REFERENCE

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VOLUME 14 NUMBER 190

Washington, Saturday, October 1, 1949

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10080

ENABLING CERTAIN EMPLOYEES OF THE FEDERAL GOVERNMENT TO ACQUIRE A COMPETITIVE CIVIL SERVICE STATUS

By virtue of the authority vested in me by section 2 of the Civil Service Act (22 Stat. 404) and by section 1753 of the Revised Statutes of the United States, it is hereby ordered as follows:

The incumbent in an active duty status of any office or position in the competitive service of the Federal Government on the date of this order who is without competitive status shall, upon recommendation made within the period of one year from the date of this order by the head of the agency in which he is employed, acquire a competitive civil service status if all of the following conditions are satisfied: (1) That such incumbent was appointed to an office or position in the executive branch of the Federal Government prior to March 16, 1942 (the date on which the War Service Regulations became effective), and has had continuous service with the Federal Government since that date which is creditable for retirement purposes, inclusive of any intervening military service; (2) that if the employment of such incumbent is evaluated under an efficiency rating system his most recent rating is "Good" or better, and if his employment is not evaluated under an efficiency rating system the head of the agency concerned has certified to the Civil Service Commission that the incumbent has served with merit for six months or longer immediately prior to the date of such certification; (3) that such person successfully qualifies in such suitable noncompetitive examination as the Civil Service Commission may prescribe; and (4) that such incumbent shall be given only one such noncompetitive examination: *Provided*, that separation for one year or less due to reduction of force shall not prevent the acquisition of a competitive status hereunder by the present incumbent in an active duty status of an office or position in the competitive service.

The Civil Service Commission shall promulgate regulations to effectuate the purposes of this order.

HARRY S. TRUMAN

THE WHITE HOUSE
September 30, 1949.

[F. R. Doc. 49-7996; Filed, Sept. 30, 1949; 12:14 p. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 22—APPEALS OF PREFERENCE ELIGIBLES UNDER THE VETERANS' PREFERENCE ACT OF 1944

PREFERENCE ELIGIBLE EMPLOYEES

Effective as of August 26, 1949, subdivisions (v) and (vi) of § 22.1 (a) (2) are amended to read as set out below. As amended, § 22.1 (a) (2) will read as follows:

§ 22.1 *Applicability of regulations*—(a) *Coverage.* * * *

(2) *Preference eligible employees.* The term "preference eligible employees" referred to in this section includes the following persons:

(i) Those ex-service men and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable conditions and who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the War Department or the Navy Department;

(ii) The wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any civil service appointment;

(iii) The unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions;

(iv) Those ex-servicemen and women who have served on active duty in any

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1949 Edition

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branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions;

Separation under "honorable conditions" means separation from active duty in any branch of the armed forces by transfer to inactive status, transfer to retired status, acceptance of a resignation or the issuance of a discharge, if such separation was under honorable conditions;

(v) Those widowed mothers (if they have not remarried or, if they have remarried, they are divorced or legally separated from their husband or such husband is dead at the time preference is claimed):

(*a*) Of deceased ex-servicemen or ex-servicewomen who lost their lives while on active duty in any branch of the armed forces of the United States dur-

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ing any war, or in any campaign or expedition (for which a campaign badge has been authorized), or

(b) Of service-connected permanently and totally disabled ex-servicemen or ex-servicewomen, if said ex-serviceman or ex-servicewoman was separated from such armed forces under honorable conditions; and

(vi) A mother of a deceased ex-serviceman or ex-servicewoman who lost his or her life while on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), or of a service-connected permanently and totally disabled ex-serviceman or ex-servicewoman, if:

(a) Said ex-serviceman or ex-servicewoman was separated from such armed forces under honorable conditions.

(b) The mother was divorced or separated from the father of said ex-serviceman son or ex-servicewoman daughter, and

(c) The mother has not remarried or, if she has remarried, she is divorced or legally separated from her husband or such husband is dead at the time preference is claimed. (Sec. 2, 58 Stat. 387; sec 1, 62 Stat. 3; 62 Stat. 1233; P. L. 269, 81st Cong.; 5 U. S. C. and Sup. 851)

(Sec. 11, 58 Stat. 390; 5 U. S. C. 860)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] HARRY B. MITCHELL,
Chairman.

[F. R. Doc. 49-7925; Filed, Sept. 30, 1949; 8:49 a. m.]

PART 24—FORMAL EDUCATION REQUIREMENTS FOR APPOINTMENT TO CERTAIN SCIENTIFIC, TECHNICAL, AND PROFESSIONAL POSITIONS

FISHERY PRODUCTS TECHNOLOGIST

Section 24.106 is hereby added as follows:

§ 24.106 *Fishery Products Technologist (positions involving highly technical research, design, or development, or similar complex scientific functions), P-436-2-6*—(a) *Educational requirement.* Applicants must have successfully completed a full 4-year course in an accredited college or university leading to a bachelor's degree with major study in bacteriology, chemistry, chemical engineering, or food or fisheries technology.

(b) *Duties.* Fishery Products Technologists advise on, administer, supervise, or perform research or other professional and scientific work in current and new methods and procedures used in the processing, storing, preserving, packaging, and distribution of fishery products; and in the development, manufacture, and use of fishery by-products.

(c) *Knowledge and training requisite for performance of duties.* The duties of this position cannot be successfully performed without basic training in fishery technological research and a sound knowledge of the basic principles of chemistry, bacteriology, physics, engineering, mathematics, and economics. Appointees must have the ability to apply this theoretical knowledge to the interpretation of data gathered in this field. This knowledge and training can be gained only through a directed course of study in an accredited college or university with scientific libraries, well-equipped laboratories, and thoroughly trained instructors, where guidance is expertly given and progress is competently evaluated.

(Sec. 11, 58 Stat. 390; 5 U. S. C. 860)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] HARRY B. MITCHELL,
Chairman.

[F. R. Doc. 49-7933; Filed, Sept. 30, 1949; 8:52 a. m.]

TITLE 7—AGRICULTURE

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

[Grapefruit Reg. 117]

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

LIMITATION OF SHIPMENTS

§ 933.446 *Grapefruit Regulation 117*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR, Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than October 3, 1949. Shipments of grapefruit, grown in the State of Florida, are subject to regulation by grades and sizes pursuant to Grapefruit Regulation 116 (7 CFR 933.444, 14 F. R. 5557), which has been in effect since September 12, 1949, and is to continue until October 3, 1949; the recommendation and supporting information for continued regulation subsequent to October 2 was promptly submitted to the Department after an open meeting of the committee on September 27; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time thereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., October 3, 1949, and ending at 12:01 a. m., e. s. t., October 17, 1949, no handler shall ship:

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

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

(iii) Any seedless grapefruit, other than pink grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 112 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

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

(2) As used in this section, "handler," "variety," and "ship" shall have the same meaning as is given to each such term in said amended marketing agreement and order; and the terms "U. S. No. 2 Russet," "standard pack," and "standard nailed box" shall each have the same meaning as when used in the United States Standards for Grapefruit (7 CFR 51.191).

(48 Stat. 31, as amended; U. S. C. and Sup. 601 et seq.; 7 CFR, Part 933)

Done at Washington, D. C., this 29th day of September 1949.

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

[F. R. Doc. 49-7966; Filed, Sept. 30, 1949; 9:00 a. m.]

[Orange Reg. 170]

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

LIMITATION OF SHIPMENTS

§ 933.447 *Orange Regulation 170*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR, Part 933), regulating the handling of oranges,

grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than October 3, 1949. Shipments of oranges, grown in the State of Florida, are subject to regulation by grades and sizes pursuant to Orange Regulation 169 (7 CFR 933.445, 14 F. R. 5559) which has been in effect since September 12, 1949, and is to continue until October 3, 1949; the recommendation and supporting information for continued regulation subsequent to October 2 was promptly submitted to the Department after an open meeting of the committee on September 27; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time thereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., October 3, 1949, and ending at 12:01 a. m., e. s. t., October 17, 1949, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in the State of Florida which do not grade at least U. S. No. 2 Russet; or

(ii) Any oranges, except Temple oranges, grown in the State of Florida which are of a size smaller than a size that will pack 283 oranges, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, the terms "handler" and "ship" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 2 Russet," "standard pack," and "standard nailed box" shall each have the same meaning as when used in the United States Standards for Oranges (7 CFR 51.192).

(48 Stat. 31, as amended; U. S. C. and Sup. 601 et seq.; 7 CFR, Part 933)

Done at Washington, D. C., this 29th day of September 1949.

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

[F. R. Doc. 49-7967; Filed, Sept. 30, 1949; 9:00 a. m.]

[Orange Reg. 295]

PART 966—ORANGES GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 966.441 *Orange Regulation 295*—(a) *Findings.* (1) Pursuant to the provisions of Order No. 66 (7 CFR, Cum. Supp., 966.1 et seq.) regulating the handling of oranges grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Orange Administrative Committee, established under the said order, and upon other available information, it is hereby found that the limitation of the quantity of such oranges which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

(b) *Order.* (1) The quantity of oranges grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., October 2, 1949, and ending at 12:01 a. m., P. s. t., October 9, 1949, is hereby fixed as follows:

(i) *Valencia oranges.* (*a*) Prorate District No. 1: No movement;

(*b*) Prorate District No. 2: 1,050 carloads;

(*c*) Prorate District No. 3: No movement.

(ii) *Oranges other than Valencia oranges.* (*a*) Prorate District No. 1: No movement;

(*b*) Prorate District No. 2: No movement;

(*c*) Prorate District No. 3: No movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said order, is hereby fixed in accordance with the prorate base schedule which is attached hereto and made a part hereof by this reference.

(3) As used herein, "handled," "handler," "carloads," and "prorate base" shall have the same meaning as is given to each such term in the said order; and "Prorate District No. 1," "Prorate District No. 2," and "Prorate District No. 3" shall have the same meaning as is given to each such term in § 966.107 (11 F. R. 10258) of the rules and regulations contained in this part.

(48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 30th day of September 1949.

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

PRORATE BASE SCHEDULE

[12:01 a. m. Oct. 2, 1949, to 12:01 a. m. Oct. 9, 1949]

VALENCIA ORANGES

Prorate District No. 2

Handler	*Prorate base (percent)*
Total	100.0000
A. F. G. Alta Loma	.1146
A. F. G. Corona	.0000
A. F. G. Fullerton	.9811
A. F. G. Orange	.4347
A. F. G. Riverside	.1101
A. F. G. San Juan Capistrano	.6604
A. F. G. Santa Paula	.5446
Hazeltine Packing Co	.4770
Placentia Pioneer Valencia Growers Association	.7110
Signal Fruit Association	.1063
Azusa Citrus Association	.5314
Damerel-Allison Co	.8297
Glendora Mutual Orange Association	.4310
Puente Mutual Orange Association	.0000
Valencia Heights Orchard Association	.5027
Covina Citrus Association	1.3094
Covina Orange Growers Association	.7373
Glendora Citrus Association	.3991
Glendora Heights Orange & Lemon Growers Association	.0000
Gold Buckle Association	.0000
La Verne Orange Association	.6859
Anaheim Citrus Fruit Association	1.4849
Anaheim Valencia Orange Association	1.1673
Eadington Fruit Co., Inc	3.0704
Fullerton Mutual Orange Association	1.8456
La Habra Citrus Association	.9101
Orange County Valencia Association	.4417
Orangethorpe Citrus Association	1.0736
Placentia Cooperative Orange Association	1.3225
Yorba Linda Citrus Association, The	.7658
Escondido Orange Association	.0000
Alta Loma Heights Citrus Association	.0707

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 2—Continued

Handler	*Prorate base (percent)*
Citrus Fruit Association	0.2515
Cucamonga Citrus Association	.1078
Rialto Heights Orange Association	.0591
Upland Citrus Association	.5146
Upland Heights Orange Association	.1382
Consolidated Orange Growers	2.2505
Frances Citrus Association	1.1716
Garden Grove Citrus Association	1.7821
Goldenwest Citrus Association	1.3254
Irvine Valencia Growers	3.1346
Olive Heights Citrus Association	2.1028
Santa Ana-Tustin Mutual Citrus Association	.9946
Santiago Orange Growers Association	4.5681
Tustin Hills Citrus Association	1.9111
Villa Park Orchards Association, The	2.1166
Bradford Bros., Inc	.7545
Placentia Mutual Orange Association	2.1626
Placentia Orange Growers Association	2.5564
Yorba Orange Growers Association	.6364
Call Ranch	.0647
Corona Citrus Association	.6332
Jameson Co	.0545
Orange Heights Orange Association	.5591
Crafton Orange Growers Association	.0000
East Highlands Citrus Association	.0000
Fontana Citrus Association	.1343
Highland Fruit Growers Association	.0285
Redlands Heights Groves	.2681
Redlands Orangedale Association	.2706
Break & Sons, Allen	.0000
Bryn Mawr Fruit Growers Association	.0000
Mission Citrus Association	.1794
Redlands Cooperative Fruit Association	.3256
Redlands Orange Growers Association	.2214
Redlands Select Groves	.2362
Rialto Citrus Association	.2213
Rialto Orange Co	.1777
Southern Citrus Association	.1694
United Citrus Growers	.1453
Zilen Citrus Co	.0690
Andrews Bros. of California	.0000
Arlington Heights Citrus Co	.1241
Brown Estate, L. V. W	.0000
Gavilan Citrus Association	.1531
Highgrove Fruit Association	.0856
Krinard Packing Co	.1998
McDermont Fruit Co	.2074
Monte Vista Citrus Association	.2196
National Orange Co	.0000
Riverside Heights Orange Growers Association	.0568
Sierra Vista Packing Association	.0459
Victoria Avenue Citrus Association	.1899
Claremont Citrus Association	.1670
College Heights Orange & Lemon Association	.4332
Indian Hill Citrus Association	.2136
Pomona Fruit Growers Exchange	.3846
Walnut Fruit Growers Association	.5073
West Ontario Citrus Association	.3758
El Cajon Valley Citrus Association	.0000
San Dimas Orange Growers Association	.4682
Canoga Citrus Association	.8496
Covina Valley Orange Co	.0791
North Whittier Heights Citrus Association	.8840
San Fernando Fruit Growers Association	.6035
San Fernando Heights Orange Association	.9867
Sierra Madre-Lamanda Citrus Association	.4051
Camarillo Citrus Association	1.7729

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 2—Continued

Handler	*Prorate base (percent)*
Fillmore Citrus Association	4.0729
Mupu Citrus Association	2.2123
Ojai Orange Association	1.3386
Piru Citrus Association	2.4390
Rancho Sesoe	.8562
Santa Paula Orange Association	1.2322
Tapo Citrus Association	1.0751
Ventura County Citrus Association	.2654
Limoneira Co	.6215
East Whittier Citrus Association	.3802
El Ranchito Citrus Association	.6430
Whittier Citrus Association	.1071
Whittier Select Citrus Association	.1072
Anaheim Cooperative Orange Association	1.5166
Bryn Mawr Mutual Orange Association	.0000
Chula Vista Mutual Lemon Association	.0000
Escondido Cooperative Citrus Association	.3547
Euclid Avenue Orange Association	.6147
Foothill Citrus Union, Inc	.0375
Fullerton Cooperative Orange Association	.3410
Garden Grove Orange Cooperative Inc	.9500
Golden Orange Groves, Inc	.2610
Highland Mutual Groves, Inc	.0270
Index Mutual Association	.0000
La Verne Cooperative Citrus Association	1.7848
Mentone Heights Association	.0000
Olive Hillside Groves, Inc	.5186
Orange Cooperative Citrus Association	1.3552
Redlands Foothill Groves	.5212
Redlands Mutual Orange Association	.1690
Riverside Citrus Association	.0409
Ventura County Orange & Lemon Association	1.0707
Whittier Mutual Orange & Lemon Association	.1282
Associated Growers Coop	.1852
Babijuice Corp. of California	.3961
Banks, L. M	.6216
Borden Fruit Co	.9048
California Associated Growers	.4948
California Fruit Distributors	.0000
Cherokee Citrus Co., Inc	.1633
Chess Company, Meyer W	.3444
Evans Brothers Packing Co	.2346
Furr Company, N. C	.0407
Gold Banner Association	.2279
Granada Hills Packing Co	.0427
Granada Packing House	1.9388
Hill Packing House, Fred A	.1011
Knapp Packing Co., John C	.1953
Orange Belt Fruit Distributors	2.0840
Panno Fruit Co., Carlo	.1601
Paramount Citrus Association	.5616
Placentia Orchard Co	.5264
San Antonio Orchard Co	.3339
Synder & Sons Co., W. A	1.0059
Stephens, T. F	.1824
Wall, E. T	.1176
Western Fruit Growers, Inc	.5160

[F. R. Doc. 49-7994; Filed, Sept. 30, 1949; 11:12 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 5646]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

PACIFIC GRAPE PRODUCTS CO. ET AL.

Subpart—*Discrimination in price under section 2, Clayton Act, as amended—Payment or acceptance of commission, brokerage or other compensation under 2 (c): § 3.820 Direct buyers.* In connection with the sale of food products or other merchandise in commerce, paying or granting, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, to any purchaser upon purchases for his own account or to any agent, representative, or other intermediary acting in fact for, or on behalf of, or subject to the direct or indirect control of, the purchaser to whom sale is made; prohibited. (Sec. 2 (c), 49 Stat. 1527; 15 U. S. C., sec. 13 (c)) [Cease and desist order, Pacific Grape Products Company, et al., Docket 5646, September 14, 1949]

In the Matter of Pacific Grape Products Company, a Corporation; Stanley F. Triplett, individually and as President of Pacific Grape Products Company; Aleck Rasmussen, Individually and as Director of Pacific Grape Products Company

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents, which answer, in substance, admits the material allegations of fact set forth in the complaint and waives all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That the respondent Pacific Grape Products Company, a corporation, its officers, agents, representatives, and employees, and the respondents Stanley F. Triplett and Aleck Rasmussen, individually and as president and director, respectively, of said corporate respondent, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of food products or other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Paying or granting, directly or indirectly, anything of value as a commission or brokerage, or any compensation, allowance, or discount in lieu thereof, to any purchaser upon purchases for his own account or to any agent, representative, or other intermediary acting in fact for, or on behalf of, or subject to the direct or indirect control of, the purchaser to whom sale is made.

It is further ordered, That said respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the man-

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

Issued: September 14, 1949.

By the Commission.

[SEAL] D. C. DANIEL,
Secretary.

[F. R. Doc. 49-7927; Filed, Sept. 30, 1949; 8:51 a. m.]

TITLE 22—FOREIGN RELATIONS

Chapter II—Economic Cooperation Administration

[ECA Reg. 4, as Amended October 1, 1949]

PART 204—GUARANTIES UNDER THE ECONOMIC COOPERATION ACT OF 1948, AS AMENDED

ECA Regulation 4 is amended in its entirety to read as follows:

Preamble. In furtherance of the purposes of the Economic Cooperation Act of 1948, as amended, in order to facilitate and maximize the use of private channels of trade, and pursuant to authority contained in sections 104 (f) and 111 (a) and (b) of such act, the following rules and regulations are prescribed for the making of guaranties of investments pursuant to section 111 (b) (3) of such act as amended.

Sec.
204.1 Scope of this part.
204.2 Preliminary statement in regard to application for guaranties and place of filing.
204.3 Information required in applications for guaranties for informational media projects.
204.4 Information required in applications for guaranties for industrial projects.
204.5 Information required in applications for guaranties described in subparagraph (iv) of section 111 (b) (3).
204.6 Fees for guaranties.
204.7 Designation of Export-Import Bank of Washington as agent.
204.8 Effect of making investment prior to issuance of guaranty.
204.9 Saving clause.

AUTHORITY: §§ 204.1 to 204.9 issued under sec. 104 (f), Pub. Law 472, 80th Cong. Interpret or apply sec. 111 (a), (b) (3), Pub. Law 472, 80th Cong., as amended by Pub. Law 47, 81st Cong.

§ 204.1 *Scope of this part.* This part shall cover all guaranties under paragraph 3 of subsection (b) of section 111 of the Economic Cooperation Act of 1948, as amended.

§ 204.2 *Preliminary statement in regard to applications for guaranties and place of filing.* Applications for guaranties should be made in writing to the Administrator for Economic Cooperation, Washington 25, D. C.

There is no prescribed form of application. Applications should conform as closely as practicable to the requirements for information given below.

§ 204.3 *Information required in applications for guaranties for informational media projects.* Each application for a guaranty for an informational media project shall be submitted in four copies plus one additional copy for each participating country in which it is desired that the project operate, and shall contain, so far as practicable, the following information:

1. Name and address of the applicant.
2. Citizenship of the applicant. (If a corporation, the applicant should indicate the State in which it is incorporated and furnish a statement by an officer showing the percentage of each class of its stock known or believed to be beneficially owned by United States citizens.)
3. Name and title of each person authorized to represent the applicant for the purposes of the application.
4. Brief history of the applicant.
5. Name and address of the applicant's commercial bank.
6. Income statements in reasonable detail, and year-end balance sheets, for each of the past three fiscal years certified by independent accountants, or by a responsible official of the applicant if the applicant's accounts are not ordinarily audited by independent accountants.
7. The participating country or countries for which the project is intended.
8. A brief description of the informational media included in the project. (The title and author of each book, or the title of each motion picture or periodical, should be listed in an appendix. Sample copies of the informational media included in the project should be furnished, if practicable. In the case of periodicals, six to eight copies of a recent issue should be furnished.)
9. A brief description of the business arrangements for the production and distribution of the media. (This should include a statement of where and how the media are produced and of how they will be distributed in the participating country or countries. In the case of periodicals and books, it should also state the proposed retail prices and dealer's discounts in the participating country or countries, in comparison with those in effect in the United States and elsewhere.)
10. An estimate of the net sales or other receipts in local currency to be received from the project in each participating country for the first six months' period of operation covered by the application, and for the succeeding six months' period of operation. (The applicant should also state whether or not any receipts may be anticipated from the project in dollars or other hard currencies, with estimates whenever practicable.)
11. An estimate of the local currency expenses of operation of the project in each participating country for such first and next succeeding six months' periods of operation.
12. The amount of the guaranty requested for each participating country for such first six months' period of operation, together with a brief explanation of how this amount is arrived at.
13. A brief statement of the reasons why the applicant considers that the project will further the purposes of the Act and be consistent with the national interests of the United States.
14. Such further information as may be relevant.

§ 204.4 *Information required in applications for guaranties for industrial projects.* Each application for a guaranty covered in this part, other than a guaranty for informational media, and other than a guaranty of an investment as described in subparagraph (iv) of section 111 (b) (3), shall be submitted in four copies, and shall contain, so far as practicable, the following information:

1. Name and address of the applicant.
2. Citizenship of the applicant. (If a corporation, the applicant should indicate the State in which it is incorporated and furnish a statement by an officer showing the percentage of each class of its stock known or believed to be beneficially owned by United States citizens.)
3. Name and title of each person authorized to represent the applicant for the purposes of the application.
4. Brief statement of history and experience of the applicant, with commercial bank and trade references, and income statements and year-end balance sheets for each of the past three fiscal years, together with a statement as to the availability of funds for the proposed investment, and the source thereof. The income statements and year-end balance sheets should be certified by independent accountants, or by a responsible official of the applicant if the applicant's accounts are not ordinarily audited by independent accountants.
5. The participating country for which the project is intended and statement of the channels through which negotiations are being or will be conducted for the purpose of obtaining approval of such country.
6. Statement of any special conditions specified by the government of the participating country for the conduct of the business; and any arrangements with the foreign government for the conversion of receipts from the investment into U. S. dollars.
7. Total amounts of dollars to be invested by the applicant and the amount of such investment for which a guaranty is requested. Schedule of time for making the investment by quarterly annual periods.
8. Amount of estimated earnings or profits for which an additional amount of guaranty is requested. State total additional amount requested and show break-down of amount by annual periods.
9. Brief description of securities or instruments to be acquired by applicant as evidence of ownership of the investment to be guaranteed.
10. If any part of the applicant's investment is to be made in a form other than cash, the basis of the valuation thereof in dollars.
11. Statement of the form of organization under which the enterprise in the participating country will be conducted; i. e., whether a branch of applicant, a separate corporation, etc., with latest available balance sheet of the enterprise, if already in existence, and pro forma balance sheet giving effect to the proposed investment.
12. A description of the plan or other facilities to which the investment will relate, its proposed location, and projected method of operation; also a brief statement of arrangements contemplated for management of the enterprise in the participating country.
13. If there are at present any other participants, financial or otherwise, in the enterprise, give their names and state extent and character of their participation; or if participants are numerous, give the required information as to the principal participants.
14. If there are any other proposed participants, financial or otherwise, in the enterprise, give their names and state extent and character of their participation.
15. Estimated time required to place the enterprise in operation.
16. Statement as to how the projected investment may be expected to affect the foreign exchange position of the participating country, or countries, concerned, including an estimate of the U. S. dollar and other imports to be saved, if any, and hard or soft currency exports to result from operation of the project.
17. Information with respect to the market for the products or services resulting from the project (this is to include the domestic market in the participating country, the market in the United States, and the general world export market) and pertinent information with respect to the economic soundness of the project.

18. Any other information to show the desirability of the project as promoting European recovery.

19. A description of all existing investments of the applicant in the participating country.

20. Such further information as may be relevant.

§ 204.5 *Information required in applications for guaranties described in subparagraph (iv) of section 111 (b) (3).* As used in this section, the term "investment" means the furnishing of capital goods items and related services, for use in connection with projects approved by the Administrator, pursuant to a contract providing for payment in whole or in part after June 30, 1950. Each application for such a guaranty shall be submitted in four copies, and shall contain, so far as practicable, the following information:

1. Name and address of the applicant.

2. Citizenship of the applicant. (If a corporation, the applicant should indicate the State in which it is incorporated and furnish a statement by an officer showing the percentage of each class of its stock known or believed to be beneficially owned by United States citizens.)

3. Name and title of each person authorized to represent the applicant for the purposes of the application.

4. Give commercial bank and trade references of applicant.

5. The participating country for which the project is intended and statement of the channels through which negotiations are being or will be conducted for the purpose of obtaining approval of such country.

6. Statement of any special conditions specified by the government of the participating country in connection with the transaction, and any arrangements with the foreign government for the conversion of receipts from the investment into U. S. dollars.

7. Copy of sales or service contract to be entered into by applicant showing the time and the amount of payments thereunder.

8. Description of the capital goods and related services (i. e., investment) to be furnished by the applicant and the use to which they will be put in the participating country.

9. The amount for which a guaranty is requested.

10. State whether the applicant has any pecuniary or other interest in the purchaser of the goods or the recipient of the related services, and if so state full details, showing character and extent of such interest.

11. Such further information as may be relevant.

§ 204.6 *Fees for guaranties.* The investor receiving a guaranty shall pay to the Administrator or his duly appointed representatives, annually in advance, a fee equal to the sum of—

(a) One percent per annum of the face amount of the guaranty for the immediately ensuing year, plus

(b) One-quarter of one percent per annum of the amount by which the face amount of the guaranty will under the terms of the contract of guaranty increase at any time during the life of the contract,

unless unusual circumstances are found by the Administrator to exist, rendering it desirable, in furtherance of the purposes of the act, to charge a smaller fee, or to charge under paragraph (b) of this section a fee of more than one-quarter of one percent per annum but not exceeding one percent per annum.

In view of the short period for which informational media guaranties are issued, paragraph (b) of this section is not applicable to such guaranties.

§ 204.7 *Designation of Export-Import Bank of Washington as agent.* Export-Import Bank of Washington is hereby designated by the Administrator as his agent, upon such terms as may be specified by the Administrator, to issue in its name and administer guaranties made under section 111 (b) (3) of the Economic Cooperation Act of 1948, as amended, other than guaranties of investments in enterprises producing or distributing informational media, and other than guaranties of projects described in subparagraph (iv) of section 111 (b) (3), except those guaranties of the latter sort as to which the Administrator may specifically request the said Bank to act as such agent.

§ 204.8 *Effect of making investment prior to issuance of guaranty.* The primary purpose of the guaranty provisions of the act is to stimulate American investment in aid of European recovery. Where an investment is made prior to the issuance of a guaranty, there is ordinarily no reason for issuing the guaranty. Accordingly, the making of an investment by an applicant prior to the filing of an application for a guaranty of such investment shall be grounds on which the application may be denied.

The making of an investment by an applicant after the filing of an application for guaranty of such investment, but before the issuance of guaranty, shall be grounds on which the application may be denied. An applicant will, however, be protected against denial of an application on such grounds if, prior to the making of such investment, he shall have obtained in writing a statement from the Economic Cooperation Administration that the investment may be made prior to the issuance of the guaranty without prejudice to applicant's position under the application.

§ 204.9 *Saving clause.* The Administrator may waive, withdraw, or amend at any time or from time to time any or all of the provisions of this part.

PAUL G. HOFFMAN,
Administrator for Economic Cooperation.

[F. R. Doc. 49-7962; Filed, Sept. 30, 1949; 9:00 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

Subchapter C—Claims and Accounts

PART 836—CLAIMS AGAINST THE UNITED STATES

PARTIAL REVISION OF REGULATIONS

The material contained in Chapter VII, Department of the Air Force, 13 F. R. 8751, pertaining to applicability of certain portions of Army Regulations to the Department of the Air Force is hereby amended by revoking the reference of Chapter VII, Part 836, Department of the Air Force to Chapter V, Part 536, Department of the Army. Pending adoption of Air Force regulations, §§ 536.26, 536.27, 536.30–536.34, 536.40, 536.50 – 536.53, 536.75 – 536.77, 536.80–536.83, 536.85, 536.86, Chapter V, Department of the Army are applicable to the Department of the Air Force.

Pursuant to the authority conferred by secs. 207 (f) and 208 (e) of the National Security Act (61 Stat. 503, 504; 5 U. S. C. Sup. II, 626 (f), 626c (e) and Transfer Order 34, (14 F. R. 2509), the following regulations are hereby prescribed:

GENERAL PROVISIONS

Sec.
836.1 Definition.
836.2 Investigations.
836.3 Action by claimant.
836.4 Ascertainment of amount of damages.
836.5 Transfers and assignments of claims.
836.6 Participation in prosecution of claims.
836.7 Disclosure of information.

TORT CLAIMS

836.10 Purpose.
836.11 Definitions.
836.12 Effective date.
836.13 Scope.
836.14 Claims in excess of $1,000.
836.15 Acts or omissions.
836.16 Contributory negligence.
836.17 Claims of subrogees.
836.18 Statute of limitations.
836.19 Acceptance of award.
836.20 Attorney fees.
836.21 Injury or death of military personnel or civilian employees.
836.22 Approval or disapproval of claims.
836.23 Appeals.
836.24 Payment.
836.25 Claims not payable.

NON-NEGLIGENCE CLAIMS

836.30 Purpose.
836.31 Scope.
836.32 Definitions.
836.33 Claims first considered under other regulations.
836.34 Claims outside the scope of this regulation.
836.35 Contributory negligence.
836.36 Statute of limitations.
836.37 Claims in excess of $1,000.
836.38 Personal injury claims; expense allowable.
836.39 Approval or disapproval.
836.40 Appeals.
836.41 Subrogation.
836.42 Assignment of claims.
836.43 Payment.
836.44 Claims not payable.

CLAIMS UNDER ARTICLE OF WAR 105

836.50 Scope.
836.51 Limitations of application.
836.52 Procedure.
836.53 Effect of court-martial proceedings.
836.54 Payment.

GENERAL PROVISIONS

AUTHORITY: §§ 836.1 to 836.7 issued under sec. 1, 41 Stat. 838, sec. 1, 55 Stat. 880, sec. 1, 57 Stat. 66, sec. 1, 57 Stat. 372, sec. 1, 59 Stat. 225, sec. 1, 60 Stat. 332, 62 Stat. 869; 10 U. S. C. 1577, 28 U. S. C. 1291, 1346, 1402, 1504, 2110, 2401-2402, 2411-2412, 2671-2680; 31 U. S. C. 222c, 223b, 224d.

DERIVATION: AFR 112-2, June 30, 1949.

§ 836.1 *Definition.* The word "claims" as used in the regulations contained in this part refers to those demands for payment in money submitted in writing by individuals, partnerships, associations, or corporations, including countries, states, territories, and other political

subdivisions of such countries, but excluding the Federal Government of the United States and its instrumentalities, other than such demands for payment as arise under obligations incurred by the Department of the Air Force or the Air Force in the procurement of services or supplies (contract claims).

§ 836.2 *Investigations.* Immediate responsibility for the investigation of an accident or incident resulting in property damage, loss, or destruction, or personal injury or death, or in connection with which a claim is filed, or if specifically directed by competent authority, as provided in §§ 836.1 to 836.7, rests upon the commanding officer of that Air Force base or corresponding unit, or that higher echelon, or installation or air attaché, who is most directly involved, normally the commanding officer of the personnel involved or of the installation on which the accident or incident occurred: *Provided,* That where two or more units or installations are concerned, the senior of the commanding officers concerned will decide which of them will have immediate responsibility for the investigation. Every investigation required by §§ 836.1 to 836.7 will be conducted or supervised by a claims officer. Upon receipt by an commanding officer of information of an accident or incident for the investigation of which he is responsible, he will refer the matter, with all then available information relating thereto, to his claims officer for investigation. Responsibility for the investigation of an accident or incident occurring at a location without the area served by an Air Force unit or installation will be placed, as far as practicable, upon the air attaché: *Provided,* That it is not advisable, permissible or practicable to send a claims officer to such location. Responsibility for an investigation may be transferred where it is determined by the commanding officer immediately responsible for the investigation that it is necessary or desirable for it to be conducted or completed by the claims officer of some other installation or unit. The commanding officer will not transfer responsibility, however, where only a minor portion of the investigation, such as the procurement of statements from witnesses, is to be conducted by another command. In such instances, he will retain the complete file on the claim and will request whatever assistance is required from the commanding officer of the unit or installation where the evidence is to be procured. When the commanding officer responsible for an investigation considers it necessary or desirable to transfer such responsibility, he will do so by transmitting direct to the commanding officer of the installation or unit which is to conduct the investigation, a report of the accident or incident in writing (or orally, and later confirmed in writing) with all evidence and other data theretofore obtained. Where an accident or incident occurs at a place where the Air Force does not have an installation or unit conveniently located for conducting an investigation, the commanding officer having immediate responsibility for making such investigation may request assistance from the commanding officer of any other organization of the National Military Establishment. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover part only of the investigation.

§ 836.3 *Action by claimant*—(a) *Presentation of claim*—(1) *Claims for property damage, loss, or destruction.* Claims for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner," as so used, includes bailees, lessees, mortgagors, and conditional vendees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only.

(2) *Claims for personal injury or death.* Claims for personal injury or death may be presented by the injured person or his duly authorized agent or legal representative. Claims for medical, hospital, and burial expenses not presented by the injured person or his duly authorized agent or legal representative, may, if it appears that no legal representative has been appointed, be presented by any person who, by reason of family relationship, has in fact incurred the expenses for which claim is made.

