk.

Handlers under the order seeking to purchase unregulated milk will naturally resort to the lowest cost source from which suitable milk is available. In fix-

ing the rate of compensation payment, it is necessary, therefore, to determine what the lowest cost source may be and to base the payment on the difference between the price of such milk and the class price under the order. The record contains abundant evidence to show that milk supplies are invariably larger in spring and summer than in fall and winter, and that because of relatively constant sales of fluid milk, the excess increased production must be marketed largely as surplus milk. This surplus outlet represents the opportunity cost of the milk since it is the highest price at which the milk can otherwise be sold. It is this opportunity cost or value of such milk which would be effective in determining the price at which the unregulated plant would sell such milk.

Since considerable volumes of Grade A milk must be disposed of as surplus in various unregulated plants throughout and beyond the milkshed area, it is evident that regulated plants under the St. Louis order could obtain such milk at the surplus price or at any small premium which would be necessary to bid such milk away from the surplus outlets, whenever the volume of surplus in the area exceeded the volume essential to sustain fluid operations. In short, the true value of this milk is not the price paid for it but really the price which can be obtained for it in the market as surplus milk.

The compensation payment provided in the attached order is based, therefore, on the difference between the value of the milk for surplus and the Class I price during those months of the year when surplus milk is likely to be available from outside sources in substantial volumes. For this purpose, the value of surplus milk in the St. Louis milkshed is deemed to be the same as the Class II price under the St. Louis order.

During the seasons of the year when milk supplies tend to be shorter, it is assumed that surplus milk will not be so readily available to St. Louis handlers, and the compensation payment is based during those seasons on the difference between the Class I and the blend prices. Evidence in the record indicates that, generally speaking, the supply situation in the St. Louis market will tend to fluctuate with that of the general area from which unpriced milk may be drawn. Thus, the rate of compensation payment based on the difference between Class I and blend prices will adjust itself automatically according to the trend in prices of and need for outside supplies. As milk supplies in the area tend to be short, it can be assumed that unregulated milk will cost handlers more than the surplus price and the rate of compensation payments will be correspondingly less. If producer milk were all assigned to Class I, no compensation payment would be required. On the other hand, as the proportion of surplus pool milk increases, the rate of payment would also be increased.

Testimony in the hearing record concerning availability of milk supplies to St. Louis handlers indicates that the rate of payment recommended here will equalize the competitive position of

priced and unpriced milk, and will avoid displacement of producer milk for reasons of cost. However, if experience proves that milk is available to handlers during the fall and winter months at prices lower than those anticipated, then it will be necessary to reconsider the rate of compensation payment on the basis of that experience. Likewise, if experience should prove that handlers find it to their advantage to curtail purchases of producer milk in order to enable themselves to sell unpriced milk in the market at any time, then the rate of compensation payment would need to be reexamined on the basis of such evidence.

Compensation charges should be required of non-pool plants distributing Class I milk in the marketing area at the same rate as that charged on other source Class I milk in pool plants. It would not be possible to stabilize the classified pricing program and allow milk from non-pool plants to be distributed in the marketing area without regulation of any kind. Such milk is unpriced and poses the same threat to the classified pricing program as unpriced milk distributed through any other channel. The same considerations prevail concerning the administrative feasibility of applying other systems of determining and assessing compensation payments. It was contended on the hearing record that economic conditions are different in the case of non-pool distributing plants than they are for non-pool plants supplying supplemental milk to pool plants. Any differences are not recognized as compelling, however, and the application of any different rate of payment would open the channels to circumvention of the compensation payment provisions. Such circumvention would be particularly easy in the case of large accounts, such as military installations, and the like.

It is considered inappropriate that a plant distributing a small share of its milk in the marketing area should be subject to full regulation because of that small share of its milk so marketed. Such regulation might place a plant of this kind at a competitive disadvantage with respect to its unregulated competition.

No compensation payments should be required on milk classified and priced as Class I under another Federal milk marketing order. The minimum prices for Class I milk under other Federal orders where St. Louis handlers might obtain supplemental supplies approximate or exceed the St. Louis Class I price, as adjusted for location of the supplying plant. Since handlers under other Federal orders must pay for such milk on a utilization basis, they would not be in a position to unload any surplus milk into the St. Louis market. If supplies should become available from other regulated markets at lesser prices, it would be necessary to reexamine the price and supply situation of the St. Louis market and in the other market, and further consideration to compensation payments on milk from other Federally regulated markets could be given.

Having determined that a compensation payment is essential, it is necessary

that provision be made for the disposition of any funds which might be received as a result of such payment. While the primary purpose of compensation payments is to remove any competitive advantage of unregulated milk rather than to insure producers an income, there nevertheless is justification for adding such money to the producer-settlement fund. It is the purpose of the order to insure that a sufficient and dependable supply of quality milk will be available for Class I needs of the market. To the extent that Class I sales are displaced through the disposition of surplus milk from unregulated sources, producers stand to lose income from the sale of milk to the market which they are expected to supply. Thus, there is justification for returning to producers the difference between the value of such milk at its opportunity cost, which would otherwise be its value to the seller, and the Class I price. This would tend to offset losses sustained by producers when their milk was forced into a lower priced use. No compensation payment is required when all producer milk is assigned to Class I.

If producers are to develop and maintain sources of supply as contemplated by the price established under the order, they must have some assurance that their milk can be marketed to the Class I outlets available. This payment is not designed, however, as a means to exclude milk from the market, or to assure any group of producers that they alone will be permitted to supply the market. Any plant which cares to do so is eligible to meet the performance standards and qualify as a pool plant fully subject to the provisions of the order, and assume the responsibility of serving the market.

There is the question also of which handler should be obligated to make the compensation payments. In the case of city plants distributing milk in the marketing area, only one plant would be involved. In the case of supplemental milk obtained from unregulated sources by pool plants, either the buying or selling plant might be assessed. From the standpoint of the economics involved, it would make no difference, since the amount of payment would be the same in both cases. If the selling plant were to be required to make payment, then it would be necessary for such plant to bill the purchaser at a rate which included the compensation payment. If the purchasing handler were to make the payment, then the purchase price will be reduced but the actual cost will be increased by virtue of the compensation payment.

From the standpoint of administration and enforcement, it would be much easier and simpler for the pool plant to make the payment. It is the pool handler with whom the market administrator regularly deals. Such handler would be expected to know and understand the terms and provisions of the order. He is the handler who would be responsible for distributing the milk in the regulated market. Whether or not a compensation payment would be required would depend upon the applica-

tion of the allocation provisions to the plant of the receiving handler.

The selling handler, on the other hand, would not be intimately familiar with the order. He would not be aware until later whether a compensation payment would be required, and might not even know at the time of the sale, particularly if the sale took place through a broker, whether his milk would be moved to a regulated market for disposition. If enforcement proceedings were to be required, it would be more convenient and logical to bring the case to trial in the area of the regulated market where the problem arose.

A finding has been made in this decision that compensation payments are necessary to support and preserve the integrity of the classified pricing system. It is also determined that such payments will not prohibit the marketing of milk nor limit the marketing of milk products from any production area of the United States. Such payments would be uniform except for adjustment by transportation differentials to any plant regardless of whether it is located in the marketing area or at any distance from the marketing area. That is to say, the rate of compensation payment is equal as among all handlers for similar transactions.

The quantity of milk and milk products which may be sold does depend in part upon the price fixed under the order for the particular class of utilization. Such influence should not be construed, however, as a limitation in the sense intended under the act. No price can be fixed without influencing, to some extent, the quantity of milk and milk products which may be sold from either regulated or unregulated sources. The compensation payment herewith provided will not discriminate against producers by areas, but will provide for equalization of competitive prices by type of transaction with respect to relationship between regulated and unregulated milk.

The compensation payment herein provided has as its primary purpose the elimination of incentives for handlers to use unpriced milk to displace producer milk in Class I sales. The rate of payment deemed to be appropriate for this purpose is one which recognizes general competitive conditions in the purchase and sale of regulated and unregulated Grade A milk. The same rate of payment applies to all handlers.

It is recognized, however, that general competitive conditions do not prevail in all cases. Each handler is situated differently and each individual transaction is made under different circumstances. It is not possible, however, to adjust prices or payments to individual circumstances or transactions. Such an individual approach would not be administratively or economically feasible. Compensatory payments must therefore be applied at a uniform rate. No single rate of payment can be determined, however, which would result in complete equality of cost to all handlers or of returns to all dairy farmers. Consequently, instances will undoubtedly arise which will appear to indicate that the objectives of the compensatory payment are not being achieved. The pay-

ments required may sometimes seem harsh.

It is necessary in seeking an overall solution to problems of this nature to adopt provisions which will be reasonable and as liberal as possible, and at the same time will still guarantee the integrity of regulation. To provide inadequate payments would leave the door open to practices which would render the program ineffective. Transactions in milk are entirely at the option of handlers. They are free to complete only those transactions which are advantageous to themselves. Order provisions must recognize this fact. They must recognize, also, that the varying conditions under which milk transactions occur give rise to great complexity and some doubtful circumstances. Where marginal problems arise, they must be resolved in favor of producers under the order, otherwise the advantage may go to unregulated milk and to dealers and farmers who are not required to abide by any rules of procedure or price making.

4. *Class II price.* The Class II price for the months of March through July should be reduced so as to bring it into alignment with the current value of milk not required for Class I use in the St. Louis milkshed.

The order now provides that the Class II price shall be the higher of two alternative formula prices, namely the average of the prices paid by 23 condenseries (5 nearby plants and the "18 Midwest Condenseries") and a butter-powder formula based on the prices of 92-score butter at Chicago and of spray and roller process non-fat dry milk solids, f. o. b. manufacturing plants in the Chicago area.

The Class II price for the months of March through July provided by this decision is computed by multiplying the average of the daily quotations for 93-score butter at Chicago for the delivery period by 4.24, adding to this the weighted average of the spray-powder prices, f. o. b. manufacturing plants in the Chicago area, multiplied by 8.2, and subtracting 75 cents. It is concluded that the 75 cent deduction herein provided will result in a Class II price which will most nearly approximate the value of surplus producer milk in the St. Louis supply area.

Adoption of the formula herein provided will reduce the level of the Class II price, computed as a weighted average for the year, approximately 9 cents per hundredweight. This is based on comparisons of the monthly Class II prices which prevailed during 1952 and those which would have prevailed under the proposed formula. The Class IV price under the Chicago milk marketing order averaged \$3.67 during 1952, compared to an average of \$3.76 per hundredweight during the same period for the proposed formula.

The Class II price for the months of August through February should not be changed from that now provided in the order. During these months, the demand for milk for Class I purposes in relation to the total deliveries of producers supplying the St. Louis market is generally good. Maintaining the higher

Class II price during this period will have a tendency to assure that it would not be profitable for handlers to use or sell milk for manufacturing, and thereby encourage the disposition of producer milk for Class I uses.

It was proposed that August be included with those months in which the Class II price would be lowered. During that month, milk supplies, even though plentiful, are decreasing rapidly from the seasonal high; and the demand for milk at that time for manufactured dairy products, especially for use in frozen desserts, is comparatively favorable.

The Class II formula proposed at the hearing provided that the 92-score Chicago butter price be used instead of that for 93-score, as provided herein. Cream from graded plants in the production area is fresh sweet cream which is suitable for manufacture into 93-score butter. Moreover, cream of such quality could be used, when such outlets are available, in other Class II products which generally have a market value above that for cream which would be unsuitable for the manufacture of high quality butter.

Over the past several years, the quotations for 93-score butter at Chicago have averaged approximately one-half cent above that for 92-score butter. When the butter market is weak, there is generally a small spread between the 92 and 93-score quotations on the Chicago exchange; and conversely, when the butter market is strong, there is a tendency to a greater spread between the two prices. The formula herein provided will give producers the benefit of such increased spread and will reflect lower Class II prices to handlers when the market is weak.

Since there may be some days on which there is no quotation reported for 93-score butter at Chicago, the formula should provide that on such days the highest price reported for 92-score butter should be used.

It was proposed at the hearing that the quotations for spray powder be used as a component in computing the Class II price. Although none of the plants now under the St. Louis order has facilities for the manufacture of spray process non-fat dry milk powder, the spray powder quotation has gained acceptance and is widely used as a representative value of skim milk for manufacturing purposes. Some handlers contended that the roller powder quotations rather than spray should be used in computing the Class II price, stating that some roller powder is made in the St. Louis area while no powder is made locally by the spray process.

Manufacture of roller process powder is only one of the many Class II utilizations of the skim milk portion of producer milk in the St. Louis market. In 1952, approximately 15 percent of the disposition of Class II milk by St. Louis handlers was in the manufacture of roller powder. The Class II utilizations in the market of milk solids-not-fat are principally in products of greater value than roller powder, such as soft curd cheese and condensed skim milk. The Class II price obtained by using the spray powder quotations would give con-

consideration to the value of skim milk in its varied utilizations in the St. Louis market.

Testimony in the hearing record indicates that the marketing of producer milk in excess of that needed to maintain the fluid milk operations of St. Louis handlers has become a serious problem. Sales of surplus milk to ungraded manufacturing plants have become more difficult, and those sales which have been made during recent years have sometimes returned less than direct costs on such milk. While milk production has increased, manufacturing facilities heretofore available to producers have disappeared. During recent years, at least 5 large manufacturing plants in the area have discontinued operations. The facilities remaining in the marketing area for manufacturing milk are limited. One of the largest handlers in the market recently discontinued his manufacturing operations; and, effective March 1, two of the country plants of this handler were purchased by one of the cooperative associations of producers. An additional plant was leased in order that this cooperative association would have facilities to take care of the milk of its members. Handlers attributed this decrease in facilities to an insufficient margin between the Class II price and market value for manufactured dairy products.

Receipts of producer milk are expanding. The trend in recent years has been for more production per farm and for increased producer numbers. Milk production in the St. Louis area is currently at a high level. For each of the three months ending January 31, 1953, production for the St. Louis market established a new record. Receipts of graded and ungraded milk in the milkshed area are being maintained at a rate 20 to 30 percent above a year ago. Producer representatives stated that a major portion of the increase in production for the market probably would continue. It will be necessary to maintain a rate of production as high or higher than that now prevailing in order to have the St. Louis market adequately supplied during the fall months of seasonally low production.

The outlook for larger supplies of Class II milk means that processing facilities will be further taxed with seasonal surpluses. Additional markets or outlets will be necessary. The seasonally lower Class II price herein provided will expedite the orderly marketing of this increased volume of surplus milk.

**5. Class II butterfat differential.** The rate of the Class II butterfat differential should be lowered. The present differential is obtained by multiplying the average of the daily quotations for 92-score butter at Chicago for the delivery period by 0.120. As provided herein, the factor of 0.120 would be replaced by 0.115.

The weighted average butterfat content of all milk received from producers supplying the St. Louis market in 1952 was 3.812 percent, and that of Class I sales for the year was 3.679 percent. This means that the average fat content of excess milk is rather high since that

butterfat received from producers which is in excess of that needed for Class I purposes must be disposed of for surplus uses the year around. Evidence in the hearing record indicates that the price received by handlers from local butter manufacturing plants for such excess butterfat is significantly less than the Class II price which they are required to pay under the order. Moreover, no payment is received by the handler for the skim milk or solids-not-fat portion in the milk or cream that is transferred or diverted for butter manufacture.

For February, the Class II butterfat differential was 3 cents per point (one-tenth of one percent). This is the equivalent of 80 cents per pound of butterfat. Manufacturing plants in the area were at the same time purchasing considerable surplus fat from St. Louis handlers at 74 and 75 cents per pound of butterfat, f. o. b. the manufacturing plant. This represents a loss of 5 to 6 cents per pound of fat to the regulated plant, disregarding any handling or processing costs. Local plants purchasing ungraded milk were paying 6 and 7 cents at this time for each point of butterfat above 4 percent in milk received from their regular shippers.

Adjustment of the butterfat differential as herein provided will enable handlers to meet better the competition of dairy product substitutes and will provide some relief to handlers who are required to dispose of butterfat to manufacturing plants at the prices prevailing in the St. Louis milkshed.

**6. Class I price.** The amounts to be added to the basic formula price, in determining the Class I price, should be \$1.45 for January and \$1.15 for July, and the differentials for the other months of the year should remain the same as those now provided in the order.

