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TITLE 3—THE PRESIDENT

PROCLAMATION 2736

JOHN PAUL JONES BICENTENNIAL DAY, 1947

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the sixth of July nineteen hundred and forty-seven is the two-hundredth anniversary of the birth of John Paul Jones at Arbigland in the parish of Kirkbean, Kirkcudbright, Scotland; and

WHEREAS John Paul Jones drew his sword in the struggle of the American colonies for freedom and the rights of man; and

WHEREAS, on February the fourteenth in the year seventeen hundred and seventy-eight, in the United States Frigate *Ranger*, John Paul Jones received from Admiral La Motte Piquet, commander of the French squadron of Louis XVI, the first salute to the Stars and Stripes from a foreign power; and

WHEREAS John Paul Jones was the first American Naval officer to be awarded a gold medal by the Continental Congress for fearlessness and perseverance in the face of overwhelming odds and, in the words of the Congress, "for the zeal, prudence, and intrepidity, with which he hath supported the honor of the American Flag"; and

WHEREAS he gave our Navy its earliest traditions of heroism and victory which have fostered the high morale and initiative demonstrated throughout our history by the men of our fighting forces:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim and designate the sixth day of July nineteen hundred and forty-seven as John Paul Jones Bicentennial Day, and I direct the appropriate officials of the Federal Government to have the flag of the United States displayed from public buildings on that day. I also request State and local officials, civic organizations, and interested individuals to observe the day with ceremonies which will reflect honor upon the career of this Naval hero and strengthen the pride of the American people in their Navy and its glorious achievements.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this second day of July in the year of our Lord nineteen hundred and forty-seven, and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

HARRY S. TRUMAN

By the President:

G. C. MARSHALL,
Secretary of State.

[F. R. Doc. 47-6331; Filed, July 2, 1947; 3:32 p. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 3—ACQUISITION OF A COMPETITIVE STATUS

PART 20—RETENTION PREFERENCE REGULATIONS FOR USE IN REDUCTIONS IN FORCE

MISCELLANEOUS AMENDMENTS

The second paragraph of § 3.101 (c) (12 F. R. 4063) is amended to read as follows:

§ 3.101 *Incumbents of positions brought into the competitive service.*

* * *

(c) * * *

Incumbents of positions on the date the positions are brought into the competitive service who are involuntarily separated because of reductions of force, within 60 days after change in status of the positions and before acquiring a competitive status under this section, may be recalled to duty for permanent appointment to their former positions within 90 days after separation: *Provided*, They are recalled in the inverse order in which they were considered for separation on the appropriate retention preference register. Employees so recalled and appointed may be recommended for a com-

(Continued on p. 4365)

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THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

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A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such in parentheses.

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petitive status in accordance with this section as if their service had been continuous, but the period of separation shall not be regarded as service.

(Sec. 2, 22 Stat. 403, 50 Stat. 533; 5 U. S. C. 631, 633)

Effective as to notices issued to employees on and after August 4, 1947, § 20.3 is amended to read in part as follows:

§ 20.3 *Retention preference; classification.* For the purposes of determining relative retention preference for reductions in force, employees shall be classified according to tenure of employment in competitive retention groups and subgroups as follows:

Group A: All employees currently serving under absolute or probational civil service appointments or who were appointed, reappointed, transferred, or promoted from absolute or probational civil service appointments to war service indefinite or trial period appointments without a break in service of 30 days or more. With respect to positions excepted from the Civil Service Act and rules, this includes all status and non-status employees currently serving in excepted positions under appointments without time limitation, or all employees who transferred from absolute or probational appointments in the competitive service to war service indefinite or trial period excepted appointments.

* * * * *

Group B: All employees serving in positions in the competitive service without competitive status or serving under appointments limited to the duration of the present war or for the duration of the war and not to exceed six months thereafter, or otherwise limited in time to a period in excess of one year, except those specifically covered in Groups A and C.

(Sec. 12, 58 Stat. 390; 5 U. S. C. Sup. 861)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] H. B. MITCHELL,
President.

[F. R. Doc. 47-6320; Filed, July 8, 1947; 8:47 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders)

[Lemon Reg. 228, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

Findings. (1) Pursuant to the marketing agreement and Order No. 53 (7 CFR, Cum. Supp., 953.1 et seq.), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is hereby further found that compliance with the notice, public rule making procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 60 Stat. 237) is impracticable and contrary to the public interest in that the time intervening between the date when information upon which the regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient for such compliance.

Paragraph (b) of § 953.335 *Lemon Regulation 228* (12 F. R. 4198) is hereby amended to read as follows:

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., June 29, 1947, and ending at 12:01 a. m., P. s. t., July 6, 1947, is hereby fixed at 750 carloads, or an equivalent quantity.

(2) The prorate base of each handler who has made application therefor, as provided in the said marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is attached to Lemon Regulation 227 (12 F. R. 4016) and made a part hereof by this reference. The Lemon Administrative Committee, in accordance with the provisions of the said marketing agreement and order, shall calculate the quantity of lemons which may be handled by each such handler during the period specified in subparagraph (1) of this paragraph.

(3) As used in this section, "handled," "handler," "carloads," and "prorate base" shall have the same meaning as is given to each such word in the said marketing agreement and order.

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

Done at Washington, D. C., this 2d day of July 1947.

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

[F. R. Doc. 47-6331; Filed, July 3, 1947; 8:47 a. m.]

[Lemon Reg. 229]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENT

§ 953.336 *Lemon Regulation 229*—(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 53 (7 CFR, Cum. Supp., 953.1 et seq.), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that compliance with the notice, public rule making procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 60 Stat. 237) is impracticable and contrary to the public interest in that 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 for such compliance.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., July 6, 1947, and ending at 12:01 a. m., P. s. t., July 13, 1947, is hereby fixed at 675 carloads, or an equivalent quantity.

(2) The prorate base of each handler who has made application therefor, as provided in the said marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is attached hereto and made a part hereof by this reference. The Lemon Administrative Committee, in accordance with the provisions of the said marketing agreement and order, shall calculate the quantity of lemons which may be handled by each such handler during the period specified in subparagraph (1) of this paragraph.

(3) As used in this section, "handled," "handler," "carloads," and "prorate base" shall have the same meaning as is given to each such term in the said marketing agreement and order. (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 2d day of July 1947.

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

PRORATE BASE SCHEDULE

Storage Date: June 29, 1947

[12:01 a. m. July 6, 1947, to 12:01 a. m. July 20, 1947]

Handler	Prorate base (percent)
Total	100.000
Allen-Young Citrus Packing Co	.000
American Fruit Growers, Fullerton	.705
American Fruit Growers, Lindsay	.000
American Fruit Growers, Upland	.359
Consolidated Citrus Growers	.000
Corona Plantation Co	.436
Hazeltine Packing Co	.393
Leppla-Pratt, Produce Distributors, Inc	.000
McKellips, C. H.-Phoenix Citrus Co	.000
McKellips Mutual Citrus Growers, Inc	.000
Phoenix Citrus Packing Co	.000
Ventura Coastal Lemon Co	1.201
Ventura Pacific Co	1.409
Total A. F. G	4.513
Arizona Citrus Growers	.000
Desert Citrus Growers Co., Inc	.000
Mesa Citrus Growers	.000
Elderwood Citrus Association	.000
Klink Citrus Association	.000
Lemon Cove Association	.000
Glendora Lemon Growers Association	1.351
La Verne Lemon Association	.785
La Habra Citrus Association	1.827
Yorba Linda Citrus Association, The	1.027
Alta Loma Heights Citrus Association	.873
Etiwanda Citrus Fruit Association	.303
Mountain View Fruit Association	.519
Old Baldy Citrus Association	1.079
Upland Lemon Growers Association	5.758
Central Lemon Association	1.313
Irvine Citrus Association, The	1.135
Placentia Mutual Orange Association	.469
Corona Citrus Association	.174
Corona Foothill Lemon Co	1.490
Jameson Co	.850
Arlington Heights Fruit Co	.395
College Heights Orange and Lemon Association	3.037
Chula Vista Citrus Association, The	1.285
El Cajon Valley Citrus Association	.129
Escondido Lemon Association	3.109
Fallbrook Citrus Association	1.616
Lemon Grove Citrus Association	.422
San Dimas Lemon Association	1.801
Carpinteria Lemon Association	2.612
Carpinteria Mutual Citrus Association	2.849
Goleta Lemon Association	2.957
Johnston Fruit Co	4.893
North Whittier Heights Citrus Association	.817
San Fernando Heights Lemon Association	.773
San Fernando Lemon Association	.475
Sierra Madre-Lamanda Citrus Association	1.756
Tulare County Lemon and Grapefruit Association	.000
Briggs Lemon Association	3.005
Culbertson Investment Co	.697
Culbertson Lemon Association	1.536
Fillmore Lemon Association	1.623
Oxnard Citrus Association No. 1	3.555
Oxnard Citrus Association No. 2	3.011
Rancho Sespe	1.050
Santa Paula Citrus Fruit Association	3.847
Saticoy Lemon Association	3.962
Seaboard Lemon Association	3.672
Somis Lemon Association	2.884
Ventura Citrus Association	1.399
Limoneira Co	3.570
Teague-McKevett Association	1.116
East Whittier Citrus Association	.754
Leffingwell Rancho Lemon Association	.812
Murphy Ranch Co	1.815
Whittier Citrus Association	.786
Whittier Select Citrus Association	.663
Total C. F. G. E	87.539
Arizona Citrus Products Co	.000
Chula Vista Mutual Lemon Association	.811
Escondido Cooperative Citrus Association	.377
Glendora Cooperative Citrus Association	.088
Index Mutual Association	.324
La Verne Cooperative Citrus Association	1.521
Libbey Fruit Packing Co	.000
Orange Cooperative Citrus Association	.177
Pioneer Fruit Co	.000
Tempe Citrus Co	.000
Ventura County Orange & Lemon Association	2.390
Whittier Mutual Orange & Lemon Association	.213
Total M. O. D	5.901
Abbate, Chas. Co., The	.000
Atlas Citrus Packing Co	.002
California Citrus Groves, Inc. Ltd	.000
El Modena Citrus, Inc	.010
El Rio Citrus Co	.057
Evans Bros. Packing Co.—Riverside	.037
Evans Bros. Packing Co.—Sentinel Butte Ranch	.000
Foothill Packing Co	.045
Granada Packing House	.000
Harding & Leggett	.000
Morris Bros. Fruit Co	.000
Orange Belt Fruit Distributors	1.557
Potato House, The	.000
Raymond Bros	.000
Riverside Growers, Inc	.000
Rooke, B. G., Packing Co	.000
San Antonio Orchard Co	.031
Sun Valley Packing Co	.000
Sunny Hills Ranch, Inc	.000
Valley Citrus Packing Co	.000
Verity, R. H., Sons & Co	.198
Western States Fruit & Produce Co	.000
Total Independents	1.987

[F. R. Doc. 47-6335; Filed, July 3, 1947; 8:47 a. m.]

[Peach Order 3]

PART 962—FRESH PEACHES GROWN IN GEORGIA

REGULATION BY SIZE

§ 962.303 *Peach Order 3*—(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 62 (7 CFR, Cum. Supp., 962.1 *et seq.*), regulating the handling of fresh peaches grown in the State of Georgia, effective under the ap-

plicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the Industry Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of peaches, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that compliance with the notice, public rule making procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong.; 60 Stat. 237) is impracticable and contrary to the public interest in that 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 for such compliance.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., July 7, 1947, and ending at 12:01 a. m., e. s. t., September 1, 1947, no handler shall ship:

(i) Any peaches of the Alton, Bush, Carman, Delicious, Dixie Gem, Dixie Gold, Early Belle, Early Carman, Early Hiley, Fair Beauty, Fisher, Flaming Gold, Georgia Belle, Georgia Gem, Golden Hale Haven, Hale Gold, Hansford's Beauty, Henrietta, Jasper Rose, Lucile, Mack's Pride, Marigold, Mikádo, Orr's Pride, Pearson Hiley, Red Bird, Red Elberta, Red Gem, Regular Hiley, Raritan Rose, Rochester, Rosalind, U. S. Nos. 10, 11, and 13, Vedette, Yellow Cling, or Yellow Hiley varieties which are of a size smaller than $1^3/_4$ inches in diameter (as "diameter" is defined in the United States Standards for Peaches, 12 F. R. 3798), except that not more than ten (10) percent, by count, of such peaches contained in any bulk lot or in any lot of packages may be of a size smaller than $1^3/_4$ inches in diameter, as aforesaid, but not more than fifteen (15) percent, by count, of such peaches contained in any individual package in any lot may be of a size smaller than $1^3/_4$ inches in diameter, as aforesaid; or

(ii) Any peaches of any variety, other than the varieties specified in paragraph (b) (1) (i) of this section, which are of a size smaller than $1^5/_8$ inches in diameter (as "diameter" is defined in the United States Standards for Peaches, 12 F. R. 3798), except that not more than ten (10) percent, by count, of such peaches contained in any bulk lot or in any lot of packages may be of a size smaller than $1^5/_8$ inches in diameter, as aforesaid, but not more than fifteen (15) percent, by count, of such peaches contained in any individual package in any lot may be of a size smaller than $1^5/_8$ inches in diameter, as aforesaid.

(2) When used in this section, the terms "handler," "ship," and "peaches" shall have the same meaning as when used in the aforesaid marketing agreement and order. (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 2d day of July 1947.

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

[F. R. Doc. 47-6336; Filed, July 3, 1947; 8:47 a. m.]

[Orange Reg. 185]

PART 966—ORANGES GROWN IN CALIFORNIA AND ARIZONA

LIMITATIONS OF SHIPMENTS

§ 966.331 *Orange Regulation 185—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 compliance with the notice, public rule making procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 60 Stat. 237) is impracticable and contrary to the public interest in that 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 for such compliance.

(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., July 6, 1947, and ending at 12:01 a. m., P s. t., July 13, 1947, is hereby fixed as follows:

(i) *Valencia oranges.* (*a*) Prorate District No. 1, unlimited movement; (*b*) Prorate District No. 2, 1200 carloads; and (*c*) Prorate District No. 3, unlimited movement.

(ii) *Oranges other than Valencia oranges.* (a) Prorate Districts Nos. 1, 2, and 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. The Orange Administrative Committee, in accordance with the provisions of the said order, shall calculate the quantity of oranges which may be handled by each such handler during the period specified in subparagraph (1) of this paragraph.

(3) As used in this section, "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 of the rules and regulations (11 F. R. 10258) issued pursuant to said order. (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 2d day of July 1947.

[SEAL] C. F. KUNKEL,
Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.

PRORATE BASE SCHEDULE

[12:01 a. m. July 6, 1947, to 12:01 a. m. July 13, 1947]

VALENCIA ORANGES

Prorate District No. 2

Handler	*Prorate base (percent)*
Total	100.0000
A. F. G. Alta Loma	.0774
A. F. G. Fullerton	.9006
A. F. G. Orange	.6331
A. F. G. Redlands	.2331
A. F. G. Riverside	.1264
A. F. G. San Juan Capistrano	.8408
A. F. G. Santa Paula	.4182
Corona Plantation Co	.2442
Hazeltine Packing Co	.3913
Signal Fruit Association	.0815
Azusa Citrus Association	.4186
Azusa Orange Co., Inc	.1360
Damerel-Allison Co	.8093
Glendora Mutual Orange Association	.3886
Irwindale Citrus Association	.3761
Puente Mutual Citrus Association	.1987
Valencia Heights Orchards Association	.4358
Glendora Citrus Association	.3567
Glendora Heights Orange and Lemon Growers Association	.0779
Gold Buckle Association	.5775
La Verne Orange Association	.6577
Anaheim Citrus Fruit Association	1.4597
Anaheim Valencia Orange Association	1.4128
Eadington Fruit Co., Inc	2.0851
Fullerton Mutual Orange Association	1.6526
La Habra Citrus Association	1.1751
Orange County Valencia Association	.6756
Orangethorpe Citrus Association	1.0366
Placentia Cooperative Orange Association	.7517
Yorba Linda Citrus Association, The	.5824
Alta Loma Heights Citrus Association	.0959
Citrus Fruit Growers	.1164
Cucamonga Citrus Association	.1497
Etiwanda Citrus Fruit Association	.0429
Old Baldy Citrus Association	.1352
Rialto Heights Orange Growers	.0910
Upland Citrus Association	.4110
Upland Heights Orange Association	.1544
Consolidated Orange Growers	1.9094
Frances Citrus Association	1.0947
Garden Grove Citrus Association	1.7616
Goldenwest Citrus Association, The	1.3924
Irvine Valencia Growers	2.3723
Olive Heights Citrus Association	1.6504
Santa Ana-Tustin Mutual Citrus Association	.9798
Santiago Orange Growers Association	3.6466
Tustin Hills Citrus Association	1.8659
Villa Park Orchards Association, The	1.8160

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 2—Continued

Handler	Prorate base (percent)
Bradford Bros., Inc	0.6491
El Modena Citrus, Inc	.4313
Placentia Mutual Orange Association	1.7770
Placentia Orange Growers Association	2.5156
Call Ranch	.0682
Corona Citrus Association	.4665
Jameson Company	.0369
Orange Heights Orange Association	.3741
Break & Son, Allen	.0575
Bryn Mawr Fruit Growers Association	.2690
Crafton Orange Growers Association	.3883
E. Highlands Citrus Association	.0874
Fontana Citrus Association	.0853
Highland Fruit Growers Association	.0516
Krinard Packing Co	.2682
Mission Citrus Association	.1457
Redlands Cooperative Fruit Association	.4134
Redlands Heights Groves	.2535
Redlands Orange Growers Association	.2656
Redlands Orangedale Association	.2881
Redlands Select Groves	.1639
Rialto Citrus Association	.1531
Rialto Orange Co	.1526
Southern Citrus Association	.2051
United Citrus Growers	.1479
Zilen Citrus Co	.1034
Arlington Heights Fruit Co	.1030
Brown Estate, L. V. W	.1340
Gavilan Citrus Association	.1569
Hemet Mutual Groves	.1140
Highgrove Fruit Association	.0787
McDermont Fruit Co	.1867
Mentone Heights Association	.0682
Monte Vista Citrus Association	.2263
National Orange Co	.0414
Riverside Growers, Inc	.0861
Riverside Heights Orange Growers Association	.0389
Sierra Vista Packing Association	.0595
Victoria Avenue Citrus Association	.1791
Claremont Citrus Association	.1293
College Heights Orange and Lemon Association	.2244
El Camino Citrus Association	.0837
Indian Hill Citrus Association	.1800
Pomona Fruit Growers Exchange	.3188
Walnut Fruit Growers Association	.4382
West Ontario Citrus Association	.3181
El Cajon Valley Citrus Association	.3175
Escondido Orange Association	2.4525
San Dimas Orange Growers Association	.5083
Covina Citrus Association	1.0267
Covina Orange Growers Association	.4031
Duarte-Monrovia Fruit Exchange	.2547
Santa Barbara Orange Association	.0518
Ball & Tweedy Association	.6199
Canoga Citrus Association	.8443
North Whittier Heights Citrus Association	.9383
San Fernando Fruit Growers Association	.4445
San Fernando Heights Orange Association	.9064
Sierra Madre-Lamanda Citrus Association	.3999
Camarillo Citrus Association	1.5049
Fillmore Citrus Association	3.5833
Mupu Citrus Association	2.3777
Ojai Orange Association	.9064
Piru Citrus Association	2.0174
Santa Paula Orange Association	1.0927
Tapo Citrus Association	1.1136
Limoneira Co	.3996
East Whittier Citrus Association	.4059
El Ranchito Citrus Association	1.3848
Murphy Ranch Co	.4614
Rivera Citrus Association	.5491

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 2—Continued

Handler	Prorate base (percent)
Whittier Citrus Association	0.6961
Whittier Select Citrus Association	.4679
Anaheim Cooperative Orange Association	1.1570
Bryn Mawr Mutual Orange Association	.0918
Chula Vista Mutual Orange Association	.0923
Escondido Cooperative Citrus Association	.3352
Euclid Avenue Orange Association	.4261
Foothill Citrus Union, Inc	.0334
Fullerton Cooperative Orange Association	.3323
Garden Grove Orange Cooperative, Inc	.7271
Glendora Cooperative Citrus Association	.0568
Golden Orange Groves, Inc	.2809
Highland Mutual Groves	.0670
Index Mutual Association	.1584
La Verne Cooperative Citrus Association	1.1902
Olive Hillside Groves	.7650
Orange Cooperative Citrus Association	1.1764
Redlands Foothill Groves	.4436
Redlands Mutual Orange Association	.1665
Riverside Citrus Association	.0681
Ventura County Orange and Lemon Association	.9418
Whittier Mutual Orange and Lemon Association	.1757
Babijuice Corp. of Calif	.4934
Banks Fruit Co	.2938
Banks, L. M	.5460
Borden Fruit Co	.7375
California Fruit Distributors	.3206
Cherokee Citrus Co., Inc	.1005
Chess Company, Meyer W	.2305
Escondido Avocado Growers	.0555
Evans Brothers Packing Co	.3657
Gold Banner Association	.2830
Granada Hills Packing Co	.0632
Granada Packing House	2.3219
Hill, Fred A	.0770
Inland Fruit Dealers	.0536
Mills, Edward	.1078
Orange Belt Fruit Distributors	1.9096
Panno Fruit Company, Carlo	.0868
Paramount Citrus Association	.4157
Placentia Orchards Co	.4899
Placentia Pioneer Valley Growers Association	.6530
San Antonio Orchards Co	.4046
Santa Fe Groves Co	.0511
Snyder & Sons Co., W. A	.9806
Stephens, T. F	.0878
Sunny Hills Ranch, Inc	.1190
Ventura County Citrus Association	.0140
Verity & Sons Co., R. H	.0363
Wall, E. T	.1233
Webb Packing Co	.2080
Western Fruit Growers, Inc., Anaheim	.0494
Western Fruit Growers, Inc., Redlands	.6624
Yorba Orange Growers Association	.6319

[F. R. Doc. 47-6342; Filed, July 3, 1947; 8:47 a. m.]

Chapter XI—Production and Marketing Administration (War Food Distribution Orders)

[W. F. O. 141, Termination]

PART 1468—GRAIN

USE OF GRAIN BY DISTILLERS, BREWERS, AND MIXED FEED MANUFACTURERS

War Food Order No. 141, as amended (11 F. R. 2217, 3997, 14065; 12 F. R. 1347), is hereby terminated.

This order shall become effective at 12:01 a. m., e. s. t., July 1, 1947. With respect to violations, rights accrued, liabilities incurred, or appeals taken, prior to said date, under War Food Order No. 141, as amended, all provisions of said order shall be deemed to remain in force for the purpose of sustaining any proper suit, action, or other proceedings, with respect to any such violation, right, liability, or appeal.

(E. O. 9280, Dec. 5, 1942; E. O. 9577, June 29, 1945)

Issued this 30th day of June 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 47-6286; Filed, July 3, 1947; 8:47 a. m.]

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board

PART 200—ORGANIZATION AND PROCEDURES

DESCRIPTION OF FORMS AND INSTRUCTIONS

The following paragraphs are added to § 200.7 (a):

§ 200.7 *Description of forms and instructions.* (a) * * *

(91) *Form G-467, Parent's Certificate of Dependency and Support.* This is the form on which a parent who is applicant for benefits as a dependent parent of a deceased employee must furnish information with regard to his support by, and dependence on, the employee.

(92) *Form SI-3, Claim for Sickness Benefits.* This is the form to be used for making claim for sickness benefits under the Railroad Unemployment Insurance Act and is to be forwarded to the Board office indicated on the form.

(93) *Form SI-10, Statement of Authority to Act for Employee.* This is a form to be used by a person in furnishing information concerning his authority when applying for sickness benefits under the Railroad Unemployment Insurance Act on behalf of an employee who is unable to sign documents and transact business in connection with obtaining such benefits.

(94) *Form SI-101, Application for Maternity Benefits.* This is the form to be used by a female employee in applying for a claim form on which to claim maternity benefits. The form provides for a statement by the employee of prior employment and of the birth or expected birth of a child; and also for a waiver of any existing "doctor-patient privilege" with respect to the maternity sickness for which the claim is made. This form is to be mailed, together with completed Form SI-104, *Statement of Maternity Sickness* to the Railroad Retirement Board, 844 Rush Street, Chicago 11, Illinois.

(95) *Form SI-103, Claim for Maternity Benefits.* This is the form to be used in making claim for maternity benefits under the Railroad Unemployment Insurance Act.

(96) *Form SI-104, Statement of Maternity Sickness.* This is the form to be

executed by a doctor of medicine in connection with an application for maternity benefits, and is to be furnished to the Board, upon execution, together with completed Form SI-101, *Application for Maternity Benefits.*

(Secs. 3, 12 Pub. Law 404, 79th Cong., 60 Stat. 238, 244)

Dated: June 30, 1947.

By authority of the Board.

[SEAL] MARY B. LINKINS,
Secretary of the Board.

[F. R. Doc. 47-6272; Filed, July 3, 1947; 8:46 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Federal Security Agency

PART 141—TESTS AND METHODS OF ASSAY FOR ANTIBIOTIC DRUGS

PENICILLIN WITH VASOCONSTRICTOR

By virtue of the authority vested in the Federal Security Administrator by the provisions of section 507 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 1055, as amended by 59 Stat. 463 and Pub. Law 16, 80th Cong.; 21 U. S. C. Sup. 357) § 141.14 of the tests and methods of assay of antibiotic drugs (12 F. R. 2215) is amended to read:

§ 141.14 *Penicillin with vasoconstrictor.* Proceed as directed in §§ 141.1, 141.2, 141.3, 141.4, and 141.5.

This order, which provides for the use of crystalline penicillin in penicillin with vasoconstrictor shall become effective upon publication in the FEDERAL REGISTER, since both the public and the penicillin industry will benefit by the earliest effective date, and I so find.

Notice and public procedure are not necessary prerequisites to the promulgation of this order and would be contrary to the public interest, and I so find, since it was drawn in collaboration with interested members of the affected industry, and since it would be against public interest to delay the marketing of penicillin with vasoconstrictor using crystalline penicillin.

(Sec. 507, 52 Stat. 1040, as amended by 59 Stat. 463 and Pub. Law 16, 80th Cong.; 21 U. S. C., Sup. 357)

Dated: June 30, 1947.

[SEAL] MAURICE COLLINS,
Acting Administrator.

[F. R. Doc. 47-6305; Filed, July 8, 1947; 8:48 a. m.]

PART 146—CERTIFICATION OF BATCHES OF PENICILLIN-OR STREPTOMYCIN-CONTAINING DRUGS

MISCELLANEOUS AMENDMENTS

By virtue of the authority vested in the Federal Security Administrator by the provisions of section 507 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 1055, as amended by 59 Stat. 463 and Pub. Law 16, 80th Cong.; 21 U. S. C., Sup. 357) the regulations for the certification of penicillin-containing drugs and streptomycin-containing drugs (12 F. R. 2231), as amended, are hereby further amended as indicated below:

1. Section 146.24 (d) (3), seventh line, is amended by deleting the figure "40" and substituting "60" therefor.
2. Section 146.25 (d) (3) (ii), fifth line, is amended by deleting the figure "40" and substituting "60" therefor.
3. Section 146.26 (d) (3) (ii), fourth line, is amended by deleting the figure "40" and substituting "60" therefor.
4. Section 146.27 (d) (3) (ii), fifth line, is amended by deleting the figure "40" and substituting "60" therefor.
5. Section 146.30 (d) (3) (ii), fifth line, is amended by deleting the figure "40" and substituting "60" therefor.
6. Section 146.31 (d) (3) (ii), third line, is amended by deleting the figure "40" and substituting "60" therefor.
7. Section 146.32 (a) first sentence is amended by inserting the words "or crystalline penicillin" between the words "calcium penicillin" and "and" in line three.
8. Section 146.32 (c) (1), line three, is amended by deleting the word "calcium".
9. Section 146.32 (c) (1) (iii) is amended to read: "The statement 'Expiration date _____', the blank being filled in with the date which is 18 months or if it is crystalline penicillin 36 months, after the month during which the batch was certified."
10. Section 146.32 (c) (2) (iii) is amended to read: "If it is not crystalline penicillin the statement 'Store in refrigerator not above 15° C. (59° F.)', or 'Store below 15° C. (59° F.)';"
11. Section 146.32 (d) (2) (i) is amended to read: "The penicillin; potency, sterility, toxicity, pyrogens, moisture, pH, clarity, crystallinity and heat stability if it is crystalline penicillin, and the penicillin G content if it is crystalline penicillin G.
12. Section 146.32 (d) (3) (i) is amended to read: "The penicillin; one package for each 5,000 packages in the batch, but in no case less than 20 packages if it is calcium penicillin, or 40 packages if it is crystalline penicillin, and not more than 100 packages, collected by taking single packages at such intervals throughout the entire time of packaging the batch that the quantities packaged during the intervals are approximately equal.
13. Section 146.33 (d) (3) (ii), line three, is amended by deleting the figure "40" and substituting "60" therefor.
14. Section 146.34 (d) (3) (ii), line five, is amended by deleting the figure "40" and substituting "60" therefor.
15. Section 146.35 (d) (3) (ii), line four, is amended by deleting the figure "40" and substituting "60" therefor.
16. Section 146.36 (d) (3) (ii), line five, is amended by deleting the figure "40" and substituting "60" therefor.
17. Section 146.38 (d) (3) (ii), line three, is amended by deleting the figure "40" and substituting "60" therefor.

This order, which provides for the use of crystalline penicillin in penicillin with vasoconstrictor and for increasing the size of sample from bulk batches of penicillin from 40 milligrams to 60 milligrams, shall become effective upon publication in the FEDERAL REGISTER, since both the public and the penicillin industry will benefit by the earliest effective date, and I so find.

Notice and public procedure are not necessary prerequisites to the promulgation of this order and would be contrary to the public interest, and I so find, since it was drawn in collaboration with interested members of the affected industry, and since it would be against public interest to delay the marketing of penicillin with vasoconstrictor using crystalline penicillin and increasing the size of the samples of penicillin from 40 to 60 milligrams.

(Sec. 507, 52 Stat. 1040, as amended by 59 Stat. 463 and Pub. Law 16, 80th Cong.; 21 U. S. C., Sup. 357)

Dated: June 30, 1947.

[SEAL] MAURICE COLLINS,
Acting Administrator.

[F. R. Doc. 47-6304; Filed, July 3, 1947; 8:47 a. m.]

TITLE 24—HOUSING CREDIT

Chapter V—Federal Housing Administration

Subchapter A—Property Improvement Loans

PART 501—CLASS 1 AND CLASS 2 PROPERTY IMPROVEMENT LOANS

Sec.
501.1 Citation.
501.2 Definitions.
501.3 Eligible notes.
501.4 Maximum amount of loans.
501.5 Financing charges.
501.6 Credits and collections.
501.7 Eligible expenditures.
501.8 Disbursement of loan proceeds.
501.9 Refinancing.
501.10 Report of loans.
501.11 Claims.
501.12 Insurance reserve.
501.13 Insurance charge.
501.14 Administrative reports and examination.
501.15 Amendments.
501.16 Effective date.

AUTHORITY: §§ 501.1 to 501.16, inclusive, issued under 53 Stat. 804, 805, 55 Stat. 364, 365, 56 Stat. 305, 57 Stat. 571; and Pub. Law 120, 80th Cong.; 12 U. S. C. and Sup., 1703.

§ 501.1 *Citation.* The sections in this part may be cited and referred to as "Regulations of the Federal Housing Commissioner Governing Property Improvement Loans effective July 1, 1947."

§ 501.2 *Definitions.* As used in the regulations in this part the term:

(a) "Act" means the National Housing Act, as amended.

(b) "Administration" means the Federal Housing Administration.

(c) "Commissioner" means the Federal Housing Commissioner or his duly authorized representative.

(d) "Contract of Insurance" includes all of the provisions of the regulations in this part and of the applicable provisions of the act.

(e) "Insured" means a financial institution holding a contract of insurance under Title I of the Act.

(f) "Loan" means an advance of funds or credit or the purchase of an obligation evidenced by a note.

(g) "Note" includes a note, bond, mortgage, or other evidence of indebtedness.

(h) "Payment" includes a deposit to an account or fund which represents the full or partial repayment of a loan.

(i) "Borrower" means one who applies for and receives a loan in reliance upon the provisions of the act and whose interest in the property to be improved is (1) a fee title, or (2) a life estate, or (3) an equitable interest under an instrument of trust or contract, or (4) a lease having a fixed term, expiring not less than six calendar months after the maturity of the loan.

(j) "Class 1 (a) Loan" means a loan, other than a loan defined in paragraph (k) of this section as a "Class 1 (b) Loan", which is for the purpose of financing the repair, alteration, or improvement of an existing structure or of the real property in connection therewith, exclusive of the building of new structures. The term "existing structure" means a completed building that has or had a distinctive functional use.

(k) "Class 1 (b) Loan" means a loan which is (1) made for the purpose of financing the alteration, repair, improvement, or conversion of an existing structure located in an area or locality in which the President shall find that an acute shortage of housing exists or impends, which would impede national war activities and (2) is made for the purpose of providing additional living accommodations to which the borrower shall establish in a manner and upon forms prescribed by the Commissioner that occupancy priority will be for veterans of World War II.

(l) "Class 2 (a) Loan" means a loan which is for the purpose of financing the construction of a new structure which is to be used exclusively for other than residential or agricultural purposes.

(m) "Class 2 (b) Loan" means a loan which is for the purpose of financing the construction of a new structure for use in whole or in part for agricultural purposes, exclusive of residential purposes.

(n) "Class 1 Loan" includes both "Class 1 (a)" and "Class 1 (b)" loans as defined in paragraphs (j) and (k) of this section.

(o) "Class 2 Loan" includes both "Class 2 (a)" and "Class 2 (b)" loans as defined in paragraphs (l) and (m) of this section.

§ 501.3 *Eligible notes.* (a) *Validity.* The note shall bear the genuine signature of the borrower as maker, shall be valid and enforceable against the borrower or borrowers as defined in § 501.2 (i), and shall be complete and regular on its face. The signatures of all parties to the note must be genuine. If the note is executed for and on behalf of a corporation or in a representative capacity, the note must create a binding obligation of the principal.

(b) *Acceleration clause.* The note shall contain a provision for acceleration of maturity, either automatic or at the option of the holder, in the event of default in the payment of any installment upon the due date thereof.

(c) *Payments.* The note shall be payable in equal monthly, semi-monthly, or weekly installments. The final installment may be more or less than the other installments provided that it is not less than one-half or more than one and one-half times the preceding installment. A note may not provide for a first payment less than six day nor more than two calendar months from the date of the note. However, if fifty-one per cent or more of the income of the borrower is derived directly from the sale of agricultural crops, commodities, or livestock produced by him, a note may be made payable in installments corresponding to income periods shown on the Credit Application. In such cases, the first payment must be made within twelve months of the date of the note and at least one payment shall be made in each twelve months thereafter, *Provided*, That no two payments shall be more than twelve months apart, and the proportion of total principal to be paid in later years shall not exceed the proportion of total principal payable in earlier years. In lieu of an installment note payable in equal periodic installments a loan may be evidenced by a series of notes provided each is of an equal amount as provided in this section and that each note indicates on its face that it is one of a series signed by the same borrower.

(d) *Maturity*—(1) *Minimum.* The note shall not have a final maturity of less than six calendar months from the date of the note.

(2) *Maximum.* The maximum permissible maturity of a note evidencing:

(i) A Class 1 (a) or a Class 2 (a) loan is three years and thirty-two days from the date of the note.

(ii) A Class 1 (b) loan is seven years and thirty-two days from the date of the note.

(iii) A Class 2 (b) loan is seven years and thirty-two days from the date of the note, except that if a Class 2 (b) loan is secured by a first mortgage, first deed of trust, or other security instrument constituting a first lien upon the improved property, the loan may have a final maturity not in excess of fifteen years and thirty-two days from the date of the note.

(iv) A combination of any of the above classes of loans shall be no greater than the maximum maturity governing that component part of the loan having the shortest maturity if made alone.

(e) *Late charges.* The note may provide for a late charge, not to exceed 5 cents for each $1.00 of each installment more than fifteen days in arrears. No late charge on a past due installment may be accrued in excess of $5.00. In lieu of late charges, notes may provide for interest on past due installments at a rate not in excess of the contract rate in the jurisdiction in which the note is drawn. The borrower must be billed for the penalties collected as such, and evidence of such billing must be in the file if claim is made under the Contract of Insurance.

§ 501.4 *Maximum amount of loans*—(a) *Class 1 (a) Loan.* A Class 1 (a) loan shall not involve a principal amount, exclusive of financing charges to the borrower, in excess of $2,500.

(b) *Class 1 (b) Loan.* A Class 1 (b) loan shall not involve a principal amount, exclusive of financing charges to the borrower, in excess of $5,000.

(c) *Class 2 Loan.* A Class 2 loan shall not involve a principal amount, exclusive of financing charges to the borrower, in excess of $3,000.

§ 501.5 *Financing charges*—(a) *Maximum charge.* The maximum permissible financing charges, exclusive of fees and charges as provided by paragraph (b) of this section, which may be paid by the borrower for interest, discount and fees of all kinds in connection with the transaction, shall be computed as follows:

(1) Class 1 loans having a principal amount not in excess of $2,500 shall not have a financing charge in excess of an amount equivalent to $4.00 discount per $100 original face amount of a one year note, to be paid in equal monthly installments calculated from the date of the note.

(2) Class 1 loans having a principal amount in excess of $2,500 shall not have a financing charge in excess of an amount equivalent to $4.00 discount per $100 original face amount of a one year note, to be paid in equal monthly installments calculated from the date of the note.

(3) Class 2 loans shall not have a financing charge in excess of an amount equivalent to $5.00 discount per $100 original face amount of a one year note, to be paid in equal monthly installments calculated from the date of the note, except that Class 2 (b) loans having a maturity in excess of seven years and thirty-two days shall not have a financing charge in excess of an amount equivalent to $3.50 discount per $100 original face amount of a one year note, to be paid in equal monthly installments calculated from the date of the note. Such charges correctly based on tables of calculations issued by the Federal Housing Commissioner are deemed to comply with this section.

An increase in the ratio of the charge to the average amount outstanding on the debt over the maximum provided in this section, which increase results from the first payment falling due less than thirty days after the date of the note as provided in § 501.3 (c), shall not be deemed to be in conflict with this section.

(b) *Permissible additional charges.* If the insured takes security in the nature of a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or other security device for the purpose of securing the payment of eligible loans, the insured may collect from the borrower, in addition to the maximum permissible financing charge as provided in paragraph (a) of this section, the following expenses actually incurred by the insured in connection with the transaction: Recording or filing fees, documentary stamp taxes, title examination charges and hazard insurance premiums: *Provided*, That such costs or expenses are not paid from the proceeds of the loan or included in the face amount of the note. Such costs or expenses shall not be included by the insured as a portion of a claim under the Contract of Insurance and if such costs or expenses

are assessed against the borrower, proper evidence thereof should be in the file.

(c) *Partial disbursement of proceeds.* If the insured in purchasing a note takes the maximum charge permitted by this section, but employs a "holdback" and does not advance the entire proceeds of the note to the seller, it shall calculate its financing charge on the amount advanced and credit to the account of the seller the difference between the financing charge calculated on the face amount of the note and the financing charge calculated on the amount advanced.

(d) *Prepayment rebate.* If a note is paid in full prior to maturity, the insured shall make a rebate at a rate not less than 6% per annum of the amounts so paid in advance of their due dates, if the maximum permissible financing charge in connection with the transaction is in an amount equivalent t· $5.00 discount as provided in paragraph (a) of this section. If a lesser cha ge has been taken, the rebate shall be at not less than a proportional rate.

§ 501.6 *Credits and collections*—(a) *Credit application.* Prior to making a loan the insured shall obtain a dated Credit Application executed by the borrower on a form approved by the Commissioner. A separate Credit Application is required for each loan made or note purchased.

(b) *Credit investigation.* The Credit Application, supplemented by such other information as the insured deems necessary, must, in the judgment of the insured, clearly show the borrower to be solvent, with reasonable ability to pay the obligation and in other respects a reasonable credit risk. If, after the loan is made, an insured who acted in good faith discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealer, or others, the eligibility of the note for insurance will not be affected. However, the insured shall promptly report such discovery to the Commissioner.

(c) *Outstanding FHA and direct federal obligations.* The proceeds of a loan shall not be disbursed if the insured has knowledge that the borrower is past due more than fifteen days as to either principal or interest with respect to an obligation owing to, or insured by, any department or agency of the Federal Government: *Provided,* That nothing contained herein shall prevent the making of a loan otherwise eligible, even though the borrower is in default under such an obligation by reason of his military service and the approval of the Commissioner is obtained.

(d) *Past due Title I Notes at time of purchase.* A note shall not be purchased when any installment thereon is part due more than fifteen days at the date of purchase except purchases of notes under the provisions of § 501.12.

(e) *Prior approval by Commissioner.* Any loan in excess of $2,500, exclusive of financing charges, or any loan which increases the principal amount outstanding as to all Class 1 or Class 2 loans to any individual borrower to an amount in excess of $2,500, exclusive of financing charges, will be accepted for insurance only upon prior approval of the Commissioner.

(f) *Security.* The taking of security to secure the payment of a loan is left to the discretion of the insured unless specifically required by the Commissioner in accordance with the provisions of paragraph (e) of this section or of § 501.3 (d) (2) (iii). An insured may permit the substitution or subordination of security provided it can be shown when claim is made that at the time of such action the original security value was not impaired or reduced as a result of such action. Upon presentation of the facts the prior approval of the Commissioner may be obtained by the insured to any proposed substitution or subordination of security.

(g) *Collections.* The insured is required to service loans in accordance with acceptable practices of prudent lending institutions. In the event of default, the insured should have adequate facilities for contacting the borrower and otherwise exercise diligence in collecting the amount due. The insured is responsible to the Commissioner for proper collection efforts even though actual collection may be performed by an agent.

§ 501.7 *Eligible expenditures*—(a) *Property location.* The property to be improved shall be located within the United States, its Territories, or Possessions.

(b) *Use of proceeds.* The proceeds of a loan shall be used only to finance alterations, repairs, and improvements upon real property or in connection with existing structures, commenced in reliance upon the credit facilities afforded by Title I of the act.

(c) *Reliance on credit application.* An insured acting in good faith may, in the absence of information to the contrary, rely upon all statements of fact made by the borrower, which are called for by the borrower's Credit Application, in determining the eligibility of the improvements to the property.

(d) *Technical services and direct costs.* The proceeds of a loan may be used to pay the cost of architectural and engineering services, and fees paid for obtaining building permits that are directly connected with the eligible alterations, repairs, or improvements financed in accordance with the regulations in this part.

(e) *Supplementing an uninsured obligation.* The proceeds of a loan shall not be used to supplement another obligation of the borrower not reported for insurance, the payment of which is to be secured by a prior lien created in connection with the proposed alteration, repairs, or improvements.

§ 501.8 *Disbursement of loan proceeds*—(a) *Disbursement.* Before disbursing the proceeds of a loan to one other than a borrower or a borrower and another jointly, the insured shall:

(1) *Dealer approval.* Have approved the dealer after such investigation as the insured considers necessary to establish to its satisfaction that the dealer is reliable, financially responsible and qualified to perform satisfactorily the work to be financed and to extend proper service to the customer. This approval, signed and dated, together with the supporting information, shall be in the insured's file. For the purpose of this section the term "dealer" means the one who executes the dealer's completion certificate.

(2) *Completion certificates.* Obtain a completion certificate signed by the borrower and a completion certificate signed by the dealer on forms approved by the Commissioner. If there are two or more eligible borrowers involved in the transaction, only one signature is required on the borrower's certificate.

(3) *Authorization to pay loan proceeds.* Obtain written authorization from the borrower, if the insured is the payee of the note and the proceeds are to be disbursed to one other than the borrower.

(b) *Precautionary measures.* If the insured has not approved the dealer, as provided in paragraph (a) (1) of this section or has reason to withdraw such approval, the proceeds of a loan shall not be disbursed until:

(1) The insured has verified all statements contained on the borrower's credit application.

(2) The borrower has signed the borrower's completion certificate in the presence of the insured.

(3) The insured has inspected the work performed in every instance when the amount involved is $500 or more, and in at least one out of every three transactions when the amounts involved are less than $500.

(4) The insured has signed a statement to the effect that the above requirements were complied with prior to releasing the proceeds of any such loans, such statement must accompany each loan report.

§ 501.9 *Refinancing*—(a) *General requirements.* New obligations to liquidate loans previously reported for insurance pursuant to Title I of the act after July 1, 1947, which may or may not include an additional amount advanced will be covered by insurance, provided they meet the requirements of all applicable regulations and the special provisions of this section.

