



# FEDERAL REGISTER

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 OF THE UNITED STATES

Washington, Wednesday, August 26, 1953

## TITLE 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

#### PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

##### DEPARTMENT OF STATE; DEPARTMENT OF AGRICULTURE

1. Effective upon publication in the FEDERAL REGISTER, § 6.302 is amended as follows: Paragraph (a) (1) is amended and subparagraph (2) is added; subparagraphs (2) and (3) are added to paragraph (c); subparagraphs (2) and (3) are added to paragraph (d); subparagraph (2) is added to paragraph (e), and paragraphs (f) through (m) are added.

§ 6.302 *Department of State*—(a) *Office of the Secretary*. (1) Until December 31, 1954, two Special Assistants to the Under Secretary for Administration.

(2) Until December 31, 1954, one private secretary to the Under Secretary for Administration.

(c) *Office of the Assistant Secretary for Congressional Relations*. \* \* \*

(2) Deputy Assistant Secretary.  
(3) Congressional Liaison Officer (Senate).

(d) *Office of the Assistant Secretary for Public Affairs*. \* \* \*

(2) Deputy Assistant Secretary.  
(3) One private secretary to the Assistant Secretary.

(e) *Office of the Assistant Secretary for Economic Affairs*. \* \* \*

(2) One private secretary to the Assistant Secretary.

(f) *Office of the Special Assistant for Research and Intelligence*. (1) One private secretary.

(g) *Office of the Counsellor*. (1) One private secretary to the Counsellor.

(h) *Bureau of Near Eastern, South Asian, and African Affairs*. (1) Deputy Assistant Secretary.

(2) One private secretary to the Assistant Secretary.

(i) *Bureau of United Nations Affairs*. (1) Deputy Assistant Secretary.

(2) One private secretary to the Assistant Secretary.

(j) *Bureau of European Affairs*. (1) Deputy Assistant Secretary.

(2) One private secretary to the Assistant Secretary.

(k) *Bureau of Far Eastern Affairs*.

(1) Deputy Assistant Secretary.

(2) One private secretary to the Assistant Secretary.

(1) *Bureau of Inter-American Affairs*.

(1) Deputy Assistant Secretary.

(2) One private secretary to the Assistant Secretary.

(m) *Office of the Legal Adviser*. (1) Deputy Legal Advisor.

(2) One private secretary to the Legal Advisor.

2. Effective upon publication in the FEDERAL REGISTER, paragraphs (f), (i) (5), and (o) of § 6.111 are revoked, and paragraph (i) (1) is amended to read as follows:

§ 6.111 *Department of Agriculture*.

(i) *Production and Marketing Administration*. (1) Five Area Directors at a salary equivalent to GS-15.

3. Effective upon publication in the FEDERAL REGISTER, paragraphs (1) through (o) are added to § 6.311 as set out below.

(1) *Production and Marketing Administration*. (1) Administrator.

(2) One Deputy Administrator.

(3) Three Assistant Administrators.

(4) Three Deputy Assistant Administrators.

(5) Four Confidential Assistants to the Administrator.

(6) One private secretary to the Administrator.

(m) *Commodity Credit Corporation*.

(1) The President.

(2) The Executive Vice-President.

(3) The Secretary.

(4) One Confidential Assistant to the President.

(n) *Extension Service*. (1) Director of Extension Work.

(2) One Assistant Director.

(3) One Confidential Assistant to the Director.

(4) One private secretary to the Director.

(o) *Soil Conservation Service*. (1) Chief.

(2) One Deputy Chief.

(3) One Confidential Assistant to the Chief.

(4) One private secretary to the Chief.

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(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 10440, March 31, 1953, 18 F. R. 1823)

UNITED STATES CIVIL SERVICE COMMISSION,  
[SEAL] WM. C. HULL,  
*Executive Assistant.*

[F. R. Doc. 53-7486; Filed, Aug. 26, 1953; 8:50 a. m.]

**TITLE 6—AGRICULTURAL CREDIT**

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

Subchapter C—Loans, Purchases, and Other Operations

[1953 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Amdt. 1, Winter Cover Crop Seed]

**PART 601—GRAINS AND RELATED COMMODITIES**

**SUBPART—1953-CROP WINTER COVER CROP SEED LOAN AND PURCHASE AGREEMENT PROGRAM**

**SCHEDULE OF SUPPORT RATES AND SPECIFICATIONS**

The regulations issued by Commodity Credit Corporation (18 F. R. 3577) containing the specific regulations for the 1953-crop winter cover crop seed price support program are amended by changing § 601.235 to read as follows:

§ 601.235 *Schedule of support rates and specifications.* The support rates at which loans will be made and at which settlement will be made on deliveries under loans and purchase agreements shall be computed for all approved points of delivery in accordance with the basic rates, specifications, and discounts shown in the following schedule, except that the basic rate for hairy vetch shall be the applicable basic county rate shown in § 601.236.

1952, in 17 F R 715, is further amended by changing the Description by Geographical Coordinates column to read: "N boundary: lat 32 02'00" N; E boundary: long. 110 51'00" W; S boundary: lat 31 54'00" N; W boundary: long 110 57'00" W."

2 In § 608.14, the Salton Sea California, area 1 (D-300), published on June 3, 1952, in 17 F R 4977, is deleted.

3 In § 608.51, b. Fort Hood, Texas, area (2), is added to read:

come effective when indicated in order to promote safety of the flying public. Since a military function of the United States is involved, compliance with the notice, procedures and effective date provisions of section 4 of the Administrative Procedure Act is not required.

Pat. 608 is amended as follows:

1 In § 608.12 the Sahuarita, Arizona, area (D-310), published on July 16 1949, in 14 F R 4288, amended on March 29, 1951, in 16 F R 2720 and on January 24,

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
F O R T H O O D (Austin Chart)	2 (D-418); Beginning at lat. 31°18'00" N; long. 107°30'00" W; S. E. to lat. 31°13'40" N; long. 107°30'00" W; S. S. W. to lat. 31°09'10" N; long. 107°03'20" W; N. W. to lat. 31°04'00" N; long. 107°38'00" W; W point of beginning	Surface to unlimited	Continuous	Fort Hood, Tex

(Sec 205 52 Stat 984, as amended; 40 U S C 425. Interpret or apply sec 601, 52 Stat 1007 as amended; 40 U S C 551)

This amendment shall become effective on September 1, 1953

**Applicability of provisions is amended by the addition of a new item to read as follows:**

5 Foreign distribution license The Foreign Distribution (FD) license authorizes the exportation of commodities identified on the Positive List by the symbol "F" in the column headed 'Commodity Lists' to a distributor located in a foreign country, other than Hong Kong, Macao, and Subgroup A countries, for resale distribution, or use in the distributor's country, or for reexportation to other countries (See Part 378 of this subchapter)

2 Section 372.14 Reexportation from country of destination paragraph (a) General provisions is amended in the following particular:

a The first sentence in paragraph (a) beginning "Except under the Time Limit (TL) license \* \* \*" is amended to read as follows: Except under the Time Limit (TL) license (see Part 377 of this subchapter), and the Foreign Distribution (FD) license (see Part 378 of this subchapter) if it is stated in a certificate of statement of an export license application that the commodity or commodities to be exported are intended for distribution or resale in a country or countries other than the named country of ultimate destination, the validated license will specifically name the country or countries to which distribution or resale is authorized."

some effective when indicated in order to promote safety of the flying public. Since a military function of the United States is involved, compliance with the notice, procedures and effective date provisions of section 4 of the Administrative Procedure Act is not required.

Pat. 608 is amended as follows:

1 In § 608.12 the Sahuarita, Arizona, area (D-310), published on July 16 1949, in 14 F R 4288, amended on March 29, 1951, in 16 F R 2720 and on January 24,

Name and location (chart)	Common ryegrass		Roughness (Lathyrus hirsutus) 2		Crimson clover		Certified reseedling crimson clover 3	
	Cents	Percent	Cents	Percent	Cents	Percent	Cents	Percent
F O R T H O O D (Austin Chart)	10	90	0	0	10	85	10	85
	10	90	0	0	10	85	10	85
F O R T H O O D (Austin Chart)	10	90	0	0	10	85	10	85
	10	90	0	0	10	85	10	85

(Sec 205 52 Stat 984, as amended; 40 U S C 425. Interpret or apply sec 601, 52 Stat 1007 as amended; 40 U S C 551)

This amendment shall become effective on September 1, 1953

**Applicability of provisions is amended by the addition of a new item to read as follows:**

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2 Section 372.14 Reexportation from country of destination paragraph (a) General provisions is amended in the following particular:

a The first sentence in paragraph (a) beginning "Except under the Time Limit (TL) license \* \* \*" is amended to read as follows: Except under the Time Limit (TL) license (see Part 377 of this subchapter), and the Foreign Distribution (FD) license (see Part 378 of this subchapter) if it is stated in a certificate of statement of an export license application that the commodity or commodities to be exported are intended for distribution or resale in a country or countries other than the named country of ultimate destination, the validated license will specifically name the country or countries to which distribution or resale is authorized."

**TITLE 15—COMMERCE AND FOREIGN TRADE**

**Chapter III—Bureau of Foreign and Domestic Commerce, Department of Commerce**

Subchapter C—Office of International Trade

16th Gen Rev of Export Regs, Amdt 61 1

**PART 372—PROVISIONS FOR INDIVIDUAL AND OTHER VALIDATED LICENSES**

**PART 373—LICENSES G POLICIES AND RELATED SPECIAL PROVISIONS**

**PART 378—FOREIGN DISTRIBUTION (FD) LICENSE**

**MISCELLANEOUS AMENDMENTS**

1 In § 372.1 Applicability and general provisions the note following paragraph

This amendment was published in Current Export Bulletin No 711, dated August 13, 1953

**SCHEDULE OF BASIS RATES SPECIFICATIONS, AND DISCOUNTS FOR 1953 WINTER COVER CROF SEED**

Basic rate per pound (not weight)	Early vetch 1		Common ryegrass		Roughness (Lathyrus hirsutus) 2		Crimson clover		Certified reseedling crimson clover 3	
	Cents	Percent	Cents	Percent	Cents	Percent	Cents	Percent	Cents	Percent
1	10	90	10	90	10	85	10	85	10	85
2	10	90	10	90	10	85	10	85	10	85
3	10	90	10	90	10	85	10	85	10	85
4	10	90	10	90	10	85	10	85	10	85

1 Rate of early vetch shall not be discounted due to the presence of woolytop.

2 Roughness (Lathyrus hirsutus) commonly called Caley peas, Singletary, when early vetch seed occurs in mixture with roughness, shall be considered as roughness for the purpose of determining eligibility and support rate and the price of roughness shall not be discounted due to the presence of the early vetch provided at least 70 percent of the mixture is roughness.

3 Certified seed of eligible varieties of reseedling crimson clover shall be the seed produced from volunteer stands which originally were planted with foundation, registered, certified, or approved seed and which has been sealed and tagged by an official agency of the State authorized to certify to the genetic purity and quality of the seed.

4 See § 601.230 for basic county support rates for hairy vetch

5 Hairy seed including hard seed

6 The fractions of a percent, as well as the whole percents, of the different winter legume seeds as reported on the official analysis report may be taken into consideration in determining the eligibility of the seed with respect to the total winter legume seed. Example: Hairy vetch, 65.2 percent; Austrian winter vetch, 1.1 percent; roughness, 1.3 percent; and common vetch, 0.4 percent; total winter legume seed content, 68 percent.

7 No requirements specified for this item. However, the total winter legume requirements where specified and the purity requirements must be met in order for seed to be eligible for price support.

8 Noxious weed seed shall not exceed the quantity permitted for sale as planting seed by the State seed law or regulations of the State in which the seed is delivered to CCC

9 Noxious weed seed shall not exceed the quantity permitted for certification under the regulations of the official agency of the State authorized to certify to the genetic purity and quality of the seed.

10 Certified Blue Tag reseedling crimson clover seed which does not meet the basic requirements for price support but which is equal to or better than the minimum requirements for crimson clover seed will be eligible for crimson clover seed price support.

**TITLE 14—CIVIL AVIATION**

**Chapter II—Civil Aeronautics Administration, Department of Commerce**

[Amdt 61]

**PART 608—DANGER AREAS**

**ALTERATIONS**

The danger area alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Air-space Subcommittee, and are adopted to be-

Approved:

JOHN H. DAVIS,  
President  
Commodity Credit Corporation

[F R Doc 53-7441; Filed, Aug 26, 1953; 8:40 a m]

(Sec. 3, 63 Stat. 7; 65 Stat. 43; 67 Stat. 62; 50 U. S. C. App. Supp. 2023. E. O. 9630, Sept. 27, 1945, 10 F. R. 12245, 3 CFR, 1945 Supp. E. O. 9919, Jan. 3, 1948, 13 F. R. 59, 3 CFR, 1948 Supp.)

3. Section 373.65 *Ultimate consignee and purchaser statement* is amended in the following particulars:

a. Subparagraph (3) *Multiple-transaction statement from ultimate consignee* of paragraph (a) *Scope* is amended to read as follows:

(3) *Multiple-transaction statement from ultimate consignee.* (i) Exporters who have a continuing and regular relationship with an ultimate consignee (including but not limited to applicants having foreign branches or subsidiaries or distributors under franchise with the applicant) involving recurring orders for the same commodities to the same destinations and for the same end uses, and applicants for Time Limit (TL) licenses (see Part 377 of this subchapter) may submit to the Office of International Trade the original or a copy of a multiple-transaction statement, executed on Form IT-843<sup>7</sup> and signed by a responsible official of the ultimate consignee. This statement shall cover all proposed exportations of such commodities, regardless of value (including those based on export orders amounting to less than \$500) for which applications for export licenses will be submitted to the Office of International Trade during all or any part of the period ending not later than June 30 of the year following the year during which the statement is executed. For example, a statement executed on December 15, 1953, may cover proposed exportations for which license applications are filed on or before June 30, 1954, and a statement executed on January 4, 1954, may cover exportations for which license applications are submitted on or before June 30, 1955.

(ii) If this procedure is used, the exporter shall submit an additional copy<sup>8</sup> of the multiple-transaction statement for each OIT processing code to which the statement applies. When submitting such statements, the exporter must attach a list of the processing codes to which the statement applies.

(iii) The statement shall be signed by the ultimate consignee, or the person to whom the reexportation is to be made in the case of a Foreign Distribution license, and shall contain the following representations and certify as to the following facts:

(a) That the statement shall be considered a part of every application for license filed by the named applicant for export of the commodity or commodities described in the statement (item 4 of Form IT-843)

<sup>7</sup>Forms IT-842 and IT-843 may be obtained at all Department of Commerce Field Offices and from the Office of International Trade, Department of Commerce, Washington 25, D. C. Foreign Importers may obtain copies of Forms IT-842 and IT-843 from their United States exporters or from United States Diplomatic and Consular Offices in Group R countries.

<sup>8</sup>Each copy submitted but not manually signed by the consignee or purchaser must be certified to be a true copy of the original, as provided in §372.9.

(b) That the ultimate consignee will promptly send a supplemental statement to the United States exporter, or that the person to whom reexportations are made under Foreign Distribution licenses will send such statement to the foreign distributor for submission to the U. S. exporter, of any change of facts or intentions set forth in the statement which occurs after the statement has been prepared and forwarded; and that, with respect to any shipment which he proposes to dispose of contrary to the representations made in the statement, he will notify the U. S. exporter and will secure approval of the Office of International Trade through the U. S. exporter prior to such disposition (item 13 of Form IT-843)

(c) The nature of the consignee's business, including whether he is the user, seller, etc., of the commodities described in the application (item 6 of Form IT-843)

(d) The nature of the consignee's business relationship with the applicant, or with the distributor in the case of a Foreign Distribution license, and how long the relationship has existed (item 7 of Form IT-843)

(e) The nature and scope or extent of the consignee's operations by country and type of customer, including the method of distribution and redistribution, if any of the commodities covered by the statement or products thereof (items 9, 10, and 11 of Form IT-843)

(f) The specific commodities regularly ordered by the consignee and the respective end uses thereof. The end-use information shall be set forth in as much detail as is known to the consignee in the course of his trade (items 5 and 8 of Form IT-843)

(g) If the consignee regularly sells or distributes a commodity or commodities described in the statement to a particular customer or type of customer, the ultimate consignee shall also describe the kind of products to be produced from the commodity or commodities, and to the extent known, the countries in which such products are produced and distributed (item 11 of Form IT-843)

(h) The country or countries where the commodity or commodities covered by the statement, and any final products thereof, will be sold or distributed by the person making the statement, or by his customers (items 10 and 11 of Form IT-843)

b. The answer to question 1 of the *Explanatory Statement and Interpretations* following § 373.65 is amended by the addition after the first unnumbered paragraph of an unnumbered paragraph to read as follows:

In addition, multiple-transaction statements may be submitted by persons in certain Group-R countries to whom reexportations are made by a foreign distributor under the provisions of § 378.3.

(Sec. 3, 63 Stat. 7; 65 Stat. 43; 67 Stat. 62; 50 U. S. C. App. Supp. 2023. E. O. 9630, Sept. 27, 1945, 10 F. R. 12245, 3 CFR, 1945 Supp., E. O. 9919, Jan. 3, 1948, 13 F. R. 59, 3 CFR, 1948 Supp.)

4. A new Part 378 is added to read as follows:

## PART 378—FOREIGN DISTRIBUTION (FD) LICENSE

- Sec.  
378.1 Foreign Distribution (FD) licensb.  
378.2 Definition.  
378.3 Reexportation.  
378.4 Application requirements.  
378.5 Issuance of licenses.  
378.6 Export clearance.  
378.7 Amendment of license.  
378.8 Other applicable provisions,

AUTHORITY: §§ 378.1 to 378.8 issued under sec. 3, 63 Stat. 7; 65 Stat. 43; 67 Stat. 62; 50 U. S. C. App. Supp. 2023. E. O. 9630, Sept. 27, 1945, 10 F. R. 12245, 3 CFR, 1945 Supp., E. O. 9919, Jan. 3, 1948, 13 F. R. 59, 3 CFR, 1948 Supp.

§ 378.1 *Foreign Distribution (FD) license.* (a) Under the provisions of this part there is established a procedure for the exportation and, where applicable, the reexportation of certain specified commodities requiring a validated license. Pursuant to this procedure, application may be made for a Foreign Distribution (FD) license covering commodities on the Positive List of Commodities (§ 399.1 of this subchapter) identified by the symbol "F" in the column headed "Commodity Lists," which, if issued, authorizes exportation to a distributor located in a foreign country for resale, use, or distribution both in the distributor's country and in any other approved country or countries to which the distributor will reexport.

(b) Generally commodities requiring manufacturing abroad are not eligible for licensing under this procedure. However, commodities which require a minimum of processing abroad are eligible under this procedure; e. g., repackaging, rebottling, assembling, refining, or blending of a nature which has not changed materially the ingredient content of the commodity.<sup>1</sup>

(c) Due to the existence of country quotas for some commodities and other factors, it may at times be necessary for the Office of International Trade to limit or restrict the quantity of these commodities authorized for reexport to a specific country or countries. Where country limitations or restrictions are required, the license document will include a statement to this effect. If the license document does not include such statement, the commodities may be resold in the distributor's country or reexported to an approved importer in any other country in accordance with the procedure described in § 378.3.

§ 378.2 *Definition.* For the purpose of this part, a distributor is defined as an importer located in a foreign country other than Hong Kong, Macao or a Subgroup A country, who receives shipments direct from the U. S. exporter for resale, use, or distribution in his own country and for reexportation to another country or countries in accordance with the provisions of § 378.3. Such distributor includes, but is not limited to, an agent or a subsidiary or branch of the applicant.

<sup>1</sup>It is recommended that exporters consult with the appropriate division of the OIT where there is a question as to whether the degree of processing abroad meets the requirements of minimum processing.

**§ 378.3 Reexportation—(a) General.** Reexportation may be made only to those importers approved by the Office of International Trade in accordance with the procedure set forth below in this section. Form IT-917<sup>2</sup> shall be used in submitting reexportation requests; items 1 through 9 of the form may be completed by the U. S. exporter who shall then transmit the form to his foreign consignee for completion of item 10 and any other uncompleted items. Such reexportation request, where required, may be submitted to the OIT either with the license application or subsequent to the issuance of the export license. The OIT will approve or deny the request for reexportation by completing the bottom portion of one copy of Form IT-917 and returning it to the U. S. exporter.

(b) *Shipments covered by import certificate.* Where the original exportation from the United States is covered by an import certificate, pursuant to § 373.2 (c) of this subchapter, reexportation may be made without further authorization from the OIT to any countries other than those countries listed in paragraph (d) of this section.

(c) *Shipments not covered by import certificate.* Where the original exportation from the United States is not covered by an import certificate, reexportation may be made to any countries, other than those countries listed in paragraph (d) of this section, under the following conditions:

(1) R commodities may be reexported to destinations in Country Group O<sup>3</sup> without further authorization.

(2) RO commodities may be reexported to destinations in Country Group O upon submission to and receipt of approval from the Office of International Trade of Form IT-917, Request for and Notice of Approval for Reexportation, in triplicate, and to destinations in Country Group R upon submission to and receipt of approval from the Office of International Trade of Form IT-917, in triplicate, supported by a Multiple-Transactions Statement, Form IT-843, executed by each proposed importer to whom the distributor proposes to reexport the commodity (ies). In completing Form IT-843, the proposed importer shall change Item 4 of the form to read:

We request that this statement be considered as applicable to every reexportation made by (name of distributor) to us under the provisions of U. S. Foreign Distribution Licenses for the type of commodities described in this statement, during the period ending (date not later than June 30 of next year).

(d) *Reexportation to excepted countries.* Reexportation may be made to the countries listed below only after each proposed reexportation transaction has been approved by the Office of International Trade:

Austria.  
British Malaya.  
British Borneo.  
Burma.  
Ceylon.  
Finland.  
Taiwan (Formosa).  
Hong Kong.  
Indochina.  
Indonesia.

Macao.  
Republic of the Philippines.  
Switzerland.  
Thailand.  
Timor.  
Yugoslavia.  
Subgroup A countries.

Such approval may be obtained by submitting Form IT-917, in triplicate, indicating the amount of each proposed reexportation, supported by an Ultimate Consignee Statement, Form IT-842, completed by the importer to whom the distributor proposes to reexport the commodity (ies). In completing Form IT-842, the proposed importer shall change item 5 of the form to read:

The commodities and quantities which we have ordered from (name of distributor) are: \_\_\_\_\_

**§ 378.4 Application requirements—**

(a) *Application form.* Applications shall be submitted on Form IT-419 (revised April 1952) accompanied by acknowledgement card, Form IT-116.

(1) Separate applications shall be submitted in accordance with the provisions of § 372.2 (c) of this subchapter.

(2) The distributor shall be shown as the ultimate consignee, and the country of ultimate destination shall be shown as the country in which the distributor is located.

(3) The applicant shall enter the words "FD License" across the top of Form IT-419, immediately above the printed words "United States of America."

(b) *Additional information.* (1) Where the distributor is located in a Group R country,<sup>3</sup> the application for export license shall be supported by a Multiple-Transactions Statement, Form IT-843, completed by the distributor in accordance with § 373.65 of this subchapter. This requirement will be waived in those instances in which an import certificate, as specified in § 373.2 (c) of this subchapter, covering the transaction described in the license application, is submitted to the Office of International Trade.

(2) A list of the specific country or countries in which each commodity is to be distributed or resold, showing the approximate amount of such distribution or resale in each country, shall be attached to the application.

(3) The application shall be supported by a written agreement signed by the distributor, to retain for inspection upon demand by the OIT or a U. S. Foreign Service officer, all consummated orders relating to reexportation under these provisions for a period of three years from the date of reexportation. Such written agreement need accompany only the first application filed for a Foreign Distribution license involving the same distributor.

(4) Where feasible, information required under the reexportation provisions, § 378.3, shall be attached to the application.

(c) *Subsequent applications.* (1) In addition to the requirements of para-

graphs (a) and (b) of this section, each subsequent application for a Foreign Distribution (FD) license involving the same distributor shall include the following certification signed by the applicant:

The undersigned hereby certifies that to the best of his knowledge and belief (name of ultimate consignee shown on application), as distributor, has complied with the reexportation provisions of the Foreign Distribution license.

(2) In order to assure the continuity of licenses issued under this part, the Office of International Trade will consider a subsequent application for license filed 30 days prior to the expiration of the validity period of an outstanding license.

(3) An exporter holding a Foreign Distribution license shall not apply for, nor will OIT issue, a Blanket license or an individual license, except an individual license for partial shipment by parcel post under the provisions of § 372.2 (e) (1) of this subchapter, for any transaction involving a commodity and consignee covered by such Foreign Distribution license. The provisions of this subparagraph shall not preclude application for, or issuance of, an individual license covering a transaction between the U. S. exporter and an importer who may be receiving reexported commodities of the same type from a distributor.

**§ 378.5 Issuance of licenses.** (a) Export licenses issued under the provisions of this part will authorize shipment to the ultimate consignee, as distributor, and distribution or resale in the country of ultimate destination, without further authorization from the OIT. Such licenses will be valid for exportation to the distributor during a period of six months from the date of issuance. Reexportation by the distributor is not restricted to any time limitation.

(b) Where required, the license will indicate the maximum amount of permissible reexportation to each country. Under these circumstances, the OIT will leave intact, as nearly as possible, the proposed country distribution submitted by the exporter with the application. If the license does not indicate the maximum amount of reexportation to each country, the total commodities may be reexported to any importer meeting the qualifications prescribed by § 378.3.

**§ 378.6 Export clearance—(a) Presentation of license to customs.** When clearing shipments for export under any Foreign Distribution (FD) license, the licensee shall present the license to the collector of customs at the port of exit. The total amount shipped against such license shall not exceed the total quantity approved for export, except as otherwise provided for under weight and volume tolerance, § 372.12 of this subchapter.

(b) *Shipper's export declaration.* A person exporting any commodity pursuant to a Foreign Distribution (FD) license shall enter the number of the license on each shipper's export declaration filed with the collector of cus-

<sup>2</sup> Filed as part of the original document. Blank Forms IT-917 may be obtained from Department of Commerce field offices and from the Office of International Trade, Washington 25, D. C.

<sup>3</sup> See § 371.3 of this subchapter for countries included in Country Groups O and R, and Subgroup A.

RULES AND REGULATIONS

toms at the port of exit at the time of each exportation under each license.