The Class I price under the order is obtained by adding a stated amount, which varies seasonally, to the basic formula price for the preceding delivery period, and by adding or subtracting an amount determined by the demand for Class I milk in relation to the supply of milk produced for the market during a preceding 12-month period. Class I differentials now provided for in the order are: \$1.45 for July through December, \$1.15 for January through March, and 75 cents for April through June.

November is the month of lowest production for the St. Louis market and from that time production rises to reach its peak in May. Imports of approved milk from sources other than producers who regularly supply the St. Louis market are greatest during the months of seasonally low production. Except for the fall months, imports of approved milk are higher in January than in any of the other months. Production for January, likewise, more nearly approximates that of the fall months than it does that for February and March, with which months it is now bracketed for a \$1.15 Class I differential. The supply and demand conditions prevailing in the St. Louis market in January indicate that an incentive similar to that provided

for producing milk for the fall months should be made applicable to January.

It was contended at the hearing that July should be removed from the grouping of those months in which the Class I differential is \$1.45. Production in July for the St. Louis market, although comparatively high, is on the decline from the seasonal peak. There are generally no imports of approved other source milk into the market in July. As discussed in issue No. 4, the Class II prices which are provided for the spring months of flush production are extended through July. It would not be consistent to maintain the Class I differential for July as high as that prevailing for the months of lowest production while at the same time providing for a seasonally adjusted lower Class II price.

It was proposed that the Class I differential over the basic formula price be increased above the 75 cents now provided in the order for the months of April, May and June. The spokesman for producers in support of this proposal recalled the high cost of hay, difficulty of obtaining farm labor, and anticipated poor pasture conditions. While it is recognized that these items are significant components of the cost of production, the cost of production is not the only factor which must be considered by the Secretary in fixing order prices. Proponents of such increased Class I prices did not show that increased milk supplies would be desirable during the three flush months, and contended that an increase in differential would not affect the rate of production.

Producers at the hearing requested a lower Class II price for the months of flush production, and to raise the Class I price for these same months at this time would be in contradiction to the overall evidence presented at the hearing. The proposal to raise the Class I differential applicable for the months of April, May and June should be and hereby is denied.

Providing for a market-wide pool will require some change in the wording of the provision which adjusts Class I prices automatically on the basis of a utilization percentage. The order now provides for the exclusion of the milk of any plant which was not regularly associated with the market from the calculation of the utilization percentage. The same principle and intent should be carried out under the market-wide pool by including as part of the supply only that milk which is regularly associated with the market. This is represented by receipts of producer milk at pool plants.

Class I sales of non-Grade A milk outside the marketing area which are allocated to other source milk should not be considered as part of the demand for producer milk. For this as well as other purposes milk sold as Grade A under the approval of any health authority having jurisdiction inside or outside the marketing area would be considered as Grade A milk. Class I milk sold in the marketing area from non-pool plants should be included along with sales of Class I Grade A milk from pool plants in computing the utilization percentage.

**7. Class I butterfat differential.** The rate of the Class I butterfat differential

should be lowered. The differential is now computed by multiplying the average of the daily quotations for 92-score butter at Chicago for the delivery period by 0.125. As provided herein, the factor of 0.125 would be replaced by 0.120.

As indicated in the discussion of issue No. 5, consumer demand for milk for Class I purposes is for a lower butterfat content than is obtained in the milk delivered by producers. The average butterfat content of Class I sales of fluid milk in the St. Louis market was 3.488 percent, while the test of all Class I sales, including cream, for the period was 3.679 percent. The current trend and that which has prevailed in recent years indicates an increased demand for non-fat and low fat milks for fluid consumption while demand for premium and high fat milk has declined. Sales of homogenized milk have also increased. This has meant less emphasis on cream line in the bottle and lower fat milks. Sales of butterfat in cream have decreased considerably. Both total sales and average butterfat content of cream have declined. This appears to be due to changes in consumer habits and to competition from vegetable fat and butterfat in Class II products, such as aerated cream.

The change proposed herein gives recognition to the increasing value of the non-fat solids portion of the milk for fluid purposes in relation to the butterfat portion. The lower rate of the butterfat differential should encourage the consumption of higher fat milk and also of cream, and in conjunction with the change in producer fat differential described under issue No. 8, bring production and consumption of milk more nearly in line with respect to average butterfat tests.

8. *Producer butterfat differential.* The producer butterfat differential should be the weighted average of the Class I and Class II butterfat differentials for the delivery period. The differential is now computed by multiplying the average of the daily quotations for 92-score butter at Chicago for the delivery period by 0.120. This is the same differential as heretofore provided for Class II butterfat.

As stated in the discussion of issues No. 5 and No. 7, the butterfat differentials for Class I and Class II milk would be revised by this attached order for the purpose of giving recognition to the changing relationships between the values of butterfat and solids-not-fat in Class I and Class II milk. Providing for a weighted average producer butterfat differential will have the effect of returning to producers a payment for butterfat which will be equal to the price paid for such butterfat by handlers, and which will be representative of its actual sale value in the St. Louis market. This change should encourage production of milk of a butterfat content which is required for the market.

9. *Assignment of ungraded milk to Class I sales.* Ungraded milk should not be given priority on sales outside the marketing area of Class I products not labeled Grade A. The order now provides that ungraded milk received as

other source milk and disposed of as Class I milk outside the marketing area should be assigned to Class I before any other assignments of Class I milk. To be eligible for such subtraction, the milk must be both received and sold as ungraded milk. Such a provision could not be enforced under a market-wide pool. If it could be enforced, it would still permit a burdening of the pool with surplus milk not associated with Class I sales of producer milk and would be undesirable for that reason.

Milk loses its identity when it enters a plant. Any hope of maintaining segregation or independent handling of two kinds of milk in the same plant must rest on the good faith of the plant operator. In the absence of full cooperation from the plant operator, only a most detailed and continuous control over plant operation would insure that the identity of the milk would be assured as it moved through the plant. No program of regulation can be successful if it must depend either on complete voluntary cooperation in the presence of economic incentives or on such means of detailed enforcement as that indicated.

Both Grade A and non-Grade A milk are bottled and sold as Class I milk by a few regulated plants under the St. Louis order. Both types of milk are handled in the same building and in some cases over the same facilities. The health departments permitting such operations do not object to the use of Grade A milk for ungraded Class I sales. The operators of such plants are placed in a position where they have a strong incentive to use the best milk available to them for distribution as fluid milk. With two grades of milk available in the plant, some of which is to be bottled for fluid consumption while the rest is moved into manufacturing outlets, it would be most logical to bottle the higher quality milk first and manufacture the lower grade milk. Such a procedure would give the seller of such milk a decided advantage over other sellers of non-Grade A milk. Although such milk would not be labeled Grade A, it would nevertheless be Grade A quality since it was produced and handled under identical conditions of quality control as milk carrying the Grade A label. Although the milk would not be labeled Grade A, sales might be solicited on the basis of the quality of the milk. It is not illogical to assume that Grade A milk sold in this manner might displace not only non-Grade A milk, but Grade A milk sold outside the marketing area by regulated handlers.

The use of available Grade A milk for this purpose would not involve any extra expense or increased pool obligation to the operator. His volume of producer milk in Class I and Class II would be the same either way providing the identity of the milk were not known to the market administrator. It must be assumed that the plant operator will, and it is only logical that he should, use his Grade A producer milk first for Class I purposes.

Even if the milk could be identified, such assignment of priority would allow

a handler to throw his surplus from ungraded Class I sales onto the pool. Under a handler pool there is an early limit to the amount of surplus which may be shifted to graded producers, since the handler must maintain his own blend prices at a competitive level. As pointed out earlier, however, under a market-wide pool a handler is not forced to maintain high Class I utilization in order to sustain his blend price.

For this reason, there would be no limitation upon the amount of surplus which handlers could throw onto the pool short of that imposed by the plant performance provisions. These standards would not be effective, however, in preventing a large amount of surplus milk from an ungraded operation from being pooled.

The mechanics of throwing surplus milk from the ungraded operation onto the pool are not difficult to visualize. The rate of milk production on ungraded farms, like that on Grade A farms, experiences a wide seasonal fluctuation. This means that if a plant operator has enough milk to cover his needs while milk production is low, he will have considerable surplus when production is at a peak. Other elements of irregularity make it necessary that a certain margin of milk in excess of Class I requirements be maintained for ungraded Class I sales even when milk is shortest. The plant operator having both graded and ungraded milk in his plant could, if permitted to deduct ungraded milk from Class I sales on a priority basis, adjust his operations so that the ungraded milk received in the months of flush production would be approximately equal to ungraded Class I sales. Supplemental milk for ungraded sales might then be obtained from Grade A producers during the wintertime. The graded producers whose milk was used for such supplemental purposes during the winter would remain in the pool all summer long but the Class I sales supplied by such producers in the winter would be gone. Thus, the ungraded milk could be maintained on a virtually 100 percent Class I basis while the handler would be required to pay ungraded producers only at a competitive ungraded milk price. All surplus milk in the plant would be pooled throughout the year.

It was contended in the hearing record that deletion of the priority given ungraded milk would force some handlers out of the ungraded Class I business. This is not necessarily the case. While the proposed amendment would increase Class I sales assigned to producers in the plants of some handlers, this is not without justification. It would still be possible, nevertheless, for an operator with both grades of milk in his plant to purchase only that quantity of priced milk required for Class I Grade A sales. In this case, there would be no question concerning the disposition of the Grade A milk. Ungraded milk could be purchased and sold under this arrangement with no impact upon producers or the pool.

10. *Diversion of producer milk.* Producer milk which is diverted from a pool

plant to a non-pool plant during the months of April through July should be deemed to have been received at the pool plant from which diverted, if diverted for the account of the operator of such plant. Milk so diverted by a cooperative should be deemed to have been received by the cooperative. Milk which is diverted from a pool plant to another pool plant during any month of the year, or to a non-pool plant during the months of August through March, shall not be deemed to have been received either by the plant from which diverted or by the cooperative which diverted the milk, but shall be deemed to have been received only at the plant to which the milk was physically delivered directly from producers or dairy farmers.

Giving recognition to the diversion of producer milk directly from farms to non-pool plants during the months of flush production will mean that this milk shall be considered and treated the same under the order as though it had been received at a pool plant, except for the accounting for disposition and calculation of location differentials. Such recognition will facilitate the handling and disposition of Class II milk. There are insufficient manufacturing facilities in the plants of regulated handlers to dispose of the volume of seasonal surplus necessary to the St. Louis market if adequate reserves for fall and winter needs are to be assured. The number and capacity of surplus disposal plants in the St. Louis market have been decreasing in recent years, while milk supplies have been increasing. It is necessary, therefore, that some of the excess be handled through ungraded manufacturing plants. Provision for delivery of this surplus milk directly from the farm to the manufacturing plant where it is to be processed may make for more economic handling of such milk. Producers whose milk is diverted will receive the same uniform price as other producers in the market. At the same time, the St. Louis market will be benefited by having retained producers during the months of flush production whose milk is needed to supply the Class I requirements of the market in the fall and winter months.

The period during which diversion to non-pool plants should be recognized, April through July, is the same as the period during which a seasonally lower Class II price would prevail under the terms of the attached amendment. These are the months during which the volume of seasonal surplus milk is greatest, and during which such milk may exceed the capacity of pool manufacturing plants. Recognition of diversion of producer milk to non-pool plants is not considered necessary in other months. To recognize such diversion would be inconsistent with the intent of this proposal and would be contrary to the best interests of the market, since it might have the effect of facilitating and encouraging the utilization of milk for Class II purposes when it is needed by handlers in the market for Class I uses.

When milk is diverted to non-pool plants such milk should be treated as though it had been received at a pool

plant except that class prices and payments to producers for such milk should be based on the location of the plant to which the milk is diverted. Basing prices on the location of the non-pool plant will reflect the value of the milk where it is actually received rather than at an assumed location. It will also provide an incentive for diverting milk most conveniently situated with respect to the non-pool plants to which milk is diverted.

Diversion of producer milk between pool plants should not be recognized under the order. Producer milk may be diverted between pool plants at any time throughout the year, but the operator of the pool plant actually receiving the milk will be considered to be the handler with respect to such milk. Under a market-wide pool, the price which a producer receives for his milk is the same, except for transportation differentials, regardless of which pool plant receives his milk, or if it is received throughout the delivery period at several different pool plants. Class prices to handlers likewise are not affected by the shifting of producers between pool plants. Prices, returns, and utilization will be the same so far as the pool and the producer are concerned as if such diversion were recognized. Recognition of diversion would make a difference in that the operator of the plant diverting the milk would be held responsible for seeing that the producers were paid the minimum prices for milk so received, and would account to the market administrator therefor.

Under the procedure herein provided, the receiving handler will account to the market administrator for the utilization of the milk and will receive or pay equalization on such milk. There would be no inter-handler transaction so far as the market administrator is concerned. If the diverting handler wants to pay producers for the milk, the receiving handler would presumably make a payment to the diverting handler based on the blend rather than on class prices. In any event, the person who is considered to be the handler under the order would be liable for payment to producers.

It is more logical that the receiving handler be held liable for paying producers since he is the one who has physical possession of the milk and has control over its manufacture and sale or distribution. Also, since he has received and handled the milk, it is obvious that he has possession or control over facilities capable of handling the milk. This may be interpreted as some measure of financial liability, and will provide added assurance that producers will be paid in accordance with the provisions of the order.

**11. Status of cooperatives as handlers.** A cooperative association of producers should be permitted to divert milk as a handler to non-pool plants during the months of flush production, provided that the association is qualified under the order to perform marketing services for its members. Such milk should be deemed to have been received by the cooperative. This will contribute to cooperatives' ability to market their mem-

ber's milk and will also assist in stabilizing and maintaining the milk supply for the market.

Some handlers purchasing milk from members of cooperative associations may not be able to handle the seasonal flush of production from all their regular supplies during the March through July period. Also, they may not be in a position to divert such milk to manufacturing plants. Rather than allow such producers as might not find a market for their milk in the months of flush production to be dropped from the market, the cooperative should be allowed to divert such milk, if they are able to do so, and pool the sale thereof with the entire market. This will insure producers whose milk is so diverted that they will receive the market average or blend price.

No provision is made for cooperatives to divert milk in the fall and winter months. During this part of the year, it is anticipated that the receipts of producer milk will be in line with the requirements of the market for Class I milk, including the amount of reserve milk which handlers will be able to dispose of through their own plant facilities.

Supplies and prices should not be maintained at a level which will require diversion of producers to ungraded plants during the months of low production. If supplies were to reach such levels as to require diversion in the winter months, it would be a strong indication that the market was oversupplied with milk and that other adjustments were necessary.

**12. The assignment of cream transferred between regulated plants.** No change should be made in the transfer provisions of the order at this time. The handler petitioning for this change contended that he was receiving cream from other handlers which was used in the manufacture of butter, but which was assigned to Class I milk because other source milk which he had in his plant was assigned first to a Class II (butter) disposition, thereby leaving insufficient Class II milk in his plant to cover cream transferred from other handlers. At certain times graded other source milk was required to keep his Class I outlets supplied.

The handler claims that this places him at a competitive disadvantage with unregulated plants in purchasing cream from regulated plants. Part of the cream purchased from other handlers, it was contended, was not satisfactory for Class I use because of its condition and the only salvage outlet available for such cream was butter.

The provisions of the order relating to the transfer of milk between handlers and the priority given such milk on Class I utilization are designed to assure that producer milk will be utilized in and assigned to Class I so far as is possible. Other source or unregulated milk in a plant is assigned to any Class II milk available in the plant before the assignment of producer milk. When the regulated milk is transferred between pool plants, it is necessary to preserve this priority by providing that milk received from other pool plants shall not be as-

signed to Class II until after the other source milk has been so assigned. If this were not the case, a handler could, at his own discretion, purchase milk, skim milk, or cream from other sources and from other handlers, and assign other source milk to the Class I use first, leaving approved or pool milk in Class II.

Amendments provided with this decision make the proposal to assign inter-handler transfers of cream to Class II of less significance. During the summertime, when compensatory payments would be charged on other source milk allocated to Class I at a rate represented by the difference between Class I and Class II prices, such assignment would make little net difference. When the compensatory payments are at a rate based on the difference between the Class I and blend prices, the handler might gain advantage through purchase of other source milk and by using it in Class I while assigning milk from producers or other regulated handlers to Class II.