(b) *Maximum maturity.* (1) A Class 1 (a) loan or a Class 2 (a) loan may be refinanced for an additional period not in excess of three years and thirty-two days from the date of the refinancing, but not to exceed five years from the date of the original note.

(2) A Class 1 (b) loan may be refinanced for an additional period not in excess of seven years and thirty-two days from the date of the refinancing, but not to exceed ten years from the date of the original note.

(3) A Class 2 (b) loan may be refinanced for an additional period not in excess of seven years and thirty-two days from the date of the refinancing, but not to exceed ten years from the date of the original note, except that if a Class 2 (b) loan is secured by a first mortgage, first deed of trust, or other security instrument, constituting a first lien upon the improved property, the new note may have a final maturity not in excess of

fifteen years and thirty-two days from the date of the refinancing, but not to exceed twenty-five years from the date of the original note.

(4) When a Class 1 loan or a Class 2 loan is made or refinanced and consolidated with another Class 1 loan or Class 2 loan, the new note evidencing the consolidated obligation shall not be for a longer term than that which the component loan having the shortest permissible maturity could have if made or refinanced alone.

(c) *Rebate.* The full unearned charge on the original note shall be refunded to the borrower. If no additional advance is made a handling charge not in excess of $2.00 may be assessed the borrower.

(d) *Special cases.* The Commissioner may upon presentation of the facts approve the refinancing or refinancing and consolidation of any loan or loans upon such terms and conditions as he may determine within the limits provided by the act.

(e) *Deferred payments.* An agreement to defer payments on a note previously reported for insurance under the regulations in this part without rewriting the note is not considered refinaneing. Such agreement will not affect the insurance coverage on the loan: *Provided,* That:

(1) Such agreement is evidenced in writing;

(2) Payments shall not be deferred for more than five months from the due date of the last fully-paid installment;

(3) Such agreement shall not extend the final maturity of the obligation beyond the maturity date of the obligation as provided by its original terms;

(4) The insured may assess the borrower for the cost of such deferment if such charge is not in excess of an equivalent amount of late charges as provided in § 501.3 (e).

§ 501.10 *Report of loans.* Loans shall be reported on the prescribed form to the Federal Housing Administration at Washington, D. C., within thirty-one days from the date of the note or date upon which it was purchased. Any loan refinanced as provided in § 501.9 shall likewise be reported on the prescribed form within thirty-one days from date of refinancing. In any case, the Commissioner may, in his discretion, accept a late report.

§ 501.11 *Claims*—(a) *Claim application.* Claim for reimbursement for loss on an eligible loan shall be made on a form provided by the Commissioner, and executed by a duly qualified officer of the insured. The claim shall be accompanied by the insured's complete credit and collection file pertaining to the transaction.

(b) *Claim after default.* Claim may be made after default (earliest installment for which full payment has not been received) provided demand has been made upon the debtor for the full unpaid balance of the note.

(c) *Maximum claim period.* For the purpose of this section, any payment received on an account, including payments on a judgment predicated thereon, shall be applied to the earliest unpaid installment, and in the case of:

(1) Yearly installment notes, whenever an installment is twelve months in default, claim must be made within thirty-one days thereafter;

(2) All other installment notes, whenever an installment is six months in default, claim shall be made within thirty-one days thereafter.

(d) *Extension of maximum claim period.* Upon presentation to the Commissioner of the facts of a particular case within the allowable claim period prescribed in this section, he may, in his discretion, extend the time within which claim must be made: *Provided,* That in computing the claim no interest will be allowed for the period of such extension.

(e) *Claim amount.* An insured will be reimbursed for its loss on loans made in accordance with the regulations in this part up to the amount of its reserve as established by § 501.12 as follows:

(1) Net unpaid amount of the loan actually made or the actual purchase price of the note, whichever is the lesser;

(2) Uncollected earned interest to date of default and interest at the rate of 4% per annum from the date of default to the date of the application for reimbursement of loss sustained, but in no event shall the total interest allowed exceed the maximum permissible financing charge on the principal amount outstanding to the date of application for reimbursement.

(3) Uncollected court cost, including fees paid for issuing, serving, and filing summons;

(4) Attorney's fees actually paid not exceeding:

(i) 15% of the amount collected by the attorney on the defaulted note provided the insured does not waive its claim against the borrower for such fees; and

(ii) $25.00 or 15% of the balance due on the note, whichever is the lesser, if a judgment is secured by suit.

(f) *Assignment of documents.* The note and any security held or judgment taken must be assigned in its entirety and if any claim has been filed in bankruptcy, insolvency, or probate proceedings, such claim shall likewise be assigned to the United States of America.

(g) *Form of assignment.* The following form of assignment properly dated shall be used in assigning a note, judgment, real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any other security device in event of claim.

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the note qualifies for insurance) to the United States of America.

(Financial Institution)

By ---

Date ---------- Title ----------

Provided, That if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable shall be used.

(h) *Election of action.* Where a real-estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any other security device has been used to secure the payment of a loan made under the provisions of Title I of the act, the insured may not both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 501.12 *Insurance reserve*—(a) *Legal limit.* Subject to the limitation on the total liability which may be outstanding at any time as stipulated in section 2 of Title I of the act, the Commissioner, in accordance with § 501.11, will reimburse any insured for losses sustained by it up to a total aggregate amount equal to 10% of the total amount advanced on all eligible loans made by it on and after July 1, 1947, and prior to July 1, 1949, and reported for insurance during the time its contract of insurance is in force.

(b) *General insurance reserve.* There shall be established for each insured a general insurance reserve equal to 10% of the aggregate amount advanced on all loans originated by it on and after July 1, 1947, and prior to July 1, 1949, pursuant to the provisions of both Part 501 and Part 502.

(c) *Transfer of loans reported for insurance.* The insured shall not assign or otherwise transfer any loan reported for insurance to a transferee not holding a contract of insurance under Title I of the National Housing Act, provided that nothing contained herein shall be construed to prevent the pledging of such loans as collateral security under a trust agreement, or otherwise, in connection with a bona fide loan transaction.

(d) *Transfer of insurance reserve.* Insurance reserve of more than $5,000 shall not be transferred to or from the reserve account of any insured during any fiscal year (July 1 through June 30) without the prior approval of the Commissioner. Except in cases involving the transfer of loans sold with recourse or under a guaranty, guarantee, or repurchase agreement, the reports required by § 501.10 shall be submitted, indicating the intent of the parties with respect to the transfer of the insurance reserve and unless the approval of the Commissioner is obtained, the insurance reserve shall be transferred as follows:

(1) In cases involving the transfer of notes purchased without recourse, guaranty, guarantee, or repurchase agreement, provided no installment payment is past due more than one calendar month at the time of purchase, the insurance reserve shall be transferred to the general insurance reserve of the purchasing institution on the basis of 10% of the actual purchase price or net unpaid original advance, whichever is the lesser.

(2) In cases involving the transfer of notes sold with recourse or under a guaranty, guarantee, or repurchase agreement, no insurance reserve will be transferred and no reports will be required.

(e) *FHA recovery shall not affect reserve.* Amounts which may be salvaged by the Commissioner with respect to a loan in connection with which an insured has been reimbursed under its contract of insurance shall not be added to the insurance reserve remaining to the credit of such insured.

§ 501.13 *Insurance charge*—(a) *Rate.* The insured shall pay to the Commissioner an insurance charge equal to three-fourths (¾) of one per centum per

annum of the net proceeds of any eligible loan reported and acknowledged for insurance: *Provided*, That in the case of a Class 1 (b) loan in excess of $2,500, exclusive of financing charges, and in the case of a Class 2 (b) loan having a maturity in excess of seven years, such insurance charge shall be one-half (½) of one per centum per annum. In computing the insurance charge, no charge shall be made for the fractional period of a month of 15 days or less, and a charge for a full month shall be made for the fractional period of a month of more than 15 days.

(b) *When payable.* Such insurance charge for the entire term of the loan shall be paid within twenty-five days after the date the Commissioner acknowledges receipt to the insured institution of the report of loan: *Provided*, That on loans having a maturity in excess of three years and thirty-two days, such charge may be paid in installments, the first of which shall be equal to the charge for three years and be paid within said twenty-five days, and the second and succeeding installments, each equal to the charge for one year, shall be paid on the first and each succeeding anniversary of the first day of the month following the date of the note.

(c) *Notes transferred.* Any adjustments of the insurance charge already paid on any obligation transferred between insureds shall be made by the insureds, except that any unpaid installments of the insurance charge shall be paid by the purchasing insured.

(d) *Refund or abatement.* There shall be no refund or abatement of any portion or installment of the insurance charge except:

(1) The charge on a refinanced note may be credited with the unearned portion of the charge on the original note;

(2) Insurance charges falling due after claim is filed or the note is prepaid in full;

(3) The charge paid on a loan or portion thereof found to be ineligible.

(e) *When not chargeable to borrower.* The insurance charge paid by the insured shall not be charged to the borrower if such charge would cause the total payments made by the borrower to exceed the maximum permissible amount which may be charged to the borrower for interest, discount, and all other charges in connection with the transaction.

§ 501.14 *Administrative reports and examination.* The Commissioner, or his authorized representative, may at any time call upon an insured for such reports as he may deem to be necessary in connection with the regulations in this part, or may inspect the books or accounts of the insured as they pertain to the loans reported for insurance.

§ 501.15 *Amendments.* The regulations in this part may be amended by the Commissioner at any time, but such amendment shall not adversely affect the insurance privileges of an insured with respect to any loan previously made.

§ 501.16 *Effective date.* The regulations in this part are effective as to all loans made on or after July 1, 1947, pursuant to the provisions of Title I of the National Housing Act, as amended, and shall have the same force and effect as if included in and made a part of each Contract of Insurance.

Issued at Washington, D. C., June 27, 1947.

RAYMOND M. FOLEY,
Federal Housing Commissioner.

[F. D. Doc. 47-6281; Filed, July 3, 1947; 8:47 a. m.]

PART 502—THE REGULATIONS OF THE FEDERAL HOUSING COMMISSIONER GOVERNING CLASS 3 LOANS

MISCELLANEOUS AMENDMENTS

1. Section 502.1 *Citation* of the regulations of the Federal Housing Commissioner governing Class 3 Loans, effective March 28, 1946, as amended, is hereby amended to read as follows: The regulations in this part, applicable to Class 3 Loans, may be cited as Part II of the "Regulations of the Federal Housing Commissioner Governing Property Improvement Loans, effective July 1, 1947".

2. Section 502.8 *Refinancing* is hereby amended by striking out "after March 28, 1946" and inserting in lieu thereof "on and after July 1, 1947".

3. In Section 502.11 *Insurance reserve*, paragraph (a) *Legal limit* is hereby amended by striking out "after July 1, 1944" and inserting in lieu thereof "on and after July 1, 1947, and prior to July 1, 1949".

4. Section 502.11 (b) *General insurance reserve* is hereby amended by striking out the date "July 1, 1944" and inserting in lieu thereof "July 1, 1947, and prior to July 1, 1949".

The amendment contained herein is effective as to all loans made on or after July 1, 1947, and shall have the same force and effect as if included in and made a part of each contract of insurance.

Issued at Washington, D. C., June 27, 1947.

RAYMOND M. FOLEY,
Federal Housing Commissioner.

[F. R. Doc. 47-6280; Filed, July 3, 1947; 8:47 a. m.]

Chapter VIII—Office of Housing Expediter

[List 1, Revocations]

PART 807—SUSPENSION ORDERS

LUCY GARNO AND E. F. GARNO ET AL.

In view of the removal of restrictions on construction by the Housing and Rent Act of 1947, except amusement and recreational construction with certain exceptions, the Chief Compliance Commissioner has directed that the suspension orders hereinafter listed be revoked forthwith.

It is therefore ordered, That the following suspension orders be revoked, effective June 30, 1947; *Provided, however*, That this revocation does not affect any liabilities incurred for violations of the suspension order prior to revocation.

S-1..... Lucy Garno and E. F. Garno.
S-2..... E. L. Livers.
S-4..... John Cavaglieri and Adolph Devencenzi.
S-5..... Irwin Topper, Oscar Topper, and Samuel Levine.
S-6..... Mrs. Emma T. Dee.
S-7..... Link & Link, Inc.
S-8..... W & F Manufacturing Co., Inc.
S-9..... Joseph Pangsten.
S-10..... George B. Charisen and R. M. Stauffer.
S-12..... Ralph T. Chilton and Stonewall J. Webster.
S-13..... Kurtz-Hodge Implement Co., Inc.
S-17..... Silvis Ice & Fuel Co.
S-18..... John H. Wood.
S-19..... Dr. Gerald B. Winrod, et al.
S-21..... Detroit Construction Co.
S-23..... Arlington Lumber & Supply Co.
S-24..... Donald M. Sills.
S-25..... Edwin P. Bergeron.
S-26..... N. V. M. Construction Corp.
S-27..... Leland Z. Arthur.
S-29..... Elmer W. Mottern.
S-30..... Dorsey Greeno, d b/a Dorsey Motor Sales.
S-31..... Ira N. Petersheim.
S-32..... Joseph Lieberman.
S-34..... Jamison Motors, Inc.
S-35..... Albert Wille.
S-36..... Ernest M. Daland.
S-37..... John A. Pring and Floyd L. Kersey.
S-39..... Alfred H. Wilson.
S-40..... James H. Pflanz.
S-41..... Willis E. Miller.
S-42..... Wm. E. Schott and Clarence A. Schott.
S-43..... Charles Allario, Oreste Allario, and John Weber.
S-44..... Samuel B. Meisner.
S-45..... Harry Williams.
S-47..... Conrad Construction Co.
S-49..... Adam Ferrare.
S-52..... F. L. Kersey.
S-54..... Hartline Cold Storage Co.
S-55..... Sam J. Bradford and Albert J. Thompson.
S-57..... Robert Callahan.
S-58..... Adrian Beverages, Inc.
S-904..... Ohio Valley Lumber Co.
S-937..... Daylite Markets, Inc.
S-945..... Etta Wamsher.
S-947..... Tower Craftsmen, Inc. and Erwin Kottler.
S-948..... Kansas Petroleum Co.
S-950..... M. J. Martin & Sons, Inc.
S-955..... Joe Sicilia.
S-956..... Morris Skilken.
S-957..... James Godshalk.
S-960..... Willard G. Daniels.
S-961..... Carl Schroeder.
S-962..... Service Screw Products Co.
S-963..... Harry and Anna Zola.
S-966..... Russell M. Larson.
S-968..... Superbuilt Construction Corp.
S-969..... George L. Dubin and Dubin Construction Corp.
S-970..... C. K. Sivas.
S-972..... E. B. Strickland and M. C. Herider.
S-973..... Louis Ruben and Bernard Ruben.
S-975..... Charles Lesser and Leonard Salvaggio.
S-979..... Leonard Blumenthal.
S-982..... Stephen E. Shigoe.
S-985..... Co-Ed Rollerdrome Co.
S-986..... Robert L. Hanman.
S-987..... Lad and Lassie Shop and Pin Rose Studios, Inc.
S-989..... Thomas Hollins.
S-991..... Charles A. Lemmo.
S-996..... Walter F. Smith.
S-997..... Henry O'Sheskey.
S-999..... Ben H. Goodwin and Roy Holsworth.
S-1001..... Joseph S. Lampman.
S-1003..... Bruno Polkowski.
S-1006..... Anton Lajavic.
S-1008..... Seymour Building Co
S-1010..... Rosemore Building Co.

S-1011____ Stephen and Mary Montella.
S-1016____ Philip H. Marcell.
S-1017____ Lloyd E. Eckert and Eva B. Eckert.
S-1018____ Nicholas Deltufo, Jr.
S-1019____ Morris Warren and Anna Warren.
S-1020____ Joseph W. Luepintz.
S-1021____ Alvin Thomas and Robert Thomas.
S-1022____ Shamballa Ashrama, Inc.
S-1023____ Leo S. Hyland.
S-1024____ King Starr Realty Co.
S-1025____ Hardwood Flooring, Inc., and Samuel Weinman.
S-1027____ J. C. Zehring and Theodore Zehring.
S-1028____ Abraham Shmookler and Francis Fine.
S-1030____ James and Kathryn Montella.
S-1034____ Fred H. Wolfe.
S-1035____ Louis Foss and B. H. Tronnem.
S-1040____ J. Schnitzer.
S-1044____ Travelers Oil Co.
S-1046____ Dura-Bilt Garage Bldg. Co., Inc., and Jack Scherr and Meyer Yagoda.
S-1049____ Huntington Building, Inc.
S-1050____ Sam Murman.
S-1052____ Frank E. Clegg and Paul C. Peters, Jr.
S-1055____ A. Melville Cox.
S-1056____ Leo J. Linberger.
S-1057____ George Chang and Nicholas Cantera.
S-1058____ David Bloom.
S-1060____ Harry Rosen.
S-1061____ Charles Posternack.
S-1062____ Ben C. Richards.
S-1065____ Louis Miller and Santo Nastasi.
S-1066____ M. J. Dontas.
S-1069____ Thompson & Smith and John S. Cook.
S-1071____ Wilshire Realty Co., and Hayes Construction Co.
S-1073____ Malkov Lumber Co. and James Burton Co.
S-1074____ Keith Spalding.
S-1075____ R. M. O'Neal.
S-1076____ Charles W. Althen.
S-1077____ Grover D. King.
S-1078____ Raymond Nicewonger.
S-1080____ Arrow Motor Sales.
S-1081____ S. E. Pancoast and Al Baker.
S-1082____ Charles A. Limberg and Al Baker.
S-1084____ J. C. Nichols.
S-1085____ E. J. McIlimurray.
S-1086____ A. L. Wiese and Fred Perschau.
S-1087____ J. J. Mellinger.
S-1088____ Wright & Company, Inc.
S-1089____ Reuben Newman and Anthony Didonato, Jr.
S-1091____ Joseph Shaffer.
S-1095____ John A. Harney.
S-1096____ Singer Sewing Machine Co., Paul M. Newstrom, and Warren Beaman.
S-1099____ Superior Boat & Mill Co.
S-1103____ Kimball Brothers.
S-1104____ United States Fidelity & Guaranty Co.
S-1111____ Floyd Gearhart.
S-1114____ Charles G. Imburgia.
S-1115____ Joseph Zuckerberg and Celia Zuckerberg.
S-1116____ City Chevrolet Co. and O. B. Peavey.
S-1120____ Louis and Lucy Spinelli.
S-1121____ Joseph Kukuruza, Stephen Kukuruza, and Charles Mick.
S-1122____ Frank Niemczewski and Maurice La Belle.
S-1124____ Ralph L. Landas.
S-1125____ Pomeroy Motor Co.
S-2001____ Edouard E. and Kathleen M. Robert.
S-1126____ Pete Cladianos and G. W. Friedhoff.
S-1009____ B & O Construction Co.
S-14_____ Frank Weddell.

Issued this 30th day of June 1947.

OFFICE OF HOUSING EXPEDITER,
By JAMES V. SARCONE,
Authorizing Officer.

[F. R. Doc. 47-6330; Filed, July 2, 1947; 8:27 p. m.]

PART 825—RENT REGULATION UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED HOUSING RENT REGULATION FOR MIAMI DEFENSE-RENTAL AREA

§ 825.3 *Controlled Housing Rent Regulation for Miami Defense-Rental Area.* The Controlled Housing Rent Regulation for Miami Defense-Rental Area, issued pursuant to the Housing and Rent Act of 1947, Public Law Eightieth Congress, is as follows:

Sec.
1. Definitions and scope of this regulation.
2. Prohibition against higher than maximum rents.
3. Minimum space, services, furniture, furnishings and equipment.
4. Maximum rents.
5. Adjustments and other determinations.
6. Inspection.
7. Registration.
8. Evasion.
9. Enforcement.
10. Procedure.
11. Requests for amendment.
12. Adoption of orders.

SECTION 1. *Definitions and scope of this regulation.* "Act" means the Housing and Rent Act of 1947.

"Expediter" means the Housing Expediter or the Rent Director or such other person or persons as the Expediter may appoint or designate to carry out any of the duties delegated to him by the act.

"Rent Director" means the person designated by the Expediter as director of the Defense-Rental Area or such person or persons as may be designated to carry out any of the duties delegated to the Rent Director by the Expediter.

"Area Rent Office" means the office of the Rent Director in the Defense-Rental Area.

"Person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

"Housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property.

"Controlled housing accommodations" means any housing accommodation in the Defense-Rental Area which is not specifically exempted from control or decontrolled under this regulation.

"Services" includes repairs, decorating and maintenance, the furnishing of light, heat, hot and cold water, telephone, elevator service, window shades, and storage, kitchen, bath, and laundry facilities and privileges, maid service, linen service, janitor service, and removal of refuse and any other privilege or facility connected with the use or occupancy of housing accommodations.

"Landlord" includes an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodations, or an agent of any of the foregoing.

"Tenant" includes a subtenant, lessee, sublessee, or other person entitled to the possession or to the use or occupancy of any housing accommodations.

"Rent" means the consideration, including any bonus, benefit, or gratuity, demanded or received for or in connection with the use or occupancy of housing accommodations or the transfer of a lease of such accommodations.

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service: *Provided, however,* That if 75 percent or more of the units in the establishment are self-contained dwelling units including a bathroom and kitchen and were rented on other than a daily term of occupancy on June 30, 1947 the establishment shall not be considered a hotel for the purposes of this regulation and the Housing and Rent Act of 1947.

"Motor court" means an establishment renting rooms, cottages or cabins; supplying parking or storage facilities for motor vehicles in connection with such renting and other services and facilities customarily supplied by such establishment; and commonly known as a motor, auto or tourist court in the community.

"Tourist home" means a rooming house which caters primarily to transient guests and is known as a tourist home in the community.

"Rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel or motor court in which a furnished room or rooms not constituting an apartment are rented on a short term basis of daily, weekly or monthly occupancy to more than two paying tenants, not members of the landlord's immediate family. The term includes boarding houses, dormitories, trailers not a part of a motor court, residence clubs and all other establishments of a similar nature, including tourist homes not serving transient guests exclusively.

"Maximum rent date" means September 1, 1943, the maximum rent date for the Miami County Defense-Rental Area as established under the Emergency Price Control Act of 1942, as amended.

"Date determining maximum rent" means the date as of which a maximum rent was determined for any particular housing accommodation in accordance with the Emergency Price Control Act of

1942, as amended, and the regulations issued thereunder, or under section 4 (c) of this regulation, whichever is applicable.

"Effective date of regulation" means November 1, 1943, the effective date of all provisions of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, except as to section 7 of that regulation which became effective October 1, 1943 in the County of Dade and October 15, 1943 in the City of Hollywood and the Town of Hallandale in the County of Broward, in the State of Florida.

The term "Rent Regulation for Housing" as herein used, means the Rent Regulation for Housing for the Miami Defense-Rental Area.

(a) *Housing and defense-rental area to which this regulation applies.* This regulation applies to all housing accommodations in the Miami Defense-Rental Area, consisting of the County of Dade and the City of Hollywood and the Town of Hallandale in the County of Broward in the State of Florida, except as provided in paragraph (b) of this section. The Miami Defense-Rental Area is referred to hereinafter in this regulation as the "Defense-Rental Area."

(b) *Housing to which this regulation does not apply.* This regulation does not apply to the following:

(1) *Farming tenants.* Housing accommodations situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time ir farming operations thereon.

(2) *Service employees.* Dwelling space occupied by domestic servants, caretakers, managers, or other employees to whom the space is provided as part or all of their compensation and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part.

(3) *Accommodations subject to the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments.* Rooms or other housing accommodations subject to the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments.

(4) *Structures subject to underlying leases.* (i) Entire structures or premises wherein more than 25 rooms are rented or offered for rent by any lessee, sublessee, or other ' nant of such entire structure or premises.

(ii) Entire structures or premises wherein 25 or less rooms are rented or offered for rent by any lessee, sublessee, or other tenant of such entire structures or premises; *Provided*, That all of the housing accommodations in such structures or premises are exempt under the provisions of this section or section 1 (b) of the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments.

(iii) This regulation does not apply to an underlying lease of any entire structure or premises which was entered into after the maximum rent date and prior to the effective date of the regulation while such lease remains in force with no power in the tenant to cancel or otherwise terminate the lease, unless all of the housing accommodations in such structure are exempt under this section or section 1 (b) of the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments.

(5) *Rented to National Housing Agency.* Housing accommodations rented to the United States acting by the National Housing Agency: *Provided, however*, That this regulation does apply to a sublease or other subrenting of such accommodations or any part thereof.

(6) *Winter resort housing.* Housing accommodations located in a resort community and customarily rented or occupied on a seasonal basis prior to November 1, 1943, which were not rented during any portion of the period beginning on June 1, 1946, and ending on September 30, 1946: *Provided, however*, That the area rent director may by order extend the above exemption to housing accommodations otherwise qualified which were rented or offered for rent for a period of not in excess of two weeks during the above period.

This exemption shall be effective only from October 1, 1947, to February 29, 1948, inclusive.

(7) *Accommodations in hotels, motor courts, and tourist homes.* (i) Housing accommodations in any establishment which is commonly known as a hotel (see definition of "hotel" in section 1) in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; (ii) housing accommodations in motor courts; and (iii) housing accommodations in any tourist home serving transient guests, exclusively: *Provided, however*, That all such housing accommodations referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such accommodations on a form provided by the Expediter within 30 days after July 1, 1947, or within 30 days after such date of first renting, whichever is the later: *And provided further*, That if a landlord fails to file said application for decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said application.

(8) *Accommodations first offered for rent.* (i) Housing accommodations, the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect; (ii) housing accommodations which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations: *Provided, however*, That all housing accommodations referred to in this paragraph (8) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 30 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: *And provided further*, That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (8) the construction of housing accommodations is considered completed on the date the last material, fixture or equipment is incorporated into the structure provided the dwelling is suitable for occupancy at that time.

For the purposes of this paragraph (8) the word "conversion" means (1) a change in a structure from a non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

(9) *Maximum rents established under section 4 (b).* Housing accommodations for which the maximum rent is established under section 4 (b) of this regulation; *Provided, however*, That such housing accommodations shall be subject to this regulation until January 1, 1948.

(10) Housing accommodations located in a resort community which, during at least six months of the year ending May 31, 1947, were either rented to tourist tenants or not rented, or both, and which were rented to a tourist tenant or not rented on May 31, 1947. This exemption shall apply to such accommodations only while rented to tourist tenants. For the purpose of this section, the term "tourist tenant" shall mean a tenant having his domicile outside of the resort community who is, or was, temporarily residing within such community; *Provided, however*, That the term shall not include a tenant who has continuously resided in the resort community for a period of more than nine months immediately prior to May 31, 1947, or more than nine months immediately prior to the date of renting the accommodations, whichever is the later.

(c) *Effect of this regulation on leases and other rental agreements.* The provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with this regulation.

(d) *Waiver of benefit void.* An agreement by the tenant to waive the benefit of any provision of this regulation is void. A tenant shall not be entitled by reason of this regulation to refuse to pay or to recover any portion of any rents due or paid for use or occupancy prior to the effective date of this regulation.

SEC. 2. *Prohibition against higher than maximum rents*—(a) *General prohibition.* Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective

date of this regulation of any housing accommodations within the defense-rental area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.

(b) *Lease with option to buy.* Where a lease of housing accommodations was entered into prior to the effective date of regulation and the tenant as a part of such lease or in connection therewith was granted an option to buy the housing accommodations which were the subject of the lease, with the further provision that some or all of the payments made under the lease should be credited toward the purchase price in the event such option is exercised, the landlord, notwithstanding any other provision of this regulation may be authorized to receive payment made by the tenant in accordance with the provisions of such lease and in excess of the maximum rent for such housing accommodations. Such authority may be secured only by a written request of the tenant to the area rent office and shall be granted by order of the Expediter if he finds that such payments in excess of the maximum rent will not be inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof. After entry of such order the landlord shall be authorized to demand, receive and retain and the tenant shall be authorized to offer payments provided by the lease in excess of the maximum rent for periods commencing on or after the effective date of this regulation. After entry of such order, the provisions of the lease may be enforced in accordance with law, notwithstanding any other provision of this regulation. Nothing in this paragraph shall be construed to authorize the landlord to demand or receive or the tenant to offer payments in excess of the maximum rent in the absence of an order of the Expediter as herein provided. Where a lease of housing accommodations has been entered into on or after the effective date of regulation, and the tenant as a part of such lease or in connection therewith has been granted an option to buy the housing accommodations which are the subject of the lease, the landlord, prior to the exercise by the tenant of the option to buy, shall not demand or receive nor shall the tenant offer payments in excess of the maximum rent, whether or not such lease allocates some portion or portions of the periodic payments therein provided as payments on or for the option to buy.

(c) *Security deposits*—(1) *General prohibition.* Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall demand, receive or retain a security deposit for or in connection with the use or occupancy of housing accommodations within the defense-rental area except as provided in this paragraph (c). The term "security deposit", in addition to its customary meaning, includes any prepayment of rent except payment in advance of the next periodic installment of rent for a period no longer than one month but shall not include rent voluntarily prepaid subsequent to possession by a tenant under a written lease for his own convenience.

(2) *Maximum rent established under section 4 (a) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (a), no security deposit shall be demanded, received, or retained except in the amount (or any lesser amount) and on the same terms and conditions (or on terms and conditions less burdensome to the tenant) provided for in the lease or other rental agreement in effect on the date determining the maximum rent established under said section 4 (a).

(3) *Maximum rent established under section 4 (b) or (f) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (b) or (f), no security deposit shall be demanded or received.

(4) *Maximum rent established under section 4 (c) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (c), no security deposit shall be demanded, received, or retained.

(5) *Maximum rent established under section 4 (d) or (e) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (d) or (e), no security deposit shall be demanded or received, except in the amount (or any lesser amount) and on the same terms and conditions (or on terms and conditions less burdensome to the tenant) provided for in the lease or other rental agreement in effect on September 1, 1944. Where such accommodations were or are first rented after September 1, 1944, no security deposit shall be demanded, received, or retained.

(6) *Deposits to secure the return of certain movable articles.* Notwithstanding the preceding provisions of this paragraph (c), any landlord may petition for an order authorizing the demand and receipt of a deposit to secure the return of movable articles. If the landlord shows that he has a special need therefor, the Expediter may enter an order authorizing a security deposit, not in excess of ten dollars, to secure the return of the movable articles specified in the order.

(7) Notwithstanding the preceding provisions of this paragraph (c), any landlord may demand, receive and retain as a security deposit, the rent for the last rental period of the term, not exceeding one month, where a newly constructed housing accommodation is, or was, rented and occupied for the first time after March 25, 1947, fully furnished, under a written lease.

SEC. 3. *Minimum space services, furniture, furnishings and equipment.* Except as set forth in section 5 (b) every landlord shall, as a minimum, provide with housing accommodations the same living space as provided June 30, 1947 or on the date he first rented on or after July 1, 1947 and the same essential services, furniture, furnishings, and equipment as those he was required to provide on June 30, 1947, in accordance with the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, or those he provided on the date he first rented on or after July 1, 1947, and as to other services, furniture, furnishings and equipment not substantially less than those he was required to provide on June 30, 1947, or actually provided on the date of first renting on or after July 1, 1947.

SEC. 4. (a) *Maximum rents in effect on June 30, 1947.* The maximum rent for any housing accommodation under this regulation (unless and until changed by the Expediter as provided in section 5), shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

(b) *Maximum rent established under a lease.* In any case in which a tenant and landlord, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any controlled housing accommodations and such lease takes effect after July 1, 1947, and expires on or after December 31, 1948, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, the rent provided by the lease if it does not represent an increase of more than 15 percent over the maximum rent otherwise applicable. Such lease shall increase the maximum rent otherwise applicable for any housing accommodations only if a true copy thereof signed by both the landlord and tenant is filed with the area rent office for the defense-rental area in which the accommodations are located within fifteen days after the date the lease is executed. Every landlord shall file with a true copy of such lease Form D–92—Registration of Lease—in triplicate. A maximum rent established under this paragraph shall not be subject to additional increase by execution of a subsequent lease. No maximum rent established under this paragraph shall be subject to modification by any order of the Expediter.

A lease shall be effective under this paragraph to increase the maximum rent only if it provides with the housing accommodations the same living space and the same essential services, furniture, furnishings, and equipment as required by this regulation prior to the effective date of the lease, and as to other services, furniture, furnishings and equipment, not substantially less than required prior to the effective date of the lease. The landlord shall continue to provide such

space and services, furniture, furnishings, and equipment at all times after the effective date of such lease.

(c) *First rent after June 30, 1947.* For controlled housing accommodations first rented on or after July 1, 1947, the maximum rent shall be the first rent for such accommodations or one-twelfth of the total rent for the year ending on August 31, 1943, whichever is the higher. Within 30 days after so renting, the landlord shall register the accommodations as provided in section 7. The Expediter may order a decrease in the maximum rent as provided in section 5 (c) (1).

If the landlord fails to file a proper registration statement within the time specified, the rent received for any rental period commencing on or after the date of the first renting shall be received, subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of the issuance of the order unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation 1. If the Expediter finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) may relieve the landlord of the duty to refund. The landlord shall have the duty to refund only if the order under section 5 (c) is issued in a proceeding commenced by the Expediter within 3 months after the date of filing of such registration statement.

(d) *Housing subject to schedule of War or Navy Department.* Where housing accommodations on June 30, 1947 are rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments for which the rent is fixed by the national rent schedule of the War and Navy Departments, and on or after July 1, 1947, the rents on such housing accommodations cease to be governed by the national rent schedule of the War or Navy Departments, the maximum rents shall be those which would have been applicable under the appropriate subsection of section 4 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, or shall be established under section 4 (c) of this regulation.

SEC. 5. *Adjustments and other determinations.* In the circumstances enumerated in this section, the Expediter may issue an order changing the maximum rents otherwise allowable or the minimum space, services, furniture, furnishings or equipment required, except in cases where the maximum rent is established under section 4 (b) of this regulation, or where an order increasing or decreasing the maximum rent on the same facts and grounds was entered under the rent regulations issued pursuant to the Emergency Price Control Act of 1942, as amended.

In cases under paragraphs (a) (2), (a) (4), (a) (5), (a) (7), (a) (8), (a) (9), (a) (11), (c) (1), (c) (3), and (c) (5), the adjustment of the maximum rent shall be on the basis of the maximum rent which the Expediter finds is generally prevailing in the defense-rental area for comparable housing accommodations.

In cases under paragraphs (a) (1), (a) (3), (a) (6), (c) (2), (c) (4) and (c) (6), the adjustment of the maximum rent shall be the amount the Expediter finds would have been, on September 1, 1943, or during the year ending on August 31, 1943, the difference in the rental value of the housing accommodations by reason of the change upon which the adjustment is based: *Provided*, That in cases under sections 5 (a) (3) and 5 (c) (4) involving an increase or decrease in living space, the adjustment shall be either the amount the Expediter finds would have been on the maximum rent date the difference in the rental value of the housing accommodations by reason of such change or on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date, whichever is higher.

In cases under paragraph (h), the adjustment of the maximum rent shall be on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations during the corresponding month of the year ending on August 31, 1943.

In cases involving construction, appropriate allowance shall be made for general increases in costs of construction in the defense-rental area since 1939, except that in the case of construction initiated prior to November 23, 1945, such allowance shall reflect general increases in costs of construction in the defense-rental area since September 1, 1943.

In cases involving a major capital improvement, an increase or decrease in the services, furniture, furnishings or equipment, an increase or decrease in the number of subtenants or other occupants, or a deterioration, no adjustment shall be ordered to the extent that a rent used in establishing the maximum rent was fixed in contemplation of and so as to reflect such change.

In cases under paragraph (a) (10) the maximum rent shall be adjusted to an amount to be ascertained by adding to the total rent for the year ending on August 31, 1943, an amount equal to the rent for the housing accommodations during the month or months of that year most nearly comparable to the month or months during which the accommodations were not rented, and dividing by twelve.

In cases under paragraph (a) (12) of this section, the adjustment in the maximum rent shall be in the amount necessary to relieve the substantial hardship which shall be the lesser of the following two amounts: the decrease in net income (before interest) or the increase in property taxes or operating costs: *Provided*, That the adjustment shall not result in a maximum rent higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

In cases under paragraph (c) (7) of this section, the adjustment in the maximum rent shall be in the amount the Expediter finds warranted by the modification or elimination of the necessity for the increase in the maximum rent granted under paragraph (a) (12) of this section: *Provided*, That no decrease shall be ordered in an amount greater than the adjustment ordered under paragraph (a) (12) of this section.

In cases under paragraph (a) (13) of this section the adjustment shall be in the amount of the difference between the rent on the date determining the maximum rent and the rent agreed upon by the landlord and tenant as a result of a continuous process of bargaining on interrelated matters.

In cases under paragraph (a) (14) of this section, the adjustment shall be the amount of the rent increase granted by the appropriate agency of the United States.

(a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable only on the grounds that:

(1) *Major capital improvement after September 1, 1943.* There has been, since September 1, 1943, a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance or a substantial increase in the services, furniture, furnishings, or equipment, and the rent on the maximum rent date was fixed by a lease or other rental agreement which was in force at the time of such change or increase.

(2) *Major capital improvement or change to furnished prior to September 1, 1943.* There was during the year ending on August 31, 1943, a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, or a change from unfurnished to fully furnished, and as a result the maximum rent for the housing accommodations is substantially lower than the maximum rent generally prevailing in the defense-rental area for comparable housing accommodations.

(3) *Substantial increase in space, services, furniture, furnishings or equipment.* There has been, since September 1, 1943, a substantial increase in the services, furniture, furnishings or equipment provided with the housing accommodations or a substantial increase in the living space since June 30, 1947. No increase in the maximum rent shall be ordered on the ground set forth in this paragraph (a) (3) unless the increase in services, furniture, furnishings or equipment occurred with the consent of the tenant or while the accommodations were vacant: *Provided*, That an adjustment may be ordered, although the tenant refuses to consent to the increase in services, furniture, furnishings or equipment, if the Expediter finds that such increase (i) is reasonably required for the operation of a multiple dwelling structure or other structure of which the accommodations are a part of (ii) is necessary for the preservation or maintenance of the accommodations.

(4) *Special relationship between landlord and tenant.* The rent during some portion of the year ending on August 31, 1943, or on the date subsequent thereto

determining the maximum rent, was materially affected by the blood, personal or other special relationship between the landlord and the tenant, and as a result the maximum rent for the housing accommodations is substantially lower than the maximum rent generally prevailing in the defense-rental area for comparable housing accommodations: *Provided*, That no adjustment under this paragraph (a) (4) increasing the maximum rent shall be made effective with respect to any accommodations regularly rented to employees of the landlord while the accommodations are rented to an employee, and no petition for such an adjustment will be entertained until the accommodations have been or are about to be rented to one other than an employee.

(5) *Written lease for term commencing on or prior to September 1, 1941.* There was in force on September 1, 1943, or during some portion of the year ending on August 31, 1943, a written lease for a term commencing on or prior to September 1, 1941, and as a result the maximum rent for the housing accommodations is lower than the maximum rent generally prevailing in the defense-rental area for comparable housing accommodations.

(6) *Substantial increase in occupancy.* (i) There has been, since the date determining the maximum rent a substantial increase in the number of subtenants or other persons occupying the accommodations or a part thereof under a rental agreement with the tenant.

(ii) There has been, since the date determining the maximum rent a substantial increase in the number of occupants, in excess of normal occupancy for that class of accommodations on the maximum rent date.

(iii) There has been, since the date determining the maximum rent an increase in the number of occupants over the number contemplated by the rental agreement on the date determining the maximum rent, where the landlord on that date had a regular and definite practice of fixing different rents for the accommodations for different numbers of occupants.

(7) On the date determining the maximum rent the housing accommodations were temporarily exempt from real estate taxes, the landlord was passing the benefit of this tax exemption on to the tenant and as a result the rent on that date was subsantially lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(8) *Not rented during twelve weeks of year ending August 31, 1943.* The housing accommodations were not rented during at least twelve weeks of the year ending on August 31, 1943, and the maximum rent established under section 4 for such accommodations is substantially lower than the maximum rent generally prevailing in the defense-rental area for comparable housing accommodations.

(9) *Priority rating granted on September 1941 application form of Office of Production Management.* The maximum rent for the housing accommodations was originally established under section 4 (c) of the Rent Regulation for Housing issued pursuant to Emergency Price Control Act of 1942, as amended, the application for priority rating for the construction of the housing accommodations was filed on the September 1941 form in use by the Office of Production Management prior to the revision of this form on December 15, 1941, the landlord did not make, prior to the maximum rent date, or, if the accommodations were not rented on that date, prior to the first renting of the accommodations after that date, a written request to the appropriate agency of the United States to approve a higher rent than the rent initially approved because of increased costs of construction, and the maximum rent for the accommodations is substantially lower than the rent generally prevailing in the defense-rental area for comparable accommodations on the maximum rent date, giving due consideration to general increases in costs of construction, if any, in the defense-rental area since the maximum rent date.

This paragraph (a) (9) shall apply only to housing accommodations which were first rented prior to March 29, 1944.

(10) *Not rented for one or two full months during the year ending on August 31, 1943.* The housing accommodations were not rented for one or two full months but less than twelve weeks during the year ending on August 31, 1943 and the maximum rent established under section 4 for such accommodations is substantially lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations. The term "full month" means a period of consecutive days constituting a month.

(11) *Peculiar circumstances.* The rent on the date determining the maximum rent was materially affected by peculiar circumstances and as a result was substantially lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(12) *Substantial hardship from increase in property taxes or operating costs.* Substantial hardship has resulted from a substantial decrease in the net income (before interest) of the property for the current year as compared with a representative period prior to the maximum rent date, due to a substantial and unavoidable increase in property taxes or operating costs.

In proper cases increases in payroll and property taxes in effect on the date of the filing of the petition may be considered by the Expediter in determining whether substantial hardship exists.

For the purposes of this paragraph (a) (12) the term:

(i) "Net income (before interest)" means the amount determined by subtracting unavoidable property taxes and operating costs actually paid or accrued from total income earned.

(ii) "Property taxes and operating costs" includes all expenses necessary to the operation and maintenance of the property actually paid or accrued and properly allocated, including depreciation but excluding interest.

(iii) "Property" includes one or more structures operated as a single unit or enterprise.

(iv) "Total income earned" includes rental and other income earned from the property and the rental value of housing accommodations in the property occupied without the full payment of rent.

(v) "Current year" means (a) the most recent full calendar or fiscal year used by the landlord, or (b) any twelve-month period ending not more than 90 days prior to the filing of the petition: *Provided, however*, That the current year in all cases shall begin on or after the maximum rent date: *And provided, further*, That if allowance is requested for increases in payroll or property taxes not fully reflected in the "current year" as defined above, at least one calendar month must have passed between the end of the current year and the beginning of the month in which the petition is filed.

(vi) "Prior representative period" means any period of two consecutive years prior to the "current year" but not beginning before January 1, 1939, which the Expediter finds to be representative of the property's normal operation: *Provided, however*, That where a representative period of two consecutive years is not available the Expediter in his discretion may for the purposes of this section accept a representative period of not less than one year.

(13) *Rented to an employee of landlord.* The housing accommodations were rented to an employee of the landlord both on the date determining the maximum rent and at the time the order under this paragraph (a) (13) is issued, and after the date determining the maximum rent but prior to the effective date of regulation the landlord and tenant agreed, as the result of a continuous process of bargaining on interrelated matters, upon a wage increase and a rent increase, and the wage increase agreed upon has been put into effect.

(14) The maximum rent was established under section 4 (c) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended and prior to final completion of all units included in a single priority application, but subsequent to the first renting of said accommodations, the landlord made a written request to the appropriate agency of the United States to approve a higher rent than the rent initially approved because of increased costs of construction, and a higher rent was approved by such agency.

(b) *Decreases in minimum services, furniture, furnishings, equipment and space.* (1) The landlord shall, until the accommodations become vacant, maintain the minimum services, furniture, furnishings, equipment and living space as required under Section 3, unless and until he has filed a petition to decrease the services, furniture, furnishings, equipment or living space and an order permitting a decrease has been entered thereon. When the accommodations become vacant, the landlord may on renting to a new tenant decrease the services, furniture, furnishings, equipment or living space below the minimum; within 10

days after so renting the landlord shall file a written report with the area rent director showing such decrease.

(2) *Adjustment in maximum rent for decreases.* The order on any petition under this paragraph (b) may require an appropriate adjustment in the maximum rent; and any maximum rent for which a report is required by this paragraph (b) may be decreased in accordance with the provisions of section 5 (c) (4).

If the landlord fails to file the report required by this paragraph (b) within the time specified, or decreases the services, furniture, furnishings, equipment or living space without an order authorizing such decrease where such order is required, the rent received by the landlord for any rental period commencing on or after such decrease or July 1, 1947, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order decreasing the maximum rent on account of such decrease in services, furniture, furnishings, equipment or living space. Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation 1. If the Expediter finds that the landlord was not at fault in failing to comply with this paragraph (b), the order may relieve the landlord of the duty to refund.