§ 378.7 *Amendment of license.* If the amount licensed under a Foreign Distribution (FD) license proves insufficient to meet an exporter's requirements, he may request an increase in the quantity authorized for export under such license. This shall be done by requesting an amendment on Form IT-763, in accordance with the provisions of § 380.2 of this subchapter. Extension of the validity period of Foreign Distribution (FD) licenses will not be granted (see § 378.4 (c) (2))

§ 378.8 *Other applicable provisions.* Insofar as consistent with the provisions of this part, all of the provisions of Parts 370 to 399 of this subchapter, inclusive, shall apply equally to applications for and licenses issued under this part.

This amendment shall become effective as of August 13, 1953.

LORING K. MACY,  
Director

Office of International Trade.

[F. R. Doc. 53-7430; Filed, Aug. 25, 1953; 8:45 a. m.]

3. The dollar-value limit in the column headed "GLV dollar-value limits" set forth opposite the commodities listed below is amended to read as follows:

Dept. of Commerce Schedule B No.	Commodity	GLV dollar-value limits
540905*	Abrasives: Diamond grinding wheels, sticks, hones, and laps (specify carat weight of contained diamonds) (report loose industrial diamonds in 59905; diamond powder or dust, including compounds, in 540910).	25
547400*	Carbon or graphite products (natural and artificial): Carbon brushes for motors, and for starting, lighting, and ignition equipment.....	100
617901*	Tools (all metals), n. e. c.: Tools incorporating industrial diamonds, n. e. c. (include slugs containing diamonds)....	25
619159	Metal powders: Selenium (specify selenium content and grade).....	25
664998	Nonferrous metals and alloys in crude form, scrap, and semifabricated forms, n. e. c. (specify by name): Selenium metal (specify selenium content and grade).....	25
707163	Radio and television apparatus: Radio communication equipment, n. e. c. (report radar equipment in 708410; broadcast equipment in 707607; automobile and home-type radio receivers in 707635-707719): Shipborne (maritime mobile) transmitters, receivers, and transceivers (transmitter-receivers), and specially fabricated parts and accessories, n. e. c. for transmitters and transceivers.	100
707617	Land-type radio communication transmitters, receivers, and transceivers (transmitter-receivers), and specially fabricated parts and accessories, n. e. c. for transmitters and transceivers.	100
911720	Motion-picture films, unexposed: Sensitized, 35 mm..	500
911740	Negative film.....	200
911760	Sensitized, 16 mm..	200
912610	Negative film.....	100
	Sensitized, 8 mm..	100
	Other sensitized films, unexposed: X-ray film, all types (medical, dental, or industrial), sheet, pack, or roll.....	100

This part of the amendment shall become effective as of 12:01 a. m., August 13, 1953.

4. The following revisions are made in commodity descriptions. These revisions include changes in validated license control, where indicated.

[6th Gen. Rev. of Export Regs., Amdt. P. L. 52<sup>1</sup>]

PART 399—POSITIVE LIST OF COMMODITIES AND RELATED MATTERS

MISCELLANEOUS AMENDMENTS

1. Section 399.1 *Appendix A—Positive List of Commodities* is amended in the following particulars:

1. *General Notes to Appendix A, paragraph (h) Explanation of symbols in column headed "Commodity Lists"* is amended by the addition of the following entry:

Symbol	Special requirement referred to	Section
F	Foreign distribution license.....	Part 378

This part of the amendment shall become effective as of August 13, 1953.

2. The following commodities are deleted from the Positive List:

Dept. of Commerce Schedule B No.	Commodity
596038	Ferrocabon (silicon carbide briquettes).
820100	Copper sulfate or blue vitriol.
839900	Other industrial chemicals: Copper sulfate (including basic and tri-basic copper sulfate) (report copper sulfate for agricultural use in 820100).

This part of the amendment shall become effective as of 12:01 a. m., August 13, 1953.

<sup>1</sup>This amendment was published in Current Export Bulletin No. 711, dated August 13, 1953.

Dept. of Commerce Schedule B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required
200100	Crude natural rubber and allied gums (report compounded or semi-processed in 209800): Crude natural rubber (report natural liquid latex in terms of total dry latex solids TDLS). <sup>1</sup>	Lb.	RUBR 2	250	RO
547400*	Carbon or graphite products (natural and artificial): Generator and other carbon brushes. <sup>2</sup>		ELME-1	100	RO
547400*	Brush stock, carbon and artificial graphite. <sup>2</sup>		ELME 1	50	RO
702810	Transforming or converting apparatus, n. e. c., and parts, n. e. c.: Selenium battery chargers (report automotive shop type in 703185). <sup>3</sup>	No.	ELME 5	100	R
702810	Selenium rectifiers for radio and television apparatus. <sup>2</sup>	No.	RARA 51	25	R
702810	Other selenium rectifiers, including stacks (report specially fabricated plates in 709998 and unfabricated plates in 664998). <sup>3</sup>	No.	ELME 5	50	R
707625	Radio and television apparatus: Radio beacon (beam) transmitters, and specially fabricated parts and accessories, n. e. c. <sup>4</sup>		RARA 50	100	RO
707810	Radio and television transmitting type tubes (specify by name) (report television camera tubes in 707812). <sup>5</sup>	No.	RARA 51	50	RO
707815	Television picture receiving tubes (cathode ray), having short-image life phosphor, types P-1 and P-4 (specify by type number). <sup>6</sup>	No.	RARA 51	100	R
707915	Inductors (including transformers, coils and chokes). <sup>7</sup>	No.	RARA 52	200	R
707916	Parts, n. e. c., specially fabricated for capacitors (condensers), resistors, inductors, transformers, and coils. <sup>8</sup>		RARA 52	100	R
708410	Fathometers. <sup>9</sup>	No.	SATE	None	RO
708410	Specially fabricated parts for fathometers, n. e. c. <sup>9</sup>		SATE	50	RO
709903	Cathode-ray tubes, types P-1, and P-4, n. e. c. (report television cathode-ray tubes in 707812 and 707815). <sup>10</sup>	No.	RARA 51	25	RO
709903	Getters. <sup>11</sup>		RARA 51	25	RO
709903	Parts, n. e. c., specially fabricated for electronic and cathode-ray tubes, n. e. c., including commercial, industrial, radio, and television tubes (specify by name). <sup>12</sup>		RARA 51	100	RO
713200	Power boilers, and parts: Fire tube, having a capacity to generate 9,000 pounds or more of steam per hour at any pressure greater than 15 psig (specify continuous steaming capacity and designed operating pressure). <sup>13</sup>	Lbs. per hr. & sq. ft.	GIEQ	None	RO
713300	Water tube, having a capacity to generate 9,000 pounds or more of steam per hour at any pressure greater than 15 psig (specify continuous steaming capacity and designed operating pressure). <sup>14</sup>		GIEQ	None	RO
713920	Parts, n. e. c., specially fabricated for power boilers, and steam specialties, n. e. c. (report boiler tubes shipped as spares or replacements under tubular products according to material). <sup>15</sup>		GIEQ	None	RO

\*The commodities described in this Positive List entry are excepted from the provisions of General In-Transit License GIT. See § 371.9 (c) of this subchapter.

See footnotes at end of table.

to change the processing code from ELAME 1 to ELAME 5 and the GLV dollar value limit from none to \$50 for other selenium rectifiers.

<sup>1</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 707925. The effect of this revision is to increase the GLV dollar value limit from none to \$100 and to change the processing code from ELAME 1 to ELAME 5.

<sup>2</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 707810. The effect of this revision is to increase the GLV dollar value limit from none to \$50 and to change the processing code from ELAME 1 to ELAME 5.

<sup>3</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 707816. The effect of this revision is to increase the GLV dollar value limit from none to \$100 and to change the processing code from ELAME 1 to ELAME 5.

<sup>4</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 707915. The effect of this revision is (1) to increase the GLV dollar value limit from \$100 to \$200 for inductors for transmitters and transmitter-receivers; (2) to extend the coverage to include all inductors for radio receivers and effective September 28, 1953, add them to the commodities subject to the IC/DV procedure (see § 373.2 of this subchapter); and (3) to change the processing code and related commodity number for the entry to ELAME 52.

<sup>5</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 707916. The effect of this revision is to add specially fabricated parts for radio receiving set capacitors, resistors, inductors, transformers and coils and to change the processing code from ELAME 50 to ELAME 52.

<sup>6</sup>The above two entries are substituted for the first entry presently on the Positive List under Schedule B No. 708410. The effect of this revision is (1) to change the processing code from ELAME 50 to ELAME 52; (2) to add the unit of quantity "number" for fathometers, n. e. c.; and (4) to remove specially fabricated parts for fathometers from the commodities subject to the IC/DV procedure (§ 373.2 of this subchapter).

<sup>7</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 709003. The effect of this revision is (1) to clarify the description by specifying types P 1 and P 4; (2) to increase the GLV dollar value limit from none to \$25; (3) to change the processing code from ELAME to ELAME 51; and (4) to add a footnote indicating that other cathode ray tubes are licensed by the State Department.

<sup>8</sup>The above entry is substituted for the first entry presently on the Positive List under Schedule B No. 709000. The effect of this revision is to increase the GLV dollar value limit from none to \$25 and to change the processing code from ELAME to ELAME 51.

<sup>9</sup>The above entry is substituted for the third and fourth entries presently on the Positive List under Schedule B No. 709000. The effect of this revision is (1) to change the processing code from ELAME to ELAME 51 and the GLV dollar value limit from none to \$100 for the commodities included in the present fourth entry; and (2) to extend the coverage to include all electronic and cathode ray tube parts not separately listed on the Positive List.

<sup>10</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 713200. The effect of this revision is (1) to change the basis for determining license requirements from square feet of heating surface to pound per hour capacity of steam generation at pressures over 15 psig; (2) to extend the coverage to include all fire tube boilers having a capacity to generate 6,000 pounds or more of steam per hour at pressures over 15 psig; (3) to require exporters to specify continuous steaming capacity and designed operating pressure; and (4) to add the unit of quantity "pounds per hour."

<sup>11</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 713300. The effect of this revision is (1) to change the basis for determining license requirements from square feet of heating surface to pounds per hour capacity of steam generation at pressures over 15 psig; and (2) to require exporters to specify continuous steaming capacity and designed operating pressure.

<sup>12</sup>The above entry is substituted for the entry presently on the Positive List under Schedule B No. 713020. The effect of this revision is to add steam specialties to the Positive List, RO control.

<sup>13</sup>The above entry is substituted for the third and fifth entries presently on the Positive List under Schedule B No. 706970. Thermocouple type of pyrometers are presently included on the Positive List under the ninth and tenth entries for Schedule B No. 706970. The effect of this revision is (1) to extend the controls from R to RO for thermocouple type of pyrometers; (2) to establish a GLV dollar value limit of none; and (3) to add these commodities to the commodities subject to the IC/DV procedure (§ 373.2 of this subchapter), effective September 28, 1953.

<sup>14</sup>The above entry is substituted for the ninth and tenth entries presently on the Positive List under Schedule B No. 706970. The effect of this revision is to clarify the coverage and to establish a GLV dollar value limit of \$50 for the commodities included in this entry.

<sup>15</sup>The above entry is substituted for the eleventh and twelfth entries presently on the Positive List under Schedule B No. 706970. The effect of this revision is to clarify the coverage and to establish a GLV dollar value limit of \$25 for the commodities included in this entry.

<sup>16</sup>The above entry is substituted for the seventh and eighth entries presently on the Positive List under Schedule B No. 706970. The effect of this revision is (1) to add specially fabricated parts for leak-detecting instruments for industrial use, and (2) effective September 28, 1953, to the provisions of General In-Transit License GLT (see § 371.9 (c) of this subchapter), and to include subject to the dollar limit (DL) restrictions (see § 373.2 (b) of this subchapter).

<sup>17</sup>The above two entries are substituted for the two entries presently on the Positive List under Schedule B No. 710604. The effect of this revision is to set forth the reporting requirements for shipments of complete knockdown pumps.

<sup>18</sup>The above entry is substituted for the second entry presently on the Positive List under Schedule B No. 712400. The effect of this revision is (1) to change the basis for determining license requirements from square feet of heating surface of the boiler with which it is to be used to designed operating pressure of the feedwater heater; (2) change the control from R to RO (3) to add specially fabricated parts for feedwater heaters included on the Positive List; and (4) effective September 28, 1953, to add such parts to the commodities subject to IC/DV requirements (see § 373.2 of this subchapter).

<sup>19</sup>The above entry is substituted for the seventh entry presently on the Positive List under Schedule B No. 830700 and the twenty third entry presently on the Positive List under Schedule B No. 830900. Cobalt, lead,

Dept. of Com. Schedule B No	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Value added license required
706970	Industrial process indicating (measuring), recording and/or controlling instruments n. e. c., and specially fabricated parts, n. e. c. (for measuring and/or controlling temperatures, pressure, level, flow, humidity, moisture, motion, rotation, gas analysis, chemical properties, and variables) (specify by name): Pyrometers thermocouple, optical and radiation types. <sup>6</sup>		GIEQ 7	None	RO
706970	Other industrial process indicating, recording or controlling instruments for pressure, flow, tonnage, humidity, gas analysis chemical proper ties, and variables. <sup>6</sup> Specially fabricated parts for other industrial processes for pressure, flow, temperature, humidity, gas analysis, chemical properties, and variables, except thermocouples, manufactured from platinum or platinum alloy, and inspecting machines. Physical properties testing and accessories n. e. c.; and specially fabricated parts and accessories n. e. c. <sup>19</sup>		GIEQ 13	50	R
706900*	Leak-detecting instruments and specially fabricated parts, n. e. c.		GIEQ 13	25	R
770905	Parts, n. e. c., specially fabricated for pumps classified under Schedule B Nos. 770900 through 770930, and 770930, irrespective of delivery pressures, operating temperature and materials used in their fabrication. (Complete knockdown pumps should be reported in the proper pump classification, whether the integral components are shipped simultaneously or in a series of partial shipments.) <sup>9</sup>		GIEQ 7	50	RO
770905	Parts, n. e. c., specially fabricated for vacuum pumps included on the Positive List under Schedule B Nos. 770930 through 770970. (Complete knockdown pumps should be reported in the proper pump classification, whether the integral components are shipped simultaneously or in a series of partial shipments.) <sup>9</sup>		CONS 20	100	RO
771200	Heat exchangers (except refrigeration type), and steam specially heaters, and specially fabricated parts n. e. c. (specify by name): Feedwater heaters for pressures greater than 15 psig, and specially fabricated parts, n. e. c. (specify continuous steaming capacity and designed operating pressure of boiler). <sup>10</sup>		GIEQ 7	100	RO
833700	Metal salts (specify by name): Naphthalenesulfonic acids, and mixtures containing such naphthalenes (except cobalt, lead, or zinc naphthalenes in 835500). Other cyanide films, unspecified. Acetal film and interdigitals. Other cyanide films, unspecified.	Lb	SALT	None	RO
91250	Research laboratory apparatus and equipment, n. e. c., and specially fabricated parts, n. e. c. (specify by name): Acetal film and interdigitals. Other cyanide films, unspecified.	Sq ft	FILM	25	R
91250	Research laboratory apparatus and equipment, n. e. c., and specially fabricated parts, n. e. c. (specify by name): Acetal film and interdigitals. Other cyanide films, unspecified.	Sq ft	FILM	100	R
916050	Research laboratory apparatus and equipment, n. e. c., and specially fabricated parts, n. e. c. (specify by name): Acetal film and interdigitals. Other cyanide films, unspecified.		SATE	100	RO

\* The commodities described in this Positive List entry are excepted from the provisions of General In-Transit License GLT. See § 371.9 (c) of this subchapter.

<sup>1</sup>The above entry is substituted for the two entries presently on the Positive List under Schedule B No. 306100. The effect of this revision is to increase the GLV dollar value limits from \$100 to \$250 for natural pale crepe rubber, Types 1, 1X, and 1I, and to remove such commodities from the commodities subject to the dollar-limit (DL) restrictions (see § 373.2 (c) of this subchapter).

<sup>2</sup>The above two entries are substituted for the last entry presently on the Positive List under Schedule B No. 517400. The effect of this revision is to change the processing code from none to ELAME 1 for these commodities and to increase the GLV dollar value limit from none to \$100 for generator and other carbon brushes and from none to \$50 for carbon and artificial graphite brush stock.

<sup>3</sup>The above three entries are substituted for the third entry presently on the Positive List under Schedule B No. 702810. The effect of this revision is (1) to change the processing code from ELAME 1 to ELAME 5 and the GLV dollar value limit from none to \$100 for selenium battery chargers; (2) to change the processing code from ELAME 1 to ELAME 51 and the GLV dollar value limit from none to \$25 for selenium rectifiers for radio and television apparatus; and (3)



headed "Commodity Lists" opposite these commodities is hereby deleted:

Dept. of Commerce Schedule B No.	Commodity
705560	Electric mining and industrial locomotives, underground type.
796114	Locomotives, underground mine (except electric), new.
796117	Used and rebuilt locomotives (except electric), underground type.
	Parts, for locomotives and railway cars (report electric propulsion motors, generators and controls in 704530; wheels and axles in 610515-610535).
796172	Parts, and accessories, n. e. c., specially fabricated for underground type locomotives (specify by name).

This part of the amendment shall become effective as of August 13, 1953.

9. The following commodities are no longer subject to evidence of availability requirements (see § 373.3 of this subchapter) Accordingly, the letter "D" set forth in the column headed "Commodity Lists" opposite these commodities is hereby deleted:

Dept. of Commerce Schedule B No.	Commodity
540905	Abrasives: Diamond grinding wheels, sticks, hones, and laps (specify carat weight of contained diamonds) (report loose industrial diamonds in 599905; diamond powder or dust, including compounds, in 540910).

This part of the amendment shall become effective as of August 13, 1953.

10. The letter "F" is inserted in the column entitled "Commodity Lists" opposite the commodities listed below for the purpose of indicating that the commodities so identified may be exported under the Foreign Distribution (FD) license procedure (Part 378) Where only certain entries on the Positive List under a single Schedule B number are thus identified, these entries are specifically listed below; where all entries on the Positive List under a single Schedule B number are thus identified, the entries are not specifically listed below, but only the Schedule B number related thereto.

Dept. of Commerce Schedule B No.	Commodity
020104	
020604	
020704	
025098	
200100	
200301	
200903	
200904	
200905	
200938	
206000	
206430	
206440	
206460	
206490	
206530	
206570	
208625	
208670	
208910	
208920	
208930	
209310	
209320	

Dept. of Commerce Schedule B No.	Commodity	Dept. of Commerce Schedule B No.	Commodity
202300		702260	
341400		702450	
341609		702570	
384026		702715	
384023		702725	
384032		702810	
384052		703110	
384062		703220	
384065		703300	
423470		703309	
489200		703700	
503460		703725	
501100		703730	
501200		703739	
501350		703740	
501370		703749	
501400		703750	
501610		703759	
501620		703760	
501640		703769	
501709		703770	
501800		703779	
502700		703780	
503000		703789	
503100		703790	
503200		703799	
503300		703800	
503320		703809	
503330		703810	
503340		703819	
503350		703820	
504005		703829	
504020		703830	
504030		703839	
504050		703840	
504060		703849	
504095		703850	
504100		703859	
504200		703860	
504440		703869	
504700		703870	
504800		703879	
505900		703880	
516500		703889	
521700		703890	
523110		703899	
523150		703900	
523300		703909	
533510		703910	
533610		703919	
536100		703920	
536200		703929	
536650		703930	
536810		703939	
536830		703940	
536850		703949	
536890		703950	
543510		703959	
547400		703960	
547850		703969	
548095		703970	
		703979	
		703980	
571410		703989	
571500		703990	
572270		703999	
572908		704000	
582938		704009	
615900		704010	
615930		704019	
617943		704020	
618235		704029	
619057		704030	
619350		704039	
		704040	
		704049	
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		704059	
		704060	
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		704250	
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		704300	
		704309	
		704310	
		704319	
		704320	
		704329	
		704330	
		704339	
		704340	
		704349	
		704350	
		704359	
		704360	
		704369	
		704370	
		704379	
		704380	
		704389	
		704390	
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Dept. of Commerce Schedule B No.	Commodity	Dept. of Commerce Schedule B No.	Commodity	Dept. of Commerce Schedule B No.	Commodity
720490 721610 721630 721535 721640 722012 722015 722020 722024 722027 722030 722045	Pile hammers (Diesel-powered), and parts. Jacks, hand- and power-operated, with lifting capacity of 10 tons and over, and specially fabricated parts.	730810 730810	Specially fabricated parts, n. e. c., for underground loading machines. Specially fabricated parts for other specialized mining and ore dressing machines and equipment included on the Positive List under Schedule B Nos. 730500, 730650, 730760, and 730769 for which validated License is required to R and O country destinations.	787460 787540 787560 787593 787597 787610 787639 787690 787690 787700 787710 787740 787760 787780 787795 787830 783501 783505 794960 724960	Test kits for aircraft instruments. Test sets for ignition harnesses.
722045 722045	Subgraders and finegraders. Logging arches and skidies for tracklaying tractors and contractors' wheel-type tractors; and rotary snowplows.	730870 730880 730890 732000 733250	Specially fabricated parts for contractors' off-the-road haulage vehicles (trucks, wagons and trailers), 10 cu. yd. struck load capacity and over.	740005 740315 740007 740700 742700 743500 743600 744305 744340	
722045	Specially fabricated parts for contractors' off-the-road haulage vehicles (trucks, wagons and trailers), under 10 cu. yd. struck load capacity.	740005 740315 740007 740700 742700 743500 743600 744305 744340	Specially fabricated parts for subgraders and finegraders.		
722045	Specially fabricated parts for logging arches and skidies for use with tracklaying tractors and contractors' wheel-type tractors; and rotary snowplows.	744371 744381 744385	Parts, accessories, and attachments, n. e. c., specially fabricated for pneumatic-tired compactors, 10 tons over net-vehicle weight.		
722045	Parts and accessories, n. e. c., specially fabricated for: pneumatic-tired soil compactors, under 10 tons net vehicle weight; and self-propelled, steel-tired road rollers.	744385	Parts, accessories, and attachments, n. e. c., specially fabricated for scrapers and graders.		
722045	Parts and accessories, n. e. c., specially fabricated for contractors' wheel-type tractors.	744400	Parts and accessories, n. e. c., specially fabricated for the following attachments for track-laying tractors and contractors' wheel-type tractors: angle dozers; brush cutters or rakes; bulldozers; cable controls; cranes; dragline, clamshell, bucket and shovel excavating and loading attachments; hydraulic controls; pipe layers; rippers or rooters; snowplow blades; trailbuilders; treedozer; and winches.		
722045	Parts and accessories, n. e. c., specially fabricated for the following attachments for agricultural wheel-type tractors: angle dozers; brush cutters or rakes; bulldozers; cable controls; cranes; dragline, clamshell, bucket and shovel excavating and loading attachments; hydraulic controls; pipe layers; rippers or rooters; snowplow blades; trailbuilders; treedozer; and winches.	746010 766950	Parts and accessories, n. e. c., specially fabricated for the following attachments for agricultural wheel-type tractors: angle dozers; brush cutters or rakes; bulldozers; cable controls; cranes; dragline, clamshell, bucket and shovel excavating and loading attachments; hydraulic controls; pipe layers; rippers or rooters; snowplow blades; trailbuilders; treedozer; and winches.		
723010 723020 723040 723070 723080 723090 723920 724965	Specially fabricated parts, n. e. c., for: chain and belt conveyors; bucket elevators; conveying stackers; feeders; loading and unloading systems; en masse or chain-casing type; and bridges and booms.	766990 766995	Parts, n. e. c., for: chain and belt conveyors; bucket elevators; conveying stackers; feeders; loading and unloading systems; en masse or chain-casing type for transporting loose, or bulk materials; and bridges and booms (report underground mine type in 724905).		
724965	Chain and belt conveyors (stationary, traveling, and portable); bucket elevators; conveying stackers; feeders; loading and unloading systems; en masse or chain-casing type for transporting loose, or bulk materials; and bridges and booms (report underground mine type in 724905).	769320 770400 770500 770610 770615 770625 770630 770700 770710 770720 770775 770900 770910 770920 770930 770940 770950 770980 770995	Oscillating conveyors and feeders, including all-electric vibrating pans and tubes, and specially fabricated parts; and live (powered) roll conveyors, and specially fabricated parts (report underground mine type in 724905).		
725003 725005 725015 725017 725020 725030 725050 730760	Equipment for the beneficiation of ores, coal and other minerals; classifying or sizing; conditioning, including thickeners; and concentrating, including flotation and sink-float (specify by name).		Equipment for the beneficiation of ores, coal and other minerals; classifying or sizing; conditioning, including thickeners; and concentrating, including flotation and sink-float (specify by name).		
730756	Other ore dressing equipment, n. e. c. including filters, except those electromagnetic or electrostatic separators below the standards described on the Positive List under this Schedule B number (specify by name) (report crushing, pulverizing and screening machines and parts in 720310-720490).	774370 787310 787440	Parts, n. e. c., specially fabricated for pumps classified under Schedule B Nos. 770900 through 770950, and 770980, irrespective of delivery pressures, operating temperatures and materials used in their fabrication. (Complete knockdown pumps should be reported in the proper pump classifications, whether the integral components are shipped simultaneously or in a series of partial shipments.)	825552 825554 825558 825560 825562 825564 825566 825568 825570 825572 825574 825576 825578 825580 825582 825584 825586 825588 825590 825592 825594 825596 825598 825600 825602 825604 825606 825608 825610 825612 825614 825616 825618 825620 825622 825624 825626 825628 825630 825632 825634 825636 825638 825640 825642 825644 825646 825648 825650 825652 825654 825656 825658 825660 825662 825664 825666 825668 825670 825672 825674 825676 825678 825680 825682 825684 825686 825688 825690 825692 825694 825696 825698 825700 825702 825704 825706 825708 825710 825712 825714 825716 825718 825720 825722 825724 825726 825728 825730 825732 825734 825736 825738 825740 825742 825744 825746 825748 825750 825752 825754 825756 825758 825760 825762 825764 825766 825768 825770 825772 825774 825776 825778 825780 825782 825784 825786 825788 825790 825792 825794 825796 825798 825800 825802 825804 825806 825808 825810 825812 825814 825816 825818 825820 825822 825824 825826 825828 825830 825832 825834 825836 825838 825840 825842 825844 825846 825848 825850 825852 825854 825856 825858 825860 825862 825864 825866 825868 825870 825872 825874 825876 825878 825880 825882 825884 825886 825888 825890 825892 825894 825896 825898 825900 825902 825904 825906 825908 825910 825912 825914 825916 825918 825920 825922 825924 825926 825928 825930 825932 825934 825936 825938 825940 825942 825944 825946 825948 825950 825952 825954 825956 825958 825960 825962 825964 825966 825968 825970 825972 825974 825976 825978 825980 825982 825984 825986 825988 825990 825992 825994 825996 825998 826000 826002 826004 826006 826008 826010 826012 826014 826016 826018 826020 826022 826024 826026 826028 826030 826032 826034 826036 826038 826040 826042 826044 826046 826048 826050 826052 826054 826056 826058 826060 826062 826064 826066 826068 826070 826072 826074 826076 826078 826080 826082 826084 826086 826088 826090 826092 826094 826096 826098 826100	



quantity of cheese for which import licenses are not issued as a result of the application of such limitation will be apportioned in the following manner upon the basis of applications therefor. The Administrator shall announce the quantities which are available for such apportionment, the countries from which such quantities may be imported, and the date by which applications must be received. Each such application may be for a quantity not in excess of the announced quantity. Consideration will be given to any such application for an import license for cheese only if the applicant purchased, or is to purchase, the cheese in the country in which produced and the cheese was, or is to be, exported to the United States from such country. Each applicant must submit, as part of his application, evidence satisfactory to the Administrator of the applicant's ownership of the quantity of the cheese for which an import license is requested, or a purchase contract, or an exact copy thereof, evidencing his ability to procure such quantity. If the government of the country-of-origin requires export licenses, evidence of the applicant's having secured, or ability to secure, the required license authorizing the exportation of the cheese from the country-of-origin to the United States must also be submitted. If the aggregate quantity applied for from any country-of-origin exceeds the available quantity, the available quantity will be apportioned among, and import licenses will be issued to, eligible applicants on the basis of each applicant's proportion of the total quantity applied for, and such other factors as must be considered to avoid inequities.