(3) *Claims of subrogees.* In general, claims by subrogees in their own right will not be considered. Settlement will be made solely with the insured in cases covered by insurance. The entire claim, including any portion thereof insured against, will be filed by or on behalf of the insured and payment of the entire amount approved will be made in the name of the insured. Claims under Article of War 105 (§§ 836.50 to 836.54) and personnel claims will be allowed to the extent of the uninsured portion only. The foregoing provisions will be equally applicable in cases of subrogation based other than on insurance.

(b) *Form of claim.* Claimants should submit in triplicate a dated statement setting forth the following information:

(1) Claimant's address (military personnel should state military and permanent home address).

(2) Circumstances attending the accident or incident:

(i) Date, place, property and persons involved.

(ii) Nature and extent of the damage, loss, destruction or injury.

(3) Agency which was the cause or occasion thereof.

(4) Whether or not a suit has been filed in a United States District Court on the subject matter of the claim; if so, the outcome or status of such suit.

(c) *Evidence required from claimant*—(1) *General.* The amount claimed for damage to or loss or destruction of property, or for personal injury or death, should be substantiated by competent evidence.

(2) *Property damage.* In support of claims for damage to personal property which has been or can be economically repaired, the claimant should submit in triplicate at least two itemized signed statements or estimates of the cost of repairs, or, if payment has been made, the itemized signed receipts evidencing payment. If not economically reparable, or if the property is lost or destroyed, the claimant should submit statements in triplicate as to the original cost of the property, the date of purchase, and the fair market value of the property both before and after the accident. In support of claims for damage to land, trees, buildings, fences, and other improvements and similar property, the statements should show the fair market value both before and after the accident, of the land damaged, or of the improvement or other property, if it can be readily and fairly valued apart from the land. In support of claims for damage to crops, the statements should show the number of acres, or other unit measure, of the crops damaged, the normal yield per unit, the gross amount which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing; if the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop should also be stated. In the case of claims for damage to or loss or destruction of registered or insured mail, the claimant should submit, where possible, the registration or insurance receipt, or an attested copy thereof, showing the amount of fee and postage paid. All statements or estimates should be by disinterested competent persons, preferably reputable dealers or expert appraisers familiar with the type of property damaged, lost or destroyed, or by two or more competitive bidders, and should be certified as just and correct.

(3) *Personal injury.* In support of claims for personal injury or death, the claimant should submit in triplicate a written report by attending physician, showing the nature and extent of injury, the nature and extent of treatment, and degree of permanent disability, if any, the prognosis, and the period of hospitalization or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred; and, if claim is made for loss of time or loss of earnings, a written report in triplicate by claimant's employer showing claimant's age, occupation, wage or salary, time lost from work, whether or not a full time employee, and actual period of employment by dates.

(d) *Signatures.* The claim and all other papers requiring the signature of the claimant should be signed in ink by the claimant personally or by a duly authorized representative and should show the given name, middle initial, if any, and surname. The signatures should be identical on all papers. The claim, if filed by an agent or legal representative, should be filed in the name of the owner, signed by such agent or legal representative "John Doe by Richard Roe," show the title or capacity of the person signing and be accompanied by evidence of his authority to file a claim on behalf of claimant as agent, executor, administrator, parent, guardian, or other fiduciary. The claim, if filed by a corporation, should show the title or capacity of the officer signing and be accompanied by documentary evidence of his authority to act.

(e) *Place of filing.* The claim should be submitted to the commanding officer of the unit involved, if known, otherwise to the commanding officer of the unit or installation within which or nearest to which the accident or incident occurred. If the incident occurs in a foreign country where no unit of the Air Force is stationed, the claim may be submitted to the United States air attaché.

(f) *Withdrawal of claim.* If claim is withdrawn, the only papers that may be returned to a claimant are his original claim and such supporting documents as he himself has furnished. In no event, will reports of investigation or any other evidence not submitted by the claimant be furnished to him.

§ 836.4 *Ascertainment of amount of damages*—(a) *Property damage, loss, or destruction.* If the property has been or can be economically repaired, the measure of damages is the net cost or estimated cost, as defined herein, of repairs necessary to restore the property to substantially the condition in which it was immediately prior to the accident or incident, but not to exceed the fair market value of the property immediately prior to the accident or incident less the fair market value thereof immediately after the accident or incident, but prior to the making of repairs. If the property cannot be economically repaired, the measure of damages is the fair market value of the property immediately prior to the accident or incident less the fair market value thereof immediately after the accident or incident. To determine the net cost, or estimated cost, of repairs, there should be deducted from the gross cost (actual or estimated) the fair market value of any salvaged parts or materials and the amount of any appreciation in value thereby effected, and there should be added to such gross cost the amount of any depreciation resulting: *Provided,* Such deductions or additions are sufficiently substantial in amount to warrant consideration. Loss of use of damaged business, agricultural, or residential property which is economically reparable may, if claimed, be included as an additional item of damages to the extent of the reasonable expense actually incurred for appropriate substitute property but only for such period as is reasonably necessary for repairs, and: *Provided,* That idle substitute property of the claimant was not employed. When substitute property is not obtainable from others, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use normally is not payable. The measure of damages, in cases of total loss or destruction of registered or insured mail is the fair market value thereof immediately prior to the accident or incident plus, if claimed, the amount of any registration or insurance fee or other special fees, and the amount of postage prepaid. In cases of damage only, or partial loss or destruction, the measure of damages is the fair market value thereof immediately prior to the accident or incident less any salvage, except that, if economically reparable, the measure of damages is the estimated or actual cost of repairs; no fee or prepaid postage are payable if actual delivery of the parcel or letter is made to the correct addressee. The measure of damages in cases cognizable under the provisions of 62 Stat. 982; 28 U. S. C. 2671–2680 (formerly the Federal Tort Claims Act) is determined by the law of the place where the act or omission, out of which such damage arises, occurred. In ascertaining the amount of damages, if the claims officer considers it advisable to secure additional statements or estimates to supplement those submitted by the claimant under the provisions of § 836.3 (c), they also should be by reliable disinterested persons, preferably reputable dealers or expert appraisers familiar with the type of property damaged, lost or destroyed or by two or more competitive bidders, and should be certified as just and correct.

(b) *Personal injury or death.* The measure of damages is as provided in the specific regulation under which the claim is payable. All statements and estimates of medical, hospital, and burial expenses should be substantiated by the originals or copies of any bills rendered, and certified as just and correct.

(c) *Excluded items.* Interest, cost of preparation of claims and securing supporting evidence, inconvenience, and similar items may not be included as elements of damage.

(d) *Recoveries from joint tort-feasors.* If the claimant has elected to proceed against a third party as a joint tort-feasor, any amount so collected in respect of items of damage which otherwise may properly be included in the claim against the Government will be reported.

§ 836.5 *Transfers and assignments of claims.* All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and all powers of attorney, orders or other authorities for receiving any payment of any such claim, or of any part or share thereof (R. S. 3477, as amended; 31 U. S. C. 203) are absolutely null and void, unless made after the issuing of a warrant for the payment thereof. The provisions of the statute, as amended, do not apply to assignments of claims by operation of law, as when a receiver or trustee in bankruptcy is appointed for an individual, firm or corporation, or an administrator for the estate of a deceased person; nor do they apply in any case in which the moneys due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, under the conditions set forth in R. S. 3477, as amended, 31 U. S. C. 203.

§ 836.6 *Participation in prosecution of claims.* "Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by enactment of Congress" (62 Stat. 697; 18 U. S. C. 283).

§ 836.7 *Disclosure of information.* Except as required in the discharge of his proper official duties, no person in the military service or employed by the United States Air Force, will furnish any information which can be used as the basis of a claim against the United States. Without prior approval of the office of the Judge Advocate General, United States Air Force, claimants or their authorized representatives will not be permitted to examine any part of the evidence of record except that submitted by such claimants.

TORT CLAIMS

AUTHORITY: §§ 836.10 to 836.25 issued under 62 Stat. 869; 28 U. S. C. 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671–2680. DERIVATION: AFR 112–4, July 26, 1949.

§ 836.10 *Purpose.* The regulations contained in §§ 836.10 to 836.25 outline the procedure for administrative settlement of tort claims cognizable under the provisions of 62 Stat. 982; 28 U. S. C. 2671–2680 for injury or loss of property or for personal injury or death caused by the negligent or wrongful act or omission of military personnel or civilian employees of the Department of the Air Force or of the United States Air Force while acting within the scope of their office or employment.

§ 836.11 *Definitions.* As used in the statute, "employee of the government" includes officers or employees of any Federal agency, members of the military or naval forces (Air Force) of the United States, and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation, and "acting within the scope of his office or employment," in the case of a member of the military or naval forces (Air Force) of the United States means acting in line of duty.

§ 836.12 *Effective date.* All claims involving the Department of the Air Force or the United States Air Force otherwise within the provisions of §§ 836.10 to 836.25 will be processed by the Department of the Air Force, provided that they accrued on or after September 26, 1947, the effective date of the transfer of the Army Air Forces to the Department of the Air Force and the United States Air Force pursuant to the National Security Act of 1947 by Transfer Order No. 1, September 26, 1947 (12 F. R. 6616). Claims arising out of Army Air Forces activities which accrued prior to September 26, 1947 will be referred to the Department of the Army.

§ 836.13 *Scope*—(a) *General.* Subject to the exclusions set forth in paragraph (b) of this section, the provisions of Title 28 of the United States Code and §§ 836.10 to 836.25 provide the exclusive authorization and procedure whereby the Secretary of the Air Force, or his designee, may consider, ascertain, adjust, determine, and settle tort claims for $1,000 or less.

(b) *Exceptions.* The provisions of §§ 836.10 to 836.25 do not apply to:

(1) Any claim based upon an act or omission of any employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(4) Any claim for which a remedy is provided by 41 Stat. 525, 43 Stat. 1112, secs. 203, 204, 804, 49 Stat. 1987, 2016; 46 U. S. C. 741-752, 781-790, relating to claims or suits in admiralty against the United States.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of 40 Stat. 411; 50 U. S. C. App., 1-31.

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(7) Any claim arising from injury to vessels, or to the cargo, crew, or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

(8) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(9) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(10) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(11) Any claim arising in a foreign country.

(12) Any claim arising from the activities of the Tennessee Valley Authority.

§ 836.14 *Claims in excess of $1,000.* The Department of the Air Force does not have authority to consider administratively claims in excess of $1,000 which are otherwise cognizable under the provisions of §§ 836.10 to 836.25. In such cases, claimant may bring suit against the United States pursuant to the provisions of sections 1346 (b) and 1402 (b) of Title 28 of the United States Code.

§ 836.15 *Act or omissions*—(a) *Scope of employment.* The law of the place where an act or omission occurred will govern in determining whether the Air Force military or civilian personnel involved were acting within the scope of their employment. Such acts or omissions are ordinarily within the scope of employment if the performance thereof is directed, or if of a kind the performance of which is expressly or impliedly authorized, or if the purpose is, at least in part, to serve the Government. Consideration should be given to all of the attendant facts and circumstances including: The time, place, and purpose of the activity; whether the activity was for the furtherance of the general interest of the Government; whether the activity is usual for personnel of the grade and classification involved or reasonably to be expected of such personnel; and whether the instrumentality from which the damage or injury resulted was owned or furnished by the Government. A slight deviation as to time or place will ordinarily not constitute a departure from scope of employment; to have legal effect, it must be a material deviation.

(b) *Proximate cause.* Claims are payable under the provision of §§ 836.10 to 836.25 only where the circumstances are such that the United States, if a private person, would be liable to the claimant under the law of negligence of the place where the act or omission occurred. Acts or omissions involving a lack of reasonable care will be the basis of claims payable under the local law of most jurisdictions. If the proximate cause of the accident or incident is the act or omission of persons other than military (Air Force) personnel or civilian employees, the claim will not be payable, as a general rule, under local law. If the proximate cause of the accident or incident is the joint or concurrent tortious act or omission of military (Air Force) personnel or civilian employees and of one or more persons other than the claimant, his agent, or employee, the claim will be considered, and determined necessarily, under the local law pertaining to joint tort-feasors. Acts or omissions constituting a mere condition without the existence of which the accident or incident could not have occurred, and which are not the proximate cause thereof, will not constitute a proper basis for finding of liability under the applicable local law as a general rule. For example, the mere violation of certain statutory laws or ordinances providing standards of safety may be declared to be negligence (per se), but such violations will not constitute the basis of liability under local laws generally unless the unlawful acts or omissions are deemed a proximate cause of the accident or incident in that jurisdiction.

§ 836.16 *Contributory negligence.* The law of the place where the act or omission occurred will be followed in determining whether contributory negligence is present under the facts of the accident or incident, and also in ascertaining the effect of contributory negligence as a bar to the claim under consideration. Contributory negligence will constitute an absolute bar to a claim under applicable local law in practically all jurisdictions. The doctrine of comparative negligence is recognized in few States.

§ 836.17 *Claims of subrogees.* Administrative settlement of claims not exceeding $1,000 will be made solely with the insured rather than with the insurer or with both insured and insurer. The entire claim, including any insured portion, will be filed by or on behalf of the insured and payment of the entire amount approved will be made in the name of the insured. The foregoing provisions will be equally applicable in cases of subrogation based other than on insurance.

§ 836.18 *Statute of limitations*—(a) *Claims.* Claims for $1,000 or less against the United States, cognizable under the provisions of §§ 836.10 to 836.25 must be presented in writing to the Air Force within two years after such claim accrues or within one year after the date of enactment of Pub. Law 55, 81st Cong., whichever is later. Pub. Law 55 amended Title 28 of the United States Code to provide additional time for presenting claims or bringing suit in the case of certain tort claims.

(b) *Suits.* A suit may be filed pursuant to the provisions of sec. 1, 62 Stat. 982-984; 28 U. S. C. 2671-2680 if brought within two years after such claim accrued or within one year after April 25, 1949, whichever is later. In the event that a claim for a sum not exceeding $1,000 is presented to the Air Force, the time to institute a suit under the act shall be extended for a period of six months from the date of mailing of notice to the claimant by the Air Force with respect to the final disposition of the claim, or for a period of six months from the date of withdrawal of the claim from the Air Force.

§ 836.19 *Acceptance of award*—(a) *General.* The acceptance by the claimant of any award, compromise, or settlement made pursuant to the provisions of §§ 836.10 to 836.25 shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the military or civilian personnel of the Air Force whose act or omission gave rise to the claim by reason of the same subject matter.

(b) *Acceptance agreements.* An acceptance agreement and general release will be required of and signed by the claimant, or claimants, as a condition precedent to payment under the provisions of §§ 836.10 to 836.25 in all cases except where the claim is for property damage only and is approved in the amount claimed, and the report of claims officer shows affirmatively that no persons were injured or killed in the accident or incident giving rise to the claim for property damage.

§ 836.20 *Attorney fees.* The Secretary of the Air Force or his designee making an award pursuant to the provisions of §§ 836.10 to 836.25, may, as a part of such award, determine and allow reasonable attorney fees, which, if the amount awarded is $500 or more, shall not exceed ten percent of the sum approved, and shall be paid to the attorney representing the claimant, out of, but

not in addition to, the amount of the award. Attorney fees may be fixed only on written request of either the claimant or his attorney.

§ 836.21 *Injury or death of military personnel or civilian employees*—(a) *Military personnel.* Claims on account of personal injury or death of military personnel of the Air Force incurred in line of duty will not be considered administratively under the provisions of §§ 836.10 to 836.25.

(b) *Civilian employees.* Claims on account of personal injury or death of civilian employees of the Air Force, to whom the Federal Employees' Compensation Act of September 7, 1916 (39 Stat. 742; 5 U. S. C. 751), as amended, is applicable, will not be considered administratively under the provisions of §§ 836.10 to 836.25.

(c) *Medical, hospital, and burial expenses.* Claims for medical, hospital, and burial expenses, on account of injury or death of Air Force personnel or civilian employees will be considered under the provisions of regulations contained in §§ 577.1 to 577.4 and 577.6 to 577.9 (13 F. R. 6785), §§ 577.40 to 577.46 (13 F. R. 6792) or §§ 536.50 to 536.53 (13 F. R. 5964) of this title; claims of civilian employees not within the provisions of these regulations may be within the jurisdiction of the United States Employees' Compensation Commission under the provisions of the act of September 7, 1916, paragraph (b) of this section.

§ 836.22 *Approval or disapproval of claims.* Subject to appeal to the Secretary of the Air Force, claims under the provisions of §§ 836.10 to 836.25 may be approved or disapproved, in whole or in part, by the appropriate designee of the Secretary of the Air Force. The action of the approving authority in approving or disapproving a claim in whole or in part will be final and conclusive for all administrative purposes unless the claimant appeals in writing to the Secretary of the Air Force as provided in § 836.23.

§ 836.23 *Appeals.* Upon disapproval of a claim in whole or in part by the approving authority, the claimant will be notified in writing of the action taken and the reason therefor; and he will in such notice be advised of his right to appeal to the Secretary of the Air Force through the authority disapproving the claim, within 30 days after the receipt by the claimant of such notification. In his appeal claimant should state the grounds on which he relies. An appeal will be considered as having been taken seasonably if mailed or delivered within 30 days after the receipt by the claimant of such notification.

§ 836.24 *Payment*—(a) *Conditions to be met.* Prior to payment by the Air Force of any claim within the provisions of §§ 836.10 to 836.25, each of the following conditions must be fulfilled:

(1) The amount of the damage, loss, or destruction, or the amount payable on account of personal injury or death must be determined in accordance with the law of the place where the negligent act or omission occurred.

(2) The payment must not exceed $1,000.

(3) Claims by subrogees will not be recognized administratively except as an element of the subrogor's claim.

(4) The claim must be presented within two years after the occurrence of the accident or incident out of which the claim arises or within one year after April 25, 1949, whichever is later.

(5) Negligence or wrongful act of the claimant, constituting a proximate cause, bars a claim in most jurisdictions. However, the effect of contributory negligence on the part of the claimant as a bar to his claim must be determined in each instance in accordance with the law of the place where the act or omission occurred.

(6) The claim must be approved as provided in § 836.22, or on appeal, by the Secretary of the Air Force.

(7) The claimant must accept, in writing, in full satisfaction, and final settlement:

(i) The amount approved for personal injury or wrongful death, even though equal to amount claimed.

(ii) The amount approved for property damage or loss if less than the amount claimed.

(iii) The amount approved for property damage or loss equal to amount claimed when personal injury or death resulted also from the accident or incident giving rise to the claim for property damage, even though no claim is filed on account of the personal injury or death.

§ 836.25 *Claims not payable.* The following claims are not payable under the provisions of §§ 836.10 to 836.25:

(a) Claims payable under the provisions of §§ 836.30 to 836.44 and §§ 836.50 to 836.54.

(b) Claims for personal injury or death of Air Force personnel or civilian employees incident to their service.

NON-NEGLIGENCE CLAIMS

AUTHORITY: §§ 836.30 to 836.44 issued under sec. 1, 57 Stat. 372, sec. 1, 59 Stat. 225, sec. 1, 60 Stat. 332; 31 U. S. C. 223b.
DERIVATION: AFR 112-3, July 25, 1949.

§ 836.30 *Purpose.* The regulations contained in §§ 836.30 to 836.44 outline the procedure for administrative settlement of claims for damage to or loss or destruction of property, real, or personal, or for personal injury or death, caused by Air Force personnel or civilian employees, or otherwise incident to noncombat activities of the Department of the Air Force or of the United States Air Force, except those cognizable under the provisions of regulations contained in §§ 836.10 to 836.25.

§ 836.31 *Scope*—(a) *General.* The provisions of §§ 836.30 to 836.44 apply to claims arising on and after September 26, 1947, for damage to or loss or destruction of real or personal property, or for reasonable medical, hospital, or burial expenses actually incurred on account of personal injury or death caused by non-negligent acts or omissions of military (Air Force) personnel or civilian employees while acting within the scope of their employment, or otherwise incident to noncombat activities, including:

(1) Claims for damage to or loss or destruction of registered or insured mail while in the possession of the military (Air Force) authorities.

(2) Claims for damage to or loss or destruction of personal property bailed to the Government.

(3) Claims for damage to real property incident to the use and occupancy thereof by the Government (Air Force) under a lease, express or implied, or otherwise, except contract claims and claims for payment of rent.

(b) *Tortious acts excluded.* The provisions of §§ 836.30 to 836.44 do not apply to claims proximately caused by willful, negligent, wrongful, or otherwise tortious acts or omissions which are cognizable under the provisions of §§ 836.10 to 836.25. If no specific act of negligence can be determined, e. g., failure to return or account for the loss of bailed property, the claims should be considered under the provisions of §§ 836.30 to 836.44.

(c) *Registered and insured mail.* Claims for damage to or loss or destruction of registered or insured mail while in the possession of the military authorities are within the scope of the provisions of §§ 836.30 to 836.44 if caused by Air Force personnel or civilian employees, even though resulting from criminal acts, or if otherwise incident to noncombat activities of the Department of the Air Force or of the United States Air Force. Claims for damage, loss, or destruction occurring prior to delivery by the Post Office Department (for distribution to the addressee) to authorized military (Air Force) personnel or civilian employees (e. g., unit or base mail clerks, and postal officers), but excluding Air Force personnel serving and bonded to the Post Office Department, are not payable under the provisions of §§ 836.30 to 836.44; nor are claims arising after resumption of possession by the Post Office Department (e. g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military (Air Force) personnel or civilian employees charged with distribution to the addressee. "Minimum fee" insured mail carrying no insurance number and not requiring hand-to-hand receipts is not within the scope of this section.

(d) *Bailed personal property.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government under an agreement, express or implied, except those cognizable under the provisions of §§ 836.10 to 836.25, are payable under the provisions of §§ 836.30 to 836.44 even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Except as payment may be barred by the provisions of § 836.34 (b), the cause of loss is immaterial. Claims payable under this section may, if deemed preferable as in the best interests of the Government, be processed as contract claims through the General Accounting Office. Claims for rent of personal property are not payable under the provisions of §§ 836.30 to 836.44.

(e) *Use and occupany of real property.* Claims for damage to real property incident to the use and occupancy thereof by the Government (Air Force) under a lease (express or implied or otherwise), except those cognizable under the provisions of §§ 836.10 to 836.25, are payable under the provisions of §§ 836.30 to 836.44 even though legally enforceable against the Government as contract claims. Payment may, however, be precluded by the provisions of § 836.34 (b). Claims payable under this section may, if deemed preferable as in the best interests of the Government, be processed as contract claims through the General Accounting Office. Claims for rent of real property are not payable under the provisions of §§ 836.30 to 836.44.

(f) *Other noncombat activities.* Claims for damage to or loss or destruction of property, or for personal injury or death, not caused by negligent or wrongful acts or omissions of Air Force personnel or civilian employees are payable under the provisions of §§ 836.30 to 836.44 if otherwise incident to the noncombat activities of the Department of the Air Force or of the United States Air Force. In general, the claims within the above category are those arising out of authorized activities which are peculiarly Air Force activities having little parallel in civilian pursuits and to situations which historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of Air Force personnel or civilian employees is present or, if present and occurring within the scope of their employment, is at least less obvious or less personal but where, because of the peculiar nature of the activity or of the resulting damage or injury, the burden of the loss should be borne rather by the Government than by the particular individual on whom the loss initially fell. Included also are claims arising out of activities such as those involving the use of explosives, not involving negligent or wrongful acts or omissions, of which damage or injury is a natural consequence. For example, included are claims for damage or injury arising out of, and which are natural or probably results or incidents of, maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and antiaircraft, use of barrage balloons, use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions, movement of combat vehicles or other vehicles designed especially for military use, and use and occupancy of real estate.

§ 836.32 *Definitions*—(a) *Military personnel or civilian employees.* Military personnel and civilian employees whose acts or omissions may give rise to claims within the scope of the provisions of §§ 836.30 to 836.44 include all Air Force personnel and civilian employees of the Department of the Air Force or of the United States Air Force, prisoners of war, and interned enemy aliens engaged in labor for pay, and volunteer workers, and others, serving as employees of the Department of the Air Force or of the United States Force, even though without compensation.

(b) *Within the scope of their employment.* Acts or omissions of Air Force personnel and civilian employees may give rise to claims payable under the provisions of §§ 836.30 to 836.44 only if the personnel involved are acting within the scope of their employment. Such acts or omissions ordinarily are within the scope of employment if the performance thereof is directed, or if of a kind the performance of which is expressly or impliedly authorized, or if the purpose is, at least in part, to serve the Government. Consideration will be given to all of the attendant facts and circumstances including: The time, place, and purpose of the activity; whether the activity was for the furtherance of the general interest of the Government; whether the activity is usual for personnel of the grade and classification involved or reasonably to be expected of such personnel; and whether the instrumentality from which the damage or injury resulted was owned or furnished by the Government. A slight deviation as to time or place ordinarily will not constitute a departure from scope of employment; to have legal effect, it must be a material deviation.

§ 836.33 *Claims first considered under other regulations*—(a) *Claims under Foreign Claims Act.* Claims for damage to or loss or destruction of property, or for personal injury or death, arising out of accidents or incidents occurring in foreign countries which are cognizable under the provisions of the Foreign Claims Act are not within the provisions of §§ 836.30 to 836.44 Claims within the scope of that act and which but for the existence thereof would be within the provisions of §§ 836.30 to 836.44 will be settled under that act, which has preemptive application. Subject, however, to the foregoing provision, there are no geographical limitations on the scope of application of the provisions of §§ 836.30 to 836.44. For example, a claim arising in a foreign country which is not cognizable under the Foreign Claims Act because the claimant is not an inhabitant of the foreign country in which the accident or incident occurs may, if the claim is otherwise within the provisions of §§ 836.30 to 836.44, be paid hereunder. Claims, arising in foreign countries, of nationals of a country at war with the United States, or of any ally of such an enemy country, who are inhabitants of such foreign countries may not be paid under the provisions of §§ 836.30 to 836.44, except as the approving authority or the local military commander determines that the claimants are friendly to the United States: *Provided*, That the approval without such a determination is not hereby precluded as to claims of prisoners of war and of interned enemy aliens, arising in a foreign country other than that of which they are nationals, for damage to or loss or destruction of personal property in the custody of the Government otherwise payable under § 836.31 (d).

(b) *Property claims; exceptions*—(1) *Air Force personnel and civilian employees.* Claims for damage to or loss or destruction of personal property of military (Air Force) personnel or civilian employees occurring incident to their service will be initially processed under the provisions of regulations issued pursuant to the Military Personnel Claims Act of 1945 (59 Stat. 225; 31 U. S. C. 222c, 222d, 223b), which take precedence over the provisions of §§ 836.30 to 836.44. Claims of such personnel and employees for damage to or loss or destruction of property not incident to their service are payable under the provisions of §§ 836.30 to 836.44 on the same basis as are claims of persons not Air Force personnel or civilian employees, except that claims of such persons for clothing being worn at the time when damaged, lost, or destroyed, and for souvenirs, ornamental jewelry, and articles required to be disposed of as gifts are not payable hereunder.

(2) *All other persons.* Claims for damage to or loss or destruction of personal property of all other persons, estates, public or private corporations, firms, partnerships, or other claimants may be payable under the provisions of §§ 836.30 to 836.44, except those cognizable under the provisions of §§ 836.10 to 836.25, except that claims for clothing being worn at the time when damaged, lost, or destroyed, and for souvenirs, ornamental jewelry, and articles acquired to be disposed of as gifts are not payable hereunder.

(c) *Injury or death of Air Force personnel or civilian employees.* Claims for medical, hospital, and burial expenses on account of injury or death of military personnel or civilian employees of the Department of the Air Force or of the United States Air Force will first be considered under the provisions of regulations contained in §§ 577.1 to 577.4 and 577.6 to 577.9 (13 F. R. 6785), §§ 577.40 to 577.46 (13 F. R. 6792), or §§ 536.50 to 536.53 (13 F. R. 5964); those of civilian employees not within these regulations may be within the jurisdiction of the United States Employees' Compensation Commission under the provisions of the act of September 7, 1916 (39 Stat. 742; 5 U. S. C. 751), as amended. Claims of such personnel for medical, hospital, and burial expenses not within the scope of the above-mentioned regulations or statute are payable under the provisions of §§ 836.30 to 836.44 on the same basis as are claims of persons not Air Force personnel or civilian employees.

§ 836.34 *Claims outside the scope of this regulation*—(a) *Claims based upon acts of depredation.* Claims for damage to or loss or destruction of property, by persons subject to military law, caused by riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or such reckless disregard of property rights as to carry an implication of guilty intent, and payable under the provisions of Article of War 105 (§§ 836.50 to 836.54) are not payable under the provisions of §§ 836.30 to 836.44.

(b) *Claims resulting from combat activities.* Claims for damage to or loss or destruction of property, or for personal injury or death, resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces en-

gaged in combat are not payable under the provisions of §§ 836.30 to 836.44.

§ 836.35 *Contributory negligence.* Contributory negligence will constitute an absolute bar to a claim presented under the provisions of §§ 836.30 to 836.44. Although the doctrine of comparative negligence is not applied, the law of the jurisdiction in which the accident or incident occurred normally will be followed in determining whether contributory negligence is present.

§ 836.36 *Statute of limitations.* Claims must be presented in writing within one year after the occurrence of the accident or incident out of which the claim arises, except that if the accident or incident occurs in time of war, or if war intervenes within one year after its occurrence, a claim may, if good cause for the delay is shown, be presented within one year after peace is established.

§ 836.37 *Claims in excess of $1,000.* Claims in excess of $1,000, if otherwise within the scope of the provisions of §§ 836.30 to 836.44, may be reported by the Secretary of the Air Force to the Congress for its consideration. Any claim which is asserted in an amount in excess of $1,000 will be forwarded to the Judge Advocate General, Headquarters United States Air Force, for appropriate action. To the extent that the claim is for damage to or loss or destruction of property, or for reasonable medical, hospital, or burial expenses actually incurred, within the provisions of §§ 836.30 to 836.44, except as the aggregate amount exceeds $1,000, such action may include the reporting of the claim in a deficiency bill for consideration by Congress without the necessity of the claimant's initiating private relief legislation. Elements of the claim to compensate for loss of wages, pain and suffering, permanent disability, and death, not being within the scope of the provisions of §§ 836.30 to 836.44, will not be included in any claim so reported.

§ 836.38 *Personal injury claims; expenses allowable*—(a) *Medical expenses*—(1) *Included.* Items properly allowable include, if reasonably necessary and reasonable in amount and actually incurred:

(i) Transportation, by ambulance or otherwise, from the scene of the accident or incident to a physician or hospital, and to and from residence to a physician or hospital, for examination or treatment.

(ii) Services performed by physicians, surgeons, dentists, laboratory technicians, anesthetists, masseurs, and registered and practical nurses.

(iii) Physiotherapy.

(iv) X-ray and roentgenological examination and treatment.

(v) Laboratory tests.

(vi) Medicines.

(vii) Other reasonably necessary medical expenses.

(2) *Excluded.* No amount may be allowed, as an item of the claim, for medical services furnished at the expense of the United States.

(b) *Hospital expenses*—(1) *Included.* Items properly allowable include, if reasonably necessary and reasonable in amount and actually incurred:

(i) Use of emergency and surgical rooms.

(ii) Room and board.

(iii) Anesthetics, medicines, laboratory fees, and dressings.

(iv) Payments to blood donors.

(v) Other reasonably necessary hospital expenses.

(2) *Excluded.* No amount may be allowed, as an item of the claim, for hospital services furnished at the expense of the United States.

(c) *Burial expenses*—(1) *Included.* Items properly allowable include, if reasonable in amount and actually incurred:

(i) Undertaker's services.

(ii) Casket.

(iii) Transportation.

(iv) Cemetery lot.

(v) Services of minister, priest, or rabbi.

(vi) Interment or cremation.

(vii) Other reasonably necessary burial and funeral expenses.

(2) *Excluded.* No amount may be allowed, as an item of the claim, for any portion of the expense of burial otherwise paid by the United States.

§ 836.39 *Approval or disapproval.* The action of the approving authority or disapproving a claim in whole or in part will be final and conclusive for all administrative purposes unless the claimant appeals in writing to the Secretary of the Air Force.

§ 836.40 *Appeals.* Upon disapproval of a claim in whole or in part, the claimant will be notified of the action taken and the reason therefor. He will also be advised of his right to appeal to the Secretary of the Air Force, through the authority disapproving the claim, within 30 days. An appeal will be considered as having been taken seasonably if mailed or delivered within 30 days after receipt by claimant of such notification. In his appeal, claimant should state the grounds upon which he relies.

§ 836.41 *Subrogation.* Claims by subrogees in their own right are not within the scope of the provisions of §§ 836.30 to 836.44 and will not be considered. No inquiry will be made into, nor determination made of, the relative interests as between insured and insurer, and settlement will be made solely with the insured.

§ 836.42 *Assignment of claims.* See regulations contained in § 836.5.

§ 836.43 *Payment*—(a) *Conditions to be met.* Prior to payment of any claim within the provisions of §§ 836.30 to 836.44, each of the following conditions must be met:

(1) The amount of the damage, loss, or destruction, or the amount payable on account of personal injury or death must be determined in accordance with the provisions of § 836.4 and §§ 836.30 to 836.44.

(2) The amount must not exceed $1,000, but claims in excess of that amount may be reported to Congress for consideration.

(3) The claim must normally be presented within one year after the occurrence of the accident or incident out of which the claim arises.

(4) The claim must be approved as provided in §§ 836.1 to 836.7 or, on appeal, by the Secretary of the Air Force.

(5) If claim is approved for less than the full amount the claimant must sign a written statement on Standard Form 96 (Settlement Agreement) signifying his willingness to accept the amount so approved in full satisfaction and final settlement of his claim.

§ 836.44 *Claims not payable.* The following claims are not payable under the provisions of §§ 836.30 to 836.44:

(a) Claims for damage or injury caused in whole or in part by the negligence or wrongful act of the claimant.

(b) Claims of Air Force personnel, or civilian employees, for personal injury or death incident to their service.

(c) Claims payable under the provisions of §§ 836.10 to 836.25 and §§ 836.50 to 836.54.

CLAIMS UNDER ARTICLE OF WAR 105

AUTHORITY: §§ 836.50 to 836.54 issued under sec. 1, 41 Stat. 808; 10 U. S. C. 1577.
DERIVATION: AFR 112-5, July 22, 1949.

§ 836.50 *Scope.* Claims for damage to or loss or destruction of property by persons subject to military law are, subject to the limitations of § 836.51, within the provisions of Article of War 105 (Sec. 1, 41 Stat. 808; 10 U. S. C. 1577) provided such damage, loss, or destruction is caused by riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or such reckless disregard of property rights as to carry an implication of guilty intent.

§ 836.51 *Limitations of application*—(a) *Claims payable under other regulations.* Claims for damage to or loss or destruction of property which are payable under the provisions of other regulations contained in this part are not payable under the provisions of §§ 836.50 to 836.54, and no stoppage of pay will be made to reimburse the Government for payments made under such other regulations.

(b) *Claims resulting from negligence.* Claims for damage to or loss or destruction of property resulting from simple negligence, whether or not within the scope of employment, are not payable under the provisions of §§ 836.50 to 836.54.

(c) *Claims of subrogees.* Claims of subrogees are not within the provisions of §§ 836.50 to 836.54. Any portion of the claim covered by insurance will be disapproved.

(d) *Claims for personal injury or death.* Claims for personal injury or death are not payable under the provisions of §§ 836.50 to 836.54.