Situations of the kind complained of might be avoided if, during periods when Class II utilization does not cover other source milk plus transfers of such cream, the handler would purchase supplemental milk from other plants regulated under the order. Moreover, the pool plant provisions provided in this decision will tend to make more readily available milk from approved order plants. Such milk could be assigned to Class I on an agreed upon basis, leaving the cream transfers for assignment to Class II.

The petitioner requested that consideration be given to the fact that the cream so transferred could not be used in Class I because of its quality. No administratively feasible means is recognized, however, whereby it would be possible to verify that cream so transferred could not be used for Class I purposes.

13. *Assignment of milk from other Federally regulated markets.* Proponents of this proposal suggested that milk received from handlers regulated under other Federal orders should be assigned first to Class I milk. It was contended that such milk has been priced and paid for in accordance with the Federal order program which insures producers a fair return on the milk according to its use. Assignment of milk paid for once at the Class I price to Class II allegedly results in a double payment of Class I differentials and results in an unfair cost to handlers.

To give blanket priority to such milk for assignment to Class I, as requested, would jeopardize the position of St. Louis producers in serving the St. Louis Class I market. Handlers operating under such priority assignments would be free to bring in whatever milk they felt might possibly be needed with the assurance that full assignment to Class I would be possible, and that surplus or excess would automatically be assigned to producers. Such priority of assignment is therefore denied.

It is recognized, however, that some supplemental milk may be needed when supplies are short in St. Louis. Much

supplemental milk has in the past been brought in from other Federal order markets. Handlers bringing in such milk have assisted the market in keeping Class I outlets fully supplied.

When such supplemental milk is actually needed and is obtained under conditions which assure that it was paid for at Class I prices under another Federal order, a limited priority of assignment to Class I should be permitted under the order. Provision should be made, therefore, that 5 percent of producer milk may be assigned to Class II before any assignment of Federally regulated other source milk to such class. This will permit a handler whose producer milk supplies run short to bring in milk from other Federal markets and have it assigned to Class I, even though he has a small amount of surplus in his plant. Such other source milk will be assigned to any Class II milk in excess of 5 percent of producer milk to insure producers against an unjustified allocation of Class II milk.

Other source milk from unregulated handlers should be assigned to Class II milk before the 5 percent deduction. Such milk may not be purchased from producers on a classification and use basis. There is no assurance that such milk would not be used to displace producer milk in Class I to the advantage of the handler.

14. *Base and rate of the administrative assessment.* The rate of the administrative assessment should be continued at 2½ cents per hundredweight and should apply to all producer milk in pool plants. All producer milk regardless of its ultimate utilization must be reported, classified and priced, and utilization or disposition verified. Each handler should be required, therefore, to pay his pro rata share of the administration expense based on total producer milk in his plant. No reason is recognized why Class I milk should bear the expense of administering the terms and provisions of the order with respect to Class II milk.

Handlers contend that Class II milk has a lesser value because of various assessments which must be paid on such milk. This is a consideration which bears on the price for such milk, however, rather than on the rate of assessment. A lower price for Class II milk is found necessary elsewhere in this decision. Such lower price is provided in recognition of the value of such Class II milk, including as one consideration the expense of assessments levied on such milk.

Provision is made also that Class I milk disposed of in the marketing area from non-pool plants shall be assessed at the same rate as producer milk. The assessment should not be made on sales of ungraded Class I milk sold outside the marketing area from pool plants, which milk is allocated to other source milk.

The incorporation into the order of performance standards for pool plants makes it necessary that consideration be given to the costs of auditing and administration with respect to milk from plants not qualified under the order as pool plants. There are also auditing and other administrative expenses asso-

ciated with milk from other sources. It is considered advisable that if milk from these various sources is assigned to Class I, it should bear its pro rata share of the administrative cost. Such assessment will tend also to equalize the competitive position of Class I milk from different sources.

No assessment should be levied against Class II milk in non-pool plants of handlers under the order since such milk is not priced and does not bear directly on the St. Louis Class I market.

15. *Miscellaneous changes.* (a) The provision of the order requiring that additional payments be on a uniform basis to all producers should be deleted. Evidence indicates that the provision has not accomplished its intended purpose. Furthermore, it has presented administrative and enforcement difficulties which seriously detract from its usefulness. It is concluded, therefore, that such provision be deleted.

(b) The provision allowing for transfer between handlers of title to milk, skim milk or cream should be deleted. Such transfer has as its purpose adjustment of uniform blend prices between different plants. Under a market-wide pool herein found necessary, uniform prices would be equalized for all regulated plants. This provision has, therefore, no further application and should be deleted.

(c) The language of the location differential provision should be adjusted to insure that milk distributed from a plant as Class I will be subject to location differentials. Class I milk physically disposed of for Class I purposes from a plant has the same value regardless of the ultimate destination of such milk. It should be clear that the order language recognizes this factor.

Location differentials should not be allowed on milk transferred between plants if such milk is not needed for Class I purposes. If it were possible under the order to transfer milk at an agreed on classification and receive credit for transportation costs on all Class I milk, it is clear that the agreed upon use would be Class I whenever that was possible. This would be true even though the milk might be transferred for manufacturing purposes. The order should not cause the pool to bear the cost of transfer of milk for manufacture by permitting location differentials on such milk. The rate of transportation differential allowed under the order will recognize that a small volume of excess milk is necessary in distributing plants to permit the operation of the Class I business.

(d) Reports and payments. Under a market-wide pool, it will be necessary for the market administrator to receive reports and payments promptly in order to calculate the blend price and make disbursement of money to handlers for the equalization of producer pay rates. The order should be adjusted, therefore, to permit disclosure of the names of handlers delinquent in such matters as soon as the delinquency occurs. Also, interest should be charged on money overdue the market administrator. The interest rate provided in the attached order is 6 percent. Such an interest rate is not a penalty but represents a fair

price for the use of the money. Charging interest will avoid giving the handler any incentive to retain money temporarily for use in his business at no cost until compliance can be enforced.

(e) The area to which milk may be transferred for Class II disposition should be expanded to include the entire portion of the state of Missouri lying south of the Missouri River. The St. Louis milkshed has expanded in recent years further and further into the southern and western portions of the state of Missouri. Surplus milk arising in these areas needs some additional latitude for disposition. In view of this fact, and also because there is further disappearance of surplus disposal facilities in the plants of regulated handlers, it is considered appropriate and feasible for the market administrator to verify disposition of surplus milk in plants located in the enlarged area.

(f) Class prices should be rounded to the nearest cent. This will have the advantage of simplifying the various computations and statistics provided for under the order. It is recognized that class prices set under the St. Louis order may not be fixed with the degree of precision which requires more decimal points than this to facilitate their accuracy.

Class butterfat differentials should be carried to the nearest tenth of a cent. This is the equivalent of pricing to the nearest cent per pound of butterfat. Any further rounding of decimals might create considerable cost differences or variations to handlers from one month to the next. The producer butterfat differential should be rounded to the nearest one-half cent. This will simplify the calculation of the producer payroll. Such rounding would make only minor differences in returns to individual producers from one month to the next, and such differences would be offsetting over a period of time.

(g) Butterfat and skim milk transferred between pool plants in a form other than milk, skim milk, or cream should be subtracted out of the handler's utilization before any assignments to other source milk or producer milk. Products other than milk, skim milk, and cream are to be classified under the order in accordance with their disposition from the first plant. If such products are transferred to a second pool plant, they should be eliminated from assignments at such plant after the subtraction of shrinkage in producer milk in order to avoid any overlapping in payments to producers.

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

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply of and demand for milk, in the marketing area and the minimum prices specified in the proposed marketing agreement and the order, as

amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

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

*Rulings on proposed findings and conclusions.* Briefs were filed by or on behalf of producers and handlers interested in this proceeding. Such briefs contained statements of fact, proposed findings and conclusions, and arguments with respect to the provisions of the proposed amendments. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in this recommended decision.

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

#### DEFINITIONS

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

§ 903.2 *Secretary.* "Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties, pursuant to the act, of the Secretary of Agriculture.

§ 903.3 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or any other Federal agency as may be authorized by act of Congress or by Executive order to perform the price reporting functions of the United States Department of Agriculture.

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

§ 903.5 *St. Louis, Missouri, marketing area.* "St. Louis, Missouri, marketing area," hereinafter called the "marketing area," means the territory within the corporate limits of the City of St. Louis and the territory within St. Louis

County, both in Missouri; and the territory within Scott Military Reservation, and East St. Louis, Centreville, Cantean, and Stites Townships, and the City of Belleville, all in St. Clair County, Illinois.

§ 903.6 *Delivery period.* "Delivery period" means a calendar month, or the portion thereof during which this order or any amendment thereto is in effect.

§ 903.7 *Producer.* "Producer" means any person who produces milk under a dairy farm permit issued by a health authority duly authorized to administer regulations governing the quality of milk disposed of in the marketing area, which milk is received at a pool plant or diverted during the months of April through July from a pool plant to a non-pool plant for the account of a handler. Milk so diverted shall be deemed to have been received at the pool plant from which diverted if diverted for the account of the operator of such plant. Milk so diverted by a cooperative shall be deemed to have been received by the cooperative. This definition shall not include a person who produces milk which is received at the plant of a handler partially exempt from the provisions of this order pursuant to § 903.61 with respect to milk received by such handler.

§ 903.8 *City plant.* "City plant" means a plant where milk is processed and packaged and from which milk, skim milk or cream is disposed of as Class I milk in the marketing area to wholesale or retail outlets (including sales through vendors or plant stores) other than city or country plants.

§ 903.9 *Country plant.* "Country plant" means a plant, except a city plant, at which milk is received from dairy farmers producing milk under a dairy farm permit or rating issued by a health authority duly authorized to administer regulations governing the quality of milk disposed of in the marketing area, and which plant is approved by such health authority to furnish milk to a city plant.

§ 903.10 *Pool plant.* "Pool plant" means: (a) A city plant which disposes during the delivery period of not less than 50 percent of its receipts of producer milk and approved milk from plants qualified pursuant to § 903.10 (b) or (c) as Class I milk; on routes to wholesale or retail outlets and from which no less than 20 percent of such receipts are distributed as Class I milk during the delivery period on routes to wholesale or retail outlets located in the marketing area;

(b) A city or country plant from which no less than 50 percent of its producer milk, during the delivery period, is shipped to pool plants and assigned as reserve supply credit, pursuant to § 903.11, or distributed on routes to retail or wholesale outlets located in the marketing area: *Provided*, That if a country plant ships to pool plants and has assigned as reserve supply credit, pursuant to § 903.11, at least 65 percent of its producer milk in two months and at least 35 percent of such milk in three additional months during the months of

August through January, inclusive, such plant shall, upon written application to the market administrator on or before January 31 of any year, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the terms of this proviso;

(c) Any plant which was a country plant pursuant to this order during the month of March 1953: *Provided*, That the operator of such plant submits written application to the market administrator to be designated as a pool plant on or before the effective date hereof: *And provided further* That the status of such plant as a pool plant shall terminate effective at the end of any month from August through January during which the milk from such plant is disposed of in such a way that it becomes impossible for the plant to establish qualification under the proviso of paragraph (b) of this section; or

(d) Any plant which was a city plant pursuant to this order during the month of March 1953: *Provided*, That the operator of such plant submits written application to the market administrator to be designated as a pool plant on or before the effective date hereof: *And provided further*, That the status of such plant as a pool plant pursuant to this paragraph shall be limited to a period of two months from the effective date hereof.

§ 903.11 *Reserve supply credit*. The hundredweight of reserve supply credit which may be assigned to approved milk transferred to a pool plant shall be calculated as follows: Deduct from the total hundredweight of skim milk or butterfat disposed of from the transferee-plant as Class I milk on routes to retail or wholesale outlets an amount calculated by multiplying the total pounds of producer milk by 0.85. Any plus figure resulting from this calculation shall be known as reserve supply credit and shall be assigned pro rata to approved milk received from country plants: *Provided*, That if the operator of the transferee plant notifies the market administrator in writing on or before the 7th day after the end of the delivery period during which the milk was received from producers of an assignment other than that specified herein, such other assignment shall be allowed.

§ 903.12 *Non-pool plant*. "A non-pool plant" is any milk distributing, manufacturing, or processing plant other than a pool plant.

§ 903.13 *Handler* "Handler" means: (a) any person in his capacity as the operator of a city plant or a country plant; (b) a producer-handler; or (c) a cooperative association qualified pursuant to § 903.86 (b) with respect to milk from producers diverted for the account of such association from a pool plant to a non-pool plant.

§ 903.14 *Producer-handler* "Producer-handler" means any person who is a producer and who processes milk from his own farm production, distrib-

uting all or a portion of such milk within the marketing area as Class I milk, but who receives no other source milk or milk from other producers.

§ 903.15 *Producer milk*. "Producer milk" means any skim milk or butterfat contained in milk received at the pool plant directly from producers, or received by a cooperative, as provided in § 903.7.

§ 903.16 *Approved milk*. "Approved milk" means any skim milk or butterfat contained in producer milk or in milk, skim milk or cream which is received from a pool plant, except the plant of a producer-handler, and which is approved by the appropriate health authority for distribution as Class I milk in the marketing area.

§ 903.17 *Other source milk*. "Other source milk" means all skim milk and butterfat received in any form except (a) approved milk; or (b) Class II non-fluid milk products which are received and disposed of without further processing or packaging.

#### MARKET ADMINISTRATOR

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

§ 903.21 *Powers*. The market administrator shall have the following powers with respect to this order:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

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

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

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

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

(d) Pay, out of the funds received pursuant to § 903.87, the cost of his bond and of the bonds of his employees, his own compensation and all other expenses (except those incurred under § 903.88), necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this order and submit such books and records to examination by the Secretary as requested;

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

(g) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this order as do not reveal confidential information;

(h) Publicly disclose to handlers and producers, at his discretion, the name of any handler who, after the date on which he is required to perform such acts, has not made reports pursuant to §§ 903.30 to 903.33 or payments pursuant to §§ 903.80 to 903.87.

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

(j) Publicly announce on or before:

(1) The 6th day of each delivery period the minimum price for Class I milk pursuant to § 903.51 (a), and the Class I butterfat differential pursuant to § 903.53 (a), both for the current delivery period; and the minimum price for Class II milk pursuant to § 903.51 (b) and the Class II butterfat differential pursuant to § 903.53 (b), both for the preceding delivery period; and

(2) The 10th day after the end of each delivery period, the uniform price pursuant to § 903.71 and the producer butterfat differential pursuant to § 903.81.

#### REPORTS, RECORDS AND FACILITIES

§ 903.30 *Reports of receipts and utilization*. On or before the 7th day after the end of each delivery period, each handler, except a producer-handler, shall report for such delivery period to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in all receipts at each of his city and country plants of (1) milk from producers, (2) skim milk or butterfat in any form from pool plants, and (3) other source milk;

(b) The quantities of skim milk and butterfat contained in milk diverted to non-pool plants;

(c) The utilization of all skim milk and butterfat required to be reported pursuant to paragraphs (a) and (b) of this section, including a separate statement of the disposition of Class I milk outside the marketing area,

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

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

§ 903.31 *Reports of payments to producers*. On or before the 20th day after the end of each delivery period, each handler shall report to the market ad-

ministrator his producer payroll for such delivery period which shall show for each producer (a) the total pounds of milk received from such producer with the average butterfat test thereof, (b) the net amount of the payment made to such producer together with the price, deductions, and charges involved, and (c) the amount and nature of any payments made pursuant to § 903.86.

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

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

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

§ 903.35 *Retention of records.* All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

#### CLASSIFICATION OF MILK

§ 903.40 *Basis of classification.* All skim milk and butterfat received by a handler at a city or country plant and which is required to be reported pursuant to § 903.30 shall be classified by

the market administrator pursuant to the provisions of §§ 903.41 through 903.46.

§ 903.41 *Classes of utilization.* Subject to the conditions set forth in §§ 903.42 and 903.43, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in fluid form as milk, skim milk, buttermilk, milk drinks (plain or flavored), cream (fresh, frozen, or sour),

(2) In milk, flavored milk, or flavored milk drinks in concentrated form (fresh or frozen) not sterilized, packaged and disposed of on routes or through plant stores for fluid consumption; and

(3) Not specifically accounted for as Class II milk.