This amendment shall become effective upon issuance.

It is hereby found that good cause exists for making the provisions hereof effective upon issuance in that this amendment is in the nature of an interpretive rule, clarifying the policies and procedures governing the filing of applications for, and the issuance of, import licenses for butter and cheese, and will enable persons entitled thereto to apply for, and receive, licenses for the importation of such commodities at an early date.

(Sec. 3, 62 Stat. 1248, as amended; 7 U. S. C. Sup. 624)

Issued at Washington, D. C., this 24th day of August 1953.

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

[F. R. Doc. 53-7535; Filed, Aug. 25, 1953;  
10:37 a. m.]

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

#### PART 909—ALMONDS GROWN IN CALIFORNIA

##### SALABLE AND SURPLUS PERCENTAGES

Notice of proposed rule making with respect to the fixing of salable and surplus percentages of almonds for the crop year beginning July 1, 1953, was pub-

lished in the FEDERAL REGISTER of August 8, 1953 (18 F. R. 4707) pursuant to the provisions of Marketing Agreement No. 119 and Order No. 9 regulating the handling of almonds grown in California (7 CFR, 1952 Rev., Part 909) effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.). In said notice, in which it was proposed to fix the salable and surplus percentages of almonds at 85 percent and 15 percent, respectively, for the crop year beginning July 1, 1953, opportunity was afforded interested persons to submit to the Department written data, views, or arguments for consideration prior to issuance of the final rule fixing the percentages. Two such documents objecting to the proposed salable and surplus percentages were received, but neither contained a recommendation as to percentages which should be fixed. In one of the documents it was contended that the salable percentage should be greater than that stated in the proposed rule. The view was expressed that estimated trade demand of 38.5 million pounds based on average trade acquisitions for 1948-52 less prospective imports, presupposes no improvement in consumption. In the other document, it was contended that the estimated trade demand is too low, and should be materially increased, which would result in materially decreasing the surplus percentage. However, the estimated trade demand of 38.5 million pounds is more than 5 million pounds greater than the actual trade demand for the preceding crop year. The documents did not contain data which would justify changing the estimates and percentages set forth in the proposed rule.

It is hereby found and determined that good cause exists for making this administrative rule effective upon its publication in the FEDERAL REGISTER, instead of waiting 30 days after publication, for the reasons that (1) it is desirable that the percentages be fixed prior to or as soon as practicable after growers begin to deliver 1953 crop almonds to handlers, (2) such deliveries of 1953 crop almonds are about to begin, and (3) compliance with this administrative rule will not require handlers to make any advance preparation of a special nature.

Therefore, after consideration of all relevant matters, the administrative rule is as follows:

§ 909.203 *Salable and surplus percentages for almonds during the crop year beginning July 1, 1953.* The salable and surplus percentages during the crop year beginning July 1, 1953, applicable to almonds, edible kernel weight basis, received by handlers for their own accounts shall be 85 percent and 15 percent, respectively

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

Issued at Washington, D. C., this 20th day of August 1953, to become effective upon publication of this document in the FEDERAL REGISTER.

[SEAL] S. R. SMITH,  
Director  
Fruit and Vegetable Branch.

[F. R. Doc. 53-7496; Filed, Aug. 25, 1953;  
8:52 a. m.]

## TITLE 17—COMMODITY AND SECURITIES EXCHANGES

### Chapter II—Securities and Exchange Commission

#### PART 240—GENERAL RULES AND REGULATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934

##### DISTRIBUTIONS OF SECURITIES ON NATIONAL SECURITIES EXCHANGE

On July 20, 1953, the Securities and Exchange Commission announced that it had under consideration two related proposals to make it possible to effect certain distributions of securities on a national securities exchange: (1) The amendment of paragraph (d) (1) of § 240.10b-2 (Rule X-10B-2) under the Securities Exchange Act of 1934, and (2) a plan of the New York Stock Exchange for distributing securities on that exchange. The Commission has considered the comments on these proposals and has determined to amend Rule X-10B-2 as proposed and to declare effective the plan of the New York Stock Exchange under Rule X-10B-2 (d) as amended.

*Purpose of amendment.* In substance, Rule X-10B-2, which implements the anti-manipulative provisions of the Securities Exchange Act of 1934, prohibits any person engaged in distributing a security from paying any other person for soliciting or inducing a third person to buy the security on an exchange. Paragraph (c) of the rule provides that it shall not apply to any salary paid by a broker or dealer to any regular employee whose ordinary duties include the solicitation or execution of brokerage orders on an exchange if such salary represents only ordinary compensation for the discharge of such duties in the regular course of his employment. Prior to the current amendment of paragraph (d) (1) of the rule such paragraph provided an exemption from the prohibitions of the rule for a transaction "involving the payment of a special commission to a person acting as a broker for a purchaser" where the payment was made pursuant to the terms of a plan filed by a national securities exchange and declared effective by the Commission; and this exemption was available only to securities listed and registered on the exchange or to certain securities admitted to unlisted trading privileges on the exchange.

On July 14, 1953, the New York Stock Exchange filed with the Commission and requested that it declare effective an Exchange Distribution Plan to permit members, member firms and member corporations (hereinafter referred to as participating members) to make a distribution of a block of securities at the market on the Exchange when the regular market on the Exchange cannot otherwise absorb the block of securities within a reasonable time and at a reasonable price or prices. The Plan contains certain anti-manipulative controls and also requires participating members to inform persons whose orders are solicited that the securities being offered are part of a distribution of a specified number of shares or bonds, and that the

participating member (1) is acting for the seller, will charge the buying customer a commission, and will receive a special commission from the seller or his broker, or (2) is acting as a principal and will not charge the buying customer a commission. The Plan also provides that a participating member may pay his or its registered representative a special commission for soliciting orders to purchase the security.

Paragraph (d) (1) of the Commission's Rule X-10B-2 has been amended to expand the scope of the exemption. The amendment eliminates the requirement that the compensation paid be "a special commission to a person acting as a broker or a purchaser." The exemption is now applicable irrespective of the capacity in which the person receiving the compensation is acting or the nature of the compensation. The only limitations in this connection are that the compensation be paid in accordance with the terms of an effective plan authorizing the payment of such compensation, and that the person paying the compensation does not know or have reasonable grounds to believe that transactions connected with such distribution are being carried out in violation of such plan. The amendment also relaxes the restriction as to the securities which can be made the subject of a distribution under an effective plan; a block of any security duly admitted to trading on the particular exchange may now be distributed under a plan declared effective by the Commission.

**Statutory basis.** Paragraph (d) (1) of Rule X-10B-2 is amended pursuant to the provisions of the Securities Exchange Act of 1934, particularly sections 10 (b) and 23 (a) thereof, the Commission deeming such action necessary in the public interest, for the protection of investors, and for the execution of the functions vested in the Commission under the act. The Commission finds that this amendment is exemptive in nature, that it relieves restriction, and that it may be declared effective immediately under section 4 (c) of the Administrative Procedure Act.

Paragraph (d) (1) of § 240.10b-2 (Rule X-10B-2) is hereby amended to read as follows:

§ 240.10b-2 *Solicitation of purchases in an exchange to facilitate a distribution of securities.* \* \* \*

(d) (1) The provisions of this section shall not apply to any transaction involving the payment of compensation pursuant to the terms of an effective plan authorizing the payment of such compensation in connection with a distribution of securities, which plan has been filed with the Commission by a national securities exchange: *Provided*, that the person paying such compensation does not know or have reasonable grounds to believe, at the time he pays or offers or agrees to pay such compensation, that transactions connected with such distribution are being carried out in violation of such plan.

(Sec. 23, 48 Stat. 901, as amended; 15 U. S. C. 78w. Interprets or applies sec. 10, 48 Stat. 391; 15 U. S. C. 78j)

Said amendment shall become effective August 20, 1953.

**Text of the Exchange Distribution Plan of the New York Stock Exchange.** The text of the Exchange Distribution Plan of the New York Stock Exchange is as follows:

To effect an "Exchange Distribution" of a block of a listed security, a member, member firm or member corporation, for his or its own account or the account of a customer, may

(A) Make an arrangement with one or more other members, member firms or member corporations under which

(1) The members, member firms or member corporations, with whom the arrangement is made, solicit others to purchase such security, and charge the purchasers commissions in accordance with Article XV of the Constitution; and

(2) The selling member, member firm or member corporation pays to the members, member firms or member corporations, with whom the arrangement is made, a special commission which is mutually agreeable but not lower than the applicable commission prescribed in Article XV of the Constitution; and

(3) The members, member firms or member corporations, with whom the arrangement is made, may pay a special commission to their registered representatives; and/or

(B) Pay a special commission to his or its registered representatives for soliciting others to purchase such security.

An "Exchange Distribution" may be made only with the prior approval of the Exchange (given after consulting and with the concurrence of a Governor who is active on the Floor of the Exchange). Such a distribution shall not be approved unless the Exchange shall have determined that the regular market on the Floor of the Exchange cannot, within a reasonable time and at a reasonable price or prices, otherwise absorb the block of securities which is to be the subject of the "Exchange Distribution." In making such determination, the following factors may be taken into consideration, viz.,

(a) Price range and the volume of transactions in such security on the Floor of the Exchange during the preceding month;

(b) Attempts which have been made to dispose of the security on the Floor of the Exchange;

(c) The existing condition of the specialist's book and Floor quotations with respect to such security;

(d) The apparent past and current interest in such security on the Floor; and

(e) The number of shares or bonds and the current market value of the block of such security proposed to be covered by such "Exchange Distribution."

No "Exchange Distribution" shall be made unless each of the following conditions is complied with:

(1) The person for whose account the Distribution is to be made shall, at the time of the Distribution, be the owner of the entire block of the security to be so distributed.

(2) The person for whose account the Distribution is to be made shall include within the Distribution all of the security which he then intends to offer within a reasonable time, and there shall be furnished to the Exchange, before the Distribution is made, a written statement by the offeror to that effect or a written statement by his broker stating that the broker has been so advised by the offeror.

(3) The person for whose account the Distribution is made shall agree that, during the period the Distribution is being made, he will not bid for or purchase any of the security for any account in which he has a direct or indirect interest.

(4) The members, member firms and member corporations who are parties to the arrangement for the Distribution shall not,

during the period the Distribution is being made, bid for or purchase any of the security for an account in which they have a direct or indirect interest.

(5) No member may have a direct or indirect interest in a block of securities being so distributed if he is registered as a specialist in such security.

(6) Each member, member firm or member corporation soliciting purchase orders for execution in the Distribution shall advise the person so solicited, before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares or bonds being offered in an "Exchange Distribution," and that he or it

(a) Is acting for the seller, will charge the buying customer a commission, and will receive a special commission from the seller or his broker; or

(b) Is acting as a principal in the sale of the block of securities, and will not charge the buying customer a commission.

(7) No "Short" sale may be made in connection with the Distribution, except that securities may be borrowed to make delivery where the person owns the securities sold and intends to deliver such securities as soon as possible without undue inconvenience or expense.

In effecting an "Exchange Distribution," the orders for the purchase of the securities being distributed must be sent to the Floor together with an order to sell an equal amount to be "crossed" in accordance with the rules applicable to the crossing of orders on the Floor.

The member, member firm or member corporation selling securities in an "Exchange Distribution" shall report to the Exchange all transactions in such securities effected by him or it for any account in which the seller had a direct or indirect interest, commencing with the time arrangements for the Distribution were made and ending with the time the Distribution was completed.

**Action declaring New York Stock Exchange Plan effective.** The text of the Commission's action declaring effective the Exchange Distribution Plan of the New York Stock Exchange is as follows:

The Securities and Exchange Commission acting pursuant to the Securities Exchange Act of 1934, particularly sections 10 (b) and 23 (a) thereof and Rule X-10B-2 (d) as amended, deeming it necessary for the exercise of the functions vested in it, and having due regard for the public interest and for the protection of investors, hereby declares effective until the close of business on February 26, 1954, the Exchange Distribution Plan of the New York Stock Exchange filed on July 14, 1953, on the condition that if at any time it appears to the Commission to be necessary or appropriate in the public interest or for the protection of investors so to do, the Commission may suspend or terminate the effectiveness of said Plan by sending at least 10 days' written notice to the New York Stock Exchange. The Commission finds that paragraph (d) of Rule X-10B-2 and this action have the effect of granting exemption and relieving restriction and that this Plan may be declared effective immediately.

Said Plan shall become effective August 21, 1953.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,  
Secretary.

AUGUST 19, 1953.

[F. R. Doc. 53-7472; Filed, Aug. 25, 1953; 8:47 a. m.]

## PROPOSED RULE MAKING

### DEPARTMENT OF AGRICULTURE

#### Production and Marketing Administration

#### [ 7 CFR Part 949 ]

[ Docket No. AO-232-A-2 ]

#### MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

#### NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT AND TO 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 900) 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 a proposed amendment to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the San Antonio, Texas, 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 proposed amendment to the tentative marketing agreement and to the order, as amended, was formulated, was conducted at San Antonio, Texas, on August 26, 1952, pursuant to notice thereof which was issued on August 19, 1952 (17 F. R. 7710). The hearing was reopened on November 5, 1952, pursuant to notice thereof which was issued on November 1, 1952 (17 F. R. 9898). The hearing was again reopened on May 21, 1953, at San Antonio, Texas, to consider additional proposals pursuant to notice thereof which was issued on May 5, 1953 (18 F. R. 2608) and a supplemental notice on May 16, 1953 (18 F. R. 2860). A decision dealing with the proposals considered at the November 5, 1952, reopening of the hearing was issued on November 22, 1952 (17 F. R. 10658). The material issues of record remaining for consideration relate to:

1. The establishment of standards which a plant must meet in order to be recognized as a pool plant fully subject to the order.
2. The need for provisions relative to unpriced milk.
3. The extension of the marketing area.
4. The need for price incentives to encourage more uniform production.
5. Miscellaneous changes.

*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.* A market-wide pooling system, such as is in effect in the San Antonio market for distributing market proceeds from producer milk, is characterized by provisions which require equalization of returns from all sales of regulated milk in the marketing area. Each handler is required to pay for producer milk at the prices applicable to the class in which he uses such milk. Through the equalization process all producers who supply milk to regulated handlers are paid the same minimum blend or uniform price, with proper adjustment for differences in the butterfat tests for milk. A two-fold purpose is served by this method of distributing returns to producers. There is an equal sharing of the higher returns for the total market Class I sales and of the lower returns realized from the disposition of reserve or Class II milk. The uniform price which represents the blend value of all producer milk received and disposed of for all purposes in the market, therefore, depends upon which handlers are included in the pool and the utilization such handlers make of milk received from producers.

Equalization is carried out through a pooling process by which handlers pay for their milk at class prices in accordance with its use. Money so collected is redistributed among handlers to enable them to make uniform payments to producers from whom they have received milk. Involved in the equalization of sales and redistribution of funds is the question as to the appropriate scope of pooling. Since the production of high quality milk required by consumers involves extra care and expense, it is important that the amount of milk produced under Grade A standards be no more than the minimum necessary to supply the market. To encourage more than enough production of such milk would represent an economic waste, since the expenditures incurred in producing Grade A milk not essential to the market supply would result in no value to consumers.

One of the problems, then, under the market-wide pool is to determine the standards for identifying the plants which constitute an essential and regular part of the market supply so as to assure the sharing of Class I sales among only those producers who furnish their milk to such plants. 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 supply of quality milk which can be obtained at these prices. In order to do this, provision should be made that equalization of market sales should be made only to plants meeting reasonable performance standards with respect to supplying their milk to the market.

Under the present provisions of the order, any person who operates a milk plant, which is approved by the appropriate health authority of the marketing area for the processing of Grade A milk, and from which Grade A milk is disposed of on retail or wholesale routes in the marketing area, is a handler. All handlers, except producer-handlers, who so distribute any quantity of Class I milk are subject to full regulation under the order, and must be and are included in the market-wide pool. If minimum producer prices which a handler must pay are to be fixed, then his sales and producer payments must be equalized with all other handlers for whom such prices are fixed.

Since the market-wide pool results in the payment of producers on the average utilization for the market, the individual handler is relieved of any responsibility for maintaining a high Class I utilization in order to support his 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. Under the present order, it is possible for any approved plant to make distribution of a small quantity of milk in the marketing area and share in the market-wide pool. Thus, the market-wide pool provides both opportunity and incentive for any distributor, wherever located, to sell a token quantity of milk in the San Antonio market if such distributor had a relatively low percentage utilization as Class I milk in relation to the market average. He would then draw money from the equalization fund of the pool, thereby reducing the price received by regular market producers. This is commonly called "riding the pool." Without some performance standards, such plants may enter the market whenever it is advantageous to do so for the sole purpose of "riding the pool." Such dissipation of returns from the sale of Class I milk would not be in the interest of either producers, handlers, or consumers in the San Antonio market.

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 upon which the San Antonio market may depend. If such plants were allowed to sell a token quantity of milk in the San Antonio marketing area whenever their Class I sales were low and then withdraw when their Class I sales were high as compared with receipts, the result would be that the in-and-out handler would be able to gain advantage in paying producers. The San Antonio 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 prices 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 should be such that any distributor who has a substantial function in the supplying of milk to the market would pool his sales and share in the market-wide equalization. On the other hand, distributors 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 San Antonio market. If distributors are to be permitted to share on a pro rata basis the Class I utilization of the entire market because of token shipments without being genuinely associated with the market, then the money paid by users of Class I milk would be subject to dissipation without accomplishing the intended purpose. This might very well happen under the present order since the only qualifications such a plant would be required to meet would be compliance with health department standards of any of the various authorities having jurisdiction in the marketing area. The mere circumstances of having health department approval is not sufficient justification for equalizing sales of such a distributor with the market. Health authorities should not be placed in a position of determining which plants should share in equalization. There is no reason to assume that a health department would refuse an application or approval because it had determined that the milk from the applicant's plant was not entitled to pool with the market or that such standards as might be applied by the health authority for this purpose would be appropriate to effectuate the declared policy of the act.

For these reasons, provision should be made in the order that a distributor must dispose of not less than 15 percent of his total receipts of milk from dairy farmers on retail or wholesale routes in the marketing area in order to be included in the market-wide pool and share in the equalization of market sales. The performance standard herein provided is designed to accomplish the objective as set forth above. On the basis of evidence available, it appears that it should accomplish such objective. If actual operating experience proves it inadequate, the standard should be revised on the basis of such experience. Such a standard should apply uniformly to all milk distributors. Any plant, regardless of its location, should have equal opportunity to comply with the standard and thereby participate in the market-wide pool and have its producers share in 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 standard of qualification. Whether or not distributors or producers choose to supply the San Antonio market will depend on the economic circumstances with which they are confronted, such as prices, transportation costs, and alternative outlets.

Evidence in the record indicates that the plants included in the pool under the order during May 1953 may be considered as associated with the market and entitled to pool. A very large per-

centage of the Class I sales of regulated handlers now goes to outlets in the marketing area. Although the record does not show the exact portion of Class I sales in the marketing area of each handler now included in the pool, it is possible that some handlers may need to watch their operations to insure continued eligibility to pool. It is concluded that to require a handler to dispose of 15 percent of his Class I sales in the marketing area is the minimum which should be established to achieve the objectives of such a provision and that such a requirement is necessary and reasonable. In order to allow plant operators time for making any adjustments which may be necessary as a result of such an amendment to the order, provision is made that if plants regulated under the order during May 1953 make application to the market administrator for designation as pool plants, such designation will be made for a six-month period after the effective date of any amendment issued pursuant to this decision, provided that such plant continues to distribute Class I milk in the marketing area.

**2. Provisions relative to unpriced milk.** A large volume of milk is customarily purchased by San Antonio handlers from sources other than producers. Such milk comes from plants scattered throughout a wide area. Although much of this milk is assigned to Class I use, it is not priced under the San Antonio order. Aside from the provision of the order requiring prior allocation of producer milk to Class I, the purchase and sale of such milk is not affected by the order program. The handler may obtain such milk whenever and wherever he can. The price he pays and the utilization he makes of the milk are not regulated in any way by the order.

Experience has proven, however, that the operations of handlers in the San Antonio market in obtaining and selling unpriced milk for Class I purposes have, at times, jeopardized the effectiveness of the classification and pricing program of the order. The volume of milk which handlers have accepted from producers has been less each month since the inception of the order than the total Class I disposition. In April 1953, which was the month of lowest imports shown on the record, approximately 6 percent of Class I sales were allocated to other source milk. In spite of this fact, the record discloses that handlers refused, during at least part of the month of April, to accept some of the milk produced by their regular producers or milk offered for sale by other potential producers. Some producers were required to keep part of their milk at home during part of this period and dispose of it as best they could. Some of the producers who had milk refused were informed that the handler to whom they delivered had enough milk for his Class I needs and any increased production above a base period average would not be accepted. The cooperative association of producers, as well as producers themselves, tried unsuccessfully to place this milk with other handlers in the market.

The record discloses, also, that handlers have largely discontinued a long-

standing practice of seeking new producers and assisting them in undertaking the production of graded milk. One handler representative testified that it would be possible to secure a substantial number of new producers if conditions were such that it was feasible to take on such producers. Failure to develop new producers could soon result in serious reductions in the flow of producer milk. There is a normal turnover among producers which represents a substantial proportion of the total production.

Evidence in the record indicates that the major reason why producer milk was refused by at least some handlers and why new production was not encouraged even though the market was short was the fact that surplus milk was temporarily available from other fluid markets at a cost less than that for Class I producer milk. Handlers purchasing this other source milk on a short term basis at a saving compared to producer Class I milk are able to underbid handlers using producer milk for contract sales, and to jeopardize generally the position of producer prices and all Class I sales in the market.

The record evidence indicates that a large share, if not all, of the supplemental milk obtained by handlers during several weeks prior to the hearing was seasonal surplus milk from other markets. The evidence indicates that such milk will not be available to the San Antonio market when seasonal shortages again occur. It indicates, also, that the alternative outlet for such milk, if not sold to San Antonio handlers, would be to manufacture Class II products.

The purchase and sale of such milk in the San Antonio market is disrupting the orderly marketing of milk. It is interfering also with the stated purpose of the act, namely, to fix prices which will insure a sufficient quantity of pure and wholesome milk.

The prices fixed under the order clearly cannot be effective in encouraging a production of milk which is appropriate to the needs of the market if handlers can circumvent these prices by purchasing surplus milk from other markets for Class I use. To raise the Class I price would provide additional incentive for handlers to obtain such milk and encourage them to refuse producer milk whenever low priced milk was available from other sources. To lower the Class I price would reduce blend prices and discourage production of milk for the market.

If some handlers purchase unpriced milk for Class I use at a lesser cost than producer milk, then those handlers using producer milk will be placed temporarily at a competitive disadvantage. This tends to be disruptive to the orderly marketing of milk and, in the San Antonio market, has given handlers the incentive to curtail their purchases of producer milk.

It is a well recognized fact that a minimum amount of milk in excess of actual Class I disposition is necessary to operate a fluid milk business. Because of a seasonal fluctuation in production not matched by seasonal changes in consumption, this excess is particularly

large in certain months of the year. This excess or reserve milk is surplus to the fluid operation, and can only be marketed in manufactured form in competition with products made from ungraded milk produced in the major low cost dairying areas of the United States. Thus, such reserve milk yields a considerably lower return than is necessary to sustain graded milk production in the San Antonio milkshed. Likewise, it yields a lower price than would be necessary to purchase graded milk on a regular basis in other supply areas and pay the cost of transporting such a bulky and perishable product to San Antonio.

The existence of this reserve Grade A milk, which must be marketed at a lower price, is the primary cause of the instability which affects fluid milk markets. If a handler were able to use milk he purchased at Class II prices for Class I use, he would stand to gain advantage, but in so doing he demoralizes the Class I market price.

One of the paramount reasons why regulation of prices is considered necessary in the San Antonio market is to insure that the position of handlers paying producers a Class I price for fluid milk will not be undermined by others using the market's excess or surplus producer milk for Class I use. It is equally important that the Class I market be protected from the use of seasonal excess milk from other markets as well as from its own surplus. The order provisions as they now stand permit a handler to curtail purchases of producer milk to their own advantage and secure low cost seasonal supplies from elsewhere for Class I use. These seasonal supplies are easily and cheaply acquired during the months of flush production when surrounding markets are receiving milk greatly in excess of their current fluid needs. If adjacent milksheds try to dump their seasonal surplus on each other's Class I markets, the result would soon be market chaos, particularly in the spring months. Class I prices would be demoralized and the rate of milk production would suffer. The result would be a shortage of milk in both markets at any time in the year when general shortages and high prices prevailed. Such marketing conditions would be contrary to the stated purpose of the act. It is necessary, therefore, in order to insure the effectiveness of the classified pricing program of the order and to promote orderly marketing, that some measure be taken to remove the incentive which handlers have to acquire unpriced milk (milk not paid for in accordance with its utilization) and undermine the Class I pricing structure of the order.

One possible alternative would be to extend price regulation in accordance with order provisions to all milk dealers who supplied milk either directly or indirectly to the San Antonio market. This alternative is both economically and administratively unacceptable in such an order program. It would open the San Antonio market pool to anyone who supplied even a token quantity of milk to handlers serving the marketing area. The objections to such distribution of pooled funds was discussed earlier in

connection with the recommendations for standards of pool participation for distributing plants.