(e) *Acts or omissions within scope of employment.* Claims for damage to or loss or destruction of property resulting from acts or omissions while the offender is acting within the scope of his employment, even though otherwise within the scope of Article of War 105, are not payable under the provisions of §§ 836.50 to 836.54.

(f) *Absence of riotous, violent, and disorderly conduct.* Claims arising from larceny, forgery, deceit, embezzlement,

fraud, misappropriation, and misapplication, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous, violent, or disorderly conduct, are not payable under the provisions of §§ 836.50 to 836.54.

(g) *Government property.* Reimbursement for damage to or loss or destruction of property of the United States may not be required under the provisions of §§ 836.50 to 836.54.

§ 836.52 *Procedure*—(a) *General.* So far as applicable, the procedure set forth in §§ 836.1 to 836.7 will be followed as to claims within the provisions of §§ 836.50 to 836.54.

(b) *Action by unit commander and higher authority*—(1) *Where offender is a member of the command.* When the claims officer finds that the claim is within the provisions of Article of War 105 (sec. 1, 41 Stat. 808; 10 U. S. C. 1577) and recommends an assessment thereunder against a member of the command, the commanding officer, by whom the claims officer was appointed, will personally determine whether the claim is within the provisions of Article of War 105 (sec. 1, 41 Stat. 808; 10 U. S. C. 1577). If he finds that the claim is within the above-mentioned provisions, he will personally fix the amount to be assessed against the offender, which amount will not be in excess of that recommended by the claims officer. The commanding officer will refer the case to a staff judge advocate, judge advocate, or other officer qualified as provided by Article of War 11 (sec. 1, 41 Stat. 789; 10 U. S. C. 1482) for review and recommendation before approving or disapproving the report. He will, in any event, make no assessment under the provisions of §§ 836.50 to 836.54 unless the conditions set forth in § 836.54 are fulfilled. The amount so approved will be stopped against the pay of the offender and the amount so collected will be paid to the claimant. Such action by the commanding officer is not subject to appeal by the claimant or the offender, and the action so taken by the commanding officer will be conclusive on any disbursing officer for the payment by him to the claimant of the stoppage so ordered. (See subparagraph (3) of this paragraph for provisions for correction of errors or irregularities). If the offender cannot be ascertained but the organization or detachment is known, such stoppage may be made against the pay of all members of the organization or detachment found by the claims officer to have been present with the organization or detachment at the time of the damage, loss, or destruction complained of, and such assessment will be in such proportion as the claims officer recommends and the commanding officer approves. A copy of the approved report of the claims officer with a copy of the commanding officer's action approving or disapproving the claim, will be forwarded direct to the air matériel area or oversea command concerned. Upon receipt by the air matériel area or oversea command of a copy of the approved report, such report will be reviewed and any errors or irregularities in any order for stoppage previously entered, or in disapproving the claim, will be called to the attention of the commanding officer who ordered such stoppage or disapproved the claim; the commanding officer will promptly correct any such errors or irregularities, removing as to future payments any improper stoppage so ordered and approving any claim improperly denied. If, in any situation the claims officer or the commanding officer finds any claim not to be within the provisions of Article of War 105 (sec. 1, 41 Stat. 808; 10 U. S. C. 1577), no damages may be assessed under the provisions of §§ 836.50 to 836.54. In such case the claimant will, wherever appropriate, be notified in writing of the action taken and the claim will be disposed of as otherwise prescribed in §§ 836.1 to 836.7 and related regulations.

(2) *Where offender is not a member of the command.* If the claims officer finds that the claim is within the provisions of Article of War 105 (sec. 1, 41 Stat. 808; 10 U. S. C. 1577) and recommends an assessment thereunder against a member of another command, the commanding officer, by whom the claims officer was appointed, will transmit the report to the commanding officer of the offender. Upon receipt of the report, the commanding officer of the offender will refer it to his claims officer for investigation and report. The claims officer may in such investigation utilize the evidence set forth in the report of the claims officer who made the initial investigation and will make such further investigation as is necessary. After action by the claims officer, the commanding officer of the offender will take action as provided in subparagraph (1) of this paragraph.

(3) *Reconsideration.* The following rules govern the reconsideration of action taken by commanding officers under the provisions of §§ 836.50 to 836.54.

(i) The commanding officer may change his decision which was favorable to the offender for any reason if it develops that the original finding was wrong, so long as he is still the commanding officer of the unit concerned regardless of whether the offender may have been transferred.

(ii) If the officer has ceased to be the commanding officer of the unit, his authority to change his decision which was favorable to the offender is lost and his successor in that command may change the original finding but only upon newly discovered evidence or obvious error of law or calculation appearing on the face of the record, and this even though the offender may have been transferred in the meantime.

(iii) The commanding officer of the unit to which the offender has been transferred has under no circumstances the authority to change a decision which was favorable to the offender.

(iv) In a situation where it is desired to relieve an offender improperly charged in the first instance, the above interpretations are equally applicable; a decision originally made under Article of War 105 (sec. 1, 41 Stat. 808; 10 U. S. C. 1577) may thus, in specified situations, be revised by later action to the prejudice of the claimant. However, if the original unit is already disbanded, no further action of any kind with relation to Article of War 105 (sec. 1, 41 Stat. 808; 10 U. S. C. 1577) can be taken.

(4) *Remission of indebtedness.* The act of May 22, 1928, as amended by the act of June 26, 1934 (45 Stat. 698, 48 Stat. 1222; 10 U. S. C. 875a), and made applicable to the Department of the Air Force and the United States Air Force by the National Security Act of 1947 (61 Stat. 495; 5 U. S. C. Sup. II, 171, 626) and Transfer Order 25, October 14, 1948 (13 F. R. 6270), authorizing the Secretary of the Air Force to remit and cancel indebtedness of an enlisted man to the United States or any of its instrumentalities, is not applicable to permit the remission and cancellation by him thereunder of any indebtedness determined under Article of War 105 (sec. 1, 41 Stat. 808; 10 U. S. C. 1577), since Article of War 105 is never applied where only Government property is involved.

§ 836.53 *Effect of court-martial proceedings.* Administrative action under the provisions of §§ 836.50 to 836.54 is separate and distinct from, and is not affected by, any disciplinary action taken, or to be taken, against the offender; consequently such a person may be tried and punished for any military offense involved without regard to proceedings under the provisions of §§ 836.50 to 836.54. In such cases the two proceedings, one disciplinary and the other administrative, are legally independent of each other and action in one proceeding is not determinative in the other.

§ 836.54 *Payment*—(a) *Conditions to be met.* Prior to payment of any claim within the provisions of §§ 836.50 to 836.54, each of the following conditions must be fulfilled:

(1) The amount of the damage, loss, or destruction must be determined.

(2) The claim must relate to property only, not including property of the Government.

(3) Riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or reckless disregard of property rights must be proximate cause.

(4) Payment must be recommended in the claims officer's report and approved personally by the offender's commanding officer.

(5) The commanding officer personally must have ordered a stoppage of pay.

[SEAL] L. L. JUDGE,
Colonel, U. S. Air Force,
Air Adjutant General.

[F. R. Doc. 49-7917; Filed, Sept. 30, 1949; 8:47 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 9113]

PART 3—RADIO BROADCAST SERVICES

BROADCAST OF LOTTERY INFORMATION

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of September 1949;

It appearing, that §§ 3.192, 3.292 and 3.692 of the Commission's rules and regulations will become effective on October 1, 1949, pursuant to the report and order of August 18, 1949, by which they were adopted; and

It further appearing, that District Courts in Illinois and New York have issued temporary restraining orders suspending the effectiveness of the rules with respect to the parties to litigation in such courts who have brought actions to enjoin the rules and that the Commission believes that all parties who might be affected by the rules should be placed on an equal footing by postponing the effective date of the rules until the final determination of pending litigation involving their validity; and

It further appearing, that the authority for the postponement made herein is contained in sections 4 (i), 303 (r) and 309 of the Communications Act of 1934, as amended; and

It further appearing, that compliance with the public notice requirements of section 4 (a) of the Administrative Procedure Act is unnecessary in view of the fact that the rules are not yet in effect and this order merely postpones the effective date;

It is ordered, That, effective immediately, the effective date of §§ 3.192, 3.292 and 3.692 of the Commission's rules is hereby postponed until a date to be fixed by further order, which shall be at least thirty days after a final decision by the Supreme Court of the United States, or thirty days after the time within which an appeal to the Supreme Court may be taken has expired without such an appeal being taken, in pending litigation with respect to these rules.

(Sec. 4 (i), 48 Stat. 1066, as amended; 47 U. S. C. 154 (i). Interprets or applies secs. 303, 309, 48 Stat. 1082, as amended, 1085; 47 U. S. C. 303, 309)

Released: September 21, 1949.

By direction of the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-7937; Filed, Sept. 30, 1949; 8:54 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Bureau of Entomology and Plant Quarantine

[7 CFR, Part 319]

NURSERY STOCK, PLANTS, AND SEEDS

NOTICE OF PROPOSED RESTRICTION ON ISSUANCE OF PERMITS FOR IMPORTATION OF CITRUS SEEDS

Notice is hereby given under section 4 of the Administrative Procedure Act (5 U. S. C. 1003) that the Chief of the Bureau of Entomology and Plant Quarantine, pursuant to § 319.37-24 of the regulations supplemental to the quarantine relating to nursery stock, plants, and seeds for importation into the United States (Regulation 24, Notice of Quarantine No. 37; 7 CFR 319.37-24), is considering the issuance of the following administrative instructions.

§ 319.37-24a *Administrative instructions restricting issuance of permits for the importation of citrus seeds.* In accordance with § 319.37-24 of the regulations supplemental to the quarantine relating to nursery stock, plants, and seeds for importation into the United States (Regulation 24, Notice of Quarantine No. 37; 7 CFR 319.37-24), the Chief of the Bureau of Entomology and Plant Quarantine has determined that the Plant Commissioner of the State Plant Board of Florida has taken action to suppress citrus canker (*Xanthomonas citri* (Hasse) Dowson), quick decline, and other dangerous diseases affecting citrus, and has promulgated as Rule 28 of rules and regulations made by the State Plant Board pursuant to the Florida Plant Act of 1927, effective March 31, 1947, a plant quarantine prohibiting the entry into Florida in interstate commerce of any and all kinds of citrus trees and parts thereof, including, among other parts, citrus seeds, with certain exceptions not applicable to the movement of such seeds. Further, the Plant Commissioner of the State Plant Board of Florida has requested that the United States Department of Agriculture cooperate in connection with such quarantine by prohibiting the importation into Florida from all foreign countries of citrus seeds. Under authority conferred upon the Chief of the Bureau of Entomology and Plant Quarantine by § 319.37-24, it is hereby ordered that permits will be issued for the importation of citrus seeds from any foreign country only if such seeds are to be imported into a place within the United States other than the State of Florida.

The purpose of these administrative instructions is to cooperate with the State of Florida by restricting the importation from all foreign countries of citrus seeds in furtherance of action already taken by that State to suppress the types of pests that might be imported with such seeds.

All persons who desire to submit written data, views, or arguments in connection with this matter should file the same with the Chief of the Bureau of Entomology and Plant Quarantine, Agricultural Research Administration, United States Department of Agriculture, Washington 25, D. C., within 15 days after the date of the publication of this notice in the FEDERAL REGISTER.

(Secs. 1, 5, and 8, 37 Stat. 315, 316, 318 as amended; 7 U. S. C. 154, 159, 161; 7 CFR 319.37-24)

Done at Washington, D. C., this 27th day of September 1949.

[SEAL] AVERY S. HOYT,
Acting Chief,
Bureau of Entomology and Plant Quarantine.

[F. R. Doc. 49-7922; Filed, Sept. 30, 1949; 8:50 a. m.]

Production and Marketing Administration

[7 CFR, Part 996]

HANDLING OF MILK IN SPRINGFIELD, MASS., MARKETING AREA

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

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR and Supps. Part 900; 13 F. R. 8585) notice is hereby given of the filing with the Hearing Clerk of a recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and to a proposed order regulating the handling of milk in the Springfield, Massachusetts, marketing area, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 15th day after publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing on the record of which the proposed marketing agreement and the proposed order have been formulated was called by the Production and Marketing Administration, United States Department of Agriculture, following receipt of a proposed marketing agreement and order filed by the New England Milk Producers' Association and United Dairy System, Inc., Springfield, Massachusetts, and proposals made by a handler. The public hearing was held at Springfield, Massachusetts July 11-14, 1949 after the issuance of notice on June 22, 1949 (14 F. R. 3472).

The material issues on the record relate to:

(a) Whether the handling of milk in the Springfield, Massachusetts marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce;

(b) Whether the issuance of a marketing order for the Sprinfield, Massachusetts marketing area will tend to effectuate the declared policy of the act;

(c) The provisions to be included in an order if one is issued.

The evidence on this issue involved:

(1) The extent of the marketing area;

(2) The definition of "producer", "handler", "pool plant", "outside milk" and other terms;

(3) The classification of milk and milk products;

(4) Assignment of classified milk and milk products to receipts from producers and from other sources;

(5) The determination and level of class prices;

(6) The determination of the uniform price to producers with appropriate differentials;

(7) Marketing service provisions;

(8) The administration assessment, and

(9) The administrative provisions common to all orders.

Findings and conclusions. Upon the basis of the evidence adduced at the hearing and on the record thereof, it is hereby found and concluded that:

(a) The handling of milk in the Springfield, Massachusetts, marketing area is in the current of interstate commerce and directly burdens, obstructs, and affects interstate commerce in milk and its products.

Substantial interstate movement occurs with respect to milk produced for the Springfield, Massachusetts, marketing area, and with respect to milk products produced therefrom, and the milk supplies for the Springfield market are procured in direct competition with the larger inter-state markets of New York and Boston.

Producers supplying milk to the Springfield market are located in Massachusetts, Vermont, New York, New Hampshire and Connecticut. Witnesses estimated the number of producers outside the state of Massachusetts from 30 to 40 percent of the total number supplying the market. Several handlers who do business in Springfield engage in the milk business also in adjacent states.

The records of the Massachusetts Milk Control Board indicate that milk moves into the Springfield market from out-of-state sources during every month of the year.

The Springfield market is located between the New York and Boston milk supply areas and the Springfield supply area intermingles with each of these markets in eastern New York and Southern Vermont where both of these two large milk markets obtain milk from producers.

Four large handlers each have receiving stations outside Massachusetts from which they supply milk to the Springfield market.

The flow of milk into the Springfield market is affected by the relationship of that market's prices to the prices paid New York and Boston producers. Price relationships which interrupt or interfere with the economical disposition of milk in this area burden, obstruct and affect interstate commerce in milk and its products.

(b) Marketing conditions in the Springfield area indicate that the issuance of a marketing order such as that set forth herein will tend to effectuate the declared policy of the Act with respect to milk produced for the Springfield market.

The record shows that conditions exist in the Springfield market which have resulted in a loss of market for several producers. These conditions must be modified in order to establish and maintain such orderly marketing conditions as will establish prices to producers for milk delivered to the Springfield market that reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and milk products in the marketing area and which will insure a sufficient quantity of pure and wholesome milk and be in the public interest.

The unsettling conditions which are disrupting the Springfield market result from the opportunity on the part of milk handlers to purchase milk from producers outside Massachusetts on a wholly unregulated price basis whereas the handlers who purchase milk from Massachusetts producers are required to make payments to producers in accordance with a classified price plan enforced by the Massachusetts Milk Control Board. The classified price plan in the Springfield market is similar to that in use in several New England markets. Class I milk, principally fluid milk and milk drinks sold in bottles is priced relatively higher than milk for all other uses which is Class II.

Handlers purchasing milk under the regulations of the Massachusetts Milk Control Board are required to pay Massachusetts producers delivering milk to their plants these prices for the quantities of milk utilized in such classes. Handlers buying milk out of state are subject to no governmental price regulation and purchase milk at a price competitive with the prices paid to producers in those areas for all milk. The level of the competitive price is dominated by either the uniform price established for producers delivering milk to plants regulated by the New York Federal milk order or the Boston Federal milk order or both. The uniform prices established under the Boston and New York Federal milk orders reflect the average percentage of Class I and of Class II in each of these markets. To the extent that any handler in the Springfield area has sales of Class I milk which give him a higher utilization of Class I milk than the average for either the New York or Boston markets, that handler can purchase milk for such Class I sales at the uniform blend price paid producers in the Boston and New York markets for all milk. The evidence in this record indicates that handlers are aware of this opportunity, that some handlers have acquired milk on this flat price basis and that at least one handler intends to expand this type of buying in preference to purchasing milk from Massachusetts producers.

The advantage accruing to a handler purchasing milk outside the state of Massachusetts has increased in recent months as the uniform blend prices in the New York and Boston markets have dropped relative to the Class I price in each of these markets and in the Springfield market. The lower uniform prices result from substantial declines in excess milk values and in an increase in the quantity of milk utilized in excess classes.

In addition to the disturbing influence of out-of-state milk in the Springfield market, the lack of a uniform market-wide price plan for all producers supplying the market is a disrupting factor. The range in prices paid by 16 large handlers in the Springfield market to producers per hundredweight of milk testing 3.7 percent butterfat was, delivered at city plants, from $5.40 to $6.326 in June 1948 and from $6.05 to $7.005 in November 1948. In May 1949 the range in prices handlers paid producers in that region was from a low of $4.2162 to a high of $5.8177 per hundredweight of milk testing 3.7 percent butterfat.

The lack of price regulation effective with respect to all of the sources of fluid milk for the Springfield market and the absence of a uniform pricing method are contributing to the growth of an unstable milk market in this area. A marketing order is needed in the area to assure producers of a market for their milk at reasonable and uniform prices.

(c) From the evidence it is concluded that the proposed marketing agreement and order which are hereinafter set forth, and all the terms and provisions thereof, meet the needs of the Springfield market and will tend to effectuate the declared policy of the act. The following findings and conclusions are made with respect to the various provisions of the marketing agreement and order.

(1) *Extent of the marketing area.* The marketing area should include the following Massachusetts cities and towns:

Agawam.	Springfield.
Chicopee.	West Springfield.
East Longmeadow.	Westfield.
Holyoke.	Wilbraham.
Longmeadow.	Easthampton.
Ludlow.	Northampton.
South Hadley.	

This is an area of relative concentration of population and industrial enterprises. Many of the dealers distributing milk in this area are operating in several of the cities or towns named. In general, the delivery routes of dealers in the area overlap or intersect to such an extent that there is close and direct competition between dealers throughout the area.

The sources of milk supply for the various cities and towns in the proposed marketing area overlap and are intermingled to such an extent that the general supply area may be considered as one milkshed for the entire marketing area. In many cases handlers receive milk at a plant supplying several of the towns in the marketing area.

No proposals were made at the hearing to the effect that the extent of the marketing area should differ from the area herein specified.

(2) *Definition of terms.* The term "producer" should be defined in order to identify those dairy farmers who are considered as the regular source of supply for the market, and to whom the minimum prices specified should be paid. Determination of producer status should be made on the basis of delivery of milk from the producers' farm to a pool plant. The proposed method of determining which plants are pool plants is discussed later in this decision.

The term "producer" should not include a dairy farmer delivering milk to a pool plant during March through September if, during any of the previous months of October through February, milk from his farm was received as nonpool milk for more than 3 days by the same handler. Such a limitation would discourage a handler from shifting the milk of certain dairy farmers into the Springfield market in the months of relatively higher milk production if their milk had been used by the handler as a supply for another market during other months. The definition should however allow a handler to occasionally divert the milk of some producers to nonpool plants, if such producers ordinarily deliver to a pool plant of the handler, and the handler reports the milk as producer receipts at his pool plant transferred to the nonpool plant. This provision will facilitate interplant movements of milk for the purpose of adjusting to short-time variations in supply and requirements without depriving the farmers producing the milk of their status as producers.

Dairy farmers who distribute their own production but do not receive any milk from other dairy farmers would not be included in the proposed definition of producer, except in respect to bulk milk which they may deliver to a pool plant.

There were no alternative proposals made for the definition of producer, although there were two different proposals as to the method of determining which plants would be included in the market-wide pool, which would be a determining factor as to which dairy farmers are producers for the market.

These two proposals were made with respect to the qualification of plants as pool plants. Specific requirements for pool plants are needed in the order to serve as a measure of which plants are to be considered as needed to supply the fluid milk requirements of the marketing area. The determination of pool plant status is the essential part of the determination of which dairy farmers are to be included in the market-wide pool.

Both proposals on determining pool plant status contained a similar provision which would qualify a city plant which had met applicable licensing requirements if the operating handler disposed of a volume of Class I milk in the marketing area equal to 10 percent of receipts at such plant. Such a provision would assure producers of receiving the uniform market price for milk delivered to a handler having a substantial part of his fluid milk business in the area. Handlers operating on the fringe of the area who sell only a small part of their milk would thereby be excluded from the pool. Such a provision should be adopted in the order.

The supply area for the Springfield market overlaps with the supply areas of other markets. Since milk plants in this region often supply more than one market it is important to establish standards which will identify a plant which is primarily supplying the Springfield Class I milk market. One proposal as made at the hearing would qualify country plants during any of the months of October through March substantially on the basis of 50 percent of the receipts from dairy farmers at such plant being accounted for as Class I disposed of in the marketing area, with the Class I utilization at a city plant receiving such milk assigned first to other Federal order milk, receipts from other handlers' city plants, and milk received directly from producers at the city plant. Such a requirement would operate to include in the pool only country plants which are needed to supply Class I milk to the market to the extent of 50 percent of the plant's receipts from dairy farmers.

A 50 percent requirement is considered to be a substantial indication that the plant is a source of fluid milk supply for the marketing area, and in general provides a measure of flexibility such that handlers can carry a considerable volume of reserve to meet changes in requirements. Some modification of the proposal as made at the hearing is needed.

The requirements for qualifying a country plant for the pool should make it possible for a handler to determine whether a plant was likely to qualify under the applicable rules. The proposal to tie in qualification of country plants with the assignment of milk to classes at city plants would make the qualification for pooling each country plant which ships to another handler's city plant too largely dependent upon the other handler's operations at his city plant. If too small a base is provided for determining the quantity of shipments from the country plant which shall be assigned to Class I at the city plant, an audit revision or even a shift in inventory might exclude a plant from the pool. In determining pool plant status, a country plant which ships in the form of milk 50 percent of its total receipts to a city plant which is predominantly a fluid milk distributing plant, should be considered as having made the required Class I disposition in the marketing area. The requirements for allocating Class I milk to all receipts at city plants in advance of receipts at country plants in the application of freight differentials to class prices should prevent a handler from shipping unnecessary quantities of milk to the marketing area only for the purpose of qualifying a plant which is not needed for the markets' fluid milk sales.

Although some objection to the 50 percent Class I requirement was made by handlers at the hearing on the supposition that a handler might fail to qualify a particular country plant in some month because of a miscalculation which would result in slightly less than 50 percent Class I, there should be no difficulty in a handler's being able to ascertain with certainty that he actually shipped in the form of milk more than 50 percent of the total receipts at the country plant to a city plant at which more than 50 percent of its total receipts were Class I. For plants regularly shipping to the market throughout the year, it was proposed that the 50 percent Class I requirement should have effect only during the 6 months of October through March, since a plant which had qualified as a pool plant during these months could upon request qualify during the following months of April through September regardless of the quantity of milk disposed of in the marketing area from this plant. The record indicates that if a handler found it difficult to qualify a plant during any of the months October through March, the difficulty would arise in the month of March when receipts are usually seasonally greater than in the other qualifying months. To provide for this possible difficulty, the qualifying months should be reduced to the months October through February so that a plant qualified for each month in that period could be a pool plant on request during the following March through September without meeting the 50 percent standard.

The record indicates that at least two country plants regularly supply milk to both the Springfield and Worcester markets. These plants are recognized as reserve sources for each market and certainly should be included in one pool or the other. Since each of these plants serves a dual reserve purpose, it might be difficult to meet the 50 percent requirement unless shipments to the Springfield and Worcester markets are combined for the purpose of determining pool plant qualification. Such a plant should then be considered a pool plant in the Springfield market if the total qualifying shipments to Springfield exceed those to Worcester. This modification in the 50 percent requirement should make it possible for such plants regularly supplying milk to the market to qualify as pool plants It is not necessary, therefore, to designate certain named plants as pool plants.

There does appear to be a reasonable basis for qualifying a city plant of a cooperative association as a pool plant. The West Springfield plant of the New England Milk Producers' Association receives milk directly from dairy farmers only temporarily while they are out of a market. If it is a pool plant in any month in which it receives milk directly from dairy farmers, it can provide a market for producers who are temporarily deprived of an outlet because of some shift in market organization.

The other proposal with respect to qualifying pool plants would allow a country plant to qualify during the months of August through March if it met licensing requirements and supplied any milk in the form of milk to the marketing area during one of two consecutive months. This proposal, which is patterned after the pool plant qualifications under the Boston order, appears unsuited to a smaller market where inclusion or withdrawal of a few country plants could be very disturbing to the market.

Plants at which producer prices are regulated by the New York or Boston orders should not be pool plants under the Springfield order. Regulation by two orders would be complex and is unnecessary to effectuate the purposes of the act. It is recognized that under present provisions of the Lowell-Lawrence order a plant might become subject to both the Lowell-Lawrence and Springfield orders. An amendment to the Lowell-Lawrence order is needed to relieve the plant from regulation under that circumstance. The evidence in the

record indicates that such a plant should not be relieved of regulation under the Springfield order because it also becomes subject to the Lowell-Lawrence order.

The definition of outside milk proposed at the hearing and the proposed payments into the pool on outside milk would assure producers of receiving the Class I price for all Class I milk disposed of in the marketing area. The proposed definition would be similar to the definition used in the Boston order except that receipts from pool plants in other Federal order markets in New York and New England in which market-wide pools are effective would not be considered outside milk, since handlers in these markets are required to pay producers for the milk in accordance with its ultimate utilization. When such payments are less than would be required under this proposed order, a payment to equal such difference should be made to the producer settlement fund for reasons set forth under issue No. 6.

The term "regulated plant" should be defined as any pool plant; any pool handler's plant which is located in the marketing area and from which Class I milk is disposed of in the marketing area; any plant operated by a handler in his capacity as a buyer-handler or producer-handler, and any city plant of an association of producers. This term is broader than "pool plant" and is needed to describe plants at which milk will be accounted for according to utilization, and which are subject to some regulation with respect to pricing, payments, or reports.

The definition of handler should include any person who engages in the handling of milk which may be of his own production or purchased from dairy farmers or other handlers, and which is received at any plants from which fluid milk products are disposed of, directly or indirectly, in the marketing area. Such a definition is designed to include all persons whom it is necessary to regulate under the order to accomplish the purposes of the act. The definition would include several classes of handlers, such as: "pool handlers," who operate pool plants at which milk is received from producers and are primarily responsible for reporting receipts and utilization of producer milk and paying producers at least the specified minimum prices; "buyer-handlers" who receive their entire supply from other handlers; and "producer-handlers" mentioned heretofore.

Various other definitions which should be adopted are set forth in detail in the attached recommended order. Many of these definitions have been copied from the Boston order except for some changes to adapt them to the proposed order. These definitions are generally useful in setting forth the various provisions of the order. No objection was made at the hearing to their adoption.

Although definitions were proposed for the terms "marketing year," and "distributing plant," there does not appear to be any need for these definitions in the proposed order.

(3) *Classification of milk and milk products.* It was proposed that the order should provide for classification pursuant to the following general provisions of all milk and milk products received by a handler.

(i) Class I milk shall be all fluid milk products the utilization of which is not established as Class II milk.

(ii) Class II milk shall be all fluid milk products the utilization of which is established:

(*a*) As being sold, distributed, or disposed of other than as or in milk; and other than as or in flavored milk or flavored skim milk, buttermilk, or cultured skim milk, for human consumption; and

(*b*) As plant shrinkage, not in excess of 2 percent of the volume handled.

These general principles of classification are the same as are in use in other Federal order markets in New England and have been used in the Springfield market under orders of the Massachusetts Milk Control Board. The utilization of milk by handlers in the Springfield market is similar to that in these other New England markets.

The use of uniform basic principles of classification in the several Federal order markets in this area is desirable to promote understanding of the regulations by the industry and for ease in accounting for milk transferred between markets. These general provisions should be supplemented by specific provisions delineating the classification of milk and milk products transferred between plants and handlers.

Classification should be established primarily in accordance with utilization at regulated plants with no limit on the number of movements among regulated plants of pool handlers. Fluid milk products other than cream moved from a pool plant to an unregulated plant, or to the plant of a producer-handler, should be classified as Class I up to the total amount of corresponding milk products utilized as Class I at the unregulated plant. This in effect gives priority to producer milk in Class I at the unregulated plant, and is a safeguard for producers against receiving the Class II price for milk moved outside the marketing area which may have been used for Class I. It usually would be difficult to establish that such milk had not been used in Class I if there were Class I utilization at the unregulated plant. It is reasonable to put the plant of a producer-handler in the same category with unregulated plants, in this respect, since the producer-handler's own milk is not subject to regulation.

If fluid milk products other than cream are moved from a regulated plant to an unregulated plant or to a regulated plant of a nonpool handler and thence to another such plant, the utilization should be considered to be Class I, since it is necessary in the interests of administrative economy to limit the number of nonpool plants through which the market adminstrator must follow the utilization of milk.

Milk moved from a city plant of a cooperative association in a month when such plant has no receipts from dairy farmers, should be classified in the same manner as milk moved from a regulated plant of a pool handler. The West Springfield plant of the New England Milk Producers' Association handles surplus milk for other handlers, sells what it can as Class I, manufactures some of it, and ships substantial quantities to unregulated manufacturing plants in the season of flush production. This plant does not normally have receipts from dairy farmers. If it can move surplus milk of other handlers as Class II milk to unregulated manufacturing plants, it can provide a market for the milk of producers whose milk is needed by handlers for Class I milk during some parts of the year and which such handlers would not otherwise handle during the flush season.

Fluid milk products other than cream moved from the Springfield market to New York order plants and other Federal order plants in New England, except Fall River order plants, would be assigned to classes by the provisions of such other orders. Under the Springfield order the classification of such fluid milk products should be the same as that assigned under these other orders. Nothing in the record indicates any need for shipping any milk from the Springfield market to the Fall River market.

Cream and other nonfluid milk products moved from a regulated plant should be considered as Class II milk in accounting for the utilization of the shipping handler. It is expected that such a provision will simplify accounting procedure. Some provisions should be made in the order, however, to assure that a Springfield handler who receives such a transfer of cream and uses it in Class I will account to the pool for his total Class I utilization. This provision with respect to the classification of shipments of cream should be an exception to the general rule as to the responsibility of handlers in establishing classification. Otherwise the burden should rest upon the handler who receives the milk from producers to account for the milk and prove that it should not be Class I.

(4) *Assignment of receipts.* A system of assignment of receipts should be set forth in the order to allocate the volumes of Class I and Class II utilization between producer milk and nonproducer milk handled at the same plant. It was proposed at the hearing that fluid milk products received from other Federal order plants in a market-wide pool should be assigned to Class II during April through July, but that receipts of milk and flavored milk in other months should be Class I to the extent such milk is classified in Class I or the equivalent class under the other Federal order unless specific Class II use is established. On the basis of the record it does not appear necessary to exclude from Class I during April through July milk from other Federal order plants in a market-wide pool.

Such milk would be accounted for to the pool in the other market as Class I. The record does not indicate that Springfield handlers will bring in additional milk from another Federal order market during the flush months to displace producer milk in Class I if there is an equality of cost of Class I milk under the two orders. The exclusion of other Federal order milk from Class I in the flush season, although it is regularly used in Class I during other months, in

effect would require these other markets to carry part of the burden of seasonal surplus for the Springfield market.

On the basis of the evidence in the record it appears that milk and milk products received from other Federal order markets in which a market-wide pool is in operation should be assigned to Class I to the extent that it is classified in Classes I-A or I-B under the New York order or in Class I under other Federal orders. Receipts of all other milk and milk products, including all receipts from other Federal order plants in which an individual dealer pool is in operation, should be assigned to Class II milk.

It was proposed at the hearing that outside milk be assigned to Class II without regard to specific use. The recommended provisions of the proposed order do not assign all outside milk to Class II, but the recommended provisions do accomplish the purpose of assuring that handlers will make payments into the pool on any outside milk which displaces producer milk in Class I. These payments are discussed under the section on payments to producers.

Further detailed assignment of Class I milk to the several plants of each handler is needed to arrive at the total value of milk in the pool. Class I milk received from other Federal order plants in a market-wide pool and milk from other handler's city plants should be assigned first to the Class I milk. Next the Class I milk of each handler should be assigned to outside milk received at city plants, and then to milk received directly from producers at his city plants. Class I milk should then be assigned to receipts from other handlers' country plants and finally to milk received from the handlers' own country plants, in order of nearness of the country plants to the marketing area.

This system of assignment of Class I milk to the plants of each handler, with the bulk of the milk assigned to nearby plants, affects the amount deducted from the value of the pool in the form of transportation differentials. It appears reasonable to require handlers to pay for Class I milk on the basis of most economical movement of such milk to the market.

(5) *Class prices.* Class prices for the Springfield market should be established on a formula basis similar to that under which class prices are determined for the Boston market. The Boston and Springfield milk markets are so interrelated that a close correlation of price changes is necessary to maintain stable market conditions. Boston is the larger market and therefore the dominant one in effecting price changes. The milksheds of these two markets overlap so that there is opportunity for producers to shift their supply from one market to the other if substantially different prices are offered. The Springfield market draws milk directly from plants at which milk is priced under the Boston milk order. Careful alignment of prices in the two markets is necessary to maintain equal cost of milk to handlers for milk used similarly.

The Springfield milk supply area is also intermingled with the New York milk supply area. Since the prices in the New York and Boston markets have been moving together, the alignment of Springfield prices with the Boston market should not result in any lack of alignment with the New York market.

The proposed method of formula pricing for Class I milk should be established for the Springfield market to maintain close relationship to the Boston price. For that reason the factors determining the price need to be the same in the Springfield order as those in the Boston order. Local factors in the Springfield market should be considered in determining the exact level of the Springfield price in relation to the Boston price.

The Boston market basic Class I price is determined at the 201-210 mile zone measured from Boston. The Springfield country plant supply area reaches out about 100 miles from Springfield. It appears reasonable that the Class I price at country plants should be about equal regardless of whether the shipment is made to Boston or to Springfield. It was argued at the hearing that such prices should be identical at all points. Such precise adjustment would fail to encourage the use of milk at plants near to Springfield for the Springfield market. General alignment in the country plant region is necessary.

City plant prices for Class I milk in these two markets must be approximately equal to prevent major shifts in producer deliveries from one market to the other.

The establishment of Class I prices at country and at city points involves the consideration of adequate differentials to reflect the difference in the value of milk at different points of delivery. The method of transportation of milk to the Springfield market differs from that in the Boston market in that shipments are generally smaller than those made to the Boston market and rail transportation which is used largely in Boston is not available on an adequate basis for the Springfield market. On the other hand the country plants serving the Springfield market are nearer to Springfield than Boston pool plants in the same area are to Boston. This location advantage just about offsets the higher freight cost incurred by Springfield handlers. Therefore, it is reasonable that Class I prices for the Springfield market be equal at city plants to those established for Boston city plants.