(b) Class II milk shall be all skim milk and butterfat accounted for:

(1) As having been used or disposed of in any product other than those specified in Class I milk;

(2) In inventory variations of milk, skim milk, cream, or any Class I product; and

(3) In shrinkage allocated to producer milk, except milk diverted to a non-pool plant pursuant to § 903.7, but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively, and in shrinkage allocated to receipts of other source milk: *Provided*, That shrinkage of skim milk and butterfat, respectively, shall be allocated pro rata to skim milk and butterfat in producer milk and in other source milk received from non-pool plants or from dairy farmers.

§ 903.42 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk and butterfat proves to the market administrator that such skim milk and butterfat should be classified in another class.

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

§ 903.43 *Transfers.* (a) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream by transfer from a pool plant to a pool plant of another handler, except a producer-handler, shall be classified as Class I milk unless utilization in another class is mutually indicated in writing to the market administrator by both handlers on or before the 7th day after the end of the delivery period within which such transaction occurred, in which case such skim milk and butterfat shall be classified according to such mutual agreement: *Provided*, That skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in such class in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 903.45, and transfers of skim milk or butterfat, respectively, in excess of that so remaining shall be assigned to Class I milk.

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

(c) Skim milk and butterfat disposed of in the form of milk, skim milk, or cream by transfer or diversion from a pool plant to a non-pool plant shall be classified as Class I milk unless:

(1) The product is transferred or diverted in bulk form or in producer cans;

(2) The transferee-plant is located within 110 airline miles from the City Hall in St. Louis, Missouri, or in the State of Missouri south of the Missouri River and the handler claims Class II on the basis of a utilization mutually indicated in writing to the market administrator by both the handler and the operator of the transferee-plant on or before the 7th day after the end of the delivery period within which such transaction occurred;

(3) The operator of the transferee-plant maintains books and records, showing the utilization of all skim milk and butterfat received in any form at such plant, which are made available if requested by the market administrator for the purpose of verification; and

(4) Equivalent amounts of skim milk and butterfat, respectively, were actually utilized in the transferee-plant in the use claimed: *Provided*, That if less than equivalent amounts of skim milk and butterfat, respectively, were actually used in the claimed use, the difference shall be classified as Class I milk.

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

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

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

(1) Subtract from the total pounds of skim milk in Class II milk the plant shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 903.41 (b) (3),

(2) Subtract from the remaining pounds of skim milk in each class the

pounds of skim milk received from pool plants of other handlers in a form other than milk, skim milk, or cream, according to its classification pursuant to § 903.41,

(3) Subtract from the pounds of skim milk remaining in Class II milk the remaining pounds of skim milk in other source milk which was not subject to the Class I pricing provisions of an order issued pursuant to the act: *Provided*, That if the pounds of skim milk to be subtracted is greater than the remaining pounds of skim milk in Class II, the balance shall be subtracted from the pounds of skim milk in Class I;

(4) Subtract from the pounds of skim milk remaining in Class II an amount equal to such remainder, or the product obtained by multiplying the pounds of producer milk in the plant by .05, whichever is less;

(5) Subtract from the pounds of skim milk remaining in Class II the pounds of skim milk in other source milk which was subject to the Class I pricing provisions of another order issued pursuant to the act: *Provided*, That if the pounds of skim milk to be subtracted is greater than the remaining pounds of skim milk in Class II, the balance shall be subtracted from the pounds of skim milk in Class I,

(6) Subtract the pounds of skim milk in milk, skim milk, or cream received from pool plants of other handlers from the pounds of skim milk remaining in the class to which assigned, pursuant to § 903.43 (a)

(7) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraphs (1) and (4) of this paragraph and if the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers; subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with the lowest price class.

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the same manner prescribed for skim milk in paragraph (a) of this section.

§ 903.46 *Determination of producer milk in each class.* For each class, add the pounds of skim milk and the pounds of butterfat allocated to producer milk, pursuant to § 903.45, and determine the percentage of butterfat in each class.

MINIMUM PRICES

§ 903.50 *Basic formula price.* The basic formula price for each delivery period to be used in determining the class prices, set forth in § 903.51, shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.

(a) Determine the arithmetic average of the basic, or field, prices paid or to be paid per hundredweight for milk of 3.6 percent butterfat content received from farmers during the delivery period at the following plants or places for which prices have been reported to the market administrator or the Department of Agriculture:

Concern and Location

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

(b) The price per hundredweight computed as follows: Multiply by 3.5 the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department, during the delivery period, add 20 percent thereof, and add or subtract, as the case may be, to such sum 3½ cents for each full half cent that the weighted average of carlot prices per pound for non-fat dry milk solids, spray and roller process, respectively, for human consumption f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period by the Department, is above or below 5½ cents: *Provided*, That if such f. o. b. manufacturing plant prices of non-fat dry milk solids are not reported there shall be used for the purpose of such computation the average of the carlot prices of non-fat dry milk solids, spray and roller process for human consumption, delivered at Chicago, as reported by the Department of Agriculture during the delivery periods; and in the latter event 7½ cents shall be used in lieu of the "5½ cents."

§ 903.51 *Class prices.* Subject to the provisions of §§ 903.52 and 903.53, each handler shall pay for milk received at his pool plant (a) from producers or received by him as a cooperative at not less than the following prices per hundredweight:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding delivery period plus or minus the following amounts:

(1) Add \$1.45 for the delivery periods of August through January \$1.15 for the delivery periods of February, March, and July and .75 cents for the delivery periods of April through June;

(2) If the utilization percentage calculated pursuant to subparagraph (3) of this paragraph exceeds 120 subtract, or if it is less than 120 add, an amount calculated by multiplying the difference between such percentage and 120 by the appropriate figure in the following schedule:

Delivery period group	Add	Subtract
February and March.....	Cents 2	Cents 3
April through June.....	0	3
July.....	2	3
August through January.....	3	3

(3) For each of the delivery period groups specified in subparagraph (2) of this paragraph, calculate a utilization percentage by dividing the total pounds of Class I milk (including the Class I milk in pool plants, except sales of non-Grade A milk outside the marketing area allocated to other source milk, plus the Class I milk sold in the marketing area from non-pool plants) for the 12-month period ending with the beginning of the month preceding each delivery period group, into the total pounds of producer milk during such 12-month period, multiplying by 100, and rounding the resultant figure to the nearest whole percentage point.

(b) *Class II milk.* The price for Class II milk shall be that computed from the following formula:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the mid-point of any price range as one price) of 93-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture, during the delivery period: *Provided*, That if no price is reported for 93-score butter, the highest of the prices reported for 92-score butter for that day shall be used in lieu of the price for 93-score butter;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process non-fat dry milk solids, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period by the Department of Agriculture; and

(3) From the sum of the results arrived at under sub-paragraphs (1) and (2) of this paragraph subtract 75 cents and round to the nearest cent: *Provided*, That such price shall not be less than the basic formula price during the months of August through February.

§ 903.52 *Location differentials to handlers.* With respect to skim milk and butterfat contained in milk received from producers at a pool plant in Meramee or Bonhomme townships, St. Louis County, Missouri (except in the cities of Valley Park and Kirkwood), or outside the marketing area, which is classified as Class I milk, the price per hundredweight shall be reduced by the amounts set forth in the following schedule according to the airline distance from the plant where the milk is first delivered from producers to the City Hall in St. Louis:

Mileage	Allowance (cents)
Not more than 10 miles.....	0
More than 10 but not more than 20 miles.....	12
More than 20 but not more than 30 miles.....	14

Mileage	Allowance (cents)
More than 30 but not more than 40 miles	16
For each additional ten miles or fraction thereof an additional	1

Provided, That for purposes of calculating such location differential with respect to milk transferred between pool plants, the Class II milk remaining in the transferee-plant after the subtraction pursuant to § 903.45 (a) (5) and (b) shall be assigned to approved milk from country plants, approved milk from city plants and producer milk in the order listed.

§ 903.53 *Butterfat differentials to handlers.* If the average butterfat test of Class I milk or Class II milk, as calculated pursuant to § 903.46, is more or less than 3.5 percent, there shall be added to, or subtracted from, as the case may be, the price for such class of utilization, for each one-tenth of 1 percent that such average butterfat test is above or below 3.5 percent, a butterfat differential calculated for each class of utilization as follows:

(a) *Class I milk.* Multiply by .120 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the previous delivery period, and round to the nearest one-tenth cent.

(b) *Class II milk.* Multiply by .115 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department of Agriculture during the delivery period, and round to the nearest one-tenth cent.

APPLICATION OF PROVISIONS

§ 903.60 *Producer-handlers.* Sections 903.40 through 903.46, 903.50 through 903.53, 903.70, 903.71, and 903.80 through 903.88 shall not apply to a producer-handler.

§ 903.61 *Handlers subject to other Federal orders.* In the case of any handler whom the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another order or marketing agreement issued pursuant to the act than is disposed of in the St. Louis marketing area as Class I milk, the provisions of this order shall not apply except as follows: The handler shall, with respect to his total receipts and utilization of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require, and allow verification of such reports by the market administrator.

§ 903.62 *Handlers operating non-pool plants.* None of the provisions from §§ 903.43 through 903.53 inclusive, or from §§ 903.70 through 903.86 inclusive, shall apply in the case of a handler operating a non-pool plant, except that such handler shall, on or before the 15th day after the end of each delivery period, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the

total hundredweight of butterfat and skim milk disposed of as Class I milk from such plant to retail or wholesale outlets in the marketing area during the delivery period, by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and location differentials:

(a) For the months of March through July the Class II price adjusted by the Class II butterfat differential; or

(b) For the months of August through February the uniform price adjusted by the Class I location differential and by the producer butterfat differential.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 903.70 *Computation of the value of milk for each handler.* For each delivery period the market administrator shall compute the value of milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 903.46 by the applicable class price, and add together the resulting amounts;

(b) Add an amount computed as follows: Multiply the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 903.45 (a) (3) and (b) (less, in the case of a plant permitted to receive and bottle non-Grade A milk, the hundredweight of skim milk and butterfat, respectively, in Class I products sold outside the marketing area as non-Grade A) by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat differential and the Class I location differential at the nearest plant(s) from which an equivalent amount of other source milk was received:

(1) For the months of March through July, the Class II price adjusted by the Class II butterfat differential; or

(2) For the months of August through February, the uniform price adjusted by the Class I location differential and by the producer butterfat differential.

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 903.45 (a) (7) and (b) by the applicable class price.

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

(a) Combine into one total the values computed pursuant to § 903.70 for all handlers who made the reports prescribed in § 903.30 and who are not in default of payments pursuant to § 903.84 for the preceding delivery period;

(b) Add an amount equivalent to the total deductions made pursuant to § 903.82;

(c) Subtract if the weighted average butterfat content of milk received from producers is more than 3.5 percent, or add if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the producer butterfat differential by the difference between 3.5 and the average butterfat content of producer milk and multiply-

ing the resulting figure by the total hundredweight of such milk;

(d) Add and amount equivalent to one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of milk received from producers; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price per hundredweight of milk: testing 3.5 percent butterfat, f. o. b. the marketing area.

PAYMENTS

§ 903.80 *Payments to producers.* On or before the 15th day after the end of each delivery period, each handler shall make payment to each producer, for the total value of milk received from such producer during such delivery period, at not less than the uniform price per hundredweight computed pursuant to § 903.71, subject to the butterfat and location differentials computed pursuant to §§ 903.81 and 903.82: *Provided,* That if by such date such handler has not received full payment pursuant to § 903.85 from the market administrator for such delivery period, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

§ 903.81 *Butterfat differential to producers.* In making payments to each producer pursuant to § 903.80, a handler shall adjust the uniform price by adding or subtracting, as the case may be, for each one-tenth of one percent by which the average butterfat content of such producers milk is more or less than 3.5 percent, an amount calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resultant figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-half cent.

§ 903.82 *Location differentials to producers.* In making payments to producers pursuant to § 903.80, the price per hundredweight for milk received at or diverted to plants located in Meramee or Bonhomme townships, St. Louis County, Missouri, (except in the cities of Valley Park or Kirkwood), or outside the marketing area, shall be reduced by the amounts set forth in the following schedule according to the airline distance from the plant where the milk is first delivered from producers to the City Hall in St. Louis:

Mileage zone	Allowance (cents)
Not more than 10 miles	6
More than 10 but not more than 20 miles	12
More than 20 but not more than 30 miles	14
More than 30 but not more than 40 miles	16
For each additional ten miles or fraction thereof an additional	1

§ 903.83 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund to be known as the "Producer-settlement Fund," into which he shall deposit all payments made by handlers pursuant to §§ 903.62, 903.84, and 903.86, and out of which he shall make payments due handlers pursuant to §§ 903.85 and 903.86.

§ 903.84 *Payments to the producer-settlement fund.* On or before the 13th day after the end of each delivery period, each handler shall pay to the market administrator the amount by which the value of milk for such handler, pursuant to § 903.70, exceeds the obligations of such handler to producers, pursuant to § 903.80: *Provided*, That to this amount shall be added one-half of one percent of any amount due the market administrator pursuant to this section for each month or any portion thereof that such payment is overdue.

§ 903.85 *Payments out of the producer-settlement fund.* On or before the 14th day after the end of each delivery period the market administrator shall pay to each handler the amount by which the obligation of such handler to producers, pursuant to § 903.80, exceeds the value of milk for such handler calculated pursuant to § 903.70; less any unpaid balances due the market administrator from such handler pursuant to §§ 903.84, 903.86, 903.87, or 903.88: *Provided*, That if the unobligated balance in the producer-settlement fund is insufficient to make full payment to all handlers entitled to payment pursuant to this paragraph, the market administrator shall reduce such payments at a uniform rate and shall complete such payments as soon as the appropriate funds are available.

§ 903.86 *Adjustment of accounts.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall make payments to such handler of any amounts due the handler, or shall notify the handler of any amount due the market administrator or producers or cooperative associations, and such payments shall be made on or before the next date for making payments as set forth in the provisions relating to the payments which were in error.

§ 903.87 *Expense of administration.* As his pro rata share of the expense of the administration of this order, each handler shall pay to the market administrator on or before the 15th day after the end of each delivery period for such delivery period 2½ cents or such lesser amount as the Secretary may prescribe for each hundredweight of milk (a) received from producers, (b) received at a pool plant as Grade A other source milk and allocated to Class I, or (c) distributed as Class I milk in the marketing area from a non-pool plant.

§ 903.88 *Marketing services—(a) Deduction of marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to § 903.80, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the delivery period and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers' cooperative associations.* In the case of producers for whom a cooperative association which the Secretary determines to be qualified under the requirements of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing the services set forth in paragraph (a) of this section, each handler, in lieu of the deductions specified in paragraph (a) of this section, shall make the deductions from the payments made pursuant to § 903.80, which are authorized by such producers, and, on or before the 15th day after the end of each delivery period, pay over such deductions to the cooperative associations rendering such services of which such producers are members.

#### EFFECTIVE TIME, SUSPENSION, AND TERMINATION

§ 903.90 *Effective time.* The provisions of this order, or any amendment to this order, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 903.91.

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

§ 903.92 *Continuing power and duty.* (a) If, upon the suspension or termination pursuant to § 903.91, there are any obligations arising under this order the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator, shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate shall (1) continue in such capacity until discharged, (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this order.

§ 903.93 *Liquidation after suspension or termination.* Upon the suspension or termination pursuant to § 903.91, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

#### MISCELLANEOUS PROVISIONS

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

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

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

§ 903.103 *Termination of obligations.* The provisions of this section shall apply to any obligation under this order for the payment of money irrespective of when such obligations arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the

market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information.

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the amount for which it is to be paid.

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this

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

Filed at Washington, D. C., this 20th day of May 1953.

[SEAL] ROY W. LENNARTSON,  
Assistant Administrator.

[F. R. Doc. 53-4567; Filed, May 22, 1953;  
8:53 a. m.]

### [ 7 CFR Part 921 ]

[Docket No. AO 222-A4]

#### HANDLING OF MILK IN SPRINGFIELD, MISSOURI, MARKETING AREA

#### NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER, AS AMENDED

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Colonial Hotel, Springfield, Missouri, beginning at 10:00 a. m., May 28, 1953, for the purpose of receiving evidence with respect to emergency and other economic conditions which relate to the handling of milk in the Springfield, Missouri, marketing area, and to proposed amendments hereinafter set forth, or appropriate modifications thereof, to the

tentative marketing agreement heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the Springfield, Missouri, milk marketing area (7 CFR 921 et seq.) These proposed amendments have not received the approval of the Secretary of Agriculture.