Such regulation would have the further disadvantage of being cumbersome, expensive, difficult to enforce, and it would interfere with the acquisition of needed supplemental milk supplies for the San Antonio market. The record discloses that needed supplemental milk is obtained by San Antonio handlers from numerous and widely scattered points. It would not be possible or desirable to limit the number of plants or area from which milk might be purchased. However, in order to bring such plants under regulation, it would be necessary to set up a complete new set of transfer and allocation rules, perhaps with individual tailoring according to the various plant locations, markets and supplies. It would be necessary to follow milk from these plants to its various destinations and uses 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 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. Classification might depend upon transactions made in the past concerning which adequate records were not kept. Producer prices would be fixed for milk already purchased and sold. Required record keeping and auditing problems would be greatly multiplied with the extension of regulation.

Such extension of regulation would undoubtedly interfere with the acquisition of needed supplemental milk supplies for the San Antonio market. Potential suppliers might be reluctant to sell milk to San Antonio handlers if such sale would mean that they would be subject to producer price fixing and complete regulations provided for the San Antonio market. Also, the terms of the order, such as pooling and equalization, might work to the disadvantage of such a supplier selling primarily to an unregulated Class I market.

If a supply plant became primarily associated with the San Antonio market, there would be need to extend full regulation to such plant. However, there is no evidence of such association of any plant at this time.

It is concluded that it is not feasible to price all milk which may enter the market and that provision is necessary in the order which will insure against the displacement of producer milk by such unpriced milk for the purpose of cost advantage. There is no choice as to what type of provision can be used for this purpose. The only alternative is to levy a charge against unpriced milk used in Class I to the extent it is required for the removal of any advantage there may be in using such milk 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 have temporary or permanent advantage through sale of unpriced milk as Class I in the marketing area. It should not be so high that it will penalize suppliers of unpriced milk who offer milk needed by the market and who are 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 described 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. Rates at which milk sales are billed may not represent actual cost to the purchaser. In the case of a firm which owns or controls pool plants under the San Antonio order as well as unregulated plants, the rate of payment from one plant to another, if any were made, would have little or no 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 which control plants under the San Antonio order as well as 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 the 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 between regulated handlers ordinarily take place at the class price plus a handling charge. This handling charge varies according to circumstances, but represents a payment to the receiver of the milk to offset his purchasing and receiving costs, such as receiving, weighing, testing and cooling the milk, and other costs of doing business. 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 the allocation of additional processing costs among more than one end product is involved. Furthermore, the marketing agreement act does not give the Secretary express 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 are used in paying farmers for milk would make the determination of pay rates to individual farmers a next to impossible task. For example, unregulated milk dealers may use varying rates of butterfat differentials, different types of base rating plans, or payments based on volume of deliveries. Various devices such as these for paying farmers often make it impossible to determine actual rate of payment per hundredweight of milk. Stated prices are often illusory, since the cost of the milk itself may be modified by unrealistic charges for various items of supplies and services. Whatever payment plan an unregulated milk dealer may use is a matter of his own choice and it can be changed readily. Calculation of compensation payments according to this suggestion would give any affected dealer special incentive to resort to these or other special payment plans for purposes of evading payments.

The further problem of establishing the rate of payment to be required would by itself preclude use of the actual cost of the milk purchased from farmers by unregulated handlers as a basis for calculating the payment to 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 a regulated handler has no choice as to what he is required to pay producers 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 such sales with other suppliers of the market.

Even though the rate of payment to producers for all milk might be known, it would still be impossible to ascertain the rate of payment on that portion of the milk disposed of in the marketing area. Since milk marketed outside the marketing area would represent most of the total supply in the unregulated plant, it would be necessary to determine payment for milk marketed to the various outlets. As pointed out subsequently in this decision, all handlers have both sur-

plus 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 at order prices in the unregulated plant and the average rate of payment to producers. This method would not recover the entire advantage of selling surplus milk as Class I in the marketing area. 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 San Antonio market, an extremely complicated and administratively impracticable system of accounting and determination in such plants. The unregulated plants from which the San Antonio handlers obtain supplemental milk are numerous and widely scattered. Determination of utilization value in these plants would involve the same complications and administrative expense and difficulties as discussed earlier which would be involved in complete regulation of such plants. To make the detailed accounting necessary to establish classification, such unregulated dealers would need to maintain the same detailed records as wholly regulated handlers.

An alternative method 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. This assumption is not valid to the degree that a payment based on the difference between such prices could be expected to insure that unregulated milk would not be used to displace regulated milk for cost reasons 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 farmers 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 plants located anywhere in the potential supplemental supply area might sell milk for Class I use in other markets at substantial handling charges whenever fluid milk tended to be in short supply, and then dispose of milk for Class I use in the San Antonio market to maintain the 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 by producers under the order, or it could retain the extra return as profit. 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 is 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 fixing 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 cost of such milk and the cost of milk priced under the order for similar use. The record shows that milk supplies are invariably larger in surrounding markets 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 manufactured products. This outlet represents the opportunity cost of the surplus 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. The minimum asking price of the unregulated supplier of such milk would be expected to be only the return which he would realize if the milk were disposed of for surplus use.

Since considerable volumes of Grade A milk must be disposed of as surplus by various unregulated plants from which the market may obtain milk, it is evident that handlers under the San Antonio order could obtain such milk at prices reflecting its value as surplus milk. In short, the actual value of this milk is not the blend price paid to dairy farmers but rather the price which can be obtained for it in the market when disposed of as surplus milk.

Therefore, for the months of February through July, during which period surplus milk is likely to be available in substantial volumes to the San Antonio market from non-pool sources, the compensation payment on other source milk or milk products used for Class I should be based on the difference between the minimum price of producer milk used for surplus and the applicable Class I price under the San Antonio order. The Class II price established by the order is a fair and economic measure of the value of milk in surplus uses whether received from producers at regulated plants or from other farmers at non-regulated plants. In calculating the payments on other source milk both the Class I and surplus values must relate to and be fixed as of the point where the milk is received from farmers at the first receiving plant, so as to be properly comparable with minimum class prices which always attach to producer milk at that level of marketing. No allowance should

be made for subsequent handling costs and profits in this farm level comparison between producer and other source milk because such costs and profits attach at stages of marketing subsequent to the basing point to which minimum class prices for producer milk refer. They are in no way regulated by the order with respect to producer milk. Neither the act nor the order contemplates, authorizes or provides for the regulation of subsequent handling charges or profits or the establishment of uniform resale prices between handlers, whether the milk be from producers or other sources.

During the months of August through January, when milk supplies tend to be shorter, it is concluded that other source milk will not be available to handlers in the San Antonio market at surplus prices. Evidence in the record indicates that the supply of excess milk available in January and August is much less than during the season of flush production. It is concluded that during these two months the compensation payment should be based on the difference between the Class I and the blend prices under the order. Generally speaking, during these two months the relationship between the supply of milk in the San Antonio supply area and the demand for such milk will tend to fluctuate considerably from year to year according to production conditions. It is concluded that these fluctuations will tend to be similar in San Antonio and surrounding milksheds. Thus, the rate of compensation payment based on the difference between Class I and blend prices will adjust itself automatically in these months according to changes in demand for and prices of outside supplies. If supplies of producer milk are relatively plentiful, unpriced milk can be expected to be cheaper, and therefore, the rate of compensation payment should be somewhat higher. On the other hand, as milk supplies in the area tend to be short, it is to be expected that the cost of unregulated milk will increase. Under these circumstances, the rate of compensation payment will be correspondingly less. If producer milk were all assigned to Class I in August or January no compensation payment would be required during such month.

During the remaining months of the year (September through December) no compensation charge should be provided. Evidence in the record indicates that the cost to San Antonio handlers of milk from unpriced sources will be at such levels that there will be no incentive to use such milk to displace producer milk for reasons of cost advantage for this period.

By choosing a rate of compensation payment which reflects the cost of the cheapest milk which may be expected to be available, any advantage to individual handlers relative to others, in obtaining such cheap milk and substituting it for producer milk in Class I, is removed insofar as administratively possible and no handler is given the clear opportunity to gain an unfair advantage which otherwise would exist. Although the unfair advantage of obtaining other source milk is removed by the particular rate of

payment herein provided, nevertheless, if other source milk is to be purchased, the incentive for purchasing the cheapest of such milk remains; for the lower the price which a handler pays for other source milk, the lower will be his total cost of purchasing such milk. This follows from the fact that the measure of the compensation payment is an objective one and does not depend upon the particular price which the handler paid for the other source milk.

As pointed out heretofore in connection with material issue number 1, the process of market-wide pooling creates an unnatural incentive for milk to come into the market to gain certain advantages. Such milk would not be associated with the market in the absence of regulation.

The act requires that prices fixed under the order for milk purchased from producers or associations of producers be uniform as to all handlers, subject only to usual adjustments, such as those for butterfat content and location of the milk. The only prices fixed under the order are those for producer milk, and it is hereby determined that they are uniform as required by the act. Class prices for pool milk under the order are for raw milk as received from farmers, f. o. b. the loading platform at the plant where first received.

No valid comparison can be made of prices to farmers with the necessarily higher prices of milk or milk products at any later point in the marketing process. The prices between dealers must necessarily reflect, in addition to such initial farm level cost or price, subsequent handling costs, such as those incurred in receiving, weighing, testing, cooling, hauling between plants, processing, and selling, as well as profits. Consequently, the compensatory charges do not purport to assure that the cost or price of non-pool milk or milk products, as bought and sold from dealer to dealer, will be no higher than the minimum class prices for raw, unassembled pool milk, f. o. b. initial plant. A handler selling pool milk or milk products could not well sell it at levels as low as the minimum class price without loss to himself. Compensatory charges at a rate which would assure a total maximum cost to a handler of only the minimum class price for non-pool milk and milk products received from a non-pool plant would clearly discriminate against pool milk and milk products.

It is concluded that the compensation payments herein provided are not only incidental, but necessary to sustain the classification and pricing of milk according to its use in the market, and that the rates of payment specified are those which are necessary and appropriate to accomplish this purpose.

Testimony in the hearing record concerning availability of milk supplies to San Antonio handlers indicates that the rate of payment recommended here will tend to 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, or

that such payments otherwise interfere with the purposes of the order, then it will be necessary to reconsider the rate of compensation payment on the basis of that experience.

In addition to that other source milk which enters the marketing area through pool plants, some non-pool milk may be distributed within the marketing area from plants which are non-pool plants and the milk from such plants will be non-pool milk. The compensation charges applicable to other source milk disposed of in the marketing area from distributing plants which are non-pool plants should be the same as those applicable to other source milk distributed from pool plants discussed above. It would not be possible to stabilize the market under the classified pricing program if non-pool plants were allowed to distribute unpriced milk in the marketing area without such payments. Such milk should be classified and priced the same through the classification pricing program as unpriced milk distributed through any other channels.

Handlers distributing such unpriced milk in the marketing area from non-pool distributing plants have the same opportunity to buy milk at the opportunity cost level as do the operators of pool plants who purchase other source milk. Such milk may be purchased and distributed in the marketing area. In addition, however, the operator of the non-pool plant in all probability has surplus milk in his own plant which he would want to dispose of on any basis which would yield a higher return than the surplus value. It would be particularly easy to dispose of such milk for Class I use in the marketing area by bidding for large contracts such as hospitals, defense establishments or large institutions. With surplus outlets as the alternative, and no compensation payments to make, the non-pool handlers would have considerable incentive or margin to underbid the seller of priced milk for such sales. A non-pool plant might also use such price advantage in selling his surplus milk to Class I outlets for the purpose of establishing a regular trade on retail or wholesale routes to homes and stores in the marketing area. The non-pool plant might sell up to 15 percent of its milk into the marketing area as Class I without becoming subject to regulation. To allow a non-pool plant to use its surplus milk in this manner for establishing a regular trade in the marketing area without compensation payments would mean that such plant would have a marked competitive advantage over regulated handlers selling priced milk. Such conditions could readily lead to disorderly marketing conditions.

It is considered inappropriate also 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. In some cases, a non-pool plant may be disposing of a larger share of its milk as Class I than the average utilization for the market. In such cases, the

compensation payments herein provided might cost the handler less than the equalization payments such plant would pay if fully regulated as a pool plant. In these instances the sale of small quantities of milk in the marketing area would be more likely to take place under the compensation payment provisions herein provided than if full regulation were extended to all plants.

The rate of compensation payment provided for non-pool plants making distribution directly in the marketing area should be the same as that for pool plants which obtain and use unpriced milk in Class I. The administrative feasibility of any other method of levying compensation payments is substantially the same as that described in the case of unpriced milk distributed in the marketing area by pool plants.

Testimony in the record indicates that 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 San Antonio handlers might obtain supplemental supplies approximate or exceed the San Antonio Class I prices, with seasonal adjustment as recommended herein and as adjusted for location of the supplying plants. Since handlers under other Federal orders must pay for producer milk on a utilization basis, they would not be in a position to unload any surplus producer milk into the San Antonio market for Class I use at less than Class I prices. In order that such handlers would not be able to sell any other source milk which they may have to the San Antonio market, provision should be made in the order that the exemption from compensation payment applies only if the Class I producer milk is equal to the total Class I sales of such handler. No distinction should be made with respect to the application of such payments to milk from handlers regulated under other Federal milk marketing orders whether the milk is distributed by the handler from the other order or by a San Antonio handler.

Any funds collected from this source should be added 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 unpriced sources, producers stand to lose income from the sale of milk to the market which they are expected to supply. This loss of income would mean that the prices contemplated under the order would not be realized by producers. As a result, production might suffer, in which case consumers would stand to lose because of the disappearance of milk supplies from the regular and dependable sources which have assumed an obligation of supplying them milk to the market on a year-round basis. Otherwise, Class I prices would have to be increased to offset the loss of income to producers. There is no alternative source of dependable milk supplies which would cost consumers less over a period of time than the milk supplied by regular producers. 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. No compensation payment is required when all producer milk is assigned to Class I. There is no other alternative disposition of funds from compensation payments under the authority of the act other than that herein provided. In order that the money accruing under this provision should provide the maximum benefit, it is concluded that it should be added to the producer-settlement fund and disbursed to producers through the uniform price during the months of September through December as a further incentive for uniform production. This is the period when local production tends to be lowest and when handlers' requirements for high cost other source milk are at a maximum.

The use of compensation payments was questioned on the hearing record on the basis that they might foster unrealistic class prices. This is not the case. Class prices held in excess of the necessary level for any reason would be self-liquidating under the terms of the order. If base prices were set above the level necessary to encourage appropriate rates of milk production, the supply of milk would increase. Higher prices could be expected to attract additional milk to the market in the form of greater production by old producers or by the addition of new producers and new plants to the pool. The provisions of the order do not preclude any producer from selling his milk to a pool plant. Any plant which cares to do so is eligible to distribute or sell milk in the market and qualify as a pool plant fully subject to the provisions of the order, and assume the responsibility of serving the market.

The increased supplies of milk which so resulted would have the effect of decreasing prices to producers. This would come about since any increase in Class II milk would reduce the blend price, and since the supply-demand provision of the order would automatically decrease the Class I price as producers' milk supplies increased relative to Class I sales. The compensation payment will not discourage association of dependable milk supplies with the market, but, as pointed out heretofore, might be a means to facilitate such association in the case of handlers largely in the fluid milk business.

It is necessary that the order specify the handler obligated to make the compensation payments. If the unpriced milk is distributed in the marketing area from a non-pool plant, the operator of such plant should make the payment. In the case of supplemental milk received at pool plants from unpriced sources, 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.

From the standpoint of administration and enforcement, it would be much easier and simpler for the regulated plant to make the payment. It is the regulated handler with whom the market administrator regularly deals. Such handler would be expected to know and under-

stand 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 application of the allocation provisions of the order to the plant of the receiving handler.

The seller, on the other hand, 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.

The compensation payments herein provided will not prohibit the marketing of milk nor limit the marketing of milk products from any production area of the United States. The rate of payment required is 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. The transportation differential herein provided for this purpose is designed to reflect the cost of hauling bulk milk in tank truck lots and is based on the evidence in the hearing record.

The quantity of milk and milk products which may be sold in any regulated market is dependent to a considerable extent upon the price fixed under the order for the particular class of utilization. Such influence should not be construed, however, as a limitation of the type precluded 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. No quantitative limitations are imposed under the order on the amounts of unpriced milk which may be disposed of in the marketing area nor do they prohibit such use or any other use of unpriced non-pool milk or milk products. 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 payment will not deprive suppliers of unpriced milk of a high priced market which they would otherwise enjoy. The alternative sale value of the unpriced milk is recognized, and this value is returned to those sources when sale is made to the San Antonio market. If marketing facilities and outlets are such that it is advantageous for unpriced sources to dispose of their surplus milk to the San Antonio Class I market, they may be expected to and undoubtedly will do so, and the return they receive will be a full surplus value for such milk.

The compensation payment herewith provided has as its primary purpose the elimination of economic incentives for handlers to use unpriced milk to displace minimum priced milk in Class I sales. The rate of payment found to be appropriate for this purpose is one which rec-

ognizes general competitive conditions in the purchase and sale of regulated and unregulated milk.

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 definite and certain rate applicable to all handlers similarly situated. No single rate of payment can be determined, however, which would result in complete equality of cost to all handlers. Consequently, instances will undoubtedly arise which will appear to indicate that the objectives of the compensatory payment are not being achieved in particular cases. In some cases, the payments required may 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. Commerce in milk is entirely at the option of handlers. They are free to complete only those transactions which are most favorable 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.

3. *Extension of the marketing area.* The proposal to extend the marketing area to include the counties of Comal, Guadalupe, and Hayes should be denied.

The present San Antonio marketing area is composed of all territory within Bexar County. Testimony for the extension of the marketing area was presented on behalf of two handlers whose plants are located in the Comal and Guadalupe counties. Proponents presented no testimony supporting the inclusion of Hayes County. The record indicates that practically all of the milk received by handlers, whose plants are located within the present marketing area, is disposed of in Bexar County. Although the record does not show the proportion of total sales which are made within the marketing area by the proponents, the testimony indicates that such sales are not a substantial proportion of their fluid sales and represent a very small proportion of total sales in the marketing area. In addition to the proponents, there is one San Antonio handler who disposes of milk in only one county of the proposed extended area. The primarily fluid milk outlets for the proponents are in the city of Austin and

in the three proposed counties. A substantial portion of the fluid milk disposed of in these counties is made by six other distributors who are not now subject to the regulation and who are primarily engaged in supplying the Austin market and adjacent territories. Thus, to extend the marketing area would have the result of bringing six additional plants under full or partial regulation which are in no way associated with the San Antonio market. The problem, complained of by proponents, of fringe-area competition, thus would be increased several-fold by the extension of the marketing area.

The record indicates that there are substantial differences between the Austin and San Antonio markets with respect to the factors surrounding the production, procurement and distribution of milk.

The purpose of defining marketing area, along with other definitions, is to establish the scope of the regulation. In other words, these definitions determine what persons and what milk is to be subject to the pricing and pooling provisions of the order. As discussed elsewhere in this decision, the regulation should apply to milk which is substantially and regularly associated with the San Antonio market. To extend the marketing area as proposed would bring under regulation handlers and milk of producers which are not closely associated with San Antonio. It is concluded, therefore, that no change should be made in the definition of marketing area at this time.

There may be some objection on the part of proponents to provisions of the order in that prices now are fixed for all producer milk in their plants, even though their Class I disposition is almost entirely to unregulated markets in competition with handlers not subject to price fixing. Provisions found necessary earlier in this decision provide that prices will not be fixed for proponent handlers if this is the case. They will be exempted from full regulation and their Class I sales in the marketing area will be treated the same as Class I milk from any other unpriced source.

4. *Uniform production incentives.* One of the important problems in a fluid milk market is to achieve a proper balance between the seasonal flow of milk from producers and the requirements for such milk in fluid uses. Production of milk tends to increase during the spring pasture season and decline during the fall and winter months, while sales of fluid milk and fluid milk products tend to be fairly stable throughout the year. If a market is adequately supplied during the short production season, burdensome surpluses may prevail during the flush production season. It is essential, therefore, that producers be encouraged to furnish a reasonably uniform quantity of milk from month to month.

Receipts of milk from San Antonio producers have been somewhat more uniform than in many fluid milk markets. The record shows that if the present pattern of production is to be maintained or improved, a greater incentive is needed for uniform production

than is now provided by the order. It is important that a safeguard be provided now rather than to wait until such time that uneven production presents a serious marketing problems.

It was proposed by certain handlers that a base rating plan be adopted to distribute to producers the market proceeds of milk. A detailed method of applying such a plan was not proposed at the hearing. However, testimony with respect to a proposed plan considered at the promulgation hearing was incorporated in the record. As indicated in the decision resulting from that hearing, with the year-round deficits of supply, which still prevail in the San Antonio market, it is evident that under the proposed base plan, the uniform price for base milk and for milk in excess of base would be practically the same. The influence of a base rating plan on the seasonal pattern of production depends upon the effect of lower prices for excess milk in reducing the incentive to make deliveries in months of surplus production and the value of a large base in encouraging production in months of normally short production. Since these influences can operate only when the price received for excess milk is lower than that for base milk this plan would be ineffective in the San Antonio market under present conditions.

In view of this situation, an incentive for more-uniform production can be best achieved through seasonal variation in the Class I price. A small degree of seasonality has resulted from the application of the supply-demand adjustment under the present Class I pricing formula. Producers testified at the hearing that it was necessary to increase the amount of the seasonal differences in the Class I price. The record evidence supports a decrease in the Class I price during the months of April, May and June, and a corresponding increase in the Class I price during the months of September, October, and November. These appear to be the months of highest and lowest production, respectively, in relation to Class I sales. It was suggested on the record that adjustments of 40 or 50 cents be made. It is concluded that the use of 50 cents or a total difference of \$1.00 between the two periods is the minimum which should be adopted. This difference plus the seasonality of prices injected by the supply-demand arrangement should offer a necessary incentive to promote uniform production in this market.

5. *Miscellaneous changes.* (a) The definitions of producer and handler should be modified so as to include in the pool any milk sold by producer-handlers and milk caused to be diverted during certain months by cooperative associations from pool plants to nonpool plants.

The present definition of a producer-handler includes a person who operates an approved plant and sells milk of his own production on routes or plant stores within the marketing area, but who receives no milk from other producers. The production and sales of producer-handlers are not pooled. Any milk which a producer-handler disposes of to another handler is considered other source milk. Under the allocation pro-

visions of the order such milk, which is delivered in bottles or packages and disposed of by the handler under the label of the producer-handler, is assigned to Class I milk and bulk milk is assigned to the lowest priced available utilization in the receiving handlers' plant.

The record shows that there is at present only one such producer-handler in the San Antonio market. He operates an approved plant at his farm located in Bexar County for the bottling of milk for distribution in the marketing area. Approximately two-thirds of his total production is bottled and delivered to other handlers for distribution by them. A plant store is operated at the farm from which sales of bottled milk are also made. The balance of his milk is disposed of in bulk form also to a regulated handler. This producer-handler proposed that the definition of producer be changed so that his milk would be considered as producer milk. He testified that he desired to have his production and sales of both bottled and bulk milk pooled along with all producers in the market. It is concluded that inasmuch as the proponents entire production is regularly disposed of in the marketing area and the major portion of which is supplied to other handlers, the request to permit such pooling is reasonable. This result may best be accomplished by considering this type of an operation as a pool plant under the order. Own-production of a handler is considered as producer milk under the order. Because sales of milk are made directly to consumers, it is necessary that such persons be identified as handlers in order that they will be subject to the necessary record keeping, reporting and auditing requirements of the order. Milk disposed of to other handlers will be subject to the inter-handler transfer provisions of the order. Administrative assessment charges should apply to own-production of handlers. The record shows that there are no other persons operating as producer-handlers in the marketing area, therefore, there is no necessity for retaining the producer-handler definition and all references to a producer-handler should be deleted from the order. In the event a producer-handler, as identified heretofore, should enter the market, he would become a handler under the order.

Situations have arisen in the market where handlers have temporarily refused to accept all of the milk production of their regular producers. Inasmuch as other outlets were not available in the market, individual producers had to dispose of the milk refused, by separating the cream and using the skim milk for feed or else dumping it. Such milk which is not received at a pool plant cannot share in the market-wide pool. One of the functions of a market-wide pool is to spread the financial burden of carrying temporary or seasonal reserve supplies equally among all producers. The producers' association proposed that a cooperative association should be recognized as a pool-handler with respect to milk of its members which is diverted by it to a non-pool plant. Proponents stated that if the association were to be

recognized as a pool-handler, with respect to diverted milk, it would be possible for the association to arrange for assembling any excess milk of its members and disposing of it to other outlets. It could thereby perform a useful service to its members and the market. Such milk would then be pooled and return to producers the market-wide uniform price. The monetary returns of the cut-back producer would be maintained on a par with other producers. This would assist him in maintaining his dairy enterprise and supply milk to the market when it is later urgently needed for Class I uses. Appropriate changes should be made in the definitions of producer and handler so that a cooperative will be considered as a pool-handler with respect to milk diverted from a pool plant to a non-pool plant for its account during the months of February through July. During this period supplies of producer milk tend to increase seasonally. The producers of such milk will thereby be enabled to share in the market-wide pool on their total milk deliveries.

(b) Minor changes should be made in the provisions relating to the announcement of Class I and Class II prices.

The market administrator is required to announce Class I prices on or before the 10th of the month based on data which are available on the 28th day of the preceding month. The record shows that by the first few days of the month more current figures for certain items included in the formula are available, but which he is precluded from using under the present order language. The use of figures available through the 5th of the month, therefore, will make possible the use of more current data in establishing the Class I price and the order should be amended accordingly. Over a period of time the use of this later date will not affect the cost of Class I milk or returns to producers. Also, 2 of the 18 condenseries specified in § 949.51 of the Class I pricing provisions of the order should be deleted since such plants are no longer operating. Official notice is hereby taken of the fact that such plants have discontinued operations. Interested parties may take exception to such official notice if they so desire.

The present order provides for rounding of the Class I price to the nearest full cent. No such provision has been made for Class II prices. The market administrator is announcing the Class II price based on the nearest full cent and the order should be clarified accordingly.

(c) It was proposed that methods employed in classifying and accounting for inventories be changed. Presently, plus or minus variations in inventory between the beginning of the month and the end of the month are classified as Class II milk. Because other source milk is received during most delivery periods by some handlers, it has been necessary for the market administrator to maintain separate inventory accounts for producer milk and other source milk for such handlers. This has been necessary in order to determine reclassification charges on producer milk

which is assigned as inventory to Class II milk and later disposed of as Class I milk.