Transportation costs appear to be generally higher in the Springfield market because of the mode of transportation used. In order to determine a basis for adjusting the proposed schedule of allowances to reflect the smaller lot basis of shipment to the Springfield market, official notice has been taken of New England Joint Tariff M-No. 5 and supplements thereto. It was found that at current tariff rates the cost of shipping milk 100 miles in carlot rates in cans amounts to about 4 cents per hundredweight more than the cost of shipping milk in tank cars. The schedule of allowances in the Springfield order should reflect this additional 4-cent cost.

A price for Class II milk which moves with the price of milk for similar uses in the Boston market is necessary because of the interrelationship of the Springfield and Boston markets. The changes in market prices for cream and for nonfat dry milk solids appear to be a reasonable method of determining changes needed in the Class II price for the Springfield market.

Class II products manufactured in the Springfield area include various types of soft cheese and ice cream. Fluid cream is disposed of in the marketing area. Excess milk is moved outside the market for use in casein and sweetened condensed skim milk.

Since a large part of the Springfield milk supply is received directly at city plants, handlers have the problem of disposing of excess skim milk from their city plants which is similar to the handling of excess milk at country plants in the Boston milkshed. Therefore, the allowances for adjusting the market prices of cream and nonfat dry milk solids should be the same as those at country plants except that the cost of shipping cream need not be reflected. Cream separated at city plants incurs no further transportation expense since it is utilized for the most part in the marketing area. Springfield is a deficit cream market and receives cream from country plants in the Boston milkshed and from midwestern sources. The cost of these cream purchases is about equal to the cost of cream delivered at Boston.

The Class II price at country points should reflect the cost of shipping cream to the Springfield market. The schedule of rates reflecting the cost of shipping cream in 100-199 can carlots was proposed and appears to be reasonable. Such a schedule of differentials should be established.

No differential factor to reflect cost of shipping nonfat solids needs to be included since it was found that city and country plants are situated similarly in this respect.

The last provision of this proposed section is a standard provision providing that when any prices, wage rates, or indexes are not available, the Secretary shall make a determination with respect to an equivalent factor. This section also provides for the announcement of class prices and differentials by the market administrator. These standard provisions should be adopted.

(6) *Payments to producers.* The percentage of milk utilized by individual handlers in Class I varies so widely that prices to producers have differed under an individual handler type pool by over $1.00 per hundredweight. Provision should be made for a market-wide type of pool in order that all producers delivering milk to all handlers may receive a uniform price for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered. This method of paying producers will require a producer-settlement fund for making adjustments in payments by handlers so that the total sum paid by each handler shall equal the value of milk received by him and utilized in the classes established by the proposed marketing agreement and order.

The uniform price paid to producers should reflect differentials for the location at which the milk is delivered and for the customary market practice of paying somewhat higher prices to producers located near the sales area.

Differentials which vary with the location of the plant at which a producer delivers his milk have been in common use in the Springfield and other New England markets. Payments to producers are modified according to the schedules of differentials applicable to the Class I price. The amount of such differentials is discussed under issue No. 5.

A system of differentials to be paid producers located near to the marketing area similar to the plan in effect under the Boston Federal milk order was supported by the producers who proposed the marketing order.

Although certain producers located in the country plant area have at times been paid premiums which returned to them prices for milk delivered at Springfield equal to the Springfield city price the record indicates that this practice is not consistent. Witnesses reported that prices paid to producers in the country plant area tended to follow the blend prices paid to producers delivering to Boston or New York market plants, whereas the prices paid to producers nearer to the market were somewhat higher.

Most of the dairy farms in Massachusetts are close to urban centers. This probably explains why prices to Massachusetts farmers for milk sold wholesale average considerably more than the prices paid to Vermont farmers. This difference cannot be attributed to transportation cost alone. The many opportunities for dairymen to market their own milk directly influence the price which they demand for their product.

The nearby differential plan has been a part of the payment plan in the Boston milk order for many years. The nearby differential area for the Boston market overlaps the Springfield supply area. Producers in this area are accustomed to receiving a price which reflects the Boston differential payment. Such a differential plan is necessary in the Springfield market to reflect this customary differential.

The nearby Springfield supply area is bounded on the east by Worcester and Boston milksheds and on the west by the Berkshire hills. Because of these limitations the supply area stretches out in a corridor running north and south.

The rates proposed for the area were 46 cents per hundredweight for most of the area and 23 cents for a smaller number of cities and towns. The smaller rate applies to those areas which are farther from the urban area of Massachusetts or which have been supplying the market only more recently. It is reasonable to assume that an advantage of farm location tapers off at some point. The two rates proposed should reflect that factor.

The location differential area proposed for the Springfield market overlaps the proposed differential area for the Worcester market and the established location differential area in the Boston market. In fact practically all of Massachusetts except Berkshire County would be covered by the 46-cent location differential area for one market or another. It appears reasonable therefore to recognize this entire area as a 46-cent differential area in the Springfield market.

Certain producers located outside the proposed differential area claimed that they should receive differential payments because they had been supplying the Springfield market for a number of years and they had received the Springfield price less a hauling charge. Some of these producers testified that they received prices approximately equal to the Boston blend prices at nearby country points. Other producers did testify that they were currently receiving a price which was about 50 cents over the competitive price in their territory. A price difference of that amount cannot be expected to be maintained in a period of adequate milk supplies.

The producers opposing the differential plan indicated their real concern was that their net price would fall below the competitive price in their territory and they would have to seek other outlets for their milk. The record indicates that the utilization of surplus milk in Springfield is lower than in either New York or Boston markets. In fact the market has limited facilities for handling surplus milk. In view of this situation it is not likely that the Springfield uniform price under the proposed order would fall below the competitive prices under the New York and Boston orders in the near future.

If this price plan does tend to draw unnecessarily large surplus milk into the Springfield market, some revision of the proposed order would be needed. The nearby differential payment plan should be adopted as a provision of the proposed order.

In making payments to producers the amount of such payment per hundredweight should be modified by a butterfat differential to reflect the value of the producer's butterfat in excess of or less than 3.7 percent. The method of determining the butterfat differential in the Springfield market has been related to the Boston weighted cream price and this practice should continue. The proposed method of determining the exact differential is similar to that used in other Federal orders effective in the New England region.

Payments to producers should be made twice monthly with the option on the part of the handler to make a total payment in one amount not later than the 17th day after the end of the month. If the handler does not elect to make the final payment as early as the 17th day of the month in which milk is delivered, he must make an advance payment on or before the 10th day of the month in which the milk is delivered and the final payment on the 25th day of the month of delivery. This practice is similar to that effective in the Boston market.

In order to maintain an equal cost of milk to all handlers for milk used in similar classes and at the same time to permit occasional receipts of milk in the market from sources other than regular producers, it is necessary to provide that payments be made to the market administrator for the producer-settlement fund on any outside milk which replaces Class I producer milk sales. In the cases of nonproducer milk which is received from handlers who are not subject to other Federal milk order regulations, the amount of such payment should be equal to the difference between the Class I and Class II prices effective for the location or freight mileage zone of the plant at which the handler received the outside milk. If such outside milk is received from a plant which is subject to another Federal order where a market-wide pool is in effect, the cost of such milk is established at equivalent levels by the other Federal order and any price advantage would be limited to the differences in freight allowances or the butterfat differentials which are permitted under the various orders. The Springfield market is located so that certain plants which are now a part of the Boston and New York pools have freight differentials which would be in excess of those allowable under the Springfield order if the plant were to become subject to this proposed order. In view of this situation it is necessary in order to establish an equal cost of milk for all handlers doing business in the Springfield market to require a payment into the producer-settlement fund on milk received from plants subject to these Federal milk orders equal to the difference between the Class I, I-A, or I-B price established under that other order and the price which would be effective at that location if the plant were subject to the Springfield order. This payment is particularly necessary in view of the decision to permit milk to move into the Springfield market from other Federal market-wide pools with no restriction on the number of months during which such milk can be received for Class I use.

Provisions for the adjustment of overdue accounts and for providing a monthly statement to the producer along with his payment should be included in the order. These are patterned after similar provisions in other New England orders.

(7) *Market service provisions.* It is generally considered desirable under the marketing program to provide for certain services to nonmembers which are normally performed by the cooperative associations for their members. The particular services needed are those of verifying weights and tests of each producer's milk and furnishing producers with information about the milk market. In order to provide for such market services to all producers, a fund should be established from the payments which would otherwise go to producers. The rate of deduction should be not more than 3 cents to compensate the market administrator for providing such services. No deduction should be provided in the case of producers who are members of a cooperative association which is actually performing such services for its members on its own account. Such deductions should not be made on a producer-handler's own production since it is normal to assume that he is as generally familiar with the market as other handlers and that since he is marketing his own product the necessity for verifying weights and tests is not important for accurate payment.

(8) *Administration assessment.* The duties of the market administrator will require the maintenance of an office and the employment of persons to assist him

in administering the order. The cost of the administration of the order should be prorated to all handlers in an equitable manner. In order to equalize the rate to all handlers the order should provide that the rate of payment is 4 cents per hundredweight on all milk which has not been assessed under other Federal milk orders. In the case of milk which has been assessed under another Federal milk order but at a lower rate than 4 cents per hundredweight, the assessment under the proposed Springfield order should be equal to the difference between 4 cents and such lesser rate. In the event a lesser amount proves to be sufficient for the administration of the proposed order, provision should be made for the Secretary to reduce the assessment accordingly without waiting for the formality of an amendment to the order.

(9) *Administrative provisions.* The marketing agreement and order should provide for other general administrative provisions which are common to all milk orders and which are incidental to and necessary to effectuate the other provisions of the order and necessary for proper and efficient administration of the order. These provisions provide for the selection of a market administrator, defining his powers and duties, prescribe the information to be reported by handlers each month, set forth various rules to be followed by the market administrator in making computations required by the order, and provide a plan for liquidation of the order in the event of its suspension or termination. No objections were raised by either the handlers or producers with regard to these standard provisions as set forth in the hearing notice except suggestions for minor changes in the language thereof. These provisions should be adopted with minor modifications.

It was proposed that the order provide specifically for the appointment of a committee of persons directly interested in the order to advise and consult with the market administrator on problems which might arise under the order. The exact duties of such a committee are difficult to define without some particular problem in mind. Since the market administrator can request interested persons to meet and discuss specific problems as they arise, establishment of a committee to consider problems generally does not appear to be necessary and should not be included in the order.

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

(b) The proposed marketing agreement and the order will regulate the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the proposed marketing agreement upon which a hearing has been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the order are such as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

(d) It is hereby found and proclaimed in connection with the issuance of this recommended decision regarding the proposed marketing agreement and the proposed order regulating the handling of milk in the Springfield, Massachusetts, marketing area, that the purchasing power of such milk during the prewar period August 1909–July 1914 cannot be satisfactorily determined from available statistics of the Department of Agriculture, but the purchasing power of such milk for the period August 1919–July 1929 can be satisfactorily determined from available statistics of the Department of Agriculture, and the period August 1919–July 1929 is the base period to be used in connection with the said marketing agreement and said order in determining the purchasing power of such milk.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of New England Milk Producers' Association, H. P. Hood & Sons, the Massachusetts Milk Control Board, and by a group of producers whose farms are located in Columbia County, New York and in the vicinity of Pawlet, Vermont. Every point covered in the briefs was carefully considered, along with the evidence in the record in making the findings and reaching the conclusions hereinafter set forth. To the extent that such proposed findings and conclusions are inconsistent with the findings and conclusions contained herein the request to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions in this recommended decision.

Recommended marketing agreement and order. The following order 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 recommended decision because the regulatory provisions thereof would be the same as those contained in the recommended order.

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

§ 996.1 *Definitions.* The following words and phrases shall have the following meanings unless the context requires otherwise.

(a) *General.* (1) "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.).

(2) "Springfield, Massachusetts, marketing area", also referred to as the "marketing area", means the territory included within the boundary lines of the following Massachusetts cities and towns:

Agawam.	Springfield.
Chicopee.	West Springfield.
East Longmeadow.	Westfield.
Holyoke.	Wilbraham.
Longmeadow.	Easthampton.
Ludlow.	Northampton.
South Hadley.	

(3) "Order" used with the name of a marketing area other than the Springfield, Massachusetts, marketing area, means the applicable respective order, issued by the Secretary regulating the handling of milk in that marketing area.

(4) "Month" means a calendar month.

(b) *Persons.* (1) "Person" means any individual, partnership, corporation, association, or any other business unit.

(2) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture.

(3) "Dairy farmer" means any person who delivers milk of his own production to a plant, except a producer-handler with respect to his deliveries in packaged form to another handler.

(4) "Dairy farmer for other markets" means any dairy farmer whose milk is received by a handler at a pool plant during the months of March through September from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received nonpool milk on more than 3 days in any one of the preceding months of October through February, except that the term shall not include any person who was a producer-handler during any of the preceding months of October through February.

(5) "Producer" means any dairy farmer whose milk is delivered from his farm to a pool plant, except a dairy farmer for other markets. The term shall also include a dairy farmer who ordinarily delivers to a handler's pool plant, but whose milk is diverted to one of the handler's nonpool plants, if the handler, in filing his monthly report pursuant to § 996.6 (a), reports the milk as receipts from a producer at such pool plant and as moved to the other plant.

(6) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(7) "Handler" means any person who in a given month operates a pool plant or engages in the handling of milk or other fluid milk products which are received at any plants from which fluid milk products are disposed of, directly or indirectly, in the marketing area.

(8) "Pool handler" means any handler who receives milk from producers at a pool plant.

(9) "Producer-handler" means any person who is both a handler and a dairy farmer, and who receives no milk from other dairy farmers except producer-handlers.

(10) "Buyer-handler" means any handler who operates a bottling or processing plant from which Class I milk is disposed of in the marketing area, and whose entire supply of fluid milk products is received from other handlers.

(11) "Dealer" means any person who engages in the business of distributing fluid milk products, or manufacturing milk products, whether or not he disposes of any fluid milk products in the marketing area.

(12) "Consumer" means any person to whom fluid milk products are disposed of, except a dealer. The term "consumer" includes, but is not limited to, stores, restaurants, hotels, bakeries, hospitals and other institutions, candy manufacturers, soup manufacturers, livestock farmers, and similar persons who are not necessarily the ultimate users. The term also includes any dealer in his capacity as the operator of any of these establishments, and in connection with any other use or disposition of fluid milk products not directly related to his operations as a dealer.

(c) *Plants.* (1) "Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products.

(2) "Receiving plant" means any plant currently used for receiving, weighing or measuring, sampling and cooling milk received there directly from dairy farmers' farms and for washing and sterilizing the milk cans in which such milk is received, and at which are currently maintained weight sheets or other records of dairy farmers' deliveries.

(3) "Pool plant" means any receiving plant, which in a given month, meets the conditions and requirements set forth in § 996.4 for being considered a pool plant in that month.

(4) "Regulated plant" means any pool plant; any pool handler's plant which is located in the marketing area and from which Class I milk is disposed of in the marketing area; any plant operated by a handler in his capacity as a buyer-handler or producer-handler; and any city plant operated by a cooperative association of producers.

(5) "Federal order plant" means any plant at which the milk received from dairy farmers is subject during the month to the minimum pricing provisions of another order of the Secretary regulating the handling of milk pursuant to the act.

(6) "City plant" means any plant which is located within 10 miles of the marketing area.

(7) "Country plant" means any plant which is located beyond 10 miles of the marketing area.

(d) *Milk and milk products.* (1) "Milk" means the commodity received from a dairy farmer at a plant as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of 1 percent but less than 16 percent, frozen milk, and reconstituted milk.

(2) "Cream" means that portion of milk, containing not less than 16 percent of butterfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, in all forms and mixtures, including sweet, sour, frozen, and aerated cream.

(3) "Skim milk" means that fluid product of milk which remains after the removal of cream, and which contains less than one-half of 1 percent of butterfat.

(4) "Fluid milk products" means milk, flavored milk, cream, skim milk, flavored skim milk, cultured skim milk, and buttermilk, either individually or collectively.

(5) "Pool milk" means milk, including milk products derived therefrom, which a handler has received as milk from producers.

(6) "Outside milk" means:

(i) All milk received from dairy farmers for other markets.

(ii) All nonpool milk, including other fluid milk products derived therefrom except cream, which is received at a regulated plant from any unregulated plant, except receipts from a New York, Boston, or Worcester order pool plant; and

(iii) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant without its intermediate movement to another plant.

§ 996.2 *Market administrator*—(a) *Designation.* The agency for the administration of this order 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.

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

(1) To administer its terms and provisions;

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

(3) To receive, investigate, and report to the Secretary complaints of violations of its terms and provisions; and

(4) To recommend to the Secretary amendments to it.

(c) *Duties.* The market administrator, in addition to the duties described in other sections of this order, shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with sureties thereon satisfactory to the Secretary;

(2) Pay, out of the funds provided by § 996.11, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office;

(3) Keep such books and records as will clearly reflect the transactions provided for in this order and surrender the same to his successor, or to such other person as the Secretary may designate;

(4) Unless otherwise directed by the Secretary, publicly disclose, within 30 days after such nonperformance becomes known to the market administrator, the name of any person who, within 2 days after the date on which he is required to perform such acts, has not:

(i) Made reports pursuant to § 996.6 or

(ii) Made payments pursuant to § 996.9.

(5) Prepare and disseminate for the benefit of producers, consumers, and handlers, statistics and information concerning the operation of this order;

(6) Promptly verify the information contained in the reports submitted by handlers; and

(7) Give each of the producers delivering to a plant as reported by the handler prompt written notice of their actual or potential loss of producer status, for the first month in which the plant's status has changed or is changing to that of a nonpool plant.

§ 996.3 *Classification of milk and milk products*—(a) *Classes of utilization.* All milk and milk products received by a handler shall be classified as Class I milk or Class II milk. Subject to the other provision of this section, the classes of utilization shall be as follows:

(1) Class I milk shall be all fluid milk products the utilization of which is not established as Class II milk.

(2) Class II milk shall be all fluid milk products the utilization of which is established:

(i) As being sold, distributed, or disposed of other than as or in milk; and other than as or in flavored milk or flavored skim milk, buttermilk, or cultured skim milk, for human consumption; and

(ii) As plant shrinkage, not in excess of 2 percent of the volume handled.

(b) *Interplant movements of fluid milk products other than cream.* Fluid milk products, except cream, moved to another plant from a pool plant or from the city plant of an association of producers shall be classified as follows:

(1) If moved to another pool plant, they shall be classified in the class to which they are assigned at the plant of receipt pursuant to § 996.5.

(2) If moved to a buyer-handler's plant, they shall be classified as Class I milk, unless Class II utilization is established.

(3) If moved to a producer-handler's plant, or to any unregulated plant except a plant subject to the New York, Boston, Lowell-Lawrence, or Worcester orders, they shall be classified as Class I milk up to the total quantity of the same form of fluid milk products utilized as Class I milk at the plant to which they were moved.

(4) If moved to a plant subject to the New York, Boston, Lowell-Lawrence, or Worcester orders, it shall be classified in the same class to which the receipt is assigned under such order, except that if moved to a plant subject to the New York order it shall be classified as Class I milk if classified in Classes I-A, I-B, or I-C under the New York order, and shall be classified as Class II milk if classified in any class other than I-A, I-B, or I-C under the New York order.

(5) If moved to a regulated plant of a nonpool handler, except the city plant of an association of producers, or to any unregulated plant except a plant subject to the New York, Boston, Lowell-Lawrence, or Worcester orders, they shall be classified as Class I milk if retransferred to either of these types of regulated or unregulated plants.

(c) *Classification of cream, and of milk products other than fluid milk products, moved to other plants.* Cream and milk products other than fluid milk products moved from the regulated plant of a pool handler to another plant shall be classified as Class II milk.

(d) *Responsibility of handlers in establishing the classification of milk.* (1) In establishing the classification of any milk received by a handler from producers, the burden rests upon the handler who receives the milk from producers to account for the milk and to prove that such milk should not be classified as Class I milk.

(2) In establishing the classification of any pool milk received in the form of cream or milk products other than fluid milk products, or any nonpool milk or milk products received by a handler, the burden rests upon the receiving handler to account for such milk and milk products and to prove that such milk and milk products should not be classified as Class I milk.

§ 996.4 *Determinations of pool plant status*—(a) *Basic requirements for pool plant status.* In order for any receiving plant to be a pool plant in any month, it must meet the applicable requirements contained in other paragraphs of this section, together with the following basic requirements for the month:

(1) A majority of the dairy farmers delivering milk to the plant hold certificates of registration issued pursuant to Chapter 94, section 16C and 16G, of the Massachusetts General Laws.

(2) The handler operating the plant holds a license which has been issued by the milk inspector of a city or town in the marketing area, pursuant to Chapter 94, section 40, of the Massachusetts General Laws, or a majority of the dairy farmers delivering milk to the plant are approved by such an inspector as sources of supply for milk for sale in his municipality.

(3) The plant is operated neither as the plant of a producer-handler, nor as a pool plant pursuant to the provisions of the Boston or New York orders.

(b) *City pool plants.* Each city plant shall be a pool plant in each month in which at least 10 percent of its total receipts of fluid milk products other than cream is disposed of in the marketing area as Class I milk or in which it is operated by an association of producers.

(c) *Monthly qualification of country pool plants.* (1) Each country receiving plant shall be a pool plant in each month in which it ships a quantity of milk in excess of 50 percent of its total receipts of fluid milk products other than cream to the marketing area for disposition directly to consumers and as shipments to any city milk plant under either the Springfield or Worcester orders which disposes of more than 50 percent of its total receipts of fluid milk products other than cream as Class I milk.

(2) For each of the months of March through September, a plant which is qualified as a pool plant pursuant to the Worcester order shall not qualify as a Springfield pool plant.

(d) *Qualification of country pool plants for the March–September period.* Any country plant which qualifies as a pool plant under paragraph (c) of this section for each of the months of October through February in which this order is effective shall be qualified as a pool plant for each of the following months of March through September regardless of the quantity shipped to the marketing area if the market administrator receives the handler's written request for such qualification prior to March 1 of the same year.

§ 996.5 *Assignment of receipts to Class I milk and Class II milk*—(a) *Determination of each pool handler's net Class I milk.* For the purpose of computing the net quantity of each pool handler's Class I milk for which a value is to be computed pursuant to § 996.8 (a), his total Class I milk shall be assigned to sources in the following sequence:

(1) Class I receipts from New York, Boston, or Worcester order plants pursuant to paragraph (b) of this section.

(2) Receipts of fluid milk products, either than cream, from the regulated city plants of other handlers, except receipts of skim milk from producer-handlers.

(3) Receipts of outside milk at city plants.

(4) Milk received directly from producers at the handler's own city plant.

(5) Receipts of fluid milk products, other than cream, from the country pool plants of other handlers, in the order of the nearness of the plants to Springfield.

(6) Receipts of outside milk at the handler's own country plants in the order of the nearness of the plants to Springfield.

(7) Milk received from producers at the handler's own country plants which was shipped as fluid milk products, other than cream, in the order of the nearness of the plants to Springfield.

(8) Receipts of cream and milk products other than fluid milk products.

(b) *Receipts from plants subject to the New York, Boston, or Worcester orders.* (1) Receipts of fluid milk products, other then cream, from plants subject to the New York or Boston orders shall be assigned to the class in which they are classified under the respective order, except that if received from a plant subject to the New York order such receipts shall be assigned to Class I milk if classified in Classes I–A or I–B under the New York order, and shall be assigned to Class II milk if classified in any class other than I–A or I–B.

(2) Receipts of fluid milk products, other than cream, from plants subject to the Worcester order shall be assigned to Class I milk, unless the operator of the shipping plant and of the regulated plant file a joint written request to the market administrator for assignment to Class II of the fluid milk products so received. In such event, the fluid milk products shall be assigned to Class II milk up to the total Class II uses of fluid milk products other than cream at the regulated plant after deducting its receipts of outside milk.

§ 996.6 *Reports of handlers*—(a) *Monthly reports of pool handlers.* On or before the 8th day after the end of each month each pool handler shall, with respect to the fluid milk products received by the handler during the month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) The receipts of milk at each pool plant from producers, including the quantity, if any, received from his own production;

(2) The receipts of fluid milk products at each plant from any other handler assigned to classes pursuant to § 996.5;

(3) The receipts of outside milk at each plant; and

(4) The quantities from whatever source derived which were sold, distributed or used, including sales to other handlers and dealers, classified pursuant to § 996.3.

(b) *Reports of nonpool handlers.* Each nonpool handler shall file with the market administrator reports relating to his receipts and utilization of fluid milk products. The reports shall be made at the time and in the manner prescribed by the market administrator, except that any handler who receives outside milk during any month shall file the report on or before the 8th day after the end of the month.

(c) *Reports regarding individual producers.* (1) Within 20 days after a producer moves from one farm to another, or starts or resumes deliveries to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state, if known, the plant to which the producer had been delivering prior to starting or resuming deliveries.

(2) Within 15 days after the 5th consecutive day on which a producer has failed to deliver to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the last delivery was made, and the farm and plant locations involved. The report shall also state, if known, the reason for the producer's failure to continue deliveries.

(d) *Reports of payment to producers.* Each pool handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer pay roll for such month, which shall show for each producer:

(1) The daily and total pounds of milk delivered with the average butterfat test thereof; and

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

(e) *Maintenance of records.* Each handler shall maintain detailed and summary records showing all receipts, move-

ments, and disposition of milk and milk products during the month, and the quantities of milk and milk products on hand at the end of the month.

(f) *Verification of reports.* For the purpose of ascertaining the correctness of any report made to the market administrator as required by this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in reports submitted in accordance with this section;

(2) Weigh, sample, and test milk and milk products; and

(3) Make such examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this paragraph.

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

§ 996.7 *Minimum class prices* — (a) *Class I prices.* Each pool handler shall pay, in the manner set forth in § 996.9 and subject to the differentials set forth in paragraph (c) of this section, for his net Class I milk computed pursuant to § 996.8 (a), not less than the price per hundredweight determined for each month pursuant to this paragraph. In determining the Class I price for each month, the latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday, the latest reported figures available on the next succeeding work day shall be used.

(1) Divide by 0.98 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the year 1926 as the base period.

(2) Divide by 3 the sum of the three latest monthly indexes of department store sales in the Boston Federal Reserve District adjusted for seasonal variations, as reported by the Federal Reserve System, with the years 1935–39 as the base period, and divide the result so obtained by 1.26.

(3) Compute an index of grain-labor costs in the Boston milkshed in the following manner:

(i) Compute the simple average of the four latest weekly average retail prices per ton of dairy ration in the Boston milkshed, as reported by the United States Department of Agriculture, divide by 0.5044, and multiply by 0.6.

(ii) Compute the weighted average of the monthly composite farm wage rates for the latest available month for Maine, Massachusetts, New Hampshire, and Vermont, as reported by the United States Department of Agriculture, divide by 0.5952, and multiply by 0.4. In computing the weighted average, weight the respective rates as follows: Maine, 10; Massachusetts, 6; New Hampshire, 7; and Vermont 77.

(iii) Add the results determined pursuant to subdivisions (i) and (ii) of this subparagraph.

(4) Divide by 3 the sum of the final results computed pursuant to the preceding subparagraphs of this paragraph. Express the result as a whole number by dropping fractions of less than one-half or by raising fractions of one-half or more to the next whole number. The result shall be known as the formula index.

(5) Subject to the succeeding subparagraphs of this paragraph, the Class I price per hundredweight for milk received from producers at city plants, shall be as shown in the following table:

CLASS I PRICE SCHEDULE

[Class I price per hundredweight]

Formula index	Jan.-Feb.-Mar.-July-Aug.-Sept.	Apr.-May-June	Oct.-Nov.-Dec.
50–56	$2.21	$1.77	$2.65
57–63	2.43	1.99	2.87
64–70	2.65	2.21	3.09
71–77	2.87	2.43	3.31
78–84	3.09	2.65	3.53
85–90	3.31	2.87	3.75
91–97	3.53	3.09	3.97
98–104	3.75	3.31	4.19
105–111	3.97	3.53	4.41
112–118	4.19	3.75	4.63
119–125	4.41	3.97	4.85
126–132	4.63	4.19	5.07
133–139	4.85	4.41	5.29
140–146	5.07	4.63	5.51
147–152	5.29	4.85	5.73
153–159	5.51	07	5.95
160–166	5.73	5.29	6.17
167–173	5.95	5.51	6.39
174–180	6.17	5.73	6.61
181–187	6.39	5.95	6.83
188–194	6.61	6.17	7.05

If the formula index is more than 194 the price shall be increased at the same rate as would result from further extension of this table at the rate of extension in the six highest index brackets.

(6) The Class I price shall be 44 cents more than the price prescribed in subparagraph (5) of this paragraph, if, under the provisions of the Boston order, less than 33 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this subparagraph would cause the Class I price to be more than 88 cents above the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent increase as will result in a Class I price equal to the Class I price for the same month of the preceding year plus 88 cents.

(7) The Class I price shall be 44 cents less than the price prescribed in subparagraph (5) of this paragraph, if, under the provisions of the Boston order, more than 41 percent of the milk received by all pool handers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this subparagraph would cause the Class I price to be more than 88 cents below the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent reduction as will result in a Class I price equal to the Class I price for the same month of the preceding year minus 88 cents.

(8) Notwithstanding the provisions of the preceding subparagraphs of this paragraph, the Class I price for any of the months of March through June of each year shall not be higher than the Class I price for the immediately preceding month, and the Class I price for any of the months of September through December of each year shall not be lower than the Class I price for the immediately preceding month.

(9) The Class I price determined under the preceding subparagraphs of this paragraph shall be increased or decreased to the extent of any increase or decrease in the rail tariff for the transportation of milk in carlots in 40-quart cans for mileage distances of 100–110 miles, inclusive, as published in the New England Joint Tariff, M–5, and supplements thereto. The adjustment shall be made to the nearest one-half cent per hundredweight, and shall be effective in the first complete month in which such increase or decrease in the rail tariff applies.

(b) *Class II price.* Each handler shall pay in the manner set forth in § 996.9 and subject to the differentials set forth in paragraph (c) of this section for his net Class II milk computed pursuant to § 996.8 (a) not less than the price per hundredweight determined for each month pursuant to this paragraph.

(1) Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the month during which such milk is delivered, and multiply the result by 3.7.

(2) Multiply by 7.5 the average price per pound of roller process nonfat dry milk solids for human consumption, in carlots, f. o. b. Chicago area manufacturing plants, as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the month during which such milk is received.

(3) Add the results obtained in subparagraphs (1) and (2) of this paragraph, and from the sum subtract the amount shown below for the applicable month. The result is the Class II price per hundredweight for milk received from producers at city plants.

Month:	*Amount (cents)*
January and February	57.5
March and April	69.5
May and June	75.5
July	69.5
August and September	63.5
October, November and December	57.5

(c) *Differentials for place of receipt of milk.* For milk received by a handler at a country plant there shall be deducted from the applicable prices pursuant to paragraphs (a) and (b) of this section the following amounts applicable to Class I milk and Class II milk at such plant as adjusted pursuant to paragraph (d) of this section. The distance of any plant from the marketing area recognized for the purpose of this section shall be the distance ascertained by the market administrator as the shortest distance from the plant to the City Hall, Springfield, Massachusetts over highways on which the Highway Departments of the governing States permit milk tank trucks to move, or the railway mileage distance to Springfield, Massachusetts from the nearest railway shipping point for such plant, whichever is shorter.

A	B	C
Zone (miles)	Class I price differentials (cents per cwt.)	Class II price differentials (cents per cwt.)
Less than 40½	(1)	(1)
41-50	−41.5	−2.0
51-60	−42.5	−3.0
61-70	−43.0	−3.0
71-80	−44.5	−3.0
81-90	−45.0	−3.0
91-100	−45.5	−3.0
101-110	−45.5	−4.5
111-120	−47.0	−4.5
121-130	−47.0	−4.5
131-140	−48.0	−4.5
141-150	−50.5	−4.5
151-160	−52.0	−6.0
161-170	−52.0	−6.0
171-180	−54.5	−6.0
181-190	−54.5	−6.0
191-200	−56.0	−6.0
201-210	−56.0	−7.0
211-220	−60.0	−7.0
221-230	−60.5	−7.0
231-240	−61.5	−7.0
241-250	−61.5	−7.0
251-260	−62.5	−8.0
261-270	−63.0	−8.0
271-280	−63.5	−8.0
281-290	−64.5	−8.0
291 and over	−65.5	−8.0

[1] No differential.

(d) *Automatic changes in zone price differentials.* In case the rail tariff for the transportation of milk in carlots in 40-quart cans (minimum 200 cans) or for the transportation of cream in 40-quart cans in carlots of 100-199 cans, as published in New England Joint Tariff—M No. 5 and supplements thereto or revisions thereof, is increased or decreased, the zone price differentials set forth in paragraph (c) of this section shall be correspondingly increased or decreased in the manner and to the extent provided in this paragraph. Such adjustments shall be effective beginning with the first complete month in which the changes in rail tariffs apply. If such rail tariff on milk is changed, the differentials set forth in Column B of the table shall be adjusted to the extent of any such change. If such rail tariff on cream is changed, the differentials set forth in Column C of the table shall be adjusted to the extent of any such change divided by 9.05. Adjustments shall be made to the nearest one-half cent per hundredweight.

(e) *Use of equivalent prices in formulas.* If for any reason a price, index or wage rate specified by this section or § 996.9 (d) for use in computing class prices and for other purposes is not reported or published in the manner described by this section or § 996.9 (d), the market administrator shall use a price, index or wage rate determined by the Secretary to be equivalent to or comparable with the factor which is specified.

(f) *Announcement of class prices and differentials.* The market administrator shall make public announcements of the class prices in effect pursuant to this section, as follows:

(1) He shall announce the Class I price for each month on the 25th day of the preceding month, except that if such 25th day is a Sunday or legal holiday he shall announce the Class I price on the next succeeding work day.

(2) He shall announce the Class II price on or before the 5th day after the end of each month.

§ 996.8 *Minimum blended prices to producers*—(a) *Computation of net value of milk used by each pool handler.* For each month, the market administrator shall compute the net value of milk which is sold, distributed, or used by each pool handler, in the following manner:

(1) From the total Class I milk and Class II milk, sold, distributed, or used, from whatever source derived, subtract all receipts from other handlers except outside milk, assigned to classes pursuant to § 996.5;

(2) Multiply the quantity of milk remaining in each class by the price applicable pursuant to § 996.7 (a) and (b);

(3) Add together the resulting value of each class;

(4) Subtract the value obtained by multiplying the quantity of receipts of outside milk by the price applicable pursuant to § 996.7 (b); and

(5) Add the amount of payments required from the pool handler pursuant to § 996.9 (g).