Amendments to the order, as amended, regulating the handling of milk in the Springfield, Missouri, milk marketing area were proposed, as follows:

By the Producers Creamery Company of Springfield:

1. Delete so much of § 921.52 (a) as reads "0.125" and substitute in lieu thereof the factor "0.117."

2. Delete so much of § 921.52 (b) as reads "0.120" and substitute in lieu thereof the factor "0.112."

3. Delete so much of § 921.81 as reads "1.2" and substitute in lieu thereof the factor "1.14."

4. Delete so much of § 921.50 (a) as reads "Borden Company, Greenville, Wisconsin" and the "Carnation Company, Jefferson, Wisconsin."

By the Dairy Branch, Production and Marketing Administration:

5. Make such changes as may be required to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and of the order now in effect may be procured from the Market Administrator, 4030 Chouteau Avenue, St. Louis 10, Missouri, or from the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: May 20, 1953, at Washington, D. C.

[SEAL] ROY W. LENNARTSON,  
Assistant Administrator

[F. R. Doc. 53-4566; Filed, May 22, 1953;  
8:52 a. m.]

## NOTICES

### DEPARTMENT OF THE TREASURY

#### Fiscal Service, Bureau of the Public Debt

[1953 Dept. Circular 923]

#### 2½ PERCENT TREASURY CERTIFICATES OF INDEBTEDNESS OF SERIES B-1954

##### OFFERING OF CERTIFICATES

MAY 20, 1953.

**I. Offering of certificates.** 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites subscriptions from the people of the United States for certificates of indebtedness of the United States, designated 2½ percent Treasury Certificates of Indebtedness of Series B-1954, in exchange for 1½ percent Treasury Certificates of Indebtedness of Series B-1953, maturing June 1, 1953, or 2 percent Treasury Bonds of 1953-55,

dated October 7, 1940, due June 15, 1955, called for redemption June 15, 1953. Exchanges will be made par for par on June 1 in the case of the certificates of indebtedness of Series B-1953, and par for par on June 15, with an adjustment of interest on that date, in the case of the called bonds.

**II. Description of certificates.** 1. The certificates will be dated June 1, 1953, and will bear interest from that date at the rate of 2½ percent per annum, payable with the principal at maturity on June 1, 1954. They will not be subject to call for redemption prior to maturity.

2. The income derived from the certificates shall be subject to all taxes, now or hereafter imposed under the Internal Revenue Code, or laws amendatory or supplementary thereto. The certificates shall be subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but shall be exempt from

all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The certificates will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer certificates will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. The certificates will not be issued in registered form.

5. The certificates will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States certificates.

**III. Subscription and allotment.** 1. Subscriptions will be received at the Federal Reserve Banks and Branches and at the Treasury Department, Washington. Banking institutions generally may submit subscriptions for account of cus-

tomers, but only the Federal Reserve Banks and the Treasury Department are authorized to act as official agencies.

2. The Secretary of the Treasury reserves the right to reject any subscription, in whole or in part, to allot less than the amount of certificates applied for, and to close the books as to any or all subscriptions at any time without notice; and any action he may take in these respects shall be final. Subject to these reservations, all subscriptions will be allotted in full. Allotment notices will be sent out promptly upon allotment.

IV *Payment.* 1. Payment for certificates allotted hereunder must be made on or before June 1, 1953, or on later allotment, in the case of maturing certificates tendered in exchange, and on or before June 15, 1953, or on later allotment, in the case of called bonds tendered in exchange. The new certificates will be delivered on or after June 1 in the case of certificates exchanged, and on or after June 15 in the case of called bonds exchanged. Payment of the principal amount may be made only in Treasury Certificates of Indebtedness of Series B-1953, maturing June 1, 1953, or in Treasury Bonds of 1953-55, called for redemption on June 15, 1953, which will be accepted at par and should accompany the subscription. The full amount of interest due on the certificates surrendered will be paid to the subscriber following acceptance of the certificates. In the case of the called bonds in coupon form, payment of accrued interest on the new certificates from June 1, 1953, to June 15, 1953 (\$1.00685 per \$1,000) should be made when the subscription is tendered. In the case of called registered bonds, the accrued interest will be deducted from the amount of the check which will be issued in payment of final interest on the bonds surrendered. Final interest due June 15 on bonds surrendered will be paid, in the case of coupon bonds, by payment of June 15, 1953 coupons, which should be detached by holders before presentation of the bonds, and in the case of registered bonds, by checks drawn in accordance with the assignments on the bonds surrendered.

V. *Assignment of registered bonds.* 1. Treasury Bonds of 1953-55 in registered form tendered in payment for certificates offered hereunder should be assigned by the registered payees or assignees thereof to "The Secretary of the Treasury for exchange for Treasury Certificates of Indebtedness of Series B-1954 to be delivered to \_\_\_\_\_," in accordance with the general regulations of the Treasury Department governing assignments for transfer or exchange, and thereafter should be presented and surrendered with the subscription to a Federal Reserve Bank or Branch or to the Treasury Department, Division of Loans and Currency, Washington, D. C. The bonds must be delivered at the expense and risk of the holders.

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the

amounts indicated by the Secretary of the Treasury to the Federal Reserve Banks of the respective Districts, to issue allotment notices, to receive payment for certificates allotted, to make delivery of certificates on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive certificates.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] G. M. HUMPHREY,  
*Secretary of the Treasury.*

[F. R. Doc. 53-4552; Filed, May 22, 1953;  
8:50 a. m.]

## DEPARTMENT OF COMMERCE

### Civil Aeronautics Administration

AIRPORTS DIVISION, REGIONAL OFFICE  
TRANSFER OF FUNCTIONS

Effective May 18, 1953, all functions of the Airports Division of the Regional Office at Chicago, Illinois, with respect to activities within the States of Kentucky and Ohio will be performed by the Airports Division of the Regional Office at Jamaica, Long Island, New York. This action is taken pursuant to the second introductory paragraph of the Notice on Organization and Functions published on May 14, 1953, in 18 F. R. 2798. The functions of an Airports Division of a Regional Office are described in 16 F. R. 2975, published on April 5, 1951.

[SEAL] F. B. LEE,  
*Administrator of Civil Aeronautics.*

[F. R. Doc. 53-4527; Filed, May 22, 1953;  
8:45 a. m.]

## CIVIL AERONAUTICS BOARD

[Docket No. 5869]

### CONTINENTAL AIR LINES, INC.

#### NOTICE OF PREHEARING CONFERENCE

In the matter of the application of Continental Air Lines, Inc., under section 401 of the Civil Aeronautics Act of 1938 for the renewal of its temporary certificate for the provision of air transportation to and from Raton, Socorro, Truth or Consequences and Las Cruces, New Mexico as intermediate points on its Route No. 29.

Notice is hereby given that a prehearing conference in the above-entitled proceeding is assigned to be held on June 2, 1953, at 10:00 a. m., e. d. s. t. in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Curtis C. Henderson.

Dated at Washington, D. C., May 19, 1953.

[SEAL] FRANCIS W BROWN,  
*Chief Examiner*

[F. R. Doc. 53-4526; Filed, May 22, 1953;  
8:45 a. m.]

[Docket No. 2888 et al.]

### SKYTRAIN AIRWAYS, INC.

#### NOTICE OF PREHEARING CONFERENCE

In the matter of Skytrain Airways, Inc., fitness, willingness, and ability properly to perform the air transportation encompassed within Docket No. 2888 and Docket No. 4473, and to conform to the provisions of the act and the rules, regulations, and requirements of the Board thereunder.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on June 4, 1953, at 10:00 a. m., e. d. s. t., in Room E-210, Temporary Building No. 5, Sixteenth and Constitution Avenue NW., Washington, D. C., before Examiner Curtis C. Henderson.

Dated at Washington, D. C., May 20, 1953.

[SEAL] FRANCIS W BROWN,  
*Chief Examiner*

[F. R. Doc. 53-4563; Filed, May 22, 1953;  
8:52 a. m.]

## FEDERAL COMMUNICATIONS COMMISSION

### CHIEF, COMMON CARRIER BUREAU

#### DELEGATION OF AUTHORITY TO REDUCE HOURS OF TELEGRAPH SERVICE IN CERTAIN CASES

In the matter of amendment of section 0.147 (a) of the Commission's Statement of Delegations of Authority.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 13th day of May 1953;

The Commission, having under consideration the necessity for amending section 0.147 (a) of the Commission's Statement of Delegations of Authority to authorize the Chief of the Common Carrier Bureau, or his nominee, to act upon applications filed under section 214 of the Communications Act of 1934, as amended, and Part 63 of the Commission's rules and regulations for authority to reduce the hours of telegraph service in a community or part of a community in cases where applicable Commission policy has been established;

It appearing, that such amendment is designed to improve the internal administration of the Commission and will facilitate the prompt and orderly handling of applications to reduce telegraph service;

It further appearing, that notice of proposed rule making pursuant to section 4 (a) of the Administrative Procedure Act is not required since the amendment herein relates to internal Commission organization and procedure and is not substantive in nature;

It further appearing, that authority for the proposed amendment is contained in sections 4 (1) and 5 (d) of the Communications Act of 1934, as amended;

It is ordered, That, effective immediately, section 0.147 (a) of the Commission's Statement of Delegations of Authority is amended to read as follows:

(a) Applications under section 214 of the Communications Act for an authorization for temporary or emergency closures of telegraph offices, for any closure of a telegraph office located at a military establishment, for closure of railroad-operated agency offices, for closure of company-operated main offices where substitute service is to be provided by a telephone or teleprinter-operated agency office in the same community and for any reduction in the hours of telegraph service in a community or part of a community in those cases where applicable Commission policy has been established, and informal requests for authority to discontinue, reduce or impair service filed pursuant to the provisions of §§ 63.63, 63.64, 63.66 to 63.69, inclusive, of the Commission's rules and regulations.

Released: May 15, 1953.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4453; Filed, May 22, 1953;  
8:50 a. m.]

[Docket No. 10505]

DONZE ENTERPRISES, INC. (KSGM)

ORDER DESIGNATING APPLICATION FOR  
HEARING ON STATED ISSUES

In re application of Donze Enterprises, Inc. (KSGM) Ste. Genevieve, Missouri, Docket No. 10505, File No. BP-8488; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C. on the 13th day of May 1953;

The Commission having under consideration the above-entitled application for construction permit to increase the daytime power of Station KSGM, Ste. Genevieve, Missouri, from 500 watts to 1000 watts and to change from employing directional antenna day and night to directional antenna nighttime only, and a petition filed September 4, 1952, by Midland Broadcasting Company, licensee of Station KMBC, Kansas City, Missouri, alleging interference from the proposed operation of KSGM to the service area of Station KMBC beyond the normally protected 0.5 mv/m contour; and

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate Station KSGM as proposed, but that the proposed KSGM operation may cause interference, as alleged by Station KMBC, in an area in which the service rendered by KMBC may be of a unique and unusual character and may be the only service of this same general character available to such area and population, that the proposed operation may cause objectionable interference to a new station in Danville, Illinois, authorized in a construction permit granted by the Commission to the Vermillion Broadcasting Corporation (File No. BP-7114) and that a multiple ownership question may arise under § 3.35 of the Commission rules since it appears that there is a substantial overlap of the primary

service area between Station KSGM operating as proposed and Station KJCF, Festus, Missouri, the controlling interest of which is held by Donald M. Donze;

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the applicant was advised by letter dated December 4, 1952, of the aforementioned matters and that the Commission was unable to conclude that a grant of the application would be in the public interest;

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the Vermillion Broadcasting Corporation was advised by letter dated December 4, 1952, of the aforementioned deficiencies of the above-entitled application and was requested to advise the Commission within thirty days whether they would participate in any hearing on the instant application; and

It further appearing, that on January 2, 1953, Donze Enterprises, Inc. filed a reply urging the Commission not to recognize Station KMBC's claim of protection based on unique service to the interference area in question and that Vermillion Broadcasting Corporation did not reply to the Commission's letter; and

It further appearing, that the Commission, after consideration of the replies, is still unable to conclude that a grant of the application would be in the public interest;

It is ordered, That the above-described petition of Midland Broadcasting Company to designate for hearing the above-entitled application of Donze Enterprises, Inc. is granted; and

It is further ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled application of Donze Enterprises, Inc. is designated for hearing, at a time and place to be specified in a subsequent order upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station KSGM as proposed and the character of other broadcast service available to those areas and populations.

2. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas to be served.

3. To determine whether the operation of Station KSGM as proposed would involve interference with Station KMBC, Kansas City, Missouri, in an area between that station's normally protected and interference-free contours.

4. If Issue 3 is determined in the affirmative, to determine further whether the program service rendered by Station KMBC to the area between that station's normally protected and interference-free contours that would lose service from KMBC because of interference from the proposed operation of KSGM is of a unique and unusual character and the only service of the same general character.

5. To determine the overlap, if any, which would exist between the service areas of Station KSGM as proposed and of Station KJCF, the nature and extent thereof, and whether such overlap, if any, is in contravention of § 3.35 of the Commission rules.

It is further ordered, That the Midland Broadcasting Company, licensee of Station KMBC, Kansas City, Missouri, is made a party to this proceeding.

It is further ordered, That the burden of proceeding with the introduction of evidence upon Issues 1, 2, 3, and 5, as well as the burden of proof upon these issues, is placed upon Donze Enterprises, Inc., and that a similar burden of evidence and proof upon Issue 4 is placed upon Midland Broadcasting Company.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4554; Filed, May 22, 1953;  
8:50 a. m.]

[Docket No. 10506]

BROWNFIELD BROADCASTING CO.

ORDER DESIGNATING APPLICATION FOR  
HEARING ON STATED ISSUES

In re application of Eugene Gunn, J. L. Hamilton, James F. Daniel, Grady Goodpasture, Charles E. Price, Herbert Chesshir, R. L. Whitley, Dewey D. Rogers, Harry Goble and J. O. Gillham, d/b as Brownfield Broadcasting Company, Brownfield, Texas, Docket No. 10506; File No. BP-8540; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of May 1953;

The Commission having under consideration the above-entitled application for a construction permit for a new standard broadcast station to operate on 1250 kc, 1 kw, daytime only, at Brownfield, Texas;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate the proposed station, but that the application may involve interference with Station KLVT, Levelland, Texas; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the applicant was advised by letter dated February 4, 1953, of the aforementioned deficiency and of the fact that on January 5, 1953, the Herald Broadcasting Company, licensee of Radio Station KLVT, Levelland, Texas, had filed a protest directed against the said application and requested that it be designated for hearing; and that the Commission was unable to conclude that a grant was in the public interest; and

It further appearing, that the applicant has not replied to the Commission's letter;

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and

place to be later specified, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station, and the availability of other primary service to such areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with Radio Station KLVT, Levelland, Texas.

It is further ordered, That the Herald Broadcasting Company, licensee of Radio Station KLVT, Levelland, Texas, is made a party to this proceeding.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4555; Filed, May 22, 1953;  
8:50 a. m.]

[Docket Nos. 10507, 10508]

HILLTOP MANAGEMENT CORP. AND NORTH-  
ERN ALLEGHENY BROADCASTING Co.

ORDER DESIGNATING APPLICATIONS FOR CON-  
SOLIDATED HEARING ON STATED ISSUES

In re applications of Hilltop Management Corporation, Kane, Pennsylvania, Docket No. 10507, File No. BP-8577; Northern Allegheny Broadcasting Co., Kane, Pennsylvania, Docket No. 10508, File No. BP-8671, for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of May 1953;

The Commission having under consideration the above-entitled applications for construction permits for new standard broadcast stations to operate on 960 kilocycles, with a power of 500 watts, daytime only, at Kane, Pennsylvania;

It appearing, That the applicants are legally, technically, financially and otherwise qualified to operate the proposed stations, but that the operation of both stations as proposed would result in mutually prohibitive interference with each other, borderline interference with and from Stations WEBR, Buffalo, New York; Station WICA, Ashtabula, Ohio; and Station WWST, Wooster, Ohio; and that the application of the Northern Allegheny Broadcasting Company may otherwise not comply with the provisions of § 3.35 of the Commission rules and regulations;

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the subject applicants were advised by letters dated March 25, 1953, of the aforementioned deficiencies and that the Commission was unable to conclude that a grant of either application would be in the public interest;

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, Stations WEBR, WICA and WWST were advised by letters dated March 25, 1953, of the aforementioned deficiencies and re-

quested to advise the Commission within thirty days whether they would participate in any hearing on the instant applications; and

It further appearing, that on April 1, 1953, the Northern Allegheny Broadcasting Company filed a reply alleging that there might be some slight interference to Station WEBR, that there would be no interference to Station WWST and that they had not considered interference to Station WICA, and requesting a waiver of § 3.35 of the rules; and.