Most of the milk which is earned in inventory by handlers in this market will be disposed of as Class I milk. Therefore, the amount of milk which would be subject to reclassification would be reduced to a minimum by classifying inventory as Class I milk. Classification of inventory variations as Class I milk would also simplify the accounting procedure. Any reclassification of milk from inventory allocated to Class II milk would be made through the regular monthly classification procedure.

In accordance with the proposal to clarify the accounting procedure, inventories of bulk milk and cream and other products included in Class I milk which are on hand at the end of each month should be classified as Class I milk. The beginning inventory should be considered as a current month milk receipt and subtracted from Class I milk in the allocation provisions. These changes will eliminate negative inventory variation figures which have caused some confusion. Over a period of time, the proposed changes will have very minor, if any, effect on the cost of milk to handlers or the returns to producers.

(d) The provisions of the order dealing with inter-handler transfers of milk, skim milk, and cream, should be changed so that producer milk is not displaced in available Class I usage by other source milk. The order now provides that inter-handler transfers cannot be classified as Class II milk if this results in producer milk being allocated to Class II milk and other source milk to Class I milk in the plant of the transferee handler. It is possible, however, under some circumstances, that a transfer of milk as Class I milk will result in producer milk being classified as Class II milk in the transferring handlers' plant at the same time other source milk is allocated to Class I milk in the transferee handlers' plant. This may happen when the transferring plant receives other source milk in excess of its utilization of Class II milk while the transferee handler buys other source milk in a lesser quantity than his net Class II utilization after subtraction of Class II milk from other pool plants. One of the purposes of the order is to allocate producer milk to the highest priced available classification. The transfer provisions should be changed to provide that if either or both pool plants have received other source milk, the skim milk or butterfat so transferred shall be classified so as to allocate the greatest possible Class I utilization to producer milk at both plants.

(e) The order is silent, with respect to the allocation of products other than milk, skim milk or cream received by a handler from a pool plant. Such transfers may be in the form of Class I products other than milk, skim milk or cream or products included in Class II milk. It is concluded that skim milk and butterfat in such products received from other handlers should be classified in conformance with the regular classification provisions of the order and subtracted from the respective class utiliza-

tions as the second step in the allocation procedure.

(f) Under the reporting provisions of the order, handlers are not required to report other source milk receipts of Class II products which are disposed of in the same form as received without further processing and packaging. Experience in this market has shown that the reporting of such receipts facilitates the checking of handlers' monthly reports and the auditing program of the market administrator. Handlers have cooperated in furnishing this information. It is concluded that the order should be changed to require handlers to report total receipts of products disposed of in the form received.

(g) It was proposed that the order be clarified with respect to classification of skim milk and butterfat used to produce products other than dairy products by handlers or by processors to whom handlers may dispose of milk. The record shows that ungraded milk may be used by the processors of soup, candy and most other manufactured food products. It is concluded, therefore, that provision should be made to classify skim milk and butterfat transferred or disposed of in bulk to wholesale manufacturers of such products as Class II milk. Skim milk and butterfat used by handlers for products not classified in Class I milk likewise should be Class II.

(h) A proposal was made to include dumped skim milk in Class II milk. Under the present order dumped skim milk is considered along with shrinkage as milk not specifically accounted for as Class II milk. Plant loss in excess of 2 percent of receipts of producers, is classified as Class I milk. The testimony shows that very few handlers have dumped skim milk and the necessity for dumping such milk has been very infrequent. Skim milk may be disposed of for livestock feed and classified as Class II milk. Other changes recommended herein provide additional outlets for skim milk at a Class II milk classification. The verification by the market administrator of the quantities of any skim milk which may be dumped presents an administrative problem. In view of these facts, it is concluded that the proposal for including dumped skim milk in Class II milk should be denied.

(i) It was proposed that shrinkage of producer milk should be prorated to Class I milk and Class II milk in accordance with the amount of producer milk, other than shrinkage, which is classified in each class. The record testimony is inconclusive with respect to a need for changing the present method of assigning to Class II milk actual shrinkage up to 2 percent of total producer milk receipts.

(j) The adoption of the several amendments decided upon herein require additions and numerous conforming changes throughout the order. For that reason the entire order should be redrafted and reissued.

**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.** Written arguments and proposed findings and conclusions submitted on behalf of interested persons were considered, along with the evidence in the record, in making the findings and reaching the conclusions herein set forth. To the extent that the proposed findings and conclusions differ from the findings and conclusions contained herein, the specific or implied requests to make such findings are denied because of the reasons stated in support of the findings and conclusions in this decision.

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

#### DEFINITIONS

§ 949.1 **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.)

§ 949.2 **Secretary.** "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

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

§ 949.4 **Cooperative association.** "Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

§ 949.5 **San Antonio, Texas, marketing area.** "San Antonio, Texas, marketing area" hereinafter called the "marketing area" means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Texas.

§ 949.6 **Approved plant.** "Approved plant" means any milk plant (a) which is approved by the appropriate health authority of the marketing area for the processing of Grade A milk and from which Class I milk is delivered (including delivery by a vendor, or sale from a plant or plant store) in the marketing area other than to any milk processing plant, or (b) which is supplying Class I milk to a federal institution or base in the marketing area.

§ 949.7 **Pool plant.** "Pool plant" means an approved plant from which the volume of skim milk and butterfat distributed as Class I milk to retail or wholesale outlets (including sales through plant stores) in the marketing area during the delivery period is equal to 15 percent of the producer milk at such plant during such delivery period: *Provided*, That, in any event, a plant which was an approved plant during the month of May 1953 shall, upon written application to the market administrator on or before the 10th day after the effective date of this subpart, be designated as a pool plant during any month of the six month period following the effective date hereof, in which Class I milk is disposed of from such plant to retail or wholesale outlets in the marketing area.

§ 949.8 **Non-pool plant.** "Non-pool plant" means any milk receiving, manufacturing, or distributing plant other than a pool plant.

§ 949.9 **Handler.** "Handler" means a person in his capacity as the operator of an approved plant(s), or a cooperative association with respect to producer milk diverted for the account of such association pursuant to § 949.10. Milk so diverted shall be deemed to have been received at a pool plant.

§ 949.10 **Producer.** "Producer" means any person who produces milk received directly from the farm at a pool plant or diverted during the months of February through July, from a pool plant to a non-pool plant for the account of a cooperative association, which milk is (a) produced under a permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by the appropriate health authority having jurisdiction in the marketing area, or by another health authority whose certification is accepted by such health authority, or (b) is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases. This definition shall not include any such person with respect to milk received by a handler partially exempt from this subpart pursuant to § 949.60.

§ 949.11 **Producer milk.** "Producer milk" means any skim milk or butterfat contained in milk received directly at

the pool plant from producers, or diverted by a cooperative association in accordance with the provisions of § 949.10.

§ 949.12 *Other source milk.* "Other source milk" means all receipts of skim milk or butterfat other than that contained in (a) producer milk, (b) receipts from pool plants, or (c) Class II products disposed of in the form in which received without further processing or packaging by the handler.

#### MARKET ADMINISTRATOR

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

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

- (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.

§ 949.22 *Duties.* The market administrator shall:

- (a) Within 30 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in 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 reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;
- (d) Pay out of funds provided by § 949.87 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 949.86) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;
- (e) Keep such books and records as will clearly reflect the transactions provided for in this subpart and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;
- (f) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;
- (g) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends;
- (h) Publicly announce, at his discretion, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any

person who, within 10 days after the day upon which he is required to perform such acts has not:

- (1) Made reports pursuant to §§ 949.30 to 949.31 inclusive, or
  - (2) Made payments pursuant to §§ 949.60, 949.61 and §§ 949.80 to 949.87, inclusive.
- (i) On or before the twelfth day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be assigned to each class in the proportion that the total producer milk in each class is of the total receipts of producer milk by such handler.

(j) Notify handlers and make announcement by such other means as he deems appropriate of prices as follows:

- (1) On or before the tenth day of each month the Class I price for such month computed pursuant to § 949.51 and the Class I butterfat differential computed pursuant to § 949.54;
- (2) On or before the fifth day of each month the Class II price for the preceding month computed pursuant to § 949.53 and the Class II butterfat differential computed pursuant to § 949.54; and
- (3) On or before the twelfth day of each month for the preceding month the uniform price computed pursuant to § 949.71, and the butterfat differential to producers computed pursuant to § 949.81.

(k) Prepare and publish such statistics and information as he deems advisable and as do not reveal confidential information.

#### REPORTS, RECORDS, AND FACILITIES

§ 949.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator for each of his approved plants as follows:

- (a) The quantities of skim milk and butterfat contained in producer milk;
- (b) The quantities of skim milk and butterfat contained in (or represented by) receipts from pool plants;
- (c) The quantities of skim milk and butterfat contained in receipts of other source milk;
- (d) The quantities of skim milk and butterfat contained in receipts of Class II products disposed of in the form in which received without further processing or packaging by the handler;
- (e) The utilization of all skim milk and butterfat required to be reported pursuant to this section; and
- (f) Such other information with respect to the receipt and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 949.31 *Reports of payments to producers.* On or before the 20th day after the end of each month, each handler who received milk from producers shall submit to the market administrator his producer payroll for the month, which shall show for each producer:

- (a) His total deliveries of milk.

(b) The average butterfat content of such milk, and

(c) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

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

- (a) The receipts and utilization of all skim milk and butterfat received from any source;
- (b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products handled;
- (c) Payments to producers and cooperative associations; and
- (d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products on hand at the beginning and end of each month.

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

#### CLASSIFICATION

§ 949.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received within the month at a pool plant in the form of producer milk, other source milk, or receipts from other pool plants shall be classified by the market administrator pursuant to the provisions of §§ 949.41 to 949.46, inclusive.

§ 949.41 *Classes of utilization.* Subject to the conditions set forth in §§ 949.43 and 949.44, 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 the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream, cultured sour cream, any mixture (except eggnog and bulk ice cream and frozen dairy product mixes) of cream and milk or skim milk; (2) contained in inventories of products designated as Class I pursuant to subparagraph (1) of this

paragraph on hand at the end of the month, and (3) all other skim milk and butterfat not specifically accounted for as Class II milk;

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

(1) Used to produce any product other than those designated as Class I in paragraph (a) of this section;

(2) Disposed of for livestock feed;

(3) In shrinkage up to 2 percent of receipts from producers; and

(4) In shrinkage of other source milk.

§ 949.42 *Shrinkage.* The market administrator shall allocate shrinkage to a handler's receipts at pool plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat in producer milk and other source milk.

§ 949.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat classified as Class II milk shall be reclassified if such skim milk or butterfat is later disposed of (whether in original or other form) as Class I milk.

§ 949.44 *Transfers.* Skim milk or butterfat transferred from a pool plant in the form of milk, skim milk, or cream shall be classified:

(a) As Class I milk, if transferred to the pool plant of another handler, unless utilization as Class II milk is mutually reported in writing to the market administrator by both handlers on or before the 7th day after the end of the month within which such transfer occurred, and the amount of skim milk or butterfat so assigned to Class II does not exceed the amount of skim milk or butterfat, respectively, remaining in Class II utilization by the transferee handler after the subtraction of other source milk pursuant to § 949.46: *Provided*, That the skim milk and butterfat so transferred shall be classified so as to result in a maximum assignment of producer milk to Class I milk.

(b) As Class I milk, if transferred or diverted to a non-pool plant except as:

(1) The transferring or diverting handler claims utilization as Class II milk;

(2) The operator of the non-pool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, and

(3) The Class I utilization of skim milk and butterfat respectively at such plant is less than the total of skim milk and butterfat so transferred plus receipts at such plant of skim milk and butterfat in milk from dairy farmers who the market administrator determines constitute the regular source of supply for fluid usage of such non-pool plant.

(c) As Class II milk if transferred subject to verification by the market administrator to a wholesale food manufacturing establishment which has no Class I disposition of skim milk or butterfat.

§ 949.45 *Computation of skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the report submitted by each handler and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk for such handler.

§ 949.46 *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 I the pounds of skim milk in Class I products which were on hand at the beginning of the delivery period.

(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 § 949.41,

(3) Subtract from the remaining pounds of skim milk in Class II milk the plant shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 949.41 (b) (3)

(4) 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,

(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 § 949.44 (a)

(7) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (3) 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.

(c) Determine the weighted average butterfat content in Class I and Class II milk computed pursuant to paragraphs (a) and (b) of this section.

#### MINIMUM PRICES

§ 949.50 *Minimum prices.* Subject to the appropriate butterfat differential computed pursuant to § 949.54 each handler shall pay in the manner set forth in §§ 949.70 through 949.85 for milk received at his pool plant from producers at no less than the prices per hundredweight set forth in §§ 949.51 and 949.53.

§ 949.51 *Class I milk.* The Class I price shall be an amount calculated as follows:

(a) Multiply the formula index computed pursuant to § 949.52 by \$5.99, and divide by 100.

(b) Adjust the price calculated pursuant to paragraph (a) of this section so that it does not exceed the price calculated pursuant to paragraph (c) of this section by less than \$2.00 or more than \$3.00.

(c) For the months of April through June subtract and for the months of September through November add 50 cents.

(d) To the foregoing price add 3 cents for each percentage point which the utilization percentage calculated pursuant to paragraph (f) of this section is less than 100 or subtract 3 cents for each percentage point which such utilization percentage is more than 110 provided that in no case shall more than 60 cents be added to or subtracted from the price because of the provisions of this paragraph. The resulting amount rounded to the nearest full cent shall be the Class I price.

(e) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the preceding month at the following plants or places for which prices have been reported to the market administrator or to the Department, divided by 3.5 and multiplied by 4.0:

#### *Present Operator and Location*

Borden Co., Mount Pleasant, Mich.  
Carnation Co., Sparta, Mich.  
Pet Milk Co., Hudson, Mich.  
Pet Milk Co., Wayland, Mich.  
Pet Milk Co., Coopersville, Mich.  
Borden Co., Black Creek, Wis.  
Borden Co., Orfordville, Wis.  
Borden Co., New London, Wis.  
Carnation Co., Chilton, Wis.  
Carnation Co., Berlin, Wis.  
Carnation Co., Richland Center, Wis.  
Carnation Co., Oconomowoc, Wis.  
Pet Milk Co., New Glarus, Wis.  
Pet Milk Co., Belleville, Wis.  
White House Milk Co., Manitowoc, Wis.  
White House Milk Co., West Bend, Wis.

(f) The percentage calculated as follows shall be known as the utilization percentage: Divide the total pounds of Class I milk during the first and second preceding months for all pool plants and the Class I milk disposed of in the mar-

keting area by non-pool plants, except those partially exempted from the provisions of this part pursuant to § 949.60 by the total pounds of producer milk for the same period. Round the result to the nearest whole percentage point.

§ 949.52 *Formula index.* Based on the latest data published on the 5th day of each month, the market administrator shall calculate a formula index for the current month as follows:

(a) Divide the monthly wholesale price index for all commodities as announced by the Bureau of Labor Statistics, U. S. Department of Labor, by the average of such index for the years 1948 through 1950 and multiply by 100.

(b) Divide by 3.586 the average of the three latest monthly indexes of retail sales of non-durable goods as announced by the Department of Business of the University of Texas, Austin, Texas.

(c) Compute a labor-feed index as follows:

(1) Divide by 0.0485 the daily farm wage rate without board or room for the State of Texas as reported by the U. S. Department of Agriculture and multiply by 0.3;

(2) Divide by 0.03971 the average price paid per hundredweight for all mixed dairy feed in the State of Texas as reported by the U. S. Department of Agriculture and multiply by 0.7;

(3) Add together the amounts determined pursuant to subparagraphs (1) and (2) of this paragraph.

(d) Add the amounts determined pursuant to paragraphs (a) (b) and (c) of this section, divide by 3 and round to the nearest one-tenth.

§ 949.53 *Class II milk.* The prices for Class II milk shall be determined according to the following computations:

(a) From the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the U. S. Department of Agriculture during the month, subtract 3 cents, add 20 percent thereof and multiply by 4.0;

(b) From the average of the carlot prices per pound of nonfat dry milk solids for human consumption, spray process, f. o. b. manufacturing plants in the Chicago area as reported by the U. S. Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the current month, subtract 5 cents, multiply by 8.16; and

(c) Add together the amounts computed pursuant to paragraphs (a) and (b) of this section and round to the nearest full cent.

§ 949.54 *Butterfat differentials to handlers.* If the average butterfat content of the milk of any handler allocated to any class pursuant to § 949.46 is more or less than 4.0 percent, there shall be added to the respective class price, computed pursuant to §§ 949.51 and 949.53 for each one-tenth of 1 percent that the average butterfat content of such milk is above 4.0 percent, or subtracted for each one-tenth of 1 percent that such

average butterfat content is below 4.0 percent, an amount equal to the butterfat differential computed by multiplying the simple average, as computed by the market administrator, of the daily wholesale prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department during the appropriate month by the applicable factor listed below:

(a) *Class I milk.* Multiply such price for the preceding month by 0.125;

(b) *Class II milk.* Multiply such price for the current month by 0.120.

§ 949.55 *Use of equivalent factors in formulas.* If for any reason a price, index, or wage rate, specified in this part for use in computing class prices and for other purposes is not reported or published in the manner described in this part, the market administrator shall use a price, index, or wage rate, determined by the Secretary to be equivalent to or comparable with the factor specified.

APPLICATION OF PROVISIONS

§ 949.60 *Handlers subject to other orders.* In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by a milk marketing agreement or order issued pursuant to the act, the provisions of this subpart shall not apply except as follows:

(a) The handler shall, with respect to the total receipts of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(b) The handler shall pay on or before the 13th day after the end of the month to the market administrator for deposit into the producer-settlement fund an amount determined as follows:

(1) Compute the total skim milk and butterfat disposed of by such handler during the month as Class I milk on retail or wholesale routes (including sales through vendors) in the marketing area;

(2) From such handler's total Class I sales, pursuant to the order regulating the pricing of milk at such handler's plant, subtract the total quantity of skim milk and butterfat received from producers pursuant to such order and allocated to Class I milk;

(3) Multiply the hundredweight computed pursuant to subparagraph (1) or (2) of this paragraph, whichever is less, by the rate determined pursuant to § 949.65.

§ 949.61 *Handlers operating non-pool plants.* None of the provisions from §§ 949.44 through 949.55, inclusive, or from §§ 949.70 through 949.84, inclusive, shall apply in the case of a handler in his capacity as the operator of a non-pool plant, except that such handler shall, on or before the 13th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund pursuant to § 949.82 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 (including sales by vendors and plant stores) in the marketing area during the month, by the rate determined pursuant to § 949.65.

UNPRICED MILK

§ 949.65 *Rate of payment on unpriced milk.* The rate of payment per hundredweight to be made by handlers on unpriced Class I milk disposed of in the marketing area shall be any plus amount calculated as follows:

(a) During the months of February through July:

(1) Subtract the Class II price, adjusted by the Class II butterfat differential, from the Class I price, adjusted by the Class I butterfat differential;

(2) From such difference subtract 10 cents and an amount calculated by multiplying 0.16 cent by the miles (shortest highway distance) from the edge of the marketing area to the plant at which the unpriced milk originates.

(b) During the months of January and August, subtract from the Class I price, adjusted by the Class I butterfat differential, the uniform price to producers, adjusted by the Class I differential.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 949.70 *Computation of 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 § 949.46 by the applicable Class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 949.46 (a) (7) and (b) by the applicable class price, and

(c) Add an amount computed by multiplying the hundredweight of other source skim milk and butterfat subtracted from Class I milk pursuant to § 949.46 (a) (4) and (b) by the rate computed pursuant to § 949.65, applicable at the nearest plant from which an equivalent amount of such other source milk was received.

§ 949.71 *Computation of uniform price for pool milk.* For each month the market administrator shall compute the uniform price for all milk received from producers as follows:

(a) Combine into one total the amounts computed pursuant to § 949.70 (a) and (b) for all handlers who made the reports prescribed in § 949.30 and who are not in default of payments required pursuant to §§ 949.80 and 949.83;

(b) Add an amount representing not less than one-half of the unobligated cash balance in the producer-settlement fund account pursuant to § 949.82 (a).

(c) Add during each of the months of September through December an amount equivalent to one-fourth of the total in payments to the producer-settlement fund pursuant to § 949.82 (b).

(d) Subtract if the average butterfat content of the producer milk of handlers included in the computations pursuant to paragraph (a) of this section is greater than 4.0 percent, an amount

computed by multiplying the amount by which such average butterfat content varies from 4.0 percent by the butterfat differential computed pursuant to § 949.81 and multiply the resulting amount by the hundredweight of such milk;

(e) Divide by the total hundredweight of producer milk of handlers included in the computation pursuant to paragraph (a) of this section;

(f) Subtract not less than 4 cents nor more than 5 cents for retention in the producer-settlement fund pursuant to § 949.83 (a). The resulting figure shall be the uniform price per hundredweight for all milk of 4.0 percent butterfat content received from producers.

#### PAYMENT FOR MILK

§ 949.80 *Time and method of payment.* Each handler shall make payment as follows:

(a) On or before the last day of each month to each producer for milk received during the first 15 days of such month at not less than the price per hundredweight for Class II milk for the preceding month.

(b) On or before the 15th day after the end of the month during which the milk was received, to each producer at not less than the uniform price per hundredweight computed for such month pursuant to § 949.71 subject to the following adjustments: (1) The butterfat differential pursuant to § 949.81, (2) less the payment made pursuant to paragraph (a) of this section, (3) less marketing service deductions pursuant to § 949.86, and (4) less proper deductions authorized in writing by the producers: *Provided*, That if by such date such handler has not received full payment pursuant to § 949.84, he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance due from the market administrator.

(c) In making the payments to producers pursuant to paragraph (b) of this section each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The delivery period and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to such producer.

§ 949.81 *Producer butterfat differential.* In making payments pursuant to § 949.80 there shall be added to the uniform price for each one-tenth of one

percent that the average butterfat content of such milk is above 4.0 percent not less than, or there may be deducted from the uniform price for each one-tenth of one percent that the average butterfat content of such milk is below 4.0 percent not more than, an amount computed as follows: Multiply by 1.1 the simple average computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the United States Department of Agriculture during the month, divide the result by 10 and round to the nearest one-tenth of a cent.

§ 949.82 *Producer - settlement fund.* The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers, pursuant to §§ 949.60, 949.61, 949.83, and 949.85 and out of which he shall make all payments, pursuant to §§ 949.84 and 949.85. This fund shall be maintained by the market administrator in two separate accounts as follows:

(a) The deductions made pursuant to § 949.71 (f) and payments made by handlers pursuant to §§ 949.83 and 949.85, less payments included under paragraph (b) of this section.

(b) The payments required pursuant to §§ 949.60, 949.61, and the amounts determined pursuant to 949.70 (c)

§ 949.83 *Payments to the producer-settlement funds.* On or before the 13th day after the end of the month during which the milk was received, each handler, including a cooperative association which is a handler, shall pay to the market administrator the amount of money if any, by which the value of the milk received by such handler from producers as determined pursuant to § 949.70 is greater than the value of such milk calculated at the uniform price adjusted by the producer butterfat differential.

§ 949.84 *Payments out of the producer-settlement fund.* On or before the 14th day after the end of the month during which the milk was received, the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the value of the milk received by such handler from producers during the month as determined pursuant to § 949.70 is less than the value of such milk calculated at the uniform price adjusted by the producer butterfat differential. During each of the months of September through December one-fourth of the amount established pursuant to § 949.82 (b) shall be applied by the market administrators to such payments.

§ 949.85 *Adjustment of accounts.* Whenever audit by the market administrator of any handler's books, reports, records, or accounts discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

§ 949.86 *Marketing services—(a) Marketing service deduction.* Except as set forth in paragraph (b) of this section each handler, in making payments to producers (other than himself) shall make a deduction of six cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.

(b) *Marketing service deduction with respect to producers who are members of or are marketing through a cooperative association.* In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary as determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the rate authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the month during which such milk was received.

§ 949.87 *Payment of administration expense.* As his pro rata share of the expense of administration of this part each handler shall pay to the market administrator on or before the 15th day after the end of the month for such month 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to skim milk and butterfat (a) received from producers, (b) received at a pool plant as other source milk and allocated to Class I milk, or (c) distributed as Class I milk in the marketing area from a non-pool plant.

§ 949.88 *Termination of obligation.* The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall 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 delivery period during which the milk, with respect to which the obligation exists, was received or handled; and

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

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

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

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the agreement (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.

**EFFECTIVE TIME, SUSPENSION OR TERMINATION**

§ 949.90 *Effective time.* The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 949.91.

§ 949.91 *Suspension or termination.* The Secretary may suspend or terminate this part or any provision of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the act. This part shall terminate in any event whenever the provisions of the act authorizing it cease to be in effect.

§ 949.92 *Continuing obligations.* If, upon the suspension or termination of

any or all provisions of this part there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 949.93 *Liquidation.* Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

**MISCELLANEOUS PROVISIONS**

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

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

Issued at Washington, D. C., this 20th day of August 1953.

[SEAL] Roy W. LEHNWARTSON,  
Assistant Administrator

[F. R. Doc. 53-7498; Filed, Aug. 25, 1953; 8:53 a. m.]

**[ 7 CFR Part 961 ]**

[Docket No. AO-1 60-A-14-RO1]

**MILK IN PHILADELPHIA, PA., MARKETING AREA**

**NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT, AND TO 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 900), notice is hereby given of the recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to proposed

amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Philadelphia, Pennsylvania, 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 proposed amendments to the tentative marketing agreement and to the order, as amended, were formulated, was conducted at Philadelphia, Pennsylvania on August 12-13, 1952, pursuant to notice issued July 18, 1952 (17 F. R. 6749), and on January 28, 1953, February 24-27, 1953, and March 5-6, 1953, pursuant to notices issued December 18, 1952, including tentative findings and conclusions (17 F. R. 11723) and January 21, 1953 (18 F. R. 553).

The material issues of record not previously dealt with in a decision issued February 16, 1953 (18 F. R. 984) related to:

1. Butterfat differentials to be used in calculating values of milk of differing butterfat content, as received from individual producers, and as disposed of in various uses by handlers.
2. Regulation of plants disposing of Class I milk in both the Philadelphia and New York marketing areas.
3. Prices applicable to producer milk sold outside the marketing area.
4. The definition of "producer milk plant."
5. Payments for administrative expense by a handler with a small portion of his sales of milk in the marketing area.
6. Coordination of allocation provisions with corresponding provisions in the New York Federal order in connection with milk received from handlers under such order.
7. Change in the provisions with respect to time for submitting reports, reporting of producer payrolls, and computation of uniform price by handlers.