(b) *Computation of the basic blended price.* The market administrator shall compute the basic blended price per hundred weight of milk delivered during each month in the following manner:

(1) Combine into one total the respective values of milk, computed pursuant to paragraph (a) of this section, for each pool handler from whom the market administrator has received at his office, prior to the 11th day after the end of such month, the report for such month and the payments required pursuant to § 996.9 (b) (2) and (g) for milk received during each month since the effective date of the most recent amendment to this order;

(2) Add the total amount of payments required from handlers pursuant to § 996.9 (f) and from buyer-handlers and producer-handlers pursuant to § 996.9 (g);

(3) Add the amount of unreserved cash on hand at the close of business on the 10th day after the end of the month from payments made to the market administrator by handlers pursuant to § 996.9;

(4) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable pursuant to § 996.9 (e);

(5) Divide by the total quantity of milk, exclusive of outside milk, for which a value is determined pursuant to subparagraph (1) of this paragraph; and

(6) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in § 996.9. This result shall be known as the basic blended price for milk containing 3.7 percent butterfat.

(c) *Announcement of blended prices.* On the 12th day after the end of each month the market administrator shall mail to all pool handlers and shall publicly announce:

(1) Such of these computations as do not disclose information confidential pursuant to the act;

(2) The zone blended prices per hundredweight resulting from adjustment of the basic blended price by the differentials pursuant to § 996.9 (e); and

(3) The names of the pool handlers, designating those whose milk is not included in the computations.

§ 996.9 *Payments for milk* — (a) *Advance payments.* On or before the 10th day after the end of each month, each pool handler shall make payment to producers for the approximate value received during the first 15 days of such month. In no event shall such advance payment be at a rate less than the Class II price for such month. The provisions of this paragraph shall not apply to any handler who, on or before the 17th day after the end of the month, makes final payment as required by subparagraph (1) of paragraph (b) of this section.

(b) *Final payments.* On or before the 25th day after the end of each month, each pool handler shall make payment for the total value of milk received during such month as required to be computed pursuant to § 996.8 (a) as follows:

(1) To each producer at not less than the basic blended price per hundredweight, subject to the differentials provided in paragraphs (d) and (e) of this section, for the quantity of milk delivered by such producer; and

(2) To producers, through the market administrator, by paying to, on or before the 23d day after the end of each month, or receiving from the market administrator, on or before the 25th day after the end of each month, as the case may be, the amount by which the payments required to be made pursuant to subparagraph (1) of this paragraph for 3.7 percent milk are less than or exceed the value of milk as required to be computed for such handler pursuant to § 996.8 (a), as shown in a statement rendered by the market administrator on or before the 20th day after the end of such month.

(c) *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments pursuant to paragraphs (b) (2),

(f) or (g) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is payable by the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of an amount less than is required by this section, the handler shall make up such payment to the producer not later than the time of making final payment for the month in which such error is disclosed.

(d) *Butterfat differential.* Each handler shall, in making payments to each producer for milk received from him, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator, as follows:

(1) Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, subtract 1.5 cents, and divide the result by 10.

(e) *Location differentials.* The payments to be made to producers by handlers pursuant to subparagraph (1) of paragraph (b) of this section shall be subject to the differentials set forth in Column B of the table in § 996.7 (c), and to further differentials as follows:

(1) With respect to milk delivered by a producer whose farm is located in any of the following cities or towns, there shall be added 23 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 996.7 (a) and (c) which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price:

Massachusetts: Otis, Becket, Washington, Hinsdale, Peru, Windsor, Savoy, Sandisfield, and Florida;

Vermont: Wilmington, Marlboro, Brattleboro, Dover, Newfane, Dummerston, and Putney;

New Hampshire: Chesterfield and Westmoreland.

(2) With respect to milk delivered by a producer whose farm is located in Franklin, Hampshire, Hampden, or Worcester Counties in Massachusetts or in any of the following cities or towns, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 996.7 (a) and (c) which is effective at the plant to which such milk is delivered, in which event there shall be added an amount which will give as a result such price:

Connecticut: Granby, Suffield, Enfield, Somers, and Ellington;

Vermont: Reedsboro, Whitingham, Halifax, Guilford, and Vernon;

New Hampshire: Hinsdale and Winchester.

(f) *Payments on outside milk.* (1) Within 23 days after the end of each month, each buyer-handler or producer-handler, whose receipts of outside milk are in excess of his total use of Class II milk after deducting receipts of cream, shall make payment on such excess quantity to producers, through the market administrator, at the difference between the price pursuant to § 996.7 (a) and the price pursuant to § 996.7 (b) effective for the location or freight mileage zone of the plant at which the handler received the outside milk.

(2) Within 23 days after the end of each month, each handler who operates an unregulated plant from which outside milk is disposed of to consumers in the marketing area without intermediate movement to another plant shall make payment to producers, through the market administrator, on the quantity so disposed of. The payment shall be at the difference between the price pursuant to § 996.7 (a) and the price pursuant to § 996.7 (b) effective for the location or freight mileage zone of the handler's plant.

(g) *Payments on other Federal order milk.* Within 23 days after the end of each month, each pool handler, buyer-handler, or producer-handler, who has received milk or milk products from a Boston, New York or Worcester Federal order plant which have been assigned to Class I milk shall make payment on such quantity to producers, through the market administrator, at the difference between the price pursuant to § 996.7 (a) effective for the location or freight mileage zone of the plant from which the handler received the milk or milk product, adjusted by paragraph (d) of this section and the Class I price (Class I-A or I-B in the case of a New York order plant) at the other Federal order plant from which such Class I milk was received adjusted by the applicable butterfat differential.

(h) *Adjustment of overdue accounts.* Any balance due pursuant to this section, to or from the market administrator on the 10th day of any month, for which remittance has not been received in, or paid from, his office by the close of business on that day, shall be increased one-half of 1 percent, effective the 11th day of such month.

(i) *Statements to producers.* In making the payments to producers prescribed by subparagraph (1) of paragraph (b) of this section, each pool 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 month and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of paragraphs (b), (d) and (e) of this section;

(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, including any deductions claimed under § 996.10, together with a description of the respective deductions; and

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

§ 996.10 *Marketing services*—(a) *Marketing service deduction.* In making payments to producers pursuant to § 996.9, each handler shall, with respect to all milk delivered by each producer other than himself during each month, except as set forth in paragraph (b) of this section, deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, and shall, on or before the 23d day after the end of each month, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information to, and for verification of weights, samples, and tests of milk delivered by such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk delivered by, such producers.

(b) *Marketing service deductions with respect to members of a producers' cooperative association.* In the case of producers who are members of an association of producers which is actually performing the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to § 996.9 as may be authorized by such producers and pay over on or before the 23d day after the end of each month, such deduction to such associations.

§ 996.11 *Expense of administration.* Within 23 days after the end of each month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this order. The payment shall be at the rate of 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, on the handler's receipts each month of milk from producers, including receipts from his own production, and receipts of outside milk.

On that quantity of fluid milk products other than cream which was received from a Boston, New York, or Worcester Federal order plant at which such milk or milk product has been assessed, the payment shall be made at a rate equal to the amount by which the rate of assessment under such other Federal order is less than the rate applicable pursuant to this section to milk received from producers.

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

(b) *Suspension or termination.* The Secretary may suspend or terminate this order or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this order, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

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

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

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

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

Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

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

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

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

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

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

Issued at Washington, D. C., this 27th day of September 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 49-7920; Filed, Sept. 30, 1949; 8:47 a. m.]

[7 CFR, Part 999]

HANDLING OF MILK IN WORCESTER, MASS., MILK MARKETING AREA

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

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR and Supps. Part 900; 13 F. R. 8585) notice is hereby given of the filing with the Hearing Clerk of a recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and to a proposed order regulating the handling of milk in the Worcester, Massachusetts, marketing area, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, Room 1353, South Bldg., United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 15th day after publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing on the record of which the proposed marketing agreement and the proposed order have been formulated was called by the Production and Marketing Administration, United States Department of Agriculture, following receipt of a proposed marketing agreement and order filed by the New England Milk Producers' Association and United Dairy System, Inc. The public hearing was held at Worcester, Massachusetts, July 25–August 2, 1949, after the issuance of notice on July 12, 1949 (14 F. R. 3816).

The material issues on the record relate to:

(a) Whether the handling of milk in the Worcester, Massachusetts, marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce;

(b) Whether the issuance of a marketing order for the Worcester, Massachusetts, marketing area will tend to effectuate the declared policy of the act;

(c) The provisions to be included in an order if one is issued.

The evidence on this issue involved:

(1) The extent of the marketing area;

(2) The definition of "producer," "handler," "pool plant," "outside milk," and other terms;

(3) The classification of milk and milk products;

(4) Assignment of classified milk and milk products to receipts from producers and from other sources;

(5) The determination and level of class prices;

(6) The determination of the uniform price to producers with appropriate differentials;

(7) Marketing service provisions;

(8) The administration assessment, and

(9) The administrative provisions common to all orders.

Findings and conclusions. Upon the basis of the evidence adduced at the hearing and on the record thereof, it is hereby found and concluded that:

(a) The handling of milk in the Worcester, Massachusetts, marketing area is in the current of interstate commerce and directly burdens, obstructs, and affects interstate commerce in milk and its products.

Substantial interstate movement occurs with respect to milk produced for the Worcester, Massachusetts, marketing area, and with respect to milk products produced therefrom. The milk supplies for the Springfield market are procured in direct competition with the larger interstate Boston market and to some extent in competition with the New York market.

Producers supplying milk to the Worcester market are located principally in Massachusetts, Vermont and New York.

The records of the Massachusetts Milk Control Board indicate that milk moves

into the Worcester market from out-of-state sources during every month of the year.

The Worcester market is located between the New York and Boston milk supply areas and the Worcester supply area intermingles with each of these markets in eastern New York and southern Vermont where both of these two large milk markets obtain milk from producers. One handler supplying the Worcester market has a receiving station in New York and another has a receiving station in Vermont from which milk is shipped regularly to the Worcester market and from which they also supply milk to the Springfield market.

The flow of milk into the Worcester market is affected by the relationship of that market's prices to the prices paid New York and Boston producers. Price relationships which interrupt or interfere with the economical disposition of milk in this area burden, obstruct and affect interstate commerce in milk and its products.

(b) Marketing conditions in the Worcester area indicate that the issuance of a marketing order such as that set forth herein will tend to effectuate the declared policy of the act with respect to milk produced for the Worcester market.

The record shows that conditions exist in the Worcester market which permit handlers to purchase milk for fluid use at substantially different prices. These conditions must be modified in order to establish and maintain such orderly marketing conditions as will establish prices to producers for milk delivered to the Worcester market that reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and milk products in the marketing area and which will insure a sufficient quantity of pure and wholesome milk and be in the public interest.

The unsettling conditions which are disrupting the Worcester market result from the opportunity on the part of milk handlers to purchase milk from producers outside Massachusetts on a wholly unregulated price basis whereas the handlers who purchase milk from Massachusetts producers are required to make payments to producers in accordance with a classified price plan enforced by the Massachusetts Milk Control Board. The classified price plan in the Worcester market is similar to that in use in several New England markets. Class I milk, principally fluid milk and milk drinks sold in bottles is priced relatively higher than milk for all other uses which is Class II.

Handlers purchasing milk under the regulations of the Massachusetts Milk Control Board are required to pay Massachusetts producers delivering milk to their plants these prices for the quantities of milk utilized in such classes. Handlers buying milk out of State are subject to no governmental price regulation and purchase milk at a price competitive with the prices paid to producers in those areas for all milk. The level of the competitive price is dominated by either the uniform price established for producers delivering milk to plants regulated by the New York Federal milk order or the Boston Federal milk order or both. The uniform prices established under the Boston and New York Federal milk orders reflect the average percentage of Class I and of Class II in each of these markets. To the extent that any handler in the Worcester area has sales of Class I milk which give him a higher utilization of Class I milk than the average for either the New York or Boston markets, that handler can purchase milk from producers outside Massachusetts for such Class I sales at the uniform blend price paid producers in the Boston and New York markets for all milk. The evidence in this record indicates that handlers are aware of this opportunity, that some handlers have acquired milk on this flat price basis and that at least one handler intends to expand this type of buying in preference to purchasing milk from Massachusetts producers.

The advantage accruing to a handler purchasing milk outside the State of Massachusetts has increased in recent months as the uniform blend prices in the New York and Boston markets have dropped relative to the Class I price in each of these markets and in the Worcester market. The lower uniform prices result from substantial declines in excess milk values and in an increase in the quantity of milk utilized in excess classes.

In addition to the disturbing influence of out-of-State milk in the Worcester market, the lack of a uniform market-wide price plan for all producers supplying the market is a disrupting factor. In May 1949 prices paid to producers delivering to different handlers varied as much as $1.24 per hundredweight in this area for milk of basic 3.7 percent butterfat content.

The lack of price regulation effective with respect to all of the sources of fluid milk for the Worcester market and the absence of a uniform market-wide pricing method are contributing to the growth of an unstable milk market in this area. A marketing order is needed in the area to assure producers of a market for their milk at reasonable and uniform prices.

(c) From the evidence it is concluded that the proposed marketing agreement and order which are hereinafter set forth, and all the terms and provisions thereof, meets all the needs of the Worcester market and will tend to effectuate the declared policy of the act. The following findings and conclusions are made with respect to the various provisions of the marketing agreement and order.

(1) *Extent of the marketing area.* The marketing area should include the following Massachusetts cities and towns:

Auburn.	Northbridge.
Boylston Center.	Paxton.
Clinton.	Rutland.
Grafton.	Shrewsbury.
Holden.	Spencer.
Leicester.	West Boylston.
Millbury.	Worcester.

This is an area of relative concentration of population and industrial enterprises. Many of the dealers distributing milk in this area are operating in several of the cities or towns named. In general, the delivery routes of dealers in the area overlap or intersect to such an extent that there is close and direct competition between dealers throughout the area.

The sources of milk supply for the various cities and towns in the proposed marketing area overlap and are intermingled to such an extent that the general supply area may be considered as one milkshed for the entire marketing area. In many cases handlers receive milk at a plant supplying several of the towns in the marketing area.

With the exception of Clinton, Northbridge, and Rutland, the marketing area specified herein is identical with the cities and towns included in the Worcester marketing area in a study of the Worcester market made by State and Federal agencies in 1945. Clinton and Northbridge are important industrial centers adjacent to the Worcester marketing area as it was defined in 1945. These towns each have a population of over 10,000. Worcester dealers now sell substantial volumes of milk in each town. Clinton and Northbridge should be included in the Worcester marketing area to round out the urban and industrial area which centers in the City of Worcester and in which milk delivery routes are served from Worcester plants.

The marketing area should not, in general, contain small rural fringe towns. While some of these towns contain the ends of routes which spill over from the marketing area, the record does not indicate any that are integral to the Worcester market except Rutland. It is important to have the adjacent town of Rutland included in the marketing area because of the location there of a veterans' hospital purchasing substantial quantities of milk. Unless Rutland is included, Worcester dealers may continue to be outbid for the hospital business by outside dealers who, the record shows, have offered unregulated milk at less than the producer Class I price.

(2) *Definition of terms.* The term "producer" should be defined in order to identify those dairy farmers who are considered as the regular sources of supply for the market, and to whom the minimum prices specified should be paid. Determination of producer status should be made on the basis of delivery of milk from the producer's farm to a pool plant. The proposed method of determining which plants are pool plants is discussed later in this decision.

The term "producer" should not include a dairy farmer delivering milk to a pool plant during March through September if, during any of the previous months of October through February, milk from his farm was received as nonpool milk for more than 3 days by the same handler. Such a limitation would discourage a handler from shifting the milk of certain dairy farmers into the Worcester market in the months of relatively higher milk production if their milk had been used by the handler as a supply for another market during other months. The definition should however allow a handler to occasionally divert the milk of some producers to nonpool plants, if such producers ordinarily deliver to a pool plant of the handler, and the handler reports the milk as producer receipts at his pool plant transferred to the nonpool plant. This provision will facil-

itate interplant movements of milk for the purpose of adjusting to short-time variations in supply and requirements without depriving the farmers producing the milk of their status as producers.

Dairy farmers who distribute their own production but do not receive any milk from other dairy farmers would not be included in the proposed definition of producer, except in respect to bulk milk which they may deliver to a pool plant.

There were no alternative proposals made for the definition of producer, although there were two different proposals as to the method of determining which plants would be included in the market-wide pool, which would be a determining factor as to which dairy farmers are producers for the market.

These two proposals were made with respect to the qualification of plants as pool plants. Specific requirements for pool plants are needed in the order to serve as a measure of which plants are to be considered as needed to supply the fluid milk requirements of the marketing area. The determination of pool plant status is the essential part of the determination of which dairy farmers are to be included in the market-wide pool.

Both proposals on determining pool plant status contained a similar provision which would qualify a city plant which had met applicable licensing requirements if the operating handler disposed of a volume of Class I milk in the marketing area equal to 10 percent of receipts at such plant. Such a provision would assure producers of receiving the uniform market price for milk delivered to a handler having a substantial part of his fluid milk business in the area. Handlers operating on the fringe of the area who sell only a small part of their milk in the area would thereby be excluded from the pool. Such a provision should be adopted in the order.

Worcester is almost exactly the same distance from Springfield, Lowell, Boston and Fall River. The supply area for the Worcester market overlaps with the supply areas of other markets. Since milk plants in this region often supply more than one market it is important to establish standards which will identify a plant which is primarily supplying the Worcester Class I milk market. One proposal made at the hearing would qualify country plants during any of the months of October through March substantially on the basis of 50 percent of the receipts from dairy farmers at such plant being accounted for as Class I disposed of in the marketing area, with the Class I utilization at a city plant receiving such milk assigned first to other Federal order milk, receipts from other handler's city plants, and milk received directly from producers at the city plant. Such a requirement would operate to include in the pool only country plants which are needed to supply Class I milk to the market to the extent of 50 percent of the plant's receipts from dairy farmers.

A 50 percent requirement is considered to be a substantial indication that the plant is a source of fluid milk supply for the marketing area, and in general provides a measure of flexibility such that handlers can carry a considerable volume of reserve to meet changes in requirements. Some modification of the proposal as made at the hearing is needed.

The requirements for qualifying a country plant for the pool should make it possible for a handler to determine whether a plant was likely to qualify under the applicable rules. The proposal to tie in qualification of country plants with the assignment of milk to classes at city plants would make the qualification for pooling each country plant which ships to another handler's city plant too largely dependent upon the other handler's operations at his city plant. If too small a base is provided for determining the quantity of shipments from the country plant which shall be assigned to Class I at the city plant, an audit revision or even a shift in inventory might exclude a plant from the pool. In determining pool plant status, a country plant which ships in the form of milk 50 percent of its total receipts to a city plant which is predominantly a fluid milk distributing plant, should be considered as having made the required Class I disposition in the marketing area. The requirements for allocating Class I milk to all receipts at city plants in advance of receipts at country plants in the application of freight differentials to class prices should prevent a handler from shipping unnecessary quantities of milk to the marketing area only for the purpose of qualifying a plant which is not needed for the markets fluid milk sales.

Although some objection to the 50 percent Class I requirement was made by handlers at the hearing on the supposition that a handler might fail to qualify a particular country plant in some month because of a miscalculation which would result in slightly less than 50 percent Class I, there should be no difficulty in a handler's being able to ascertain with certainty that he actually shipped in the form of milk more than 50 percent of the total receipts at the country plant to a city plant at which more than 50 percent of its total receipts were Class I. For plants regularly shipping to the market throughout the year, it was proposed that the 50 percent Class I requirement should have effect only during the 6 months of October through March, since a plant which had qualified as a pool plant during these months could upon request qualify during the following months of April through September regardless of the quantity of milk disposed of in the marketing area from this plant. The record indicates that if a handler found it difficult to qualify a plant during any of the months October through March, the difficulty would arise in the month of March when receipts are usually seasonally greater than in the other qualifying months. To provide for this possible difficulty, the qualifying months should be reduced to the months October through February so that a plant qualified for each month in that period could be a pool plant on request during the following March through September without meeting the 50 percent standard.

The record indicates that at least two country plants regularly supply milk to both the Springfield and Worcester markets. These plants are recognized as reserve sources for each market and certainly should be included in one pool or the other. Since each of these plants serves a dual reserve purpose, it might be difficult to meet the 50 percent requirement unless shipments to the Springfield and Worcester markets are combined for the purpose of determining pool plant qualification. Such a plant should then be considered a pool plant in the Worcester market if the total qualifying shipments to Worcester exceed those to Springfield. This modification in the 50 percent requirement should make it possible for such plants regularly supplying milk to the market to qualify as pool plants. It is not necessary, therefore, to designate certain named plants as pool plants.

There does appear to be a reasonable basis for qualifying a city plant of a cooperative association as a pool plant. The Worcester plant of the New England Milk Producers' Association receives milk directly from dairy farmers only temporarily while they are out of a market. If it is a pool plant in any month in which it receives milk directly from dairy farmers, it can provide a market for producers who are temporarily deprived of an outlet because of some shift in market organization.

The other proposal with respect to qualifying pool plants would allow a country plant to qualify during the months of August through March if it met licensing requirements and supplied any milk in the form of milk to the marketing area during one of two consecutive months. This proposal, which is patterned after the pool-plant qualifications under the Boston order, appears unsuited to a smaller market where inclusion or withdrawal of a few country plants could be very disturbing to the market.

Plants at which producer prices are regulated by the New York or Boston orders should not be pool plants under the Worcester order. Regulation by two orders would be complex and is unnecessary to effectuate the purposes of the act. It is recognized that under present provisions of the Lowell-Lawrence order a plant might become subject to both the Lowell-Lawrence and Worcester orders. An amendment to the Lowell-Lawrence order is needed to relieve the plant from regulation under that circumstance. The evidence in the record indicates that such a plant should not be relieved of regulation under the Worcester order because it also becomes subject to the Lowell-Lawrence order.

The definition of outside milk proposed at the hearing and the proposed payments into the pool on outside milk would assure producers of receiving the Class I price for all Class I milk disposed of in the marketing area. The proposed definition would be similar to the definition used in the Boston order except that receipts from pool plants in other Federal order markets in New York and New England in which market-wide pools are effective would not be considered outside milk, since handlers in these markets are required to pay producers for the milk in accordance with its ultimate utilization. When such payments are less than would be required under this proposed order, a payment to equal such dif-

ference should be made to the producer settlement fund for reasons set forth under issue No. 6.

The term "regulated plant" should be defined as any pool plant; any pool handler's plant which is located in the marketing area and from which Class I milk is disposed of in the marketing area; any plant operated by a handler in his capacity as a buyer-handler or producer-handler, and any city plant of an association of producers. This term is broader than "pool plant" and is needed to describe plants at which milk will be accounted for according to utilization, and which are subject to some regulation with respect to pricing, payments, or reports.

The definition of handler should include any person who engages in the handling of milk which may be of his own production or purchased from dairy farmers or other handlers, and which is received at any plants from which fluid milk products are disposed of, directly or indirectly, in the marketing area. Such a definition is designed to include all persons whom it is necessary to regulate under the order to accomplish the purposes of the act. The definition would include several classes of handlers, such as: "pool handlers," who operate pool plants at which milk is received from producers and are primarily responsible for reporting receipts and utilization of producer milk and paying producers at least the specified minimum prices; "buyer-handlers" who receive their entire supply from other handlers; and "producer-handlers" mentioned heretofore.

Various other definitions which should be adopted are set forth in detail in the attached recommended order. Many of these definitions have been copied from the Boston order except for some changes to adapt them to the proposed order. These definitions are generally useful in setting forth the various provisions of the order. No objection was made at the hearing to their adoption.

Although definitions were proposed for the terms "marketing year," and "distributing plant," there does not appear to be any need for these definitions in the proposed order.

(3) *Classification of milk and milk products.* It was proposed that the order should provide for classification pursuant to the following general provisions of all milk and milk products received by a handler:

(1) Class I milk shall be all fluid milk products the utilization of which is not established as Class II milk.

(2) Class II milk shall be all fluid milk products the utilization of which is established:

(i) As being sold, distributed, or disposed of other than as or in milk; and other than as or in flavored milk or flavored skim milk, buttermilk, or cultured skim milk, for human consumption; and

(ii) As plant shrinkage, not in excess of 2 percent of the volume handled.

These general principles of classification are the same as are in use in other Federal order markets in New England and have been used in the Worcester market under orders of the Massachusetts Milk Control Board. The utilization of milk by handlers in the Worcester market is similar to that in these other New England markets.

The use of uniform basic principles of classification in the several Federal order markets in this area is desirable to promote understanding of the regulations by the industry and for ease in accounting for milk transferred between markets. These general provisions should be supplemented by specific provisions delineating the classification of milk and milk products transferred between plants and handlers.

Classification should be established primarily in accordance with utilization at regulated plants with no limit on the number of movements among regulated plants of pool handlers. Fluid milk products other than cream moved from a pool plant to an unregulated plant, or to the plant of a producer-handler, should be classified as Class I up to the total amount of corresponding milk products utilized as Class I at the unregulated plant. This in effect gives priority to producer milk in Class I at the unregulated plant, and is a safeguard for producers against receiving the Class II price for milk moved outside the marketing area which may have been used for Class I. It usually would be difficult to establish that such milk had not been used in Class I if there were Class I utilization at the unregulated plant. It is reasonable to put the plant of a producer-handler in the same category with unregulated plants, in this respect, since the producer-handler's own milk is not subject to regulation.

If fluid milk products other than cream are moved from a regulated plant to an unregulated plant or to a regulated plant of a nonpool handler and thence to another such plant, the utilization should be considered to be Class I, since it is necessary in the interests of administrative economy to limit the number of nonpool plants through which the market administrator must follow the utilization of milk.

Milk moved from a city plant of a cooperative association in a month when such plant has no receipts from dairy farmers, should be classified in the same manner as milk moved from a regulated plant of a pool handler. The Worcester plant of the New England Milk Producers' Association handles surplus milk for other handlers, sells what it can as Class I, and ships substantial quantities to unregulated manufacturing plants in the season of flush production. This plant does not normally have receipts from dairy farmers. If it can move surplus milk of other handlers as Class II milk to unregulated manufacturing plants, it can provide a market for the milk of producers whose milk is needed by handlers for Class I milk during some parts of the year and which such handlers would not otherwise handle during the flush season.

Fluid milk products other than cream moved from the Worcester market to New York order plants and other Federal order plants in New England, except Fall River order plants, would be assigned to classes by the provisions of such other orders. Under the Worcester order the classification of such fluid milk products should be the same as that assigned under these other orders. Nothing in the record indicates any need for shipping any milk from the Worcester market to the Fall River market.

Cream and other non-fluid milk products moved from a regulated plant should be considered as Class II milk in accounting for the utilization of the shipping handler. It is expected that such a provision will simplify accounting procedure. Some provisions should be made in the order, however, to assure that a Worcester handler who receives such a transfer of cream and uses it in Class I will account to the pool for his total Class I utilization. This provision with respect to the classification of shipments of cream should be an exception to the general rule as to the responsibility of handlers in establishing classification. Otherwise the burden should rest upon the handler who receives the milk from producers to account for the milk and prove that it should not be Class I.

(4) *Assignment of receipts.* A system of assignment of receipts should be set forth in the order to allocate the volumes of Class I and Class II utilization between producer milk and nonproducer milk handled at the same plant. It was proposed at the hearing that fluid milk products received from other Federal order plants in a market-wide pool should be assigned to Class II during April through July, but that receipts of milk and flavored milk in other months should be Class I to the extent such milk is classified in Class I or the equivalent class under the other Federal order or unless specific Class II use is established. On the basis of the record it does not appear necessary to exclude from Class I during April through July milk from other Federal order plants in a market-wide pool.

Such milk would be accounted for to the pool in the other market as Class I. The record does not indicate that Worcester handlers will bring in additional milk, except limited quantities of special grades of milk, from another Federal order market during the flush months to displace producer milk in Class I if there is an equality of cost of Class I milk under the two orders. The exclusion of other Federal order milk from Class I in the flush season, although it is regularly used in Class I during other months, in effect would require these other markets to carry part of the burden of seasonal surplus for the Worcester market.

On the basis of the evidence in the record it appears that milk and milk products received from other Federal order markets in which a market-wide pool is in operation should be assigned to Class I to the extent that it is classified in Classes I–A or I–B under the New York order or in Class I under other Federal orders. Receipts of all other milk and milk products, including all receipts from other Federal order plants in which an individual dealer pool is in operation, should be assigned to Class II milk.

It was proposed at the hearing that outside milk be assigned to Class II without regard to specific use. The recommended provisions of the proposed order do not assign all outside milk to Class II, but the recommended provisions do ac-

complish the purpose of assuring that handlers will make payments into the pool on any outside milk which displaces producer milk in Class I. These payments are discussed under the section on payments to producers.

Further detailed assignment of Class I milk to the several plants of each handler is needed to arrive at the total value of milk in the pool. Class I milk received from other Federal order plants in a market-wide pool and milk from other handler's city plants should be assigned first to the Class I milk. Next the Class I milk of each handler should be assigned to outside milk received at city plants, and then to milk received directly from producers at his city plants. Class I milk should then be assigned to receipts from other handler's country plants and finally to milk received at the handler's own country plants, in order of nearness of the country plants to the marketing area.

This system of assignment of Class I milk to the plants of each handler, with the bulk of the milk assigned to nearby plants, affects the amount deducted from the value of the pool in the form of transportation differentials. It appears reasonable to require handlers to pay for Class I milk on the basis of most economical movement of such milk to the market.

(5) *Class prices.* Class prices for the Worcester market should be established on a formula basis similar to that under which class prices are determined for the Boston market. The Boston and Worcester milk markets are so interrelated that a close correlation of price changes is necessary to maintain stable market conditions. Boston is the larger market and therefore the dominant one in effecting price changes. The milksheds of these two markets overlap so that there is opportunity for producers to shift their supply from one market to the other if substantially different prices are offered. The Worcester market draws milk directly from plants at which milk is priced under the Boston milk order. Careful alignment of prices in the two markets is necessary to maintain equal cost of milk to handlers for milk used similarly.

The Worcester milk supply area is also intermingled with the New York milk supply area. Since the prices in the New York and Boston markets have been moving together, the alignment of Worcester prices with the Boston market should not result in any lack of alignment with the New York market.

The proposed method of formula pricing for Class I milk should be established for the Worcester market to maintain close relationship to the Boston price. For that reason the factors determining the price need to be the same in that Worcester order as those in the Boston order. Local factors in the Worcester market should be considered in determining the exact level of the Worcester price in relation to the Boston price.

The Boston market basic Class I price is determined at the 201–210 mile zone measured from Boston. The Worcester country plant supply area reaches out about 100 miles from Worcester. It appears reasonable that the Class I price at country plants should be about equal regardless of whether the shipment is made to Boston or to Worcester. It was argued at the hearing that such prices should be identical at all points. Such precise adjustment would fail to encourage the use of milk at plants near to Worcester for the Worcester market. General alignment in the country plant region is necessary.

City plant prices for Class I milk in these two markets must be approximately equal to prevent major shifts in producer deliveries from one market to the other.

The establishment of Class I prices at country and at city points involves the consideration of adequate differentials to reflect the difference in the value of milk at different points of delivery. The method of transportation of milk to the Worcester market differs from that in the Boston market in that shipments are generally smaller than those made to the Boston market and rail transportation which is used largely in Boston is not available on an adequate basis for the Worcester market. On the other hand the country plant area of northern New England is nearer to Worcester than to Boston. This location advantage just about offsets the higher freight cost incurred by Worcester handlers. Therefore, it is reasonable that Class I prices for the Worcester market be equal at city plants to those established for Boston city plants.

Transportation costs appear to be generally higher in the Worcester market because of the mode of transportation used. In order to determine a basis for adjusting the proposed schedule of allowances to reflect the smaller lot basis of shipment to the Worcester market, official notice has been taken of New England Joint Tariff M—No. 5 and supplements thereto. It was found that at current tariff rates the cost of shipping milk 100 miles in carlot rates in cans amounts to about 4 cents per hundredweight more than the cost of shipping milk in tank cars. The schedule of allowances in the Worcester order should reflect this additional 4-cent cost. A greater differential for country plant receiving stations was requested at the hearing. The evidence fails to show that the costs of operating receiving stations for the Worcester market are any greater compared to the operation of city plants than the difference set forth in the proposed order. The proposed allowance is the same as that recognized in the Boston order.

A price for Class II milk which moves with the price of milk for similar uses in the Boston market is necessary because of the interrelationship of the Worcester and Boston markets. The changes in market prices for cream and for nonfat dry milk solids appear to be a reasonable method of determining changes needed in the Class II price for the Worcester market.

Class II products manufactured in the Worcester area include various types of soft cheese and ice cream. Fluid cream is disposed of in the marketing area. Excess milk is moved outside the market for use in casein and sweetened condensed skim milk.

Since a large part of the Worcester milk supply is received directly at city plants, handlers have the problem of disposing of excess skim milk from their city plants which is similar to the handling of excess milk at country plants in the Boston milkshed. On the other hand, cream separated at city plants incurs no further transportation expense since it is utilized for the most part in the marketing area. Worcester is a deficit cream market and receives cream from country plants in the Boston milkshed and from midwestern sources. The cost of these cream purchases is about equal to the cost of cream delivered at Boston.

The Class II price at country points should reflect the cost of shipping cream to the Worcester market. The schedule of rates reflecting the cost of shipping cream in 100–199 can carlots was proposed and appears to be reasonable. Such a schedule of differentials should be established.

No differential factor to reflect cost of shipping nonfat solids needs to be included since it was found that city and country plants are situated similarly in this respect.

The last provision of this proposed section is a standard provision providing that when any prices, wage rates, or indexes are not available, the Secretary shall make a determination with respect to an equivalent factor. This section also provides for the announcement of class prices and differentials by the market administrator. These standard provisions should be adopted.

(6) *Payments to producers.* The percentage of milk utilized by individual handlers in Class I varies so widely that prices to producers have differed under an individual handler type pool by over $1.00 per hundredweight. Provision should be made for a market-wide type of pool in order that all producers delivering milk to all handlers may receive a uniform minimum price for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered. This method of paying producers will require a producer-settlement fund for making adjustments in payments by handlers so that the total sum paid by each handler shall equal the value of milk received by him and utilized in the classes established by the proposed marketing agreement and order.

The uniform price paid to producers should reflect differentials for the location at which the milk is delivered and for the customary market practice of paying somewhat higher prices to producers located near the sales area.

Differentials which vary with the location of the plant at which a producer delivers his milk have been in common use in the Worcester and other New England markets. Payments to producers are modified according to the schedules of differentials applicable to the Class I price. The amount of such differentials is discussed under issue No. 5.

A system of differentials to be paid producers located near to the marketing area similar to the plan in effect under the Boston Federal milk order was supported by the producers who proposed the marketing order.

Most of the dairy farms in Massachusetts are close to urban centers. This probably explains why prices to Massa-

chusetts farmers for milk sold wholesale average considerably more than the prices paid to Vermont farmers. This difference cannot be attributed to transportation cost alone. The many opportunities for dairymen to market their own milk directly influence the price which they demand for their product.

The nearby differential plan has been a part of the payment plan in the Boston milk order for many years. The nearby differential area for the Boston market overlaps the Worcester supply area. Producers in this area are accustomed to receiving a price which reflects the Boston differential payment. Such a differential plan is necessary in the Worcester market to reflect this customary differential.