(c) *Grounds for decrease of maximum rent.* The Expediter at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations established under paragraphs (b) or (f) of section 4 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, or under paragraph (c) or (d) of section 4 of this regulation is higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

Where the maximum rent for said housing accommodations was originally established under paragraphs (b), (d) or (f) of section 4 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, and the landlord failed to file a proper registration statement in accordance with the provisions of said Rent Regulation for Housing on or before June 30, 1947, and fails to file a proper registration statement in accordance with the provisions of this Regulation within the time specified in section 7 or where the maximum rent is established under section 4 (c) of this regulation and the landlord fails to file a registration statement in accordance with the provisions af section 7 of this regulation, the rent received for any rental period commencing on or after July 1, 1947, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under this section. Such amount shall be refunded to the tenant within 30 days after the date of the issuance of the order, unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation 1. If the Expediter finds that the landlord was not at fault in failing to file the proper registration statement within the time specified, the order under this section may relieve the landlord of the duty to refund. The landlord shall have the duty to refund only if the order under this section is issued in a proceeding commenced by the Expediter within 3 months after the date of filing of such registration statement.

(2) *Substantial deterioration.* There has been a substantial deterioration of the housing accommodations other than ordinary wear and tear since September 1, 1943.

(3) *Substantial deterioration or change to unfurnished prior to September 1, 1943.* There was a substantial deterioration of the housing accommodations or a change from fully furnished to unfurnished during the year ending on August 31, 1943, and as a result the maximum rent for such accommodations is substantially higher than the maximum rent generally prevailing in the defense-rental area for comparable housing accommodations.

(4) *Decrease in space, services, furniture, furnishings or equipment.* There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since September 1, 1943, or a substantial decrease in the living space since June 30, 1947.

(5) *Special relationship between landlord and tenant or peculiar circumstances.* The rent during some portion of the year ending on August 31, 1943, or on the date subsequent thereto determining the maximum rent, was materially affected by the blood, personal, or other special relationship between the landlord and the tenant, or by peculiar circumstances, and as a result the maximum rent for the housing accommodations is substantially higher than the maximum rent generally prevailing in the defense-rental area for comparable housing accommodations.

(6) *Substantial decrease in occupancy.* There has been a substantial decrease in the number of subtenants or other occupants since an order under paragraph (a) (6) of this section or section 5 (a) (6), of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.

(7) *Modification or elimination of necessity for increase under section 5 (a) (12).* There has been a modification or elimination of the necessity for the increase in the maximum rent granted under paragraph (a) (12) of this section or section 5 (a) (12) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended, since the order issued under either of said paragraphs.

(d) *Orders where facts are in dispute, in doubt, or not known.* If the maximum rent, or any other fact necessary to the determination of the maximum rent, or the services, furniture, furnishings or equipment required to be provided with the accommodations is in dispute between the landlord and the tenant, or is in doubt, or is not known, the Expediter at any time on his own initiative, may enter an order fixing the maximum rent by determining such fact, or determining the services, furniture, furnishings, and equipment required to be provided with the accommodations which order shall be effective to establish the maximum rent from July 1, 1947 or the date of first renting after July 1, 1947, whichever is applicable. If the Expediter is unable to ascertain such fact, or facts, he shall enter the order on the basis of the rent which he finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date and, where appropriate, may determine the services, furniture, furnishings and equipment included in such rent.

(e) *Sale of underlying lease or other rental agreement.* Where housing accommodations or a predominant part thereof are occupied by one or more subtenants or other person occupying under a rental agreement with the tenant the tenant may petition the Expediter for leave to exercise any right he would have except for this regulation to sell his underlying lease or other rental agreement. The Expediter may grant such petition if he finds that the sale will not result, and that sales of such character would not be likely to result in the circumvention or evasion of the act or this regulation. He may require that the sale be made on such terms as he deems necessary to prevent such circumvention or evasion.

(f) *Interim orders.* Where a petition is filed by a landlord on one of the grounds set out in paragraph (a) of this section or a proceedings is initiated by the Expediter under paragraph (d), the Expediter may enter an interim order increasing or fixing the maximum rent until further order subject to refund by the landlord to the tenant of any amount received in excess of the maximum rent established by final order in such proceeding. The receipt by the landlord of any rent authorized by such interim order shall constitute an agreement by the landlord with the tenant to refund to the tenant any amount received in excess of the maximum rent established by final order. The landlord shall make such refund either by repayment in cash or where the tenant remains in occupancy after the effective date of the final order, by deduction from the next installment of rent, or both.

(g) *Adjustments in case of options to buy.* No adjustment in the maximum rent shall be ordered on the ground that the landlord has, as a part of or in connection with a lease of housing accommodations, granted the tenant an option to buy the accommodations which are subject to the lease. Where a lease of housing accommodations was in force on the date determining the maximum rent, and the landlord had on that date as a part of or in connection with such lease, granted the tenant an option to buy the accommodations which are the subject of the lease, the Expediter may, on or after the termination of such lease, on his own initiative or on application of the tenant, enter an order fixing the

maximum rent on the basis of the rent which the Expediter finds is generally prevailing in the defense-rental area for comparable housing accommodations not subject to an option to buy on the maximum rent date.

(h) *Election by landlord of seasonal maximum rents*—(1) *Landlord's election.* Where the total rent for housing accommodations for the eight months September 1942 through December 1942 and May 1943 through August 1943 was less than one-half of the total rent for the four months January 1943 through April 1943, the landlord may elect to have seasonal maximum rents applicable to the accommodations. A landlord so elects when he files a registration statement as provided in section 7 and expresses such election on the registration statement. After the landlord has elected seasonal maximum rents, the maximum rents provided by this paragraph shall apply to the housing accommodations until, on petition of the landlord, the Expediter consents to the landlord's request to revoke the election. Upon the granting of such request the maximum rents provided by section 4 shall apply to the accommodations.

(2) *Maximum rents for particular months.* Upon the landlord's election as provided in subparagraph (1), the maximum rent for the housing accommodations for a particular month, beginning with the first rental period after the landlord's election, shall be the rent for the accommodations for the corresponding month of the year ending on August 31, 1943: *Provided, however,* That, where the accommodations were not rented or were rented for less than 21 days during such corresponding month of the year ending on August 31, 1943, the maximum rent for the particular month shall be the rent on September 1, 1943, or, if the accommodations were not rented on that date, the first rent after that date.

(3) *Adjustments of maximum rents.* If the maximum rent for a particular month is established under subparagraph (2) by either the rent on September 1, 1943 or the first rent after that date, and is lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations for the corresponding month of the year ending on August 31, 1943, the Expediter on petition of the landlord, may order an increase in the maximum rent. If such maximum rent is higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations for the corresponding month of the year ending August 31, 1943, the Expediter on his own initiative or on application of the tenant, may order a decrease in the maximum rent.

(4) *Reporting first rent.* Where the housing accommodations were not rented on September 1, 1943 and the maximum rent for a particular month is established under subparagraph (2) by the first rent after that date, the landlord, if he has previously filed a registration statement for the accommodations, shall report the first rent after September 1, 1943, within 30 days after the accommodations are first rented after that date, on the form provided therefor. If the landlord has not previously filed a registration statement for the accommodations, he shall file such registration statement within 30 days after first renting, as provided in section 7. If the landlord fails to file the report or registration statement within the time specified, the rent received from the time of first renting on November 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amounts in excess of the maximum rents which may later be fixed by an order under subparagraph (3) decreasing maximum rents. In such case, the order under subparagraph (3) shall be effective to decrease the maximum rents from the time of such first renting or November 1, 1943, whichever is the later.

(i) Where the maximum rent for any housing accommodations constructed by the United States or any agency thereof, or by a State of the United States or any of its political subdivisions, or any agency of the State, or any of its political subdivisions, and owned by any of the foregoing, is below the rent generally prevailing in the defense-rental area for comparable accommodations on the maximum rent date, the owner of such accommodations may with the consent of the Expediter increase the maximum rents to such generally prevailing rent by re-registering such accommodations at such generally prevailing rent.

For the purpose of this section, any corporation formed under the laws of a State shall not be considered an agency of the United States.

SEC. 6. *Inspection.* Any person who rents or offers for rent or acts as a broker or agent for the rental of housing accommodations and any tenant shall permit such inspection of the accommodations by the Expediter as he may, from time to time, require.

SEC. 7. *Registration*—(a) *Registration statement.* Every landlord of controlled housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor, to be known as a registration statement, unless a registration statement was heretofore filed in accordance with the provisions of section 7 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended. For housing accommodations rented prior to June 1, 1947, such registration statement shall be filed on or before July 10, 1947. For housing accommodations first rented after June 1, 1947, such registration statement shall be filed on or before July 30, 1947 or within 30 days after first renting, whichever is later. The statement shall identify each dwelling unit and specify the maximum rent provided by this regulation for such dwelling unit and shall contain such other information as the Expediter shall require. The original shall remain on file with the Expediter and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement and shall obtain the tenant's signature and the date thereof, on the back of such statement.

When the maximum rent is changed by order of the Expediter, the landlord shall deliver his stamped copy of the registration statement to the area rent office for appropriate action reflecting such change.

Where, since the filing of the registration statement for any controlled housing accommodations, there has been a change in the identity of the landlord, by transfer of title or otherwise, the new landlord shall file a notice of such change on a form provided for that purpose, to be known as a notice of change in identity within 15 days after the change or July 1, 1947, whichever is later. If the new landlord indicates on the notice of change in identity that he has not obtained the landlord's copy of the original registration statement, the Expediter shall cause to be prepared and delivered to him a true copy of said original, which may be used to satisfy all requirements of this paragraph (a).

Any notice, order or other process or paper directed to the person named on the registration statement as the landlord at the address given thereon, or when a notice of change in identity has been filed, to the person named as landlord and at the address given in the most recent such notice, shall, under the circumstances prescribed in Rent Procedural Regulation 1 constitute notice to the person who is then the landlord.

The provisions of this section shall be applicable to any housing accommodations whose maximum rent was determined under section 4 (d) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended, on its sale by the owning agency, and within thirty days after the sale of such accommodations the new landlord shall file a registration statement as provided in subsection (a) of this section: *Provided, however,* That if the housing accommodations are sold to the United States or a state of the United States or any of its political subdivisions, or any agency of the foregoing, subsection (c) of this section shall continue to be applicable.

(b) *Receipt for amount paid.* No payment of rent need be made unless the landlord tenders a receipt for the amount to be paid.

(c) *Exemptions from registration requirements*—(1) *Housing owned and constructed by governmental agencies.* The provisions of this section shall not apply to housing accommodations whose maximum rent was originally determined under section 4 (d) of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended. The owner of such housing accommodations shall file a schedule or schedules, setting out the maximum rents for all such accommodations in the defense-rental area and containing such other information as the Expediter shall require. A copy of such schedule or schedules shall be posted by the owner in a place where it will be available for inspection by the tenants of such housing accommodations.

(2) *Housing subject to rent schedule of War or Navy Department.* The pro-

visions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including any civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

SEC. 8. *Evasion*—(a) *General.* The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchased money or other form of mortgage, or sale with option to repurchase or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing, or by tying agreement, or otherwise.

(b) *Purchase of property as condition of renting.* Specifically, but without limitation on the foregoing, no person shall require a tenant or prospective tenant to purchase or agree to purchase furniture or any other property as a condition of renting housing accommodations unless the prior written consent of the Expediter is obtained.

SEC. 9. *Enforcement.* Persons violating any provision of this regulation are subject to civil enforcement actions and suits for treble damages as provided by the act.

SEC. 10. *Procedure.* All registration statements, reports and notices provided for by this regulation shall be filed with the area rent office. All landlord's petitions and tenant's applications shall be filed with such office in accordance with Rent Procedural Regulation 1.

SEC. 11. *Requests for amendment.* Persons seeking any amendment of general applicability to any provision of this regulation may file requests therefor in accordance with Rent Procedural Regulation 1.

SEC. 12. *Adoption of orders.* All orders issued pursuant to section 2 (c), 2 (d) (5) and 2 (d) (6) of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, which were in effect on June 30, 1947, shall be deemed to continue in effect under this regulation unless and until revoked or modified by the Expediter.

Effective date. This Controlled Housing Rent Regulation for the Miami Defense-Rental Area shall become effective July 1, 1947.

NOTE: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 30th day of June 1947, effective July 1, 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V. SARCONE,
Authorizing Officer.

[F. R. Doc. 47-6267; Filed, June 30, 1947; 5:15 p. m.]

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED HOUSING RENT REGULATION FOR ATLANTIC COUNTY DEFENSE-RENTAL AREA

§ 825.4 *Controlled Housing Rent Regulation for Atlantic County Defense-Rental Area.* The Controlled Housing Rent Regulation for Atlantic County Defense-Rental Area, issued pursuant to the Housing and Rent Act of 1947, Public Law 129, Eightieth Congress, is as follows:

Sec.
1. Definitions and scope of this regulation.
2. Prohibition against higher than maximum rents.
3. Minimum space services, furniture, furnishings and equipment.
4. Maximum rents.
5. Adjustments and other determinations.
6. Inspection.
7. Registration.
8. Evasion.
9. Enforcement.
10. Procedure.
11. Requests for amendment.
12. Adoption of orders.

SECTION 1. *Definitions and scope of this regulation.* "Act" means the Housing and Rent Act of 1947.

"Expediter" means the Housing Expediter or the Rent Director or such other person or persons as the Expediter may appoint or designate to carry out any of the duties delegated to him by the act.

"Rent Director" means the person designated by the Expediter as director of the Defense-Rental Area or such person or persons as may be designated to carry out any of the duties delegated to the Rent Director by the Expediter.

"Area rent office" means the office of the Rent Director in the Defense-Rental Area.

"Person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

"Housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property.

"Controlled housing accommodations" means any housing accommodation in the Defense-Rental Area which is not specifically exempted from control or decontrolled under this regulation.

"Services" includes repairs, decorating and maintenance, the furnishing of light, heat, hot and cold water, telephone, elevator service, window shades, and storage, kitchen, bath, and laundry facilities and privileges, maid service, linen service, janitor service, and removal of refuse and any other privilege or facility connected with the use or occupancy of housing accommodations.

"Landlord" includes an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodations, or an agent of any of the foregoing.

"Tenant" includes a subtenant, lessee, sublessee, or other person entitled to the possession or to the use or occupancy of any housing accommodations.

"Rent" means the consideration, including any bonus, benefit, or gratuity, demanded or received for or in connection with the use or occupancy of housing accommodations or the transfer of a lease of such accommodations.

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service: *Provided, however,* That if 75 per cent or more of the units in the establishment are self-contained dwelling units including a bathroom and kitchen and were rented on other than a daily term of occupancy on June 30, 1947, the establishment shall not be considered a hotel for the purposes of this regulation and the Housing and Rent Act of 1947.

"Motor court" means an establishment renting rooms, cottages or cabins; supplying parking or storage facilities for motor vehicles in connection with such renting and other services and facilities customarily supplied by such establishments; and commonly known as a motor, auto or tourist court in the community.

"Tourist home" means a rooming house which caters primarily to transient guests and is known as a tourist home in the community.

"Rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel or motor court in which a furnished room or rooms not constituting an apartment are rented on a short term basis of daily, weekly or monthly occupancy to more than two paying tenants, not members of the landlord's immediate family. The term includes boarding houses, dormitories, trailers not a part of a motor court, residence clubs and all other establishments of a similar nature, including tourist homes not serving transient guests exclusively.

"Maximum rent date" means September 1, 1943, the maximum rent date for the Atlantic County Defense-Rental Area, as established under the Emergency Price Control Act of 1942, as amended.

"Date determining maximum rent" means the date as of which a maximum rent was determined for any particular housing accommodation in accordance with the Emergency Price Control Act of 1942, as amended, and the regulations issued thereunder, or under section 4 (c) of this regulation, whichever is applicable.

"Effective date of regulation" means June 1, 1944. The term Rent Regulation for Housing, as hereinafter used, means the Rent Regulation for Housing in Atlantic County Defense-Rental Area issued pursuant to the Emergency Price Control Act of 1942, as amended.

(a) *Housing and defense-rental area to which this regulation applies.* This regulation applies to all housing accommodations in the Atlantic County Defense-Rental Area, consisting of the County of Atlantic, New Jersey, except as provided in paragraph (b) of this section. The Atlantic County Defense-Rental Area is referred to hereinafter in this regulation as the "defense-rental area."

(b) *Housing to which this regulation does not apply.* This regulation does not apply to the following:

(1) *Farming tenants.* Housing accommodations situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon.

(2) *Service employees.* Dwelling space occupied by domestic servants, caretakers, managers, or other employees to whom the space is provided as part or all of their compensation and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part.

(3) *Accommodations subject to the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments.* Rooms or other housing accommodations subject to the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments.

(4) *Structures subject to underlying leases.* (i) Entire structures or premises wherein more than 25 rooms are rented or offered for rent by any lessee, sublessee or other tenant of such entire structure or premises.

(ii) Entire structures or premises wherein 25 or less rooms are rented or offered for rent by any lessee, sublessee, or other tenant of such entire structures or premises, *Provided*, That all of the housing accommodations in such structures or premises are exempt under the provisions of this section, or section 1 (b) of the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments.

(iii) This regulation does apply to an underlying lease of any entire structure or premises which was entered into after the maximum rent date and prior to the effective date of the regulation while such lease remains in force with no power in the tenant to cancel or otherwise terminate the lease, unless all of the housing accommodations in such structure are exempt under this section or section 1 (b) of the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments.

(5) *Rented to National Housing Agency.* Housing accommodations rented to the United States acting by the National Housing Agency: *Provided, however*, That this regulation does apply to a sublease or other subrenting of such accommodations or any part thereof.

(6) *Resort housing; summer resort housing.* Housing accommodations located in a resort community and customarily rented or occupied on a seasonal basis prior to October 1, 1945, which were not rented during any portion of the period beginning on November 1, 1943, and ending on February 29, 1944.

This exemption shall be effective only from July 1, 1947, to September 30, 1947, inclusive.

(See Rent Regulation for Housing issued pursuant to Emergency Price Control Act of 1942, as amended, for similar exemption from June 1 to June 30, 1947.)

(7) *Accommodations in hotels, motor courts, and tourist homes.* (i) Housing accommodations in any establishment which is commonly known as a hotel (see definition of hotel in section 1) in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; (ii) housing accommodations in motor courts; and (iii) housing accommodations in any tourist home serving transient guests, exclusively: *Provided, however*, That all such housing accommodations referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such accommodations on a form provided by the Expediter within 30 days after July 1, 1947, or within 30 days after such date of first renting, whichever is the later: *And provided further*, That if a landlord fails to file said application for decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said application.

(8) *Accommodations first offered for rent.* (i) Housing accommodations, the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect; (ii) housing accommodations which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations: *Provided, however*, That all housing accommodations referred to in this paragraph (8) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 30 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: *And provided further*, That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (8) the construction of housing accommodations is considered completed on the date the last material, fixture or equipment is incorporated into the structure provided the dwelling is suitable for occupancy at that time.

For the purposes of this paragraph (8) the word "conversion" means (1) a change in a structure from a non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

(9) *Maximum rents established under Section 4 (b).* Housing accommodations for which the maximum rent is established under section 4 (b) of this regulation, *Provided, however*, That such housing accommodations shall be subject to this regulation until January 1, 1948.

(10) *Subletting.* The subletting or other subrenting of housing accommodations for a term beginning on or after June 1, 1947 and ending on or before September 30, 1947 by a tenant who remained in occupancy and used the accommodations as his home from January 1, 1947, to the date of subletting or other subrenting.

(c) *Effect of this regulation on leases and other rental agreements.* The provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with this regulation.

(d) *Waiver of benefit void.* An agreement by the tenant to waive the benefit of any provision of this regulation is void. A tenant shall not be entitled by reason of this regulation to refuse to pay or to recover any portion of any rents due or paid for use or occupancy prior to the effective date of this regulation.

SEC. 2. *Prohibition against higher than maximum rents.*—(a) *General prohibition.* Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodations within the defense-rental area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.

(b) *Lease with option to buy.* Where a lease of housing accommodations was entered into prior to the effective date of regulation and the tenant as a part of such lease or in connection therewith was granted an option to buy the housing accommodations which were the subject of the lease, with the further provision that some or all of the payments made under the lease should be credited toward the purchase price in the event such option is exercised, the landlord, notwithstanding any other provision of this regulation may be authorized to receive payment made by the tenant in accordance with the provisions of such lease and in excess of the maximum rent

for such housing accommodations. Such authority may be secured only by a written request of the tenant to the area rent office and shall be granted by order of the Expediter if he finds that such payments in excess of the maximum rent will not be inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. After entry of such order the landlord shall be authorized to demand, receive and retain, and the tenant shall be authorized to offer payments provided by the lease in excess of the maximum rent for periods commencing on or after the effective date of this regulation. After entry of such order, the provisions of the lease may be enforced in accordance with law, notwithstanding any other provision of this regulation. Nothing in this paragraph shall be construed to authorize the landlord to demand or receive, or the tenant to offer payments in excess of the maximum rent in the absence of an order of the Expediter as herein provided. Where a lease of housing accommodations has been entered into on or after the effective date of regulation, and the tenant as a part of such lease or in connection therewith has been granted an option to buy the housing accommodations which are the subject of the lease, the landlord, prior to the exercise by the tenant of the option to buy, shall not demand or receive, nor shall the tenant offer payments in excess of the maximum rent, whether or not such lease allocates some portion or portions of the periodic payments therein provided as payments on or for the option to buy.

(c) *Security deposits*—(1) *General prohibition.* Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall demand, receive or retain a security deposit for or in connection with the use or occupancy of housing accommodations within the defense-rental area except as provided in this paragraph (c). The term "security deposit", in addition to its customary meaning, includes any prepayment of rent except payment in advance of the next periodic installment of rent for a period no longer than one month but shall not include rent voluntarily prepaid subsequent to possession by a tenant under a written lease for his own convenience.

(2) *Maximum rent established under section 4 (a) or (b) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (a) or (b), no security deposit shall be demanded, received, or retained except in the amount (or any lesser amount) and on the same terms and conditions (or on terms and conditions less burdensome to the tenant) provided for in the lease or other rental agreement in effect on the date determining the maximum rent established under said section 4 (a) or (b).

(3) *Maximum rent established under section 4 (c) or (d) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (c) br (d), no security deposit shall be demanded, received, or retained except in the amount (or any lesser amount) and on the same terms and conditions (or on terms and conditions less burdensome to the tenant) provided for in the lease or other rental agreement under which the accommodations were first rented or in any order heretofore or hereafter entered. Where such lease or other rental agreement provided for a security deposit, the Expediter at any time, on his own initiative or on application of the tenant, may order a decrease in the amount of such deposit or may order its elimination.

(4) *Maximum rent established under section 4 (e) or (i) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (e) or (i), no security deposit shall be demanded or received.

(5) *Maximum rent established under section 4 (f) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (f), no security deposit shall be demanded, received, or retained.

(6) *Maximum rent established under section 4 (g) or (h) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.* Where the maximum rent of the housing accommodations is or initially was established under said section 4 (g) or (h), no security deposit shall be demanded or received, except in the amount (or any lesser amount) and on the same terms and conditions (or on terms and conditions less burdensome to the tenant) provided for in the lease or other rental agreement in effect on September 1, 1944. Where such accommodations were or are first rented after September 1, 1944, no security deposit shall be demanded, received, or retained.

(7) *Deposits to secure the return of certain movable articles.* Notwithstanding the preceding provisions of this paragraph (c), any landlord may petition for an order authorizing the demand and receipt of a deposit to secure the return of movable articles. If the landlord shows that he has a special need therefor, the Expediter may enter an order authorizing a security deposit, not in excess of ten dollars, to secure the return of the movable articles specified in the order.

(8) Notwithstanding the preceding provisions of this paragraph (c), any landlord may demand, receive and retain as a security deposit, the rent for the last rental period of the term, not exceeding one month, where a newly constructed housing accommodation is or was rented and occupied for the first time after March 25, 1947, fully furnished, under a written lease.

SEC. 3. *Minimum services, furniture, furnishings and equipment.* Except as set forth in section 5 (b) every landlord shall, as a minimum, provide with housing accommodations the same living space as provided June 30, 1947, or on the date he first rented on or after July 1, 1947, and the same essential services, furniture, furnishings, and equipment as those he was required to provide on June 30, 1947, in accordance with the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, or those he provided on the date he first rented on or after July 1, 1947, and as to other services, furniture, furnishings and equipment not substantially less than those he was required to provide on June 30, 1947, or actually provided on the date of first renting on or after July 1, 1947.

SEC. 4. (a) *Maximum rents in effect on June 30, 1947.* The maximum rent for any housing accommodation under this regulation (unless and until changed by the Expediter as provided in Section 5), shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

(b) *Maximum rent established under a lease.* In any case in which a tenant and landlord, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any controlled housing accommodations and such lease takes effect after July 1, 1947, and expires on or after December 31, 1948, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, the rent provided by the lease if it does not represent an increase of more than 15 percent over the maximum rent otherwise applicable. Such lease shall increase the maximum rent otherwise applicable for any housing accommodations only if a true copy thereof signed by both the landlord and tenant is filed with the area rent office for the Defense-Rental Area in which the accommodations are located within fifteen days after the date the lease is executed. Every landlord shall file with a true copy of such lease Form D-92—Registration of Lease—in triplicate. A maximum rent established under this paragraph shall not be subject to additional increase by execution of a subsequent lease. No maximum rent established under this paragraph shall be subject to modification by any order of the Expediter.

A lease shall be effective under this paragraph to increase the maximum rent only if it provides with the housing accommodations the same essential services, furniture, furnishings, and equipment as required by this regulation prior to the effective date of the lease, and as to other services, furniture, furnishings and equipment, not substantially less than required prior to the effective date of the lease. The landlord shall continue to provide such space and services, furniture, furnishings, and equipment at all times after the effective date of such lease.

(c) *First rent after June 30, 1947.* For controlled housing accommodations first

rented on or after July 1, 1947, the maximum rent shall be the first rent for such accommodations. Within 30 days after so renting, the landlord shall register the accommodations as provided in section 7. The Expediter may order a decrease in the maximum rent as provided in section 5 (c) (1) and 5 (c) (6).

If the landlord fails to file a proper registration statement within the time specified, the rent received for any rental period commencing on or after the date of the first renting shall be received, subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1) and 5 (c) (6). Such amount shall be refunded to the tenant within 30 days after the date of the issuance of the order unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation 1. If the Expediter finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) may relieve the landlord of the duty to refund. The landlord shall have the duty to refund only if the order under section 5 (c) is issued in a proceeding commenced by the Expediter within 3 months after the date of filing of such registration statement.

(d) *Housing subject to schedule of War or Navy Department.* Where housing accommodations on June 30, 1947 are rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments for which the rent is fixed by the national rent schedule of the War and Navy Departments, and on or after July 1, 1947, the rents on such housing accommodations cease to be governed by the national rent schedule of the War or Navy Departments, the maximum rents shall be those which would have been applicable under the appropriate subsection of section 4 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, or shall be established under section 4 (c) of this regulation.

SEC. 5. *Adjustments and other determinations.* In the circumstances enumerated in this section, the Expediter may issue an order changing the maximum rents otherwise allowable or the minimum space, services, furniture, furnishings or equipment required, except in cases where the maximum rent is established under section 4 (b) of this regulation, or where an order increasing or decreasing the maximum rent on the same facts and grounds was entered under the rent regulations issued pursuant to the Emergency Price Control Act of 1942, as amended.

In those cases involving a major capital improvement, an increase or decrease in the furniture, furnishings or equipment, an increase or decrease of services, an increase or decrease in the number of subtenants or other occupants, or a deterioration, the adjustment in the maximum rent shall be the amount the Expediter finds would have been on the maximum rent date, the difference in the rental value of the housing accommodations by reason of such change: *Provided, however,* That no adjustment shall be ordered where it appears that the rent on the date determining the maximum rent was fixed in contemplation of and so as to reflect such change.

In all other cases except those under paragraphs (a) (7), (a) (12), (a) (13), (a) (14), (a) (15), (c) (6) and (c) (8) of this section, the adjustment shall be on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date: *Provided,* That in cases under paragraphs (a) (6) and (c) (5) of this section, the adjustment may be on the basis of the rental agreement in force on the date determining the maximum rent: *Provided, further,* That in cases under section 5 (a) (3) and 5 (c) (3) involving an increase or decrease in living space the adjustment shall be either the amount the Expediter finds would have been on the maximum rent date the difference in the rental value of the housing accommodations by reason of such change or on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date, whichever is higher.

In cases involving construction, appropriate allowance shall be made for general increases in costs of construction in the defense-rental area since 1939, except that in the case of construction initiated prior to November 23, 1945, such allowance shall reflect general increases in costs of construction in the defense-rental area since the maximum rent date.

In cases under paragraph (a) (7), (a) (14), and (c) (6) of this section, the adjustment shall be on the basis of the rents which the Expediter finds were generally prevailing in the defense-rental area for comparable housing accommodations during the year ending on the maximum rent date.

In cases under paragraph (a) (12) of this section, the adjustment in the maximum rent shall be in the amount necessary to relieve the substantial hardship which shall be the lesser of the following two amounts: the decrease in net income (before interest) or the increase in property taxes or operating costs: *Provided,* That the adjustment shall not result in a maximum rent higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

In cases under paragraph (c) (8) of this section, the adjustment in the maximum rent shall be in the amount the Expediter finds warranted by the modification or elimination of the necessity for the increase in the maximum rent granted under paragraph (a) (12) of this section: *Provided,* That no decrease shall be ordered in an amount greater than the adjustment ordered under paragraph (a) (12) of this section.

In cases under paragraph (a) (13) of this section the adjustment shall be in the amount of the difference between the rent on the date determining the maximum rent and the rent agreed upon by the landlord and tenant as a result of a continuous process of bargaining on interrelated matters.

In cases under paragraph (a) (15) of this section, the adjustment shall be the amount of the rent increase granted by the appropriate agency of the United States.

(a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable only on the grounds that:

(1) *Major capital improvement after effective date.* There has been on or after the effective date of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended, a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance or a substantial increase in the services, furniture, furnishings, or equipment, and the rent on the maximum rent date was fixed by a lease or other rental agreement which was in force at the time of such change or increase.

(2) *Change prior to maximum rent date.* There was, on or prior to the maximum rent date, a substantial change in the housing accommodations by a major capital improvement, as distinguished from ordinary repair, replacement, and maintenance or a substantial increase in the services, furniture, furnishings, or equipment, and the rent on the maximum rent date was fixed by a lease or other rental agreement which was in force at the time of such change or increase.

(3) *Substantial increase in services, furniture, furnishings or equipment.* There has been a substantial increase in the services, furniture, furnishings or equipment provided with the housing accommodations since the date or order determining its maximum rent or a substantial increase in the living space since June 30, 1947. No increase in the maximum rent shall be ordered on the ground set forth in this paragraph (a) (3) unless the increase in services, furniture, furnishings or equipment occurred with the consent of the tenant or while the accommodations were vacant: *Provided,* That an adjustment may be ordered, although the tenant refuses to consent to the increase in services, furniture, furnishings or equipment, if the Expediter finds that such increase (i) is reasonably required for the operation of a multiple dwelling structure or other structure of which the accommodations are a part of (ii) is necessary for the preservation or maintenance of the accommodations.

(4) *Special relationship between landlord and tenant.* The rent on the date determining the maximum rent was materially affected by the blood, personal or other special relationship between the landlord and the tenant and as a result was substantially lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date: *Provided,* That no adjustment under this subparagraph increasing the maximum rent shall be made effective with respect to any accommodations regularly rented to employees of the landlord while the accommodations are rented to an employee, and no petition for such an ad-

justment will be entertained until the accommodations have been or are about to be rented to one other than an employee.

(5) *Lease for term commencing one year or more before maximum rent date.* There was in force on the maximum rent date, a written lease, for a term commencing on or prior to the date one year before the maximum rent date, requiring a rent lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date; or the housing accommodations were not rented on the maximum rent date, but were rented during the two months ending on that date and the last rent for such accommodations during that two-month period was fixed by a written lease, for a term commencing on or prior to the date one year before the maximum rent date, requiring a rent lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(6) *Varying rents.* The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a higher rent at other periods during the term of such lease or agreement.

(7) *Seasonal rents.* The rent on the date determining the maximum rent was substantially lower than at other time of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Expediter's order may if he deems it advisable provide for different maximum rent for different periods of the calendar year.

(8) *Substantial increase in occupancy.* (i) There has been, since the date determining the maximum rent a substantial increase in the number of subtenants or other persons occupying the accommodations or a part thereof under a rental agreement with the tenant.

(ii) There has been, since the date determining the maximum rent a substantial increase in the number of occupants, in excess of normal occupancy for that class of accommodations on the maximum rent date.

(iii) There has been, since the date determining the maximum rent an increase in the number of occupants over the number contemplated by the rental agreement on the date determining the maximum rent, where the landlord on that date had a regular and definite practice of fixing different rents for the accommodations for different numbers of occupants.

(9) On the date determining the maximum rent the housing accommodations were temporarily exempt from real estate taxes, the landlord was passing the benefit of this tax exemption on to the tenant and as a result the rent on that date was substantially lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(10) *Priority rating granted on September 1941 application form of Office of Production Management.* The maximum rent for the housing accommodations was originally established under section 4 (f) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended, the application for priority rating for the construction of the housing accommodations was filed on the September 1941 form in use by the Office of Production Management prior to the revision of this form on December 15, 1941, the landlord did not make, prior to the maximum rent date, or, if the accommodations were not rented on that date, prior to the first renting of the accommodations after that date, a written request to the appropriate agency of the United States to approve a higher rent than the rent initially approved because of increased costs of construction, and the maximum rent for the accommodations is substantially lower than the rent generally prevailing in the defense-rental area for comparable accommodations on the maximum rent date, giving due consideration to general increases in costs of construction, if any, in the defense-rental area since the maximum rent date.

This paragraph (a) (10) shall apply only to housing accommodations which were first rented prior to March 29, 1944.

(11) *Peculiar circumstances.* The rent on the date determining the maximum rent was materially affected by peculiar circumstances and as a result was substantially lower than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(12) *Substantial hardship from increase in property taxes or operating costs.* Substantial hardship has resulted from a substantial decrease in the net income (before interest) of the property for the current year as compared with a representative period prior to the maximum rent date, due to a substantial and unavoidable increase in property taxes or operating costs.

In proper cases increases in payroll and property taxes in effect on the date of the filing of the petition may be considered by the Expediter in determining whether substantial hardship exists.

For the purposes of this paragraph (a) (12) the term:

(i) "Net income (before interest)" means the amount determined by subtracting unavoidable property taxes and operating costs actually paid or accrued from total income earned.

(ii) "Property taxes and operating costs" includes all expenses necessary to the operation and maintenance of the property actually paid or accrued and properly allocated, including depreciation but excluding interest.

(iii) "Property" includes one or more structures operated as a single unit or enterprise.

(iv) "Total income earned" includes rental and other income earned from the property and the rental value of housing accommodations in the property occupied without the full payment of rent.

(v) "Current year" means (a) the most recent full calendar or fiscal year used by the landlord, or (b) any twelve-month period ending not more than 90 days prior to the filing of the petition: *Provided, however,* That the current year in all cases shall begin on or after the maximum rent date: *And provided, further,* That if allowance is requested for increases in payroll or property taxes not fully reflected in the "current year" as defined above, at least one calendar month must have passed between the end of the current year and the beginning of the month in which the petition is filed.

(vi) "Prior representative period" means any period of two consecutive years prior to the "current year" but not beginning before January 1, 1939, which the Expediter finds to be representative of the property's normal operation: *Provided, however,* That where a representative period of two consecutive years is not available the Expediter in his discretion may for the purposes of this section accept a representative period of not less than one year.

(13) *Rented to an employee of landlord.* The housing accommodations were rented to an employee of the landlord both on the date determining the maximum rent and at the time the order under this paragraph (a) (13) is issued, and after the date determining the maximum rent but prior to the effective date of regulation the landlord and tenant agreed, as the result of a continuous process of bargaining on interrelated matters, upon a wage increase and a rent increase, and the wage increase agreed upon has been put into effect.

(14) *Changes from year-round to seasonal renting.* The accommodations are located in a resort community, are primarily adapted to occupancy on a seasonal basis, are vacant and the establishment of seasonal variations in the rent would not, in the opinion of the area rent director, be inconsistent with the purposes of the act.

(15) The maximum rent was established under section 4 (f) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended, and prior to final completion of all units included in a single priority application, but subsequent to the first renting of said accommodations, the landlord made a written request to the appropriate agency of the United States to approve a higher rent than the rent initially approved because of increased costs of construction, and a higher rent was approved by such agency.

(b) *Decreases in minimum services, furniture, furnishings, equipment and space.* (1) The landlord shall, until the accommodations become vacant, maintain the minimum services, furniture, furnishings, equipment and living space as required under section 3, unless and until he has filed a petition to decrease the services, furniture, furnishings, equipment or living space and an order permitting a decrease has been entered thereon. When the accommodations become vacant, the landlord may on renting to a new tenant decrease the services, furniture, furnishings, equipment or living space below the minimum; within 10 days after so renting the landlord shall file a written report with the area rent director showing such decrease.

(2) *Adjustment in maximum rent for decreases.* The order on any petition under this paragraph (b) may require

an appropriate adjustment in the maximum rent; and any maximum rent for which a report is required by this paragraph (b) may be decreased in accordance with the provisions of section 5 (c) (3).

If the landlord fails to file the report required by this paragraph (b) within the time specified, or decreases the services, furniture, furnishings, equipment or living space without an order authorizing such decrease where such order is required, the rent received by the landlord for any rental period commencing on or after such decrease or July 1, 1947, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order decreasing the maximum rent on account of such decrease in services, furniture, furnishings, equipment or living space. Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation 1. If the Expediter finds that the landlord was not at fault in failing to comply with this paragraph (b), the order may relieve the landlord of the duty to refund.

(c) *Grounds for decrease of maximum rent.* The Expediter at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations established under paragraphs (c), (e), or (i) of section 4 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, or under paragraph (c) or (d) of section 4 of this regulation is higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

Where the maximum rent for said housing accommodations was originally established under paragraphs (c), (d), (e), or (i) of section 4 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, and the landlord failed to file a proper registration statement in accordance with the provisions of said Rent Regulation for Housing on or before June 30, 1947, and fails to file a proper registration statement in accordance with the provisions of this Regulation within the time specified in section 7 or where the maximum rent is established under section 4 (c) of this regulation and the landlord fails to file a registration statement in accordance with the provisions of section 7 of this regulation, the rent received for any rental period commencing on or after July 1, 1947, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under this section. Such amount shall be refunded to the tenant within 30 days after the date of the issuance of the order, unless the refund is stayed in accordance with the provisions of Rent Procedural Regulation 1. If the Expediter finds that the landlord was not at fault in failing to file the proper registration statement within the time specified, the order under this section may relieve the landlord of the duty to refund. The landlord shall have the duty to refund only if the order under this section is issued in a proceeding commenced by the Expediter within 3 months after the date of filing of such registration statement.

(2) *Substantial deterioration.* There has been a substantial deterioration of the housing accommodations other than ordinary wear and tear since the date or order determining its maximum rent.

(3) *Decrease in space, services, furniture, furnishings or equipment.* There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since the date or order determining the maximum rent, or a substantial decrease in the living space since June 30, 1947.

(4) *Special relationship between landlord and tenant or peculiar circumstances.* The rent on the date determining the maximum rent was materially affected by the blood, personal, or other special relationship between the landlord and tenant, or by peculiar circumstances and as a result was substantially higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date.

(5) *Varying rents.* The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a lower rent at other periods during the term of such lease or agreement.

(6) *Seasonal rent.* The rent on the date determining the maximum rent was substantially higher than at other times of year by reason of seasonal demand or seasonal variations in the rent, for such housing accommodations. In such cases the Expediter's order may if he deems advisable provide for different maximum rents for different periods of the calendar year.

(7) *Substantial decrease in occupancy.* There has been a substantial decrease in the number of subtenants or other occupants since an order under paragraph (a) (8) of this section, or section 5 (a) (8) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended.

(8) *Modification or elimination of necessity for increase under section 5 (a) (12).* There has been a modification or elimination of the necessity for the increase in the maximum rent granted under paragraph (a) (12) of this section or section 5 (a) (12) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended, since the order issued under either of said paragraphs.

(d) *Orders where facts are in dispute, in doubt, or not known.* If the maximum rent, or any other fact necessary to the determination of the maximum rent, or the services, furniture, furnishings or equipment required to be provided with the accommodations is in dispute between the landlord and the tenant, or is in doubt, or is not known, the Expediter at any time on his own initiative, may enter an order fixing the maximum rent by determining such fact, or determining the services, furniture, furnishings, and equipment required to be provided with the accommodations which order shall be effective to establish the maximum rent from July 1, 1947 or the date of first renting after July 1, 1947, whichever is applicable. If the Expediter is unable to ascertain such fact or facts, he shall enter the order on the basis of the rent which he finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date and, where appropriate, may determine the services, furniture, furnishings and equipment included in such rent.

(e) *Sale of underlying lease or other rental agreement.* Where housing accommodations or a predominant part thereof are occupied by one or more subtenants or other persons occupying under a rental agreement with the tenant the tenant may petition the Expediter for leave to exercise any right he would have except for this regulation to sell his underlying lease or other rental agreement. The Expediter may grant such petition if he finds that the sale will not result, and that sales of such character would not be likely to result in the circumvention or evasion of the Act or this regulation. He may require that the sale be made on such terms as he deems necessary to prevent such circumvention or evasion.

(f) *Interim orders.* Where a petition is filed by a landlord on one of the grounds set out in paragraph (a) of this section or a proceeding is initiated by the Expediter under paragraph (d), the Expediter may enter an interim order increasing or fixing the maximum rent until further order subject to refund by the landlord to the tenant of any amount received in excess of the maximum rent established by final order in such proceeding. The receipt by the landlord of any rent authorized by such interim order shall constitute an agreement by the landlord with the tenant to refund to the tenant any amount received in excess of the maximum rent established by final order. The landlord shall make such refund either by repayment in cash or where the tenant remains in occupancy after the effective date of the final order, by deduction from the next installment of rent, or both.

(g) *Adjustments in case of options to buy.* No adjustment in the maximum rent shall be ordered on the ground that the landlord has, as a part of or in connection with a lease of housing accommodations, granted the tenant an option to buy the accommodations which are the subject of the lease. Where a lease of housing accommodations was in force on the date determining the maximum rent, and the landlord had on that date, as a part of or in connection with such lease, granted the tenant an option to buy the accommodations which are the subject of the lease, the Expediter may, on or after the termination of such lease, on his own initiative or on application of the tenant, enter an order fixing the maximum rent on the basis of the rents

which the Expediter finds were generally prevailing in the defense-rental area for comparable housing accommodations not subject to an option to buy on the maximum rent date.

(h) Where the maximum rent for any housing accommodations constructed by the United States or any agency thereof, or by a State of the United States or any of its political subdivisions, or any agency of the State, or any of its political subdivisions, and owned by any of the foregoing, is below the rent generally prevailing in the defense-rental area for comparable accommodations on the maximum rent date, the owner of such accommodations may with the consent of the Expediter increase the maximum rents to such generally prevailing rent by re-registering such accommodations at such generally prevailing rent.

For the purpose of this section, any corporation formed under the laws of a State shall not be considered an agency of the United States.

SEC. 6. *Inspection.* Any person who rents or offers for rent or acts as a broker or agent for the rental of housing accommodations and any tenant shall permit such inspection of the accommodations by the Expediter as he may, from time to time, require.

SEC. 7. *Registration*—(a) *Registration statement.* Every landlord of controlled housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor, to be known as a registration statement, unless a registration statement was heretofore filed in accordance with the provisions of section 7 of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended. For housing accommodations rented prior to June 1, 1947, such registration statement shall be filed on or before July 10, 1947. For housing accommodations first rented after June 1, 1947, such registration statement shall be filed on or before July 30, 1947, or within 30 days after first renting, whichever is later. The statement shall identify each dwelling unit and specify the maximum rent provided by this regulation for such dwelling unit and shall contain such other information as the Expediter shall require. The original shall remain on file with the Expediter and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement and shall obtain the tenant's signature and the date thereof, on the back of such statement.

When the maximum rent is changed by order of the Expediter, the landlord shall deliver his stamped copy of the registration statement to the area rent office for appropriate action reflecting such change.