It further appearing, that on April 24, 1953, the Hilltop Management Corporation filed a reply alleging that there might be some slight interference to Station WEBR, that there would be no interference to Station WWST or Station WICA, and requesting that the Commission specifically include an issue to determine whether the application of Northern Allegheny Broadcasting Company complies with the provisions of § 3.35 of the Commission rules and regulations; and

It further appearing that on April 20, 1953, Station WEBR advised the Commission that it does not believe that objectionable interference will result from the proposed operation at Kane, Pennsylvania, and that therefore, it does not desire to appear or participate in any proceeding with reference thereto; and

It further appearing, that neither Station WWST nor Station WICA has replied to the Commission's letters; and

It further appearing, That the Commission, after consideration of the replies, is still unable to conclude that a grant of either application would be in the public interest and moreover, is of the opinion that a hearing is mandatory.

It is ordered, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding, at a time and place to be later specified, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations, and the availability of other primary service to such areas and populations.

2. To determine whether a grant of the Northern Allegheny Broadcasting Company application would be in contravention of the provisions of § 3.35 of the Commission rules and regulations.

3. To determine on a comparative basis which, of the operations proposed in the above-entitled applications, would best serve the public interest, convenience or necessity in the light of the evidence adduced under the foregoing issues and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each of the above-named applicants having a bearing on his ability to own and operate the proposed station.

(b) The proposals of each of the above-named applicants with respect to and management and operation of the proposed stations;

(c) The programming service proposed in each of the above-named applications.

FEDERAL COMMUNICATIONS  
COMMISSION,  
T. J. SLOWIE,  
Secretary.

[SEAL]

[F. R. Doc. 53-4556; Filed, May 22, 1953;  
8:51 a. m.]

[Docket Nos. 10510, 10511]

MOUNTCASTLE BROADCASTING Co., INC.,  
AND WKGN, INC.

ORDER DESIGNATING APPLICATIONS FOR CON-  
SOLIDATED HEARING ON STATED ISSUES

In re applications of Mountcastle Broadcasting Co., Inc., Knoxville, Tennessee, Docket No. 10510, File No. BPCT-813; WKGN, Incorporated, Knoxville, Tennessee, Docket No. 10511, File No. BPCT-996; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of May 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 6 in Knoxville, Tennessee; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters dated August 20, 1952, that their applications were mutually exclusive and that a hearing would be necessary; that Mountcastle Broadcasting Co., Inc., was advised by a letter dated April 2, 1953, that certain questions were raised as a result of deficiencies of a financial nature in its application; and that WKGN, Incorporated, was advised by a letter dated April 2, 1953, that certain questions were raised as a result of deficiencies of a financial and technical nature in its application; and

It further appearing, that the antenna system and site proposed by Mountcastle Broadcasting Co., Inc., would not constitute a hazard to air navigation, provided that a 25-watt, Type H radiobeacon be installed at the Inskip Fan Marker; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the reply to the above letters filed by Mountcastle Broadcasting Co., Inc. (no reply having been filed by WKGN, Incorporated) the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory that Mountcastle Broadcasting Co., Inc., is legally, financially, and technically qualified to construct, own and operate a television broadcast station; and that WKGN, Incorporated, is legally qualified to con-

struct, own and operate a television broadcast station, and is technically qualified to construct, own and operate a television broadcast station except as to the matter referred to in issue "2" below.

*It is ordered*, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 9:00 a. m. on June 15, 1953, in Washington, D. C., upon the following issues:

(1) To determine whether WKGN, Incorporated, is financially qualified to construct, own and operate the proposed television broadcast station.

(2) To determine whether the installation and operation of the antenna system proposed by WKGN, Incorporated, in its above-entitled application would constitute a hazard to air navigation.

(3) To determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

Released: May 19, 1953.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4557; Filed, May 22, 1953;  
8:51 a. m.]

[Docket Nos. 10512, 10513, 10514]

SCRIPPS-HOWARD RADIO, INC., ET AL.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Scripps-Howard Radio, Inc., Knoxville, Tennessee, Docket No. 10512, File No. BPCT-630; Radio Station WBIR, Inc., Knoxville, Tennessee, Docket No. 10513, File No. BPCT-686; Tennessee Television, Inc., Knoxville, Tennessee, Docket No. 10514, File No. BPCT-1002; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of May 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 10 in Knoxville, Tennessee; and

It appearing that the above-entitled applications are mutually exclusive in

that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters dated August 20, 1952, that their applications were mutually exclusive and that a hearing would be necessary; that Scripps-Howard Radio, Inc., was advised by a letter dated April 2, 1953, that certain questions were raised as a result of deficiencies of a legal and technical nature in its application, and that the question of whether its proposed antenna system and site would constitute a hazard to air navigation was unresolved; and that Tennessee Television, Inc., was advised by a letter dated April 2, 1953, that certain questions were raised as a result of a deficiency of a technical nature in its application, and that the question of whether its proposed antenna system and site would constitute a hazard to air navigation was unresolved; and

It further appearing, that the antenna systems and sites proposed by Scripps-Howard Radio, Inc. and Tennessee Television, Inc. would not constitute hazards to air navigation, provided that a 25-watt, Type H radiobeacon be installed at the Inskip Fan Marker; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory and that each of the above-named applicants is legally, financially, and technically qualified to construct, own and operate a television broadcast station;

*It is ordered*, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 9:00 a. m. on June 15, 1953, in Washington, D. C., to determine on a comparative basis which of the operations proposed in the above-entitled applications would best serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences among the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

Released: May 19, 1953.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4558; Filed, May 22, 1953;  
8:51 a. m.]

[Docket Nos. 10515, 10516]

MORRISVILLE BROADCASTING CO. AND  
PEOPLES BROADCASTING CORP.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Morrisville Broadcasting Company, Trenton, New Jersey, Docket No. 10515, File No. BPCT-1249; Peoples Broadcasting Corporation, Trenton, New Jersey, Docket No. 10516, File No. BPCT-1526; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of May 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 41 in Trenton, New Jersey; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters dated October 1, 1952, and March 31, 1953, that their applications were mutually exclusive and that a hearing would be necessary that Morrisville Broadcasting Company was advised by the letter of March 31, 1953 that certain questions were raised as a result of deficiencies of a legal, financial and technical nature in its application, and that the question of whether its proposed antenna system and site would constitute a hazard to air navigation was unresolved; and that Peoples Broadcasting Corporation was advised by the letter dated March 31, 1953, that certain questions were raised as a result of deficiencies of a legal, financial and technical nature in its application; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory and that each of the above-named applicants is legally and technically qualified to construct, own and operate a television broadcast station except as to matters set forth in the issues below;

*It is ordered*, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 9:00 a. m., on June 15, 1953, in Washington, D. C., upon the following issues:

1. To determine whether the above-named applicants are authorized to construct, own, and operate television broadcast stations in Trenton, New Jersey.

2. To determine whether the above-named applicants are financially qualified to construct, own, and operate the proposed television broadcast stations.

3. To determine whether the transmitter site specified in each of the above-entitled applications is suitable for the proposed operation.

4. To determine whether the installation and operation of the television antenna and tower proposed by Morrisville Broadcasting Company in its above-entitled application would constitute a hazard to air navigation.

5. To determine the precise geographic coordinates of the television antenna site proposed in the above-entitled application of Peoples Broadcasting Corporation.

6. To determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4559; Filed, May 22, 1953;  
8:51 a. m.]

d

[Docket Nos. 10517, 10518]

WSAV INC., AND WJIV-TV INC.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of WSAV, Incorporated, Savannah, Georgia, Docket No. 10517, File No. BPCT-703; WJIV-TV Inc., Savannah, Georgia, Docket No. 10518, File No. BPCT-1006; for construction permits for new television broadcast stations.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of May 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 3 in Savannah, Georgia; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters dated August 20, 1952, that their applications were mutually exclusive and that a hearing would be necessary that WSAV, Incorporated, was advised by a letter dated April 23, 1953, that the ques-

tion of whether its proposed antenna system and site would constitute a hazard to air navigation was unresolved; and that WJIV-TV Inc., was advised by a letter dated April 23, 1953, that certain questions were raised as a result of deficiencies of a financial nature which existed in its application; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the replies to the above letters, the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; that WSAV Incorporated, is legally, financially and technically qualified to construct, own and operate a television broadcast station; and that WJIV-TV, Inc., is legally and technically qualified to construct, own and operate a television broadcast station;

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 9:00 a. m. on June 15, 1953, in Washington, D. C., upon the following issues:

1. To determine whether WJIV-TV Inc., is financially qualified to construct, own and operate the proposed television broadcast station.

2. To determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4560; Filed, May 22, 1953;  
8:51 a. m.]

c

[Docket No. 10519, 10520]

SAVANNAH BROADCASTING CO. AND MARTIN & MINARD

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Savannah Broadcasting Company, Savannah, Georgia, Docket No. 10519, File No. BPCT-712; W. H. Martin and J. Gordon Minard, d/b as Martin & Minard, Savannah, Georgia, Docket No. 10520, File No. BPCT-1064; for construction permits for new television stations.

At a session of the Federal Communications Commission held at its offices

in Washington, D. C., on the 13th day of May 1953;

The Commission having under consideration the above-entitled applications, each requesting a construction permit for a new television broadcast station to operate on Channel 11 in Savannah, Georgia; and

It appearing, that the above-entitled applications are mutually exclusive in that operation by more than one applicant would result in mutually destructive interference; and

It further appearing, that pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters dated August 20, 1952, that their applications were mutually exclusive and that a hearing would be necessary; that Savannah Broadcasting Company was advised by a letter dated April 23, 1953, that certain questions were raised regarding the ownership of its stock; and that Martin & Minard was advised by a letter dated April 23, 1953, that certain questions were raised as a result of deficiencies of a financial nature which existed in its application, and that the question of whether its proposed antenna system and site would constitute a hazard to air navigation was unresolved; and

It further appearing, that upon due consideration of the above-entitled applications, the amendments filed thereto, and the reply to the above letters filed by Savannah Broadcasting Company (no reply having been received from Martin and Minard), the Commission finds that under section 309 (b) of the Communications Act of 1934, as amended, a hearing is mandatory; that Savannah Broadcasting Company is legally, financially and technically qualified to construct, own and operate a television broadcast station; and that Martin & Minard is legally and technically qualified to construct, own and operate a television broadcast station;

It is ordered, That, pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding to commence at 9:00 a. m., on June 15, 1953, in Washington, D. C., upon the following issues:

1. To determine whether Martin & Minard is financially qualified to construct, own and operate the proposed television broadcast station.

2. To determine on a comparative basis which of the operations proposed in the above-entitled applications would better serve the public interest, convenience and necessity in the light of the record made with respect to the significant differences between the applications as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed television station.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the above-entitled applications.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4561; Filed, May 22, 1953;  
8:52 a. m.]

[Docket No. 10521]

BAY RADIO, INC.

ORDER DESIGNATING APPLICATION FOR  
HEARING ON STATED ISSUE

In re application of Bay Radio, Inc. (KEAR) San Mateo, California, Docket No. 10521, File No. BP-3514; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 14th day of May 1953;

The Commission having under consideration a protest filed pursuant to section 309 (c) of the Communications Act of 1934, as amended, on May 1, 1953 by McClatchy Broadcasting Company, licensee of Station KFBK, Sacramento, California (1530 kc, 50 kw, unlimited time) requesting the Commission to reconsider its action of April 1, 1953 granting the above-entitled application of Bay Radio, Inc., licensee of Station KEAR (1550 kc, 1 kw, unlimited time) to increase the power of Station KEAR from 1 kw to 10 kw, and to designate the application for hearing;

It appearing, that the engineering affidavit, together with supporting field intensity measurements attached to the KFBK petition indicates that the 25 mv/m contour of Station KEAR, operating as proposed will overlap with the 2 mv/m contour of Station KFBK, that the Commission's further study of the matter, including an analysis of the field intensity measurements submitted by the petitioner, also indicates that operating as proposed, Station KEAR's 25 mv/m contour will overlap with the 2 mv/m contour of Station KFBK and that the Standards of Good Engineering Practice Concerning Standard Broadcast Stations provides that stations will not be authorized with a frequency separation of 30 kc if the 2 mv/m contour of one overlaps with the 25 mv/m contour of the other and

It further appearing, that the Commission is of the opinion that the aforesaid protest meets the requirements of section 309 (c) and that a hearing must be held on the KEAR application upon the matters put in issue by said protest, which issues, in the opinion of the Commission, are appropriate;<sup>1</sup>

*It is ordered*, That the above-described petition of McClatchy Broadcasting Company is granted;

*It is further ordered*, That pursuant to section 309 (c) of the Communications Act of 1934, as amended, the above-entitled application of Bay Radio, Inc. to increase the power of Station KEAR

from 1 kw to 10 kw is designated for hearing at a time and place to be designated in a subsequent Order upon the following issues:

1. To determine the nature and extent of the interference that will be caused to Station KFBK by the proposed operation of KEAR on the frequency of 1550 kilocycles with the power of 10 kilowatts and unlimited hours of operation.

2. To determine whether the 25 mv/m contour of Station KEAR, operating as proposed, will overlap with the 2 mv/m contour of Station KFBK in contravention of the provisions of Section 1 of the Standards of Good Engineering Practice (Pike & Fischer section 81:34).

3. To determine the areas and populations affected thereby and the availability of other broadcast service to such areas and population.

4. To determine whether, based on the findings made pursuant to Issues 1, 2 and 3, the public interest, convenience or necessity would be served by the grant of the above-entitled application.

*It is further ordered*, That McClatchy Broadcasting Company, licensee of Station KFBK, Sacramento, California is made a party to the proceeding.

*It is further ordered*, That effective immediately and pending the final determination of the above hearing, the effectiveness of the Commission's action of April 1, 1953 granting the above-entitled Bay Radio, Inc. application is postponed.

Released: May 19, 1953.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 53-4562; Filed, May 22, 1953;  
8:52 a. m.]

## FEDERAL POWER COMMISSION

[Project No. 2097]

NAMEKAGON HYDRO CO.

ORDER FOR REVIEW OF PRESIDING EXAMINER'S DECISION AND ORAL ARGUMENT THEREON

On April 14, 1953, the Presiding Examiner issued his decision in the above-entitled case in which the Namekagon Hydro Company seeks a license under the Federal Power Act for a project to be constructed on the Namekagon River in Wisconsin, Project No. 2097. The questions presented by the Presiding Examiner's decision warrant further consideration and we will therefore review his decision and hear oral argument thereon. Because of such review we will also consider the exceptions filed by the State of Wisconsin, although such exceptions were filed out-of-time.

The Commission orders: The decision of the Presiding Examiner in the above-entitled case is taken under review and oral argument will be heard thereon and on the exceptions filed by the State of Wisconsin, commencing May 25, 1953, at 10:00 a. m., e. d. s. t., in the Hearing

Room of the Commission, 441 G Street NW., Washington, D. C.

Adopted: May 14, 1953.

Issued: May 19, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY,  
Secretary.

[F. R. Doc. 53-4535; Filed, May 22, 1953;  
8:47 a. m.]

## INTERSTATE COMMERCE COMMISSION

[Sec. 5a, Application 44]

MOTOR CARRIERS TARIFF BUREAU, INC.

APPLICATION FOR APPROVAL OF AGREEMENT

MAY 20, 1953.

The Commission is in receipt of the above-entitled and numbered application for approval of an agreement under the provisions of section 5a of the Interstate Commerce Act.

Filed April 17, 1953, by G. H. Dilla, Chief of Tariff Bureau, Motor Carriers Tariff Bureau, Inc., 3350 Superior Ave., Cleveland 14, Ohio.