The producers and handlers opposing the differential plan indicated their real concern was that their net price would fall below the competitive price in their territory and they would have to seek other outlets for their milk. The record indicates that the utilization of surplus milk in Worcester is lower than in either New York or Boston markets. In fact the market has limited facilities for handling surplus milk. In view of this situation it is not likely that the Worcester uniform price under the proposed order would fall below the competitive prices under the New York and Boston orders in the near future.

If this price plan does tend to draw unnecessarily large surplus milk into the Worcester market, some revision of the proposed order would be needed. The nearby differential payment plan should be adopted as a provision of the proposed order.

In making payments to producers the amount of such payment per hundredweight should be modified by a butterfat differential to reflect the value of the producer's butterfat in excess of or less than 3.7 percent. The method of determining the butterfat differential in the Worcester market has been related to the Boston weighted cream price and this practice should continue. The proposed method of determining the exact differential is similar to that used in other Federal orders effective in the New England region.

Payments to producers should be made twice monthly with the option on the part of the handler to make a total payment in one amount not later than the 17th day after the end of the month. If the handler does not elect to make the final payment as early as the 17th day of the month in which milk is delivered, he must make an advance payment on or before the 10th day of the month in which the milk is delivered and the final payment on the 25th day of the month of delivery. This practice is similar to that effective in the Boston market.

In order to maintain an equal cost of milk to all handlers for milk used in similar classes and at the same time to permit occasional receipts of milk in the market from sources other than regular producers, it is necessary to provide that payments be made to the market administrator for the producer-settlement fund on any outside milk which replaces Class I producer milk sales. In the case of nonproducer milk which is received from handlers who are not subject to other Federal milk order regulations, the amount of such payment should be equal to the difference between the Class I and Class II prices effective for the location or freight mileage zone of the plant at which the handler received the outside milk. If such outside milk is received from a plant which is subject to another Federal order where a market-wide pool is in effect, the cost of such milk is established at equivalent levels by the other Federal order and any price advantage would be limited to the differences in freight allowances or the butterfat differentials which are permitted under the various orders. The Worcester market is located so that certain plants which are now a part of the Boston and New York pools have freight differentials which would be in excess of those allowable under the Worcester order if the plant were to become subject to this proposed order. In view of this situation it is necessary in order to establish an equal cost of milk for all handlers doing business in the Worcester market to require a payment into the producer-settlement fund on milk received from plants subject to these Federal milk orders equal to the difference between the Class I, I-A or I-B price established under that other order and the price which would be effective at that location if the plant were subject to the Worcester order. This payment is particularly necessary in view of the decision to permit milk to move into the Worcester market from other Federal market-wide pools with no restriction on the number of months during which such milk can be received for Class I use.

Provisions for the adjustment of overdue accounts and for providing a monthly statement to the producer along with his payment should be included in the order. These are patterned after similar provisions in other New England orders.

(7) *Market service provisions.* It is generally considered desirable under the marketing program to provide for certain services to nonmembers which are normally performed by the cooperative associations for their members. The particular services needed are those of verifying weights and tests of each producer's milk and furnishing producers with information about the milk market. In order to provide for such market services to all producers, a fund should be established from the payments which would otherwise go to producers. The rate of deduction should be not more than 3 cents to compensate the market administrator for providing such services. No deduction should be provided in the case of producers who are members of a cooperative association which is actually performing such services for its members on its own account. Such deductions should not be made on a producer-handler's own production since it is normal to assume that he is as generally familiar with the market as other handlers and that since he is marketing his own product the necessity for verifying weights and tests is not important for accurate payment.

(8) *Administration assessment.* The duties of the market administrator will require the maintenance of an office and the employment of persons to assist him in administering the order. The cost of the administration of the order should be prorated to all handlers in an equitable manner. In order to equalize the rate to all handlers the order should provide that the rate of payment is 4 cents per hundredweight on all milk which has not been assessed under other Federal milk orders. In the case of milk which has been assessed under another Federal milk order but at a lower rate than 4 cents per hundredweight, the assessment under the proposed Worcester or- the event a lesser amount proves to be between 4 cents and such lesser rate. In sufficient for the administration of the der should be equal to the difference for the Secretary to reduce the assessment accordingly without waiting for the proposed order, provision should be made formality of an amendment to the order.

(9) *Administrative provisions.* The marketing agreement and order should provide for other general administrative provisions which are common to all milk orders and which are incidental to and necessary to effectuate the other provisions of the order and necessary for proper and efficient administration of the order. These provisions provide for the selection of a market administrator, defining his powers and duties, prescribe the information to be reported by handlers each month, set forth various rules to be followed by the market administrator in making computations required by the order, and provide a plan for liquidation of the order in the event of its suspension or termination. No objections were raised by either the handlers or producers with regard to these standard provisions as set forth in the hearing notice except suggestions for minor changes in the language thereof. These provisions should be adopted with minor modifications.

It was proposed that the order provide specifically for the appointment of a committee of persons directly interested in the order to advise and consult with the market administrator on problems which might arise under the order. The exact duties of such a committee are difficult to define without some particular problem in mind. Since the market administrator can request interested persons to meet and discuss specific problems as they arise, establishment of a committee to consider problems generally does not appear to be necessary and should not be included in the order.

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

(b) The proposed marketing agreement and the order will regulate the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in the proposed marketing agreement upon which a hearing has been held; and

(c) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8 (e) of the act are not reason-

able in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the order are such as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

(d) It is hereby found and proclaimed in connection with the issuance of this recommended decision regarding the proposed marketing agreement and the proposed order regulating the handling of milk in the Worcester, Massachusetts, marketing area, that the purchasing power of such milk during the prewar period August 1909–July 1914 cannot be satisfactorily determined from available statistics of the Department of Agriculture, but the purchasing power of such milk for the period August 1919–July 1929 can be satisfactorily determined from available statistics of the Department of Agriculture, and the period August 1919–July 1929 is the base period to be used in connection with the said marketing agreement and said order in determining the purchasing power of such milk.

Rulings on proposed findings and conclusions. Briefs were filed on behalf of New England Milk Producers' Association, H. P. Hood & Sons, the Massachusetts Milk Control Board, Maurice H. Laipson, Deerfoot Farms Division of General Ice Cream Corporation, Deary Bros., Whiting Milk Company, and Hillcrest Dairy. Every point covered in the briefs was carefully considered, along with the evidence in the record in making the findings and reaching the conclusions hereinafter set forth. To the extent that such proposed findings and conclusions are inconsistent with the findings and conclusions contained herein the request to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions in this recommended decision.

Recommended marketing agreement and order. The following order 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 recommended decision because the regulatory provisions thereof would be the same as those contained in the recommended order.

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

§ 999.1 *Definitions.* The following words and phrases shall have the following meanings unless the context requires otherwise:

(a) *General.* (1) "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.).

(2) "Worcester, Massachusetts, marketing area," also referred to as the "marketing area," means the territory included within the boundary lines of the following Massachusetts cities and towns:

Auburn.	Northbridge.
Boylston Center.	Paxton.
Clinton.	Rutland.
Grafton.	Shrewsbury.
Holden.	Spencer.
Leicester.	West Boylston.
Millbury.	Worcester.

(3) "Order" used with the name of a marketing area other than the Worcester, Massachusetts, marketing area, means the applicable respective order issued by the Secretary regulating the handling of milk in that marketing area.

(4) "Month" means a calendar month.

(b) *Persons.* (1) "Person" means any individual, partnership, corporation, association, or any other business unit.

(2) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States who is, or who may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture.

(3) "Dairy farmer" means any person who delivers milk of his own production to a plant, except a producer-handler with respect to his deliveries in packaged form to another handler.

(4) "Dairy farmer for other markets" means any dairy farmer whose milk is received by a handler at a pool plant during the months of March through September from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler, received nonpool milk on more than 3 days in any one of the preceding months of October through February, except that the term shall not include any person who was a producer-handler during any of the preceding months of October through February.

(5) "Producer" means any dairy farmer whose milk is delivered from his farm to a pool plant, except a dairy farmer for other markets. The term shall also include a dairy farmer who ordinarily delivers to a handler's pool plant, but whose milk is diverted to one of the handler's nonpool plants, if the handler, in filing his monthly report pursuant to § 999.6 (a), reports the milk as receipts from a producer at such pool plant and as moved to the other plant.

(6) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(7) "Handler" means any person who in a given month operates a pool plant or engages in the handling of milk or other fluid milk products which are received at any plants from which fluid milk products are disposed of, directly or indirectly, in the marketing area.

(8) "Pool handler" means any handler who receives milk from producers at a pool plant.

(9) "Producer-handler" means any person who is both a handler and a dairy farmer, and who receives no milk from other dairy farmers except producer-handlers.

(10) "Buyer-handler" means any handler who operates a bottling or processing plant from which Class I milk is disposed of in the marketing area, and whose entire supply of fluid milk products is received from other handlers.

(11) "Dealer" means any person who engages in the business of distributing fluid milk products, or manufacturing milk products, whether or not he disposes of any fluid milk products in the marketing area.

(12) "Consumer" means any person to whom fluid milk products are disposed of, except a dealer. The term "consumer" includes, but is not limited to, stores, restaurants, hotels, bakeries, hospitals and other institutions, candy manufacturers, soup manufacturers, livestock farmers, and similar persons who are not necessarily the ultimate users. The term also includes any dealer in his capacity as the operator of any of these establishments, and in connection with any other use or disposition of fluid milk products not directly related to his operations as a dealer.

(c) *Plants.* (1) "Plant" means the land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products.

(2) "Receiving plant" means any plant currently used for receiving, weighing or measuring, sampling and cooling milk received there directly from dairy farmers' farms and for washing and sterilizing the milk cans in which such milk is received, and at which are currently maintained weight sheets or other records of dairy farmers' deliveries.

(3) "Pool plant" means any receiving plant, which in a given month, meets the conditions and requirements set forth in § 999.4 for being considered a pool plant in that month.

(4) "Regulated plant" means any pool plant; any pool handler's plant which is located in the marketing area and from which Class I milk is disposed of in the marketing area; any plant operated by a handler in his capacity as a buyer-handler or producer-handler; and any city plant operated by a cooperative association of producers.

(5) "Federal order plant" means any plant at which the milk received from dairy farmers is subject during the month to the minimum pricing provisions of another order of the Secretary regulating the handling of milk pursuant to the act.

(6) "City plant" means any plant which is located within 10 miles of the marketing area.

(7) "Country plant" means any plant which is located beyond 10 miles of the marketing area.

(d) *Milk and milk products.* (1) "Milk" means the commodity received from a dairy farmer at a plant as cow's

milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of 1 percent but less than 16 percent, frozen milk, and reconstituted milk.

(2) "Cream" means that portion of milk, containing not less than 16 percent of butterfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, in all forms and mixtures, including sweet, sour, frozen, and aerated cream.

(3) "Skim milk" means that fluid product of milk which remains after the removal of cream, and which contains less than one-half of 1 percent of butterfat.

(4) "Fluid milk products" means milk, flavored milk, cream, skim milk, flavored skim milk, cultured skim milk, and butter-milk, either individually or collectively.

(5) "Pool milk" means milk, including milk products derived therefrom, which a handler has received as milk from producers.

(6) "Outside milk" means:

(i) All milk received from dairy farmers for other markets.

(ii) All nonpool milk, including other fluid milk products derived therefrom except cream, which is received at a regulated plant from any unregulated plant, except receipts from a New York, Boston, or Springfield order pool plant; and

(iii) All Class I milk, after subtracting receipts of Class I milk from regulated plants, which is disposed of to consumers in the marketing area from an unregulated plant without its intermediate movement to another plant.

§ 999.2 *Market administrator*—(a) *Designation.* The agency for the administration of this order 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.

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

(1) To administer its terms and provisions;

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

(3) To receive, investigate, and report to the Secretary complaints of violations of its terms and provisions; and

(4) To recommend to the Secretary amendments to it.

(c) *Duties.* The market administrator, in addition to the duties described in other sections of this order, shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with sureties thereon satisfactory to the Secretary;

(2) Pay, out of the funds provided by § 999.11, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office;

(3) Keep such books and records as will clearly reflect the transactions provided for in this order and surrender the same to his successor, or to such other person as the Secretary may designate;

(4) Unless otherwise directed by the Secretary, publicly disclose, within 30 days after such nonperformance becomes known to the market administrator, the name of any person who, within 2 days after the date on which he is required to perform such acts, has not:

(i) Made reports pursuant to § 999.6 or

(ii) Made payments pursuant to § 999.9.

(5) Prepare and disseminate for the benefit of producers, consumers, and handlers, statistics and information concerning the operation of this order;

(6) Promptly verify the information contained in the reports submitted by handlers; and

(7) Give each of the producers delivering to a plant as reported by the handler prompt written notice of their actual or potential loss of producer status, for the first month in which the plant's status has changed or is changing to that of a nonpool plant.

§ 999.3 *Classification of milk and milk products*—(a) *Classes of utilization.* All milk and milk products received by a handler shall be classified as Class I milk or Class II milk. Subject to the other provision of this section, the classes of utilization shall be as follows:

(1) Class I milk shall be all fluid milk products the utilization of which is not established as Class II milk.

(2) Class II milk shall be all fluid milk products the utilization of which is established:

(i) As being sold, distributed, or disposed of other than as or in milk; and other than as or in flavored milk or flavored skim milk, buttermilk, or cultured skim milk, for human consumption; and

(ii) As plant shrinkage, not in excess of 2 percent of the volume handled.

(b) *Interplant movements of fluid milk products other than cream.* Fluid milk products, except cream, moved to another plant from a pool plant or from the city plant of an association of producers shall be classified as follows:

(1) If moved to another pool plant, they shall be classified in the class to which they are assigned at the plant of receipt pursuant to § 999.5.

(2) If moved to a buyer-handler's plant, they shall be classified as Class I milk, unless Class II utilization is established.

(3) If moved to a producer-handler's plant, or to any unregulated plant except a plant subject to the New York, Boston, Lowell-Lawrence, or Springfield orders, they shall be classified as Class I milk up to the total quantity of the same form of fluid milk products utilized as Class I milk at the plant to which they were moved.

(4) If moved to a plant subject to the New York, Boston, Lowell-Lawrence, or Springfield orders, it shall be classified in the same class to which the receipt is assigned under such order, except that if moved to a plant subject to the New York order it shall be classified as Class I milk if classified in Classes I–A, I–B, or I–C under the New York order, and shall be classified as Class II milk if classified in any class other than I–A, I–B, or I–C under the New York order.

(5) If moved to a regulated plant of a nonpool handler, except the city plant of an association of producers, or to any unregulated plant except a plant subject to the New York, Boston, Lowell-Lawrence, or Springfield orders, they shall be classified as Class I milk if retransferred to either of these types of regulated or unregulated plants.

(c) *Classification of cream, and of milk products other than fluid milk products, moved to other plants.* Cream and milk products other than fluid milk products moved from the regulated plant of a pool handler to another plant shall be classified as Class II milk.

(d) *Responsibility of handlers in establishing the classification of milk.* (1) In establishing the classification of any milk received by a handler from producers, the burden rests upon the handler who receives the milk from producers to account for the milk and to prove that such milk should not be classified as Class I milk.

(2) In establishing the classification of any pool milk received in the form of cream or milk products other than fluid milk products, or any nonpool milk or milk products received by a handler, the burden rests upon the receiving handler to account for such milk and milk products and to prove that such milk and milk products should not be classified as Class I milk.

§ 999.4 *Determinations of pool plant status*—(a) *Basic requirements for pool plant status.* In order for any receiving plant to a pool plant in any month, it must meet the applicable requirements contained in other paragraphs of this section, together with the following basic requirements for the month:

(1) A majority of the dairy farmers delivering milk to the plant hold certificates of registration issued pursuant to Chapter 94, section 16C and 16G, of the Massachusetts General Laws.

(2) The handler operating the plant holds a license which has been issued by the milk inspector of a city or town in the marketing area, pursuant to Chapter 94, section 40, of the Massachusetts General Laws, or a majority of the dairy farmers delivering milk to the plant are approved by such an inspector as sources of supply for milk for sale in his municipality.

(3) The plant is operated neither as the plant of a producer-handler, nor as a pool plant pursuant to the provisions of the Boston or New York orders.

(b) *City pool plants.* Each city plant shall be a pool plant in each month in which at least 10 percent of its total receipts of fluid milk products other than cream is disposed of in the marketing area as Class I milk or in which it is operated by an association of producers.

(c) *Monthly qualification of country pool plants.* (1) Each country receiving plant shall be a pool plant in each month in which it ships a quantity of milk in excess of 50 percent of its total receipts of fluid milk products other than cream to the marketing area for disposition directly to consumers and as shipments to any city milk plant under either the

Springfield or Worcester orders which disposes of more than 50 percent of its total receipts of fluid milk products other than cream as Class I milk.

(2) For each of the months of March through September, a plant which is qualified as a pool plant pursuant to the Springfield order shall not qualify as a Worcester pool plant.

(d) *Qualification of country pool plants for the March-September period.* Any country plant which qualifies as a pool plant under paragraph (c) of this section for each of the months of October through February in which this order is effective shall be qualified as a pool plant for each of the following months of March through September regardless of the quantity shipped to the marketing area if the market administrator receives the handler's written request for such qualification prior to March 1 of the same year.

§ 999.5 *Assignnment of receipts to Class I milk and Class II milk*—(a) *Determination of each pool handler's net Class I milk.* For the purpose of computing the net quantity of each pool handler's Class I milk for which a value is to be computed pursuant to § 999.8 (a), his total Class I milk shall be assigned to sources in the following sequence:

(1) Class I receipts from New York, Boston, or Springfield order plants pursuant to paragraph (b) of this section.

(2) Receipts of fluid milk products, other than cream, from the regulated city plants of other handlers, except receipts of skim milk from producer-handlers.

(3) Receipts of outside milk at city plants.

(4) Milk received directly from producers at the handler's own city plant.

(5) Receipts of fluid milk products, other than cream, from the country pool plants of other handlers, in the order of the nearness of the plants to Worcester.

(6) Receipts of outside milk at the handler's own country plants in the order of the nearness of the plants to Worcester.

(7) Milk received from producers at the handler's own country plants which was shipped as fluid milk products, other than cream, in the order of the nearness of the plants to Worcester.

(8) Receipts of cream and milk products other than fluid milk products.

(b) *Receipts from plants subject to the New York, Boston, or Springfield orders.* (1) Receipts of fluid milk products, other than cream, from plants subject to the New York or Boston orders shall be assigned to the class in which they are classified under the respective order, except that if received from a plant subject to the New York order such receipts shall be assigned to Class I milk if classified in Classes I-A or I-B under the New York order, and shall be assigned to Class II milk if classified in any class other than I-A or I-B.

(2) Receipts of fluid milk products, other than cream, from plants subject to the Springfield order shall be assigned to Class I milk, unless the operator of the shipping plant and of the regulated plant file a joint written request to the market administrator for assignment to Class II of the fluid milk products so received. In such event, the fluid milk products shall be assigned to Class II milk up to the total Class II uses of fluid milk products other than cream at the regulated plant after deducting its receipts of outside milk.

§ 999.6 *Reports of handlers*—(a) *Monthly reports of pool handlers.* On or before the 8th day after the end of each month each pool handler shall, with respect to the fluid milk products received by the handler during the month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) The receipts of milk at each pool plant from producers, including the quantity, if any, received from his own production;

(2) The receipts of fluid milk products at each plant from any other handler assigned to classes pursuant to § 999.5;

(3) The receipts of outside milk at each plant; and

(4) The quantities from whatever source derived which were sold, distributed or used, including sales to other handlers and dealers, classified pursuant to § 999.3.

(b) *Reports of nonpool handlers.* Each nonpool handler shall file with the market administrator reports relating to his receipts and utilization of fluid milk products. The reports shall be made at the time and in the manner prescribed by the market administrator, except that any handler who receives outside milk during any month shall file the report on or before the 8th day after the end of the month.

(c) *Reports regarding individual producers.* (1) Within 20 days after a producer moves from one farm to another, or starts or resumes deliveries to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state, if known, the plant to which the producer had been delivering prior to starting or resuming deliveries.

(2) Within 15 days after the 5th consecutive day on which a producer had failed to deliver to any of a handler's pool plants, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the last delivery was made, and the farm and plant locations involved. The report shall also state, if known, the reason for the producer's failure to continue deliveries.

(d) *Reports of payment to producers.* Each pool handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer pay roll for such month, which shall show for each producer:

(1) The daily and total pounds of milk delivered with the average butterfat test thereof; and

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

(e) *Maintenance of records.* Each handler shall maintain detailed and summary records showing all receipts, movements, and disposition of milk and milk products during the month, and the quantities of milk and milk products on hand at the end of the month.

(f) *Verification of reports.* For the purpose of ascertaining the correctness of any report made to the market administrator as required by this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in reports submitted in accordance with this section;

(2) Weigh, sample, and test milk and milk products; and

(3) Make such examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this paragraph.

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

§ 999.7 *Minimum class prices*—(a) *Class I prices.* Each pool handler shall pay, in the manner set forth in § 999.9 and subject to the differentials set forth in paragraph (c) of this section, for his net Class I milk computed pursuant to § 999.8 (a), not less than the price per hundredweight determined for each month pursuant to this paragraph. In determining the Class I price for each month, the latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of the preceding month falls on a Sunday or legal holiday, the latest reported figures available to the next succeeding work day shall be used.

(1) Divide by 0.98 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the year 1926 as the base period.

(2) Divide by 3 the sum of the three latest monthly indexes of department store sales in the Boston Federal Reserve District adjusted for seasonal variations, as reported by the Federal Reserve System, with the years 1935-39 as the base period, and divide the result so obtained by 1.26.

(3) Compute an index of grain-labor costs in the Boston milkshed in the following manner;

(i) Compute the simple average of the four latest weekly average retail prices per ton of dairy ration in the Boston milkshed, as reported by the United States Department of Agriculture, divide by 0.5044, and multiply by 0.6.

(ii) Compute the weighted average of the monthly composite farm wage rates for the latest available month for Maine, Massachusetts, New Hampshire, and Vermont, as reported by the United States Department of Agriculture, divide by 0.5952, and multiply by 0.4. In computing the weighted average, weight the respective rates as follows: Maine, 10; Massachusetts, 6; New Hampshire, 7; and Vermont 77.

(iii) Add the results determined pursuant to subdivisions (i) and (ii) of this subparagraph.

(4) Divide by 3 the sum of the final results computed pursuant to the preceding subparagraphs of this paragraph. Express the result as a whole number by dropping fractions of less than one-half or by raising fractions of one-half or more to the next whole number. The result shall be known as the formula index.

(5) Subject to the succeeding subparagraphs of this paragraph, the Class I price per hundredweight for milk received from producers at city plants, shall be as shown in the following table:

CLASS I PRICE SCHEDULE

[Class I price per hundredweight]

Formula index	Jan.-Feb.-Mar.-July-Aug.-Sept.	Apr.-May-June	Oct.-Nov.-Dec.
50-56	$2.21	$1.77	$2.65
57-63	2.43	1.99	2.87
64-70	2.65	2.21	3.09
71-77	2.87	2.43	3.31
78-81	3.09	2.65	3.53
85-90	3.31	2.87	3.75
91-97	3.53	3.09	3.97
98-104	3.75	3.31	4.19
105-111	3.97	3.53	4.41
112-118	4.19	3.75	4.63
119-125	4.41	3.97	4.85
126-132	4.63	4.19	5.07
133-139	4.85	4.41	5.29
140-146	5.07	4.63	5.51
147-152	5.29	4.85	5.73
153-159	5.51	5.07	5.95
160-166	5.73	5.29	6.17
167-173	5.95	5.51	6.39
174-180	6.17	5.73	6.61
181-187	6.39	5.95	6.83
188-191	6.61	6.17	7.05

If the formula index is more than 194 the price shall be increased at the same rate as would result from further extension of this table at the rate of extension in the six highest index brackets.

(6) The Class I price shall be 44 cents more than the price prescribed in subparagraph (5) of this paragraph, if, under the provisions of the Boston order, less than 33 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this subparagraph would cause the Class I price to be more than 88 cents above the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent increase as will result in a Class I price equal to the Class I price for the same month of the preceding year plus 88 cents.

(7) The Class I price shall be 44 cents less than the price prescribed in subparagraph (5) of this paragraph, if, under the provisions of the Boston order, more than 41 percent of the milk received by all pool handlers from producers during the 12-month period ending with the second preceding month was Class II milk, except that if the operation of this subparagraph would cause the Class I price to be more than 88 cents below the Class I price for the same month of the preceding year, its application shall be limited to only such portion of the 44-cent reduction as will result in a Class I price equal to the Class I price for the same month of the preceding year minus 88 cents.

(8) Notwithstanding the provisions of the preceding subparagraphs of this paragraph, the Class I price for any of the months of March through June of each year shall not be higher than the Class I price for the immediately preceding month, and the Class I price for any of the months of September through December of each year shall not be lower than the Class I price for the immediately preceding month.

(9) The Class I price determined under the preceding subparagraphs of this paragraph shall be increased or decreased to the extent of any increase or decrease in the rail tariff for the transportation of milk in carlots in 40-qt. cans for mileage distances of 100-110 miles, inclusive, as published in the New England Joint Tariff, M-5, and supplements thereto. The adjustment shall be made to the nearest one-half cent per hundredweight and shall be effective in the first complete month in which such increase or decrease in the rail tariff applies.

(b) *Class II price.* Each handler shall pay in the manner set forth in § 999.9 and subject to the differentials set forth in paragraph (c) of this section for his net Class II milk computed pursuant to § 999.8 (a) not less than the price per hundredweight determined for each month pursuant to this paragraph.

(1) Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the month during which such milk is delivered, and multiply the result by 3.7.

(2) Multiply by 7.5 the average price per pound of roller process nonfat dry milk solids for human consumption, in carlots, f. o. b. Chicago area manufacturing plants, as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the month during which such milk is received.

(3) Add the results obtained in subparagraphs (1) and (2) of this paragraph, and from the sum subtract the amount shown below for the applicable month. The result is the Class II price per hundredweight for milk received from producers at city plants.

Month:	*Amount (cents)*
January and February	57.5
March and April	69.5
May and June	75.5
July	69.5
August and September	63.5
October, November, and December	57.5

(c) *Differentials for place of receipt of milk.* For milk received by a handler at a country plant there shall be deducted from the applicable prices pursuant to paragraphs (a) and (b) of this section the following amounts applicable to Class I milk and Class II milk at such plant as adjusted pursuant to paragraph (d) of this section. The distance of any plant from the marketing area recognized for the purpose of this section shall be the distance ascertained by the market administrator as the shortest distance from the plant to the City Hall, Worcester, Massachusetts, over highways on which the highway departments of the governing States permit milk tank trucks to move, or the railway mileage distance to Worcester, Massachusetts, from the nearest railway shipping point for such plant, whichever is shorter.

A	B	C
Zone (miles)	Class I price differentials (cents per cwt.)	Class II price differentials (cents per cwt.)
Less than 40½	(1)	(1)
41-50	−41.5	−2.0
51-60	−42.5	−3.0
61-70	−43.0	−3.0
71-80	−44.5	−3.0
81-90	−45.0	−3.0
91-100	−45.5	−3.0
101-110	−45.5	−4.5
111-120	−47.0	−4.5
121-130	−47.0	−4.5
131-140	−48.0	−4.5
141-150	−50.5	−4.5
151-160	−52.0	−6.0
161-170	−52.0	−6.0
171-180	−54.5	−6.0
181-190	−54.5	−6.0
191-200	−56.0	−6.0
201-210	−56.0	−7.0
211-220	−60.0	−7.0
221-230	−60.5	−7.0
231-240	−61.5	−7.0
241-250	−61.5	−7.0
251-260	−62.5	−8.0
261-270	−63.0	−8.0
271-280	−63.5	−8.0
281-290	−64.5	−8.0
291 and over	−65.5	−8.0

[1] No differential.

(d) *Automatic changes in zone price differentials.* In case the rail tariff for the transportation of milk in carlots in 40-quart cans (minimum 200 cans) or for the transportation of cream in 40-quart cans in carlots of 100-199 cans, as published in New England Joint Tariff—M No. 5 and supplements thereto or revisions thereof, is increased or decreased, the zone price differentials set forth in paragraph (c) of this section shall be correspondingly increased or decreased in the manner and to the extent provided in this paragraph. Such adjustment shall be effective beginning with the first complete month in which the changes in rail tariffs apply. If such rail tariff on milk is changed, the differentials set forth in Column B of the table shall be adjusted to the extent of any such change. If such rail tariff on cream is changed, the differentials set forth in

Column C of the table shall be adjusted to the extent of any such change divided by 9.05. Adjustment shall be made to the nearest one-half cent per hundredweight.

(e) *Use of equivalent prices in formulas.* If for any reason a price, index or wage rate specified by this section or § 999.9 (d) for use in computing class prices and for other purposes is not reported or published in the manner described by this section or § 999.9 (d), the market administrator shall use a price, index or wage rate determined by the Secretary to be equivalent to or comparable with the factor which is specified.

(f) *Announcement of class prices and differentials.* The market administrator shall make public announcements of the class prices in effect pursuant to this section, as follows:

(1) He shall announce the Class I price for each month on the 25th day of the preceding month, except that if such 25th day is a Sunday or legal holiday he shall announce the Class I price on the next succeeding work day.

(2) He shall announce the Class II price on or before the 5th day after the end of each month.

§ 999.8 *Minimum blended prices to producers*—(a) *Computation of net value of milk used by each pool handler.* For each month, the market administrator shall compute the net value of milk which is sold, distributed, or used by each pool handler, in the following manner:

(1) From the total Class I milk and Class II milk, sold, distributed, or used, from whatever source derived, subtract all receipts from other handlers except outside milk, assigned to classes pursuant to § 999.5;

(2) Multiply the quantity of milk remaining in each class by the price applicable pursuant to § 999.7 (a) and (b);

(3) Add together the resulting value of each class;

(4) Subtract the value obtained by multiplying the quantity of receipts of outside milk by the price applicable pursuant to § 999.7 (b); and

(5) Add the amount of payments required from the pool handler pursuant to § 999.9 (g).

(b) *Computation of the basic blended price.* The market administrator shall compute the basic blended price per hundredweight of milk delivered during each month in the following manner:

(1) Combine into one total the respective values of milk, computed pursuant to paragraph (a) of this section, for each pool handler from whom the market administrator has received at his office, prior to the 11th day after the end of such month, the report for such month and the payments required pursuant to § 999.9 (b) (2) and (g) for milk received during each month since the effective date of the most recent amendment to this order;

(2) Add the total amount of payments required from handlers pursuant to § 999.9 (f) and from buyer-handlers and producer-handlers pursuant to § 999.9 (g);

(3) Add the amount of unreserved cash on hand at the close of business on the 10th day after the end of the month from payments made to the market administrator by handlers pursuant to § 999.9;

(4) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable pursuant to § 999.9 (e);

(5) Divide by the total quantity of milk, exclusive of outside milk, for which a value is determined pursuant to subparagraph (1) of this paragraph; and

(6) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in § 999.9. This result shall be known as the basic blended price for milk containing 3.7 percent butterfat.

(c) *Announcement of blended prices.* On the 12th day after the end of each month the market administrator shall mail to all pool handlers and shall publicly announce:

(1) Such of these computations as do not disclose information confidential pursuant to the act;

(2) The zone blended prices per hundredweight resulting from adjustment of the basic blended price by the differentials pursuant to § 999.9 (e); and

(3) The names of the pool handlers, designating those whose milk is not included in the computations.

§ 999.9 *Payments for milk*—(a) *Advance payments.* On or before the 10th day after the end of each month, each pool handler shall make payment to producers for the approximate value received during the first 15 days of such month. In no event shall such advance payment be at a rate less than the Class II price for such month. The provisions of this paragraph shall not apply to any handler who, on or before the 17th day after the end of the month, makes final payment as required by subparagraph (1) of paragraph (b) of this section.

(b) *Final payments.* On or before the 25th day after the end of each month, each pool handler shall make payment for the total value of milk received during such month as required to be computed pursuant to § 999.8 (a) as follows:

(1) To each producer at not less than the basic blended price per hundredweight, subject to the differentials provided in paragraphs (d) and (e) of this section, for the quantity of milk delivered by such producer; and

(2) To producers, through the market administrator, by paying to, on or before the 23d day after the end of each month, or receiving from the market administrator, on or before the 25th day after the end of each month, as the case may be, the amount by which the payments required to be made pursuant to subparagraph (1) of this paragraph for 3.7 percent milk are less than or exceed the value of milk as required to be computed for such handler pursuant to § 999.8 (a), as shown in a statement rendered by the market administrator on or before the 20th day after the end of such month.

(c) *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments pursuant to paragraphs (b) (2), (f) or (g) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is payable by the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of an amount less than is required by this section, the handler shall make up such payment to the producer not later than the time of making final payment for the month in which such error is disclosed.

(d) *Butterfat differential.* Each handler shall, in making payments to each producer for milk received from him, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator as follows:

(1) Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream, f. o. b. Boston, as reported by the United States Department of Agriculture for the period between the 16th day of the preceding month and the 15th day inclusive of the month during which such milk is delivered, subtract 1.5 cents, and divide the result by 10.

(e) *Location differentials.* The payments to be made to producers by handlers pursuant to subparagraph (1) of paragraph (b) of this section shall be subject to the differentials set forth in Column B of the table in § 999.7 (c), and to further differentials as follows:

With respect to milk delivered by a producer whose farm is located in Franklin, Hampshire, Hampden, Worcester, Middlesex, and Norfolk counties in Massachusetts, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 999.7 (a) and (c) which is effective at the plant to which such milk is delivered in which event there shall be added an amount which will give as a result such price.

(f) *Payments on outside milk.* (1) Within 23 days after the end of each month, each buyer-handler or producer-handler, whose receipts of outside milk are in excess of his total use of Class II milk after deducting receipts of cream, shall make payment on such excess quantity to producers, through the market administrator, at the difference between the price pursuant to § 999.7 (a) and the price pursuant to § 999.7 (b) effective for the location or freight mileage zone of the plant at which the handler received the outside milk.

(2) Within 23 days after the end of each month, each handler who operates an unregulated plant from which outside milk is disposed of to consumers in the marketing area without intermediate movement to another plant shall make payment to producers, through the mar-

ket administrator, on the quantity so disposed of. The payment shall be at the difference between the price pursuant to § 999.7 (a) and the price pursuant to § 999.7 (b) effective for the location or freight mileage zone of the handler's plant.

(g) *Payments on other Federal order milk.* Within 23 days after the end of each month, each pool handler, buyer-handler, or producer-handler, who has received milk or milk products from a Boston, New York, or Springfield Federal order plant which have been assigned to Class I milk shall make payment on such quantity to producers, through the market administrator, at the difference between the price pursuant to § 999.7 (a) effective for the location or freight mileage zone of the plant from which the handler received the milk or milk product, adjusted by paragraph (d) of this section and the Class I price (Class I-A or I-B in the case of a New York order plant) at the other Federal order plant from which such Class I milk was received adjusted by the applicable butterfat differential.

(h) *Adjustment of overdue accounts.* Any balance due pursuant to this section, to or from the market administrator on the 10th day of any month, for which remittance has not been received in, or paid from, his office by the close of business on that day, shall be increased one-half of 1 percent, effective the 11th day of such month.