Where, since the filing of the registration statement for any controlled housing accommodations, there has been a change in the identity of the landlord, by transfer of title or otherwise, the new landlord shall file a notice of such change on a form provided for that purpose, to be known as a notice of change in identity within 15 days after the change or July 1, 1947, whichever is later. If the new landlord indicates on the notice of change of identity that he has not obtained the landlord's copy of the original registration statement, the Expediter shall cause to be prepared and delivered to him a true copy of the original, which may be used to satisfy all requirements of this paragraph (a).

Any notice, order or other process or paper directed to the person named on the registration statement as the landlord at the address given thereon, or, where a notice of change in identity has been filed, to the person named as landlord and at the address given in the most recent such notice, shall, under the circumstances, prescribed in Rent Procedural Regulation 1 constitute notice to the person who is then the landlord.

The provisions of this section shall be applicable to any housing accommodations whose maximum rent was determined under section 4 (g) of the Rent Regulation for Housing issued pursuant to the Emergency Price Control Act of 1942, as amended, on its sale by the owning agency, and within thirty days after the sale of such accommodations the new landlord shall file a registration statement as provided in subsection (a) of this section: *Provided, however,* That if the housing accommodations are sold to the United States or a state of the United States or any of its political subdivisions, or any agency of the foregoing, paragraph (c) of this section shall continue to be applicable.

(b) *Receipt for amount paid.* No payment of rent need be made unless the landlord tenders a receipt for the amount to be paid.

(c) *Exceptions from registration requirements*—(1) *Housing owned and constructed by governmental agencies.* The provisions of this section shall not apply to housing accommodations whose maximum rent was originally determined under section 4 (g) of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended. The owner of such housing accommodations shall file a schedule or schedules, setting out the maximum rents for all such accommodations in the defense-rental area and containing such other information as the Expediter shall require. A copy of such schedule or schedules shall be posted by the owner in a place where it will be available for inspection by the tenants of such housing accommodations.

(2) *Housing subject to rent schedule of War or Navy Department.* The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including any civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

SEC. 8. *Evasion*—(a) *General.* The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchased money or other form of mortgage, or sale with option to repurchase or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing, or by tying agreement, or otherwise.

(b) *Purchase of property as condition of renting.* Specifically, but without limitation on the foregoing, no person shall require a tenant or prospective tenant to purchase or agree to purchase furniture or any other property as a condition of renting housing accommodations unless the prior written consent of the Expediter is obtained.

SEC. 9. *Enforcement.* Persons violating any provision of this regulation are subject to civil enforcement actions and suits for treble damages as provided by the act.

SEC. 10. *Procedure.* All registration statements, reports and notices provided for by this regulation shall be filed with the area rent office. All landlord's petitions and tenant's applications shall be filed with such office in accordance with Rent Procedural Regulation 1.

SEC. 11. *Requests for amendment.* Persons seeking any amendment of general applicability to any provision of this regulation may file requests therefor in accordance with Rent Procedural Regulation 1.

SEC. 12. *Adoption of orders.* All orders issued pursuant to section 2 (c), 2 (d) (3) and 2 (d) (7) of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, which were in effect on June 30, 1947, shall be deemed to continue in effect under this regulation unless and until revoked or modified by the Expediter.

Effective date. This Controlled Housing Rent Regulation for the Atlantic County Defense-Rental Area shall become effective July 1, 1947.

NOTE: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 30th day of June 1947, effective July 1, 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V. SARCONE,
Authorizing Officer.

[F. R. Doc. 6263; Filed, June 30, 1947; 5:12 p. m.]

TITLE 25—INDIANS

Chapter III—Indian Claims Commission

PART 503—GENERAL RULES OF PROCEDURE

Sec.
503.1 Petitioners.
503.2 Commencement of action.
503.3 Service of petition.
503.4 Service and filing of other papers.
503.5 Time.
503.6 Pleadings allowed, form of motions.
503.7 General rules of pleading.

AUTHORITY: §§ 503.1 to 503.40, inclusive, issued under sec. 9, 60 Stat. 959, 25 U. S. C. 70.

§ 503.1 *Petitioners.* (a) Claims within the jurisdiction of the Indian Claims Commission of the United States (60 Stat. 959; 25 U. S. C. 70), hereafter referred to in this part as the Commission, may be presented by any Indian tribe, band or other identifiable group of Indians.

(b) Claims by Indian tribes, bands or groups which have tribal organizations recognized by the Secretary of the Interior as having authority to represent such tribe, band or group shall be filed and presented by the duly appointed or elected officers of such organization, except as provided in paragraph (c) of this section.

(c) Where by virtue of fraud, collusion or laches on the part of a recognized tribal organization a claim has not been presented (or has not been included as part of a presented claim), any member of such tribe, band or group may file claim on behalf of all the other members of such tribe, band or group upon complying with the provisions of § 503.8 (a).

(d) Claims on behalf of any unorganized tribe, band or other identifiable group may be filed by any member of such tribe, band or identifiable group as the representative of all its members.

§ 503.2 *Commencement of action.* (a) A claim shall be commenced by the filing of a petition with the Commission.

(b) Twenty printed copies of each petition shall be filed. The Commission on motion accompanying a typewritten petition assigning good and sufficient cause, may waive or postpone printing of the petition. When printing of the petition is waived 8 legible typewritten copies thereof shall be filed.

§ 503.3 *Service of petition.* Service shall be made upon the United States as follows:

By sending 15 copies of the printed petition or 4 copies of the typed petition by registered mail (return receipt requested) to the Attorney General of the United States at Washington, D. C. Service by mail is complete upon mailing. The return receipt shall be delivered to the Clerk of the Commission to be filed in the case.

Said copies of the petition may be delivered to the Attorney General at Washington, D. C., and obtaining his written receipt therefor, and in such cases service shall be complete upon the date they are received by him. Such receipt shall be delivered to the Clerk of the Commission to be filed in the case.

§ 503.4 *Service and filing of other papers*—(a) *Service*—(1) *When required.* Every order required by its terms to be served, every pleading subsequent to the original petition, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar papers shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief shall be served in the manner provided for service in § 503.3.

(2) *How made.* Whenever under the rules in this part service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney of record (hereinafter provided for in this paragraph) unless service upon the party himself is ordered by the Commission. Service upon the attorney of record or upon a party shall be made by delivering a copy to him or by mailing it to him at his address registered with the Clerk as required by § 503.35. Delivery of a copy within the provisions of this section means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(b) *Proof of service*—(1) *File before taking action.* Proof of service of papers required or permitted to be served, other than those for which a method of proof is prescribed by the Federal rules of civil procedure, shall be filed before action is to be taken thereon.

(2) *Form of.* The proof shall show the time and manner of service, and may be by written acknowledgment of service, by affidavit of the person making service, by certificate of a member of the bar of this Commission, or by other proof satisfactory to the Commission.

(3) *Failure to make.* Failure to make proof of service will not affect the validity thereof. The Commission may at any time allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

(c) *Filing.* All papers after the petition required to be served upon a party shall be filed with the Commission either before service or within a reasonable time thereafter.

(d) *Filing with the Commission defined.* The filing of pleadings and other papers with the Commission as required by the rules in this part shall be made by filing them with the Clerk of the Commission, except that a Commissioner or Examiner when a claim is being heard by him may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the Clerk.

§ 503.5 *Time*—(a) *Computation.* In computing any period of time prescribed or allowed by the rules in this part by order of Commission, Commissioner or Examiner or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day upon which the Commission is open for business. Legal holidays in the District of Columbia are as follows:

1st day of January, New Year's Day;
Day of the inauguration of the President in every fourth year, January 20;
22d day of February, Washington's Birthday;
30th day of May, Decoration Day;
4th day of July, Independence Day;
First Monday in September, Labor's Holiday;
11th day of November, Armistice Day;
Any day appointed or recommended by the President of the United States as a day of public fasting or thanksgiving (Thanksgiving, generally the last Thursday in November);
25th day of December, Christmas Day.
(Code of Law for the District of Columbia, sec. 1389, 31 Stat. 1405.)

When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) *Enlargement.* When by the rules in this part or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specified time, the Commission, or a Commissioner or Examiner in a case being heard by him, or by stipulation of the parties, for cause shown may at any time in its or his discretion (1) with or without motion or notice if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(c) *For motions; affidavits.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by the rules in this part or by order of the Commission. Such an order may for cause shown be made on ex parte application. When a motion is supported by

affidavit, the affidavit shall be served with the motion; opposing affidavits may be served not later than 1 day before the hearing, unless the Commission permits them to be served at some other time.

(d) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

§ 503.6 *Pleadings allowed, form of motions*—(a) *Pleadings.* There shall be a petition and an answer; and there shall be a reply to a counterclaim denominated as such. No other pleading shall be allowed, except that the Commission may order a reply to an answer.

(b) *Motions and other papers.* (1) An application to the Commission for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by the rules in this part.

(c) *Demurrers, pleas, etc.* Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

§ 503.7 *General rules of pleading*—(a) *Pleading to be concise and direct; consistency.* (1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has, regardless of consistency and regardles of the nature of the grounds on which they are based. All statements shall be made subject to the obligations set forth in § 503.10 (b).

(b) *Statement of petition.* A petition shall state with particularity. (1) Any action on the claim previously taken by Congress or by any department of the Government or in any judicial proceeding and whether the claim or any part thereof is included in any suit pending in the Court of Claims or in the Supreme Court of the United States or whether the same has been filed in the Court of Claims under any legislation in effect on the date of the approval of the Indian Claims Commission Act.

(2) If the claim or defense is founded upon an act of Congress or upon the regulation of an executive department or independent establishment, the act and the section thereof on which the pleader relies shall be specified and the particular regulation of the department of independent establishment stated, and a copy of such regulation attached to the petition.

(3) If the claim or defense is founded on a contract or treaty with the United States or an Executive order of the President, the substance of the same shall be set forth in the petition; if in writing, the original or a copy thereof shall be annexed thereto. All parts immaterial to the claim or defense or to the relief sought may be omitted.

(c) *Construction of pleadings.* All pleadings shall be so construed as to do substantial justice.

§ 503.8 *Capacity.* (a) Petitions filed by any tribal organization recognized by the Secretary of the Interior as having authority to represent a tribe, band or group need not aver the capacity of such organization to sue except to the extent required to show the jurisdiction of the Commission. When the United States desires to raise an issue as to the capacity of such a recognized tribal organization to sue, it shall do so by specific negative averments, which shall include supporting particulars.

(b) If a petition is filed by one or more members of a tribe, band or other identifiable group having a tribal organization which is recognized by the Secretary of the Interior because the tribal organization has failed or refused to take any action authorized by the act, the petition shall be verified and shall aver that the petitioner is a member of the tribe, band or group. The petitioner shall also set forth with particularity the efforts of the petitioner to secure from the duly constituted and recognized officers of said tribal organization such action as he desires and the reasons for his failure to obtain such action (such as fraud, collusion or laches) or the reasons for not making such effort.

(c) Petitions filed by one or more members on behalf of an unorganized tribe, band or other identifiable group shall be verified and shall aver (1) that the petition or petitioners are members of the tribe, band or group (2) a description of the unorganized tribe, band or group of sufficient comprehension to identify the tribe, band or group on whose behalf the petition is filed.

§ 503.9 *Form of pleadings*—(a) *Caption; names of parties.* Every pleading shall contain a caption setting forth the name of the Commission, and the title of the action, and a designation as in § 503.6 (a). A petition filed on behalf of a tribal organization under the provisions of § 503.1 (b) shall be commenced in the name of such tribe, band or group. A petition filed on behalf of an organized tribe, band or group under the provisions of § 503.1 (c), or an unorganized group under § 503.1 (d), shall be in the name of the member or members filing the same on the relation of the tribe, band or group. In the petition the title of the action shall include the names of all the parties, but in other pleadings it shall be unnecessary to name more than one of the petitioners.

(b) *Paragraphs; separate statements.* All averments of claims or defenses shall be made in numbered paragraphs, the contents of each of which shall be limited as far as possible to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) *Adoption by reference; exhibits.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

§ 503.10 *Signing of pleadings*—(a) *Petitioner.* Every pleading of a party other than the United States represented by an attorney shall be signed by the attorney of record, designated under § 503.35 in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign its pleading and state its address.

(b) *Effect of.* The signature of an attorney constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

§ 503.11 *Defenses and objections*—(a) *When presented.* The United States shall serve its answer to the petition except a demand for a counterclaim or set-off, within 60 days after service on the Attorney General as provided in this part. The service of any motion permitted under this section alters this period of time as follows, unless a different time is fixed by order of the Commission: (1) If the Commission denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 30 days after notice of the Commission's action or before the expiration of 60 days from the service of the petition, whichever is latest; (2) if the Commission grants a motion for a more definite statement the responsive pleading shall be served within 60 days after the service of the more definite statement.

(b) *How presented.* Every defense to a claim for relief in any pleading, except a counterclaim or set-off by the United States, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of service, (4) failure to state a claim upon which relief can be granted. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, it may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered

(4) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Commission, the motion shall be treated as one for summary judgment and disposed of, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Commission, the motion shall be treated as one for summary judgment and disposed of, and all parties shall be given a reasonable opportunity to present all material pertinent to such a motion.

(d) *Preliminary hearings.* The defenses specifically enumerated as subparagraphs (1) through (4) in paragraph (b) of this section, whether made in a pleading or by motion, and the motion for judgment mentioned in paragraph (c) of this section shall be heard and determined before trial on application of any party, unless the Commission orders that the hearing and determination thereof be deferred until the trial. Any pleading which includes any of the defenses enumerated in paragraph (b) of this section shall be accompanied by the statement of points and authorities required by § 503.22 (a) (1).

(e) *Motion for more definite statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, it may move for a more definite statement before interposing its responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Commission is not obeyed within 10 days after notice of the order or within such other time as the Commission may fix, the Commission may strike the pleading to which the motion was directed or make such order as it deems just.

(f) *Motion to strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon it or upon the Commission's own initiative at any time, the Commission may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) *Consolidation of motions.* A party who makes a motion under this section may join with it the other motions provided for in this section and then available to it. If a party makes a motion under this section and does not include therein all defenses and objections then available to it which this section permits to be raised by motion, it shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in paragraph (h) of this section.

(h) *Waiver of defenses.* The United States waives all defenses and objections which it does not present either by motion as hereinbefore provided in this section or, if it has made no motion, in its answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleading or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the Commission lacks jurisdiction of the subject matter, the Commission shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in § 503.13 (b) in the light of any evidence that may have been received.

(i) *Default by United States.* Unless the Attorney General shall within 60 days after the service of the petition serve a defensive pleading upon the petitioner, if the time is not extended by order of the Commission, or consent of the parties, the Commission may, on motion of the petitioner and after notice to the Attorney General, have the Clerk note on the docket that no answer has been filed and the Commission shall hear the petitioner's evidence and such facts as the Investigation Division of the Commission may assemble, before making its final determination.

§ 503.12 *Counterclaim, cross-claim and set-off*—(a) *Set-offs.* If, after a preliminary hearing under § 503.22 (f) it is determined that the United States is liable to the petitioner in any amount, the United States shall, within 60 days after the entry of the final order determining that right, unless extended by the Commission, amend its answer by setting forth the amount of any off-sets, counter-claims or any other demands against the petitioner authorized by the Act.

(b) *Omitted counterclaim or set-off.* When the United States fails to set up a counterclaim or set-off, through oversight, inadvertence, or excusable neglect, or when justice requires, it may by leave of the Commission set up the counterclaim or set-off by amendment.

(c) *Answer to counterclaim or set-off.* Within 40 days after the filing of a set-off or counterclaim or other demand by the defendant, the petitioner or his attorney shall serve a reply thereto.

§ 503.13 *Amended and supplemental pleadings*—(a) *Amendments.* (1) A party may amend its pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for hearing, it may so amend it at any time within 20 days after it is served. Otherwise a party may amend its pleading only by leave of the Commission or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time allowed for responding to an original pleading, unless the Commission otherwise orders.

(2) *Printed or by interlineation.* Amended petitions shall be printed and the same number filed as in the case of original petitions, unless printing is waived by the Commission. Where the amendments are slight and can be understood without a reprint of the entire petition they may either be interlined in the existing petition or printed pasters may be attached to the original petition.

Where a petition is amended in accordance with that portion of this section which permits interlineations or printed pasters to be attached to the original petition, the Clerk shall endorse on its face the fact that it is an amended petition and also the date of the amendment or amendments and such amended petition shall be verified when required by § 503.8.

(b) *Amendments to conform to the evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence not within the issues made by the pleadings is offered at a hearing held by a Commissioner or an Examiner, upon objection such evidence shall be rejected; whereupon the party may make an offer of proof. Upon motion to amend the pleading the Commission shall after notice to the adverse party allow the pleading to be amended to conform to the offered evidence and shall do so freely when the presentation of the merits of the claim or defense will be subserved thereby and the objecting party fails to satisfy the Commission that the amendment of the pleading and the admission of such evidence would prejudice it in maintaining its claim or defense. The Commission may grant a continuance to enable the objecting party to meet such evidence.

(c) *Relation back of amendments.* Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

§ 503.14 *Depositions pending action*—(a) *When depositions may be taken.* Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After service of the petition the deposition may be taken without leave of the Commission, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the petitioner within 20 days after service of the petition. The attendance of witnesses may be compelled by the use of subpoena as provided in § 503.24 (a) (1). Depositions shall be

taken only in accordance with the rules in this part.

(b) *Scope of examination.* Unless otherwise ordered by the Commission, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Examination and cross-examination.* Examination and cross-examination of deponents may proceed as permitted at the hearings under the provisions of § 503.23.

(d) *Use of depositions.* At a hearing before the Commission, a Commissioner or Examiner or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Commission, Commissioner or Examiner finds: (i), that the witness is dead; or (ii) that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii), that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or (iv), that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v), upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(e) *Objections to admissibility.* Subject to the provisions of § 503.19 (c), objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(f) *Effect of taking or using depositions.* A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

§ 503.15 *Depositions to perpetuate testimony.* Depositions taken under the provisions of section 13 (a) of the act creating the Commission shall be taken pursuant to the notices hereinafter provided for, which shall be given to the Attorney General of the United States, and if a petition has been filed, to the attorney of record for the petitioner, of which the aged or invalid Indians whose depositions are to be taken are members, provided that the Commission may, if it deems it necessary, authorize the taking of such depositions on shorter notice than that hereinafter provided for. Depositions of such aged or invalid Indians may be used in any case in which the same may be material.

§ 503.16 *Persons before whom depositions may be taken*—(a) *Within the United States.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the Commission. A person so appointed has power to administer oaths and take testimony.

(b) *Disqualification for interest.* No deposition shall be taken before a person who is directly or indirectly interested in the outcome of the claim.

§ 503.17 *Depositions upon oral examination*—(a) *Notice of examination; time and place.* A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the Commission may for cause shown enlarge or shorten the time.

(b) *Witnesses by other party.* When depositions are taken on notice, as provided in this part, if both parties are present or represented at the time and place specified in the notice, either party may, after the examination of the witnesses summoned under the notice, be entitled to summon and examine other witnesses; but in such case one day's notice shall be given to the adverse party or its attorney there present, unless such notice is waived.

(c) *Record of examinations; oath; objections.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) *Interpreter.* If a witness is in need of an interpreter the interpreter shall be sworn to well and truly translate all questions asked and answers given.

(e) *Submission to witness; changes; signing.* When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness. If the witness refuses to sign the deposition, the officer shall sign it and state on the record the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under § 503.19 (d) the Commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and filing by officer; copies; notice of filing.* (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the Commission or send it by registered mail to the Clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

§ 503.18 *Depositions of witnesses upon written interrogatories*—(a) *Serving interrogatories; notice.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter, a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within 5 days thereafter, the latter may serve

redirect interrogatories upon a party who has served cross-interrogatories. Within 3 days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by § 503.17 (c), (d) and (e) to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

§ 503.19 *Effect of errors and irregularities in depositions*—(a) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under § 503.18 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

(d) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under §§ 503.17 and 503.18 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 503.20 *Calls on departments or agencies of the Government.* (a) A call will be made on any department or agency of the Government on motion of any party upon the approval of the Commission.

(b) The motion shall show with particularity what is sought to be proved by the papers or information desired, and how or in what respect they are relevant and material to the issues of the case.

(c) Motions for calls upon any department or agency of the Government shall be filed in the Clerk's office. If no objection is filed with the Clerk within 10 days after the motion has been served on the Attorney General, the motion will be presented to and acted upon by the Chief Commissioner or a Commissioner acting in his stead, as in the case of other motions.

(d) The Attorney General may offer in evidence duly certified information and papers from any department or agency of the Government without calling for the same under the provisions of paragraph (a) of this section.

(e) All information and papers furnished by any department or agency of the Government in response to a call or offered in evidence by the Attorney General shall be subject to objection by either party; but as to duly certified copies furnished on call or offered by the Attorney General, neither party will be required to produce the originals of such papers or prove their execution.

§ 503.21 *Documentary evidence.* (a) At any hearing held under the rules in this part, any official letter, paper, document, map or record in the possession of any officer or department or court of the United States, or committee of Congress (or a certified copy thereof), may be used in evidence insofar as the same is relevant or material.

(b) Original depositions or original transcripts of other testimony of record (or certified copies of either) in any suit or proceeding in any court of the United States to which an Indian or Indian tribe or group was a party may be used in evidence insofar as relevant and material.

(c) Objections to the competency, relevancy and materiality of any evidence hereunder shall be made at the time it is offered in evidence.

§ 503.22 *Hearings*—(a) *Motions.* (1) With each motion there shall be filed and served a separate paper stating the specific points of law and authorities to support the motion. Such statement shall be additional to a statement of grounds in the motion itself, and shall be entered on the docket but shall not be a part of the record. A statement of opposing points and authorities shall be similarly filed, noted and served within 10 days or such further time as the Commission may grant or the parties agree upon. If not filed within the prescribed time, the Commission may treat the motion as conceded. If so filed, the motion shall be treated as submitted unless the Commission directs or either party requests an oral hearing.

(2) *Nonappearance of parties.* If at the time set for hearing there be no appearance for the moving party, the Commission may treat the motion as submitted or waived, or continue or strike it from the motion calendar. If there be no appearance for the opposing side, it may be treated as submitted or conceded.

(b) *Assignment of case.* When a claim is at issue, the same shall be assigned for hearing by the Commission. Any claim may be retained for hearing by the Commission or assigned for hearing to a Commissioner or an Examiner. When retained by the Commission to determine the facts, the rules applicable to hearings by a Commissioner or an Examiner shall be applicable.

(c) *Authority of Commissioner or Examiner.* When a claim has been assigned to a Commissioner or to an Examiner for hearing, such Commissioner or Examiner shall act in the name of the Commission and all lawful and proper orders made and directions given by such Commissioner or Examiner shall have the same force and effect as though made by the Commission; but any party feeling himself aggrieved at any order made or direction given may have such order or direction reviewed by the Commission by motion to review filed within a reasonable time thereafter, or by objections to the findings of fact filed by said Commissioner or Examiner.

(d) The Commission, the Commissioner or the Examiner shall rule on the competency, materiality and relevancy of all evidence offered.

(e) *Pre-trial procedure; formulating issues.* In any proceeding the Commission may in its discretion direct the attorneys for the parties to appear before it or a Commissioner designated for that purpose for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the action.

If the proceeding has been assigned to a Commissioner or Examiner he shall be present. The Commissioner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

(f) *On merits.* (1) In every case, unless otherwise ordered, the hearing before the Commission, a Commissioner or an Examiner in the first instance shall be limited to the issue of fact and law relating to the right of the plaintiff to recover.

(2) The burden of going forward with its proof shall be on the petitioner and the defendant shall not be required to produce any evidence until the petitioner has closed its proof. When hearings are being held in any place other than the District of Columbia, the defendant, may,

if it so desires, take the testimony of any witness available at the time and place. If the hearing at any other place than the District of Columbia is on the part of the defendant, the petitioner may, at the same time and place, produce evidence in rebuttal of any evidence theretofore or then being produced.

(3) When the Commissioner or the Examiner has reason to believe that there are other material witnesses and evidence which have not been procured by either party, he may, after reasonable notice to the parties, summon and examine such witnesses and procure such evidence and consider the same in connection with the proof submitted by the parties. When the Commissioner or the Examiner has reason to believe that the case is being unnecessarily delayed by the failure of either or both parties to produce witnesses, he may fix a reasonable time in which said party delaying the same must close the testimony.

(g) *Swearing witnesses.* Witnesses shall be sworn or affirmed by the Commissioner or Examiner. When testimony is taken orally before a Commissioner or Examiner at a hearing, it shall not be necessary for the witness to sign the same.

(h) *Date and place.* When a claim has been assigned for hearing, the Commission, the Commissioner or the Examiner shall notify the interested parties to produce before it or him witnesses or evidence within such reasonable time and at such place as it or he may designate.

(i) *Reporter.* At all hearings, whether before the Commission, a Commissioner or an Examiner, the testimony shall be taken by a disinterested reporter named by the Commission, a Commissioner or an Examiner, as the case may be, who shall take the testimony and transcribe the same. The reporter shall be sworn by a member of the Commission or an Examiner to well and truly take down and transcribe the questions propounded to and the answers given by the witnesses, and to do all other things required of him by the Commission, a Commissioner or an Examiner. A reporter who is in the regular employ of the Commission shall take the oath required by section 4 of the act creating the Commission and the oath prescribed in this paragraph and need not thereafter take the latter oath, but reporters selected for a particular case must be sworn as herein provided in this paragraph.

§ 503.23 *Evidence*—(a) *Form and admissibility.* In all hearings, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by the rules in this part. All evidence shall be admitted which is admissible under the statutes of the United States or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence at common law. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is made in this part. The competency of a witness to testify shall be determined in like manner.

(b) *Record of excluded evidence.* If an objection to a question propounded to a witness is sustained, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness, except that upon request the evidence shall be reported in full, unless it clearly appears that the evidence is not admissible on any ground or that the evidence of the witness is privileged.

(c) *Affirmation in lieu of oath.* Whenever under the rules in this part an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(d) *Rulings; exceptions unnecessary.* The Commission or person presiding at any hearing shall rule on the competency, relevancy and materiality of all evidence offered. Formal exceptions to rulings or orders are unnecessary.

(e) When at any hearing documentary evidence is offered and objection is made thereto the Commission, Commissioner or Examiner conducting the hearing, shall rule upon the same and, if the ruling is adverse to the party offering said evidence, the document may be marked for identification and added to the record.

§ 503.24 *Subpoena*—(a) *For attendance of witnesses; form; issuance; fees.* (1) Every subpoena shall be issued in the name of the Commission and shall be signed by the Clerk under the seal of the Commission. Every subpoena shall state the title of the claim and the number and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The Clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(2) The fees and mileage of witnesses shall be such as are now or may hereafter be prescribed by statute, for like service in the District Courts of the United States, and shall be paid by the party at whose instance the witnesses appear.

(b) *For production of documentary evidence.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Commission, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) *Service.* (1) A subpoena may be served by any person who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, fees and mileage need not be tendered.

(2) The fees and mileage shall be the same as allowed by law for service of subpoenas issued by United States District Courts, which shall be paid by the party requesting the service.

(d) *Return.* The person serving the process shall make proof of service thereon to the Commission promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States Marshal or his deputy, he shall make affidavit thereof. Failure to make proof of service does not affect the validity of the service.

§ 503.25 *Proposed findings of fact.* Upon the closing of proof by the parties in any case, the petitioner shall, unless otherwise directed by the Commission, a Commissioner or an Examiner, have 30 days from the filing of the transcript within which to file proposed findings of fact and the defendant shall have 30 days after the service of petitioner's proposed findings of fact to file its objections to petitioner's proposed findings of fact and its own proposed findings of fact, and the petitioner shall have 20 days after the service of defendant's proposed findings of fact within which to file its objections thereto, but such requested findings of fact or objections to proposed findings need not be printed. The time designated in this section may be extended by the Commission, a Commissioner or an Examiner hearing the claim. Such proposed findings shall, upon the filing of the report, be filed with the original record in the case for consideration of the Commission in connection with any exceptions by either party and may be referred to by either party in support of any exceptions to the findings of fact.

§ 503.26 *Report.* When a case has been referred to a Commissioner or Examiner and proof has been closed by both parties, the Commissioner or Examiner shall proceed to ascertain the facts, including ultimate facts, considered by him to be established by the evidence, and make a report of his findings to the Commission within a reasonable time.

§ 503.27 *Exceptions to findings of fact.* The petitioner may have 40 days from the date of the filing of the report to file printed exceptions thereto, unless the time is extended. The defendant shall have 40 days after the filing of petitioner's exceptions within which to file its exceptions thereto, unless the time is extended. Each exception, at the end thereof, shall have appropriate references to the parts of the record relied upon for its support.

§ 503.28 *Briefs*—(a) *Petitioner.* (1) The petitioner shall within 40 days from the filing of such report file in the Clerk's office 25 printed copies of its request for findings of fact and brief and serve 10 copies on the Attorney General.

(2) The petitioner's brief shall begin with a clear statement of the case and may include in the statement references

to parts of the record. It shall present and discuss in its original brief all propositions upon which it relies for a recovery.

(b) *Defendant.* (1) Within 40 days from the filing of petitioner's brief as above, the defendant shall file in the Clerk's office 25 printed copies of its brief and serve 10 copies on the attorney of record for other parties.

§ 503.29 *Reply brief.* (a) Petitioner may file a printed reply brief within 20 days after the filing of defendant's brief, unless the time is extended by order of the Commission, and no brief shall be received after the prescribed time except upon order of the Commission for cause shown; nor shall any briefs other than those described in §§ 503.28 and 503.29 be received at any time except upon such order.

(b) Statements of fact or propositions of law presented in defendant's brief as matters of defense, and not properly within the scope of Petitioner's original brief, may be discussed by petitioner in a reply brief, but matters within the proper scope of petitioner's original brief shall not again be discussed in a reply brief.

(c) After a cause has been submitted, any stipulation or additional authorities which counsel desires to call to the attention of the Commission shall by leave of the Commission be submitted by appropriate supplemental memorandum of at least 8 copies filed with the Clerk of the Commission, and not by letter. The Clerk shall serve a copy upon opposing counsel.

Supplemental or reply briefs shall be permitted only in accordance with the rules in this part.

§ 503.30 *Trial calendar.* (a) The Commission shall dispose of (1) all motions or other pleadings containing the defenses enumerated in § 503.11 (b) and all other motions or requests for action by the Commission, (2) all exceptions to the report of a Commissioner or Examiner, (3) all motions for rehearing and amendments of findings.

(b) Said matters when ordered by the Commission shall be placed on a trial calendar by the Clerk and a copy of said trial calendar mailed to the attorneys of record interested therein in sufficient time to permit the attorneys of record to appear before the Commission on the date and place appointed for the hearing.

(c) All matters shall be calendared for hearing as follows:

(1) Motions and pleadings containing the defenses enumerated in § 503.11 (b) when the opposing points and authorities have been filed as required by § 503.22 (a) (1).

(2) All other motions or requests for action by the Commission upon the filing of a responsive pleading as provided for in this part.

(3) All exceptions to the report of a Commissioner or Examiner when the briefs have been filed as provided in §§ 503.28 and 503.29.

(4) Motions for rehearing and amendments of findings when the briefs have been filed as provided in § 503.39.

(d) *Non-appearance of parties.* If at the time set for hearing there be no appearance for the moving party, the Commission may treat the motion as submitted or waived, or, for good cause shown, continue or strike it from the motion calendar. If there be no appearance for the opposing side, it may be treated as conceded.

§ 503.31 *Evidence in other cases*—(a) *Documents.* Any information or papers duly certified from any department or agency of the Government and filed in any case may, by leave of the Commission, a Commissioner or an Examiner in a case being heard by him, on motion made therefor, be used and applied in any other pending cause to which the same may be applicable or pertinent.

(b) *Depositions.* The deposition of a witness, subjected to cross-examination, on file in a case may be used by leave of the Commission in another case, notice of the purpose to use it being given the adverse party; or if the Commission desires the benefit of evidence appearing in another case it may, by appropriate order and upon reasonable notice to the parties and an opportunity to them to be heard, consider the same.

§ 503.32 *Stipulations.* All stipulations shall be signed on behalf of the petitioner by the attorney of record, and on behalf of the United States by the Attorney General or Assistant Attorney General, unless made at a hearing or other proceeding before the Commission, a Commissioner or an Examiner by the attorney representing the United States and recorded by the reporter.

§ 503.33 *Motions for rehearing and for amendment of findings.* (a) Whenever either party desires to question the correctness or the sufficiency of the Commission's conclusions on its findings of fact or to amend the same, the complaining party shall file a motion which shall be known as a motion for a rehearing. All grounds relied upon for any or all of said objections shall be included in one motion. After the Commission has announced its decision upon such motion no other motion for a rehearing shall be filed by the same party unless by leave of the Commission. Motions for a rehearing shall be filed within 30 days from the time the final determination of the Commission is filed with the clerk.

(b) A motion for rehearing shall be founded upon one or more of the following grounds: First, error of fact; second, error of law; and, third, newly discovered evidence.

(1) A motion founded upon an error of fact shall specify with minuteness the fact or facts which are regarded as erroneously found or erroneously omitted to be found by the Commission, with full references to the evidence which is relied upon to support the motion.

(2) A motion founded upon error of law shall specify with like minuteness the points upon which the Commission is supposed to have erred, with references to the authorities relied upon to support the motion.

(3) A motion by either plaintiff or defendant upon the ground of newly discovered evidence shall not be entertained unless it appears therein that the newly discovered evidence came to the knowledge of such party, its attorneys of record, or counsel, after the hearing and before the motion was made; that it was not for want of due diligence that it did not sooner come to its knowledge; that it is so material that it would probably produce a different determination if the rehearing were granted; and that it is not cumulative.

Such motion shall be accompanied by the affidavit of the party or the attorney of record, setting forth:

(i) The facts in detail which the party expects to be able to prove, and whether the same are to be proved by witnesses or by documentary evidence.

(ii) The name, occupation, and residence of each and every witness whom it is proposed to call to prove said facts.

(iii) That the said facts were unknown to either the party or the attorney of record, and, if other counsel was employed at the hearing, were unknown to such counsel until after the close of the hearing.

(iv) The reason why the party, the attorney of record, or counsel, could not have discovered said evidence before the hearing by the exercise of due diligence.

(c) A motion for a rehearing shall also be accompanied by the brief of the moving party, a copy of which shall be served upon the opposing party, who may file its brief in response thereto within 15 days, unless the time is extended by the Commission.

(d) All motions for rehearing or for amendment of findings, and briefs thereon, and briefs in reply to such motions, exceeding ten typewritten pages in length, shall be printed before presentation for filing in the Clerk's office, unless by order of the Commission first obtained the time for printing is extended.

§ 503.34 *Claims filed by attorney.* Claims may be filed on behalf of a claimant by an attorney or firm of attorneys retained for that purpose under the provisions of section 15 of the act creating the Commission. Where a claimant has retained more than one attorney or more than one firm of attorneys, only one of said attorneys shall be designated individually as the attorney of record. All pleadings, notices or other papers required by these rules or by orders of the Commission to be served upon a claimant, shall be sent to such attorney of record at the address designated by him, and service upon him shall be deemed to be service upon the claimant.

§ 503.35 *Attorneys to register.* An attorney of record, on appearing in a case, shall register with the Clerk of the Commission his name and post office address or the designation as such and his post office address may be shown at the end of the petition.

§ 503.36 *Attorney's death or incapacitation.* If the attorney of record dies or is incapacitated, a suggestion of his death or incapacity shall be made and a motion to substitute any other attorney shall be made by plaintiff or an attorney authorized by it.

§ 503.37 *Attorney's qualification.* Any person of good moral character who has

been admitted to practice in the Supreme Court of the United States or in any other Federal court, or in the highest court of any State or Territory, and is in good standing therein, may practice as an attorney before the Commission.

§ 503.38 *Disbarment and suspension.* Where it is shown to the Commission that any member of the bar representing a party before the Commission has been disbarred or suspended from practice in the Supreme Court of the United States or in any other Federal court, or in any court of record of any State or Territory, he shall be forthwith suspended from practice before this Commission; and unless, upon notice mailed to him at the address shown in the Clerk's records and to the clerk of any of the courts mentioned in which he shall have been disbarred, or suspended, he shows good cause to the contrary within 30 days, he shall be barred from appearing before the Commission as attorney for any claimant.

§ 503.39 *Clerk, docket and journal.* (a) The administrative officer of the Commission, unless one is otherwise designated, shall be the clerk who shall receive and file all pleadings, reports, orders, briefs, documents and other papers, and shall keep all records connected with all claims filed with the Commission. He shall also perform such other duties as the Commission may from time to time prescribe.

(b) The Clerk shall, after filing, promptly mail or deliver to the party not filing the same, the required number of copies of all pleadings, motions, briefs, notices, or other papers, not required to be served by a party, and shall note on the docket the date the same were so mailed or delivered.

(c) The Clerk shall be custodian of the seal of the Commission and shall affix the same to all papers, subpoenas, or instruments that he is now or may hereafter be required to sign or certify in his official capacity. He shall authenticate all papers where an authentication is required, under his hand and the seal of the Commission.

(d) It shall be the duty of the Clerk to keep an appearance docket in which there shall be separately entered the title of each claim, the names of the attorneys filing the same and the designated attorney of record; and there shall be entered thereon, on the date received, each pleading, motion, demurrer, brief, and other paper filed in a cause. Following each entry showing the filing of a paper required to be recorded in the Journal of the Commission, there shall be shown the volume number of the Journal, and the page thereof in which the paper is recorded.

(e) The Clerk shall keep a Journal in which shall be recorded in each cause all orders made by the Commission or a Commissioner, the final determination of each claim, including the way each Commissioner voted thereon, and the instrument or instruments by which employees of the Commission are designated by the Chief Commissioner for the purpose of administering oaths and examining witnesses. The Journal shall be approved by the Commission, or any two members thereof.

§ 503.40 *Seal.* The Commission shall have an official seal, around the border of which shall be the name: "Indian Claims Commission", and in the center shall be the words: "Official Seal".

EDGAR E. WITT,
Chief Commissioner.
WILLIAM M. HOLT,
Associate Commissioner.
LOUIS J. O'MARR,
Associate Commissioner.

[F. R. Doc. 47-6290; Filed, July 3, 1947; 8:48 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter A—Income and Excess Profits Taxes

[T. D. 5567]

PART 29—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DEC. 31, 1941

TAXABILITY OF INCOME OF CERTAIN TRUSTS

On January 28, 1947 notice of proposed rule making regarding the taxability of the income of certain trusts was published in the FEDERAL REGISTER (12 F. R. 560). After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendments to Regulations 111 (26 CFR Part 29) are hereby adopted. These amendments are designed to set forth the application in certain cases of the principles enunciated in Helvering v. Clifford, 309 U. S. 331, and related cases.

PARAGRAPH 1. Section 29.22 (a)-21, *Trust income taxable to the grantor as substantial owner thereof,* added by Treasury Decision 5488, approved December 29, 1945, is amended as follows:

(A) By striking out the last sentence of paragraph (a) of such section and inserting in lieu thereof the following: "Such factors are set forth in general in paragraph (b) and in detail in paragraphs (c), (d) and (e), below."

(B) By striking out the words "subsection (a)", "subsection (c)", "subsection (d)" and "subsection (e)" wherever they appear in paragraph (b) of such section and inserting in lieu thereof "paragraph (a)", "paragraph (c)", "paragraph (d)" and "paragraph (e)".

(C) By striking out of subparagraph (2) of paragraph (c) of such section the words: "or spouse living with the grantor", and inserting in lieu thereof the following: "or spouse (living with the grantor, and not having a substantial adverse interest in the corpus or income of the trust),".

(D) By striking out the second undesignated paragraph of paragraph (c) of such section beginning: "Where the grantor's reversionary interest is to take effect in possession or enjoyment" to and including subdivision (ii) and inserting in lieu thereof the following:

Where the grantor's reversionary interest is to take effect in possession or enjoyment by reason of some event other than the expiration of a specific term of years, the trust income is nevertheless attributable to him if such event is the practical equivalent o the expiration of a period less than 10 or 15 years, as the case may be. For example, a grantor is taxable on the income of a trust if the corpus is to return to him or his estate on the graduation from college or prior death of his son, who is 18 years of age at the date of the transfer in trust. Trust income is, however, not attributable to the grantor where such reversionary interest is to take effect in possession or enjoyment at the death of the person or persons to whom the income is payable.

(E) By striking out the words "exceptions (1) to (5)" in the first parenthetical clause in the first undesignated paragraph of paragraph (d) and inserting in lieu thereof "subparagraphs (1) to (4)".

(F) By striking out the second sentence of the first undesignated paragraph of paragraph (d) of such section and inserting in lieu thereof the following: "The grantor is not taxable, however, if the power, whether exercisable with respect to corpus or income, may only affect the beneficial enjoyment of the income for a period commencing 10 years from the date of the transfer (or 15 years where any power of administration specified in paragraph (c) is exercisable solely by the grantor, or spouse living with the grantor and not having a substantial adverse interest, or both, whether or not as trustee)."

(G) By striking out the last sentence of the first undesignated paragraph of paragraph (d) of such section and inserting in lieu thereof the following: "Where the income affected by the power is for a period beginning by reason of some event other than the expiration of a specific term of years, the grantor will be taxable if such event is the practical equivalent of the expiration of a period less than 10 or 15 years, as the case may be, in accordance with the criteria stated in paragraph (c)."

(H) By striking out the clause constituting the beginning of the second undesignated paragraph of paragraph (d) reading as follows: "This paragraph shall not apply to any one or more of the following excepted powers:" and inserting in lieu thereof the following: "The foregoing provisions of this paragraph shall not apply to any one or more of the following powers:"

(I) By striking out all of paragraph (d) following subparagraph (2) and inserting in lieu thereof the following:

(3) If (i) the power is exercisable by a trustee or trustees, none of whom is the grantor, spouse living with the grantor, or a related or subordinate trustee of the type and under all the conditions referred to in subparagraph (4) (ii), and (ii) the exercise of the power is not subject to the approval or consent of any person other than such trustee or trustees, this subparagraph shall not apply to a power:

(*a*) To distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries,

(*b*) To pay out corpus to or for a beneficiary or beneficiaries or to or for a

class of beneficiaries (whether or not income beneficiaries).

The powers herein described include all the powers described in subparagraph (4), since the latter powers are more limited than those herein described.

(4) If the power:

(i) Is exercisable by the grantor or spouse living with the grantor, or both, whether or not as trustee, or

(ii) Is exercisable (*a*) solely by a trustee or trustees who include the father, mother, issue, brother, sister, or employee of the grantor, or a subordinate employee of a corporation in which the grantor is an executive or in which the stockholdings of the grantor and the trust are significant from the viewpoint of voting control, and (*b*) in a manner which may affect the interests of beneficiaries which include the spouse or any child of the grantor (see subparagraph (3) for a power exercisable by a related or subordinate trustee of the class hereinabove described where the exercise of the power does not affect the interest of the spouse or a child of the grantor or where the power is exercisable only with the concurrence of an unrelated and nonsubordinate trustee), or

(iii) Is exercisable by any person or persons other than as trustee, or

(iv) Is exercisable by any trustee or trustees, and the exercise of the power is subject to the approval or consent of any person or persons (other than such trustee or trustees), or of the grantor or spouse living with the grantor, or both, in the capacity of trustee,

this paragraph shall not apply.

(aa) To a power to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries): *Provided*, That the power is limited by a reasonably definite external standard. Such standard must be set forth in the trust instrument and must consist of needs and circumstances of the beneficiaries;

(bb) If the power is not limited by a reasonably definite external standard, to a power to pay out corpus to or for any current income beneficiary: *Provided*, That any such payment of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to such beneficiary as if such corpus constitutes a separate trust;

(cc) To a power to distribute or apply income to or for any current income beneficiary or to accumulate such income for him: *Provided*, That any accumulated income must ultimately be payable to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment): *Provided*, That such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors or the creditors of his estate; or, if payable upon the termination of the trust or in conjunction with a distribution of corpus which distribution is augmented by such accumulated income, is ultimately payable to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument. Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which may reasonably be expected to occur within the beneficiary's lifetime, the share of such deceased beneficiary is to be paid to such persons as the beneficiary may appoint, or is to be paid to one or more designated alternate takers (other than the grantor or the grantor's estate) if the share of such alternate taker or the shares of such alternate takers have been irrevocably specified in the trust instrument;

(dd) To a power, exercisable only during (*1*) the existence of a legal disability of any current income beneficiary, or (*2*) the period in which any income beneficiary shall be under the age of twenty-one years, to distribute or apply income to or for such beneficiary or to accumulate and add such income to corpus;

(ee) In a case falling under subdivision (ii) hereof, to a power to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions in subdivision (cc) or (dd) are satisfied; *Provided*, That such power is limited by a reasonably definite external standard. For the requirements of such standard, see subdivision (aa) hereof.