Agreement involved: An agreement between and among motor common carriers, members of the Motor Carriers Tariff Bureau, Inc., relating to rates, rules, and regulations governing the transportation of property between points served by such carriers in the United States east of the Rocky Mountains and north of the southern boundary of official territory and procedures for the joint initiation, consideration, and establishment thereof.

The complete application may be inspected at the office of the Commission in Washington, D. C.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing.

By the Commission, Division 2.

[SEAL] GEORGE W. LAIRD,  
Acting Secretary.

[F. R. Doc. 53-4564; Filed, May 22, 1953;  
8:52 a. m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2300]

NEW ENGLAND GAS AND ELECTRIC ASSN.  
AND ALCONQUY GAS TRANSMISSION CO.

NOTICE OF FILING REGARDING AMENDMENTS  
TO INDENTURE SECURING BONDS

MAY 18, 1953.

Notice is hereby given that New England Gas and Electric Association, a reg-

[File No. 70-3042]

METROPOLITAN EDISON CO. AND GENERAL  
PUBLIC UTILITIES CORP.SUPPLEMENTAL ORDER REGARDING ISSUANCE  
AND SALE OF BONDS AT COMPETITIVE BID-  
DING

MAY 19, 1953.

The Commission, by order dated May 8, 1953, having granted and permitted to become effective an application-declaration, as amended, filed, pursuant to the Public Utility Holding Company Act of 1935 ("act") by General Public Utilities Corporation ("GPU") a registered holding company, and one of its public utility subsidiaries, Metropolitan Edison Company ("Meted") regarding, among other things, (1) the issuance and sale by Meted of \$8,000,000 principal amount of First Mortgage Bonds, ... Percent Series, due 1983, pursuant to the competitive bidding requirements of Rule U-50, (2) the issuance and sale by Meted of unsecured notes to specified banks under the terms of a credit agreement, and (3) the issuance and sale by Meted of shares of its common stock to GPU and

The Commission's order having contained a condition, among others, that the proposed issuance and sale of bonds should not be consummated until the results of competitive bidding, pursuant to Rule U-50, should have been made a matter of record in this proceeding and a further order should have been issued with respect thereto; and jurisdiction having been reserved therein with respect to (1) all fees and expenses of GPU and with respect to the fees and expenses of counsel for Meted and of counsel for the purchasers of the notes and for the successful bidder for the bonds; and

A further amendment having been filed on May 19, 1953, setting forth the action taken by Meted to comply with the requirements of Rule U-50, and stating that, pursuant to the invitation for competitive bids, the following bids have been received:

Bidder	Annual interest rate (per cent)	Price to company (percent of principal) <sup>1</sup>	Annual cost to company (per cent)
Halsey, Stuart & Co. Inc.....	3 3/4	100.6699	3.8372
White, Weld & Co.....	3 3/4	100.5399	3.8417
Kidder, Peabody & Co.....	3 3/4	100.4390	3.8502
Drexel & Co.....		101.7600	3.9000
Kuhn, Loeb & Co.....	4		

<sup>1</sup>Exclusive of accrued interest from May 1, 1953.

The amendment having further stated that Meted has accepted the bid of the group headed by Halsey, Stuart & Co. Inc., as set forth above, and that the bonds will be offered to the public at a price of 101.3350 percent of the principal amount thereof, plus accrued interest from May 1, 1953, resulting in an underwriters' spread of 0.6651 percent of the principal amount or an aggregate of \$53,208; and

The amendment having set forth that the Pennsylvania Public Utility Commission has issued a supplemental order which expressly authorizes the issuance and sale of the bonds within the terms set forth above; and

The amendment having also set forth the fees and expenses of GPU, estimated not to exceed \$300, and the nature and extent of the legal services rendered or to be rendered in connection with the proposed transactions, for which requests for payment of fees have been made as follows:

Harold J. Ryan, counsel for Meted, \$7,500, of which \$500 is estimated to be for local counsel who made title searches and performed other services; Berlack, Israels & Liberman, special counsel for Meted, \$4,000, of which \$3,000 is allocated to the bonds and \$1,000 to the credit agreement and borrowings thereunder through 1953; said amendment having also stated that the successful bidders for the bonds are to pay legal fees of \$5,500 to Beekman & Bogue, their counsel, and that Meted is to pay Beekman & Bogue, special counsel for the banks which are to purchase the notes, legal fees of \$833 for services in connection with the credit agreement and, in addition, not more than \$200 for each closing under such agreement; and

The Commission having examined the said application-declaration, as further amended, and having considered the record herein and finding no basis for imposing terms or conditions with respect to the price to be received for the bonds, the interest rate and the underwriters' spread or for imposing terms or conditions, other than those specified below; and it appearing that the fees and expenses of GPU and the legal fees and expenses with respect to the transaction proposed by Meted are not unreasonable, provided they do not exceed the amounts set forth above:

*It is ordered,* That the jurisdiction heretofore reserved with respect to the matters to be determined by the competitive bidding in connection with the issuance and sale of the bonds under Rule U-50 and with respect to fees and expenses be, and it hereby is, released, and that said application-declaration, as amended be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.[F. R. Doc. 53-4532; Filed, May 22, 1953;  
8:46 a. m.]

[File No. 70-3053]

## WEST TEXAS UTILITIES CO.

ORDER REGARDING PROPOSED ISSUE AND SALE  
TO BANKS OF TWO YEAR NOTES

MAY 19, 1953.

West Texas Utilities Company ("West Texas Utilities") a public utility subsidiary of Central and South West Corporation, a registered holding company, having filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("act") particularly sections 6 (a) and 7 and Rule U-50 (a) (2) promulgated thereunder regarding the following proposed transactions:

istered holding company, and one of its subsidiary companies, Algonquin Gas Transmission Company ("Algonquin") have filed a declaration regarding the amendment of an indenture securing bonds, the issuance of which was authorized heretofore pursuant to a joint application-declaration under sections 6, 7, 9 (a) 10 and 12 (f) of the Public Utility Holding Company Act of 1935 ("act") and Rule U-50 promulgated thereunder.

All interested persons are referred to said declaration, which is on file in the office of this Commission, for a statement of the transactions therein proposed, which are summarized as follows:

Algonquin has outstanding \$27,600,000 principal amount of First Mortgage Pipeline Bonds, 3 3/4 Percent Series due 1971, and \$9,734,000 principal amount of First Mortgage Pipeline Bonds, 4 1/4 Percent Series due 1971. The bonds which were issued after authorization granted by this Commission are held by four insurance companies which have consented to the amendment of the original indenture securing the bonds. The amendment is contained in a Tenth Supplemental Indenture dated as of November 1, 1952, but executed in February 1953.

The amendment redefines "Event of Default" so as to extend from March 1, 1953, to September 1, 1953, the time within which Algonquin may, without being subject to a declaration of default, complete the pipeline to a maximum capacity of approximately 220,000 Mcf per day instead of the minimum of 250,000 Mcf per day previously specified. The amendment also extends until July 1, 1953, the time within which Algonquin may, without being subject to a declaration of default, obtain from the Federal Power Commission a certificate of convenience and necessity authorizing it to resume construction of the pipeline.

Notice is further given that any interested person may, not later than June 5, 1953, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by the said declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after June 5, 1953, said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.[F. R. Doc. 53-4530; Filed, May 22, 1953;  
8:46 a. m.]

Pursuant to a loan agreement dated April 21, 1953, West Texas Utilities proposes to borrow, from time to time prior to December 1, 1954, from banks named below the amounts shown:

First National Bank of Chicago	\$2,360,000
Bankers Trust Co.	2,360,000
First National Bank in Dallas	330,000
The Fort Worth National Bank	250,000
Citizens National Bank in Abilene	100,000
Farmers & Merchants National Bank	100,000
<b>Total</b>	<b>5,500,000</b>

Each sum borrowed is to be evidenced by a note maturing two years from the date of the Commission's order herein, and bearing interest from the date of issuance at 3 1/4 percent per annum, payable quarterly on the last day of March, June, September and December, until maturity. After maturity such notes are to bear interest at 6 percent per annum. The notes may be prepaid in whole or in part at any time without penalty, unless prepayment is made directly or indirectly from the proceeds of other bank borrowings, in which event the company is to pay a premium equal to 1/2 of 1 percent of the amount of the prepayment if made during the first year, and 1/4 of 1 percent if made thereafter. The commitment expires June 15, 1953 unless approved by the Commission prior thereto. A commitment fee at the rate of 1/2 of 1 percent on the daily average unused amount of the commitment is to be paid. All borrowings and prepayments are to be pro rata and in multiples of \$275,000. The proceeds of the proposed loans are to be used to finance in part, temporarily, the company's construction expenditures during the next two years, estimated at an aggregate of \$12,265,000. It is contemplated that the notes will be paid at or before maturity from the proceeds from the issue and sale of such securities as are deemed appropriate in the light of the market conditions, and as are approved by the Commission:

By amendment, declarant agrees that no notes evidencing borrowings under the credit agreement will be issued pursuant to this declaration after the expiration of one year from the date of this order unless a post-effective amendment shall first have been filed and permitted to become effective.

Notice of said filing having been given in the form and manner required by Rule U-23 promulgated pursuant to said act, the Commission not having received a request for a hearing within the time specified in said notice, or otherwise, and the Commission not having ordered a hearing thereon; and the Commission finding that the applicable provisions of the act are satisfied and observing no basis for adverse findings, and deeming it appropriate to permit said declaration, as amended, to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act that said declaration, as amended, be and become effective forthwith, subject to the terms and conditions contained in Rule U-24, and subject to the further condition that no notes evidencing bor-

rowings under the credit agreement shall be issued hereunder after the expiration of one year from the date of this order unless a post-effective amendment shall first have been filed and permitted to become effective.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F. R. Doc. 53-4533; Filed, May 22, 1953; 8:46 a. m.]

[File No. 70-3066]

BLYTH & Co., Inc.

NOTICE REGARDING PROPOSAL TO ACQUIRE COMMON STOCK OF HOLDING COMPANY AND OF APPLICATION FOR TEMPORARY EXEMPTION

MAY 18, 1953.

Notice is hereby given that Blyth & Co., Inc. ("Blyth") an investment banking firm, has filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("act") a combined application and an amendment thereto requesting (a) that the Commission approve the acquisition by Blyth from Standard Oil Company of California ("Standard") an exempt holding company, of 448,712 shares, approximately 61 percent, of the outstanding 741,974 shares of common stock of Pacific Public Service Company ("Pacific") an exempt holding company, and (b) that the Commission grant to Blyth and its subsidiaries an exemption from the provisions of the act for a period of 12 months. Applicant designates sections 9 (a) (2) and 10 of the act as applicable to its acquisition of the common stock of Pacific and section 3 (a) (4) as applicable to its request for exemption.

All interested persons are referred to said application, as amended, which is on file in the offices of the Commission for a statement of the transactions proposed therein which are summarized as follows:

Blyth has entered into an agreement to purchase from Standard, subject to the approval of this Commission, all of Standard's holdings of 448,712 shares of the common stock of Pacific at a price of \$21 per share, or an aggregate consideration of \$9,422,952. Following the acquisition of such stock, Blyth will make a similar offer, the form of which is to be subject to the approval of this Commission, to the other holders of the common stock of Pacific. Following the acquisition of the common stock of Pacific from Standard and such other stockholders of Pacific who elect to accept Blyth's offer, Blyth proposes to endeavor to negotiate a merger (or consolidation) of Pacific into Pacific Gas and Electric Company ("P. G. & E.") pursuant to which the common stockholders of Pacific would receive for their shares, shares of common stock of P. G. & E. In the event that such a merger is consummated, Blyth states that it intends to then distribute to the public the shares of P. G. & E. stock received by it. If within a reasonable time Blyth fails to negotiate and consummate the merger of Pacific into P. G. & E., Blyth

proposes to make a public distribution of the common stock of Pacific proposed to be acquired by it.

Pacific's sole public utility subsidiary is Coast Counties Gas and Electric Company ("Coast Counties") Coast Counties is incorporated and operates in California. It distributes electricity, all of which is purchased from P. G. & E., in substantially all of Santa Cruz and San Benito Counties and in certain areas in Monterey and Santa Clara counties, all of which counties are adjacent to and surrounded by the electric service area of P. G. & E. Coast Counties also distributes natural gas to consumers in that territory as well as other areas in Northern California adjacent to or near the gas service area of P. G. & E. from whom Coast Counties purchases a substantial amount of its natural gas requirements.

The application states that the acquisition of the common stock of Pacific by Blyth will result in the elimination of Standard as a holding company under the act, and thus tend toward the carrying out of the objectives of section 11 of the act. The application further states that effectuation of a merger between Pacific and P. G. & E. would eliminate Pacific as a holding company with similar desirable results under the act.

In connection with its application for an exemption from the provisions of the act so long as Blyth remains a holding company with respect to Pacific and its system, Blyth has agreed, among other things, (a) that it will within twelve months from the Commission's order granting the exemption, or such additional time as may be granted by the Commission, sell its holdings of Pacific common stock, and (b) that during the existence of such exemption Blyth will notify the Commission of any proposed transaction between it and the Pacific system which would otherwise be subject to the act and that unless Blyth makes any modifications requested by the Commission with respect to such transaction the exemption will automatically terminate and Blyth will register as a holding company under the act.

Applicant requests that the order to be entered by the Commission herein be issued as soon as practicable and that it become effective forthwith upon issuance.

Notice is further given that any interested person may, not later than June 1, 1953, at 12:30 p. m., request the Commission in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law raised by such application proposed to be controverted, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. Said application as filed or as it may be further amended may be granted at any time after 12:30 p. m., on June 1, 1953.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F. R. Doc. 53-4531; Filed, May 22, 1953; 8:46 a. m.]

[File No. 70-3068]

## MICHIGAN-WISCONSIN PIPE LINE CO.

## NOTICE OF FILING REGARDING ISSUE AND EXCHANGE OF ONE YEAR NOTES

MAY 18, 1953.

Notice is hereby given that Michigan-Wisconsin Pipe Line Company ("Michigan-Wisconsin") a subsidiary of American Natural Gas Company, a registered holding company, has filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("act") Applicant designates section 6 (b) and Rule U-50 (a) (2) promulgated thereunder as applicable to the proposed transactions.

Notice is hereby further given that any interested person may, not later than June 8, 1953 at 5:30 p. m., e. d. t., request the Commission in writing that a hearing be held in respect of said application, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street, NW., Washington 25, D. C. At any time after June 8, 1953 said application, as filed or as amended; may be granted as provided in Rule U-23 of the Rules and regulations promulgated under the act, or the Commission may exempt the proposed transactions as provided in Rule U-20 and Rule U-100 thereof.

All interested persons are referred to the application on file in the office of the Commission for a statement of the transactions therein proposed which are summarized as follows:

Michigan-Wisconsin proposes to issue \$20,000,000 principal amount of 3 3/4 percent notes to mature July 1, 1954, and to exchange them with the banks hereinafter named in the principal amounts shown for a like principal amount of the outstanding 3 percent notes of the company held by such banks:

The National City Bank of New York	\$6,666,667
The Hanover Bank, New York	6,666,667
Mellon National Bank & Trust Co., Pittsburgh	6,666,666
Total	20,000,000

The notes are to be issued under a loan agreement to be executed upon the granting of the application by the Commission. The notes are to be prepayable at any time in amounts of \$600,000, or multiples thereof, without penalty, except that if prepayment is to be made from the proceeds from other bank borrowings a prepayment penalty of one-quarter of one percent per annum from the date of prepayment to July 1, 1954, is to be payable. The company states that it contemplates the consummation of a permanent financing program prior to the maturity of the notes to be issued.

The company will covenant that it will not without prior written consent of each of the Banks (i) pay dividends on its common stock in excess of the amount permitted by its outstanding mortgage or any mortgage indenture supplementing

or replacing it; (ii) incur, create, assume, guarantee, or suffer any liability on account of other borrowings or of any funded debt, unless subordinated to the notes issued hereunder, except (a) the presently outstanding notes, (b) the notes to be issued, and (c) bonds issued under the existing mortgage or any mortgage supplementing or replacing it, and that the proceeds of any bonds issued shall be applied first to prepayment of the proposed notes; or (iii) merge or consolidate with or into any other company.