(i) *Statements to producers.* In making the payments to producers prescribed by subparagraph (1) of paragraph (b) of this section, each pool 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 month and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of paragraphs (b), (d) and (e) of this section.

(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, including any deductions claimed under § 999.10, together with a description of the respective deductions; and

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

§ 999.10 *Marketing services*—(a) *Marketing service deduction.* In making payments to producers pursuant to § 999.9, each handler shall, with respect to all milk delivered by each producer other than himself during each month, except as set forth in paragraph (b) of this section, deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, and shall, on or before the 23d day after the end of each month, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information to, and for verification of weights, samples, and tests of milk delivered by such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to or with respect to the milk delivered by, such producers.

(b) *Marketing service deductions with respect to members of a producers' cooperative association.* In the case of producers who are members of an association of producers which is actually performing the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to § 999.9 as may be authorized by such producers and pay over on or before the 23d day after the end of each month, such deduction to such associations.

§ 999.11 *Expense of administration.* Within 23 days after the end of each month, each handler shall make payment to the market administrator of his pro rata share of the expense of administration of this order. The payment shall be at the rate of 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, on the handler's receipts each month of milk from producers, including receipts from his own production, and receipts of outside milk. On that quantity of fluid milk products other than cream which was received from a Boston, New York, or Springfield Federal order plant at which such milk or milk product has been assessed, the payment shall be made at a rate equal to the amount by which the rate of assessment under such other Federal order is less than the rate applicable pursuant to this section to milk received from producers.

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

(b) *Suspension or termination.* The Secretary may suspend or terminate this order or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this order, there are any obligations arising under it, the final accruals or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

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

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

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

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

Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

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

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

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

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section,

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

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

Issued at Washington, D. C. this 27th day of September 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 49-7921; Filed, Sept. 30, 1949; 8:48 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

SHORE SPACE RESTORATION NO. 427

SEPTEMBER 13, 1949.

By virtue of the authority contained in the act of June 5, 1920 (41 Stat. 1059, 48 U. S. C. 372), and in accordance with 43 CFR, § 4.275 (56) (Departmental Order No. 2325 of May 24, 1947, 12 F. R. 3566), and Order No. 319 of July 19, 1948 (43 CFR 50.451, 13 F. R. 4278), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the 80-rod shore space reserve which may now or hereafter be created under the act of May 14, 1898 (30 Stat. 409), as amended by the act of March 3, 1903 (32 Stat. 1028, 48 U. S. C. 371), is hereby revoked as to the following described lands:

T. 4 N., R. 12 W., Seward Meridian:
Secs. 1, 12, 13, 24 (except $N\frac{1}{2}N\frac{1}{2}S\frac{1}{2}S\frac{1}{2}$ and $S\frac{1}{2}N\frac{1}{2}S\frac{1}{2}S\frac{1}{2}$ of Lot 2), 25, 35 and 36: All portion abutting on or within 80 rods of the shore of Cook Inlet.

T. 5 N., R. 11 W., Seward Meridian:
Secs. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 (except Lots 6 and 8), 16, 17, 18, 19, 20, 23, 24 (except Lot 1), 30 and 31: All portion abutting on or within 80 rods of the shore of Cook Inlet or the banks of the Kenai River.

T. 5 N., R. 12 W., Seward Meridian:
Sec. 1: All portion abutting on or within 80 rods of Cook Inlet.

T. 6 N., R. 12 W., Seward Meridian:
Secs. 2, 3, 11, 14, 23, 26, 35 and 36: All portion abutting on or within 80 rods of the shore of Cook Inlet.

T. 3 N., R. 11 W., Seward Meridian:
Secs. 30 (except Lots 9 and 10), 31, 32, and 33: All portions abutting on or within 80 rods of Kasilof River.

T. 2 N., R. 12 W., Seward Meridian:
Secs. 4 and 9: All portion abutting on or within 80 rods of the shore of Cook Inlet.

T. 3 N., R. 12 W., Seward Meridian:
Secs. 1, 2 (except Lot 4), 3, 4, 9, 11, 12, 13, 16, 21, 24, 25, 28 and 33 (except Lot 2): All portion abutting on or within 80 rods of the shores of Cook Inlet and Kasilof River.

T. 1 S., R. 14 W., Seward Meridian:
Secs. 12, 13, 23, 26, 27, 33 and 34 (except Lots 2 and 4): All portion abutting on or within 80 rods of the shore of Cook Inlet.

T. 2 S., R. 14 W., Seward Meridian:
Secs. 4 (except Lot 5), 8, 9 and 17: All portion abutting on or within 80 rods of the shore of Cook Inlet.

T. 5 S., R. 11 W., Seward Meridian:
Secs. 8, 9, 10, 16, 17, 18 and 19: All portion abutting on or within 80 rods of the shore of Kachemak Bay.

T. 5 S., R. 12 W., Seward Meridian:
Secs. 24, 25, 26, 34 and 35: All portion abutting on or within 80 rods of the shore of Kachemak Bay.

LOWELL M. PUCKETT,
Regional Administrator.

[F. R. Doc. 49-7913; Filed, Sept. 30, 1949; 8:46 a. m.]

ALASKA

SHORE SPACE RESTORATION NO. 428

SEPTEMBER 13, 1949.

By virtue of the authority contained in the act of June 5, 1920 (41 Stat. 1059, 48 U. S. C. 372), and in accordance with 43 CFR, § 4.275 (56) (Departmental Order No. 2325 of May 24, 1947, 12 F. R. 3566), and Order No. 319 of July 19, 1948 (43 CFR 50.451, 13 F. R. 4278), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the 80-rod shore space reserve between claims hereafter created under the act of May 14, 1898 (30 Stat. 409), as amended by the act of March 3, 1903 (32 Stat. 1028, 48 U. S. C. 371), is hereby revoked as to all portions of the following described lands abutting on or within 80 rods of the shore of Cook Inlet:

T. 8 N., R. 10 W., Seward Meridian:
Sections 2, 3, 9, 16, 17 and 18.

T. 8 N., R. 11 W., Seward Meridian:
Sections 13, 14, 15, 16, 17, 20, 29, 30 and 31.

T. 7 N., R. 12 W., Seward Meridian:
Sections 3, 4, 5, 9 and 16.

T. 8 N., R 12 W., Seward Meridian:
Sections 34, 35 and 36.

T. 1 S., R. 13 W., Seward Meridian:
Sections 5, 6 and 7.

T. 2 S., R. 14 W., Seward Meridian:
Sections 19, 29 and 32.

T. 3 S., R. 14 W., Seward Meridian:
Sections 5, 6, 7, 18 and 19.

T. 3 S., R. 15 W., Seward Meridian:
Sections 24, 25 and 36.

T. 1 N., R. 12 W., Seward Meridian:
Section 6.

T. 1 N., R. 13 W., Seward Meridian:
Sections 12, 13, 14, 23, 26, 27, 33 and 34.

T. 2 N., R. 12 W., Seward Meridian:
Sections 16, 17, 20, 29 (except Lot 1), 31 and 32.

T. 5 S., R. 15 W., Seward Meridian:
Sections 16, 21, 27, 35 and 36.

T. 6 S., R. 15 W., Seward Meridian:
Section 1.

T. 6. S., R. 14 W., Seward Meridian:
Sections 6, 8, 16, 17, 22 and 23.

LOWELL M. PUCKETT,
Regional Administrator.

[F. R. Doc. 49-7914; Filed, Sept. 30, 1949; 8:46 a. m.]

ALASKA

SHORE SPACE RESTORATION NO. 429

SEPTEMBER 13, 1949.

By virtue of the authority contained in the act of June 5, 1920 (41 Stat. 1059; 48 U. S. C. 372), and in accordance with 43 CFR, § 4.275 (56) (Departmental Order No. 2325 of May 24, 1947, 12 F. R. 3566), and Order No. 319 of July 19, 1948 (43 CFR 50.451, 13 F. R. 4278), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the 80-rod shore space reserve created under the act of May 14, 1898 (30 Stat. 409), as amended by the act of March 3, 1903 (32 Stat. 1028; 48 U. S. C. 371), is hereby revoked as to the following described lands:

T. 7 N., R. 12 W., Seward Meridian:
Section 21: Lots 2, 3, 4 and 5.
Section 27: Lots 1, 2, $SW\frac{1}{4}NW\frac{1}{4}$ and $NE\frac{1}{4}SW\frac{1}{4}$.
Section 28: Lot 2.
Section 34: Lots 1, 2, 3, 4, $NW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}$ and $NE\frac{1}{4}SE\frac{1}{4}$.

T. 8 N., R. 10 W., Seward Meridian:
Section 3: Lot 3.
Section 10: Lot 1.

T. 8 N., R. 11 W., Seward Meridian:
Section 20: Lots 2 and 4.
Section 29: Lot 1 and $NE\frac{1}{4}NW\frac{1}{4}$.
Section 31: Lots 1 and 3.

T. 1 S., R. 13 W., Seward Meridian:
Section 5: Lots 2, 3 and 4.
Section 7: Lots 1 and 3.

T. 2 S., R. 14 W., Seward Meridian:
Section 20: Lots 1 and 2.
Section 29: Lots 1 and 4.
Section 32: Lots 3, 4 and $SE\frac{1}{4}SW\frac{1}{4}$.

T. 3 S., R. 14 W., Seward Meridian:
Section 7: Lots 3, 4 and $SE\frac{1}{4}SE\frac{1}{4}$.
Section 18: Lots 1, 2 and $E\frac{1}{2}NW\frac{1}{4}$.
Section 19: Lots 1, 2 and $NE\frac{1}{4}NW\frac{1}{4}$.

T. 3 S., R. 15 W., Seward Meridian:
Section 24: Lots 1, 2, 3 and $SE\frac{1}{4}SE\frac{1}{4}$.
Section 25: Lot 2 and $SW\frac{1}{4}NE\frac{1}{4}$.
Section 35: Lots 1, 2, 3 and 4.
Section 36: $NW\frac{1}{4}NW\frac{1}{4}$.

T. 1 N., R. 12 W., Seward Meridian:
Section 6: Lots 2, 3 and 4.

T. 1 N., R. 13 W., Seward Meridian:
Section 12: Lots 1, 2 and 3.
Section 13: Lot 1.
Section 22: Lot 1.

Section 23: Lots 2, 3 and 4.
Section 27: Lots 1, 2, 3, 4.
Section 33: Lot 1.
T. 2 N., R. 12 W., Seward Meridian:
Section 17: Lots 2 and 3.
Section 20: Lots 1, 2, 3, 4 and SE¼SE¼.
Section 29: Lot 4.
Section 31: Lot 1.
Section 32: Lot 2.
T. 4 S., R. 15 W., Seward Meridian:
Section 11: Lot 3.
Section 22: Lot 3.
Section 33: Lots 5, 6, 7 and 8.
T. 5 S., R. 15 W., Seward Meridian:
Section 16: Lots 1 and 3.
Section 21: Lot 2.
Section 22: Lot 1.
Section 27: Lot 1.
Section 35: Lots 3 and 4.
Section 36: Lot 1 and NW¼SW¼.
T. 6 S., R. 15 W., Seward Meridian:
Section 1: Lots 1, 2 and 3.
T. 6 S., R. 14 W., Seward Meridian:
Section 6: Lots 3 and 5.
Section 8: Lot 3.
Section 16: Lot 3.

The areas described aggregate approximately 3,444.67 acres.

No application for these lands may be allowed under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), unless the land has already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application.

At 10:00 a. m., on October 18, 1949, the lands shall, subject to valid existing rights and the provisions of existing withdrawals become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from October 18, 1949, to January 16, 1950, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or homesite laws, or the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a) as amended by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279-283), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in subdivision (2).

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from September 28, 1949, to October 17, 1949, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m., on October 18, 1949, shall be treated as simultaneously filed.

(c) *Date for non-preference-right filings authorized by the public land laws.* Commencing at 10:00 a. m., on January 17, 1950, any of the lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public land laws.

(d) *Twenty-day advance period for simultaneous non-preference-right filings.* Applications by the general public may be presented during the 20-day period from December 27, 1949, to January 16, 1950, inclusive, and all such applications, together with those presented at 10:00 a. m., on January 17, 1950, shall be treated as simultaneously filed.

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

Applications for these lands, which shall be filed in the District Land Office at Anchorage, Alaska, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254), to the extent that such regulations are applicable. Applications under the homestead and homesite laws shall be governed by the regulations contained in Parts 64, 65 and 66, of Title 43 of the Code of Federal Regulations and applications under the Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Part 257 of that title.

Inquiries concerning these lands shall be addressed to the District Land Office at Anchorage, Alaska.

LOWELL M. PUCKETT,
Regional Administrator.

[F. R. Doc. 49-7915; Filed, Sept. 30, 1949; 8:46 a. m.]

Geological Survey

UTAH

COAL RECLASSIFICATION

Pursuant to authority vested in me by the act of March 3, 1879 (20 Stat. 394; 43 U. S. C. 31), and to the provisions of applicable regulations (30 CFR Part 201), the following described land, insofar as title thereto remains in the United States, which land was officially classified as coal land in 1911, is hereby reclassified as noncoal land:

SALT LAKE MERIDIAN

T. 4 S., R. 21 E.:
Sec. 30, SW¼NE¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 31, E½, E½W½;
Sec. 33, SW¼NW¼, SW¼, SW¼SE¼.
T. 5 S., R. 21 E.:
Sec. 3, SW¼NW¼, SW¼;
Sec. 4, all;
Sec. 5, lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, SW¼NE¼, S½NW¼, W½SE¼;
Sec. 8, lot 1;
Sec. 9, lots 1, 2, 3 and 4, E½, W½NW¼, NW¼SW¼;
Sec. 10, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 11, SW¼SW¼;
Sec. 14, lots 1, 2, 3 and 4, SW¼NE¼, NW¼, SE¼;
Sec. 15, all;
Sec. 16, N½NE¼, SE¼NE¼;
Sec. 22, lots 1, 2 and 3, S½NE¼, E½SE¼;
Sec. 23, all;
Sec. 24, W½NW¼, SE¼NW¼, SW¼, SW¼SE¼;
Sec. 25, lots 3 to 11 incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 26, E½, N½NW¼, SE¼NW¼;
Sec. 35, NE¼NE¼;
Sec. 36, lots 1 to 8 incl., W½E½, NW¼, NE¼SW¼.
T. 5 S., R. 22 E.:
Sec. 30, lots 3 and 4, SE¼SW¼;
Sec. 31, lots 1, 2, 3 and 4, W½NE¼, SE¼NE¼, E½W½, SE¼;
Sec. 32, S½NW¼, S½;
Sec. 33, S½SW¼.
T. 6 S., R. 22 E.:
Sec. 2, SW¼SW¼;
Sec. 3, SW¼, S½SE¼;
Sec. 4, all;
Sec. 5, lots 1, 2, 3 and 4, S½N½, N½S½;
Sec. 6, lots 1, 2, 3, 4 and 5, S½NE¼, SE¼NW¼;
Sec. 9, N½NE¼;
Sec. 10, N½, N½SE¼;
Sec. 11, lot 2, SW¼NE¼, W½, NW¼SE¼;
Sec. 14, lots 2, 3 and 4.

The area described aggregates 11,445.16 acres.

Dated: September 26, 1949.

JULIAN D. SEARS,
Acting Director.

[F. R. Doc. 49-7916; Filed, Sept. 30, 1949; 8:46 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 4038]

"IBERIA", COMPANIA MERCANTIL ANONIMA DE LINEAS AEREAS

NOTICE OF HEARING

In the matter of the application, as amended, of "Iberia" Compania Mercantil Anonima de Lineas Aereas under section 402 of the Civil Aeronautics Act of 1938, as amended, for a foreign air carrier permit authorizing it to engage in foreign air transportation of persons, property and mail as follows: "Route from Spain to the United States of America: Spain, Isla de la Sal, Trinidad (Optional), Caracas, Havana (Optional), Miami (Optional), Santo Domingo (Optional), San Juan de Puerto Rico, Bermudas (Optional), Azores, Spain, in both directions".

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 402 and 1001 of said act, that a hearing in the above-entitled proceeding is assigned to be held on October 7, 1949, at 10:00 a. m., e. s. t., in Room 2065, Temporary Building No. 4, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Curtis C. Henderson.

Without limiting the scope of the issues presented by said application, particular attention will be directed to the following matters and questions:

1. Whether the proposed air transportation will be in the public interest.
2. Whether the applicant is fit, willing and able to perform such transportation.
3. Whether the authorization of the proposed transportation is consistent with any obligation assumed by the United States in any treaty, convention or agreement in force between the United States and Spain or any other foreign country.
4. Notice is further given that any person, other than a party of record, desiring to be heard in this proceeding must file with the Board, on or before October 7, 1949, a statement setting forth the issues of fact or law raised by said application which he desires to controvert.

For further details of the service proposed and authorization requested, interested parties are referred to the application on file with the Civil Aeronautics Board.

Dated at Washington, D. C., September 28, 1949.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 49-7944; Filed, Sept. 30, 1949; 8:56 a. m.]

[Docket No. 1705 et al.]

DIRECTIONAL COMMODITY RATES; AIR FREIGHT RATE INVESTIGATION

NOTICE OF ORAL ARGUMENT

In the matter of the investigation of directional rates and charges for the transportation of freight by air established, demanded, and charged by certificated and noncertificated air carriers.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a), 1001, and 1002 of said act, that oral argument in the above-entitled proceeding is assigned to be held on October 31, 1949, at 10:00 a. m., e. s. t., in Room 5042, Commerce Building, Fourteenth Street and Constitution Avenue NW., Washington, D. C., before the Board.

Dated at Washington, D. C., September 27, 1949.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 49-7945; Filed, Sept. 30, 1949; 8:56 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 9415, 9416]

STATION KXXL AND CHET L. GONCE

ORDER CONTINUING HEARING

In re application of Edward Margolis, Frederick W. Kirske and Byron J. Samuel, a partnership d/b as Station KXXL, Reno, Nevada, applicant for renewal of license, Docket No. 9415, File No. BR-1804; Edward Margolis, Frederick W. Kirske and Byron J. Samuel, a partnership d/b as Station KXXL (assignor), Chet L. Gonce (assignee), Reno, Nevada, applicants for voluntary assignment of license, Docket No. 9416, File No. BAL-852.

It is ordered, This 12th day of September 1949, that the consolidated hearing in the above-entitled matters, now scheduled for 10 o'clock a. m., Monday, October 3, 1949, in Reno, Nevada, be, and it is hereby continued to 10 o'clock a. m., Wednesday, October 5, 1949, in Reno, Nevada.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] FANNEY N. LITVIN,
Hearing Examiner.

[F. R. Doc. 49-7934; Filed, Sept. 30, 1949; 8:53 a. m.]

[Docket No. 9257]

JOSE RAMON QUINONES AND WPTF RADIO CO.

ORDER CONTINUING HEARING

In re petition of Jose Ramon Quinones, San Juan, Puerto Rico, for reconsideration of action granting a construction permit to WPTF Radio Company (WPTF) Raleigh, North Carolina; Docket No. 9257.

The Commission having under consideration a joint motion of the parties in the above-entitled proceeding, Jose Ramon Quinones and WPTF Radio Company, filed September 8, 1949, requesting a 30-day continuance of the hearing in the above matter presently scheduled to commence September 23, 1949; and

It appearing, that the purpose of the request is to enable WPTF Radio Company to make certain measurements and obtain certain factual data relating to one of the issues in the case, which information may obviate the necessity for a hearing; and

It further appearing, that there is no opposition to the requested continuance;

It is ordered, This 16th day of September 1949, that the motion be and it is hereby granted and the hearing presently scheduled to commence September 23, 1949, is continued to Monday, October 24, 1949.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] J. FRED JOHNSON, Jr.,
Hearing Examiner.

[F. R. Doc. 49-7935; Filed, Sept. 30, 1949; 8:53 a. m.]

[Docket No. 8246]

YORK BROADCASTING CO.

ORDER CONTINUING HEARING

In re application of York Broadcasting Company, York, Pennsylvania, for construction permit; Docket No. 8246, File No. BP-5907.

The Commission having under consideration a petition filed by applicant September 8, 1949, requesting a continuance of the hearing in the above-entitled matter for ninety (90) days; and

It appearing, that there are no other parties to the proceedings and that no opposition to the petition has been filed with the Commission;

It is ordered, This 16th day of September 1949, that the petition be and it is hereby granted and the hearing presently scheduled for September 20, 1949, is continued to December 21, 1949.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] J. FRED JOHNSON, Jr.,
Hearing Examiner.

[F. R. Doc. 49-7936; Filed, Sept. 30, 1949; 8:53 a. m.]

[Designation Order 38]

DESIGNATION OF MOTIONS COMMISSIONER FOR OCTOBER 1949

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 21st day of September 1949;

It is ordered, Pursuant to section 0.111 of the Statement of Delegations of Authority, that George E. Sterling, Commissioner, is hereby designated as Motions Commissioner for the month of October 1949.

It is further ordered, That in the event said Motions Commissioner is unable to act during any part of said period the Chairman or Acting Chairman will designate a substitute Motions Commissioner.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-7938; Filed, Sept. 30, 1949; 8:54 a. m.]

[Docket No. 9463]

JAMES D. SINYARD

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of James D. Sinyard, Moundsville, West Virginia, for construction permit; Docket No. 9463, File No. BP-7082.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 21st day of September 1949;

The Commission having under consideration the above-entitled application of James D. Sinyard requesting a permit to construct a new standard broadcast station at Moundsville, West Virginia, to operate on frequency 990 kilocycles with 250 watts power, daytime only;

It appearing, that the above applicant is legally, technically and financially qualified and that the proposed program service will meet the requirements of the populations and areas proposed to be served, but that the proposed operation may cause interference with one or more existing or proposed stations; or otherwise not comply with the Commission's rules and standards;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of James D. Sinyard is designated for hearing at a time and place to be designated

by subsequent order of the Commission, upon the following issues:

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

2. To determine whether the operation of the proposed station would involve objectionable interference with any other existing broadcast stations or the services proposed in any pending application and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the proposed station would be in contravention of any international agreement or the Commission's rules and standards with particular reference to the daytime groundwave signal to be delivered to the Canadian border.

4. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-7939; Filed, Sept. 30, 1949; 8:55 a. m.]

[Docket No. 9464]

MALDEN BROADCASTING CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of John Wood Logan, tr/as Malden Broadcasting Company, Malden, Massachusetts, for construction permit; Docket No. 9464, File No. BP-7172.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 21st day of September 1949;

The Commission having under consideration the above-entitled application of John Wood Logan tr/as Malden Broadcasting Company requesting a permit to construct a new standard broadcast station to operate on frequency 1470 kilocycles with 1 kilowatt power, daytime only, at Malden, Massachusetts;

It appearing, that the above applicant is legally, technically, financially and otherwise qualified and that the proposed programming meets the needs of the areas and populations to be served, but that the above-entitled application may involve objectionable interference with one or more existing stations and otherwise not comply with the Commission's Standards of Good Engineering Practice Concerning Standard Broadcast Stations;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the application of John Wood Logan, tr/as Malden Broadcasting Company is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

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

2. To determine whether the operation of the proposed station would involve objectionable interference with station WLAM, Lewiston, Maine, or with any other existing broadcast stations or the services proposed in any pending application and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

It is further ordered, That, Lewiston-Auburn Broadcasting Corporation, licensee of Station WLAM, Lewiston, Maine, is made a party to these proceedings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-7940; Filed, Sept. 30, 1949; 8:55 a. m.]

[Docket No. 9465]

MOBERLY BROADCASTING CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Jerrell A. Shepherd tr/as Moberly Broadcasting Company, Moberly, Missouri, for a construction permit; Docket No. 9465, File No. BP-7137.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 21st day of September 1949;

The Commission having under consideration (1) the above-entitled application for a construction permit for a new standard broadcast station to operate on 1230 kilocycles, 250 watts power, unlimited time at Moberly, Missouri, and (2) a request, filed July 1, 1949, by the Missouri Valley Broadcasting Corporation, licensee of station KRES, St. Joseph, Missouri, that the Commission designate the subject application for hearing because of electrical interference and make KRES a party to the proceeding;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate the proposed station, but that the application may involve interference with one or more existing stations and otherwise not comply with the Standards of Good Engineering Practice;

It is ordered, That pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

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

2. To determine whether the operation of the proposed station would involve objectionable interference with station KRES, St. Joseph, Missouri, or with any other existing broadcast station and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

It is further ordered, That the Missouri Valley Broadcasting Corporation, licensee of Station KRES, St. Joseph, Missouri, is made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-7941; Filed, Sept. 30, 1949; 8:55 a. m.]

[Docket No. 8343]

EASTERN IDAHO BROADCASTING AND TELEVISION CO. (KIFI)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Eastern Idaho Broadcasting and Television Company (KIFI), Idaho Falls, Idaho; Docket No. 8343, File No. BP-5978; for construction permit.

At a session of the Federal Communications Commission, held at its office in Washington, D. C., on the 21st day of September 1949;

The Commission having under consideration the above-entitled application requesting a construction permit to change frequency from 1400 kc. to 1060 kc., increase power from 250 watts to 10 kilowatts, install new transmitter and directional antenna for nighttime operation and to change transmitter location of Station KIFI, Idaho Falls, Idaho;

It appearing, that, except as specified in issue number 4, the applicant is legally, technically, financially, and otherwise qualified;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of Eastern Idaho Broadcasting and Television Company is designated for hearing at a time and place to be designated

by subsequent order of the Commission upon the following issues:

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

2. To determine whether the operation of Station KIFI as proposed would involve objectionable interference with any other existing broadcast stations or the service proposed in any pending application, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the installation and operation of Station KIFI as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

4. To determine the overlap, if any, that will exist between the service areas of Station KIFI, as proposed, and of Station KEIO at Pocatello, Idaho, the nature and extent thereof, and whether such overlap, if any, is in contravention of § 3.35 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-7942; Filed, Sept. 30, 1949; 8:55 a. m.]

[Docket No. 9466]

KVLH BROADCASTING CO.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of James T. Jackson, Galen O. Gilbert, Phil Crenshaw, George A. Rountree, and Harley E. Walker d/b as KVLH Broadcasting Company, Paul's Valley, Oklahoma, for a modification of license; Docket No. 9466, File No. BML-1311.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 21st day of September 1949;

The Commission having under consideration the above-entitled application requesting a modification of license to increase the hours of operation of station KVLH from daytime only to unlimited time utilizing the identical present facilities of 1470 kilocycles, 250 watts power at Paul's Valley, Oklahoma;

It appearing, that the applicant is legally, technically, financially and otherwise qualified to operate station KVLH as proposed, but that the application may involve objectionable interference with one or more existing stations and otherwise not comply with the Standards of Good Engineering Practice;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing at a time and place to be designated by subsequent order of the Commission, upon the following issues:

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

2. To determine whether the operation of station KVLH as proposed would involve objectionable interference with stations WMBD, Peoria, Illinois; KPLC, Lake Charles, Louisiana, and KRBC, Abilene, Texas, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of Station KVLH as proposed would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of Station KVLH as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

It is further ordered, That the Peoria Broadcasting Company, licensee of Station WMBD, Peoria, Illinois, the Reporter Broadcasting Company, licensee of Station KRBC, Abilene, Texas, and Calcasieu Broadcasting Company, licensee of Station KPLC, Lake Charles, Louisiana, are made parties to the proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-7943; Filed, Sept. 30, 1949; 8:55 a. m.]

FEDERAL DEPOSIT INSURANCE CORPORATION

INSURED BANKS

ORDER CALLING FOR SUMMARY OF DEPOSITS

Notice is hereby given that the Board of Directors of Federal Deposit Insurance Corporation at its meeting held on September 21, 1949, adopted the following order:

Pursuant to the provisions of subsections (j) and (k) of section 12B of the Federal Reserve Act, as amended (sec. 101 (j) and (k), 49 Stat. 692, 693; 12 U. S. C. 264 (j) and (k)); *It is ordered*, That each insured bank shall submit to the Federal Deposit Insurance Corporation on or before October 10, 1949, a report of its deposits as of the close of business September 30, 1949, on Form 89—Call No. 5, entitled "Summary of Deposits"[1] and said report shall be prepared in accordance with the "Instructions for Preparation of Summary of Deposits, Form 89—Call No. 5 at the close of business on September 30, 1949."

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.

[F. R. Doc. 49-7953; Filed, Sept. 30, 1949; 8:57 a. m.]

[1] Filed with the original document. Copies may be obtained from District Supervising Examiners of the Federal Deposit Insurance Corporation or from the Federal Deposit Insurance Corporation, Washington, D. C.

FEDERAL POWER COMMISSION

[Docket No. G-1249]

ATLANTIC SEABOARD CORP.

ORDER FIXING DATE OF HEARING

SEPTEMBER 27, 1949.

On August 2, 1949, Atlantic Seaboard Corporation (Applicant), a Delaware corporation having its principal place of business at Charleston, West Virginia, filed an application for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, as amended, authorizing the construction and operation of facilities, subject to the jurisdiction of the Commission, as is more fully described in the application on file with the Commission and open to public inspection.

Applicant has requested omission of the intermediate decision procedure under the provisions of § 1.32 of the Commission's rules of practice and procedure. No request to be heard or protest has been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on August 16, 1949 (14 F. R. 5070).

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

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on October 19, 1949, at 9:30 a. m., e. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of said rules of practice and procedure.

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

Date of issuance: September 28, 1949.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-7926; Filed, Sept. 30, 1949; 8:49 a. m.]

[Docket No. G-1277]

TRANSCONTINENTAL GAS PIPE LINE CORP.

NOTICE OF APPLICATION

SEPTEMBER 26, 1949.

Take notice that Transcontinental Gas Pipe Line Corporation (Applicant), a Delaware corporation, address 2100 Niels Esperson Building, Houston 2, Texas, filed on September 9, 1949, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain transmission pipeline facilities hereinafter described.

Applicant proposes to expand its facilities authorized In the Matter of Transcontinental Gas Pipe Line Corporation, Docket No. G-1143, by (1) the addition of 10 compressor stations which will increase its previously authorized H. P. by 137, 120; (2) substitution of approximately 362 miles of 30-inch pipe for the 26-inch pipe now authorized on the sections of Applicant's Line in Texas, Louisiana, Pennsylvania, and New Jersey; and (3) construction of 36 miles of line extending from New Jersey to New York-Connecticut State line.

Applicant's proposal will expand its presently authorized capacity of 340,000 Mcf per day to a total of 505,000 Mcf per day.

Applicant estimates the cost of its expansion program to be $50,386,000. It proposes to finance the project by the issuance of $32,000,000 in 3½ to 3⅝% mortgage bonds and $2,650,000 in common stock, a temporary $12,000,000 bank loan, and from funds on hand plus earnings from investment of idle funds.

Applicant proposes to supply additional gas to all but one of its present utility customers which it has been authorized to serve and in addition to new customers, namely, South Jersey Gas Company and Northeastern Gas Transmission Company.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) within 15 days from the date of publication hereof in the FEDERAL REGISTER. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-7910; Filed, Sept. 30, 1949; 8:45 a. m.]

[Docket No. G-1281]

MISSISSIPPI RIVER FUEL CORP.

NOTICE OF APPLICATION

SEPTEMBER 27, 1949.

Take notice that Mississippi River Fuel Corporation (Applicant), a Delaware corporation, of 407 North Eighth Street, St. Louis, Missouri, filed on September 19, 1949, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain transmission pipeline facilities hereinafter described.

Applicant proposes to construct and operate additions to two previously authorized compressor stations and to lease and operate three new compressor stations to be constructed by a third party, as follows:

Location	Number of units	Rated hp. per unit	Total rated hp.
Perryville, La	1	1,000	[1] 1,000
Glendale, Ark	5	1,000	[2] 5,000
West Point, Ark	2	1,000	[1] 2,000
Biggers, Ark	4	1,000	[2] 4,000
Twelve Mile, Mo	4	1,000	[2] 4,000
Total	16		16,000

[1] Additions to existing stations to be owned by applicant.
[2] New stations to be leased by applicant.

The proposed additional compressor station facilities will have the effect of increasing Applicant's total daily capacity to 344,000 Mcf at Perryville, Louisiana, and its total daily sales capacity to 328,000 Mcf. By means of this increased capacity Applicant will be enabled to meet increased demands of its existing customers and render additional natural-gas service to new distributing utilities and municipalities in Arkansas and Missouri. Applicant also proposes to connect additional main line industrial customers in Arkansas, Missouri and Illinois.

The estimated cost of the compressor station facilities to be added to Applicant's existing stations is $570,000, which will be financed from cash on hand. The estimated cost of construction of the new compressor stations to be leased by Applicant is $2,470,000, which costs will be financed by the lessor.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) within 15 days from the date of publication hereof in the FEDERAL REGISTER. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-7911; Filed, Sept. 30, 1949; 8:45 a. m.]

[Project No. 1927]

CALIFORNIA OREGON POWER CO.

NOTICE OF APPLICATIONS FOR AMENDMENT OF LICENSE (MAJOR)

SEPTEMBER 26, 1949.

Public notice is hereby given pursuant to the provisions of the Federal Power Act (16 U. S. C. 791a-825r), that the California Oregon Power Company, of Yreka, California, and Medford, Oregon, has filed two applications for amendment of the license for water-power Project No. 1927 (Toketee) to include the following additional developments to be located on North Umpqua River in Douglas County, Oregon:

(1) The Slide Creek development, consisting of a reinforced concrete diversion dam, with overflow spillway and radial gates, located approximately 1,000 feet downstream from the Toketee power plant, creating a pool with normal water level at elevation 1,982 feet (U. S. Geological Survey datum); an open canal about 2 miles long, partly concrete-lined and partly timber flume, along the north bank of the river; a penstock approximately 300 feet long, a powerhouse at the junction of Slide Creek with North Umpqua River containing a 25,000-horsepower turbine connected to an 18,000-kilowatt generator; a substation adjacent to the powerhouse; a 132-kilovolt transmission line to the switchyard adjacent to the Toketee power plant; and appurtenant facilities; and

(2) The Soda Springs development, consisting of a thin-arch-type reinforced-concrete dam, with two overflow spillways equipped with Tainter gates, located about 1,300 feet above the confluence of the river with Soda Creek, creating a pool with normal water level at elevation 1,802 feet (U. S. Geological Survey datum); a tunnel about 1,400 feet long along the north bank of the river; a penstock about 900 feet long; a powerhouse containing a 16,000-horsepower turbine connected to an 11,250-kilowatt generator; a substation adjacent to the powerhouse; a 132-kilovolt transmission line to the switchyard adjacent to the Toketee power plant; and appurtenant facilities.

Any protest against the approval of these applications or request for hearing thereon, with the reasons for such protest or request and the name and address of the party or parties so protesting or requesting, should be submitted before November 7, 1949, to the Federal Power Commission, Washington 25, D. C.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-7912; Filed, Sept. 30, 1949; 8:45 a. m.]

HOUSING AND HOME FINANCE AGENCY

Federal Housing Administration

ALASKA

FIELD ORGANIZATION

1. In accordance with renumbering set up at 14 F. R. 232 for former §§ 500.1 to 500.22 inclusive of Chapter V of Title 24, the codification of which was discontinued at 13 F. R. 6443 the following change in "Field Organization" will be noted:

Effective immediately the address of the Juneau, Alaska office is changed. Therefore, the entry in section 22 (b) (5) under "Alaska" is amended by:

Deleting opposite "Alaska" and in the column headed "Address" the following: "Federal Building" and substituting therefore the following: "Community Building, 120 Third Street".