*Findings and conclusions.* The following findings and conclusions on the material issues are based upon evidence contained in the record of the hearing:

1. *Butterfat differentials.* The butterfat differential used to adjust the value of the individual producer's milk in accordance with its butterfat content, and the butterfat differential used in calculating the value of milk used by a handler in Class I should be 7 cents per one-tenth of a percent of butterfat for the current level of Class I price, and should be subject to automatic adjustments in relationship to the level of the Class I price. The basic test from which differential butterfat is reckoned should be changed from 4.0 percent to 3.7 percent. Additional payments for butterfat in Grade A milk should apply to butterfat in excess of 4.0 percent.

Producers' organizations at the hearing requested that the butterfat differential used to adjust the value of in-

dividual producer's milk in accordance with butterfat content be increased. The amounts of the increases proposed would change the present 5-cent differential to a figure of from 6 to 15 cents per one-tenth of one percent of butterfat.

Some of these proposals were based upon the findings and recommendations of a committee representing the colleges of agriculture in states supplying milk to the market. The report of this committee recommended increasing the present 5-cent producer and Class I butterfat differentials to 7 cents, with provision for automatic increases depending on the level of the Class I price.

Since the production of milk by producers for this market is primarily to supply the fluid milk required by the market, the butterfat differential should be designed to encourage the production of milk with butterfat content about the same, or at least as high as the butterfat content of milk sold by handlers. Grade B milk is the larger portion of the volume of Class I sales by handlers, amounting to approximately 75 percent of total sales. The average test of Grade B milk sales is slightly less than 3.7 percent butterfat. The number of Grade B producers whose milk tested less than 3.7 percent increased from 41.6 percent of all Grade B producers in August 1943 to 51.5 percent in August 1951, and 55.7 percent in August 1952. Although the average test of all receipts of Grade B milk was 3.82 percent butterfat in 1950, and 3.75 percent in 1951, the test tends to be lower in the months of seasonally high production, and in some months of 1951 and 1952 was actually less than 3.7 percent. These average tests include Guernsey milk with a test of about 4.4 percent, which is sold as a special type of milk with high butterfat content. The record evidence indicates that low test producers are finding increasing difficulty in marketing their milk, and at least one handler has notified his producers that those delivering milk testing less than 3.5 percent butterfat will be dropped unless their test improves.

The downward trend in the average butterfat content of the kind of milk most used in the market indicates the need for a producer butterfat differential somewhat higher than the current one. It is noted that the differential is considerably less in relationship to the level of the Class I price than is the case in most other Federal orders, and that the current 5-cent differential is well below the market value of butterfat for manufactured products. Since September 1945, when the 5-cent differential was made effective, the Class I price has increased about 54 percent.

The problem of establishing the producer butterfat differential is related to the problem of an appropriate charge for butterfat used in Class I. The appropriate level for the producer butterfat differential represents a price for differential butterfat based upon supply and demand conditions in a fluid milk market, and accordingly, a cost to handlers for differential butterfat in Class I milk as high as the producer differential is consistent with market conditions. Application of the same rate of differential

for butterfat in Class I as applied to the producer uniform price will provide a definite relationship between the demand for butterfat in Class I and the cost of obtaining the required butterfat test in milk from producers. Also, since the Class I butterfat differential serves to establish the residual value of skim milk, a differential which may be used over the whole range of butterfat tests in Class I is desirable.

A somewhat lower level of butterfat differential than recommended in the tentative findings and conclusions appears better suited to market conditions in view of the conclusion to retain a premium for butterfat in Grade A milk, and factors which are tending generally to reduce the value of the butterfat portion of milk in relation to the price for whole milk. It is concluded that under current conditions a rate of 7 cents per one-tenth of one percent of butterfat would best service the purposes stated above for producer and Class I butterfat differentials. This will eliminate the need for a separate butterfat differential for Class I items testing less than 3 percent or over 6 percent.

In the case of Grade A milk, the order now provides a butterfat premium of 2 cents per tenth of a percent of butterfat over 3.7 percent. The record shows that a higher butterfat content for Grade A milk is desired by the market than in the case of standard Grade B milk, and the butterfat premium serves as an incentive to Grade A producers to supply milk with the higher butterfat test. The average butterfat content of sales of Grade A milk approximates 4.2 percent. It is clear from the record that continuation of the present Grade A butterfat premium along with the increased level of the differential might seriously reduce the interest of handlers in selling such milk. A modified system of butterfat premiums proposed herein, along with other proposed adjustments, would result in little change from the present system with respect to the cost of Grade A milk to handlers. The proposed butterfat premiums would be 2 cents per one-tenth of a percent of butterfat over 4 percent. In this manner, the application of the butterfat premiums would be confined to the tests of milk most particularly needed for the Grade A trade, and producers supplying this type of milk would be given a greater incentive than under present order provisions.

Proposals that butterfat premiums should apply to other types of milk sold as premium types would entail administrative difficulty in determining precise application, and should not be adopted.

The butterfat differentials proposed herein, along with the adjusted Class I price schedule as set forth in the prior tentative findings and conclusions, would result in little change in the average cost to handlers of all Class I disposition.

It was proposed that the Class I and producer butterfat differentials should change automatically with changes in the price received by producers. Some method of automatic adjustment in line with changing market conditions is desirable, and the relationship between the butterfat differential and the price re-

ceived by producers for milk is important as to whether there is adequate incentive for producing milk of the required butterfat content. It is more practical to relate the butterfat differential to the Class I price than the uniform price, since the latter varies considerably among handlers. Testimony at the reopened hearing emphasized that comparative stability of the butterfat differential is more important in this market than a constant percentage relationship to the Class I price as recommended in the tentative findings and conclusions, and it was suggested that the level of the differential should depend on the basic annual level of the Class I price. The basic annual level of the Class I price is understood to be, in the first and third calendar quarters, the same as the announced Class I price; in the second calendar quarter, the announced Class I price plus 40 cents; and in the fourth calendar quarter, the announced Class I price less 40 cents. The following schedule would relate the butterfat differential to the basic annual level of the Class I price, and would employ a bracket system with intervals between, thus assuring a relatively stable butterfat differential rate.

#### BUTTERFAT DIFFERENTIAL SCHEDULE

Basic annual level of class I price:	Butterfat differential (cents)
\$3.66 or less.....	4
\$3.86-\$4.46.....	5
\$4.66-\$5.26.....	6
\$5.46-\$6.06.....	7
\$6.26-\$6.86.....	8
\$7.06 and over.....	9

The butterfat differential should not change from month to month unless the price so calculated is within a bracket corresponding to a butterfat differential different from the differential in the previous month. This schedule would increase or decrease the butterfat differential at about the same rate as the schedule recommended by the study committee.

For the purpose of uniformity, the Class II price should also be stated in terms of a price for milk testing 3.7 percent butterfat. This change may be accomplished by calculating the cream butterfat price component by dividing the average cream price by 33.48, multiplying by 3.7 and subtracting 24.5 cents. This calculation, along with the skim milk price component, results in a price for milk of 3.7 percent test equivalent to the current order price for milk of 4.0 percent test. Similar adjustment would be made in the case of the value of butterfat made into butter, and the calculation of the applicable butterfat differential would be adjusted to result in the same butterfat differential as under current order provisions. These changes would not result in any but minor changes in the value of Class II milk.

2. *Milk sold in the New York marketing area.* The price for milk sold as Class I in the New York metropolitan milk marketing area should be the New York order Class I-A price less such payment as may be required under the New York order on such milk.

A producer representative at the hearing requested that the amendment proposed in the tentative findings and conclusions apply only to handlers who become handlers by supplying milk for Class I use as specified in § 961.6 (c) to pasteurizing or bottling plants disposing of Class I milk in the marketing area. Although there is no evidence other handlers have made sales of milk for Class I use in the New York market, there does not appear to be a basis for discriminating in the manner requested between (1) handlers with named plants and pasteurizing or bottling plants distributing in the area, as against (2) handlers regulated only because they ship milk to such pasteurizing or bottling plants. The evidence submitted did not show that the proposed amendment would in any way interfere with regular operations of bona fide handlers in the Philadelphia market. Accordingly, the tentative findings and conclusions are adopted as the findings and conclusions of this recommended decision.

3. *Sales outside the area.* No action is taken in this recommended decision on prices to be paid producers for milk sold as Class I outside the marketing area, except for sales in the New York marketing area. This matter is reserved for a further decision.

4. *Definition of "producer milk plant."* The definition of producer milk plant should be modified to include during the months of February through September, any plant supplying milk to pasteurizing or bottling plants described in § 961.6 (b) unless not more than 25,000 pounds of such milk is Class I milk, and during the months of October through January, plants shipping milk to such pasteurizing or bottling plants on 11 or more days unless such milk is only Class II.

It was proposed that the definition of producer milk plant be changed to include all plants supplying Class I milk to the marketing area. The evidence presented in support of this proposal by a representative of milk plants not ordinarily associated with this market, was directed towards making it easier for these plants to compete for supplies in the same area as Philadelphia producer milk plants. This presumably would result from the proposed amendment by causing Philadelphia handlers to handle more milk, thus reducing the uniform prices they pay producers.

The purpose given is not an adequate basis for changing the order in the manner proposed. Also, from the record it does not appear that the present order provisions are in any way detrimental to the interests of the dairy farmers supplying plants represented by the proponent.

A study of the record shows, however, that there is considerably less need than in previous periods for use of non-producer milk to fill out the supplies of handlers in meeting requirements of the fluid market. During recent years there has been a rather steady increase in the supply of producer milk. A producer witness proposed that no milk should be allowed to be used in the market for Class I use free of price regulation during the months of April, May and June, and handler representatives concurred in such modification of the order. The

record is persuasive that a more extensive change is possible and desirable. During the months in which the order now allows a handler to obtain supplies of milk from a non-producer plant for Class I use on four days per month without involving such plant under regulation, it would appear possible for handlers to assure themselves without great difficulty of regular producer milk either by direct receipt or by purchase from other handlers. During these months in recent years the reserve of producer milk over Class I needs has been 18 percent or more of the total producer receipts in the market. During other months also (October through January) there is a lesser need for supplemental supplies from non-producer sources than in previous periods. It would appear that shipments on 10 days or less per month should be sufficient to accommodate handlers who may need to fill out their requirements from other than producer sources.

These provisions of the order which apply to the use of non-producer milk for Class I are designed to meet the needs of the market in a short supply situation without involving under regulation plants which are not needed on a regular basis as a part of the supply. Under current supply conditions, however, the order provisions allow some handlers to obtain part of their milk supply at a cost considerably less than the minimum prices specified in the order. The change here recommended would tend to correct this situation in that the use of milk not priced under the order would occur only when the cost of such milk is likely to be comparable with the cost of producer milk.

It is desirable that the order specify some minimum amount of milk which, if used as Class I milk, would involve a plant under order regulation. The quantity of 25,000 pounds per month, which may be considered about one tank load, would serve this purpose.

5. *Administrative expense.* No change should be made in the manner in which payment for administrative expense applies to handlers.

It was proposed that in the case of a plant which is a producer milk plant only by reason of shipments to pasteurizing and bottling plants described in § 961.6 (b) payments for administrative expense should apply only to milk sold in the marketing area. This proposal was made by the operator of a non-producer plant which sometimes supplies milk to the market. This plant operator complained that the relatively small percentage of his milk which comes into the market would require him to pay administrative expense on all receipts of milk at his plant if the plant became qualified as a producer milk plant by shipping to such pasteurizing and bottling plants on more than 4 days per month in the months of February through September, or more than 19 days in other months.

The proponent did not ask that any change be made in the qualifications for plants coming under order regulation as producer milk plants. If a plant becomes a producer milk plant, it is necessary for the market administrator to

audit all payments to producers delivering to the plant and all disposition of milk therefrom. Expense of administration accordingly tends to be in proportion to the volume of milk received by the plant rather than the amount disposed of as Class I in the marketing area.

It is concluded that no change should be made in the required payments for administrative expense on the basis of this record.

6. *Coordination of allocation provisions with New York order.* No change should be made in the provisions for allocating producer and nonproducer milk to Class I and Class II.

A handler witness pointed out that a handler who receives milk from a New York order pool plant might be required to pay for more milk at the Philadelphia order Class I and the New York order Class I-B prices than his total Class I utilization. This might happen if a multiple plant handler received such milk at a plant which had a higher percentage Class I utilization than the average for all his plants. Under the Philadelphia order, during the months of October through January, such milk could be allocated pro rata to Class I, the same as producer milk, in accordance with the average utilization in all plants of the handler. Under the New York order, however, such milk would be classified either entirely as I-B, or if the New York plant operator so elects, in the proportion that Class I utilization at the Philadelphia plant is to total receipts of all milk.

In the months of February through September, under the Philadelphia order, none of the Class I utilization could be allocated to nonproducer milk from a New York order plant.

Current supply conditions are such that handlers of most of the milk sold in the market have adequate supply from regular producer sources to meet year around needs, and other handlers may arrange to do so. There are ordinarily additional supplies of milk available from plants not now regulated under either order. Accordingly, there does not appear there would be any need for a handler to buy milk from a New York order plant. In view of supply conditions, no change should be made in the allocation provisions which would reduce the share of producer milk in Class I utilization.

7. *Reports and computation of uniform prices.* No change should be made in the provisions concerning the filing of reports. Payments for milk should continue to be at the uniform price computed for each handler by the market administrator.

Handlers' request that 8 days other than Saturday and Sunday be allowed for submission of reports required pursuant to § 961.50 would cause an uneconomical peak-load of work for the market administrator's office and increase the expense in checking these reports prior to the announcement of uniform prices. The time now provided under the order for the submission of these reports appears to be as much as can be allowed and yet afford the market administrator opportunity to properly

carry out the functions of his office without delaying the payments to producers. It is understood that handlers now are submitting their reports, with few exceptions, on time.

The proposal by handlers that they be allowed to compute their own uniform price and pay producers on this basis, subject to correction of any errors after audit, is of doubtful practicability. Although such a procedure might allow handlers more time for preparing checks to producers, since they would not need to wait for verification of the price by the market administrator, experience has shown there would be increased risk of error in payments, and no doubt many handlers would request at least a preliminary check of their computations by the market administrator before beginning payments. In view of the likelihood of increased administrative problems in adjusting errors and possible confusion on the part of producers resulting from errors or different procedures used by several handlers, it is questionable whether the proposal of handlers could be made to work satisfactorily. There is nothing in the order provisions which prevents a handler from making payments prior to announcement of the uniform price by the market administrator, and if the handler's reports and computations are accurate, no discrepancies would be involved.

Omission of producer pay-roll reports was proposed by handlers to save the expense of submitting such information which, it was argued, could be obtained by the market administrator at the time of audit of the handler's records. Such a change in reporting requirements, however, would shift the burden and expense of this work to the market administrator. Pay-roll reports have been required under the order for the purpose of thoroughly checking prices, deductions and other computations involved in payments to producers. Such checking can be done more efficiently and with less expense if the reports are submitted and the clerical work is done in the market administrator's office. These reports also contain much of the statistical information regularly summarized and published by the market administrator and from time to time compiled for special purposes particularly for presentation at public hearings.

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

1. Delete the table in § 961.40 (a) (6) and substitute:

CLASS I PRICE SCHEDULE  
CLASS I PRICE PER HUNDREDWEIGHT

Formula index	Jan., Feb., Mar., July, Aug., Sept.	Apr., May, June	Oct., Nov., Dec.
116.3-120.3	\$3.26	\$2.86	\$3.66
124.1-128.1	3.46	3.06	3.86
131.9-135.9	3.66	3.26	4.06
139.6-143.6	3.86	3.46	4.23
147.4-151.4	4.06	3.66	4.46
155.2-159.2	4.26	3.86	4.66
163.0-167.0	4.46	4.06	4.86
170.8-174.8	4.66	4.26	5.06
178.5-182.5	4.86	4.46	5.23
186.3-190.3	5.06	4.66	5.46
194.1-198.1	5.26	4.86	5.66
201.9-205.9	5.46	5.06	5.86
209.7-213.7	5.66	5.26	6.06
217.5-221.5	5.86	5.46	6.26
225.2-229.2	6.06	5.66	6.46
233.0-237.0	6.26	5.86	6.66
240.8-244.8	6.46	6.06	6.86
248.6-252.6	6.66	6.26	7.06
256.4-260.4	6.86	6.46	7.26

2. Delete § 961.40 (b) (1) and substitute the following:

(1) **Butterfat.** Add all market quotations (using midpoint of any weekly range as one quotation) of prices for a 40-quart can of fresh sweet cream of bottling quality in the Philadelphia, Pennsylvania, market reported for each week ending within the month by the United States Department of Agriculture (or such other agency as is authorized to perform this price reporting function) divide by the number of quotations, divide by 33.48, multiply by 3.7 and sub-

tract 24.5 cents: *Provided*, That for butterfat established as used in butter, the price shall be 3.7 times 120 percent of the average of the daily wholesale selling prices for Grade A (92-score) butter at New York as reported by the United States Department of Agriculture for the month for which payment is to be made, less 17.6 cents, but in no event shall this butter value be greater than the butterfat value established otherwise by this subparagraph.

3. Delete § 961.41 and substitute the following:

§ 961.41 **Butterfat differential.** (a) The Class I price shall be subject to a butterfat differential, for each one-tenth of one percent variation above or below 3.7 percent, equal to the butterfat differential calculated pursuant to § 961.82.

(b) The Class II price shall be subject to a butterfat differential for each one-tenth of one percent variation above or below 3.7 percent, calculated as follows: divide the average of the cream quotations used in calculating the Class II price by 334.8, and subtract 0.67 cents; or in the case of butterfat in Class II to which the "butter-value" is applicable divide the butter value by 37.

4. In § 961.43 delete the second proviso and substitute: "And provided further, That for Class I milk disposed of in an area where the handling of milk is regulated by another order of the Secretary the price effective under such other order shall apply except that for Class I milk disposed of in the New York metropolitan milk marketing area, the price shall be the Class I-A price pursuant to the New York order less such payment as is required on such milk pursuant to the New York order."

5. Delete § 961.70 and substitute:

§ 961.70 **Computation of value of milk for each handler.** For each month the market administrator shall compute, subject to the provisions of § 961.60, the value of milk of producers disposed of by each handler, exclusive of the value of premiums paid pursuant to § 961.85 to designated Grade A producers, by (a) multiplying the hundredweight of such milk in each class and price subdivision of each class, computed pursuant to §§ 961.30 through 961.35 by the prices applicable pursuant to § 961.40, plus or minus the applicable differentials in §§ 961.41 through 961.43, and adding 40 cents per hundredweight for milk sold as Grade A in excess of the milk received from designated Grade A producers, and (b) adding together the resulting values.

6. Delete § 961.82 and substitute the following:

§ 961.82 **Butterfat differential.** If a handler has received from a producer, during the month, milk having an average butterfat content other than 3.7 percent, such handler, in making payments pursuant to § 961.80, shall add to the uniform price for such producer for each one-tenth of one percent of average butterfat content in milk above 3.7 percent not less than, or shall deduct from the uniform price for such producer for each one-tenth of one percent of average butterfat content in milk below 3.7 percent,

not more than a butterfat differential computed as follows: in determining the butterfat differential from the following schedule, if the butterfat differential is for April, May, or June, calculate a price which is 40 cents more than the Class I price, or if for October, November, or December, a price 40 cents less than the Class I price, or if for other months, a price the same as the Class I price, and determine the butterfat differential as the one corresponding to the price bracket including the price so calculated, except that if the price so calculated is not within a bracket the butterfat differential shall be the same as for the previous month.

**BUTTERFAT DIFFERENTIAL SCHEDULE**

Price bracket:	Butterfat differential (cents)
\$3.66 or less	4
\$3.86-\$4.46	5
\$4.66-\$5.26	6
\$5.46-\$6.06	7
\$6.26-\$6.86	8
\$7.06 and over	9

7. Delete § 961.85 and substitute:

§ 961.85 *Premium for Grade A milk.* In addition to the uniform price and all other payments required pursuant to §§ 961.80 through 961.84, each handler shall pay for milk, which he has designated as qualified under the Commonwealth of Pennsylvania Department of Health or the New Jersey Department of Health requirements for sale as Grade A milk and which is delivered to a plant similarly qualified (so long as such requirements are in effect as a separate grade) the following amounts times the ratio of such milk sold under Grade A label to the total quantity of Grade A milk received from producers: 40 cents per hundredweight of Grade A milk received from producers of 10,000 bacteria or less per c. c. and 25 cents per hundredweight of Grade A milk received from producers of more than 10,000 but less than 25,000 bacteria and 2 cents for each one-tenth of one percent that the butterfat content is above 4 percent.

8. Delete § 961.6 (c) and substitute:

(c) Any other plant from which milk is supplied to a pasteurizing or bottling plant as described in paragraph (b) of this section: *Provided*, That any such other plant shall not be included in this definition during any month in which there is shipped from the plant only Class II milk as defined in § 961.31 or during any of the months of October, November, December, and January in which shipments are made from the plant on less than 11 days, or during any other month in which shipments allocated to Class I are not more than 25,000 pounds, to such pasteurizing and bottling plant or to a plant or plants supplying such pasteurizing or bottling plant.

Issued at Washington, D. C., this 20th day of August 1953.

[SEAL] Roy W. LEHNWARTSON,  
Assistant Administrator.

[F. R. Doc. 53-7497; Filed, Aug. 25, 1953; 8:52 a. m.]

**CIVIL AERONAUTICS BOARD**  
[ 14 CFR Part 41 ]

**CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE CONTINENTAL LIMITS OF UNITED STATES**

**INSTRUMENTS AND EQUIPMENT REQUIRED FOR CONTINUANCE OF FLIGHT; FUEL QUANTITY INDICATORS**

Pursuant to authority delegated by the Civil Aeronautics Board to the Bureau of Safety Regulation, notice is hereby given that the Bureau will propose to the Board the adoption of an amendment to Part 41 of the Civil Air Regulations which will alter the requirements for fuel quantity indicators.

Interested persons may participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the Civil Aeronautics Board, attention Bureau of Safety Regulations, Washington 25, D. C. In order to insure their consideration by the Board before taking further action on the proposed rule, communications must be received by Sept. 24, 1953. Copies of such communications will be available after Sept. 28, 1953, for examination by interested persons at the Docket Section of the Board, Room 5412, Department of Commerce Building, Washington, D. C.

Section 41.25 (k) of the Civil Air Regulations requires that fuel quantity indicators, in serviceable condition, indicating the amount of fuel in each tank, be provided in aircraft used in scheduled air carrier operations outside the continental limits of the United States. This requirement had been based upon the premise that there exists no suitable alternative means by which the quantity of fuel available in each fuel tank may be determined. An aircraft without such fuel indicators or with an inoperative fuel indicator would not be permitted to initiate a flight under Part 41. In the event a fuel quantity indicator becomes inoperative in flight during night or instrument operation the pilot in command must either land at the nearest suitable landing area or at the next point of intended landing, whichever in his opinion is the safer procedure. Thereafter, the flight may not be redispached until the fuel quantity indicator is returned to a serviceable condition.

The bureau is in receipt of comment that this requirement works undue hardship upon United States flag carriers. The Bureau's attention has been drawn to the fact that certain fuel in-

dicating systems installed in modern aircraft are highly complex and involve the use of electronic components the repair of which may be accomplished only by highly skilled maintenance personnel. Situations have occurred in which flights have been canceled or delayed for considerable periods of time because of the difficulty in obtaining maintenance service for these components. This situation is reported to have resulted in serious economic penalty to the carriers involved.

The Bureau is also advised that the safe operation of multiengine aircraft, equipped with fuel flow meters and carrying flight engineers as members of the crew, is no longer completely dependent upon the proper functioning of fuel quantity indicators. The fuel flow meters in these planes are of relatively simple design and greater reliability than the highly complex fuel quantity indicators in question, and enable the flight engineer to make a reasonably accurate determination of the fuel consumption and thus ascertain the quantity of fuel remaining in each tank. There appears to be merit, therefore, in the proposal that, when a fuel quantity indicator becomes unserviceable while the aircraft is en route, an alternative means for determining fuel quantity be permitted to be used until the aircraft has reached a point at which repairs can be made. The amendment proposed by this notice changes § 41.25 (k) to carry out this intent by permitting the operator to employ approved alternative means in such cases for determining the amount of fuel in each tank in aircraft in which a flight engineer is carried.

Accordingly, notice is hereby given that it is proposed to amend § 41.25 (k) as follows:

§ 41.25 *Instruments and equipment required for continuance of flight.* \* \* \*

(k) Fuel quantity indicators indicating the amount of fuel in each tank to be used for the remainder of the flight, or, in the case of aircraft having a flight engineer assigned as a member of the flight crew, an alternate means approved by the Administrator for determining the amount of fuel in each tank (night and instrument operation)

This regulation is proposed under the authority of Title VI of the Civil Aeronautics Act of 1933, as amended, and may be changed in the light of comments received in response to this notice of proposed rule making.

(Sec. 205, 62 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601-610, 52 Stat. 1007-1012; 49 U. S. C. 551-569; 62 Stat. 1216)

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

By the Bureau of Safety Regulation.

[SEAL] JOHN M. CHAMBERLAIN,  
Director.

[F. R. Doc. 53-7499; Filed, Aug. 25, 1953; 8:53 a. m.]

## NOTICES

## DEPARTMENT OF DEFENSE

## Office of the Secretary

## SECRETARY OF THE ARMY

## DELEGATION OF AUTHORITY TO ORDER CERTAIN MEMBERS OF RESERVE COMPONENTS TO ACTIVE DUTY

The following delegation of authority is promulgated pursuant to the authority vested in me by Executive Order 10478, dated August 5, 1953, and by subsection 202 (f) of the National Security Act of 1947, 61 Stat. 495, as amended, and Reorganization Plan No. 6 of 1953.

1. The Secretary of the Army is authorized to order to active duty under the provisions of subsection 4 (c) Public Law 779, as amended, with or without their consent, those members of the National Guard of the United States and of the Army Reserve who are registered under subsection 4 (i) of the Universal Military Training and Service Act (64 Stat. 826) as amended, and those persons who would be, but for such membership, liable for registration under the provisions of said subsection 4 (i) as amended. Such persons should, so far as practicable, be ordered to active duty under this subsection in accordance with the priorities established under subsection 4 (i) of the Universal Military Training and Service Act, as amended. The period of active duty that any such person may be required to perform shall not exceed: (a) 24 months if he has had less than 9 months of active service, as defined in paragraphs 4 (i) (4) and (5) of the Universal Military Training and Service Act, as amended; (b) 21 months if he has had at least 9 months but less than 12 months of such service; (c) 18 months if he has had at least 12 months but less than 15 months of such service; (d) 15 months if he has had at least 15 or more months of such service; since September 16, 1940, but prior to the date of his order to active duty under the provisions of subsection 4 (c) Public Law 779, as amended.