It is stated that no regulatory agency or authority other than this Commission has jurisdiction over the proposed transactions, and that the proposed issue and exchange of notes is exempt from section 6 (a) of the act by reason of the provisions of section 6 (b) and is exempt from the competitive bidding requirements of Rule U-50 by reason of the provision of paragraph (a) (2) thereof.

It is requested that the Commission enter an order, to become effective upon its issuance, by June 18, 1953, or as soon thereafter as the convenience of the Commission will permit, granting said application.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,  
Secretary.[F. R. Doc. 53-4529; Filed, May 22, 1953;  
8:46 a. m.]

[File No. 812-829]

## AMERICAN RESEARCH AND DEVELOPMENT CORP. AND HIGH VOLTAGE ENGINEERING CORP.

## NOTICE OF FILING REQUESTING ORDER EXEMPTING CERTAIN TRANSACTIONS BETWEEN AFFILIATES

Notice is hereby given that American Research and Development Corporation ("Research") Boston, Massachusetts, a registered closed-end nondiversified investment company and its controlled company, High Voltage Engineering Corporation ("High Voltage") Cambridge, Massachusetts, have filed a joint application pursuant to section 17 (b) of the Act seeking an order exempting the transactions summarized below from section 17 (a) of the act.

High Voltage, organized in 1946, engages in the manufacture of multimillion volt electrostatic generators for use in scientific research, deep X-ray cancer therapy, industrial radiography, cathodray sterilization of pharmaceuticals and foods; linear accelerators for providing electrons with energies up to fifty million volts; and precision accessory apparatus.

High Voltage has outstanding 17,166 shares of common stock, no par value, none of which are held by Research, and 25,000 shares of participating, voting, preferred stock, \$10 par value, of which Research owns 20,000 shares, bought at par in 1946, which represents 47.4 percent of the voting power of High Voltage. The common stock, all of which is owned by officers, directors and employees of High Voltage, ranks equally with the

preferred in all respects, except that the preferred stock is entitled to a \$10 per share preference in liquidation, after which the common and preferred stocks share pro rata in any further distribution. High Voltage also had outstanding, at March 31, 1953, \$175,000 of short-term bank loans, a \$42,000 unsecured installment 3 percent bank note due serially through 1955 and a \$110,250 installment 4 percent mortgage due serially through 1965.

High Voltage's earnings for the years 1949 thru 1952, inclusive, ranged from \$1.38 to \$1.54 per share on the presently outstanding preferred and common stocks. During the same period annual dividends of 50 cents per share were paid on the preferred and common stocks.

High Voltage proposes to recapitalize its present preferred and common stocks into a single class of new common stock, \$1 par value, by, in effect, exchanging 5 shares of new common stock for each share of presently outstanding preferred and common stock. After the recapitalization High Voltage will have total authorized common stock of 500,000 shares, of which 210,830 shares will be issued and outstanding.

The applicants state the proposed recapitalization is a necessary preliminary step to the sale of additional stock to raise funds for construction of additional plant facilities, for research and development, for additional working capital and to repay all or part of its present short term bank borrowings. In order to raise these funds the company proposes to sell at private sale 125,000 shares of common stock at a price of \$6 per share.

The application states that Research and the other holders of the preferred stock of High Voltage are willing and believe it to their advantage to relinquish the liquidating preference of \$10 per share which attaches to their preferred stock in order to permit High Voltage to obtain the equity financing mentioned above. Research, which valued the preferred stock of High Voltage at \$20 per share, as of December 31, 1952, has also stated that the fact that the new common stock will be sold at a price 50 percent in excess of the value which it placed on the preferred stock at the above date, furnishes full and adequate consideration, for the exchange.

Section 17 (a) of the act prohibits the sale or purchase of securities or other property by an affiliated company of a registered investment company to or from such registered company, subject to certain exceptions, unless the Commission, upon application pursuant to section 17 (b) of the act, grants an exemption from the provisions of section 17 (a). The applicants state that the standards of section 17 (b) are met in that the terms of the proposed transactions are fair and reasonable and do not involve over-reaching on the part of any person concerned, and that the transactions are consistent with the policies of Research as recited in its registration statement and reports filed under the act and are consistent with the general purposes of the act.

Notice is further given that any interested person may, not later than June 1, 1953, at 5:30 p. m. submit to the Com-

mission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the Rules and Regulations promulgated under the act.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F. R. Doc. 53-4582; Filed, May 22, 1953; 8:55 a. m.]

**DEPARTMENT OF JUSTICE**

**Office of Alien Property**

IVAN BUNIN

**NOTICE OF INTENTION TO RETURN VESTED PROPERTY**

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Ivan Bunin, also known as Ivan Bouhine, Paris, France, Claim No. 41372; \$527.00 in the Treasury of the United States. All right, title, interest and claim of whatsoever kind or nature in and to every copyright, claim of copyright, license, agreement, privilege, power and every right of whatsoever nature, including, but not limited to all monies and amounts, by way of royalties, share of profits or other emolument, and all causes of action accrued or to accrue relating to the works entitled *The Village* and *The Gentleman From San Francisco* as listed in Exhibit A to Vesting Order No. 3552 effective May 9, 1944 (Vol. 523, pages 354 through 391), to the extent owned by Ivan Bunin also known as Ivan Bouhine immediately prior to vesting thereof by Vesting Order No. 3552.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General:

[SEAL] PAUL V. MYRON,  
Deputy Director  
Office of Alien Property.

[F. R. Doc. 53-4542; Filed, May 22, 1953; 8:48 a. m.]

**BURMEISTER & WAIN'S**

**NOTICE OF INTENTION TO RETURN VESTED PROPERTY**

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended,

notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Burmeister & Wain's, Maskin-og-Skibbyggeri, Copenhagen, Denmark, Claim No. 36651; Property described in Vesting Order Nos. 3944 (9 F. R. 9682, August 9, 1944); 664

(8 F. R. 4933, April 17, 1943); and 230 (7 F. R. 9333, November 26, 1942), relating to United States Letters Patent, Patent Applications, and Contract Interests, more particularly described in Schedule A attached hereto and made a part hereof. Cash in the Treasury of the United States in the amount of \$63,300.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director  
Office of Alien Property.

**SCHEDULE A—PROPERTY CLAIMED BY BURMEISTER AND WAIN**

**I. PATENTS VESTED BY VESTING ORDER NO. 3944**

Patent No.	Date issued	Inventor	Title
1,747,935	Feb. 18, 1930	Torkild Valdemar Hammingsen.	Fuel Valve for Internal Combustion Engines.
1,753,367	May 29, 1930	Ove Petersen.	Injection Valve for Internal Combustion Engines.
1,792,444	Feb. 10, 1931	do.	Double Acting Internal Combustion Engine.
1,803,250	Apr. 23, 1931	Torkild Valdemar Hammingsen.	Internal Combustion Engine.
1,823,389	Sept. 15, 1931	do.	Scavenging for Two Stroke Internal Combustion Engines.
1,841,764	Jan. 19, 1932	Einar Selver.	Gudgeon Pin Especially for Trunk Pistons in Internal Combustion Engines.
1,875,457	Sept. 6, 1932	Torkild Valdemar Hammingsen.	Cooling Device for Injection Nozzles of Internal Combustion Engines.
1,909,605	Mar. 7, 1933	do.	Controlling Device for Controlling Pistons of Internal Combustion Engines.
1,904,056	Apr. 18, 1933	Viggo Axel Kjaer.	Reversible Rotary Blower or Pump.
1,916,482	July 4, 1933	do.	Yellable Gearing.
1,925,755	Sept. 5, 1933	Torkild Valdemar Hammingsen.	Shaft Angularity Adjusting Device.
1,953,148	May 8, 1934	Viggo Axel Kjaer.	Device for Counterbalancing or Diminishing the Vibrations Occurring in the Stationary Parts of Engine Plants and the Like.
1,943,143	Jan. 9, 1934	Ove Petersen.	Double Acting Internal Combustion Engine.
2,002,115	May 21, 1935	Viggo Axel Kjaer.	Resilient Coupling.
2,028,459	Jan. 21, 1936	do.	Device for Reducing Torsional Vibrations in Shafts, Chain.
2,049,841	Aug. 4, 1939	do.	Lubricating Device for Driving Chains.
2,103,161	Dec. 21, 1937	Torkild Valdemar Hammingsen.	Engine Speed Governor.
2,116,025	May 3, 1938	do.	do.
2,116,192	do.	Pec Draminsky.	Elastic Coupling.
2,217,549	Oct. 8, 1940	Torkild Valdemar Hammingsen.	Valve Spring for Engines.
2,217,550	do.	do.	Crankshaft.
2,219,033	Oct. 22, 1940	Otto Lund and Ove Petersen.	Two Stroke Internal Combustion Engine.
2,223,893	Dec. 3, 1940	Ove Petersen and Einar Selver.	Do.
2,249,631	July 8, 1941	Torkild Valdemar Hammingsen.	Welded Frame and Bedplate for Vertical Piston Machines.
2,250,376	July 22, 1941	do.	Cylinder Construction for Internal Combustion Engines.
2,250,378	do.	Adolf Heumeller.	Do.
2,254,410	Sept. 2, 1941	Haakon Carl Herman Andresen.	Multi-cylinder Single Acting Two Stroke Cycle Internal Combustion Engine of the Crosshead Type.

**II. PATENTS VESTED BY VESTING ORDER NO. 624**

Patent No.	Date issued	Inventor	Title
1,927,368	Sept. 19, 1933	Viggo Axel Kjaer.	Four Stroke Internal Combustion Engine.
2,193,763	Apr. 30, 1949	Pec Draminsky.	Hydraulic Oscillation Damper.
2,279,491	Apr. 14, 1942	Ove Petersen.	Governor for Power Engines.

**III. PATENT APPLICATIONS VESTED BY VESTING ORDER NO. 230**

Patent application serial No.	Date issued	Inventor	Title
(now Patent No. 2,325,538)	Apr. 24, 1941 (July 27, 1943) <sup>1</sup>	Ove Petersen and Svend Harald Jensen.	Method and Means for Operating Internal Combustion Engines with Supercharge.
(now Patent No. 2,344,364)	Jan. 29, 1942 (Mar. 14, 1944) <sup>1</sup>	Ove Petersen and Niels Mads Lindberg.	Internal Combustion Engine with Crosshead.

<sup>1</sup> Refers to date patent issued to the Alien Property Custodian.

**IV. CONTRACT REQUESTS VESTED BY VESTING ORDER NO. 3944**

All interests and rights (including all royalties and other monies payable or held with respect to such interests and rights and all damages for breach of the agreement hereinafter described, together with the right to sue therefor) created in Burmeister & Wain's Maskin-og-Skibbyggeri by virtue of an agreement dated Sept. 1, 1939 (including all modifications thereof and supplements thereto, including, but not by way of limitation, supplemental agreements dated respectively July 18, 1938, and Nov. 1, 1939) by and between said Burmeister & Wain's Maskin-og-Skibbyggeri and Nordberg Manufacturing Company, which agreement relates, among other things, to certain United States Letters Patent, to the extent owned by Burmeister & Wain's Maskin-og-Skibbyggeri immediately prior to the vesting thereof by Vesting Order No. 3944.

[F. R. Doc. 53-4643; Filed, May 22, 1953; 8:48 a. m.]

ANDRE MAXIME DUCRET AND JEAN ROBERT RIDEAU

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Andre Maxime Ducret, Paris, France, Claim No. 41705; Jean Robert Rideau, Paris, France, Claim No. 42252. An undivided one-half part of the property described in Vesting Order No. 666 (8 F. R. 5047, April 17, 1943) relating to United States Letters Patent Nos. 2,205,543 and 2,222,742 to each of the claimants.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General.

[SEAL] PAUL V MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 53-4544; Filed, May 22, 1953; 8:48 a. m.]

LOUIS HENRI HERKERT

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Louis Henri Herkert, Boulogne-sur-Seine, France, Claim No. 41704; Property described in Vesting Order No. 293 (7 F. R. 9836, November 26, 1942) relating to United States Patent Application Serial No. 387,794 (now United States Letters Patent No. 2,372,204) and United States Letters Patent No. 2,442,360 resulting from a division of Application Serial No. 387,794 identified as Divisional Application Serial No. 584,877.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General.

[SEAL] PAUL V. MYRON,  
Deputy Director  
Office of Alien Property.

[F. R. Doc. 53-4545; Filed, May 22, 1953; 8:48 a. m.]

EUGENIO AND MARIA LUIGIA RAFFO

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date

of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Eugenio Raffo, Maria Luigia Raffo a/k/a Irene DeFerrari, Genoa, Italy, Claim No. 39835; \$56.23 in the Treasury of the United States and stock of the De Nobili Cigar Company, a New York corporation, consisting of 10 shares, third preferred capital stock, par value \$25 per share, Certificate No. 310 and 4 shares, common capital stock, par value \$50 per share, Certificate No. 272, presently in custody of Safekeeping Department, Federal Reserve Bank of New York, at New York City; one-half thereof to each claimant.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General.

[SEAL] PAUL V MYRON,  
Deputy Director  
Office of Alien Property.

[F. R. Doc. 53-4546; Filed, May 22, 1953; 8:49 a. m.]

GIUSEPPINA AND RACHELE ROCCA

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Giuseppina Rocca, a/k/a Giuseppina-Dovo, Pietra Ligure (Savona-Italy), Claim No. 40258; \$1,976.58 in the Treasury of the United States.

Rachele Rocca, Pietra Ligure (Savona-Italy), Claim No. 40201; \$1,976.57 in the Treasury of the United States. All right, title, interest and claim of any kind or character whatsoever of Giuseppina Dovo and Rachele Rocca in and to the Estate of John A. Rocca, a/k/a John Rocca, J. A. Rocca, Jack Rocca, Giacomo A. Rocca and Giacomo Rocca, deceased.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General.

[SEAL] PAUL V MYRON,  
Deputy Director  
Office of Alien Property.

[F. R. Doc. 53-4547; Filed, May 22, 1953; 8:49 a. m.]

KARL SCHIMEK

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return,

and after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., Property, and Location*

Karl Schimek, Graz, Hackbörgasse 24, Austria, Claim No. 44980, Vesting Order No. 3101; \$386.35 in the Treasury of the United States. A one-twelfth (1/12) interest in 11 shares Refinite Corporation, \$100.00 par value capital stock, presently in the Safekeeping Department, Federal Reserve Bank of New York. An undivided one-twelfth (1/12) interest in an undivided two-thirds (2/3) interest in an undivided three-fourths (3/4) interest in and to the South Half (S 1/2) of the Northwest Quarter (NW 1/4) of Section Seventeen (17); Township Nineteen (19), Range Fifty (50), Morrill County, Nebraska.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General.

[SEAL] PAUL V MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 53-4548; Filed, May 22, 1953; 8:49 a. m.]

MME. ANNE MARIE AND PIERRE PAUL JACQUES VION

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

*Claimant, Claim No., and Property*

Mme. Anne Marie known as Lucie Gautier, widow of Auguste Henri Eugene Vion, Pierre Paul Jacques Vion, Paris, France, Claim No. 36642; To: Mme. Anne Marie known as Lucie Gautier, widow of Auguste Henri Eugene Vion an undivided five-eighths part of the property described below.

To: Pierre Paul Jacques Vion an undivided three-eighths part of the property described below subject to the right of usufruct of Mme. Anne Marie known as Lucie Gautier, widow of Auguste Henri Eugene Vion, being a life interest in one-eighth of the property described below.

All right, title and interest in and to United States Letters Patent No. 1,590,639 vested by Vesting Order No. 1039 (8 F. R. 4029, April 2, 1943).

All interests and rights created in Eugene Vion and his heirs, executors, administrators, and assigns in and to an agreement made May 7, 1937, by and between Eugene Vion and Bendix Aviation Corporation, relating to compensating devices for magnetic compasses and similar instruments and the patent rights connected therewith, together with all accrued royalties and other monies payable or held with respect to such interest to the extent owned by Eugene Vion immediately prior to vesting by Vesting Order No. 1039.

Executed at Washington, D. C., on May 18, 1953.

For the Attorney General.

[SEAL] PAUL V MYRON,  
Deputy Director,  
Office of Alien Property.

[F. R. Doc. 53-4549; Filed, May 22, 1953; 8:49 a. m.]