A power does not fall within the powers described in subparagraphs (3) and (4) if the trustee is enabled to add to the class of beneficiaries designated to receive the income or corpus, except insofar as provision may be made for afterborn or after-adopted children. A mere power to allocate receipts as between corpus and income, even though expressed in broad language, is not deemed a power over beneficial enjoyment with respect to income or corpus.

(J) By striking out paragraph (e) of such section in its entirety and inserting in lieu thereof the following:

(e) *Administrative control.* Income of a trust, whatever its duration, is taxable to the grantor where, under the terms of the trust or the circumstances attendant on its operation, administrative control is exercisable primarily for the benefit of the grantor rather than the beneficiaries of the trust. Administrative control is exercisable primarily for the benefit of the grantor where:

(1) A power exercisable by the grantor, or any person not having a substantial adverse interest in its exercise, or both, whether or not in the capacity of trustee, enables the grantor or any person to purchase, exchange or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate and full consideration in money or money's worth; or

(2) A power exercisable by the grantor, or any person not having a substantial adverse interest in its exercise, or both, whether or not in the capacity of trustee, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest in any case, or without adequate security except where a trustee (other than the grantor or spouse living with the grantor) is authorized under a general lending power to make loans without security to the grantor and other persons and corporations upon the same terms and conditions; or

(3) The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year; or

(4) Any one of the following powers of administration over the trust corpus or income is exercisable in a nonfiduciary capacity by the grantor, or any person not having a substantial adverse interest in its exercise, or both: a power to vote or direct the voting of stock or other securities, a power to control the investment of the trust funds either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, and a power to reacquire the trust corpus by substituting other property of an equivalent value.

If a power is exercisable by a person as trustee, it is presumed that the power is exercisable in a fiduciary capacity primarily in the interests of the beneficiaries. Such presumption may be rebutted only by a clear and convincing proof that the power is not exercisable primarily in the interests of the beneficiaries. If a power is not exercisable by a person as trustee, the determination of whether such power is exercisable in a fiduciary or a nonfiduciary capacity depends on all the terms of the trust and the circumstances surrounding its creation and administration. For example, where the trust corpus consists of diversified stocks or securities or corporations the stock of which is not closely held and in which the holdings of the trust, either by themselves or in conjunction with the holdings of the grantor, are of no significance from the viewpoint of voting control, a power with respect to such stocks or securities held by a person who is not a trustee will be regarded as exercisable in a fiduciary capacity primarily in the interests of the beneficiaries. Where the trust corpus consists of stock or securities of a closely-held corporation, such a power may or may not, depending upon all the facts, be considered exercisable in a fiduciary capacity.

The mere fact that a power exercisable by the trustee is described in broad language does not indicate that the trustee is authorized to purchase, exchange, or otherwise deal with or dispose of the trust property or income for less than an adequate and full consideration in money or money's worth, or is authorized to lend the trust property or income to the grantor without adequate interest. On the other hand, such authority may be indicated by the actual administration of the trust.

PAR. 2. Section 29.22 (a)–21 as amended shall be applicable to taxable years beginning after December 31, 1945.

(53 Stat. 32; 26 U. S. C. 62)

This Treasury decision shall be effective on the 31st day after the date of its publication in the FEDERAL REGISTER.

[SEAL] JOSEPH D. NUNAN, Jr.,
Commissioner of Internal Revenue.

Approved: June 30, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 47-6303; Filed, July 3, 1947; 8:48 a. m.]

PART 29—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

POLICY REGARDING EXTENT OF APPLICATION OF TREASURY DECISION 5567, RELATING TO TAXABILITY OF INCOME OF CERTAIN TRUSTS

1. Section 29.22 (a)-21, dealing with the taxation of trust income to the grantor within the principles of Helvering v. Clifford, 309 U. S. 331, was added to Regulations 111 by Treasury Decision 5488 (11 F. R. 65), approved December 29, 1945. Section 29.22 (a)-21 was amended by Treasury Decision 5567, approved June 30, 1947.[1] Such section, as amended, is applicable only to taxable years beginning after December 31, 1945. However, it will be the policy of the Bureau, where no inconsistent claims prejudicial to the Government are asserted by trustees or beneficiaries, not to assert liability of the grantor for any prior taxable year under the general provisions of section 22 (a) of the Internal Revenue Code if the trust income would not be taxable to the grantor under the regulations as amended.

2. IT-Mimeograph, Coll. No. 6071, R. A. No. 1544 (11 F. R. 12044), approved October 10, 1946, provided that where the grantor's control over a trust created prior to January 1, 1946 was terminated at any time during the calendar year 1946, with the result that the trust income on the last day of such calendar year was no longer taxable to the grantor under the provisions of § 29.22 (a)-21 of Regulations 111, it would be the policy of the Bureau not to assert liability of the grantor under such provisions for any part of the calendar year 1946. In view of the amendments made by Treasury Decision 5567 grantors who have not heretofore terminated their substantial ownership of the trust income under IT-Mimeograph 6071 may now desire to terminate such controls over the trusts as subject them to tax under the provisions of § 29.22 (a)-21 as amended by Treasury Decision 5567.

It will, therefore, be the policy of the Bureau where the grantor's control over a trust created prior to January 1, 1946 is terminated at any time prior to January 1, 1948 with the result that the trust income on the last day of the calendar year 1947 is no longer taxable to the grantor under the provisions of § 29.22 (a)-21 as amended by Treasury Decision 5567 not to assert liability of the grantor under these regulations for any part of the calendar years 1946 and 1947. The Bureau may, however, assert liability of the grantor in such a case under section 22 (a) of the Internal Revenue Code without reference to § 29.22 (a)-21 for any part of the calendar year 1946 or the calendar year 1947 preceding the termination of the grantor's control over the trust. The complete repayment by the grantor prior to January 1, 1948 of a loan of trust corpus or income made to him directly or indirectly prior to January 1, 1946, shall be considered, for the purposes of the applicability of this mimeograph, a termination (with respect to such loan) of the controls defined in paragraph (e) (3) of § 29.22 (a)-21, as amended.

Correspondence in regard to this mimeograph should refer to Coll. No. 6156, R. A. No. 1595, and the symbols IT:EIM.

This mimeograph is published without prior general notice of its proposed issuance, inasmuch as taxpayers, in order to secure the benefits provided herein, must act prior to January 1, 1948, and notice and public rule making procedure in connection herewith would result in delay, which is hereby found to be contrary to the public interest. See section 4 (a) of the Administrative Procedure Act, approved June 11, 1946.

This mimeograph, being within the parenthetical exception to section 4 (c) of the Administrative Procedure Act, shall be effective upon its filing for publication in the FEDERAL REGISTER.

[SEAL] JOSEPH D. NUNAN, Jr.,
Commissioner.

Approved: June 30, 1947.

JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 47-6302; Filed, July 3, 1947; 8:48 a. m.]

Subchapter C—Miscellaneous Excise Taxes

PART 316—MANUFACTURERS' EXCISE TAXES

PART 320—RETAILERS' EXCISE TAXES

EXEMPTION FROM MANUFACTURERS AND RETAILERS EXCISE TAXES

JUNE 30, 1947.

By virtue of the authority vested in me by section 307 (c) of the Revenue Act of 1943 (Pub. Law 235, Seventy-eighth Cong.), as amended by section 303 of the Revenue Act of 1945 (Pub. Law 214, Seventy-ninth Cong.), exemption is hereby authorized from the taxes imposed by Chapters 19 and 29 of the Internal Revenue Code (26 U. S. C. Chapters 19 and 29), with respect to articles sold on or after June 1, 1944, to any corporation created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864 (American Red Cross), for its exclusive use, at a price not including such taxes.

NOTE: The text set forth above affects the notes for Parts 316 and 320 of Title 26 in the 1944 Supplement to the Code of Federal Regulations.

[SEAL] JOSEPH J. O'CONNELL, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 47-6301; Filed, July 3, 1947; 8:48 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VII—Sugar Rationing Administration,[1] Department of Agriculture

[Rev. Gen. RO 18,[2] Amdt. 2 to Supp. 1]

PART 705—ADMINISTRATION

DISTRIBUTION OF BASES TO CERTAIN FORMER MEMBERS OF THE ARMED FORCES

Supplement 1 to Revised General Ration Order 18 issued by the Office of Price Administration and amended by the Office of Temporary Controls under § 1305.217 of Title 32, Chapter XI is designated Supplement 1 to Revised General Ration Order 18, issued under § 705.4, Title 32, Chapter VII pursuant to the authority vested in the Secretary of Agriculture by the "Sugar Control Extension Act of 1947" and is amended in the following respects:

1. Schedule I, is amended to read as follows:

SCHEDULE I—INDUSTRIAL USERS

Group of products	Maximum annual base permitted (number of pounds of sugar)
1. Bread and rolls only	12,800
2. General baking products (excluding bread and rolls)	28,200
3. Ice cream, ices, sherbets, frozen custards (including mixes used for any of these products)	40,000
4. Bottled beverages (nonalcoholic)	80,000
5. Candy	31,300
6. Caramel popcorn	16,600
7. Mayonnaise	600
8. Salad dressing	1,200
9. Baking mixes	78,200
10. Fruit compote	20,000
11. Gelatins, puddings, powdered desserts	80,000
12. Insecticides	1,200
13. Jams, jellies, marmalades, preserves, fruit butters	80,000
14. Meat spreads	1,500
15. Peanut butter	6,000
16. Pharmaceuticals:	
(a) cough drops	25,000
(b) cough syrups	9,200
(c) general	1,400
17. Sauces (for meat, poultry, etc.)	9,800
18. Spaghetti, macaroni, and noodle products packed in sauce	14,000
19. Stews (brunswick, etc.)	3,600
20. Flavoring extracts	80,000
21. Glaced fruits for baking purposes	80,000
22. Shredded sweetened cocoanut	58,000
23. Table syrups	80,000
24. Fountain syrups	80,000
25. Maraschino cherries	80,000
26. Sugared egg yolks	24,000
27. Other (specify)	(*)

*To be determined by the Washington Office.

2. Schedule II is revoked.

This order shall become effective July 3, 1947.

Issued this 30th day of June 1947.

CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 47-6360; Filed, July 3, 1947; 11:52 a. m.]

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[1] See F. R. Doc. 47-6303, in this chapter, *supra*.

[1] Formerly Chapter XI, Office of Temporary Controls, Office of Price Administration.

[2] 11 F. R. 7576.

[Gen. RO 19, Amdt. 1]

PART 705—ADMINISTRATION

DISTRIBUTION OF BASES TO CERTAIN NEW USERS

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.

General Ration Order 19 is amended in the following respects:

1. Section 4.3 is amended to read as follows:

SEC. 4.3 *Group of products and maximum annual industrial user base for such products authorized to be established.*

INDUSTRIAL USERS

Group of products	Maximum annual base permitted (number of pounds of sugar)
1. Bread and rolls only	12,800
2. General baking products (excluding bread and rolls)	28,200
3. Ice cream, ices, sherbets, frozen custards (including mixes used for any of these products)	40,000
4. Bottled beverages (nonalcoholic)	80,000
5. Candy	31,300
6. Caramel popcorn	16,600
7. Mayonnaise	600
8. Salad dressing	1,200
9. Baking mixes	78,200
10. Fruit compote	20,000
11. Gelatins, puddings, powdered desserts	80,000
12. Insecticides	1,200
13. Jams, jellies, marmalades, preserves, fruit butters	80,000
14. Meat spreads	1,500
15. Peanut butter	6,000
16. Pharmaceuticals:	
(a) cough drops	25,000
(b) cough syrups	9,200
(c) general	1,400
17. Sauces (for meat, poultry, etc.)	9,800
18. Spaghetti, macaroni, and noodle products packed in sauce	14,000
19. Stews (brunswick, etc.)	3,600
20. Flavoring extracts	80,000
21. Glaced fruits for baking purposes	80,000
22. Shredded sweetened cocoanut	58,000
23. Table syrups	80,000
24. Fountain syrups	80,000
25. Maraschino cherries	80,000
26. Sugared egg yolks	24,000
27. Other (specify)	(*)

*To be determined by the Washington Office.

2. Section 4.4 is revoked.

This order shall become effective July 3, 1947.

Issued this 30th day of June 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

Rationale Accompanying Amendment No. 1 to General Ration Order 19

Provision is made in General Ration Order 19 for the granting of sugar bases to certain new users. Section 4.3 of General Ration Order 19 contains a restriction which quite generally limits the recipients of bases under this order to the manufacture of products in consumer size containers. This restriction was imposed when the sugar supply situation required more stringent controls and in order to insure that bases provided new users under General Ration Order 19 would be used chiefly to provide consumers with sugar-containing products and to prevent a diversion of such products to industrial and institutional users.

Owing to the improved sugar supply situation, which is now reflected in the liberalization of the rationing program, and the recent removal of rationing controls on consumers and institutional users, the consumer size limitation is no longer deemed necessary. Removal of the consumer size limitation will also permit greater freedom and flexibility in the marketing of products by new industrial users who obtain sugar bases under the provisions of General Ration Order 19.

In view of the removal of rationing controls on institutional users, the amendment to General Ration Order 19 also provides for the revocation of section 4.4, which sets forth the type of refreshment service and maximum monthly institutional user refreshment bases authorized institutional users under that order.

[F. R. Doc. 47-6359; Filed, July 3, 1947; 11:51 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 21—INTERNATIONAL POSTAL SERVICE

SERVICE TO FOREIGN COUNTRIES; MAIL SERVICE TO YUGOSLAVIA

The regulations under the country "Yugoslavia" (39 CFR, Part 21, Subpart B—Service to Foreign Countries) are amended to read as follows:

YUGOSLAVIA

Regular mails. See Table No. 1, § 21.116 for classifications, rates, weight limits and dimensions. Small packets accepted.

Indemnity. See § 21.110.

Special delivery. No service.

Air mail service. Postage rate, 15 cents one-half ounce.

Money-order service. (See §§ 17.51 to 17.97.)

Dutiable articles (merchandise) prepaid at letter rate. Accepted. (See § 21.3.)

Observations. Regular mail articles containing merchandise sent for commercial purposes must be accompanied by the original invoice in the same manner as indicated for parcel post under the subheading "Observations."

The Postal Administration of Yugoslavia suggests that specimens, 12 centimeters long and 12 centimeters wide, of the fabrics used in made-up garments accompany each shipment in order that the rate of customs duties applicable to the particular material may be assessed at the time of delivery, otherwise the maximum rate will be imposed in the event that the addressee refuses to permit the customs officials to cut a piece for examination purposes.

The importation and distribution of foreign newspapers and magazines within Yugoslavia is regulated by the law of December 5, 1931, on the basis of which the "Agencija Avala A. D." in Beograd has exclusive permission to import foreign newspapers and magazines.

However, exception is made in the cases of persons taking direct subscriptions to foreign newspapers and magazines, not for the purpose of resale and for scientific and professional magazines considered as such by the Ministry of Commerce and Industry, which may be imported by bookstores. Fashion magazines, needlecraft magazines and the like are not considered as professional magazines, and may be imported for resale only through the intermediary of the agency above mentioned.

Customs duties are collected on fashion journals, whether addressed to the Avala Agency and its representatives or to direct subscribers. Therefore, the paper form of customs declarations (form 2976-A) should be completed and enclosed in packages containing such fashion journals when transmitted in the Postal Union (regular) mails.

Gold, silver, and platinum watchcases are to be submitted to analysis and stamping only if they are complete, whether mounted or not. If parcels received from abroad do not contain complete cases, but only detached pieces, such parcels will be delivered to the addressees only after the arrival of the other parts so as to permit of the complete stamping of the cases, after which the analysis and stamping of the metal will be undertaken. If within a reasonable period the other pieces of the watchcases do not arrive, the incomplete parts having already arrived will be returned to the sender.

Prohibitions. Advertisements and articles relating to the "snowball" system of selling.

Various tokens which, by their dimensions and color, resemble money of the State.

Emigration advertisements.

Also all articles prohibited in the parcel-post mails.

Parcel post. (*Yugoslavia.*)

(Rates include surcharges)

Pounds:	Rate	Pounds:	Rate
1	$0.22	23	$3.30
2	.36	24	3.44
3	.50	25	3.58
4	.64	26	3.72
5	.78	27	3.86
6	.92	28	4.00
7	1.06	29	4.14
8	1.20	30	4.28
9	1.34	31	4.42
10	1.48	32	4.56
11	1.62	33	4.70
12	1.76	34	4.84
13	1.90	35	4.98
14	2.04	36	5.12
15	2.18	37	5.26
16	2.32	38	5.40
17	2.46	39	5.54
18	2.60	40	5.68
19	2.74	41	5.82
20	2.88	42	5.96
21	3.02	43	6.10
22	3.16	44	6.24

(Gift parcels only. The following rates are applicable to parcels sent as gifts. See "Observations" below.)

Pounds:	Rate	Pounds:	Rate
1	$0.14	23	$3.22
2	.28	24	3.36
3	.42	25	3.50
4	.56	26	3.64
5	.70	27	3.78
6	.84	28	3.92
7	.98	29	4.06
8	1.12	30	4.20
9	1.26	31	4.34
10	1.40	32	4.48
11	1.54	33	4.62
12	1.68	34	4.76
13	1.82	35	4.90
14	1.96	36	5.04
15	2.10	37	5.18
16	2.24	38	5.32
17	2.38	39	5.46
18	2.52	40	5.60
19	2.66	41	5.74
20	2.80	42	5.88
21	2.94	43	6.02
22	3.08	44	6.16

Weight limit: 44 pounds.
Customs declarations: 1 Form 2966.
Dispatch note: No.
Parcel-post sticker: 1 Form 2922.
Sealing: Optional.

Group shipments: Yes (see § 21.81).
Registration: No.
Insurance: No.
C. o. d.: No.
Exchange office: New York.

Dimensions. Greatest combined length and girth, 6 feet. Greatest length, 3½ feet, except that parcels may measure up to 4 feet in length, on condition that parcels over 42 and not over 44 inches in length do not exceed 24 inches in girth, parcels over 44 and not over 46 inches in length do not exceed 20 inches in girth, and parcels over 46 inches and up to 4 feet in length do not exceed 16 inches in girth.

Storage charges. See section 93 relative to storage charges on returned parcels.

Observations. (a) Gift parcels weighing up to 22 pounds are admitted free of duty and without previous permission for importation under the following conditions:

(1) The parcel must be plainly marked by the sender on the address side to indicate that it is intended as a gift.

(2) Permissible contents are as follows:

Nonperishable foodstuffs.

Used clothing and shoes.

New clothing and shoes and materials for making them (free of customs duty only up to 44 pounds per year for each person of the addressee's family).

Tobacco and its preparations up to 40 grams (about 1.4 ounces) per parcel.

Other articles for daily use in small quantities (luxury items are prohibited).

(b) Ordinary (unregistered and uninsured) gift parcels not exceeding $25.00 in value may be sent by parcel post free of postage to prisoners of war held by Yugoslavian forces under the following conditions:

(1) Contents permitted are nonperishable foodstuffs, cigarettes, clothing, soaps and shaving preparations, mailable medicines and similar items of a relief nature. Parcels must not contain any written or printed communications of any kind, except a list of the contents which should be placed inside the parcel.

(2) Maximum weight: 11 pounds. Maximum dimensions: Greatest length, 20 inches. Greatest length and girth combined, 72 inches.

(3) The parcels shall not be sealed, and shall be packed closely, and carefully and securely wrapped in a manner which will facilitate opening for inspection.

(4) Parcels must be addressed to the prisoner of war in care of the Yugoslav Red Cross, which will act as intermediary in the transmittal. The wrappers of the parcels must be endorsed—

POKLON RATNOM ZAROBLJENIKU—OSLOBODJENO POSTARINE
PRISONER OF WAR GIFT PARCEL—POSTAGE FREE

(5) The contents of each parcel shall be listed on a customs declaration (Form 2966) which shall be affixed to the outside of the parcel. No other postal forms are required to accompany the parcels.

(6) No labels will be required for the sending of parcels to Yugoslav-held prisoners of war. However, not more than one parcel per week may be sent by the same sender to the same Yugoslav-held prisoner of war.

(c) It is prohibited to effect the clearance of parcels unless the respective addresses are in a position to produce a permit to import the contents from the commission of the national bank appointed to issue importation permits. That measure, dictated by the state of exchange, affects only merchandise addressed to merchants for commercial purposes. It does not affect private individuals or merchants importing for their personal or domestic use.

Parcels containing merchandise sent for commercial purposes, for which the senders are to receive payment, must be accompanied by the original invoice. Packages not accompanied by the original invoice will be cleared through the customs in Yugoslavia and delivered to the addressees, but the latter will be unable to make payment to the sender for the merchandise involved, since the Yugoslav authorities will grant the means for payment only if packages are accompanied by the original invoice. Senders should endorse the wrappers of such packages to indicate that the original invoice is enclosed.

It should be recommended to senders that, in order to facilitate customs handling, a copy of the ordinary invoice, signed by the senders, be transmitted to the addressees by letter mail, giving notice of the mailing of the parcels. The invoice copy is submitted by the addressees to the customs authorities and serves as a basis for collecting the import duties.

Certificates of origin should be furnished for parcels addressed for delivery in Yugoslavia. However, in lieu thereof, it is permissible for senders to indicate on the customs declarations of their parcels the country of origin of the merchandise contained therein, the said indication taking the place of the certificate of origin so far as the Yugoslav customs authorities are concerned.

Parcels not accompanied by certificates of origin or whose customs declarations do not bear an indication of the country of origin of the merchandise contained in the parcel will be assessed with the duty at the maximum rate.

The Postal Administration of Yugoslavia suggests that specimens, 12 centimeters long and 12 centimeters wide, of the fabrics used in made-up garments accompany each shipment in order that the rate of customs duties applicable to the particular material may be assessed at the time of delivery, otherwise the maximum rate will be imposed in the event that the addressee refuses to permit the customs official to cut a piece for examination purposes.

Gold, silver, and platinum watchcases are to be submitted to analysis and stamping only if they are complete, whether mounted or not. If parcels received from abroad do not contain complete cases, but only detached pieces, such parcels will be delivered to the addresses only after the arrival of the other parts so as to permit of the complete stamping of the cases, after which the analysis and stamping of the metal will be undertaken. If within a reasonable period, the other pieces of the watchcases do not arrive, the incomplete parts having already arrived will be returned to the sender.

Prohibitions. For reasons of public safety: Newspapers, magazines, pamphlets, books, and other prints in general whose circulation is prohibited.

Hunting arms, but not those in use in the Army; empty cartridges and projectiles for those arms; ammunition prepared for unrifled hunting rifles, with smokeless powder, as well as ammunition for all kinds of arms not in use in the Army.

Wireless and telegraph and telephone apparatus.

Lithographic copies of plans, except those on the scale of 1:25,000 and below.

Communistic cards, advertisements, pamphlets, etc.

(The arms, wireless telegraph and telephone apparatus, and lithographic copies of plans mentioned above may be imported by previous authorization from the competent ministry.)

For reasons of sanitary policy: Concentrated acetic acid having a strength of over 15 percent.

Grains and fruits.

Serums and vaccines for veterinary use.

Apparatus for the treatment of flukeworm.

Essences for the manufacture of wines and brandies.

Whistles, spoons, and all articles intended to contain foods, having more than 10 percent of lead, unless the part coming into contact with the mouth is nickel plated.

Musts containing any quantity, no matter how small, of sulphuric acid.

Leaven containing plaster, chalk, saccharine, or other harmful ingredients, as well as leaven not having the normal fermenting power (75–80 percent).

Friedmann vaccines against tuberculosis.

Foodstuffs, in any form, containing more than 0.35 percent of sulphuric acid as a preservative.

(The acetic acid, grains and fruits, serums and vaccines, and apparatus for treating flukeworm mentioned above may be imported by special permission of the competent ministry.)

For the protection of plants and animals: Poisonous herbs for fishing.

The exotic nut "acajou" (cashew nut).

Special authorization is required for the importation of silkworm eggs; grapevines, plants and cuttings, with or without roots; enological preparations and means for combating diseases of grapevines and fruit trees; meats.

Arms, munitions, etc.: All kinds of firearms used in the Army and their detached parts, as well as all kinds of ammunition therefor.

Playing cards made of metal.

Nonexplosive components of artillery fuses.

Foreign military uniforms.

State monopolies, etc.: All articles placed under the regime of the monopoly. Tobacco seed and plants destined for reproduction or transplanting.

Valid dinars. If found in the mails they will be confiscated and deposited in blocked accounts in the National Bank of Yugoslavia, which will credit the confiscated sums to the interested parties only after a certain delay.

For other reasons: Live or dead ruminants, primary substances and waste thereof, fresh or dried; fowl; and everything which may propagate epizootic diseases; forage.

Foreign merchandise in general bearing false marks of native artisans or agriculturists or any marks of native origin.

Forms and extracts therefrom: Church records, animal certificates, deposit books (of the forms used by the State Administrations for financial operations), registers, protocols, copy books, exercise books, notes, drawing books, and printed papers in general use exclusively for the official service of the State, of the post, and of the school.

Samples of medicines, unless addressed to national or provincial hospitals, university clinics, or national medical institutions.

(R. S. 161, 396. Sec. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

[SEAL] J. M. DONALDSON,
Acting Postmaster General.

[F. R. Doc. 47-6283; Filed, July 3, 1947; 8:46 a. m.]

PART 21—INTERNATIONAL POSTAL SERVICE

SERVICE TO FOREIGN COUNTRIES; GIFT PARCELS TO GERMANY

Paragraph (h) of the regulations under the Country "Germany" (12 F. R. 706), as amended, is further amended to read as follows:

(h) Ordinary (unregistered and uninsured gift parcels will be accepted for mailing when addressed for delivery in all parts of Germany (American, British, French, and Russian Zones, including all sectors of Berlin), except the portions of Germany under Polish control, which are subject to the conditions applicable to Poland. The parcels will be subject to the same conditions as were in effect prior to the suspension of the service and also to the following restrictions:

(1) Only one parcel per week may be sent by or on behalf of the same sender to or for the same addressee.

(2) Contents may include any commodities intended for personal use that are not prohibited in the parcel post mails to foreign countries generally, as shown in section 57 on page 49 of the 1946 Postal Guide, Part II. The following may not be included: Writing or printed matter of any kind, cigarettes or other tobacco products, money or dollar instruments, firearms of any kind, and nonessential luxury items such as jewelry, perfume, cosmetics and the like.

(3) Parcels must not exceed 22 pounds in weight, or measure more than 36 inches in length or 72 inches in length and girth combined.

(4) Parcel post rates are 14 cents per pound or fraction of a pound.

(5) The parcels and relative customs declarations must be conspicuously marked "Gift Parcel" by the senders, who must itemize the contents and value on the customs declarations. Parcels are liable to censorship and customs examination in the zone of destination.

(6) Parcels should bear the name of the addressee, street and house number, town, postal district number (if known), province, and, in addition to the word "Germany", indication of the zone of destination. If known, the name of the sector should be included as part of the address of parcels destined for Berlin. Box numbers may be used as part of the address provided the name of the box holder is shown. Parcels shall not be accepted for mailing when addressed "General Delivery."

(7) Parcels which are undeliverable will not be returned to senders but will be turned over to authorized German relief organizations for distribution to the needy.

The export control regulations of the Office of International Trade, Department of Commerce, Washington 25, D. C., are applicable to parcels for delivery in Germany.

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

This amendment shall become effective at once.

[SEAL] J. M. DONALDSON,
Acting Postmaster General.

[F. R. Doc. 47-6277; Filed, July 3, 1947; 8:46 a. m.]

PART 21—INTERNATIONAL POSTAL SERVICE

SERVICE TO FOREIGN COUNTRIES; MAILING OF CIGARETTES AND TOBACCO PRODUCTS TO A. P. O.'S IN FRANCE AND AUSTRIA PROHIBITED

1. The regulations under the Country "Austria" (39 CFR, Part 21), as amended (12 F. R. 1604, 3974) are further amended by the addition of the following:

However, the transmission of cigarettes and tobacco products for delivery in Austria through A. P. O.'s 174, 541, and 777, c/o Postmaster, New York, New York, is prohibited.

Postmasters are, therefore, directed to question the mailers as to the contents of parcels addressed for delivery through the A. P. O.'s above mentioned and shall refuse to accept for mailing any containing cigarettes or other tobacco products.

This does not affect the shipment of such products through the international mails.

2. The regulations under the Country "France" (39 CFR, Part 21) are amended by the addition of the following:

The transmission of cigarettes and tobacco products for delivery in France through A. P. O.'s 58 and 741, c/o Postmaster, New York, New York, is prohibited.

Postmasters are, therefore, directed to question the mailers as to the contents of parcels addressed for delivery through the A. P. O.'s above mentioned and shall refuse to accept for mailing any containing cigarettes or other tobacco products.

This does not affect the shipment of such products through the international mails.

(R. S. 161, 396, sec. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

These amendments shall become effective July 1, 1947.

[SEAL] J. M. DONALDSON,
Acting Postmaster General.

[F. R. Doc. 47-6279; Filed, July 3, 1947; 8:47 a. m.]

PART 21—INTERNATIONAL POSTAL SERVICE

SERVICE TO FOREIGN COUNTRIES; MAIL SERVICE TO CHINA.

The regulations under "China" (39 CFR, Part 21, Subpart B—Service to foreign countries), as amended (12 F. R. 3864) are further amended by deleting all the regulations under China, except those published at 12 F. R. 3864, and inserting in lieu thereof the following:

Regular mails. See Table No. 1, § 21.116 for classifications, rates, weight limits, and dimensions. Small packages not accepted.

Indemnity. See § 21.110.

Special delivery. Fee, 20 cents. Special-delivery service in China is confined to the delivery radius of Chinese express or delivery offices. See page 16 of the February 1937 Supplement for a list of the post offices in China participating in the special delivery service. Special delivery service not available to Manchuria. (Also see § 21.18.)

Money-order service. Suspended.

Air-mail service. Postage rate, 25 cents one-half ounce. Limit of weight, 4 pounds, 6 ounces.

Observations. Hong Kong is a British possession and articles destined for that place should not be dispatched under the conditions applicable to China. (For information regarding Hong Kong, refer to that country.)

Macao is a Portuguese possession and articles destined for that place should not be dispatched under the conditions applicable to China. (For information regarding Macao, refer to that country.)

Prohibitions. Coins; manufactured or unmanufactured platinum, gold, or silver; precious stones, jewelry, or other precious articles.

Dutiable articles (merchandise) in letters and packages prepaid at letter rate.

Also, all articles prohibited by parcel post.

Parcel post. (*China.*)[1]

Pounds:	*Rate*	Pounds:	*Rate*
1	$0.14	5	$0.70
2	.28	6	.84
3	.42	7	.98
4	.56	8	1.12
9	$1.26	30	$4.20
10	1.40	31	4.34
11	1.54	32	4.48
12	1.68	33	4.62
13	1.82	34	4.76
14	1.96	35	4.90
15	2.10	36	5.04
16	2.24	37	5.18
17	2.38	38	5.32
18	2.52	39	5.46
19	2.66	40	5.60
20	2.80	41	5.74
21	2.94	42	5.88
22	3.08	43	6.02
23	3.22	44	6.16
24	3.36	45	6.30
25	3.50	46	6.44
26	$3.64	47	6.58
27	3.78	48	6.72
28	3.92	49	6.86
29	4.06	50	7.00

Weight limit: 22,[2] 50 pounds.
Customs declarations: 1 Form 2966.
Dispatch note: No.
Parcel-post sticker: 1 Form 2922.
Sealing: Optional.
Group shipments: No.
Registration: No.
Insurance: No.
C. o. d.: No.
Exchange offices: San Francisco, Seattle, Honolulu, San Pedro.

Indemnity. No provision.

Dimensions. Parcels addressed to steam-served offices: Greatest length, 3½ feet. Greatest length and girth combined, 7 feet: *Provided, however,* That parcels exceeding 6 feet in combined length and girth are restricted to 2 feet 6 inches in length. Parcels addressed to non-steam-served offices: Greatest length, 1½ feet. Greatest length and girth combined, 5 feet. A list of the steam-served offices in China is published on pages 28 to 32 of the August 1936 Supplement.

Observations. There is no parcel-post service to the Chinese Province of Mongolia. The name of the Province in which the office of destination is located must be indicated in the addresses of all parcels for China.

In order to facilitate customs operations and prompt delivery of parcels to addresses a copy of the original invoice relative to the merchandise contained therein, together with a detailed description of the contents, should be inclosed.

Chinese senders should indicate in Chinese characters on the customs declaration, in addition to English, the name and address of the addressee if the parcel is addressed to a Chinese.

Hong Kong is a British possession and parcels destined for that place should not be dispatched under the conditions applicable to China. (For information regarding Hong Kong, refer to that country.)

Macao is a Portuguese possession and parcels destined for that place should not be dispatched under the conditions applicable to China. (For information regarding Macao, refer to that country.)

Parcels mailed simultaneously by the same sender to the same addressee at one address, although not mailable as a "group shipment", must be marked in the following manner in order that customs officials in China may more readily ascertain the combined value of the parcels contained in a single mailing.

Each parcel in a single mailing must bear a fractional number, the numerator of which indicates the number of the parcel and the

[1] Parcel post service to Manchuria and to the Provinces of Shansi, Suiyuan and Chahar is suspended. There is no parcel post service to Mongolia.

[2] Parcels exceeding 22 pounds accepted for the cities of Canton (Kwangtung), Peiping (Hopeh), Shanghai (Kiangsu), Swatow (Kwangtung), and Tientsin (Hopeh) only.

denominator the number of parcels comprised in the mailing. For example, if a single mailing were composed of 15 parcels, the parcels would be numbered, 1/15, 2/15, 3/15, etc. A customs declaration must accompany each parcel.

The Chinese postal service will collect a demurrage fee of 5 cents (Chinese currency) on each parcel for each day the parcel is left in the post office after the expiration of 10 days, counting from the delivery to the addressee of notice of arrival.

Liquids, greases, powders, and dyes in powder form, in lead-sealed metal containers, properly boxed and wrapped to afford the utmost protection to the accompanying mail matter, are admissible.

Prohibition

For the Protection of Animals and Plants

Bees and their eggs must be accompanied by a certificate that they are in good health.

Silkworm eggs may be imported only upon presentation of a certificate issued by the merchandise inspection bureau of the Ministry of Industry.

Parasites and predators of injurious insects are admitted.

Virus, bacteria, fungi, and protozoa of contagious diseases, also all insects harmful to agriculture, may be imported only by permit.

Cottonseed may be imported only by permit.

Arms, etc.

All types of arms, munitions, and war materials, including plans for their manufacture, may be imported only with the permission of the government. Sword canes and other articles in which a weapon is concealed. Toy air guns less than 31 inches in length and toy pistols; also ammunition therefor. Handcuffs.

For Other Reasons

Gambling equipment.

Flags, cards, and printed matter implying recognition of the so-called government of "Manchukuo".

Prosperity bonds and similar articles.

Blank copper coins.

Flashlights in the form of pistols.

The following books and periodicals:

"Ways That are Dark," by Ralph Townsend.

"The Chinese Soviets," by Victor A. Yakhontoff.

"China's Red Army Marches," by Agnes Smedley.

"China Today," printed monthly at New York.

"Asia," printed monthly in the United States.

Counterfeit banknotes and plates for printing them.

Apparatus for manufacturing tobacco or cigarettes to be rolled by hand.

Other articles which may be prohibited by the customs authorities.

The Importation of the Following Articles Is Subject to Restrictions

Chinese or Russian banknotes. Salt. Chinese, Russian, or Japanese coins. Coin-making machinery. Copper for use of provincial monetary establishments. Radio apparatus and equipment. Aviation instruments, accessories and materials. Hypodermic syringes of 5 cc. or less, and needles of 0.7 mm. or less in diameter. Banknote paper. Cigarette paper. Adulterated sugar. Revenue stamps.

Many articles of merchandise require a special import permit from the Ts'ai-cheng Pu (Ministry of Finances). The acceptance of parcels containing articles subject to import permit will be considered to be at the risk of the senders insofar as concerns the treatment which may be accorded the parcels upon their receipt in China.

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 369)

[SEAL] J. M. DONALDSON,
Acting Postmaster General.

[F. R. Doc. 47-6278; Filed, July 3, 1947; 8:46 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

PART 162—LIST OF ORDERS CREATING AND MODIFYING GRAZING DISTRICTS

ARIZONA GRAZING DISTRICT NO. 1

CROSS REFERENCE: For order affecting the tabulation contained in § 162.1, see F. R. Doc. 47-6273 under Department of the Interior, Bureau of Land Management, in the Notices section, *infra*, relating to lands within Arizona Grazing District No. 1.

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

[S. O. 760]

PART 97—ROUTING

REROUTING OF TRAFFIC

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 27th day of June A. D. 1947.

It appearing, that floods have washed out the tracks on the Des Moines-Osceola Branch of the Chicago, Burlington & Quincy Railroad Company at 43 places between Osceola and Burch, Iowa; that the complete restoration of service on the eleven (11) mile segment of track between Osceola and New Virginia, Iowa will be made shortly but that due to emergency work elsewhere the restoration of the forty-two (42) mile segment of track between New Virginia and Burch, Iowa, will not be completed for some time; the Commission is of opinion that the Chicago, Burlington & Quincy Railroad Company is unable to transport the traffic offered it to, from, or between points on the Des Moines-Osceola Branch so as to properly serve the public and that handling, routing, and movement of this carrier's traffic (including trains) over The Great Western Railway Company's track (over a temporary track connecting the former's and latter's tracks) between Afton Junction and Burch, Iowa, will best promote the service in the interest of the public and the commerce of the people. It is ordered, that:

§ 97.760 *Rerouting.* (a) The Chicago, Burlington & Quincy Railroad Company shall handle, route, and move its traffic; (including trains) originating or terminating at points on the Des Moines-Osceola Branch between Burch and Des Moines, Iowa, inclusive, over The Great Western Railway Company's track (over a temporary track connecting the former's and latter's tracks) between Afton Junction and Burch, Iowa.

(b) *Compensation.* The handling, routing, and movement of traffic ordered and described in paragraph (a) herein shall be upon such terms as between the carriers as they may agree upon or in the event of their disagreement as the Commission may, after subsequent hearing find to be just and reasonable.

(c) *Application.* The provisions of this order shall apply to intrastate and foreign traffic as well as interstate traffic.

(d) *Rates to be applied.* Inasmuch as such disregard of routing is deemed to be due to carrier's disability, the rates applicable to traffic so forwarded by routes other than those designated by shippers, or by carriers shall be the rates which were applicable at date of shipment over the routes so designated.

(e) *Division of rates.* In executing the orders and directions of the Commission provided for in this order, common carriers affected shall proceed, even though no division agreements are in effect, over the routes authorized; divisions shall be, during the time this order remains in force, voluntarily agreed upon by and between said carriers; and upon failure of said carriers to so agree, the divisions shall be hereinafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act. If division agreements now exist on the traffic affected, over the routes herein authorized they shall not be changed or affected by this order.

(f) *Effective date.* The provisions of this order shall become effective at 6:00 p. m., June 27, 1947.

(g) *Expiration date.* The provisions of this order shall expire at 6:00 p. m., August 31, 1947, unless otherwise modified, changed, suspended, or annulled by order of the Commission.

It is further ordered, That copies of this order and direction shall be served upon the Iowa State railroad regulatory body, and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

(40 Stat. 101, secs. 402, 418, 41 Stat. 476, 485, secs. 4, 10, 54 Stat. 901, 912; 49 U. S. C. 1 (10)-(17), 15 (4))

By the Commission, Division 3.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 47-6293; Filed, July 3, 1947; 8:48 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Part 52]

UNITED STATES STANDARDS FOR GRADES OF CANNED GREEN BEANS AND CANNED WAX BEANS

NOTICE OF PROPOSED RULE MAKING

Correction

In F. R. Doc. 47-5982, appearing at page 4117 of the issue for Wednesday, June 25, 1947, the second unnumbered paragraph of § 52.165 (i) (3) (iii) (*a*) has been corrected to read as follows:

Not more than 5 unstemmed units or 5 detached stems, or any combination of not more than 5 unstemmed units and detached stems;

[7 CFR, Part 904]

HANDLING OF MILK IN GREATER BOSTON, MASS., MARKETING AREA

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

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Supps. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159), public hearings were held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area.

A public hearing was held at St. Johnsbury, Vermont, on February 1 and 2, 1946, and continued at Boston, Massachusetts, on February 4–9, February 15–16, and March 11–13, 1946. Action has been completed with respect to all of the issues developed at that hearing except the issue concerning service payments to cooperative associations. A notice of report and opportunity to file exceptions with regard to this issue was published in the FEDERAL REGISTER (12 F. R. 1169) on February 20, 1947. The revised report on this issue was filed with the Hearing Clerk, United States Department of Agriculture, June 11, 1947, and on June 30, 1947, the Secretary of Agriculture tentatively approved a marketing agreement containing provisions amending the sections of the order relating to service payments to cooperative associations. Sections 904.8 and 904.10 of the marketing agreement and the order amending the order, as amended, annexed hereto and made a part hereof contain provisions identical to the amended cooperative service payment provisions of the aforesaid tentatively approved marketing agreement.

A hearing was held at Burlington, Vermont, on March 14 and 15, 1947, and continued at Boston, Massachusetts, on March 17–19 and 24–26, 1947. Previously a hearing was held at Boston on November 20, 1946, to consider amendments to Order No. 4, which had been proposed by cooperative associations of producers and by the Dairy Branch. Action has been taken with respect to all of the issues except one which were developed at that hearing. The issue upon which action has not been completed deals with contraseasonal changes in the Class I price which might occur as the result of the formula-determined price. A notice of recommended decision and opportunity to file written exceptions with respect to the issues developed at the March 1947 hearing and the open issue of the hearing held November 20, 1946, was published in the FEDERAL REGISTER (12 F. R. 3340) May 24, 1947. Exceptions have been filed to that recommended decision and were considered in arriving at the findings and conclusions contained herein.

Findings and conclusions. The issues which were listed in the notice and which were developed at the hearing in March 1947 are grouped under the following headings. The issue developed at the hearing held November 20, 1946, is included under the issue "Basis for determining Class I prices".

(1) Basis for determining Class I prices.

(2) Minimum floor prices for Class I milk for the latter half of 1947.

(3) A "take-out" and "pay-back" plan of seasonal pricing.

(4) Reported prices to be used as basis for Class II skim value.

(5) Allowance to handlers to cover freight and administration assessment on Class II milk.

(6) Pricing of butterfat made into butter or cheese.

(7) Months in which butter and cheese adjustment should apply.

(8) Pricing of skim milk made into casein and animal feed powder.

(9) Transportation differentials on Class II milk shipped to city plants in fluid form.

(10) Basis of pooling.

(11) Uniform payment of premiums.

(12) Permissive variation in butterfat differential.

(13) Months in which milk subject to the New York order is allocated to Class II.

(14) Modification of emergency milk definition and classification.

(15) Revision of the definition of producer-handler.

(16) Maintenance of records by handlers.

(17) Reports regarding individual producers.

(18) Time limit on reaudits and rebillings.

(19) Time of payment to producers.

(20) Bringing up to date table of transportation differentials and emergency price provision.

(21) General.

The recommended decision contained rulings upon the proposed findings and conclusions submitted by interested parties in this proceeding. Such rulings are confirmed except as they are modified by the findings and conclusions set forth herein.

Exceptions were filed on behalf of New England Milk Producers' Association, Bethel Cooperative Creamery, Grand Isle County Cooperative Creamery, Milton Cooperative Dairy Corporation, Shelburne Cooperative Creamery, United Farmers of New England, David Buttrick Company, H. P. Hood and Sons, Inc., White Brothers Milk Company, and Whiting Milk Company.

No exceptions were filed to the findings and conclusions contained in the aforesaid recommended decision with regard to issues (3), (10), (14), (15), (16), (17), (19), and (20). The findings and conclusions contained in the recommended decision on these issues are adopted as the findings and conclusions of this decision. With regard to the findings and conclusions of the recommended decision to which specific exception has been taken, by either producers or handlers, this decision contains a ruling thereon in the discussion of the material issue to which the exception refers.

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

(1) *Basis for determining Class I prices.* The butter-powder formula for determining the Class I price should be retained in its present form with a provision to prevent contraseasonal changes in the Class I price. In addition, minimum floor prices for the period from July 1947 through December 1947 should be provided.

There is a very serious need for encouraging a shift toward more fall production. During three of the last four years the production of milk in the Boston milk shed has been insufficient in November and December to supply the needs for Class I milk. Production varies seasonally to such an extent that it is nearly twice as great in May and June as in November and December. A price plan to encourage increasing fall production is imperative for the Boston market. Minimum Class I floor prices are required for each month through December 1947 in order to assure a substantial rise in prices from the spring to the fall and thus develop a better seasonal pattern of production.