2. The Secretary of the Army is authorized to redelegate the authority delegated to him to the Continental Army Commanders and to the Commanding General, United States Armed Forces Antilles, Commanding General, United States Army Alaska, Commanding General, United States Army Pacific, Commander in Chief, United States Army Europe, and Commanding General, United States Army Forces Far East (Main)

C. E. WILSON,  
Secretary of Defense.

AUGUST 19, 1953.

[F. R. Doc. 53-7469; Filed, Aug. 25, 1953; 8:46 a. m.]

## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## SMITH FORK PROJECT, COLORADO

## ORDER OF REVOCATION

MAY 9, 1952.

Pursuant to the authority delegated by Departmental Order No. 2515 of April 7, 1949 (14 F. R. 1937) I hereby revoke Departmental Order of May 4, 1949, in so far as said order affects the following described land: *Provided, however*, That such revocation shall not affect the withdrawal of any other lands by said order or affect any other orders withdrawing or reserving the land hereinafter described:

## NEW MEXICO PRINCIPAL MERIDIAN, COLORADO

T. 51 N., R. 7 W.  
Sec. 24, SW $\frac{1}{4}$ SW $\frac{1}{4}$ .

The above area aggregates 40 acres.

G. W. LINEWEAVER,  
Assistant Commissioner

I concur. The records of the Bureau of Land Management will be noted accordingly.

The lands are located on a pinon-jumper hillside. They are suitable chiefly for disposal at public sale. It is unlikely that they will be classified for any other disposition, but any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall become subject to application, petition, location, and selection, subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable laws, and the 91-day preference-right filing period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747 43 U. S. C. 279-284) as amended.

Information showing the periods during which and the conditions under which veterans and others may file applications for these lands may be obtained on request from the Manager of the Land and Survey Office, Denver, Colorado.

EDWARD WOZLEY,  
Administrator

[F. R. Doc. 53-7470; Filed, Aug. 25, 1953; 8:46 a. m.]

## Geological Survey

## COLORADO RIVER, ARIZONA

## POWER SITE CLASSIFICATION NO. 429

Pursuant to authority vested in me by the act of March 3, 1879 (20 Stat.

394; 43 U. S. C. 31), and by Departmental Order No. 2333 of June 10, 1947 (43 CFR 4.623; 12 F. R. 4025), the following described land is hereby classified as power sites insofar as title thereto remains in the United States and subject to valid existing rights; and this classification shall have full force and effect under the provisions of section 24 of the act of June 10, 1920, as amended by section 211 of the act of August 26, 1935 (16 U. S. C. 818)

## GILA AND SALT RIVER MERIDIAN

T. 41 N., R. 8 E.,  
Sec. 1, lot 4;  
Sec. 2, NE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
Sec. 12, SW $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
Sec. 14, E $\frac{1}{2}$ E $\frac{1}{2}$ .  
T. 42 N., R. 8 E.,  
Sec. 35, lots 1, 2, 3, and N $\frac{1}{2}$ SE $\frac{1}{4}$ ,  
Sec. 36, W $\frac{1}{2}$ SW $\frac{1}{4}$ .  
T. 41 N., R. 9 E.,  
Sec. 3, SW $\frac{1}{4}$  and NE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
Sec. 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
Sec. 5, NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
Sec. 6, NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Sec. 7, NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$  and N $\frac{1}{2}$ SE $\frac{1}{4}$ ,  
Sec. 8, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$  and W $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
Sec. 9, N $\frac{1}{2}$ N $\frac{1}{2}$ ,  
Sec. 10, E $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ ,  
N $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$  and  
S $\frac{1}{2}$ SE $\frac{1}{4}$ ,  
Sec. 11, W $\frac{1}{2}$ W $\frac{1}{2}$ ,  
Sec. 17, NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ ,  
Sec. 18, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$  and SE $\frac{1}{4}$   
NW $\frac{1}{4}$ .  
T. 42 N., R. 9 E.,  
Sec. 31, lot 1 and E $\frac{1}{2}$ SE $\frac{1}{4}$ ,  
Sec. 32, lots 1, 2, 3, 4, SW $\frac{1}{4}$  and W $\frac{1}{2}$ SE $\frac{1}{4}$ ,  
Sec. 33, lot 1 and NE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
Sec. 34, NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

All unsurveyed lands at altitudes of less than 3,740 feet above sea level draining into the Colorado River in Arizona upstream from Lees Ferry, excluding lands which when surveyed will be within legal subdivisions any portion of which lies within  $\frac{1}{4}$  mile of Colorado River and Navajo Creek and reserved by Power Site Reserve No. 447, July 16, 1914, and/or Water Power Designation No. 7, February 9, 1917, in townships which when surveyed probably, but not necessarily, will be:

## GILA AND SALT RIVER MERIDIAN

T. 41 N., R. 9 E.,  
T. 42 N., R. 9 E.,  
T. 40 N., R. 10 E.,  
T. 41 N., R. 10 E.,  
T. 42 N., R. 10 E.,  
T. 40 N., R. 11 E.,  
T. 41 N., R. 11 E.,  
T. 42 N., R. 11 E.,  
T. 41 N., R. 12 E.,  
T. 42 N., R. 12 E.

The area described is estimated to aggregate 13,617 acres, 3,786.66 acres of which are surveyed.

Dated: August 19, 1953.

W. E. WRATHIER,  
Director

[F. R. Doc. 53-7490; Filed, Aug. 25, 1953; 8:51 a. m.]

## DEPARTMENT OF LABOR

## Wage and Hour Division

## LEARNER EMPLOYMENT CERTIFICATES

## ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1068, as amended; 29 U. S. C. and Sup. 214) and Part 522 of the regulations issued thereunder (29 CFR Part 522), special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act have been issued to the firms listed below. The employment of learners under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of Part 522. The effective and expiration dates, occupations, wage rates, number or proportion of learners, and learning period for certificates issued under the general learner regulations (§§ 522.1 to 522.14) are as indicated below; conditions provided in certificates issued under special industry regulations are as established in these regulations.

Single Pants, Shirts and Allied Garments, Women's Apparel, Sportswear and Other Odd Outerwear, Rainwear, Robes and Leather and Sheep-Lined Garments Divisions of the Apparel Industry Learner Regulations (29 CFR 522.160 to 522.168, as amended December 31, 1951, 16 F. R. 12043; and June 2, 1952; 17 F. R. 3818)

Bastian Sportswear, Inc., Bastian, Va., effective 8-19-53 to 2-18-54; 40 learners for expansion purposes (children's and infants' sportswear).

Chicago Garment Co., Inc., Cheboygan, Mich., effective 8-17-53 to 2-16-54; 10 learners for expansion purposes (work clothing, trousers, coveralls, jackets, sport jackets, shirts).

Cluett, Peabody & Co., Buchanan, Ga., effective 8-12-53 to 2-11-54; 65 learners for expansion purposes (men's shirts).

Colonial Togs, Legett and Clark Streets, Scranton, Pa., effective 8-14-53 to 8-13-54; 10 percent of the factory production workers for normal labor turnover purposes (children's snow suits and spring jackets).

Ely & Walker Factory, Salem, Mo., effective 8-14-53 to 8-13-54; 10 percent of the factory production workers for normal labor turnover purposes. This certificate authorizes the employment of learners engaged in the production of sport shirts and pajamas only (sport shirts, men's and ladies' pajamas).

Federal Sportswear, Inc., 210 Pryor Street (3d floor), Atlanta, Ga., effective 8-11-53 to 2-10-54; 75 learners for expansion purposes (khaki and other cotton sports trouser and wear).

Glen Lyon Bra & Corset Co., 44 Carey Avenue, Wilkes-Barre, Pa., effective 8-14-53 to 8-13-54; 10 percent of the factory production workers for normal labor turnover purposes (corsets and allied garments).

Hazleton Sportswear Co., 315 West Tenth Street, Hazleton, Pa., effective 8-19-53 to 8-18-54; 10 percent of the factory production workers for normal labor turnover purposes. This certificate does not authorize the employment of learners in the manufacture of skirts (ladies' and children's sportswear, snow pants, ski pants, beachwear).

Jane Hogan Inc., 185 South Main Street, Pittston, Pa., effective 8-14-53 to 8-13-54; 10 percent of the factory production workers

or 10 learners, whichever is greater (women's street dresses).

Johnnye Manufacturing Co., Fourth and Walnut Streets, Alton, Ill., effective 8-13-53 to 8-12-54; 10 percent of the factory production workers for normal labor turnover purposes. This certificate does not authorize the employment of learners at subminimum wage rates engaged in the production of misses' and ladies' shirts (women's and misses' dresses and blouses).

Kane Manufacturing Co., Morgantown, Ky., effective 8-18-53 to 2-17-54; 25 learners for expansion purposes (sport jackets).

Kramer Manufacturing Co., 313 Arch Street, Philadelphia, Pa., effective 8-14-53 to 8-13-54; 3 learners for normal labor turnover purposes (work and semi-dress pants).

Litz Manufacturing Co., 608 School Street, Hillsboro, Ill., effective 8-14-53 to 8-13-54; 10 percent of the factory production workers for normal labor turnover purposes (women's cotton dresses).

Marydell Styles, Inc., West Main Street, Statesboro, Ga., effective 8-17-53 to 2-16-54; 25 learners for expansion (children's dresses).

Superior Garment Co., Corner Blaine and Franklin Streets, Newberg, Ore., effective 8-14-53 to 8-13-54; 10 learners for normal labor turnover (wool shirts, nylon shirts and jackets, wool jackets, cotton shirts and blouses).

Will Manufacturing Co., 210 Pryor Street, Atlanta, Ga., effective 8-11-53 to 2-10-54; 65 learners for expansion purposes (cotton convalescent jackets).

Glove Industry Learner Regulations (29 CFR 522.220 to 522.231, as amended October 26, 1950, 15 F. R. 6883; and July 13, 1953, 18 F. R. 3292).

The Boss Manufacturing Co., 510 West Main Cross Street, Findlay, Ohio, effective 8-12-53 to 8-11-54; 10 learners (work gloves).

Glove Corp., Heber Springs, Ark., effective 8-17-53 to 2-16-54; 25 learners for expansion purposes (leather combination work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.40 to 522.51, as revised November 19, 1951, 16 F. R. 10733)

Duke Hosiery Corp., Hickory, N. C., effective 8-12-53 to 8-11-54; 5 learners.

Lawler Hosiery Mills, Inc., 53 Bradley Street, Carrollton, Ga., effective 8-12-53 to 4-11-54; 35 learners for expansion purposes.

Trio Knitting Mill, Willow Street, Mt. Airy, N. C., effective 8-17-53 to 8-16-54; 5 learners.

Knitted Wear Industry Learner Regulations (29 CFR 522.68 to 522.79, as amended January 21, 1952; 16 F. R. 12863).

Ely & Walker Factory, Salem, Mo., effective 8-14-53 to 8-13-54; 5 learners for normal labor turnover purposes. This certificate authorizes the employment of learners engaged in the manufacture of men's woven underwear only (men's woven underwear).

The following special learner certificates were issued to the school-operated industries listed below:

Adelphian Academy, Holly, Mich., effective 9-1-53 to 8-31-54; woodwork shop, machine operator, assembler and related skilled and semi-skilled occupations including incidental clerical work in the shop; 40 learners; 250 hours at 60 cents per hour, 250 hours at 65 cents per hour, 250 hours at 70 cents per hour.

Auburn Academy, Auburn, Wash., effective 9-1-53 to 8-31-54; woodwork shop, assembler (furniture), machine operator, furniture finisher helper, and related skilled and semi-skilled occupations; 60 learners; 250 hours at 60 cents per hour, 250 hours at 65 cents per hour, 250 hours at 70 cents per hour.

Broadview Academy, 8330 West Carmel Road, La Grange, Ill., effective 9-1-53 to 8-31-54; woodwork shop, assembler (furniture), upholsterer, woodworking machine operator, furniture finisher helper and related skilled and semi-skilled occupations; 50 learners; 250 hours at 60 cents per hour, 250 hours at 65 cents per hour, 250 hours at 70 cents per hour.

Union College, Lincoln, Nebr., effective 9-1-53 to 8-31-54; print shop, compositor, pressman and related skilled and semi-skilled occupations; 6 learners; 350 hours at 60 cents per hour, 325 hours at 65 cents per hour, 325 hours at 70 cents per hour; book-binding shop, bookbinder, bindery worker, and related skilled and semi-skilled occupations; 10 learners; 200 hours at 60 cents per hour, 200 hours at 65 cents per hour, 200 hours at 70 cents per hour; broom shop, broom maker and related skilled and semi-skilled occupations; 8 learners; 150 hours at 60 cents per hour, 125 hours at 65 cents per hour, 125 hours at 70 cents per hour; furniture shop, furniture maker, furniture finisher and related skilled and semi-skilled occupations; 25 learners; 250 hours at 60 cents per hour, 250 hours at 65 cents per hour, 250 hours at 70 cents per hour; clerical, bookkeeper, file clerk, business machine operator, and related skilled and semi-skilled occupations; 5 learners; 200 hours at 60 cents per hour, 200 hours at 65 cents per hour, 200 hours at 70 cents per hour.

The following special learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, the number of learners, the learner occupations, the length of the learning period and the learner wage rates are indicated, respectively.

Electronic Mica Co., Inc., 300 Topla Street, Santurce, P. R., effective 8-14-53 to 2-13-54; 60 learners; mica slitters, 160 hours at 32 cents an hour; mica dialing, 240 hours at 32 cents an hour (mica fabricating).

Rico Electronics, Inc., Vega Alta, P. R., effective 8-2-53 to 2-1-54; 25 learners; gun assemblers, 160 hours at 34 cents an hour, 160 hours at 37 cents an hour, 160 hours at 40 cents an hour (manufacture of electron guns for cathode ray tubes).

Rico Glove Corp., Bo. Maton, Cayey, P. R., effective 8-14-53 to 2-13-54; 35 learners; machine stitching, woven and knitted fabric gloves, 240 hours at 32 cents an hour, 240 hours at 40 cents an hour (machine sewn fabric gloves).

Senorita Hosiery Mills, Inc., Curabo, P. R., effective 7-15-53 to 1-14-54; 14 learners; knitters, 420 hours at 30 cents an hour, 420 hours at 35 cents an hour; seamers, 420 hours at 30 cents an hour, 420 hours at 35 cents an hour; examiners, 240 hours at 30 cents an hour; menders, 420 hours at 30 cents an hour, 420 hours at 35 cents an hour (manufacture of full fashioned hosiery).

Sylvania Electric Co. of P. R., Inc., Bayamon, P. R., effective 7-28-53 to 1-27-54; 225 learners; pre-assembly, miscellaneous assembly and weld, heater welding, prepare cathodes, attend cathode spray machine, operate rotary grind machine, 160 hours at 34 cents an hour, 160 hours at 37 cents an hour, 160 hours at 40 cents an hour; operate coalex, attend wire coating machines, attend test equipment, 160 hours at 34 cents an hour, 160 hours at 37 cents an hour, mount inspection, short check mounts, test tubes, analyzer and process quality control (units), inspect tabulated bulbs, process quality operator, operate stem cutter, attend automatic tabling machine, hand-load cathodes, quality control inspector (filament), operate drum winder, inspect grids, quality control inspector (grid), form grids, attend furnace, MID inspectors; 160 hours at 34 cents an hour (manufacture of radio receiving tubes).

Sylvania Electric of P. R., Inc., Rio Piedras, P. R., effective 7-13-53 to 1-12-54; 32 learners; hand inserting, coil winding, 160 hours at 34 cents an hour, 160 hours at 37 cents an hour, 160 hours at 40 cents an hour; basing, soldering, aging, final inspection, sealing, quality inspecting, utility, 160 hours at 34 cents an hour.

Each certificate has been issued upon the employer's representation that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be cancelled in the manner provided in the regulations and as indicated in the certificates. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of Part 522.

Signed at Washington, D. C., this 17th day of August 1953.

ROBERT G. GRONEWALD,  
Authorized Representative  
of the Administrator

[F. R. Doc. 53-7471; Filed, Aug. 25, 1953;  
8:47 a. m.]

## FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 10602]

### NATIONAL PLASTIK-WARE FASHIONS

#### ORDER CONTINUING HEARING

In the matter of cease and desist order to be directed to National Plastik-ware Fashions, 700 Broadway, New York, N. Y., Docket No. 10602.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 19th day of August 1953;

The Commission having under consideration a request by the National Plastik-ware Fashions, Inc. to continue for 90 days a hearing scheduled to be held on September 15, 1953, in the above entitled matter, because the corporation is now going through bankruptcy proceedings;

It appearing, that, in view of the interference being caused to authorized radio services by the electronic heating equipment operated by the corporation, the public interest would not be served by delaying the hearing for 90 days as requested by the corporation; and

It further appearing, that the corporation is scheduled to appear in Federal Court on September 15, 1953, in connection with the bankruptcy proceedings;

It is ordered, That the hearing on this matter originally scheduled to be held in the Commission's offices, Twelfth and Pennsylvania Avenue NW., Washington 25, D. C., on the 15th day of September 1953 be continued to the 22d day of September 1953; and

It is further ordered, Pursuant to § 1.402 of the rules, that said National Plastik-ware Fashions is directed to file with the Commission within fifteen days of receipt of this order a written appearance in triplicate, stating that the corporation will appear and present

evidence on the matter specified in this order if the corporation desires to avail itself of its opportunity to appear before the Commission. If said National Plastik-ware Fashions does not desire to appear before the Commission and give evidence on the matter specified herein, it shall, within thirty days of the receipt of this order, file with the Commission, in triplicate, a written waiver of hearing. Such waiver may be accompanied by a statement of reasons why National Plastik-ware Fashions believes that a cease and desist order should not be issued; and

It is further ordered, That failure of said National Plastik-ware Fashions timely to respond to this order or failure to appear at the hearing designated herein will be deemed a waiver of hearing.

Released: August 20, 1953.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] WM. P. MASSING,  
Acting Secretary.

[F. R. Doc. 53-7491; Filed, Aug. 25, 1953;  
8:51 a. m.]

[Docket No. 10645]

### GLOBE WIRELESS LTD.

#### MEMORANDUM OPINION AND ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In the matter of Globe Wireless Ltd., application for modification of its Mussel Rock, California point-to-point radiotelegraph station license to authorize addressed press service; Docket No. 10645, File No. 1171-C4-ML-53.

1. The Commission has before it for consideration a protest filed on August 7, 1953, by Press Wireless, Inc. (Press Wireless) against the Commission's action of July 29, 1953, granting Globe Wireless Ltd. (Globe) modification of license at its Mussel Rock, California, point-to-point radiotelegraph station whereby Globe was authorized to provide addressed press service.<sup>1</sup> This protest was filed pursuant to the provisions of section 309 (c) of the Communications Act of 1934, as amended. The text of section 309 (c) is attached hereto as appendix A.<sup>2</sup> On August 18, 1953, Globe filed a motion to strike this protest.

2. On April 27, 1953, Globe filed an application for the above described modification of its Mussel Rock, California, point-to-point telegraph station license. At about the same time (April 21, 1953) Globe filed a proposed tariff (FCC No. 34) covering the terms and conditions of its proposed service, as well as an application for special permission to make this tariff effective on

<sup>1</sup> Addressed Press service involves transmission without co-ordinated reception of addressed press messages to one or more persons at one or more fixed points not specifically named in the license of the carrier (see § 6.53 of the Commission's rules). In addition, Globe was also authorized to provide similar service to ships at sea (see § 6.52 of the Commission's rules).

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

less than statutory notice. In response to the Commission's letter of April 30, 1953, Globe, by letter dated May 13, 1953, supplied certain additional information with respect to its proposed service.

3. Meanwhile on May 11, 1953, Press Wireless filed informal objections to the grant of the Globe application and requested that no action be taken thereon until Press Wireless had had a full opportunity to study the matter and, if it so desired, to submit a formal protest thereto. On May 11, 1953, the staff forwarded a copy of Press Wireless' informal objections to Globe and invited that company to submit comments thereon for consideration by the Commission. Globe, by letter dated May 15, 1953, replied to the informal objections of Press Wireless.

4. On May 29, 1953, Press Wireless filed a formal petition with the Commission wherein it protested "against any action looking toward a grant of the (Globe) application without a hearing." Finally on July 6, 1953, Globe filed a formal reply to the Press Wireless petition wherein it argued that Press Wireless "has shown no substantial ground for the denial of the application" and urged that the Commission "issue its order forthwith granting such application without hearing thereon." As noted above, the Commission, on July 29, 1953, granted the Globe application and on the same date granted Globe special permission to make its tariff covering this service effective on not less than one day's notice to the Commission and the public.<sup>3</sup>

5. In support of its application Globe alleged that no additional facilities, frequencies or personnel will be required either at its transmission station or at its message center to provide the proposed service; that facilities at its customers' premises and between such premises and the Globe message center will be arranged, furnished and maintained by and at the expense of persons other than Globe; but that Globe would furnish radiotype equipment<sup>4</sup> at the rental rates set forth in its proposed tariff.

6. According to Globe's proposed tariff, the customer must subscribe for a minimum contract period of one year. Charges are to be \$36 per day for 6 days per week in return for which the customer is to be entitled to six transmitter hours of service subject to a minimum schedule of twenty minutes. Overtime use will be charged for at ten cents per minute per transmitter. Further, according to this tariff, the customer may file his traffic in the form of perforated tape for radiotype, radioteletype or Morse transmission. In the alternative the customer may transmit his traffic over tie lines either in the form of perforated tape or in the form of signals for any of the aforementioned types

<sup>3</sup> Globe has not as yet filed a tariff for this service.

<sup>4</sup> Radiotype equipment is a special type of telegraph printer equipment capable of high speed operation which was developed by the International Business Machines Corporation. Globe is the only one of the United States international telegraph carriers which makes use of this equipment.

of transmission. Proposed speed of transmission at five characters per word is to be approximately 100 words per minute for radiotype, 60 words per minute for radioteletype, and 15 to 100 words per minute, as the customer designates, for Morse transmission.

7. Globe stated that it has received one request for the proposed service from a prospective customer who is not now using the services of any other carrier. Globe also alleged that the other major international radiotelegraph carriers (RCA Communications, Inc., Mackay Radio and Telegraph Company, and Tropical Radio Telegraph Company) have been licensed to provide this service and that it too should have an equal opportunity to provide the service.

8. Press Wireless bases its protest to the grant of the Globe application on five grounds. The first ground relates to the adverse effect of the grant on Press Wireless. The second relates to the qualifications of Globe to provide the service at issue. The third ground relates to the licensing of an additional carrier to provide this service. The fourth ground relates to the quality of service and the level of charges proposed by Globe for its high speed radiotype service. The fifth ground relates to the matter of efficient use of frequencies. These grounds will be summarized below.

9. Press Wireless alleges that if Globe is permitted to provide the service in question at the proposed rates, particularly for radiotype service, Press Wireless would suffer economic injury through the diversion of existing traffic and the loss of opportunity to handle the traffic of Globe's prospective customer. Press Wireless also alleges that existing press users would be injured by the "diminishment" of the volume of such traffic handled by Press Wireless with the consequent inability of Press Wireless to furnish such service at low rates.

10. With respect to Globe's legal qualifications, Press Wireless does not adduce any facts whatsoever but instead states "Globe's application herein does not supply sufficient information to the Commission for it to determine that Globe has the statutory qualifications required by section 310 of the act with respect to Alien ownership \* \* \*" and requests that the Commission "inquire fully into the stock ownership of the corporations owning or voting the stock of Globe to determine whether or not Globe is barred by section 310 from holding this or any other license from the F. C. C."

11. Press Wireless alleges that it was established for the purpose of furnishing specialized service to the press and reiterates the various reasons given by the Federal Radio Commission in support of that Commission's action in the original licensing of Press Wireless in the public press service (see § 6.2 of the Commission's rules for a definition of fixed public press service) Press Wireless also alleges that it pioneered the development of addressed press service which is a rapid low rate means of transmitting news throughout the world depending upon large volumes for its existence as a low rate service; and that its facilities

are more than adequate to meet present and foreseeable needs for this service. Press Wireless further alleges that Globe was organized to furnish service to the Robert Dollar Company that it has furnished very little service to press entities; that there is no showing that any member of the public is unable to obtain this service from Press Wireless or the other carriers licensed to provide such service.

12. With respect to the quality of Globe's proposed radiotype service, Press Wireless alleges that the proposed speed of 100 words per minute exceeds existing international standards; that it is doubtful if satisfactory uncoordinated service can in fact be provided at such speed; that Globe's experience with such speed for point-to-point service is no criterion for what the results would be for such speed in a blind transmission service; that Press Wireless believes it is Globe's intent actually to use cue and contact control for the proposed 100 word per minute speed. Press Wireless further alleges that it has investigated the need for 100 word per minute service and believes that there is no present demand for such service; that while it does not publish rates for such service it is willing to furnish it upon request therefor at reasonable and nondiscriminatory rates, about 25 percent higher than those applicable to the 60 word per minute service.

13. Press Wireless alleges that the rates for the 100 word per minute service, assuming its feasibility, are unlawful, because in its opinion such rates would be below the cost of service to Globe and because they would be discriminatory as between customers for this service and those selecting other alternative speeds at the same charge. Press Wireless alleges that more time and effort would be required to provide the 100 word service; that there would be a higher cost in handling this service between the central office and the transmitting station; that Globe's rates were computed on a "by-product" theory and not upon the basis of allocating costs; and that the rates so established would adversely affect Press Wireless by enabling Globe to attract its customers. Finally, with respect to rates, Press Wireless alleges that the capacity of the 100 word service is so substantially greater than that of the 60 word service that there should be a differential in rates to reflect the greater value of such service to users.

14. Press Wireless also alleges that a grant of the Globe application will permit Globe to expand its consumption of frequency space that is badly needed by other and more efficient carriers.

15. Finally Press Wireless alleges that by the granting of Globe's application without a hearing the Commission has denied Press Wireless' aforementioned formal protest of May 29, 1953, without a statement of reasons for an adverse ruling on this petition as required by § 1.729 of the Commission's rules.

16. In light of all of the foregoing, Press Wireless requests that the grant be set aside; that the Globe application be designated for hearing on the issues

specified in the protest; and, that the Globe tariff be rejected or suspended.<sup>6</sup>

17. Globe bases its motion to strike the protest of Press Wireless on the following three grounds:

(a) That the protest does not specify with particularity the facts, matters, and things relied on as to issues desired to be tried in a formal hearing but rather includes only issues or allegations phrased generally;

(b) That such allegations as may be specific and many of those which are general are either frivolous or sham or are immaterial and irrelevant to any basic issues presented by Globe's application; and

(c) That the protest does not specify with particularity the facts, matters and things relied upon to show that Press Wireless is a real party in interest to contest Globe's application.