[SEAL] DONALD M. ALSTRUP,
Assistant Commissioner.

[F. R. Doc. 49-7919; Filed, Sept. 30, 1949, 8:50 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2086]

INTERSTATE POWER CO.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 27th day of September A. D. 1949.

Interstate Power Company ("Interstate"), a registered holding company, on March 17, 1949, filed a declaration (File No. 70-2086) with this Commission pursuant to sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("act") respecting the issuance and sale at par, from time to time between June 1, 1949, and December 15, 1949, of $2,400,000 aggregate amount of 3% collateral promissory notes, maturing on or before June 30, 1950, in equal amounts to The Chase National Bank of the City of New York and the Manufacturers Trust Company. Interstate also proposed to issue and pledge as collateral security for such notes its First Mortgage Bonds, 4½% Series, due 1978, in a principal amount not to exceed $2,400,000. The proceeds from the sale of such notes was to be used to finance Interstate's construction program and to implement its working funds which had been reduced in financing new construction. By amendment to its declaration Interstate requested that the Commission approve the issuance and sale of $1,900,000 principal amount of the $2,400,000 of notes and reserve jurisdiction with respect to the remaining $500,000 principal amount.

The Commission, after notice and opportunity for hearing (see Holding Company Act Release No. 8981), by order dated April 19, 1949 (see Holding Company Act Release No. 9018) permitted said declaration to become effective with respect to $1,900,000 principal amount of said notes and reserved jurisdiction over the issuance and sale of the remaining $500,000 principal amount until the Commission should enter a further order with respect thereto.

Interstate has now filed a declaration (File No. 70-2228) with this Commission proposing the issuance and sale of 300,000 additional shares of its common stock and has requested that the Commission release jurisdiction heretofore reserved with respect to the issuance and sale of the remaining $500,000 principal amount of collateral promissory notes.

It now appearing to the Commission that it is appropriate in the public interest and the interest of investors and consumers that the declaration with respect to the issuance and sale of said remainder of collateral promissory notes be permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, and subject to the terms and conditions prescribed in Rule U-24, that said declaration, filed March 17, 1949, respecting the issuance and sale by Interstate Power Company of the remaining $500,000 principal amount of its 3% collateral promissory notes (out of an aggregate of $2,400,000 principal amount of such notes) and the issuance and pledge of $500,000 principal amount of its First Mortgage Bonds, 4½% Series, due 1978, as collateral security for such notes, as amended, be, and hereby is, permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-7932; Filed, Sept. 30, 1949; 8:52 a. m.]

[File No. 70-2141]

PENNSYLVANIA ELECTRIC CO. ET AL.

NOTICE OF FILING OF POST-EFFECTIVE AMENDMENT

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 26th day of September 1949.

In the matter of Pennsylvania Electric Company, Associated Electric Company, General Public Utilities Corporation; File No. 70-2141.

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, its subsidiary, Associated Electric Company ("Aelec"), also a registered holding company, and the latter's subsidiary, Pennsylvania Electric Company ("Penelec"), have filed, pursuant to the Public Utility Holding Company Act of 1935, a post-effective amendment to their joint application-declaration.

Notice is further given that any interested person may, not later than October 6, 1949, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest, and the issues of fact or law raised by the post-effective amendment to the joint application-declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be adressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after October 6, 1949, the post-effective amendment to the joint application-declaration, 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 thereof.

All interested persons are referred to the post-effective amendment to the joint application-declaration which is on file in the office of this Commission for a statement of the transactions therein proposed, which are summarized as follows:

On May 27, 1949, this Commission approved and permitted to become effective a joint application-declaration, as amended, wherein it was proposed that (a) GPU make cash capital contributions to Aelec in the aggregate amount of $25,000,000, (b) Aelec apply $20,854,000 of such capital contributions to the redemption, at principal amount of its outstanding 4½% bonds due 1953, with the balance of $4,146,000 to be advanced, from time to time, by Aelec to Penelec, and (c) Aelec also advance to Penelec, from time to time, from Aelec's treasury, cash in an aggregate amount not in excess of $354,000. It was also proposed that, as Penelec received the advances, it would issue its promissory notes to Aelec for the amount of each advance, such promissory notes to mature six months from date of issue and to bear no interest. Penelec would apply the cash received from Aelec in payment of the cost of, or reimbursement of payments made for, the cost of construction or improvements after January 1, 1949, of Penelec's facilities.

It now appears that GPU has made capital contributions to Aelec in the aggregate amount of $23,800,000.

It is now proposed that GPU make capital contributions to Aelec in the amount of $1,200,000 thus completing the contributions authorized in our order of May 27, 1949. It is also proposed that Aelec advance the entire $1,200,000 to Penelec rather than employ $890,000 of such funds for debt retirement as authorized by our order of May 27, 1949.

Applicants-declarants state that no commission other than this Commission has jurisdiction over any of the transactions proposed in the post-effective amendment.

Applicants-declarants request that the Commission enter its order at the earliest date practicable.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-7928; Filed, Sept. 30, 1949; 8:52 a. m.]

[File No. 70-2215]

PACIFIC POWER & LIGHT CO.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at his office in the city of Washington, D. C., on the 26th day of September A. D. 1949.

Pacific Power & Light Company ("Pacific"), an electric utility subsidiary of American Power & Light Company ("American"), a registered holding company subsidiary of Electric Bond and Share Company, also a registered holding company, having filed a declaration and amendments thereto pursuant to the Public Utility Holding Company Act of 1935, particularly sections 6 (a) and 7 thereof and Rule U-23 thereunder, regarding the following transactions:

Pacific presently has outstanding $6,500,000 principal amount of its 2⅜% promissory notes all held by Mellon National Bank and Trust Company ("Mellon Bank"). Said notes are secured by a pledge of $6,500,000 in principal amount of Pacific's First Mortgage Bonds, 3¼% Series due 1977, and said notes, pursuant to an extension agreement between Mellon Bank and Pacific, dated June 10, 1949, are due on November 15, 1949. When this Commission, by orders dated November 5, 1948, March 2, 1949, and June

27, 1949 (File Nos. 70-1975 and 70-2171) authorized, respectively, the issuance of said notes and the extension of their maturity it was the stated intention of Pacific that prior to November 15, 1949, a permanent financing program would be completed under which it would issue and sell additional First Mortgage Bonds in an amount sufficient, together with an investment in the equity of the company by American of $2,500,000, to enable it to retire all of said notes and provide funds for its construction requirements through 1949 and part or all of 1950.

It is stated in the pending declaration that Pacific has been advised by American that American considers it impracticable because of uncertainty as to American's other cash requirements to make the additional investment of $2,500,000 in the equity of Pacific by November 15, 1949, but that it may make such investment on or about May 1, 1950. It is further stated that Pacific accordingly believes it desirable to defer its program for further permanent financing until on or about May 1, 1950. In the meantime, Pacific proposes to finance its construction requirements through arrangements with Mellon Bank, the effect of which would be to extend to May 1, 1950, the maturity of the indebtedness owing upon the present notes and to provide Pacific with an additional $2,500,000 in cash.

To effect the foregoing proposed transactions Pacific has entered into an agreement with Mellon Bank dated September 7, 1949, pursuant to which Mellon Bank would surrender to Pacific all of the present notes of Pacific held by it and deposit to Pacific's account the sum of $2,500,000. Pacific thereupon would execute a new note in the principal amount of $9,000,000, to be dated as of the date of the delivery thereof and to mature on May 1, 1950, or on the sixtieth day following the date on which American invests an additional sum equal to $2,500,000 in the equity of Pacific, whichever date shall be the earlier. The new $9,000,000 note would bear interest at the rate of 2¾% per annum. The $6,500,000 in principal amount of Pacific's First Mortgage Bonds heretofore deposited with Mellon Bank would remain on deposit as security for the new note and as additional security for the new note Pacific would issue and deposit an additional First Mortgage Bond, 3¼% Series due 1977, of Pacific in the principal amount of $2,500,000.

It is stated in the declaration that Pacific presently expects that funds for the retirement of the new notes at or before maturity, as well as additional funds for use in carrying forward its construction program through 1950, will be raised through the issuance and sale to the public, on or about May 1, 1950, of $9,000,000 in principal amount of a new series of First Mortgage Bonds and the proposed issuance and sale to American, on or about the same date, of additional shares of common stock of Pacific for a cash consideration of $2,500,000.

The declaration having been filed on September 8, 1949, and amendments thereto having been filed on September 23 and September 26, 1949, and notice of said filing having been given in the form and manner required by Rule U-23, and no request for a hearing with respect thereto having been received within the period specified in said notice or otherwise, and the Commission not having ordered a hearing thereon; and

The Commission finding with respect to said declaration, as amended, that the requirements of the applicable provisions of the act and rules thereunder are satisfied, and deeming it appropriate that said declaration, as amended, be permitted to become effective without the imposition of terms and conditions other than those hereinafter ordered, and the Commission also deeming it appropriate to grant declarant's request that the order herein become effective forthwith upon the issuance thereof;

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said declaration, as amended, be and the same hereby is permitted to become effective forthwith, subject to the terms and conditions contained in Rule U-24 and to the condition that upon redelivery by Mellon to Pacific of any bonds pledged as collateral for Pacific's notes, Pacific shall not sell or otherwise dispose of said bonds without obtaining the authorization of this Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary*.

[F. R. Doc. 49-7929; Filed, Sept. 30, 1949; 8:52 a. m.]

[File No. 70-2218]

NATIONAL POWER & LIGHT CO. AND MEMPHIS GENERATING CO.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 27th day of September A. D. 1949.

Notice is hereby given that National Power & Light Company ("National"), a registered holding company, and its wholly owned subsidiary Memphis Generating Company ("Memphis"), have filed a joint declaration pursuant to the Public Utility Holding Company Act of 1935. Declarants designate sections 12 (d) and 12 (f) of the act and Rules U-43 and U-44 of the rules and regulations promulgated thereunder as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than October 12, 1949, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest, and the issues of law or fact raised by such joint declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after October 12, 1949, said joint declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100.

All interested persons are referred to said joint declaration which is on file in the offices of this Commission for a statement of the transactions therein proposed, which are summarized below:

National, which owns all of the outstanding securities of Memphis, consisting of 39,000 shares of common stock having a par value of $100 per share, proposes to sell to Memphis 1,000 shares of such common stock for a cash consideration of $100,000. Memphis proposes to retire such 1,000 shares of stock and effect a reduction of its capital in the amount of $100,000.

Declarants request that the Commission's order contain recitations conforming to the requirements of the Internal Revenue Code, as amended, including section 1808 (f) and Supplement R thereof, and further request that the Commission's order be issued as promptly as practicable and become effective immediately upon issuance thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary*.

[F. R. Doc. 49-7930; Filed, Sept. 30, 1949; 8:52 a. m.]

[File No. 70-2228]

INTERSTATE POWER CO.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C. on the 27th day of September A. D. 1949.

Notice is hereby given that Interstate Power Company ("Interstate"), a registered holding company and also an operating public utility company, has filed a declaration with this Commission pursuant to sections 6 (a) and 7 of the Public Utility Holding Company Act of 1935 ("act"), respecting the issuance and sale of 300,000 additional shares of its common stock at competitive bidding pursuant to Rule U-50 promulgated under the act.

Notice is further given that any interested person may, not later than October 19, 1949, request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law, raised by said declaration which he proposes to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after October 19, 1949, said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transaction as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said declaration, which is on file in the

offices of this Commission, for a statement of the transaction therein proposed which is summarized as follows:

Interstate proposes to issue and sell 300,000 shares of its common stock, $3.50 par value per share, at public sale pursuant to competitive bidding.

It is stated that the net proceeds from the sale of such shares will be applied to pay the cost of Interstate's construction program and to reimburse the company's treasury for working capital. The company estimates that it will incur fees and expenses of approximately $34,800 in connection with the proposed transaction.

Interstate requests that our order granting said declaration be issued prior to October 24, 1949, that such order become effective forthwith upon issuance, and that, in this instance, the ten day period for soliciting bids as provided in Rule U-50 be shortened to an appropriate period to permit Interstate to open bids on November 1, 1949.

The declaration indicates that no regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-7931; Filed, Sept. 30, 1949; 8:52 a. m.]

UNITED STATES MARITIME COMMISSION

[No. 690]

PRACTICES OF MEMBERS OF CONFERENCES TO ABSORB CERTAIN INSURANCE PREMIUMS CHARGEABLE TO SHIPPERS BY INSURANCE COMPANIES

NOTICE OF HEARINGS

By order of August 11, 1949, the Commission entered upon a proceeding of inquiry and investigation concerning the lawfulness, under section 15 of the Shipping Act, 1916, of the practice by members of the steamship conferences named in the attached "Exhibit A" of absorbing out of the freight rates paid by the shippers any added amount of insurance premiums charged shippers by insurance companies because of the use of ships subject to such additional premiums because of age, or other conditions, or because of stowing cargo on deck rather than below deck; and requiring the respondents named in said order to show cause why an order should not be entered disapproving the practice of the absorption of said insurance premiums.

The hearings required by the Commission's said order of August 11, 1949, will be held before Examiner A. L. Jordan in New York, N. Y., beginning at 10 o'clock a. m., e. s. t., October 17, 1949, in the Directors' Room, Maritime Association of the Port of New York, 80 Broad Street; and in New Orleans, La., beginning at 10 o'clock a. m., c. s. t., October 31, 1949, in the Jung Hotel. The hearings will be conducted pursuant to the Commission's rules of procedure (12 F. R. 6076), and a recommended decision will be issued.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) desiring to intervene in this proceeding should notify the Commission immediately and file petitions of intervention in accordance with § 201.81 of the Commission's rules of procedure.

By order of the United States Maritime Commission.

Dated: August 11, 1949, Washington, D. C.

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

EXHIBIT A

Gulf/French Atlantic Hamburg Range Freight Conference (Agreement No. 140-1).

Gulf/United Kingdom Conference (Agreement No. 161).

Havana Steamship Conference (Agreement No. 4189).

United States Atlantic and Gulf/Haiti Conference (Agreement No. 5590).

United States Atlantic and Gulf-Santo Domingo Conference (Agreement No. 6080).

U. S. Atlantic & Gulf-Netherlands West Indies & Venezuela Conference (Agreement No. 6190).

River Plate and Brazil Conference (Agreement No. 59).

Brazil-United States/Canada Freight Conference (Agreement No. 5450).

Mid Brazil/United States-Canada Freight Conference (Agreement No. 7630).

North Brazil/United States-Canada Freight Conference (Agreement No. 7640).

River Plate/United States-Canada Freight Conference (Agreement No. 6900).

East Coast South America Reefer Conference (Agreement No. 6800).

River Plate and Brazil/United States Reefer Conference (Agreement No. 7200).

Gulf/South and East African Conference Agreement No. 7780).

U. S. A./South Africa Conference (Agreement No. 3578).

South Atlantic Steamship Conference (Agreement No. 4620).

North Atlantic continental Freight Conference (Agreement No. 4490).

North Atlantic French Atlantic Freight Conference (Agreement No. 7770).

Gulf Scandinavian and Baltic Sea Ports Conference (Agreement No. 5400).

North Atlantic Baltic Freight Conference (Agreement No. 7670).

South Africa/U. S. A. Conference (Agreement No. 3579).

Gulf and South Atlantic Havana Steamship Conference (Agreement No. 4188).

Pacific Coast River Plate Brazil Conference (Agreement No. 6400).

[F. R. Doc. 49-7923; Filed, Sept. 30, 1949; 8:48 a. m.]

ASSOCIATED STEAMSHIP LINES (MANILA) CONFERENCE AND TRANS-PACIFIC FREIGHT CONFERENCE OF NORTH CHINA

NOTICE OF AGREEMENTS FILED WITH THE COMMISSION FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended:

Agreement 5600-14 modifies Articles 15 and 17 of the basic agreement of the Associated Steamship Lines (Manila) Conference (Agreement 5600) to provide (1) that each member shall deposit with the conference the refundable sum of $25,000 in cash, Government Bonds, Bank Guarantee, or surety bond to guarantee payment of possible damages for violation of the agreement; (2) that copies of all manifests, excluding names of shippers and consignees, be submitted to the Conference Secretary; and (3) for the inclusion of provisions governing the determination of violations of and damages for breach of the agreement. Agreement 5600 covers the establishment and maintenance of uniform rates, charges and practices for or in connection with the transportation of cargo from the Philippine Islands to or via ports in Ceylon, India, Malay States, Straits Settlements, United States, Canada, Mexico, Central America, Canal Zone, South America, Caribbean Sea ports, the West Indies, Australia, and New Zealand.

Agreement 85-3 amends Clause 3 (a) of the basic agreement of the Trans-Pacific Freight Conference of North China (Agreement No. 85), which clause designates the scale of rates to apply on cargo destined to Hawaii and Pacific Coast ports of the United States and Canada and the rail rates to apply on cargo destined to inland points in the United States and Canada. As presently worded Clause 3 (a) provides that the rail rates shall be those set forth in tariffs of the Trans-Continental Freight Bureau and Canadian Freight Association. As amended by Agreement 85-3 this clause will provide that the rail rates shall be those published in tariffs filed with the Interstate Commerce Commission and the Canadian Board of Transport Commissioners. Agreement No. 85 provides for the establishment and maintenance of uniform rates and conditions for and in connection with the transportation of cargo from North China ports to United States and Canadian Pacific coast ports and Hawaii.

Interested parties may inspect these agreements and obtain copies thereof at the Commission's Office of Regulation, Washington, D. C., and may submit to the Commission within 20 days after publication of this notice written statements with reference to any of the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: August 10, 1949.

By order of the United States Maritime Commission.

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

[F. R. Doc. 49-7924; Filed, Sept. 30, 1949; 8:48 a. m.]

VETERANS' ADMINISTRATION

CENTRAL OFFICE

ORGANIZATION

Paragraph (h) (3), section 2, is amended to read as follows:

SEC. 2. *Central office.* * * *

(h) * * *

(3) *Organization.* The office of the assistant administrator for insurance

consists of the executive assistant, underwriting service, disability insurance claims service, actuarial service, insurance accounts service, field operations service, and the special insurance projects service.

[SEAL] O. W. CLARK,
Deputy Administrator.

[F. R. Doc. 49-7918; Filed, Sept. 30, 1949; 8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616, E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 13795]

"TRIUMPH DES WILLENS"

In re: Motion Picture "Triumph des Willens" and Interests therein.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All right, title, interest and claim of whatsoever kind or nature under the statutory and common law of the United States, and of the several states, territories and possessions thereof, in, to and under the following:

a. The motion picture entitled, "Triumph des Willens", which is a record of the festivities of the Nazi Party Convention (Reichsparteitag) held at Nuermberg, Germany, in 1934, and which was produced under the supervision of and edited by Leni Riefenstahl during the years 1934–36,

b. Every copyright, claim of copyright and right to the copyright in the foregoing,

c. All rights of renewal, reversion and revesting in the foregoing,

d. All monies and amounts, by way of damages, royalties, share of profits or other emolument, accrued or to accrue, whether arising pursuant to law, contract or otherwise, with respect to the foregoing, and

e. All causes of action accrued or to accrue at law or in equity with respect to the foregoing, including, but not limited to, the right to sue for and recover all damages and profits and to request and receive the benefits of all remedies provided by common law or statute for the infringement of any copyright, or in violation of any right described in or affecting the foregoing,

is property within the United States, owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by a designated enemy country (Germany), and is property payable or held with respect to copyrights or rights related thereto in which interests are held by, and such property itself constitutes interests held therein by, a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The term "designated enemy country" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 7, 1949.

For the Attorney General.

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

[F. R. Doc. 49-7946; Filed, Sept. 30, 1949; 8:56 a. m.]

[Vesting Order 13825]

TOBIS FILMKUNST G. M. B. H. ET AL.

In re: Rights in motion pictures owned by Tobis Filmkunst G. m. b. H. and others.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the persons (including individuals, partnerships, associations, corporations or other business organizations) whose names and last known addresses are set forth in Column 3 of Exhibit A attached hereto and made a part hereof, are residents of, or are organized under the laws of, or have or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in, Germany and are nationals of a designated enemy country (Germany).

2. That the property described as follows:

(a) All right, title, interest, and claim of whatsoever kind or nature, under the statutory and common law of the United States and of the several States thereof, in, to and under the following:

(1) The motion pictures listed in said Exhibit A, including, but not limited to, the exclusive right to exhibit same in whole or in part by any means within the United States, all rights to arrange, adapt, revise, translate, and duplicate said motion pictures in whole or in part, and every copyright, claim of copyright, right to copyright, and right to renew the copyright or copyrights in said motion pictures.

(2) The screen plays, scenarios, and shooting scripts upon which said motion pictures are based, including, but not limited to, all motion picture and television rights therein, and every copyright, claim of copyright, right to copyright, and right to renew the copyright or copyrights in said screen plays, scenarios, and shooting scripts.

(3) The rights to dramatize, perform, represent, and reproduce on motion picture film those portions of the published and unpublished works subject to copyright, other than the above mentioned screen plays, scenarios, and shooting scripts, which underlie or are embodied in said motion pictures and to exhibit such film by any means in the United States.

(b) All right, title, interest, and claim of whatsoever kind or nature, under the statutory and common law of the United States and of the several States thereof, of the persons referred to in Column 3 of said Exhibit A and also of all other persons (including individuals, partnerships, associations, corporations or other business organizations), whether or not named elsewhere in this Order including said Exhibit A, who are citizens and residents of, or which are organized under the laws of or have their principal places of business in, Germany or Japan, and are nationals of such designated enemy countries, in, to and under the following:

(1) All prints in the United States of the motion pictures listed in said Exhibit A;

(2) All arrangements, adaptations, revisions, dramatizations, translations, and versions of the motion pictures listed in said Exhibit A;

(3) Every license, agreement, privilege, power and right of whatsoever nature arising under or with respect to the property described in subparagraphs 2 (a), 2 (b) (1) and 2 (b) (2) of this Vesting Order;

(c) All monies and amounts, and all rights to receive monies and amounts, by way of damages, royalty, share of profits or other emolument, accrued or to accrue, whether arising pursuant to law, contract or otherwise, with respect to the property described in subparagraphs 2 (a) and 2 (b), of this Vesting Order, and

(d) All causes of action accrued or to accrue at law or in equity with respect to the property described in subparagraphs 2 (a), 2 (b), and 2 (c) hereof, including but not limited to the rights to sue for and recover all damages and profits and to request and receive the benefits of all remedies provided by common law and by statute for the infringement of any copyright, for the violation of any right and for the breach of any obligation described in or affecting the aforesaid property,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the persons referred to in subparagraphs 1 and 2 (b) hereof, the aforesaid nationals of a designated enemy country (Germany) and is property of, or is property payable or held with respect to copyrights or rights related thereto in which interests are held by, and such property itself constitutes interest therein held by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the persons referred to in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 12, 1949.

For the Attorney General.

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

EXHIBIT A

Column 1 Copyright numbers	Column 2 Titles of works	Column 3 Names and last known addresses of owners
Unknown	Philharmoniker	Tobis-Filmkunst G. m. b. H., Berlin, Germany (nationality, German).
Do	Rembrandt	Terra-Filmkunst G. m. b. H., Berlin, Germany (nationality, German).
Do	Der Strom	Do.
Do	Liebesexpress	Joint production of: Greenbaum Film G. m. b. H., Berlin, Germany, and Emelka Kulturfilm G. m .b. H., Munich, Germany (nationality, German).
Do	Der schüchterne Casanova	Tobis-Magna-Film Produktions G. m. b. H., known also as Tobis-Magna, Berlin, Germany (nationality, German).
Do	Die Privatsekretärin heiratet	Joint production of: Greenbaum Film G. m. b. H., Berlin, Germany and Emelka Kulturfilm G. m. b. H., Munich, Germany (nationality, German).
Do	Skandal um Eva	Henny Porten Film Produktion G. m. b. H., Berlin, Germany Nero-Film A. G., Berlin, Germany Nero-Film G. m. b. H., Berlin, Germany (nationality, German).
Do	Die Tänzerin von Sanssouci	Zelnik Film G. m. b. H., Berlin, Germany "Aafa" Film A. G., Berlin, Germany (nationality, German).
Do	Der zerbrochene Krug	Tobis-Magna-Filmproduktion G. m. b. H., Berlin, Germany (nationality, German).

[F. R. Doc. 49-7948; Filed, Sept. 30, 1949; 8:57 a. m.]

[Vesting Order 13811]

WALTER BRINKMANN

In re: Securities owned by and debt owing to Walter Brinkmann, also known as Dr. Walter Brinkmann, and as Walter Brinkman. F-28-23565-A-1, F-28-23565-D-1, F-28-23565-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Walter Brinkmann, also known as Dr. Walter Brinkmann, and as Walter Brinkman, on or since the effective date of Executive Order 8389, as amended, and on or since December 11, 1941, has been a resident of Germany and is a national of a designated enemy country (Germany);

2. That the property described as follows:

a. Five (5) East Bay Municipal Utility District Water 5% bonds, each of $1,000.00 face value, in bearer form, bearing the numbers 24651-5 inclusive, presently in the custody of The American Trust Company, 464 California Street, San Francisco 20, California, in an account entitled, "American Trust Company, Agent for Walter Brinkmann, A-3256", together with any and all rights thereunder and thereto,

b. Five (5) Pasadena San Gabriel Water Project, Series C, 5% bonds of 1951, each of $1,000.00 face value, in bearer form, bearing the numbers 267-71 inclusive, presently in the custody of The American Trust Company, 464 California Street, San Francisco 20, California, in an account entitled, "American Trust Company, Agent for Walter Brinkmann, A-3256", together with any and all rights thereunder and thereto,

c. Two hundred (200) shares of $25.00 par value 5½% first preferred stock of the Pacific Gas and Electric Company, 245 Market Street, San Francisco 6, California, a corporation organized under the laws of the State of California, evidenced by certificate numbered C 9346 for one hundred (100) shares, and certificate numbered C 9347 for one hundred (100) shares, registered in the name of Dr. Walter Brinkmann, presently in the custody of The American Trust Company, 464 California Street, San Francisco 20, California, in an account entitled, "American Trust Company, Agent for Walter Brinkmann, A 3256", together with all declared and unpaid dividends thereon,

d. That certain debt or other obligation owing to Walter Brinkmann, also known as Dr. Walter Brinkmann, and as Walter Brinkman, by The American Trust Company, 464 California Street, San Francisco 20, California, arising out of savings account, account number 1204, entitled Walter Brinkman, together with any and all rights to demand, enforce and collect the same, and

e. That certain debt or other obligation of The American Trust Company, 464 California Street, San Francisco 20, California, arising out of a savings account, account number 1602, entitled "American Trust Company, Agent for Walter Brinkmann, A 3256", maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Walter Brinkmann, also known as Dr. Walter Brinkmann, and as Walter Brinkman, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 12, 1949.

For the Attorney General.

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

[F. R. Doc. 49-7947; Filed, Sept. 30, 1949; 8:56 a. m.]

[Vesting Order 13837]

NICHOLAS BAUMGARTNER AND OTTO MOOG

In re: Stock owned by Nicholas Baumgartner and Otto Moog. F-28-30244-D-1, F-28-774-D-8.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Nicholas Baumgartner, whose last known address is Bodenwohr Ort, Oberpfalz, Bavaria, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That Otto Moog, whose last known address is Am Wendenwehr 9, Braunschweig, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

3. That the property described as follows: One (1) share of no par value Class A capital stock of The Western Union Telegraph Company, 60 Hudson Street, New York 13, New York, a corporation organized under the laws of the State of New York, evidenced by a certificate numbered A-019933, registered in the name of Nicholas Baumgartner, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evi-

dence of ownership or control by Nicholas Baumgartner, the aforesaid national of a designated enemy country (Germany);

4. That the property described as follows: Two (2) shares of no par value Class A capital stock of The Western Union Telegraph Company, 60 Hudson Street, New York 13, New York, a corporation organized under the laws of the State of New York, evidenced by a certificate numbered 318959, registered in the name of Direktor Dr. Ing Otto Moog, together with all declared and unpaid dividends thereon.

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Otto Moog, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

5. That to the extent that the persons named in subparagraphs 1 and 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 19, 1949.

For the Attorney General.

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

[F. R. Doc. 49-7949; Filed, Sept. 30, 1949; 8:57 a. m.]

[Vesting Order 500A-255]

COPYRIGHTS OF CERTAIN GERMAN NATIONALS

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the persons (including individuals, partnerships, associations, corporations or other business organizations) referred to or named in Column 5 of Exhibit A attached hereto and made a part hereof and whose last known addresses are listed in said Exhibit A as being in a foreign country (the names of which persons are listed (a) in Column 3 of said Exhibit A as the authors of the works, the titles of which are listed in Column 2, and the copyright numbers, if any, of which are listed in Column 1, respectively, of said Exhibit A, and/or (b) in Column 4 of said Exhibit A as the owners of the copyrights, the numbers, if any, of which are listed in Column 1, and covering works the titles of which are listed in Column 2, respectively, of said Exhibit A, and/or (c) in Column 5 of said Exhibit A as others owning or claiming interests in such copyrights) are residents of, or are organized under the laws of, or have their principal places of business in, such foreign country and are nationals thereof;

2. That all right, title, interest and claim of whatsoever kind or nature, under the statutory and common law of the United States and of the several States thereof, of the persons referred to in Column 5 of said Exhibit A, and also of all other persons (including individuals, partnerships, associations, corporations or other business organizations), whether or not named elsewhere in this Order including said Exhibit A, who are residents of, or which are organized under the laws of or have their principal places of business in, Germany or Japan, and are nationals of such foreign countries, in, to and under the following:

a. The copyrights, if any, described in said Exhibit A,

b. Every copyright, claim of copyright and right to copyright in the works described in said Exhibit A and in every issue, edition, publication, republication, translation, arrangement, dramatization and revision thereof, in whole or in part, of whatsoever kind or nature, and of all other works designated by the titles therein set forth, whether or not filed with the Register of Copyrights or otherwise asserted, and whether or not specifically designated by copyright number,

c. Every license, agreement, privilege, power and right of whatsoever nature arising under or with respect to the foregoing,

d. All monies and amounts, and all rights to receive monies and amounts, by way of royalty, share of profits or other emolument, accrued or to accrue, whether arising pursuant to law, contract or otherwise, with respect to the foregoing,

e. All rights of renewal, reversion or revesting, if any, in the foregoing, and

f. All causes of action accrued or to accrue at law or in equity with respect to the foregoing, including but not limited to the rights to sue for and recover all damages and profits and to request and receive the benefits of all remedies provided by common law or statute for the infringement of any copyright or the violation of any right or the breach of any obligation described in or affecting the foregoing,

is property of, and is property payable or held with respect to copyrights or rights related thereto in which interests are held by, and such property itself constitutes interests held therein by, the aforesaid nationals of foreign countries.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The term "national" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 7, 1949.

For the Attorney General.

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

EXHIBIT A

Column 1 Copyright numbers	Column 2 Titles of works	Column 3 Names and last known nationalities of authors	Column 4 Names and last known addresses of owners of copyrights	Column 5 Identified persons whose interests are being vested
A. For. 12793.	Das Saxophon, mit Zahlreichen Abbildungen und Notenbeispielen. 1931.	Jaap Kool (nationality not established).	Verlagsbuchhandlung J. J. Weber, Leipzig, Germany (nationality, German).	Owner.
E. 625078	Der Getreue Musikmeister. (Il Maestro di Musica): Komische Oper in zwei Aufzügen, von Giovanni Battista Pergolesi, 1710-1736. Frei übersetzt und bearbeitet von Arnold Schering. Orchester-Partitur. 1925.	Giovanni Battista Pergolesi (composer) Arnold Schering (editor and translator) (nationalities not established).	C. F. Kahnt, Leipzig, Germany (nationality, German).	Do.
Unknown	Zeitschrift für angewandte psychologie und charakterkunde.	Unknown (periodical publication).	Johann Ambrosius Barth, Leipzig, Germany (nationality, German).	Do.

[F. R. Doc. 49-7952; Filed, Sept. 30, 1949; 8:57 a. m.]

[Vesting Order 13845]

I. OKANO

In re: Bank account owned by I. Okano. F-39-6551-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That I. Okano, whose last known address is 2422 Koi machi Honmachi, Hiroshima City, Japan, is a resident of Japan and a national of a designated enemy country (Japan);

2. That the property described as follows: That certain debt or other obligation of the Sumitomo Bank of Seattle, Room 1210, 1411 Fourth Avenue Building, Seattle, Washington, arising out of a Time Deposit Account, entitled Mrs. I. Okano, Trustee for M. Okano, evidenced by a Certificate of Deposit numbered 733, said account maintained at the aforesaid bank, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, I. Okano, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 19, 1949.

For the Attorney General.

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

[F. R. Doc. 49-7950; Filed, Sept. 30, 1949; 8:57 a. m.]

[Vesting Order 13859]

EMILY F. P. LANDIS

In re: Trust under the will of Emily F. P. Landis, deceased. File No. D-49-648.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Ottokar Reynolds Erich von Borcke; Else Bertha Jenny Louise Clara Hermine, also known as Frau Ella Nothen (Frau Michael Nothen); Brigitte Nothen, and Adrian Henry Alexander, also known as Adrian von Borcke, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the issue, names unknown, of Ottokar Reynolds Erich von Borcke, of Else Bertha Jenny Louise Clara Hermine, also known as Frau Ella Nothen (Frau Michael Nothen), and of Adrian Henry Alexander, also known as Adrian von Borcke, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the trust created under the will of Emily F. P. Landis, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

4. That such property is in the process of administration by Fidelity-Philadelphia Trust Company, as trustee, acting under the judicial supervision of the Orphans' Court of Philadelphia County, Pennsylvania;

and it is hereby determined:

5. That to the extent that the persons named in subparagraph 1 hereof and the issue, names unknown, of Ottokar Reynolds Erich von Borcke, of Else Bertha Jenny Louise Clara Hermine, also known as Frau Ella Nothen (Frau Michael Nothen), and of Adrian Henry Alexander, also known as Adrian von Borcke, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 27, 1949.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-7951; Filed, Sept. 30, 1949; 8:57 a. m.]

[Vesting Order 13829]

ADOLF HORLACHER

In re: Rights of Adolf Horlacher under Insurance Contract. File No. F-28-24705-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Adolf Horlacher, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 4023 715, issued by The Equitable Life Assurance Society of the United States, New York, New York, to Adolf Horlacher, together with the right to demand, receive and collect said net proceeds.

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on September 19, 1949.

For the Attorney General.

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

[F. R. Doc. 49-7903; Filed, Sept. 29, 1949; 8:54 a. m.]

ERICH LACHMANN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Erich Lachmann, 115 Broadway, New York 6, New York, 1199; $1,452.02 in the Treasury of the United States.

Executed at Washington, D. C., on September 23, 1949.

For the Attorney General.

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

[F. R. Doc. 49-7903; Filed, Sept. 29, 1949; 8:54 a. m.]