The uncertainty of economic conditions in the fall and winter requires a safeguard in addition to minimum floor prices for Class I milk. The butter-powder formula should be retained to give producers the benefit of any increase over the floor prices which may be justified by the prices of other dairy products and by the general price level in the fall and winter. The butter-powder formula should be modified to prevent contraseasonal price changes in the months just preceding or during the season of greatest shortage or seasonal flush production. Generally, the Class I price for any of the months of September through December

of any year should not be lower than the Class I price in effect for the preceding month and the Class I price for the months of March through June of any year should not be higher than the Class I price in effect for the preceding month. The provision to prevent a contraseasonal price change will avoid nullification of the seasonal price plan by movements of the general price level. It is not considered advisable to provide for complete prevention of downward price movements in the last half of the year or upward price movements in the first half because such a provision would hold back unduly adjustments to the general price level.

Producers contended that the butter-powder formula method of determining the Class I price be deleted entirely from the order and fixed prices substituted for it. Exact prices cannot be determined from this record for nine months to a year in advance. The present trend toward increasing production and decreasing consumption and the general uncertainty as to business conditions this fall and winter precludes a fixed guarantee of exact Class I prices. Producers indicated that they do consider fixed prices as a guarantee and it would be misleading to write into the order fixed prices to be effective beyond the time for which they can be assured. The present butter-powder formula should be retained until some other plan is developed. The formula will establish prices this fall above the floor prices named if conditions warrant higher prices, and will provide a method of pricing after December. If the rise in prices of butter and nonfat dry milk solids which took place in 1946 is repeated in 1947, the formula will establish prices as high as those established in November 1946.

(2) *Minimum floor prices for Class I milk for the latter half of 1947.* The minimum floor price for Class I milk in the 201–210-mile zone of the Boston milkshed should be $4.77 per hundredweight in July and August, 1947 and $5.21 for each of the months September through December 1947. If the formula produces a price higher than $5.21 in August, September, October, or November, this price should continue to the end of the year. The maximum drop in price from either level between December and January or January and February should be 44 cents.

In 1946 a start was made in New England on a program of encouraging the production of more milk in the fall months. Shifting to fall freshening has involved substantial additional costs of producing milk. These special costs include breeding difficulties and the cost of purchasing additional fall-freshening cows. The current prices and rates paid for feed, labor, and farm machinery are higher than last year. These factors indicate that the program to encourage more fall production may be seriously hampered unless producers are assured of absolute floor prices for the last quarter of 1947 as high as the floor established in 1946.

Absolute floor prices should be established for July and August at 44 cents above the prices established for May and June to assure a seasonal rise this year on July 1. The short season rise in prices which should normally take place on October 1 should be advanced to September 1 this year, in order to encourage feeding during the fall season to get more milk this fall. Adjustment of breeding practices cannot be expected to be far enough advanced this year to result in enough increase in fall milk production and extra feeding and good care of spring-freshened cows will be necessary to increase the supply of milk during October, November, and December this year. The current trend toward greater milk production this year with some indication of smaller Class I sales does not justify absolute floor prices for Class I milk for the last quarter of 1947 higher than the last quarter of 1946.

A seasonal price spread equivalent to about 40 percent of the May–June price is necessary to encourage fall production. Farmers indicated that at present price levels this would require a price in November as near as possible to $1.50 above the blended price for May and June. Such a spread should encourage farmers who have already started the shift toward more fall production to continue and encourage other farmers to follow their example. The minimum floor price for Class I milk of $5.21 in October, November, and December will provide this encouragement. Following a seasonal pattern, the drop from December 1947 to January 1948 should not exceed 44 cents with a floor price of $4.77 for January and any further drop which might be indicated by the formula for February should be limited to not more than 44 cents. The limitation of any price decrease from December to January and January to February will prevent any precipitous price drop immediately following the period for which greater production is to be encouraged. This limitation is not intended to establish the level of prices for 1948. The exact prices would be determined by the present formula provision or on the basis of a hearing nearer the end of this year if a further hearing this year is considered advisable.

(3) *A "take-out" and "pay-back" plan of seasonal pricing.* The proposal to "take-out" of the Class I price during April, May, and June, 44 cents to be paid back according to the amount collected, in equal amounts during October, November, and December should not be adopted.

The seasonal change in Class I prices will accomplish the adjustment in producer prices which proponents of the "take-out" and "pay-back" plan advocated. Since the change in Class I prices was generally supported and better understood than this proposal, it can be expected to encourage producers more effectively to produce more fall milk.

(4) *Reported prices to be used as basis for Class II skim value.* No change should be made at this time in the reported prices used as a basis for Class II skim value.

The proponents of a change to another price series did not show that official prices published by the United States Department of Agriculture for nonfat dry milk solids manufactured by the roller process for human food or animal feed products do not reflect changes in the value of skim milk marketed in Class II milk. Class II milk is utilized in products such as cream, ice cream, condensed milk and skim milk products, dried milk and skim milk products, butter and several types of cheeses. The prices reported by the United States Department of Agriculture for nonfat dry milk solids reflect the changes in the value of skim milk for these uses. The problem is not one of matching the published price against prices received for any particular Class II product. The formula is primarily a device for bringing about changes in the price as the general level of skim milk values changes.

The lower prices reported by the United States Department of Agriculture for nonfat dry milk solids have established lower values for skim milk utilized in Class II in recent months. The weaker market for nonfat dry milk solids and sweetened condensed skim milk is reflected in these quotations. There is no evidence in the record that further reductions by changes in the formula are necessary to reflect the current value of Class II skim milk.

(5) *Allowance to handlers to cover freight and administration assessment on Class II milk.* No change should be made in the allowance to cover freight and administration assessment on Class II milk.

The handling allowance is only one of the many factors which are included in the Class II price formula. With so many factors, it is easy for one or more factors to be out of line in one direction while at the same time other factors are out of line in the opposite direction. One group of factors may underprice skim milk somewhat while other factors may overprice Class II milk at the same time. There is no evidence that the total allowance should be changed or that the increase in freight and administration assessment is not offset by other factors in the Class II price. The proponents of an increase in the allowance described changes in the items of freight and administration cost and relied on the fact that evidence of change in the other factors was not presented to support their claim that the total allowance should reflect the changes in these two items. Evidence on the entire allowance cannot be developed in this piece-meal fashion. One proponent argued in his exceptions that the revision of the allowance would bring about a needed reduction in the total Class II price. Although the hearing notice called particular attention to the necessity for introducing evidence concerning the total level of the Class II price in support of particular adjustments, no case for a definite change in the level of the Class II price was made at the hearing.

(6) *Pricing of butterfat made into butter or cheese.* The butter and cheese adjustment provisions of the order should be limited to butterfat which is manufactured into salted butter and the named cheeses and which is disposed of as such, and a separate cheese class should not be established.

Plastic cream or cream containing 80 percent butterfat is widely used in ice cream mix and is not eligible for special pricing because the fat in ice cream mix has a value comparable with that of the fat in fluid cream. Sweet butter is interchangeable with plastic cream in making ice cream mix and, therefore, should not be eligible for special pricing. A separate cheese class is not needed to provide an additional outlet for milk and might return to producers less than the butter value of the fat in Class II milk.

Exceptions were filed by a group of operating cooperatives objecting to the language recommended to carry out these findings. It was contended that the language would prevent a cheesemaker from receiving the credit on milk which he made into processed types of cheeses. The subject of pricing milk made into processed cheese was not discussed at the hearing. The language recommended herewith does not revise the order with respect to its application to processed cheese. A hearing on this point would be necessary to permit the credit to apply to products other than those already listed.

(7) *Months in which butter and cheese adjustment should apply.* The months in which the butter and cheese adjustment should apply should not be changed.

The requirements of the marketing area for fluid cream far exceed cream available from producer milk except in a few of the months of flush production. The fluid cream market is generally available to all handlers. The proposed year-around butter price which would permit certain handlers to churn butter and thus keep New England cream off the Boston market could not be expected to influence in any compensating degree the market price of the large volume of cream sold in Boston from western sources. Although proponents claimed that a butter and cheese class on a year-around basis was necessary to prevent large cream users from boycotting the cream of a particular cooperative, no evidence of such boycotts actually happening was presented.

Temporary oversupplies of cream were described as a normal burden incidental to the handling of milk and cream. The normal operations in handling Class II milk are recognized in the regular Class II formula.

The proposal to permit a handler to claim the butter price in April and July only if the market administrator could not market his cream in fluid channels would involve special machinery for administration and detailed plans for determining whether the cream was of marketable quality and what price should be considered reasonable. Proponents did not show the details of the plan to carry out their proposal.

(8) *Pricing of skim milk made into casein and animal feed powder.* The special price for skim milk made into casein should be eliminated from the order and there should be no special price provision for skim milk made into animal powder.

Prior to 1942, casein returned a higher skim value than skim milk powder. During the war, casein production was purposely discouraged by a low ceiling price. The casein market has been strong since the end of the war while the powder market is slow and sluggish. A return to the price relationship which existed before the war between the two products may be expected. Although the latest prices reported in the record showed a drop in January and February from the prices prevailing last year, the January and February prices were strong in relation to the market for nonfat dry milk solids.

The casein adjustment, and any separate adjustment for skim milk made into animal feed powder, tends to remove the incentive to vigorous merchandising which will return to producers the regular Class II price for skim milk. The skim formula is already heavily weighted with animal powder in the months of flush production. The pool should not absorb losses on lower value uses of skim milk when alternative outlets for higher value uses are available. Since it is concluded to eliminate the special price for skim milk made into casein, the proposal to change the quotation on which such price is based become a moot issue.

(9) *Transportation differentials on Class II milk shipped to city plants in fluid form.* Class I transportation differentials on Class II milk shipped to city plants in fluid form should not be allowed.

The differential proposed would have the effect of creating a separate class for skim milk which would return less than the regular Class II price for milk shipped to city plants from certain zones. The alternative outlet for this milk would be in fluid cream and manufactured skim products as regular Class II milk at country plants. Since this alternative outlet exists, the value of Class II milk at country plants should not be lower than the regular Class II value. The proposal would also have increased the cost of Class II milk from certain near-by zones but since the Class II milk price covers milk utilized in a number of different ways, some higher and some lower in value than others, there is no good reason to single out this particular use of milk for a higher price. The proposal to achieve more uniformity with respect to the cost of Class II milk moved as milk to city plants was not accompanied by evidence upon which a new class price based upon the value of milk in this particular use could be established.

Exceptions filed by certain handlers indicated their willingness to have the price for Class II milk received at or moved to city plants increased so that the net effect of this adjustment would result in no reduction in the cost of Class II milk to any handler. The effect of this adjustment would be to increase the cost of Class II milk principally for those handlers who have no country plants. This change was not proposed clearly at the hearing and it cannot be concluded that the record covers fully the subject of pricing milk at city plants.

The proposal as it was supported in the hearing does not achieve complete uniformity since it would apply differently to different types of handlers. The proponents did not offer a revised proposal which would apply uniformly to all city buyers.

(10) *Basis of pooling.* The proposed revision of the basis of pooling and related proposals made by the market administrator should be adopted. The revised basis of pooling should permit an individual producer to be retained on the pay roll of a pool plant even if his milk is delivered directly to a nonpool plant of the handler, provided the pool receives full Class I credit for the milk of such producer. The proposal to provide that the operation of the three-day provision in paragraph (c) of § 904.8 be measured from the date on which the plant first becomes a pool plant rather than being measured from August 1 should not be adopted except with regard to New York pool plants.

The adoption of the administrator's proposal would reduce or eliminate the possibility of accidental inclusion or exclusion of a plant from the pool, would curb the movement of plants in and out of the pool to the handler's advantage and loss to the pool, and would promote a more efficient physical handling of milk. The proposal sets up sound basic requirements for the inclusion of country plants in the market pool, which will prevent any plant from participation in the pool unless it is actually qualified to supply milk to the marketing area.

Producer milk and all other sources of milk should be clearly defined and the obligations on handlers with respect to all sources of milk should be stated. Administration expense should be shared by handlers who receive milk which is not a part of the normal supply of the market. This outside milk involves additional administrative cost which should be borne by the handlers who receive it, including producer-handlers and buyer-handlers.

In connection with the proposed change in the section regarding expense of administration, the change in the rate of assessment should be made by the Secretary instead of by the market administrator subject to review by the Secretary. Payments to the producer settlement fund on outside milk which displaces producer milk in Class I should be made by the handler who receives the milk for disposition in the Boston marketing area. During an emergency period, when supplies of producer milk are not sufficient to meet the needs of the market, the outside milk which is considered emergency milk should not be subject to such payments.

More efficient handling of milk will be provided by allowing an individual producer to be retained on the pay roll of a plant even if his milk is delivered directly to a nonpool plant of the handler, provided the pool receives full Class I credit for the milk of such producer.

The proposal to provide that the operation of the three-day provision in the "Dairy Farmers for Other Markets" paragraph be measured from the date on which the plant first becomes a pool plant rather than being measured from August 1 would apply to plants other than those newly acquired if it were adopted as it was proposed in the no-

tice. If the inclusion were that broad, the provisions to prevent transfers in and out of the pool could be circumvented by this provision. If the proposal were revised to apply only to newly acquired plants, it, too, could provide a vehicle for circumvention if a handler wished to maintain his newly acquired plant as a supply for a Class I outlet in another market outside the pool for several delivery periods. The lapse of time during each calendar month is sufficient for the ordinary acquisition of the plant by passing legal papers and obtaining other evidence of the right to ship milk to the Boston market. In general, under the revised basis of pooling, if a newly acquired plant otherwise qualified makes one shipment of Class I milk to the marketing area in the form of milk during any month, it becomes eligible for pooling for the entire month. However, this is not true in the case of New York pool plants.

In the case of a transfer of a milk plant from the New York pool to the Boston pool, the New York order would require that the plant be pooled for the entire month if it were pooled for any part of the month. The Boston order exempts from pooling any plant which is a New York pool plant. Therefore, the transfer of a plant from New York to Boston would have to be accomplished on the first day of the month to prevent the producers delivering to that plant from being considered "dairy farmers for other markets" during the following April, May, June, and July.

(11) *Uniform payment of premiums.* The uniform payment of premiums to producers should not be required.

Recurring milk shortages since 1943 have caused an acute increase in the payment of cash premiums and in the building of new plants in the supply area of existing plants as competitive means of securing milk. Hauling subsidies and free use of cans are other forms of premium payments in use in the Boston milkshed. Regulation of cash premiums only would not be an effective solution of the problems involved. The problem will gradually disappear as supplies become more ample. It is possible that the administration of such a provision would discourage the payment of premiums for quality and incentives for seasonal production.

The evidence failed to show that the payment of premiums to producers supplying the Boston market constituted unfair trade practices. The record indicates that handlers paid premiums to secure needed supplies of milk.

(12) *Permissive variation in butterfat differential.* Handlers should not be allowed to use an adjusted butterfat differential in making payments to producers at any of their plants in any period even if total payments to producers at such a plant during the period were not less than the total payments required by the order.

A permissive variation in the butterfat differential was offered as a device to aid in meeting competition in areas where producers can deliver to handlers subject to the provisions of Order No. 27. If it were adopted, producers delivering milk with a high butterfat content would receive less and producers delivering milk with a low butterfat content to the same plant would receive more than the minimum prices required by the order. The high-test producers would, in effect, be paying part of the handler's cost in meeting local competition for milk. Even though producers agreed to sharing this expense the departure from the principle of uniform payments to all producers could not be countenanced under the requirements of the act.

(13) *Months in which milk subject to the New York order is allocated to Class II.* The months in which milk subject to the New York order is allocated to Class II should not be changed.

The record does not show the need for a change. In each of the months of April and July since January 1, 1938, Class II milk has exceeded 42 percent of total producer receipts except during 1946 when Class II milk exceeded 30 percent of receipts. In case of an emergency, New York milk would be available under the provision discussed in issue 14, which is recommended for adoption. The pricing of milk under each Federal order requires the appraisal of the local conditions and the relationship of any adjacent Federal order market to the market for which prices are being established. The proposal to extend the months during which New York milk should be allocated entirely to Class II was not in the hearing notice and was not fully developed at the hearing.

(14) *Modification of emergency milk definition and classification.* The provision for classifying emergency milk should apply only to the period within the month during which the handler brings in some emergency milk, and the wording should be revised to make clear how it is applied. The definitions of emergency period and emergency milk should be revised to delete any reference to the New York milkshed and make any milk outside the regular Boston supply available on an emergency basis.

Since handlers who do not purchase any emergency milk are not limited in the amount of Class II milk they may handle during an emergency period, other handlers who purchase emergency milk only during a part of the period should have the same privilege during the part of the period in which they bring in no emergency milk.

The language of the section which provides for allocating emergency milk to classes should also be worded to make clear that receipts of cream are not used in determining the base or the quantity of Class II milk, and that total receipts of other products are adjusted for inventory variations.

There may be extra milk in the New York milkshed which is not available to Boston handlers because of provisions of health regulations. Boston may need emergency milk even when New York is adequately supplied.

The supply of milk in Boston pool plants should be the basis for determining whether an emergency exists in the Boston market. New York milk should be considered as emergency milk during any emergency which might occur during April, May, June, and July.

(15) *Revision of the definition of producer-handler.* A producer-handler should be defined as any person who is both a dairy farmer and a handler who receives milk of his own production only from farms within 80 miles of Boston and who receives no milk from other dairy farmers except producer-handlers.

The present definition of producer-handler in the order can work a hardship and is not needed to establish the bona fide nature of a producer-handler's operation. The proposed 80-mile limit is consistent with other provisions of the order which grant special pricing to producers within that area and there have never been producer-handlers under Order No. 4 located beyond 80 miles.

(16) *Maintenance of records by handlers.* Handlers should be required to maintain detailed and summary records which will show all receipts, movements, and disposition of milk and milk products.

The order does not now specifically require that records be maintained although proper verification of reports is not possible in the absence of adequate records. The requirement that adequate records be maintained should be set forth in the order so that it could be relied on in legal proceedings to compel a handler to maintain records.

(17) *Reports regarding individual producers.* The section of the order providing for reports regarding individual producers should be clarified and revised to permit handlers to submit such reports only twice a month.

The first subparagraph of paragraph (c) of the reports has been in the order since August 1, 1937, and was intended for use in connection with base ratings. It has never been used and should be deleted.

Filing reports regarding individual producers twice each month will be a convenience to some handlers and will not create any administrative difficulties.

(18) *Time limit on reaudits and rebillings.* The proposal to provide a time limit with respect to the retention of records and with respect to reaudits and the issuance of revised billings should not be adopted at this time.

The evidence indicated that a limitation of time on the keeping of records involved important collateral issues which were not included in the notice of hearing or fully developed at the hearing. For example, it was pointed out that if there were a time limit on reaudits, it would be necessary to set a companion limit on the time within which handlers would be permitted to file revised reports. Safeguards would have to be provided with respect to records which become involved in audit adjustments, litigation, or where there is fraud or intentional falsification. There is involved also the question of a limitation of time within which the market administrator could enforce a claim against a handler or a handler against the market administrator. The order should not be amended to provide for these matters until a hearing has been held on proposals which contain specific language to cover these collateral issues.

Although certain handlers excepted to the finding that a recommendation on a

limitation should be delayed until the above issues could be resolved, they failed to show such a need for the proposed amendment that would justify adoption without further consideration.

(19) *Time of payment to producers.* An advance payment to producers should not be required if a first and final payment is made on or before the seventeenth day after the end of the delivery period.

A single monthly payment will be advantageous to some handlers in that they can reduce their total pay-roll work. Producers will not be inconvenienced and payment by the seventeenth will not require them to extend handlers any more credit than they do now.

(20) *Bringing up to date table of transportation differentials and emergency price provision.* The table of plant handling and transportation differentials in the minimum price section should be brought up to date by substituting the table of differentials which has been in use since January 1, 1947, when "New England Joint Tariff M–5" became effective.

The emergency price provision should be revised to delete references to subsidies and maximum uniform prices which were wartime measures and are no longer in effect.

(21) *General.* (a) The proposed marketing agreement and the proposed amended 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 proposed amended order regulates 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 said tentatively approved marketing agreement upon which the hearings have 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 sections 2 and 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 of and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the proposed amended order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area" and "Order amending the order, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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

This decision filed at Washington, D. C., this 30th day of June 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

Order,[1] *Amending the Order, as Amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area*

§ 904.0 *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 C. F. R., Supps. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159), public hearings were held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

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

(b) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 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 supplies of and demand for such milk, and the minimum prices specified in the order, as amended and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The said order, as amended and as hereby further amended, regulates 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 a marketing agreement upon which hearings have been held.

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

It is therefore ordered, That on and after the first day of August 1947, the handling of milk in the Greater Boston, Massachusetts, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended to read as follows:

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

(a) *General.* (1) "Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

(2) "Greater Boston, 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:

Arlington.	Newton.
Belmont.	Peabody.
Beverly.	Quincy.
Boston.	Reading.
Braintree.	Revere.
Brookline.	Salem.
Cambridge.	Saugus.
Chelsea.	Somerville.
Dedham.	Stoneham.
Everett.	Swampscott.
Lexington.	Wakefield.
Lynn.	Waltham.
Malden.	Watertown.
Marblehead.	Wellesley.
Medford.	Weymouth.
Melrose.	Winchester.
Milton.	Winthrop.
Nahant.	Woburn.
Needham.	

(3) "Month" means a calendar month.

(4) "Marketing year" means the twelve months' period from August 1 of each year through July 31 of the following year.

(5) "Emergency period" means the period of time for which the market administrator declares that an emergency exists in that the milk supply available to the marketing area from producers is insufficient to meet the demand for Class I milk in the marketing area.

(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) "Market administrator" means the agency which is described in § 904.2.

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

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

(5) "Segregated dairy farmer" means a dairy farmer whose milk is kept separate from the supply for the marketing area.

(6) "Dairy farmer for other markets" means any dairy farmer, except a segregated dairy farmer, whose milk is received by a handler at a pool plant during April, May, June, or July 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 August through March. The term shall not include a person who was a producer-handler or a person delivering to a New York order pool plant during any of the preceding months of August through March.

(7) "Producer" means any dairy farmer whose milk is delivered from his farm to a pool plant, except a dairy farmer for other markets and a segregated dairy farmer. 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 § 904.6 (a), reports the milk as receipts from a producer and as Class I milk at such pool plant.

(8) "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.

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

(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) "Producer-handler" means any person who is both a handler and a dairy farmer and who receives milk of his own production only from farms located within 80 miles of the State House in Boston, and who receives no milk from other dairy farmers except producer-handlers or segregated dairy farmers.

(12) "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.

(13) "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) "City plant" means any plant which is located not more than 40 miles from the State House in Boston.

(3) "Country plant" means any plant which is located more than 40 miles from the State House in Boston.

(4) "Receiving plant" means any milk 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.

(5) "Pool plant" means any receiving plant which, in a given month, meets the conditions and requirements set forth in § 904.4 for being considered a pool plant in that month.

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

(7) "Distributing plant" means any plant from which Class I milk in the form of milk is disposed of to consumers in the marketing area without intermediate movement to another plant.

(8) "New York order pool plant" means any plant designated as a pool plant in accordance with the provisions of Order No. 27, issued by the Secretary, regulating the handling of milk in the New York metropolitan 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. The term "cream" also includes sour cream, frozen cream, and milk and cream mixtures containing 16 percent or more of butterfat.

(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 fluid 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 order pool plant and receipts of emergency milk; 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.

(7) "Emergency milk" means fluid milk products, other than cream, received at a regulated plant during an emergency period from a plant which was an unregulated plant in the month immediately proceding the month in which the emergency period became effective.

§ 904.2 *Market administrator* — (a) *Selection, removal, and bond.* The market administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The market administrator shall, 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 surety thereon satisfactory to the Secretary.

(b) *Compensation.* The market administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) *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.

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

(1) Keep such books and records as will clearly reflect the transactions provided for in this order;

(2) Submit his books and records to examination by the Secretary at any and all times;

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

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not made reports pursuant to § 904.6, or made payments pursuant to § 904.9;

(6) 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 of the marketing year in which the plant's status has changed or is changing to that of a nonpool plant;

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

(8) Employ and fix the compensation of such persons as may be necessary to enable him to exercise his powers and perform his duties; and

(9) Pay, out of the funds provided by § 904.11.

(i) The cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator.

(ii) His own compensation, and

(iii) All other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(e) *Responsibility.* The market administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.

§ 904.3 *Classification of milk and other fluid 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 provisions 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) *Classification of milk and milk products utilized at regulated plants of pool handlers.* All milk and milk products received at a regulated plant of any pool handler shall be classified in accordance with their utilization at such plant, except as provided otherwise in paragraph (c) of this section.

(c) *Classification of fluid milk products, other than cream, moved to other plants.* Milk, flavored milk, skim milk, cultured or flavored skim milk, or buttermilk which is moved from the regulated plant of a pool handler to any other plant shall be classified as follows:

(1) If moved to any other regulated plant, it shall be classified in accordance with its utilization at the plant to which it is moved.

(2) If moved to an unregulated plant, it shall be classified as Class I milk up to the total quantity of milk, or the corresponding milk product so moved, which is utilized as Class I milk at the unregulated plant.

(3) If moved to a regulated plant of a nonpool handler or to an unregulated plant, and thence to another such plant, it shall be classified as Class I milk.

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

§ 904.4 *Determination of pool plant status*—(a) *Basic requirements for pool plant status.* Subject to the provisions of paragraph (b) of this section, each receiving plant shall be a pool plant in the first month in which the handler operates it in conformity with the basic requirements specified in this paragraph, and shall thereafter be a pool plant for the remaining months of the marketing year in which it is operated by the same handler. The basic requirements for acquiring pool plant status shall be as follows:

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

(2) The handler 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) Class I milk in the form of milk is disposed of in the marketing area from the plant.

(4) The handler's total Class I milk in the marketing area exceeds 10 percent of his total receipts of fluid milk products other than cream.

(b) *Conditions resulting in nonpool plant status.* (1) Each plant which has acquired pool plant status but from which no Class I milk in the form of milk is disposed of in the marketing area for two successive months in the marketing year shall be a nonpool plant in the second of the two months and for each consecutive succeeding month of the marketing year during which no such Class I disposition is made.

(2) Each nondistributing plant for which the market administrator has received on or before the 16th day of the preceding month the handler's written request for nonpool plant designation shall be a nonpool plant in each month of the marketing year to which the request applies.

(3) Each city distributing plant operated by a handler who operates no other plant which is a pool plant in the same month shall be a nonpool plant in any month in which the handler's total Class I milk in the marketing area does not exceed 10 percent of his total receipts of fluid milk products other than cream.

(4) Each plant which is operated as the plant of a producer-handler shall be a nonpool plant in any month in which it is so operated.

(5) Each plant which is operated as a New York order pool plant or as a plant from which emergency milk is received shall be a nonpool plant during the month or portion of a month of such operation.

(6) Each of a handler's plants which is a nonpool receiving plant during any of the months of August through March shall be a nonpool plant in any of the months of April through July of the same marketing year in which it is operated by the same handler, an affiliate of the handler, or any person who controls or is controlled by the handler, unless its operation during August through March was in the handler's capacity as a producer-handler or as the operator of a New York order pool plant which had been acquired by him after June 30 of the immediately preceding marketing year.

(c) *Disposition of Class I milk in the form of milk in the marketing area.* For the purposes of this section, each plant from which milk is moved at some time during the month to another plant from which Class I milk in the form of milk is disposed of in the marketing area shall itself be considered to have made such a disposition, except that no movement of milk to any unregulated nondistributing plant shall be considered a disposition of Class I milk in the form of milk in the marketing area.

(d) *Total receipts of fluid milk products other than cream.* For the purpose of this section, each handler's total receipts of fluid milk products other than cream, referred to in this paragraph as "total receipts," shall be determined as follows:

(1) For each month of the marketing year until and including the first month in which the handler is a pool handler, his total receipts shall be the receipts at all plants from which Class I milk in the form of milk is disposed of in the marketing area, except his receipts from segregated dairy farmers and his receipts at any plant which fails to meet the applicable standards set forth in subparagraphs (1) and (2) of paragraph (a) of this section or which is a nonpool plant pursuant to subparagraph (2) of paragraph (b) of this section.

(2) For each of the other months of the marketing year, the handler's total receipts shall be the total receipts determined pursuant to subparagraph (1) of this paragraph plus the receipts at any other of his plants which is a pool plant in such month.

§ 904.5 *Assignment of receipts to Class I milk and Class II milk*—(a) *General provisions.* Except as provided in the other paragraphs of this section, all receipts of fluid milk products, other than receipts from producers, shall be assigned to Class I milk or Class II milk as follows:

(1) Receipts as to which Class II use is established shall be assigned to Class II milk.

(2) All other receipts shall be assigned to Class I milk.

(b) *Receipts of cream and other milk products.* All receipts of cream, and milk products other than fluid milk products, shall be assigned to Class II milk.

(c) *Receipts of skim milk from producer-handlers.* Skim milk received from a producer-handler shall be assigned to Class II milk, except that if the specific Class I use of the skim milk is established, it shall be assigned to Class I milk.

(d) *Receipts of outside milk.* All receipts of outside milk shall be considered as receipts of Class II milk, and shall be assigned to that class without regard to the specific use of such receipts.

(e) *Receipts from New York order pool plants.* Except as provided in paragraph (f) of this section, receipts of fluid milk products, other than cream, from New York order pool plants shall be assigned to Class I milk or Class II milk as follows:

(1) All receipts during the months of April through July, inclusive, shall be assigned to Class II milk.

(2) Receipts of milk and flavored milk during the months of August through March, inclusive, shall be assigned to Class I milk when classified in Classes I-A, I-B, or I-C under the New York order, except that the quantity as to which specific Class II use is established shall be assigned to Class II milk.

(3) Receipts of skim milk, cultured or flavored skim milk, or buttermilk during the months of August through March, inclusive, shall be assigned to Class II milk, except that if the quantity so received is in excess of the total quantity of the corresponding milk product classified as Class II milk at the plant of receipt, such excess shall be assigned to Class I milk.

(f) *Receipts of emergency milk.* (1) Emergency milk received by a handler whose total use of Class II milk is in excess of 10 percent of the total volume of fluid milk products, other than cream, handled by him shall be assigned to Class II milk to the extent of such excess. For the purpose of this subparagraph, the handler's total Class II milk and total volume handled shall be the total of the respective quantities from the first day on which emergency milk is received by the handler during the month up to and including the last such day in the month.

(2) If the quantity of emergency milk as to which specific Class II use is established is greater than the quantity assigned to Class II milk pursuant to subparagraph (1) of this paragraph, such greater quantity shall be assigned to Class II milk in lieu of the quantity determined under that subparagraph.

(3) Receipts of emergency milk not assigned to Class II milk shall be assigned to Class I milk.

§ 904.6 *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 § 904.5;

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

(4) The respective quantities which were sold, distributed, or used, including sales to other handlers and dealers, classified pursuant to § 904.3.

(b) *Reports of nonpool handlers.* Each nonpool handler shall file with the market administrator reports relating to his receipt 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 has 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 payments 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) *Outside cream purchases.* Each handler shall report, as requested by the market administrator, his purchases, if any, of bottling quality cream from nonpool handlers, showing the quantity and the source of each such purchase and the cost thereof at Boston.

(f) *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.

(g) *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.

§ 904.7 *Minimum class prices*—(a) *Class I prices.* (1) Each pool handler shall pay producers, in the manner set forth in § 904.9 and subject to the differentials set forth in paragraph (c) of this section, for Class I milk delivered by them, not less than the price per hundredweight determined for each month as follows:

(i) Using the period beginning with the 25th of the second preceding month and ending with the 24th of the immediately preceding month, compute the average of the highest prices reported daily by the United States Department of Agriculture for U. S. Grade A (U. S. 92-score) butter at wholesale in the New York market.

(ii) Using the midpoint of any range as one quotation, compute the average of all the hot roller process dry skim milk quotations per pound for "other brands, animal feed, carlots, bags, or barrels", and for "other brands, human consumption, carlots, bags, or barrels", published during the 30 days ending on the 24th day of the immediately preceding month in "The Producers' Price Current"; subtract 4 cents; and multiply the remainder by 1.8.

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

(iv) Subject to subdivisions (v), (vi), and (vii) of this subparagraph, the Class I price per hundredweight shall be as shown in the following table:

CLASS I PRICE SCHEDULE

Value computed pursuant to (iii) of this subparagraph (cents)		Class I price (dollars per hundredweight)	
At least—	But less than—	April through June	July through March
0	25	1.69	2.13
25	30	1.91	2.35
30	35	2.13	2.57
35	40	2.35	2.79
40	45	2.57	3.01
45	50	2.79	3.23
50	55	3.01	3.45
55	60	3.23	3.67
60	65	3.45	3.89
65	70	3.67	4.11
70	75	3.89	4.33
75	80	4.11	4.55
80	85	4.33	4.77
85	90	4.55	4.99
90	95	4.77	5.21
95	100	4.99	5.43
100	105	5.21	5.65

If the value computed pursuant to subdivision (iii) of this subparagraph is 105 cents or more the price shall be increased at the same rate as would result from further extension of this table.

(v) 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.

(vi) The Class I price shall not be less than $4.77 per hundredweight for the month of August 1947 and shall not be less than $5.21 per hundredweight for each of the months of September through December 1947.

(vii) The Class I price for January 1948 shall not be less than the December 1947 Class I price minus 44 cents, and the Class I price for February 1948 shall not be less than the January 1948 Class I price minus 44 cents.

(2) For the purpose of this section, each pool handler's Class I milk during

the month, after excluding receipts assigned to Class I milk pursuant to § 904.5 shall be allocated to his plants as follows:

(i) His Class I milk first shall be considered to have been the receipts at his city plants of milk from producers' farms, and of outside milk.

(ii) Thereafter, his Class I milk shall be considered to have been the receipts at his country plants of that milk received from producers' farms, and that outside milk, which was shipped as fluid milk products, other than cream, from each of his country plants, in the order of the nearness of the plants to Boston. However, shipments to plants located in the States of Maine, New Hampshire, Vermont, or New York, with respect to which utilization as Class II milk is established, shall not be allocated to Class I milk.

(b) *Class II prices.* Each pool handler shall pay producers, in the manner set forth in § 904.9 and subject to the differentials set forth in this section, for Class II milk delivered by them, not less than the price per hundredweight calculated by the market administrator for each month by combining in one sum such of the following computations as apply:

(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, multiply this result by 3.7, and subtract 27 cents.

(2) For any month for which no cream price as described in subparagraph (1) of this paragraph is reported, multiply the average price reported for such month by the United States Department of Agriculture for U. S. Grade A (U. S. 92-score) butter at wholesale in the Chicago market by 1.4, multiply this result by 3.7, and subtract 27 cents.

(3) Compute any plus amount for skim milk value which results from the following calculation. Using the midpoint in any range as one price, compute the average price per pound of nonfat dry milk solids in carlots for roller process human food products in barrels, and for hot roller process animal feed products in bags, as published during the month by the United States Department of Agriculture for New York City. Multiply each such average price by the applicable percentage indicated for the month in the following table and combine the results; subtract 4 cents; and multiply the remainder by 7.5.

Month	Percent	
	Human food products	Animal feed products
January	100	0
February	100	0
March	50	50
April	50	50
May	25	75
June	25	75
July	50	50
August	75	25
September	75	25
October	100	0
November	100	0
December	100	0

(c) *Plant handling and transportation differentials.* The minimum prices set forth in paragraphs (a) and (b) of this section shall be subject to the differentials contained in the following table for the zone applicable to the plant at which the milk is received from producers. For each country plant the zone shall be determined in accordance with the railroad freight mileage distance to Boston from the railroad shipping point for such plant. In case the rail tariff for the transportation of milk in carlots in tank cars, as published in the New England Joint Tariff, M–5, is increased or decreased, the differentials set forth in Column B for zones other than 201–210 miles shall be increased or decreased to the extent of any increase or decrease in the difference between the rail tariff for mileage distances of 201–210 miles inclusive and for the other applicable distances. Such adjustment shall be made to the nearest one-half cent per hundredweight, effective with the first complete month in which such increase or decrease in the rail tariff applies. For the purpose of this paragraph, it shall be considered that the rail tariff on milk received at a city plant is zero.

DIFFERENTIALS FOR DETERMINATION OF ZONE PRICES

A	B	C
Zone (miles)	Class I price differentials (cents per cwt.)	Class II price differentials (cents per cwt.)
City plant	+46.0	+29.0
41–50	+12.0	+5.0
51–60	+11.0	+5.0
61–70	+10.5	+5.0
71–80	+9.5	+5.0
81–90	+9.0	+5.0
91–100	+8.5	+5.0
101–110	+8.5	+1.5
111–120	+7.5	+1.5
121–130	+7.5	+1.5
131–140	+6.5	+1.5
141–150	+4.5	+1.5
151–160	+3.0	+0.5
161–170	+3.0	+0.5
171–180	+1.0	+0.5
181–190	+1.0	+0.5
191–200	0	+0.5
201–210	(1)	(1)
211–220	−3.5	0
221–230	−4.0	0
231–240	−4.5	0
241–250	−4.5	0
251–260	−5.5	−0.5
261–270	−6.0	−0.5
271–280	−6.5	−0.5
281–290	−7.0	−0.5
291–300	−8.0	−0.5
301–310	−11.0	−1.0
311–320	−11.0	−1.0
321–330	−12.0	−1.0
331–340	−12.0	−1.0
341–350	−12.5	−1.0
351–360	−12.5	−1.5
361–370	−12.5	−1.5
371–380	−13.0	−1.5
381–390	−13.0	−1.5
391 and over	−13.0	−1.5

[1] No differential.

(d) *Butter and cheese adjustment.* During the months of April, May, June, and July, the value of a pool handler's milk computed pursuant to § 904.8 (a) (2) shall be reduced by an amount determined as follows:

(1) Using the midpoint of any range as one price, compute the average of the daily prices for U. S. Grade A (U. S. 92-score) butter at wholesale in the New York market which are reported during the month by the United States Department of Agriculture, deduct 5 cents, and add 20 percent.

(2) Divide by 3.7 the value determined as applicable to milk delivered to country plants in the 201–250 freight mileage zone pursuant to subparagraph (1) or (2) of paragraph (b) of this section, whichever applies, and subtract therefrom the value determined in subparagraph (1) of this paragraph. The result is the butter and cheese differential.

(3) Determine the pounds of butterfat in Class II milk received from producers, which was processed into salted butter, Cheddar cheese, American Cheddar cheese, Colby cheese, washed curd cheese, or part skim Cheddar cheese at a plant of the first handler of such butterfat or at a plant of a second person to which such butterfat was moved.

(4) Subtract such portion of the quantity determined in subparagraph (3) of this paragraph as was disposed of by the handler or such second person in a form other than salted butter or one of the designated types of cheese.

(5) Multiply the remaining pounds of butterfat determined pursuant to subparagraph (4) of this paragraph by the butter and cheese differential determined pursuant to subparagraph (2) of this paragraph.

(e) *Use of equivalent prices in formulas.* If for any reason a price for any milk product specified by this section or § 904.9 (d) for use in computing class prices and for other purposes is not reported or published in the manner described by this section or § 904.9 (d), the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price which is specified.

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

(1) He shall announce any change in the Class I price on the 25th day of the month preceding the month in which such change is effective.

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

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

(1) Multiply the quantity of milk in each class by the price applicable pursuant to § 904.7 (a) and (b); and

(2) Add together the resulting value of each class.

(3) Adjust the value determined in subparagraph (2) of this paragraph as provided in § 904.7 (d).

(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 § 904.9 (b) (2) and (g) for milk received during each month since the effective date of the most recent amendment of this order;

(2) Add the total amount of payments required from handlers pursuant to § 904.9 (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 § 904.9;

(4) Deduct the amount of the plus differentials, and add the amount of the minus differentials, which are applicable pursuant to § 904.9 (e);

(5) Subtract the total amount of cooperative payments required by § 904.10 (b);

(6) Divide by the total quantity of milk for which a value is determined pursuant to subparagraph (1) of this paragraph;

(7) 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 § 904.9. 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 § 904.9 (e); and

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

§ 904.9 *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 of milk 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 § 904.8 (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 are less than or exceed the value of milk as required to be computed for such handler pursuant to § 904.8 (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 subparagraph (2) of paragraph (b) 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 pool handler shall, in making the 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: 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: *Provided,* That if no such cream price is reported, multiply the average price reported for such period by the United States Department of Agriculture for U. S. Grade A (U. S. 92-score) butter at wholesale in the Chicago market by 1.4, 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 § 904.7 (c), and to further differentials as follows:

(1) With respect to milk delivered by a producer whose farm is located more than 40 miles but not more than 80 miles from the State House in Boston, there shall be added 23 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 904.7 (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.

(2) With respect to milk delivered by a producer whose farm is located not more than 40 miles from the State House in Boston, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to § 904.7 (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) *Other differentials.* In making the payments to producers set forth in subparagraph (1) of paragraph (b) of this section, pool handlers may make deductions as follows:

(1) With respect to milk delivered by producers to a city plant which is located outside the marketing area and more than 14 miles from the State House in Boston, 10 cents per hundredweight;

(2) With respect to milk delivered by producers to a country plant, at which plant the average daily receipts of milk from producers are:

(i) Less than 17,000 but greater than 8,500 pounds, 4 cents per hundredweight, and

(ii) 8,500 pounds or less, 8 cents per hundredweight.

(g) *Payments on outside milk.* (1) Within 23 days after the end of each month, each pool handler, 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 § 904.7 (a) and the price pursuant to § 904.7 (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 § 904.7 (a) and the price pursuant to § 904.7 (b) effective for the location or freight mileage zone of the handler's plant.

(h) *Adjustment of overdue accounts.* Any balance due pursuant to this section, for any month since August 1, 1937, 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 paragraph (f) of this section and § 904.10, together with a description of the respective deductions; and

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

§ 904.10 *Payments to cooperative associations*[1]—(a) *Application and qualification for cooperative payments.* Any cooperative association of producers duly organized under the laws of any state may apply to the Secretary for a determination that it is qualified to receive cooperative payments in accordance with the provisions of this section. Upon notice of the filing of such an application, the market administrator shall set aside for each month, from the funds provided by handlers' payments to the market administrator pursuant to § 904.9, such amount as he estimates is ample to make payment to the applicant, and hold it in reserve until the Secretary has ruled upon the application. The applicant association shall be considered to be a qualified association entitled to receive such payments from the date fixed by the Secretary, if he determines that it meets all of the following requirements.

(1) It conforms to the requirements relating to character of organization, voting, dividend payments, and dealing in products of nonmembers, which are set forth in the Capper-Volstead Act and in the state laws under which the association is organized.

(2) It operates as a responsible producer-controlled marketing association exercising full authority in the sale of the milk of its members.

(3) It systematically checks the weights and tests of milk which its members deliver to plants not operated by the association.

(4) It guarantees payment to its members for milk delivered to plants not operated by the association.

(5) It maintains, either individually or together with other qualified associations, a competent staff for dealing with marketing problems and for providing information to its members.

(6) It constantly maintains close working relationships with its members.

(7) It collaborates with similar associations in activities incident to the maintenance and strengthening of collective bargaining by producers and the operation of a plan of uniform pricing of milk to handlers.

(8) It is in compliance with all applicable provisions of this order.

(b) *Cooperative payments.* On or before the 25th day after the end of each month, each qualified association shall be entitled to receive a cooperative payment from the funds provided by handlers' payments to the market administrator pursuant to § 904.9. The payment shall be made under the conditions and at the rates specified in this paragraph, and shall be subject to verification of the receipts and other items upon which such payment is based.

(1) Each qualified association shall be entitled to payment at the rate of 1 cent per hundredweight on the milk which its producer members deliver to the plant of a handler other than a qualified association; except on milk delivered by a producer who is also a member of another qualified association, and on milk delivered to a handler who fails to make applicable payments pursuant to § 904.9 (b) (2) and § 904.11 within 10 days after the end of the month in which he is required to do so. If the handler is required by paragraph (e) of this section to make deductions from members of the association at a rate lower than 1 cent per hundredweight, the payment pursuant to this subparagraph shall be at such lower rate.

(2) Each qualified association shall be entitled to payment at the rate of 2 cents per hundredweight on milk received from producers at a plant operated by that association.

(c) *Reports relating to cooperative payments.* Each qualified association shall, upon request by the market administrator, make reports to him with respect to its use of cooperative payments and its performance in meeting the requirements set forth as the basis for such payments, and shall file with him a copy of its balance sheet and operating statement at the close of each fiscal year.

(d) *Suspension of cooperative payments.* Whenever there is reason to believe that an association is no longer meeting the qualification requirements, the market administrator shall, upon request by the Secretary, suspend cooperative payments to it, and shall give the association written notice of the suspension. Such suspended payments shall be held in reserve until the Secretary has, after notice and opportunity for a hearing, ruled upon the performance of the association.

(e) *Deductions from payments to members.* (1) Each association which is entitled to receive cooperative payments on milk which its producer members deliver to a handler other than a qualified association may file a claim with the handler for amounts to be deducted from the handler's payments to such members. The claim shall contain a list of the producers, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unterminated membership contract with each producer, authorizing the claimed deduction.