18. In its motion to strike the protest, Globe then proceeds to analyze each of the statements made by Press Wireless in its protest in an attempt to prove the foregoing bases for its position. In light of the foregoing, Globe moves that the Commission strike the protest of Press Wireless in its entirety as failing to meet the legal requirements of section 309 (c) of the Communications Act and that the Commission issue its finding to the effect that the protest has failed to meet said requirements.

19. Press Wireless is in error insofar as it alleges that it was not advised of the reasons for a denial of its petition. On July 29, 1953, the same day that the Globe application was granted, the Commission by letter, advised Press Wireless of its action and the grounds therefor.

20. It appears that Press Wireless is licensed in the public press service; that it provides addressed press service to numerous trans-pacific points; that it derives substantial revenue from this service; that the service sought herein by Globe would be in a direct competition with the service now provided by Press Wireless; and that Press Wireless has alleged that it would suffer economic injury from the grant complained of herein. We are therefore of the view and accordingly find that Press Wireless is a party in interest within the meaning of section 309 (c) of the Communications Act of 1934 as amended. *Sanders v. Federal Communications Commission*, 309 U. S. 470.

21. Having found that Press Wireless has established standing to protest as a party in interest, we turn to the further jurisdictional requirement of section 309 (c) that the protestant "shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally." We have held that the "clear import of this requirement is that a protestant must do something more than set forth in his protest vague, non-specific, conclusory arguments and allegations; he must allege those facts upon which his conclusions as to the impropriety of the Commission's grant without a hearing are predicated. These facts must be

<sup>6</sup> Since Globe has not filed any tariff, no action need be taken on this request.

alleged with specificity they must be concrete basic facts. "See In re Applications of Salinas Broadcasting Corp. et al. FCC 53-817. In the case before us we are unable to find that the protestant has complied with this basic requirement in so far as the first issue specified by Press Wireless is concerned. This first issue is "to determine, \* \* \* the legal, technical and financial qualifications of Globe, \* \* \*". As noted in paragraph 10 above Press Wireless did not adduce any facts with respect to this issue but merely alleged that "Globe's application does not supply sufficient information to the Commission for it to determine that Globe has the statutory qualifications required by section 310 of the act with respect to Alien ownership \* \* \*". No mention whatever is made of Globe's financial qualifications or of its technical ability to provide addressed press service.

22. Globe's application reveals that in response to question 8 (a) on the application form for modification of license Globe stated under oath that there had not been any changes in the data furnished previously covering ownership, citizenship, station control, business connections, and monopolistic practices. Globe has been a licensee of this Commission for many years and no previous questions have arisen regarding alien ownership. We do not believe that a long standing licensee's authority to provide service should be put in issue on the basis of data of the type before us here. Accordingly, we do not find any grounds for including an issue herein with respect to Globe's legal, technical and financial qualifications.

23. Upon consideration and analysis of all the pleadings herein, we do find, however, that Press Wireless has specified with particularity facts, matters, and things relied upon to warrant the designation of the Globe application for hearing on the issues specified in the protest other than that relating to the legal, technical, or financial qualifications of Globe. These facts, matters, and things were set forth in the body of the protest and in some instances were not specifically repeated in the issues set forth by Press Wireless. However, in order that the record may be complete we shall include issues herein with respect to all such relevant matters whether set forth in the body of the protest or in the specification of issues. It is to be noted, however, that the burden of proving the facts alleged and of demonstrating their materiality and relevancy on all issues not specifically adopted by the Commission herein is upon Press Wireless.

24. In view of the foregoing: *It is ordered*, That effective immediately the effective date of the grant of the above entitled application for modification of license is postponed pending a final determination by the Commission with respect to the protest herein of Press Wireless; and that pursuant to section 309 (c) of the Communications Act of 1934, as amended, the above entitled application for modification of license is designated for hearing at the offices of the Commission in Washington, D. C., on the following issues, which are either

set forth in the body of the complaint or in the specification of issues by Press Wireless:

(a) To determine the background and experience of Globe in providing addressed press service;

(b) To determine the nature, capacity and adequacy of the facilities of Press Wireless to provide the service proposed by Globe;

(c) To determine the need for the proposed radiotype service or a similar service at a speed of 100 words per minute;

(d) To determine whether adequate radiotype service can be provided by Globe at 100 words per minute without cue and contact control;

(e) To determine the extent to which each of Globe's presently authorized frequencies are now being used to provide currently licensed services at its Mussel Rock Station and the extent to which they will be used for operating the proposed service;

(f) To determine the effect of Globe's proposed service on the existing services and rates of Press Wireless;

(g) To determine the full costs to Globe for furnishing its proposed service;

(h) To determine the lawfulness of the proposed rates of Globe and in this connection to determine:

(i) Whether the proposed rates for radiotype service are in fact compensatory;

(ii) Whether an identical charge for radiotype services and the other types of services proposed herein by Globe is discriminatory as between users of the respective services;

(iii) Whether there should be a differential between the proposed rates for radiotype service and radioteletype and Morse services and if so, the amount thereof;

(i) To determine in the light of the facts adduced upon the foregoing issues whether the public interest, convenience, and necessity require that the grant of the subject application be vacated.

Issues (a) (b) (c) (d) and (f) specified above are not specifically adopted by the Commission and the burden of

proceeding with the introduction of evidence and the burden of proof shall be upon Press Wireless as provided in section 309 (c) of the Communications Act of 1934, as amended. All other issues are specifically adopted by the Commission and the burden of proof as to such issues other than (a) (b), (c) (d) and (f) specified above shall be upon Globe Wireless.

25. *It is further ordered*, That Globe, the applicant herein, Press Wireless, the protestant herein and the Acting Chief, of the Common Carrier Bureau are made parties to the proceeding herein and that:

(a) The hearing on the above issues shall commence at 10:00 a. m. on September 8, 1953, before Herbert Sharfman, Hearing Examiner.

(b) The parties to the proceeding herein shall have fifteen (15) days after the issuance of the Examiner's decision to file exceptions thereto and seven (7) days thereafter to file replies to any such exceptions; and

(c) The appearances by the parties intending to participate in the above hearing should be filed no later than August 28, 1953.

Adopted: August 19, 1953.

Released: August 20, 1953.

FEDERAL COMMUNICATIONS COMMISSION,  
[SEAL] WM. P MASSING,  
*Acting Secretary*,

[F. R. Doc. 53-7492; Filed, Aug. 25, 1953; 8:51 a. m.]

[Change List No. 6]

CUBAN RADIO STATIONS

LIST OF CHANGES, MODIFICATIONS AND DELETIONS OF EXISTING STATIONS

AUGUST 25, 1953.

Notification of new Cuban Radio Stations, and of changes, modification and deletions of existing stations, in accordance with Part III, Section F of the North American Regional Broadcasting Agreement, Washington, D. C., 1950.

REPUBLIC OF CUBA

Call letters	Location	Power (kw)	Antenna	Schedule	Class	Proposed date of change or commencement of operation
CMDQ-----	Victoria de las Tunas, Oriente-----	640 kilocycles 1	ND	U	II	Jan. 26, 1954

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,  
WM. P MASSING,  
*Acting Secretary*.

[F. R. Doc. 53-7493; Filed, Aug. 25, 1953; 8:52 a. m.]

[Change List No. 519]

U. S. STANDARD BROADCAST STATIONS

LIST OF CHANGES, PROPOSED CHANGES, AND CORRECTIONS IN ASSIGNMENTS

AUGUST 12, 1953.

Notification under the provisions of Part III, Section 2 of the North American Regional Broadcasting Agreement.

This notification consists of a list of changes, proposed changes, and corrections in Assignments of United States Standard Broadcast Stations modifying the

Appendix containing assignments of United States Standard Broadcast Stations, Mimeograph No. 48126, attached to the "Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941" as amended.

UNITED STATES

Call letters	Location	Power (kw)	Antenna	Schedule	Class	Date of FCC action	Proposed date of change or commencement of operation
KLON	Blytheville, Ark. (delete assignment, vide 910kc).	900 kilocycles					
KLON	Blytheville, Ark.	910 kilocycles 5	ND	D	III		Now in operation.
WNRV	Narrows, Va.	890 kilocycles 1	ND	D	II		Now in operation.
WWPF	Palatka, Fla. (PO: 800 kc 0.25 ND D II).	1870 kilocycles 0.5	DA-N	U	III-B	Aug. 12, 1953	Aug. 12, 1954.
WHWD	Hollywood, Calif.	1820 kilocycles 0.5	ND	D	III		Now in operation.
KWRT	Boonville, Mo.	1870 kilocycles 1	ND	D	III		Now in operation.
KMYC	Marysville, Calif.	1410 kilocycles 1	DA-2	U	III-B		Now in operation with directional antenna daytime.
WPON	Pontiac, Mich. (change in call letters from WBLM).	1460 kilocycles					
WNRC	New Rochelle, N. Y. (change in call letters from WGNE).						
KDIA	Auburn, Calif. (delete assignment).	1490 kilocycles					
WDON	Du Quoin, Ill. (change call letters from WAVA).	1580 kilocycles					

FEDERAL COMMUNICATIONS COMMISSION,  
WHL P MASSING,  
Acting Secretary.

[SEAL]

[F. R. Doc. 53-7494; Filed, Aug. 25, 1953; 8:52 a. m.]

business at 445 West Main Street, Clarksburg, West Virginia, filed an application for authorization, pursuant to section 7 (b) of the Natural Gas Act, to abandon certain compressor stations used in the transmission of natural gas subject to the jurisdiction of the Commission, as described in the application on file with the Commission and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on July 22, 1953 (18 F. R. 4260)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on September 11, 1953, at 9:30 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by the application herein: *Provided, however* That the Commission may, after a noncontested hearing dispose of the proceeding pursuant to provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State Commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 19, 1953.

Issued: August 20, 1953.

By the Commission.

[SEAL]

J. H. GUTRIDE,  
Acting Secretary.

[F. R. Doc. 53-7482; Filed, Aug. 25, 1953; 8:49 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-2179]

ARKANSAS LOUISIANA GAS CO.

ORDER FIXING DATE OF HEARING

On May 28, 1953, Arkansas Louisiana Gas Company (Applicant) a Delaware corporation with its principal place of business in Shreveport, Louisiana, filed an application and amendment thereto on August 10, 1953, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of natural-gas transmission pipeline facilities subject to the jurisdiction of the Commission as described in the application on file with the Commission and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the aforesaid rule for noncontested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on June 26, 1953 (18 F. R. 3678)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the

Natural Gas Act, and the Commission's rules of practice and procedure, a public hearing be held on September 15, 1953, at 9:45 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however* That the Commission may after a non-contested hearing forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 19, 1953.

Issued: August 20, 1953.

By the Commission.

[SEAL]

J. H. GUTRIDE,  
Acting Secretary.

[F. R. Doc. 53-7481; Filed, Aug. 25, 1953; 8:49 a. m.]

[Docket No. G-2189]

HOPE NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

On June 16, 1953, Hope Natural Gas Company (Applicant) a West Virginia corporation having its principal place of

[Docket No. G-2205]

EL PASO NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

On July 1, 1953, El Paso Natural Gas Company (Applicant) a Delaware corporation with its principal office in El Paso, Texas, filed application with the Federal Power Commission for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of a tap and regulating equipment at the Wingate Fractionating Plant terminus of its existing Gallup-Wingate pipeline in McKinley County, New Mexico, for the sale of natural gas subject to the jurisdiction of the Commission, as described in the application on file with the Commission, and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest, or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on July 22, 1953 (18 F. R. 4261)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on September 9, 1953, at 9:45 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the application: *Provided, however* That the Commission may, after a noncontested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State Commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 19, 1953.

Issued: August 20, 1953.

By the Commission.

[SEAL] J. H. GUTRIDE,  
Acting Secretary.

[F. R. Doc. 53-7483; Filed, Aug. 25, 1953;  
8:49 a. m.]

[Docket No. G-2206]

EL PASO NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

On July 1, 1953, El Paso Natural Gas Company (Applicant) a Delaware corporation with its principal office in El Paso, Texas, filed application with the Federal Power Commission for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of taps on its existing facilities, together with measuring and regulating facilities to serve the Navajo Tribe at 10 points in the Navajo Indian Reservation in Northwest New Mexico and Northeast Arizona, for the transportation and sale of natural gas subject to the jurisdiction of the Commission, as described in the application on file with the Commission, and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested

proceedings, and no request to be heard, protest, or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on July 29, 1953 (18 F. R. 4441)

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on September 10, 1953, at 9:45 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the application: *Provided, however* That the Commission may after a noncontested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State Commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 19, 1953.

Issued: August 20, 1953.

By the Commission.

[SEAL] J. H. GUTRIDE,  
Acting Secretary.

[F. R. Doc. 53-7484; Filed, Aug. 25, 1953;  
8:50 a. m.]

[Docket No. G-2207]

SOUTHERN NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

On July 3, 1953, Southern Natural Gas Company (Applicant), a Delaware corporation with its principal office at the Watts Building, Birmingham, Alabama, filed an application for permission and approval, pursuant to section 7(b) of the Natural Gas Act, to abandon 1,367 miles of 6½-inch transmission pipeline together with a meter station located at the terminus of the line, as described in the application on file with the Commission and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest, or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on July 22, 1953 (18 F. R. 4261)

The Commission orders:

(1) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing be held on September 14, 1953, at 9:45 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street

NW., Washington, D. C., concerning the matters involved in and the issues presented by the application: *Provided, however* That the Commission may, after a noncontested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(2) Interested State Commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Adopted: August 19, 1953.

Issued: August 20, 1953.

By the Commission.

[SEAL] J. H. GUTRIDE,  
Acting Secretary.

[F. R. Doc. 53-7485; Filed, Aug. 25, 1953;  
8:50 a. m.]

## SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3119]

CONSOLIDATED NATURAL GAS CO.

ORDER AUTHORIZING ISSUE AND SALE TO BANKS OF PROMISSORY NOTES

AUGUST 20, 1953.

Consolidated Natural Gas Company ("Consolidated") a registered holding company, having filed a declaration and an amendment thereto with this Commission pursuant to sections 6 (a) and 7 of the Public Utility Holding Company Act of 1935 ("act") regarding the following proposed transactions:

Consolidated proposes to borrow an aggregate of \$15,000,000 from one or more commercial banks on simple promissory notes, without collateral, maturing March 1, 1955, with the right of Consolidated to prepay the loans in whole or in part at any time. Interest will be at the rate of 3¼ percent per annum for the period ended September 1, 1954, and 3½ percent per annum thereafter until maturity.

Consolidated expects to borrow the money on the following schedule:

Sept. 1, 1953.....	\$3,000,000
Sept. 15, 1953.....	3,000,000
Oct. 15, 1953.....	6,000,000
Nov. 16, 1953.....	3,000,000
Total.....	15,000,000

and will pay a standby charge computed from September 1, 1953, at the rate of 3/8ths of 1 percent per annum on the daily average unused amount of the \$15,000,000 during the period from September 1, 1953, to November 16, 1953.

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.

By the Commission:

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F. R. Doc. 53-7477; Filed, Aug. 25, 1953;  
8:48 a. m.]

[File No. 70-3127, 70-3128]

DUQUESNE LIGHT CO. AND STANDARD  
POWER AND LIGHT CORP.

NOTICE OF FILING OF APPLICATIONS-DECLARATIONS REGARDING ISSUANCE AND SALE BY PUBLIC UTILITY SUBSIDIARY OF ADDITIONAL SHARES OF COMMON STOCK, ADDITIONAL SHARES OF PREFERRED STOCK AND OF FIRST MORTGAGE BONDS AND SALE BY PARENT OF COMMON STOCK OF SUBSIDIARY; AND ORDER CONSOLIDATING FILINGS

AUGUST 20, 1953.

In the matter of Duquesne Light Company, File No. 70-3127; Standard Power and Light Corporation, File No. 70-3128.

Duquesne Light Company ("Duquesne") a subsidiary of Philadelphia Company, a registered holding company and a subsidiary of Standard Gas and Electric Company which, in turn, is a subsidiary of Standard Power and Light Corporation ("Standard Power") both also registered holding companies, has filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("act") an application-declaration (File No. 70-3127) regarding the proposed issuance and sale of additional shares of common stock, additional shares of a new series of preferred stock and a new series of First Mortgage Bonds. Standard Power has filed an application-declaration (File No. 70-3128) regarding the proposed sale of shares of the presently outstanding common stock of Duquesne now held by Standard Power, such sale to be conducted simultaneously with the proposed sale by Duquesne of additional shares of its common stock. Applicants-declarants have designated sections 6, 7, 9, 10, and 12 of the act and Rules U-44 and U-50, promulgated thereunder, as applicable to the proposed transactions.

All interested persons are referred to the applications-declarations on file in the office of this Commission for a complete statement of the transactions therein proposed, which are summarized as follows:

Duquesne proposes to issue and sell, pursuant to the competitive bidding requirements of Rule U-50, (a) 150,000 shares of its authorized but unissued common stock of a par value of \$10 per share, (b) 100,000 shares of its authorized but unissued preferred stock as an additional series to be known as its "Percent Preferred Stock" of the par value of \$50 per share, and (c) \$12,000,000 principal amount of its First Mortgage Bonds, Series due September 1, 1983. The price per share of the additional common stock and the dividend rate and the price per share of the new preferred stock will be determined by the bidding

except that the invitation for bids will specify that the price to the company for the new preferred stock shall not be less than \$50 nor more than \$51.375 per share. The new bonds will be issued under the provisions of an Indenture, dated August 1, 1947, between Duquesne and Mellon National Bank and Trust Company, Trustee, as last supplemented by a Supplemental Indenture dated September 1, 1952, and to be further supplemented by a new Eighth Supplemental Trust Indenture, to be dated as of September 1, 1953. The interest rate and the price to be paid the company for the bonds will be determined by the bidding, except that the invitation for bids will specify that the price to the company shall not be less than 100 percent nor more than 102¾ percent of the principal amount thereof.

Duquesne represents that the net proceeds to be derived from the sale of the common stock, the preferred stock, and the bonds will be used, in part, for the purpose of financing its 1953-1955 construction program and for the repayment of bank loans, aggregating \$15,900,000, incurred for construction purposes.

Duquesne requests that the ten-day notice period required by Rule U-50 with respect to the proposed sale of the common stock and preferred stock be shortened, respectively, to six and eight days and that the Commission's order to be entered herein be issued not later than September 8, 1953, and that such order be permitted to become effective forthwith upon issuance.

Duquesne also represents that the Pennsylvania Public Utility Commission is the only State Commission having jurisdiction over the proposed issuance and sale of securities by Duquesne.

Standard Power proposes to sell, pursuant to the competitive bidding requirements of Rule U-50, 34,739 shares of the presently outstanding common stock of Duquesne now held by Standard Power. It is proposed that the sale will be made simultaneously with the proposed sale by Duquesne of additional shares of its common stock. In connection with its proposed sale, Standard Power will enter into an agreement with Duquesne whereby Standard Power will agree, among other things, to accept or reject any and all bids as to its shares of Duquesne common stock as shall be accepted or rejected by Duquesne for the additional shares of its common stock. Standard Power proposes to apply the proceeds derived from its proposed sale to the reduction of its presently outstanding bank loan with the Hanover Bank of New York, New York, in the amount of \$2,400,000. Standard Power requests that the ten-day notice period required by Rule U-50 be shortened to six days and that the Commission's order to be entered herein be permitted to become effective forthwith upon issuance. Standard Power represents that no State Commission has jurisdiction over its proposed transactions.

It appearing to the Commission that the transactions proposed by Duquesne and Standard Power are related and involve common questions of law and fact and that the proceedings on such matters should be consolidated:

It is ordered, That the proceedings in File No. 70-3127 and File No. 70-3128 be, and the same hereby are, consolidated.

Notice is hereby given that any interested person may, not later than September 4, 1953, at 5:30 p. m., request in writing that a hearing be held in respect of such consolidated matters, stating the nature of his interest, the reason for such request, and the issues of fact or law, if any, raised by said applications-declarations which he desires to controvert, or he may request that he be notified if the Commission orders 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 September 4, 1953, the applications-declarations, as filed or as amended, may be granted and 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 Rules U-20 (a) and U-100 of such rules.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F. R. Doc. 53-7478; Filed, Aug. 25, 1953;  
8:48 a. m.]

[File Nos. 811-550, 812-842]

OGDEN CORP.

NOTICE OF APPLICATION FOR ORDER DECLARING COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY AND FOR EXEMPTION FROM CERTAIN REPORTING REQUIREMENTS

AUGUST 20, 1953.

Notice is hereby given that Ogden Corporation ("Ogden") a registered closed-end, non-diversified investment company, has filed an application pursuant to section 8 (f) of the act for an order declaring that Ogden has ceased to be an investment company under the act and under section 6 (c) of the act for an order exempting it from the provisions of section 30 of the act and Rule N-30D-1 thereunder requiring that a financial report for the first six months of 1953 be sent to all stockholders within 60 days after June 30, 1953.

On June 18, 1953, Ogden purchased all the outstanding capital stock of W. A. Case & Son Manufacturing Co. ("Case") which transaction was exempted from the provisions of section 17 (a) of the act, pursuant to an order of this Commission dated June 17, 1953 (Investment Company Act Release No. 1876). On July 14, 1953, at a special meeting of stockholders, the purchase of the Case securities, which now represent 76.58 percent of Ogden's total assets, was approved and ratified by a vote of more than two-thirds of the outstanding Common Stock of Ogden, and it was also voted to terminate the registration of Ogden as an investment company under the act.

Ogden maintains that the principal purpose of the corporation has now changed from that of an investment company to that of a company primarily

engaged, through its subsidiary Case, in the business of manufacturing, selling, and distributing various types of heating and plumbing products; that the corporation is not; does not propose to be, and does not hold itself out as being an investment company and that the corporation has ceased to be an investment company within the definition of that term in section 3 of the act.

Notice is further given that any interested person may, not later than September 2, 1953, at 5:30 p. m., submit to the Commission 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. 53-7473; Filed, Aug. 25, 1953;  
8:47 a. m.]

[File No. 812-843]

UNIFIED FUNDS, INC.

NOTICE OF FILING OF APPLICATION FOR  
ORDER APPROVING DEPOSIT AGREEMENT OF  
FACE-AMOUNT CERTIFICATE COMPANY

AUGUST 20, 1953.

Notice is hereby given that Unified Funds, Inc. ("Unified") of Indianapolis, Indiana, a registered face-amount certificate investment company, has filed an application seeking the approval of a deposit agreement pursuant to section 28 (c) of the Investment Company Act of 1940 ("act")

Under date of May 26, 1953, Unified entered into a deposit agreement with The Indiana Trust Company of Indianapolis, Indiana ("Bank") wherein Unified undertakes to deposit and maintain with said Bank qualified investments as reserves required by section 28 of the act in respect of face-amount certificates proposed to be issued and sold by Unified, upon the terms and conditions specified in said agreement.

Section 28 (c) provides, among other things, that the Commission shall by rule, regulation, or order, in the public interest or for the protection of investors, require a registered face-amount certificate company to deposit and maintain, upon such terms and conditions as the Commission shall prescribe and as are appropriate for the protection of investors, with one or more institutions having the qualifications re-

quired by section 26 (a) (1) of the act for a trustee of a unit investment trust, all or any part of the investments maintained by such company as certificate reserve requirements under the provisions of section 28 (b) of the act.

Notice is further given that any interested person may, not later than August 31, 1953, at 5:30 p. m., submit to the Commission 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 such 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. 53-7474; Filed, Aug. 25, 1953;  
8:47 a. m.]

[File No. 813-9]

D & Z EMPLOYEES' TRUST FUND

NOTICE OF FILING OF SUPPLEMENTAL APPLI-  
CATION BY EMPLOYEES' SECURITIES COM-  
PANY FOR EXTENSION OF TERMINATION  
DATE OF EXEMPTION FROM CERTAIN PROVI-  
SIONS OF THE ACT

AUGUST 20, 1953.

Notice is hereby given that D & Z Employees' Trust Fund ("Fund") a registered management, closed-end non-diversified investment company, has filed a supplemental application and an amendment thereto pursuant to section 6 (b) of the Investment Company Act of 1940 ("act") for an extension of the termination date of the exemption granted in the Commission's order dated February 9, 1951 (Investment Company Act Release No. 1578) from December 31, 1953, to December 31, 1978.

The Fund is a common law trust which was organized in 1939 under the laws of Pennsylvania to provide a medium by which employees, including officers, of Day and Zimmerman, Incorporated ("Corporation") could by means of relatively small weekly or other periodic payments acquire the Corporation's outstanding common stock, with a view to confining the ownership of such stock, so far as practicable, to persons in its employ. The Corporation is engaged in a general engineering business with its principal office in Philadelphia, Pennsylvania.

By order dated February 9, 1951, supra, the Commission exempted the Fund from certain provisions of the act and of the rules and regulations promulgated thereunder. The exemption afforded un-

der said order is to continue until December 31, 1953 (the termination date of the Fund) or an earlier termination of the Fund, unless extended by order of the Commission upon application of the Fund. It was also provided that the exemption could be modified or revoked at any time by the Commission, after notice and opportunity for hearing of such action was deemed necessary or appropriate.

The filing states that the Fund has only partially achieved its primary purpose of providing a medium whereby the ownership of all the outstanding stock of the Corporation, might eventually be confined to the employees (including officers) of that Corporation. The process of purchasing sufficient shares of the Corporation's common stock has been a slow one because of the relatively small contributions by most of the participants of the Fund, and also the infrequent availability of such stock for purchase. As of May 27, 1953, the Fund held 4,656 shares out of a total of 15,023 outstanding shares of common stock of the Corporation (excluding shares reacquired by it) representing 31 percent of such total.

In order to attain its original goal applicant states that it is necessary that the Fund continue its activities for a considerable period in the future. At a special meeting of the holders of units of the Fund held on June 30, 1953, the amendment to extend the termination date of the Trust Agreement from December 31, 1953 to December 31, 1978 was approved by holders of 71,750 units representing 83.7 percent of the outstanding units (no units were voted against the amendment) The Trust Agreement provides that any modification or alteration of the Trust Agreement must be approved by holders of at least two-thirds of the outstanding units.

All interested persons are referred to the original application, as amended, and the supplemental application which are on file in the offices of the Commission for a detailed statement of the facts.

Notice is further given that any interested person may, not later than September 2, 1953, at 5:30 p. m., submit to the Commission 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. 53-7475; Filed, Aug. 25, 1953;  
8:48 a. m.]