(2) In making payments to his producers for milk received during the month, each handler shall make deductions in accordance with the association's claim, and shall pay the amount deducted to the association within 25 days after the end of the month.

§ 904.11 *Payments of administration expense.* 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 2.5 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, and shall apply to all of the handler's receipts of milk from producers and receipts of outside milk during the month.

§ 904.12 *Effective time, suspension, or termination*—(a) *Effective time.* The provisions of this order, or any amendment 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 of its provisions whenever he finds that this order or any of its provisions obstruct or do 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 power and duty of the market administrator.* 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 handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall:

(i) Continue in such capacity until removed by the Secretary;

(ii) From time to time account for all receipts and disbursements, and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct; and

(iii) If so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this order.

(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 amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market ad-

[1] Provisions of this section are identical to those contained in the marketing agreement tentatively approved by the Secretary June 30, 1947.

ministrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 904.13 *Agents.* The secretary may, by designation in writing, name any officer or employee of the United States, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this order.

[F. R. Doc. 47-6287; Filed, July 3, 1947; 8:47 a. m.]

[7 CFR, Part 927]

HANDLING OF MILK IN NEW YORK METROPOLITAN MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENT TO ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Supps., 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159), public hearings were held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the New York metropolitan area.

A public hearing was held at Utica, New York on March 17–21, 1947, and continued at New York City on March 24 and 25, 1947. Previously a public hearing was held at Albany, New York, on November 20, 1946. Action has been taken with respect to all except one of the issues which were developed at this earlier hearing. The issue upon which action has not been completed deals with contraseasonal changes in the Class I–A and Class II–A prices which might occur as the result of the formula-determined prices. A notice of recommended decision and opportunity to file written exceptions with respect to the issues developed at the March 1947 hearing and the open issue of the hearing held on November 20, 1946, was published in the FEDERAL REGISTER (12 F. R. 3838) on June 12, 1947. Exceptions have been filed to that recommended decision and were considered in arriving at the findings and conclusions contained herein.

Findings and conclusions. The material issues[1] presented at the March 1947 hearing (plus the issue remaining from the November 1946 hearing) are divided, for purposes of this decision, into three categories: (1) Those issues included in the notice of hearing with respect to which the submission of evidence has been postponed for a later hearing, and therefore concerning which no findings and conclusions are herein set forth, (2) those issues with respect to which findings and conclusions are being deferred pending further study and analysis of the hearing record, and (3) those issues with respect to which findings and conclusions are herein set forth.

The first category of issues consists of the following:

1. Elimination or revision of provisions relating to payments to cooperative associations (H. N. Nos. 46, 47, 48, 49, and 50).

2. Elimination or revision of provisions relating to location differentials (H. N. Nos. 41, 42, and 43).

The second category of issues consists of the following:

1. Revision of the pricing provision for Class I–C milk (H. N. Nos. 29, 30, and 31).

2. Elimination of the "floor provisions" as now contained in the pricing provisions for Class II–B, II–D, and II–E milk (H. N. Nos. 32 and 33).

3. Revision of the pricing provision for Class III milk (H. N. Nos. 35 and 36).

4. Elimination of the "floor provisions" and to make other changes in the pricing provisions for Class IV–A and IV–B milk (H. N. Nos. 6, 37, 38, 39, and 40).

5. A new method of calculating the butterfat differential used in connection with payments to producers (H. N. No. 45).

6. Revision of the pricing provision for Class V–B milk (H. N. No. 58).

7. Revision of provisions for payments for milk or milk products other than from producer sources (H. N. Nos. 52, 53, 54, 55, and 56).

The third category of issues consists of the following:

1. Revision of the method of determining the Class I–A and Class II–A prices:

(a) By preventing contraseasonal Class I–A and Class II–A price changes,

(b) By revision of the present Class I–A price formula,

(c) By replacing the present Class I–A price formula, with specific fixed prices, and

(d) By replacing the present Class I–A price formula with prices calculated on the basis of determinations of the cost of production plus a reasonable profit (H. N. Nos. 3 (of November 1946 hearing), 4, 5, and 19 to 28, inclusive).

2. A requirement that the market administrator publish a bulletin monthly and that it be sent to all producers, and that published information include a report on the activity of check testers (H. N. No. 1).

3. A requirement that on request of any handler an inspection must be made by the market administrator and a determination made by him as to what constitutes a plant, and that the handler be notified of such determination within 30 days of such request (H. N. No. 2).

4. A requirement that the market administrator issue at the request of any handler an interpretative ruling on the classification of milk utilized or moved in the manner described by the handler (H. N. No. 3).

5. Qualification of a plant to be a pool plant even though shipment of milk to the marketing area is prohibited for specified periods by reason of health authority permission for shipping approved skim milk from such plant (H. N. No. 7).

6. Modification of the provisions concerning the suspension of pool plant designations as to the classes of milk which are permitted or required to be included by the market administrator in his determination as to the desirable utilization of milk (H. N. Nos. 8 and 9).

7. The inclusion in the pool during April, May, and June of plants not designated as reserve pool plants (H. N. No. 10).

8. Public announcement each month by the market administrator of any plant included in the pool other than plants designated as reserve pool plants (H. N. No. 11).

9. Removal of the time limitation for establishing the classification of milk held in the form of frozen desserts (H. N. No. 12).

10. Classification as I–C, in any month in which the I–C price is higher than the I–A price, of milk shipped as milk to or through the marketing area but ultimately distributed in an area not regulated by the Secretary (H. N. No. 13).

11. Change procedure for issuance of rules and regulations by deleting reference to the first rules and regulations and by adding a specific requirement that a meeting to consider new rules or amendments be called within 30 days upon request of any handler (H. N. Nos. 14 and 15).

12. Extension of the time, from 48 hours to 7 days, allowed handlers for reporting transfers of cream in storage (H. N. No. 16).

13. Revision or elimination of the temperature requirements for cream held in storage as a basis for establishing its classification in Class II–B (H. N. No. 17).

14. Classification of frozen desserts in Class II–F when moved to a warehouse, as well as to a plant or purchaser as now provided in the Class II–F territory (H. N. No. 18).

15. Revision of the Class II–E price formula by changing the figure of "21.5" as contained therein to "25.5" (H. N. No. 34).

16. Provision for payment by handlers into the producer-settlement fund, and for later disposition, of payments due producers who cannot be located, and of payments concerning which dispute arises as to whether such payments are due producers (H. N. No. 44).

17. Revision in wording storage cream payment provision to more accurately describe the present requirement for payment (H. N. No. 51).

18. Provision for the payment of interest on accounts past due the producer-settlement fund and on monies unlawfully withheld by the market administrator (H. N. No. 57).

19. General.

The recommended decision contained rulings upon the proposed findings and conclusions submitted by interested parties in this proceeding. Such rulings are confirmed except as they are modi-

[1] The description of each issue will be followed by the numbers, as shown in the notice of hearing, of the proposals directly associated with that issue, thus: (H. N. No. --). All proposal numbers refer to the hearing notice issued March 7, 1947 unless otherwise indicated.

fied by the findings and conclusions set forth herein.

Exceptions were filed on behalf of the Milk Dealers' Association of Metropolitan New York, Inc.; Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc.; Eastern Milk Producers' Cooperative Association, Inc.; Mutual Cooperative of Independent Producers, Inc.; Association of Ice Cream Manufacturers of New York State; New York State Association of Refrigerated Warehouses; New England Milk Producers' Association; United Dairy Farmers' Division, District 50, United Mine Workers of America; Mt. Joy Farmers' Cooperative Association; and by Dr. Leland Spencer.

No exceptions were filed to the findings and conclusions contained in the aforesaid recommended decision with regard to issues (third category) 2, 3, 5, 7, 8, 9, 11, 12, 15, 16, 17, and 18. The findings and conclusions contained in the recommended decision on these issues are set forth herein without substantial change and are, in effect, adopted as the findings and conclusions of this decision. With regard to the findings and conclusions of the recommended decision to which specific exception has been taken, this decision contains a ruling thereon in the discussion of the material issue to which the exception refers.

Exception has been taken to the deferment of findings and conclusions concerning the revision of the pricing provisions for Class I–C milk. Study and analysis of the evidence in the hearing record with respect to this issue have not yet been completed. Findings and conclusions with respect to the issue are, therefore, deferred.

The following findings and conclusions on material issues are based upon the evidence introduced at the hearing and the record thereof. (Findings and conclusions are numbered to correspond to the numbers of the issues above set forth under the third category of issues.)

1. The present method of determining the Class I–A price should be continued by retention of the present butter-powder formula without revision. The formula should be supplemented, however, by adding a provision to prevent contraseasonal price changes, and by providing minimum floor prices of $4.58 per hundredweight for the month of August 1947, and $5.02 per hundredweight for the months of September through December 1947. Provision should also be made for limiting to 44 cents per hundredweight any reduction which might occur from December 1947 to January 1948 or from January to February 1948. No provision to prevent contraseasonal price changes in the Class II–A price should be adopted. The foregoing conforms to the standards set forth in section 8c (18) of the Agricultural Marketing Agreement Act of 1937, as amended.

It is essential that the production of pool milk be increased in the fall months in relation to production in the spring months, thus bringing about a seasonal pattern of production which is more nearly in line with market requirements. Significant seasonal variation in the Class I–A price is necessary to encourage such a seasonal pattern of production.

During the years 1940–1946, there was a trend toward wider variation between spring and fall levels of production. Seasonal variation in price tended to grow narrower during the same period. Sales of fluid milk during the years 1940–1946 increased more than production, not only in the New York market, but particularly so in other northeastern markets. Shortages in surrounding areas have resulted in heavy demands for milk from the New York milk shed, thereby accentuating the supply problem during the months of lowest production.

A seasonal increase in the returns to producers during the fall months equivalent to about 30 to 35 percent of such returns during the months of April–June is necessary to encourage less seasonal variation in production. Definite assurance of such a seasonal price relationship in 1947 should be provided by the establishment of a minimum floor price for Class I–A milk of $5.02 per hundredweight for the months of September through December 1947. As further safeguards against factors which might operate to offset the incentive for fall production, a floor price of $4.58 per hundredweight should be established for the month of August 1947, and provision should be made for limiting to 44 cents per hundredweight any reduction in the Class I–A price which might occur from December 1947 to January 1948 or from January to February 1948.

The level of the Class I–A price should, in general, move up and down consistent with changes in the level of prices of manufactured dairy products. Such adjustments in the general level of the Class I–A price should occur in such amounts and at such times as will result in a minimum of interference with necessary seasonal price changes. Accordingly, provision should be made in the order for controlling adjustments in the general level of the Class I–A price to the extent of providing that the Class I–A price for any of the months of September through December of any year should not be lower than in the preceding month, and that the Class I–A price for the months of March through June of any year should not be higher than in the preceding month. The provision to prevent seasonal price changes should be confined to periods of four months in order to result in a minimum of interference with necessary adjustments in the general level of the Class I–A price.

Evidence on the record concerning contraseasonal price changes relates only incidentally to the Class II–A price and fails to indicate that such a provision applied to the Class II–A price would have enough effect on the uniform price to warrant interference with formula changes in the Class II–A price.

Proposals to substitute fixed prices for the present pricing formula were considered at the hearing. Economic conditions during the last half of 1947, or after, cannot be determined on evidence in the record with sufficient accuracy to constitute a sound basis for fixing Class I–A prices for that period at a more exact and inflexible level than will result from the establishment of minimum floor prices as herein provided to assure minimum seasonal increases, and from the continued operation of the present butter-powder pricing formula. Retention of the present butter-powder pricing formula provides a method of establishing Class I–A prices after the period for which minimum floor prices can be established, and for prices for the months of July–December 1947 higher than the minimum floor prices, if justified by economic condition then prevailing.

Evidence on the record for revision of the present butter-powder formula as a method of fixing Class I–A prices relates only to proposed technical changes which could do no more than correct minor weakness of the present formula, rather than to changes in the basic factors necessary to produce a Class I–A price at the proper level and a price which changes at the proper time. The emphasis at the hearing on prices for the immediate future, rather than for the long run, indicates contemplation by handlers and producers of further consideration of the basis for pricing Class I–A milk at another hearing this year. A more complete analysis of the basic factors involved, and of the present formula in its entirety, should be considered at another hearing before making change in the present formula.

The average cost of producing milk was higher in February and March of 1947 than at the same time in 1946. Such cost increased, due principally to the price of feed, between February 15, 1947 and March 15, 1947. The cost of milk production during the last half of 1947 cannot be determined from evidence in the record. The level of production, both in terms of pool milk and production per day per dairy, was higher in the first part of 1947 than at the same time in 1946. Per capita sales of fluid milk in the marketing area were slightly lower in 1946 than in 1945 but still substantially higher than in 1940. Total sales of fluid milk in the marketing area in February 1947 fell below sales in the same month a year earlier for the first time since 1941.

Various proposals were considered at the hearing to establish the Class I–A price solely on the basis of the cost of production, or the cost of production plus a "reasonable" profit. A reasonable profit was not defined. It was proposed that the cost of production be determined from cost data submitted at frequent public hearings, and also that the function of determining the cost of production and of fixing the Class I–A price be delegated to a board of experts. The best available cost of production figures are estimates of the year-around cost. The cost of production varies widely between individual farms, between counties, and between states.

The cost of production is not the only factor affecting the supply of milk for the marketing area. In addition to the necessity for the consideration of other factors affecting supply, the economic conditions affecting the demand for milk in the marketing area are important factors which must also be considered if orderly marketing is to result. Further-

more, the Agricultural Marketing Agreement Act requires that due consideration be given to all of the economic conditions affecting both the supply and demand for milk in the marketing area.

Question was raised at the hearing concerning the level of the New York Class I–A price in relation to the Boston Class I price. The Class I–A butterfat differential is different from the butterfat differential in the Boston market. The existence of this difference precludes a complete and precise alignment of New York and Boston prices. Prices precisely the same for milk of one butterfat test would be different for milk of any other test. A different relationship of Class I prices between the two markets would not necessarily result in a constant and continuing alignment of the uniform or blended prices received by producers.

Exception was taken to the conclusion, as set forth in the recommended decision, that the present butter-powder formula should be retained as a method of pricing Class I–A milk. A conclusion to the contrary would necessitate adoption of some substitute method. Adoption of any substitute method considered at the hearing is not justified by evidence in the record. Accordingly, the ruling on the exception is that the butter-powder formula should be retained subject to the supplemental provisions herein set forth.

Exception was taken to the recommended conclusion, and to the recommended effectuating amendment, that provision should be made for limiting to 44 cents per hundredweight any reduction in the Class I–A price which might occur from December 1947 to January 1948 or from January to February 1948. This exception was on the basis that there is no evidence in the record to support a finding as to what the level of the Class I–A price should be in January or February 1948. The provision does not fix the absolute level of the Class I–A price during January and February 1948, but establishes only the lower limit in relation to the December 1947 price, thus providing insurance against a too precipitous and abrupt price decline. Subject only to this limitation, the exact level of the Class I–A price in January and February 1948 would be determined on the basis of the present butter-powder formula. Therefore, the exception is not granted.

Exceptions were taken to the recommended provision to prevent contraseasonal changes in the Class I–A price. Reasons supporting the exceptions were that (1) the recommended provision is wrong in principle and of no significance at this time, (2) the periods of September–December and March–June are too short, and (3) no notice was given in the March 1947 notice of hearing that such a provision would be considered, and no action can be taken on evidence in the November 20, 1946 hearing record since that record allegedly is closed.

The records of both hearings (November 20, 1946 and March 1947) support adoption of a provision to prevent contraseasonal price changes. The findings herein indicate the reasons for making the provision applicable only during the months of September–December and March–June. The March 1947 notice of hearing gave adequate notice for consideration of evidence to prevent contraseasonal changes in the Class I–A price. Numerous references to such a provision are in the record of the March 1947 hearing. Action taken following the November 20, 1946 hearing specifically deferred, in accordance with applicable regulations, conclusions with respect to the question of contraseasonal changes in the Class I–A and Class II–A prices. For these reasons and in accordance with the findings herein set forth, the exceptions are not granted.

Exceptions were taken to the recommended provision to establish floor prices for Class I–A milk of $4.58 for the months of July, August, and September 1947 and $5.02 for the months of October, November, and December 1947. The reasons advanced in support of the exceptions are that (1) such prices are inadequate to cover production costs or to result in a sufficient supply of milk during the last half of 1947, (2) evidence in the record supports higher floor prices during all or a part of the period, and (3) economic conditions prevailing since the hearing and now definitely in prospect merit official notice. Suggested revisions in the recommended decision are that the floor prices should be:

(1) $4.58 for July and $5.02 for August through December;

(2) $5.02 for July through September and $5.46 for October through December; or

(3) $4.58 for July, $5.02 for August and September and $5.46 for October through December.

Further analysis of the record, in connection with the consideration of the exceptions, indicates (1) the necessity of reliance upon feeding practices to a greater extent than on any adjustment thus far made in breeding practices to produce an adequate supply of milk during the fall of 1947, and (2) the definite prospect of the maintenance during 1947 of a relatively high level of feed costs.

Action has heretofore been taken fixing a Class I–A price of $4.58 for July 1947. As to later months, the exceptions are granted to the extent that it is hereby found and concluded that the Class I–A price should be not less than $4.58 for August 1947 and not less than $5.02 for the months of September through December 1947.

Exception was taken to the finding in the recommended decision that the level of the Class I–A price should, in general, move up and down consistent with changes in the level of prices of manufactured dairy products. This exception is not granted. Evidence in the record shows that changes in the level of prices of manufactured dairy products quite accurately reflect changes in the essential economic conditions affecting the supply of and demand for milk for the marketing area, and that such economic conditions are of major importance in establishing the general level of the Class I–A price.

Exception was also taken to the finding in the recommended decision that the cost of production is not the only factor affecting the supply of milk in the marketing area. This exception is not granted. The requirements of other markets for milk from the same general production area is definitely shown to be a factor affecting the supply of milk for the New York metropolitan milk marketing area.

Exception was taken to the findings in the recommended decision concerning the relationship between the New York Class I–A price and the Boston Class I price. The exception is not granted. Argument in support of the exception was to the effect that the existing disparity between the New York and Boston uniform or blended prices is shown by evidence in the record to be caused almost entirely by the fact that the Boston Class I price is 19 cents higher than the New York Class I–A price. It is not conceded that the evidence so indicates.

2. No provision should be included in the order requiring monthly publication by the market administrator of a bulletin or that such bulletin contain reports on the activity of check testers or that it be sent to all producers.

It has not been shown that the function of reaching producers with necessary market information would thereby be materially enhanced. Producers are not now deprived of essential and timely information by reason of publication of the market administrator's bulletin less frequently than monthly. Cooperative associations receiving cooperative payments are relied upon to provide, and to some extent at least do provide, their members with essential market information. The market administrator's bulletin is now sent to all producers who are not members of qualified cooperatives and to others on request. The activities of check testers, or the amount of check testing performed would not be changed by adoption of this proposal. Reports on the activities of check testers are now authorized.

3. The duty of the market administrator relative to the making of inspections and determinations as to what constitutes a plant should be amended by adding a provision requiring prompt determination by the market administrator, upon receipt of request therefor by any handler, and prompt notice to the handler of such determination.

The market administrator's determination of what constitutes a plant is important and handlers are entitled to such determination. The evidence does not show, however, what is involved in making an inspection and a determination nor the probable number of requests. It is entirely possible that 30 days would be an insufficient time in which to make all requested inspections and determinations. Request for reinspection should include a showing of the necessity for inspection by reason of conditions which have changed since a previous determination.

4. The order should not be amended by adding, as a duty of the market administrator, a requirement that he issue at the request of any handler an interpretative ruling on the classification of milk to be utilized or moved in the manner described by the handler. The appropriate solution of the problem here presented is the clarification of the order, or the rules and regulations issued by

the market administrator, to the extent necessary to eliminate the need for interpretative rulings.

Administrative difficulty would arise in determining whether milk was utilized or moved precisely as described in the request.

Under the proposal an erroneous prospective ruling would be final if in favor of the petitioning handler. However, the petitioning handler could at will disregard an erroneous unfavorable ruling and establish a correct classification by subsequent appeal. No method was proposed to protect other interested persons against erroneous prospective rulings.

No satisfactory method was proposed which would avoid prospective rulings upon purely hypothetical facts.

No specifications have been proposed for inclusion in a description of a proposed utilization or movement of facts and circumstances which are comparable with the facts and circumstances which the market administrator, pursuant to provisions of the order and the rules and regulations, would be required to consider in determining the final classification of milk.

Exception was taken by the Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc. to the conclusion in the recommended decision that the order should not be amended by adding, as a duty of the market administrator, a requirement that he issue at the request of any handler an interpretative ruling on the classification of milk to be utilized or moved in a manner described by the handler. The findings in the recommended decision, and herein affirmed, on the basis of evidence in the record outweigh the reasons advanced in support of the exception. The exception is not granted.

5. The proposal concerning the qualification of a plant to be a pool plant, even though shipments of milk to the marketing area are prohibited for specified periods by reason of health authority permission for shipping approved skim milk from such plant should be adopted.

A plant given health authority permission for the shipment of approved skim milk is in the same category as a plant which is given permission to receive unapproved milk or skim milk insofar as its qualification to ship milk to the marketing area is concerned. The addition of this proposal more accurately describes the conditions under which it is intended that a plant be considered as being in a position to meet the requirements of a source of milk for the marketing area.

6. No change should be made in the order with respect to the classes of milk which must be included by the market administrator in making his determination of the desirable utilization of milk in connection with the conditions under which pool plant designations may be suspended.

Inclusion of the classes of milk, which the proposal would require to be included in the desirable utilization of milk, is now permitted except for Class II-F.

The prices for Class II-A, II-B and II-F milk, particularly during the months of short production, are lower than the prices for Class I-A and Class I-C milk. The proponents of this proposal are also requesting a further reduction in prices for Class II-B and II-F milk. There are numerous areas outside of the marketing area which depend upon pool milk during the low production period of the year to supplement their regular sources of supply, and in addition, numerous handlers distributing milk in the marketing area also distribute milk in other areas and operate plants approved for the shipment of milk both to the marketing area and to such other areas.

While it has also been the practice of New York City ice cream manufacturers to utilize for ice cream purposes a portion of the current production of pool milk during the low production period of the year, there is available to them butterfat from other sources, among which are butter and storage cream, which are not available as sources of milk for distribution as fluid milk. Whether or not ice cream manufacturers are restricted to plants approved by New York City health authorities as sources of fresh supplies depends upon regulations of such health authorities rather than upon provisions of Order No. 27. It was not shown that the health authorities could not permit the use of fresh supplies from other than normally approved sources if conditions so warrant. The order cannot properly require the market administrator to endeavor to influence the activities or policies of marketing area health authorities.

Ice cream manufacturers are not restricted by Order No. 27 to pool plants as sources of fresh supplies of butterfat and other milk solids. Plants furnishing fresh supplies for ice cream can be withheld or withdrawn from the pool by the handler if he considers it to be in his interest to do so, and irrespective of whether such plants are approved by the health authority.

The present provisions of the order with respect to the desirable utilization of milk may result, by reason of the issuance of a determination of the desirable utilization of milk in which ice cream classes are not specified, in the utilization by a handler in fluid milk classes of milk which would otherwise be utilized in ice cream. Such a determination, however, does not preclude the handler from utilizing milk in ice cream, nor does it follow that a handler's pool plant designation will be automatically suspended or cancelled if milk is so utilized. A determination of the desirable utilization of milk under the present provisions of the order constitutes a standard which, if met by a handler, insures him during most months against suspension of pool plant designations, and during all months against cancellation of pool plant designations.

Evidence in the record does not show that the present provisions of the order have prevented ice cream manufacturers from marketing a satisfactory product and in sufficient volume to meet market requirements for frozen desserts. The authority of the market administrator under the present provisions of the order authorizing the suspension of pool plant designations has not been exercised in an arbitrary manner.

Several exceptions were taken by the Association of Ice Cream Manufacturers of New York State to the findings and conclusion set forth therein concerning issue No. 6. Their exceptions were (1) to the conclusion that "no change should be made in the order with respect to the classes of milk which must be included by the market administrator in making his determination of the desirable utilization of milk in connection with the conditions under which pool plant designations may be suspended." (2) to certain of the findings set forth in the recommended decision and (3) to the failure to make certain additional findings.

The conclusion to which exception was taken is herein affirmed and the exception is not granted. Exception was taken to the finding that "The prices for Class II-A, II-B, and II-F milk, particularly during the months of short production, are lower than the prices for Class I-A and Class I-C milk. The proponents of this proposal are also requesting a further reduction in prices for Classes II-B and II-F." The reason advanced for the exception was that the finding is neither relevant nor material to the issue since the determination of the desirable utilization of milk is a matter completely disassociated from price. The exception is not granted. The provision in question cannot logically be considered to be unrelated to the price of the various classes of milk. Price is an important consideration influencing the decision of a handler as to whether plants operated by him are to be withheld or withdrawn from the pool. The utilization of milk can hardly be considered to be a desirable utilization of milk from the standpoint of producers, if it tends to result in the utilization of milk in low priced classes at a time when higher priced uses are available. If, as alleged, the price of Class I-A milk in relation to the price of Class II-B is not material, a handler can readily effect the desirable utilization of milk as determined, by the utilization of Class I-A milk in the manufacture of ice cream.

Each of the exceptions numbered 3, 4, 5, 6, and 7 taken by the Association of Ice Cream Manufacturers of New York State are to the failure to make certain additional findings. After consideration of these exceptions certain new findings are herein set forth. Otherwise, each of these exceptions is denied.

Exceptions 8 and 9 of the Association of Ice Cream Manufacturers of New York State allege error in making certain findings. The findings in the recommended decision to which these two exceptions refer have been revised as set forth herein. Otherwise, the exceptions and the proposed substitute findings are denied.

Exception was also taken to the refusal of the Assistant Administrator to rule that the present § 927.3 (a) (4) (iv) is illegal, and to his failure to find that "The utilization of milk in any class within the marketing area may not lawfully be prohibited or limited with respect to a product in which a health authority of the area requires approved milk." The latter finding is requested

for the first time in such exceptions. Section 8c (18) and section 8c (5) (G) of the act are cited in support of such contentions.

These exceptions are overruled and the proposed finding is not made. Section 927.3 (a) (4) (iv) of Order No. 27 was not shown to be illegal. It is neither inconsistent with section 8c (18) of the act, nor does it prohibit or limit the marketing of milk or its products in the marketing area within the meaning of section 8c (5) (G) of the act.

7. The provisions for automatic designation of a pool plant as a pool plant during the months of April, May, and June on the basis of milk sold or distributed in, or shipped to the marketing area from such plant should be clarified to leave no question that the requirement for shipment of 60 percent of the milk received during the preceding period of October, November, and December applies only to a plant at which some milk was in fact received directly from dairy farmers during such preceding period.

The pool status of a plant during April, May, and June is uncertain in the case of a plant not designated as a reserve pool plant and at which no milk was received from dairy farmers during the preceding October, November, and December. The proposed amendment will eliminate that uncertainty, and will not materially impair the effectiveness of the provision nor result in practices contrary to the interests of handlers or producers.

8. There should be included in the order a provision requiring the market administrator to make public each month the location, and the name of the operator, of each plant other than a designated reserve pool plant, for which a report of receipts from dairy farmers was used in the computation of the uniform price for the previous month.

It might be desirable that the market administrator make public at the time of announcement of the uniform price, the location, and name of the operator, of each plant automatically designated, in accordance with § 927.3 (b), as a pool plant for the previous month by reason of shipment of Class I–A milk. However, such information is not at that time available. The market administrator, in releasing such information, would have to rely solely on the unverified report of the handler. Plants automatically designated as pool plants pursuant to § 927.3 (b) can be determined only after verification of the handler's report. Handler's reports for any month cannot be verified by the 14th of the following month. The market administrator, consequently, is in a position to make public at the time of announcing the uniform price only the location, and the name of the operator, of each plant the report for which was used, pursuant to § 927.3 (b), in the computation of the uniform price for the previous month. Such information will probably include most, if not all, of the information requested by the proponents.

9. The proposal to remove the time limitation for establishing the classification of milk held in the form of frozen desserts should not be adopted at this time.

This proposal involves the apparent necessity or desire on the part of ice cream manufacturers to hold frozen desserts in inventory longer than the period permitted for establishing classification. Adoption of this proposal could materially accentuate the problem of accounting for milk. The proponent of this proposal, in its brief filed, recognized administrative difficulties involved, and concluded with the statement: "Therefore, we desire to give further study to the problem, with the view toward overcoming such difficulties through a more complete suggestion at a later date."

10. The order should not be amended to provide that in any month in which the Class I–C price is higher than the Class I–A price, milk shipped to or through the marketing area but ultimately distributed in an area not regulated by the Secretary should be classified as Class I–C rather than as Class I–A. However, the words "which has not passed through the marketing area, but including milk which was received directly from producers at a plant in the marketing area," as they appear in the Class I–C definition, should be deleted.

The proposal was designed to deny handlers a lower price on milk distributed in the Class I–C territory merely by reason of having first transported the milk in bulk through the marketing area. This objective would be more appropriately accomplished by the recommended change in the Class I–C definition.

A change in § 927.4 (a) (3) (i), as proposed, would be inconsistent with § 927.5 (c) (3), the definition of Class I–C milk. Section 927.4 (a) (3) (i) provides that milk shipped in the form of milk to a plant in the marketing area shall be classified as Class I–A, and constitutes a condition to which the Class I–C definition is subject. Deletion from the Class I–C definition of the above quoted words leaves a definition which, together with § 927.4 (a) (3) (i) defines milk ultimately distributed in an area not regulated by an order of the Secretary as Class I–C unless the milk was previously shipped in the form of milk from the plant at which it was received from dairy farmers to a plant in the marketing area.

Exception was taken by the Milk Dealers' Association of Metropolitan New York, Inc., to the proposed amendment No. 6, the definition of Class I–C milk, as set forth in the recommended decision. The basis of the exception was that the proposed amendment does not solve the alleged problem; that is, that milk shipped in the form of milk to a plant in the marketing area and ultimately distributed in the I–C area would still be Class I–A milk, even though the price of Class I–C milk might be higher than the price of Class I–A milk. It is true that the proposed amendment will result in no change with respect to milk shipped in the form of milk to a plant in the marketing area, but it will clarify the order with respect to milk ultimately distributed in the I–C area and which has not previously been shipped in the form of milk to a plant in the marketing area. This record does not justify a more extensive change. The exception, therefore, is not granted.

11. The procedure for issuance by the market administrator of rules and regulations should be amended by deletion of language, now obsolete, relative to issuance of the first rules and regulations, and by including a provision requiring the market administrator, within 30 days after receipt of a written request of any handler for issuance, amendment or repeal of any rule, to either call a meeting for consideration of such request or notify the handler that the request is denied and of the reasons for denial.

Effective administration of the order and proper exercising by the market administrator of his function in the issuance of necessary rules and regulations to effectuate the terms and provisions of the classification section of the order requires prompt consideration by the market administrator of evidence of the necessity for the issuance, amendment or repeal of a rule.

Requests of handlers showing evidence of the necessity for issuance, amendment or repeal of any rule have been given prompt consideration. Handlers have not been denied an opportunity to be heard on such requests. Proponents intended to allow the market administrator wide discretion in determining what is a bona fide request. Adoption of the proposal results in expressly setting forth in the order, and in more specific terms, the already existing responsibility of the market administrator in the issuance of the necessary rules and regulations.

12. The time allowed for reporting the transfer of cream from one licensed cold storage warehouse to another should be extended from 48 hours to 7 days.

A period of 7 days in which to report transfers of storage cream is a more reasonable allowance of time than is the period of 48 hours. Handlers experience difficulty giving notice within 48 hours. No necessary purpose is served by a provision requiring notice within a period shorter than 7 days.

13. There should be deleted from the order the requirements as to the temperature below which cream must be held in a licensed cold storage warehouse for purposes of qualifying it for a II–B classification.

Present temperature requirements were originally adopted as a safeguard against misuse of a provision designed to encourage the storage of cream. The order contains other such safeguards. The burden on warehouse operators resulting from the present temperature requirements causes reluctance to accept cream for storage thus creating a potential scarcity of storage space for cream. Storage warehouses equip themselves with recording thermometers only for the purpose of meeting the storage cream requirements of the order. The failure to meet the temperature requirements frequently results from the unavoidable breakdown of recording thermometers and the inability to repair them promptly.

The breakdown of recording thermometers results in failure to meet requirements of the order, even though the

cream is actually held at the required temperatures. Cream held in storage for 28 days or longer is not physically suitable for Class II–A purposes unless held during such period in a frozen condition.

Exception was taken by the New York State Association of Refrigerated Warehouses to the proposed elimination from the Class II–B definition of the specific temperature requirements for cream held in storage as a condition for its classification in Class II–B. The reasons advanced in support of the exception were that the elimination of temperature requirements would jeopardize the maintenance of quality in storage cream, and open the door to abuses inconsistent with the objectives of the order. These reasons do not appear, on the basis of the evidence in the hearing record, to be sufficient to outweigh the advantages resulting from the elimination of the specific temperature requirements. The exception is not granted.

14. The proposal to classify frozen desserts as Class II–F on the basis of shipments to a warehouse as well as to a plant or purchaser in the II–F territory should not be adopted.

Adoption of this proposal would extend a privilege to ice cream manufacturers operating in the II–F territory which is not extended to manufacturers of other products or to ice cream manufacturers operating in other territories. To the extent that a warehouse is a point of storage rather than a point of distribution, as in the case of a plant or a purchaser, adoption of this proposal could have the effect of extending the period for establishing classification with respect to frozen desserts in the II–F territory.

Exception was taken by the Association of Ice Cream Manufacturers of New York State to the findings and conclusion No. 14 set forth in the recommended decision with respect to the classification of frozen desserts as Class II–F on the basis of shipments to a warehouse in the II–F territory, and to failure to make a different finding. Further analysis of the evidence in the record incident to the consideration of these exceptions fails to support revision of the recommended findings and conclusion. The exceptions are not granted.

15. The proposal to revise the Class II–E price formula by changing the figure "21.5" to "25.5" should not be adopted.

This proposal was withdrawn during the hearing by its proponent and no evidence was submitted in support of the proposal.

16. A new provision should be included in the order to provide for payment by handlers into the producer-settlement fund, and for later disposition, of payments due producers who cannot be located, and of payments concerning which dispute arises as to whether such payments are actually due producers.

This provision will assist in the administration of the order and more completely effectuate its terms and provisions.

17. The storage cream payment provision should be reworded as set forth in proposal No. 51.

Adoption of this proposal makes no substantive change in the order, but merely clarifies the present provision and more accurately describes the conditions under which storage cream payments are at present authorized.

18. The proposal for payment of interest on accounts past due to the producer-settlement fund and on monies unlawfully withheld by the market administrator should not be adopted at this time.

The absence of such a provision was not shown to have adversely affected the interests of producers or handlers. The record contains insufficient detail with respect to several questions involved, such as, the identity of monies unlawfully withheld by the market administrator and the date on which interest would begin to accrue.

General exception was taken on behalf of United Dairy Farmers' Division, District 50, United Mine Workers of America to the proposed findings as a whole, as set forth in the recommended decision, on the ground that they do not reflect the evidence received at the hearing. This exception was taken with no indication as to specific instances in which the recommended findings do not reflect evidence in the record. The exception is denied.

Exception was taken conditionally by the Milk Dealers' Association of Metropolitan New York, Inc., to the failure of the recommended decision to contain recommended rulings on certain findings and rulings proposed by that association dealing with questions of law and procedure. The exception was on the condition that the sentence, "These requested rulings of law were not shown to be material and necessary to the decision of any issue decided herein and they are accordingly not made herein", means final dismissal of the proposed findings and rulings. Since the above quoted sentence does not mean final dismissal but merely deferment of the requested rulings pending a decision on issues to which such requested rulings are shown to be material and necessary, it is considered that no exception has been taken to the failure to make the requested rulings at this time. A similar exception taken by the Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., likewise is denied for the same reasons.

19. *General.* (a) The proposed marketing agreement and the proposed amendments to the order, as amended, 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 proposed amendments to the order, as amended, regulates the handling of milk in the same manner and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentatively approved marketing agreement upon which the hearings have 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 § 2 and § 8 (e) of the act are not reasonable in view of the price of feed, 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 proposed amendments to the order, as amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area" and "Order Amending the Order, As Amended, Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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

This decision filed at Washington, D. C., this 30th day of June 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

Order, Amending the Order, as Amended, Regulating the Handling of Milk in the New York Metropolitan Milk Marketing Area [1]

§ 927.1 *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159), public hearings were held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the New York metropolitan milk marketing area. Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(a) The said order, as amended and as hereby further amended, and all of the terms and conditions of said order,

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

as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(b) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 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 supplies of and demand for such milk and the minimum prices specified in the order as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The said order, as amended and as hereby further amended, regulates 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 a marketing agreement upon which hearings have been held.

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

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New York metropolitan milk marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. Amend § 927.2 (d) (10) to read:

(10) The market administrator, shall from time to time, cause inspections to be made of the buildings, facilities and surroundings of the plant and shall notify handlers of his determination as to what constitutes the plan and its equipment. If any handler makes written request for such determination, the market administrator shall promptly notify such handler of his determination: *Provided*, That if the request is for a revised determination or for affirmation of a previous determination, the handler shall set forth in his request the changed conditions which he believes make a new determination necessary. Such determination shall be ruling for all purposes hereunder, and any revision in the determination of which handlers have been notified shall be effective not earlier than the date of notice to handlers of such revised determination.

2. Amend § 927.3 (a) (3) (ii) by adding the words: "or for shipment of approved skim milk from such plant" at the end of the proviso contained therein so that the proviso will read: "*Provided*, That approval by a health authority of the plant as a source of milk for the marketing area shall constitute sufficient evidence that this requirement is being met even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant; and"

3. Amend § 927.3 (b) by changing the first proviso therein to read: "*Provided*, That for the months of April, May, or June no plant at which milk was received from dairy farmers during the preceding period of October, November, and December shall be a pool plant on this basis, unless at least 60 percent of such milk was classified in Class I–A, and, either directly, or through other plants, was sold or distributed in or shipped to the marketing area in the form of milk." and by adding at the end of § 927.3 (b) the following sentence: "At the time of announcing the uniform price for each month, the market administrator shall make public the location, and name of the operator, of any plant for which a report of receipts from dairy farmers was used, pursuant to this paragraph, in the computation of that uniform price."

4. Amend § 927.4 (a) (2) by changing the proviso contained therein to read: "*Provided*, That the holding of milk in the form of cream in a licensed cold storage warehouse for at least 7 days shall constitute that portion of the handling of such cream required pursuant to § 927.4 (c) (5) that is required to be performed during the month following its receipt from dairy farmers."

5. Amend § 927.4 (b) by deleting the two provisos contained therein and substituting the following:

Provided, That at any time upon a determination by the Secretary that an emergency exists which requires the immediate adoption of rules and regulations, the market administrator may issue, with the approval of the Secretary, temporary rules and regulations without regard to the following procedure:

Provided further, That if any interested person makes written request for the issuance, amendment, or repeal of any rule, the market administrator shall within 30 days either issue notice of meeting pursuant to (1) of this paragraph or deny such request, and except in affirming a prior denial, or where the denial is self-explanatory, shall state the grounds for such denial.

6. Amend § 927.4 (c) (3) to read:

(3) Class I–C milk shall be all milk which leaves a plant as milk, or cultured or flavored milk drinks containing 3.0 percent butterfat or more, and which is ultimately distributed in an area not regulated by an order of the Secretary.

7. Amend § 927.4 (c) (5) to read as follows:

(5) Class II–B milk shall be all milk, except as set forth in (7), (8), and (9) of this paragraph, the butterfat from which leaves or is on hand at a plant in the form of plain condensed milk, frozen desserts or homogenized mixtures; or which leaves or is on hand at a plant in the form of cream which is subsequently held in a licensed cold storage warehouse for at least 28 days, and which is subject at all times to being inspected by a representative of the market administrator to determine the physical presence of the cream. After the first 7 days such cream may be moved from one licensed cold storage warehouse to another: *Provided*, That the market administrator receives notice of such removal within 7 days thereafter. Any handler whose report claimed the original classification of milk in this class shall be liable under the provisions of § 927.9 (e) for the difference between the Class II–B and Class II–A prices for the month in which the II–B classification was claimed on any such milk, if the storage of the cream does not comply with all the requirements of this subparagraph.

8. Amend § 927.5 (a) (1) by deleting that portion of such subparagraph preceding the table contained therein and by substituting therefor the following:

(1) Except as provided in subdivisions (i), (ii), and (iii) of this subparagraph, for Class I–A milk the price per hundredweight during each month shall be as set forth in the following table:

and by adding after the table contained therein the following three subdivisions:

(i) The Class I–A price for any of the months of March through June of each year shall not be higher than the Class I–A price for the immediately preceding month, and the Class I–A price for any of the months of September through December of each year shall not be lower than the Class I–A price for the immediately preceding month.

(ii) The Class I–A price shall not be less than $4.58 per hundredweight for the month of August 1947, and shall not be less than $5.02 per hundredweight for each of the months of September through December 1947.

(iii) The Class I–A price for January 1948 shall not be less than the December 1947 Class I–A price minus 44 cents, and the Class I–A price for February 1948 shall not be less than the January 1948 Class I–A price minus 44 cents.

9. Amend § 927.8 (a) by adding at the end thereof the following: "*Provided* That if a handler claims that he cannot make the required payment because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, such payment shall be made to the producer-settlement fund, and in the event that a lawful claim is later established, the market administrator shall make such payment from the producer-settlement fund. *Provided further*, That, if not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the market administrator's finding upon verification as provided above, such payment shall be made to the producer-settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed, or until the handler submits proof to the market administrator that the required payment has been made to the producer

or association of producers, in which latter event the payment shall be refunded to the handler."

10. Amend § 927.9 (g) by deleting therefrom the words "and was used in Classes II–D, II–E, or II–F during the months of July to March, inclusive, or in Class IV–A during the months of January to March, inclusive." and by substituting therefor the words: "and was assigned, in accordance with the provisions of the rules and regulations issued by the market administrator pursuant to § 927.4 (b), to Classes II–D, II–E, or II–F during the months of July to March, inclusive, or to Class IV–A during the months of January to March, inclusive."

[F. R. Doc. 47–6289; Filed, July 3, 1947; 8:47 a. m.]

[7 CFR, Part 934]

Handling of Milk In Lowell-Lawrence, Mass., Marketing Area

Decision With Respect to Proposed Marketing Agreement and to Proposed Amendments With Respect to Order

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Cum. Supp. 900.1 et seq., 11 F. R. 7737, 12 F. R. 1159), public hearings were held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Lowell-Lawrence, Massachusetts, marketing area.

A hearing was held at Lawrence, Massachusetts, on March 20, 1947. Previously, a hearing was held at Boston on November 20, 1946, to consider amendments to Order No. 34, which had been proposed by cooperative associations of producers and by the Dairy Branch. Action has been taken with respect to all of the issues except one which were developed at that hearing. The issue upon which action has not been completed deals with contraseasonal changes in the Class I price which might occur as a result of the formula-determined price. A notice of recommended decision and opportunity to file written exceptions with respect to the issues developed at the March 1947 hearing and the open issue of the hearing held November 20, 1946, was published in the Federal Register May 30, 1947 (12 F. R. 3535). Exceptions have been filed to that recommended decision and were considered in arriving at the findings and conclusions contained herein.

Findings and conclusions. The issues which were listed in the notice and which were developed at the hearing in March 1947 are grouped under the following headings. The issue developed at the hearing held November 20, 1946, is included under the issue "Determination of Class I prices."

(1) Determination of Class I prices.
(2) Emergency price provision.
(3) Reports regarding individual producers.
(4) Reports of payments to producers.
(5) Maintenance of records by handlers.
(6) Expense of administration.
(7) Relationship between Class II prices in Boston and in Lowell-Lawrence.
(8) General.

Exceptions were filed on behalf of New England Milk Producers' Association and H. P. Hood and Sons, Inc. No exceptions were filed to the findings and conclusions contained in the aforesaid recommended decision with regard to issues (2), (4), (5), (6), and (7). The findings and conclusions contained in the recommended decision on these issues are adopted as the findings and conclusions of this decision. With regard to the findings and conclusions of the recommended decision to which specific exception has been taken, this decision contains a ruling thereon in the discussion of the material issue to which the exception refers.

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

(1) *Determination of Class I prices.* The butter-powder formula for determining the Class I price should be retained in its present form but minimum floor prices for the period from August 1947 through December 1947 should be provided and there should be a provision to prevent contraseasonal changes in the Class I price. The minimum floor price should be $5.23 per hundredweight in August 1947 and $5.67 for each of the months of September through December 1947. If the formula produces a price higher than $5.67 in August, September, October, or November, this price should continue to the end of the year. The maximum drop between December and January and between January and February should be 44 cents. These prices are in conformity with those set forth for the Greater Boston marketing area in a decision of the Secretary of Agriculture issued June 1947.

There is a serious need for encouraging a shift toward more fall production in New England. Minimum Class I floor prices are required for each month through December 1947 in order to assure a substantial rise in prices from the spring to the fall and thus develop a better seasonal pattern of production in this area.

The closeness of the Boston and Lowell-Lawrence marketing areas and the overlapping of milk sheds necessitate a close correlation of price plans and, consequently, of the actual Class I prices. Since it is possible for certain producers under Order No. 34 to shift to Boston city plants if the price there becomes more attractive, the basic Class I price under the Lowell-Lawrence order should reflect the higher differential now applicable at Boston city plants as a result of the increase in freight rates effective January 1, 1947. A handler excepted to the alignment of the Lowell-Lawrence Class I prices with the Class I prices established for Boston city plants, contending that the prices resulting from this alignment were not proposed, discussed, or supported at the hearing. This exception is without merit. The price proposal in the hearing notice was based upon this alignment, and the evidence clearly indicated that the Lowell-Lawrence Class I prices should be identical to the Class I prices at Boston city plants in order to discourage the shifting of producers between these two markets.

In 1946 a start was made in New England on a program of encouraging more milk in the fall months. The current prices and rates paid for feed, labor, and farm machinery are higher than last year. These factors indicate that the program to encourage more fall production may be seriously hampered unless producers are assured of absolute floor prices for the last quarter of 1947 as high as the floor prices established in 1946. Absolute floor prices should be established for July and August at 44 cents above the prices established for May and June to assure a seasonal rise this year on July 1. The short season rise in prices which should normally take place on October 1 should be advanced to September 1 this year in order to encourage feeding during the fall season to get more milk this fall. The current trend toward greater milk production this year with some indication of smaller Class I sales does not justify absolute floor prices for Class I milk for the last quarter of 1947 higher than the last quarter of 1946.

The uncertainty of economic conditions in the fall and winter requires a safeguard in addition to minimum floor prices on Class I milk. The butter-powder formula should be retained to give producers the benefit of any increase over the floor prices which may be justified by the prices of other dairy products and by the general price level in the fall and winter. The butter-powder formula should be modified to prevent contraseasonal price changes in the months just preceding or during the season of greatest shortage or seasonal flush production. Generally, the Class I price for any of the months of September through December of any year should not be lower than the Class I price in effect for the preceding month and the Class I price for the months of March through June of any year should not be higher than the Class I price in effect for the preceding month. The provision to prevent a contraseasonal price change will avoid nullification of the seasonal price plan by movements of the general price level. It is not considered advisable to provide for complete prevention of downward price movements in the last half of the year or upward price movements in the first half because such a provision would hold back unduly adjustments to the general price level.

Producers contended that the butter-powder formula method of determining the Class I price should be deleted entirely from the order and fixed prices substituted for it. Exact prices cannot be determined from this record for nine months to a year in advance. The present trend toward increasing production and decreasing consumption and the general uncertainty as to business conditions this fall and winter preclude a fixed guarantee of exact Class I prices. The present butter-powder formula will

establish prices this fall above the floor prices named if conditions warrant higher prices, and will provide a method of pricing after December. If the rise in prices of butter and nonfat dry milk solids which took place in 1946 is repeated in 1947, the formula will establish prices as high as those established in November 1946.

(2) *Emergency price provision.* The emergency price provision should be revised to delete references to subsidies and maximum uniform prices which were wartime measures and are no longer in effect.

(3) *Reports regarding individual producers.* Subparagraphs (1), (3), and (4) of paragraph (c) and paragraph (d) of § 934.7 should be deleted. It is recommended that a new § 934.7 (c) be incorporated in the order and that it require submission of individual producer reports within seven days of the events specified.

Section 934.7 (c) (1) was originally put in the order for use in connection with base ratings. It has never been used and should be deleted. Section 934.7 (c) (3) provides for the reporting by handlers of a schedule of transportation rates and paragraph (c) (4) provides for the reporting of any changes in the rates charged to producers for moving their milk from the farm to the handler's plant. Section 934.7 (d) provides for the announcement of these rates and rate changes. The reporting, compilation, and publication of information on these transportation rates constitute a burden upon the market administrator and upon the handlers. The information is not sufficiently illuminating to justify the burden. Each producer is in a position to appraise his own rates and, if dissatisfied, can make changes in his hauling arrangements.

The order does not now provide specifically for the submission by handlers of reports respecting individual producers when they start or resume deliveries, move from one farm to another, or stop deliveries. This information is needed to facilitate the auditing of handlers' reports and is now being submitted but it is desirable that the order specifically require such information, the same as the Boston order does. The market administrator has a butterfat testing program under the Lowell-Lawrence order and needs to know promptly of any new producers who begin deliveries to handlers. On the other hand, requirement of such reports within a very short time might inflict a hardship on handlers, as indicated in the handler's exceptions. Under these circumstances, the requirement that such reports be submitted within seven days of the events specified is reasonable.

(4) *Reports of payments to producers.* Each handler should be required to submit his producer pay roll to the market administrator within five days after his request, made not earlier than 14 days after the end of the delivery period. For the sake of clarity this requirement should be a separate paragraph designated as § 934.7 (d).

A handler can meet the present requirements of § 934.7 (c) (2) by submitting his producer pay roll by the twenty-fifth of each month. Since under § 934.10 (a) a handler must pay producers by the eighteenth of each month, there is no reason why he should not be able to submit his pay roll at any time after the eighteenth of each month.

(5) *Maintenance of records by handlers.* Handlers should be required to maintain detailed and summary records which will show all receipts, movements, and disposition of milk and milk products.

The order does not now specifically require that records be maintained although proper verification of reports is not possible in the absence of adequate records. The requirement that adequate records be maintained should be set forth in the order so that it could be relied on in legal proceedings to compel a handler to maintain records.

(6) *Expense of administration.* The Lowell-Lawrence order should be made to conform with other Federal orders in providing that the Secretary, rather than the market administrator, determine the use of a lower assessment rate than the maximum provided under the order.

Inasmuch as the market administrator clears the use of a lower rate with the Secretary, it is proper that the Secretary's determination be recognized in the order.

Under § 934.12 (a) reference to assessments paid the market administrator by the Massachusetts Milk Control Board should be deleted. No such assessments have been paid for several years and no payments are contemplated.

Announcement of the assessment rate should be required only as the rate is changed. This is the present method and it has proved satisfactory.

In connection with this proposal, § 934.12 (b) should be deleted. This section expresses the right of the market administrator to maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense. As this provision is also made in the Agricultural Marketing Agreement Act under section 10 (b) (2), it is unnecessary to restate the right in Order No. 34. The market administrator has never maintained a suit in his own name since the order first became effective.

(7) *Relationship between Class II prices in Boston and in Lowell-Lawrence.* Since no change is being recommended at this time in the regular Class II price under the Boston order, there is no question of making changes in the Class II price for Lowell-Lawrence market to correspond with changes in Boston.

Changes being recommended in the Boston order would require a rephrasing of § 934.8 (c) and § 934.9 (b) (2). These sections provide that the Lowell-Lawrence order shall not apply to milk fully subject to the Boston order. The new wording in these sections would preserve this effect.

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

(b) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, regulates the handling of milk in the same manner and is applicable only to persons in the respective classes of industrial and commercial activity specified in the said tentatively approved marketing agreement upon which the hearings have 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 sections 2 and 8 (e) of the act are not reasonable in view of the price of feed, 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, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled "Marketing Agreement Regulating the Handling of Milk in the Lowell-Lawrence, Massachusetts, Marketing Area" and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Lowell-Lawrence, Massachusetts, Marketing Area" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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

This decision filed at Washington, D. C., this 30th day of June 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

Order, Amending the Order, as Amended, Regulating the Handling of Milk in the Lowell-Lawrence, Massachusetts, Marketing Area [1]

§ 934.1 *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 C. F. R., Supps. 900.1 et seq.,

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

11 F. R. 7737, 12 F. R. 1159), public hearings were held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Lowell-Lawrence, Massachusetts, marketing area. Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

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

(b) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 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 supplies of and demand for such milk and the minimum prices specified in the order as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The said order, as amended and as hereby further amended, regulates 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 a marketing agreement upon which hearings have been held.

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

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Lowell-Lawrence, Massachusetts, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. In § 934.6 (a) (1) delete the words "except that from the effective date hereof through February 1947 the price shall be not less than $5.70 per hundredweight: *Provided*, That for each delivery period or part thereof prior to February 1, 1947, which falls within any emergency period declared by market administrator of the order, as amended, regulating the handling of milk in the Greater Boston marketing area pursuant to § 904.3 (a) (14) of that order, the price shall be not less than $6.09."

2. Delete § 934.6 (a) (1) (iv) and substitute the following:

(iv) Subject to subdivisions (v), (vi), and (vii) of this subparagraph, the Class I price per hundredweight shall be as shown in the following table:

CLASS I PRICE SCHEDULE

Value computed pursuant to (iii) of this subparagraph (cents)		Class I price (dollars per cwt.)	
At least—	But less than—	April through June	July through March
0	25	2.15	2.59
25	30	2.37	2.81
30	35	2.59	3.03
35	40	2.81	3.25
40	45	3.03	3.47
45	50	3.25	3.69
50	55	3.47	3.91
55	60	3.69	4.13
60	65	3.91	4.35
65	70	4.13	4.57
70	75	4.35	4.79
75	80	4.57	5.01
80	85	4.79	5.23
85	90	5.01	5.45
90	95	5.23	5.67
95	100	5.45	5.89
100	105	5.67	6.11

If the value computed pursuant to subdivision (iii) of this subparagraph is 105 cents or more the price shall be increased at the same rate as would result from an extension of this table.

3. Add three new subdivisions to § 934.6 (a) (1) as follows:

(v) 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.

(vi) The Class I price shall not be less than $5.23 per hundredweight for the month of August 1947 and shall not be less than $5.67 per hundredweight for each of the months of September through December 1947.

(vii) The Class I price for January 1948 shall not be less than the December 1947 Class I price minus 44 cents, and the Class I price for February 1948 shall not be less than the January 1948 Class I price minus 44 cents.

4. In § 934.6 add a new paragraph as follows:

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

5. In § 934.7 renumber paragraph (e) as (f), delete paragraphs (c) and (d), and add new paragraphs (c), (d), and (e) to read as follows:

(c) *Reports regarding individual producers.* (1) Within 7 days after a producer moves from one farm to another, or starts or resumes deliveries to a handler's plant, 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 immediately prior to starting or resuming deliveries.

(2) Within 7 days after the 5th consecutive day on which a producer has failed to deliver to a handler's plant, 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 payments to producers.* Each handler shall submit to the market administrator within 5 days after his request, made not earlier than 14 days after the end of the delivery period, his producer pay roll for such delivery period 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.

6. Revise § 934.8 (c) to read as follows:

(c) *Milk subject to the Greater Boston order.* The provisions hereof shall not apply, except as provided in § 934.5 and § 934.7, to the handling of milk which is received from a plant which is a regulated plant, as defined in the order of the Secretary regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, or which is received from a person who is a producer, as defined in that order.

7. Revise § 934.9 (b) (2) to read as follows:

(2) Subtract any amounts which the handler is required to pay on such milk pursuant to those provisions of the order of the Secretary regulating the handling of milk in the Greater Boston, Massachusetts, marketing area (i) which require a handler under that order who operates an unregulated plant from which outside milk is disposed of to consumers in the Greater Boston, Massachusetts, marketing area, without intermediate movement to another plant, to make payments to producers as defined in that order, through the administrator of that order, on the quantity so disposed of, and (ii) which require payments for administrative expense under that order; and

8. Delete § 934.12 and substitute therefor the following:

§ 934.12 *Expense of administration.* As his pro rata share of the expense of administration hereof, each handler, except as set forth in § 934.8 (a) shall, on or before the 18th day after the end of each delivery period, pay to the market administrator 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to all milk received by him during such delivery period, from producers, from his own production, and with respect to milk or skim milk received from the type of handler described in § 934.8 (f) and moved to the marketing area.

9. Delete § 934.15.

[F. R. Doc. 47-6285; Filed, July 8, 1947; 8:47 a. m.]

NOTICES

TREASURY DEPARTMENT

Bureau of Customs

[T. D. 51708]

BLACK DIAMOND STEAMSHIP CORP.

REGISTRATION OF HOUSE FLAG AND FUNNEL MARK

JUNE 30, 1947.

House flag and funnel mark of Black Diamond Steamship Corp. registered in accordance with § 3.81 (a), Customs Regulations of 1943.

The Commissioner of Customs, by virtue of the authority vested in him by section 7 of the act of May 28, 1908 (46 U. S. C. 49), as modified by section 102, Reorganization Plan No. 3 of 1946 (11 F. R. 7875), and in accordance with § 3.81 (a) of the Customs Regulations of 1943 (19 CFR 3.81 (a)), has registered the house flag and funnel mark of the Black Diamond Steamship Corp. described below:

(a) *House flag.* The house flag is a square flag having a buff field; the hoist is 4 feet in height; the fly is 6 feet. Superimposed upon the buff field is a black diamond whose points bisect the four sides of the flag.

(b) *Funnel mark.* The mark is to appear on a buff-colored stack and consists of a black band around the top of the funnel .500 of funnel diameter in width; then .667 of the funnel diameter below that is a second black band .333 of the funnel diameter in width. Between these two bands and on a buff background are two black diamonds (one on each side of the funnel) with two of their points horizontal and with a gap of .046 funnel diameter between the horizontal points of the two diamonds at forward and after centers of the funnel and with a gap of .046 diameter of funnel between the vertical points of the diamond and the upper and lower bands. The sizes of these two diamonds are .954 of the funnel diameter between horizontal points and .575 of the funnel diameter between vertical points.

Colored scale replica drawings of the house flag and of the funnel mark described above are on file with the Division of the Federal Register, The National Archives.

[SEAL] FRANK DOW,
Acting Commissioner of Customs.

[F. R. Doc. 47-6321; Filed, July 3, 1947; 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.

[Return Order 27]

RAOUL ROLAND RAYMOND SARAZIN

Having considered the claim set forth below and having approved the Vested Property Claims Committee's Determinations and Allowance with respect thereto, which are incorporated by reference herein and filed herewith,[1]

It is ordered, That the claimed property, described below and in the Determinations and Allowance, be returned after adquate provision for conservatory expenses:

Claimant and claim No.	Notice of intention to return published	Property
Raoul Roland Raymond Sarazin, 11 Square Moncey, Paris (Seine), France, Claim No. 5992.	12 F. R. 878, Feb. 6, 1947.	Title to United States Patents Nos. Re. 20,773, 2,079,227 and 2,202,967 (vested by Vesting Order No. 1589, 8 F. R. 10583, July 29, 1943), owned and held by Raoul Roland Raymond Sarazin immediately prior to the vesting thereof, together with the right to all damages and profits recoverable by him at law or in equity from any person, firm, corporation, or government other than the Government of the United States for infringement thereof prior to July 8, 1943, provided, however, that this return is expressly subject to the reservation for future consideration of the determination of claimant's asserted rights respecting a return (1) of all interests and rights in and to all damages and profits directly or indirectly recoverable at law or in equity from the Government of the United States for infringement of said patents (2) of all interests and rights in and to all damages and profits recoverable at law or in equity from anyone for infringement of said patents on or after July 8, 1943 and prior to the return of these patents and (3) of all interests and rights in any and all agreements of any kind or nature whatsoever relating to said patents including all royalties and any monies now or hereafter payable or held with respect to said interests and rights and all damages for breach of said agreements together with the right to sue therefor.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on June 30, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General, Director, Office of Alien Property.

[F. R. Doc. 47-6319; Filed, July 3, 1947; 8:51 a. m.]

[Dissolution Order 55]

M. A. IRMISCHER, INC.

Whereas, by Vesting Order No. 344, dated November 7, 1942 (7 F. R. 11033, December 29, 1942), and Supplemental Vesting Order No. 4284, dated November 6, 1944 (9 F. R. 13536, November 11, 1944), there were vested 89 of the 90 issued and outstanding shares of capital stock of M. A. Irmischer, Inc., a New York corporation; and

Whereas, the remaining 1 share of issued and outstanding capital stock is owned by Karl Vaitl, a citizen of the United States; and

Whereas, by said Vesting Order No. 344 there were also vested all right, title and interest of Max A. Irmischer, Saalfield, Germany, in and to an indebtedness owed him by M. A. Irmischer, Inc., and it has been determined that a certain obligation in the amount of $2,096.36 was thereby vested; and

Whereas, M. A. Irmischer, Inc. is indebted to the Attorney General of the United States, as successor to the Alien Property Custodian, for monies advanced or services rendered to or on behalf of the corporation in the amount of $236.40; and

Whereas, M. A. Irmischer, Inc. is insolvent and has been substantially liquidated;

Now, under the authority of the Trading With the Enemy Act, as amended, and Executive Orders 9095, as amended, and 9788, and pursuant to law, the undersigned, after investigation:

1. Finding that the claims of all known creditors have been paid, except such claim as the Attorney General of the United States has for monies advanced or services rendered to or on behalf of the corporation; and except the claim formerly of Max A. Irmischer, in the amount of $2,096.36 and which was vested as aforesaid; and

2. Having determined that it is in the national interest of the United States that said corporation be dissolved and that its assets be distributed, and a certificate of dissolution having been issued by the Secretary of State of the State of New York;

hereby orders that the officers and directors of M. A. Irmischer, Inc. (to wit: M. S. Watts, President and Director, Francis J. Carmody, Secretary and Director, and Robert Kramer, Treasurer and Director, and their successors, or any of them) continue the proceedings for the dissolution of M. A. Irmischer, Inc.; and further orders, that the said officers and directors wind up the affairs of the corporation and distribute the assets thereof coming into their possession as follows:

a. They shall first pay the current expenses and reasonable and necessary charges of winding up the affairs of the said corporation and the dissolution thereof; and

b. They shall then pay all known Federal, state and local taxes and fees owed by or accruing against the said corporation; and

c. They shall then pay over, transfer, assign, and deliver to the Attorney General of the United States all of the funds and property, if any, remaining in their hands after the payments as aforesaid, the same to be applied by him, first, in satisfaction of the vested claim against the corporation in the amount of $2,096.36, as hereinbefore described, and

[1] Filed as part of the original document.

second, in satisfaction of such claim as he may have for monies advanced or services rendered to or on behalf of the corporation;

and further orders, that nothing herein set forth shall be construed as prejudicing the right, under the Trading with the Enemy Act, as amended, of any person who may have a claim against the said corporation to file such claim with the Attorney General of the United States against any funds or property received by the Attorney General of the United States hereunder; *Provided, however,* That nothing herein contained shall be construed as creating additional rights in such person; *And provided, further,* That any such claim shall be filed with or presented to the Attorney General of the United States within the time and in the form and manner prescribed for such claims by the Trading with the Enemy Act, as amended, and applicable regulations and orders issued pursuant thereto; and further orders, that all actions taken and acts done by the officers and directors of M. A. Irmischer, Inc. pursuant to this order and the directions contained therein shall be deemed to have been taken and done in reliance on and pursuant to paragraph numbered (2) of subdivision (b) of section (5) of the Trading with the Enemy Act, as amended, and the acquittance and exculpation provided therein.

Executed at Washington, D. C., this 30th day of June 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-6318; Filed, July 3, 1947; 8:50 a. m.]

[Dissolution Order 56]

NATIONAL SEED CO., INC.

Whereas, by Vesting Order Number 3454, dated April 17, 1944 (9 F. R. 5451, May 23, 1944), there were vested all the issued and outstanding shares of the capital stock of The National Seed Company, Inc., a New York corporation; and

Whereas, by said Vesting Order No. 3454, there was also vested the interest of Algemeene Zaadteelt-en Handelmaatschappij, Roosendaal, Holland, in The National Seed Company, Inc., represented on the books and records of said company as an account payable, and it has been ascertained that a certain claim in favor of Algemeene Zaadteelt-en Handelmaatschappij in the amount of $11,430.62 was thereby vested; and

Whereas, The National Seed Company, Inc., has been substantially liquidated under the supervision of the undersigned.

Now, under the authority of the Trading with the Enemy Act, as amended, and Executive Orders 9095, as amended, and 9788, and pursuant to law, the undersigned, after investigation:

1. Finding that the claims of all known creditors have been paid, except such claims, if any, as the Attorney General of the United States may have for money advanced or services rendered to or on behalf of the corporation; and except the claim formerly of Algemeene Zaadteelt-en Handelmaatschappij which has been vested as aforesaid; and

2. Having determined that it is in the national interest of the United States that the said corporation be dissolved, and that its assets be distributed, and a Certificate of Dissolution having been issued by the Secretary of State of the State of New York;

hereby orders, that the officers and directors of The National Seed Company, Inc. (to wit, Robert Kramer, President and Director, Francis J. Carmody, Secretary and Director, and Martin S. Watts, Treasurer and Director, and their successors, or any of them), continue the proceedings for the dissolution of The National Seed Company, Inc.; and further orders, that the said officers and directors wind up the affairs of the corporation and distribute the assets thereof coming into their possession as follows:

(a) They shall first pay the current expenses and reasonable and necessary charges of winding up the affairs of said corporation and the dissolution thereof; and

(b) They shall then pay all known Federal, State, and local taxes and fees owed by or accruing against the said corporation; and

(c) They shall then pay over, transfer, assign and deliver to the Attorney General of the United States all of the funds and property, if any, remaining in their hands after the payments as aforesaid, the same to be applied, first, in satisfaction of the vested claim described above, second, in satisfaction of such claims, if any, as he may have for monies advanced or services rendered to or on behalf of the corporation, and third, as a liquidating distribution of assets to the Attorney General of the United States as holder of all the issued and outstanding stock of the corporation;

and further orders, that nohting herein set forth shall be construed as prejudicing the right, under the Trading with the Enemy Act, as amended, of any person who may have a claim against said corporation to file such claim with the Attorney General of the United States against funds or property received by the Attorney General of the United States hereunder: *Provided, however,* That nothing herein contained shall be construed as creating additional rights in such person: *Provided, further,* That any such claim against said corporation shall be filed with or presented to the Attorney General of the United States within the time and in the form and manner prescribed for such claims by the Trading with the Enemy Act, as amended, and applicable regulations and orders issued pursuant thereto; and further orders, that all actions taken and acts done by the said officers and directors of The National Seed Company, Inc., pursuant to this Order and the directions contained herein shall be deemed to have been taken and done in reliance on and pursuant to paragraph numbered (2) of subdivision (b) of section 5 of the Trading with the Enemy Act, as amended, and the acquittance and exculpation provided therein.

Executed at Washington, D. C., on June 30, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-6316; Filed, July 3, 1947; 8:50 a. m.]

[Dissolution Order 57]

ORANGE PETROLEUM CORP.

Whereas, by Vesting Order No. 63, dated July 28, 1942, (7 F. R. 7045, September 5, 1942), and Vesting Order No. 1048, dated March 11, 1943 (8 F. R. 3644, March 24, 1943), there were vested all the issued and outstanding shares of the capital stock of Orange Petroleum Corporation, a Delaware corporation; and

Whereas, by said Vesting Order No. 63, there were also vested all right, title, interest and claim of Kawasaki Dockyard Company, Ltd., Kobe, Japan and or its successor, Kawasaki Heavy Industries, Ltd., Osaka, Japan, in and to all indebtedness owing to them or either of them by Orange Petroleum Corporation, and it has been ascertained that certain claims in the total amount of $1,409,072.73 were thereby vested; and

Whereas, by Vesting Order No. 77, dated July 30, 1942 (7 F. R. 7048, September 5, 1942), there was vested all property of Kawasaki Kisen Kaisha, Ltd., Kobe, Japan, as well as of its three American branches, and it has been ascertained that a certain claim against Orange Petroleum Corporation in the amount of $3,000.00 was thereby vested; and

Whereas, Orange Petroleum Corporation has been substantially liquidated;

Now, under the authority of the Trading with the Enemy Act, as amended, and Executive Orders 9095, as amended, and 9788, and pursuant to law, the undersigned, after investigation:

1. Finding that the claims of all known creditors have been paid, except such claims, if any, as the Attorney General of the United States may have for monies advanced or services rendered to or on behalf of the corporation, and except the claims which have been vested as aforesaid; and

2. Having determined that it is in the national interest of the United States that said corporation be dissolved, and that, its assets be distributed, and a Certificate of Dissolution having been issued by the Secretary of State of the State of Delaware;

hereby orders, that the officers and directors of Orange Petroleum Corporation (to wit, Henry S. Sellin, President and Director, Stanley B. Reid, Vice-President and Director, and Robert Kramer, Secretary, Treasurer and Director, and their successors, or any of them), continue the proceedings for the dissolution of Orange Petroleum Corporation; and further orders, that the said officers and

directors wind up the affairs of the corporation and distribute the assets thereof coming into their possession as follows:

(a) They shall first pay the current expenses and reasonable and necessary charges of winding up the affairs of said corporation and the dissolution thereof; and

(b) They shall then pay all known Federal, state and local taxes and fees owed by or accruing against the said corporation; and

(c) They shall then pay over, transfer, assign and deliver to the Attorney General of the United States, all of the funds and property, if any, remaining in their hands after the payments as aforesaid, the same to be applied by him, first, in satisfaction of the vested claims described above, second, in satisfaction of such claims, if any, as he may have for monies advanced or services rendered to or on behalf of the corporation, and third, as a liquidating distribution of assets to the Attorney General of the United States as holder of all the issued and outstanding stock of the corporation;

and further orders, that nothing herein set forth shall be construed as prejudicing the right, under the Trading with the Enemy Act, as amended, of any person who may have a claim against said corporation to file such claim with the Attorney General of the United States against any funds or property received by the Attorney General of the United States hereunder; *Provided, however,* That nothing herein contained shall be construed as creating additional rights in such person; *Provided, further,* That any such claim against said corporation shall be filed with or presented to the Attorney General of the United States within the time and in the form and manner prescribed for such claims by the Trading with the Enemy Act, as amended, and applicable regulations and orders issued pursuant thereto; and further orders, that all actions taken and acts done by the said officers and directors of Orange Petroleum Corporation, pursuant to this Order and the directions contained herein shall be deemed to have been taken and done in reliance on and pursuant to paragraph numbered (2) of subdivision (b) of section 5 of the Trading with the Enemy Act, as amended, and the acquittance and exculpation provided therein.

Executed at Washington, D. C., this 30th day of June, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General.
Director, Office of Alien Property.

[F. R. Doc. 47-6317; Filed, July 3, 1947; 8:50 a. m.]

[Vesting Order 9151]

PAUL BRAUN

In re: Stock and participating receipt owned by and debt owing to Paul Braun. F-28-23397-D-1/3.

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 Paul Braun, whose last known address is Edgmont St. 4, Berlin-Lichtenberg, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. Fifteen (15) shares of no par value common capital stock of National Dairy Products Corporation, 230 Park Avenue, New York, New York, a corporation organized under the laws of the State of Delaware, evidenced by certificate number 3244353, registered in the name of Paul Braun, together with all declared and unpaid dividends thereon,

b. Four (4) shares of $20 par value common capital stock of E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, Delaware, a corporation organized under the laws of the State of Delaware, evidenced by certificate number WE72769, registered in the name of Paul Braun, and presently in the custody of The First National Bank of Jersey City, Jersey City 3, New Jersey, together with all declared and unpaid dividends thereon,

c. One (1) participating receipt for 16/206 share of $20 par value common capital stock of E. I. du Pont de Nemours and Company, 1007 Market Street, a corporation organized under the laws of the State of Delaware, bearing number 5387, issued by Bankers Trust Company, 16 Wall Street, New York, New York, and presently in the custody of The First National Bank of Jersey City, Jersey City 3, New Jersey, together with any and all rights thereunder and thereto, and

d. That certain debt or other obligation owing to Paul Braun by Bankers Trust Company, 16 Wall Street, New York, New York, in the amount of $10.79, as of December 31, 1945, arising out of a distribution under the plan for reorganization of Pathe Film Corporation, together with any and all accruals thereto 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, 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 May 29, 1947.

For the Attorney General.

[SEAL] DONALD C. COOK,
Director.

[F. R. Doc. 47-6312; Filed, July 3, 1947; 8:49 a. m.]

[Vesting Order 9159]

ERNST HASCHE

In re: Bank account, bonds and stock owned by the personal representatives, heirs, next of kin, legatees and distributees of Mr. Ernst Hasche, deceased, also known as Ernst Friedrich Carl Hasche. F-28-970-A-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 the personal representatives, heirs, next of kin, legatees and distributees of Mr. Ernst Hasche, deceased, also known as Ernst Friedrich Carl Hasche, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation owing to the personal representatives, heirs, next of kin, legatees and distributees of Mr. Frank Hasche, deceased, also known as Ernst Friedrich Carl Hasche, by Guaranty Trust Company of New York, 140 Broadway, New York 15, New York, arising out of a Custody Cash Account, Account Number FC8483, and any and all rights to demand, enforce and collect the same,

b. Twenty (20) shares of no par value cumulative first preferred capital stock of American Water Works and Electric Company, Inc., 50 Broad Street, New York 4, New York, a corporation organized under the laws of the State of Delaware, evidenced by Certificate Number PO7353, registered in the name of Schmidt & Co., and presently in the custody of Guaranty Trust Company of New York, 140 Broadway, New York 15, New York, together with all declared and unpaid dividends thereon,

c. Two (2) Colombia Republic 4% Arrears Certificates of $130.00 face value each, in bearer form, bearing the numbers G2420 and G2421, which Certificates are presently in the custody of Guaranty Trust Company of New York, 140 Broadway, New York 15, New York, together with any and all rights thereunder and thereto, and

d. These certain bonds described in Exhibit A, attached hereto and by reference made a part hereof, in bearer form, and presently in the custody of Guaranty Trust Company of New York, 140 Broadway, New York 15, New York, together with any and all rights thereunder and thereto,

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 nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the personal representatives, heirs, next of kin, legatees and distributees of Mr. Ernst Hasche, deceased, also known as Ernst Friedrich Carl Hasche, 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 May 29, 1947.

For the Attorney General.

[SEAL] DONALD C. COOK,
Director.

EXHIBIT A

Description of issue	Face value	Certificate No.
Mortgage Bank of Chile, 6¾% guaranteed sinking fund gold bond.	2@$1,000	M535 M536
Agricultural Mortgage Bank of Colombia, 7% guaranteed sinking fund gold bond.	2@$1,000	M2294 M2533
Republic of Colombia, 6% external sinking fund gold bond.	2@$1,000	M2024 M2026

[F. R. Doc. 47-6313; Filed, July 3, 1947; 8:50 a. m.]

[Vesting Order 9162]

METTA KUCK

In re: Debts owing to and mortgage certificate owned by the personal representatives, heirs, next of kin, legatees and distributees of Metta Kuck, deceased. F-28-341-A-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 the personal representatives, heirs, next of kin, legatees and distributees of Metta Kuck, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

2. That the property described as follows:

a. All those debts or other obligations owing to the personal representatives, heirs, next of kin, legatees and distributees of Metta Kuck, deceased, by William F. Wund, 12 East 41st Street, New York 17, New York, including particularly but not limited to that sum of money on deposit with The Chase National Bank of the City of New York, 18 Pine Street, New York 15, New York, in a checking account, entitled William F. Wund, Special, maintained at the branch office of the aforesaid bank located at 60 East 42nd Street, New York, New York, and any and all rights to demand, enforce and collect the same,

b. One (1) 5½% New York Title and Mortgage Company Guaranteed First Mortgage Certificate, Series F-1, of $10,000.00 face value, bearing the number 7966, registered in the name of Metta Kuck, and presently in the custody of William F. Wund, 12 East 41st Street, New York 17, New York, together with any and all rights thereunder and thereto, and

c. That certain debt or other obligation owing to the personal representatives, heirs, next of kin, legatees and distributees of Metta Kuck, deceased, by Trustees of the Reorganization of Series F-1 Guaranteed First Mortgage Certificate of New York Title and Mortgage Company, 39 Broadway, New York 6, New York, in the amount of $300.00, as of May 13, 1947, evidenced by the issuance of a check, by the aforesaid Trustees for the benefit of Metta Kuck, which check is presently in the possession of William F. Wund, 12 East 41st Street, New York 17, New York, and any and all rights to demand, enforce and collect the aforementioned debt or other obligation, together with any and all rights in, to and under, including particularly, but not limited to, the rights to possession and presentation for collection and payment of the aforesaid check,

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 nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the personal representatives, heirs, next of kin, legatees and distributees of Metta Kuck, deceased, 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 May 29, 1947.

For the Attorney General.

[SEAL] DONALD C. COOK,
Director.

[F. R. Doc. 47-6314; Filed, July 3, 1947; 8:50 a. m.]

[Vesting Order 9231]

VALENTINE HOFMANN

In re: Debt owing to and stock, bonds and a mortgage interest owned by Valentine Hofmann. F-28-6565-A-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 Valentine Hofmann, whose last known address is Bad Durkheim, Ostertag Strasse, Saarpfalz, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation owing to Valentine Hofmann by Land Title Bank and Trust Company, 100 South Broad Street, Philadelphia 10, Pennsylvania, in the amount of $8,005.99 as of October 5, 1946, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

b. Forty (40) shares of $1.00 par value common capital stock of Benjamin Franklin Hotel Company, Securities Building, 1632 Bankers Street, Philadelphia, Pennsylvania, a corporation organized under the laws of the State of Pennsylvania, evidenced by certificates numbered 4534 to 4541 inclusive for five shares each, and presently in the custody of Land Title Bank and Trust Company, 100 South Broad Street, Philadelphia 10, Pennsylvania, together with all declared and unpaid dividends thereon,

c. That certain debt or other obligation owing to Valentine Hofmann, represented on the books of the Land Title Bank and Trust Company, 100 South Broad Street, Philadelphia 10, Pennsylvania, as an interest in omnibus mortgage numbered 718, on the premises 29 South 16th Street, Philadelphia, Pennsylvania, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same, and

d. Those certain bonds described in Exhibit A, attached hereto and by reference made a part hereof, owned by Valentine Hofmann, and presently in the custody of Land Title Bank and Trust Company, 100 South Broad Street, Philadelphia 10, Pennsylvania, together with any and all rights thereunder and thereto,

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 June 23, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Issuer	Description of bond	Bond No.	Face value
The United States of America.	United States of America Treasury 2½ percent bond due Sept. 15, 1967-72.	50593C	$1,000
		91901	100
		9191A	100
		70282B	100
		75785E	100
		75786F	100
		75787H	100
Do	United States of America Treasury 2½ percent bond, due June 15, 1964-69.	37516	1,000
Do	United States of America Treasury 2½ percent bond, due Dec. 15, 1967-72.	49466	500

[F. R. Doc. 47-6306; Filed, July 3, 1947; 8:48 a. m.]

[Vesting Order 9241]

MAX STANSCHUS

In re: Stock owned by Max Stanschus, also known as Max Stenchus. F-28-26066-A-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 Max Stanschus, also known as Max Stenchus, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. One Hundred (100) shares of $1.00 par value common capital stock of Central Foundry Co., 386 Fourth Avenue, New York, N. Y., a corporation organized under the laws of the State of Maine, evidenced by a certificate numbered NC-16182, registered in the name of Max Stenchus, together with all declared and unpaid dividends thereon, and

b. Twenty (20) shares of $7.00 par value common capital stock of Pennsylvania-Dixie Cement Corporation, 60 East 42nd Street, New York 17, N. Y., a corporation organized under the laws of the State of Delaware, evidenced by a certificate numbered CO-10405, registered in the name of Max Stenchus, 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, 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 June 23, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-6307; Filed, July 3, 1947; 8:48 a. m.]

[Vesting Order 9246]

JOSEPH MULLER ET AL.

In re: Interest in real property, property insurance policy and claim owned by Joseph Muller, 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, whose names and last known addresses appear below, are residents of Germany and nationals of a designated enemy country (Germany);

Name	*Address*
Joseph Muller	Germany.
Alois Muller	Germany.
Bertha Hoffele	Germany.
Maria Bader	Germany.
Joseph Eisele	Germany.
Englebert Eisele	Germany.
Josephine Krupp	Germany.

2. That the property described as follows:

a. An undivided 7/9ths interest in real property, situated in the City and County of Philadelphia and State of Pennsylvania, particularly described in Exhibit A, attached hereto and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances thereto, and any and all claims for rents, refunds, benefits or other payments arising from the ownership of such property,

b. All right, title and interest of the persons named in subparagraph 1, in and to Fire Insurance Policy No. 235056, issued by Franklin Fire Insurance Co., Philadelphia, Pennsylvania, in the name of "Estate of Otto Muller, deceased", which policy expires December 21, 1947, and insures the property described in subparagraph 2-a hereof, and

c. That certain debt or obligation, owing to the persons named in subparagraph 1 hereof by Theresia Lorenz, 7342 Limekiln Pike, Philadelphia 38, Pennsylvania, arising out of rents collected from the premises described in subparagraph 2-a hereof, 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, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the persons named 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-a hereof, subject to recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of designated enemy countries, and

There is hereby vested in the Attorney General of the United States the property described in subparagraphs 2-b and 2-c hereof,

All such property so vested 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 June 27, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

All that certain lot or piece of ground with the buildings and improvements thereon erected situate on the Southerly side of Dounton Street (No. 1616) at the distance of Five hundred and nineteen feet Eastwardly from the Easterly side of Germantown Avenue in the Forty third Ward of the said City of Philadelphia containing in front or breadth on the said Dounton Street—Fourteen feet and extending of that width in length or depth Southwardly between lines at right angles to the said Dounton Street Fifty feet to ground now or late of Zepperneck.

[F. R. Doc. 47-6309; Filed, July 3, 1947; 8:49 a. m.]

[Vesting Order 9259]

AUGUSTA RUESTIG

In re: Estate of Augusta Ruestig, deceased. File D-28-11543; E. T. sec. 15749.

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 Anna Leonhardt and Else Grallapp, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof in and to the Estate of Augusta Ruestig, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by Fred G. Sutherland, as executor, acting under the judicial supervision of the Superior Court of the State of California, in and for the County of Los Angeles;

and it is hereby determined:

4. That to the extent that the persons named 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 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 June 27, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 47-6310; Filed, July 8, 1947; 8:49 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Misc. 1218080]

ARIZONA

PARTIAL REVOCATION OF PUBLIC WATER RESERVE NO. 107

JUNE 25, 1947.

Pursuant to the authority contained in section 10 of the act of December 29, 1916 (39 Stat. 865, 43 U. S. C. 300), and in accordance with 43 CFR § 4.275 (50) (Departmental Order No. 2325 of May 24, 1947, 12 F. R. 3566), it is ordered as follows:

The Departmental order of June 16, 1928 (Interpretation No. 69), construing certain lands as withdrawn by the Executive order of April 17, 1926, creating Public Water Reserve No. 107 under the act of June 25, 1910 (36 Stat. 847, 43 U. S. C. 141), is hereby revoked as to the lands hereinafter described.

At 10:00 a. m. on August 27, 1947, 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 August 28, 1947, to November 26, 1947, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land 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), 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 August 8, 1947, to August 27, 1947, 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 August 28, 1947, 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 November 27, 1947, 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 November 7, 1947, to November 26, 1947, inclusive, and all such applications, together with those presented at 10:00 a. m. on November 27, 1947, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits 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 Phoenix, Arizona, 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), and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office at Phoenix, Arizona.

The lands affected by this order are described as follows:

GILA AND SALT RIVER MERIDIAN

T. 39 N., R. 3 E.,
Sec. 13, W½SW¼;
Sec. 14, SE¼.

The area described aggregates 240 acres.

The lands, which are within Grazing District No. 1, are desert in character and are located on the Kaibito Plateau.

FRED W. JOHNSON,
Director.

[F. R. Doc. 47-6273; Filed, July 3, 1947; 8:46 a. m.]

[Misc. 2130223]

IDAHO

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

JUNE 23, 1947.

Order dated November 29, 1946, and approved March 13, 1947, revoked Departmental order of December 22, 1903, so far as it withdrew in the second form prescribed by section 3 of the Reclamation Act of June 17, 1902 (32 Stat. 388), the lands hereinafter described within the Boise Project, Idaho, and provided that such revocation shall not affect the withdrawal of any other lands by said order or affect any other order withdrawing or reserving the lands described.

At 10:00 a. m. on August 25, 1947, 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 August 26, 1947, to November 24, 1947, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land 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), 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 August 6, 1947, to August 25, 1947, 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 August 26, 1947, 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 November 25, 1947, 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 November 5, 1947, to November 24, 1947, inclusive, and all such applications, together with those presented at 10:00 a. m. on November 25, 1947, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits 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 Blackfoot, Idaho, 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), and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office at Blackfoot, Idaho.

The lands affected by this order are described as follows:

BOISE MERIDIAN, IDAHO

T. 3 N., R. 4 W.,
Sec. 26, NE¼NE¼.

The area described aggregates 40 acres.

The land has a gently rolling surface, and a sandy loam soil. The vegetative covering consists of sagebrush, with an understory of native grasses.

FRED W. JOHNSON,
Director.

[F. R. Doc. 47-6274; Filed, July 3, 1947; 8:46 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Admin. 282]

GREATER BOSTON, MASS. MARKETING AREA

ORDER DIRECTING THAT A REFERENDUM BE CONDUCTED AMONG THE PRODUCERS SUPPLYING MILK; DETERMINATION THAT FEBRUARY 1947 IS A REPRESENTATIVE PERIOD; AND DESIGNATION OF AGENT TO CONDUCT SUCH REFERENDUM

Pursuant to section 8c (19) of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, it is hereby directed that a referendum be conducted among the producers (as defined in the amended order included in the decision with respect to proposed amendments to the order, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area issued simultaneously herewith) who, during the month of February 1947, were engaged in the production of milk for sale in the said marketing area, as defined in the aforesaid amended order, to determine whether such producers favor the issuance of an order which would regulate the handling of milk in the said marketing area in the same manner as provided by the aforesaid amended order.

The month of February 1947 is hereby determined to be a representative period for the conduct of such referendum.

R. D. Alpin is hereby designated agent to conduct such referendum in accordance with the instructions contained in Form Dr-14 and any other supplementary instructions that may be issued by the Director of the Dairy Branch, Production and Marketing Administration; and such referendum shall be completed on or before the 7th day after the date this order is issued.

Done at Washington, D. C., this 30th day of June 1947.

[SEAL] CLINTON P. ANDERSON,
Secretary of Agriculture.

[F. R. Doc. 47-6288; Filed, July 8, 1947; 8:47 a. m.]

DEPARTMENT OF COMMERCE

Office of Materials Distribution

[Certificate 216, as Amended June 18, 1947]

TRANSPORTATION IN HIGH PRESSURE TANK CARS AND STORAGE OF SPECIFIED MATERIALS; APPROVAL OF HAULAGE REQUEST TR-3 AS AMENDED

THE ATTORNEY GENERAL:

I submit herewith Haulage Request TR-3 [1] issued by the Civilian Production Administration on October 24, 1946, as amended by the Department of Commerce on June 18, 1947. Haulage Request TR-3 relates to the transportation in high pressure tank cars and the storage of anhydrous ammonia, liquefied petroleum gas and chlorine.

Pursuant to Executive Order 9841, dated April 23, 1947, I have succeeded to the powers of the Temporary Controls Administrator under section 12 of Public Law 603, 77th Congress (56 Stat. 357). For the purposes of said section 12 I approve the request, as amended; and after consultation with you, I hereby find and so certify to you that the doing of any act or thing or the omission to do any act or thing by any person in compliance with Haulage Request TR-3, as amended, is requisite to the prosecution of the war.

W. A. HARRIMAN,
Secretary of Commerce.

JUNE 18, 1947.

[Haulage Request TR-3, as Amended June 18, 1947]

TRANSPORTATION IN HIGH PRESSURE TANK CARS AND STORAGE OF SPECIFIED MATERIALS

It is requisite to the prosecution of the war that the maximum amount of certain essential materials be delivered to essential industries with a minimum dislocation of the general economy, with a minimum of delay, and with a minimum of strain upon transportation facilities already severely taxed. This can best be accomplished through voluntary arrangements which permit materials to be consumed as near as may be to their source. Now therefore, it is hereby requested that:

SECTION 1. *Purchases, sales, exchanges, and common use of facilities.* All persons engaged in producing, supplying or distributing the materials listed on Schedule X hereto annexed (herein referred to as "Schedule X materials") may make such purchases, sales, exchanges or loans of Schedule X materials and arrange for such common use of transportation in high pressure tank cars and storage facilities as may be requisite or necessary in order to attain the most efficient utilization of such facilities. All such purchases, sales, exchanges or loans, and all such arrangements for common use of transportation in high pressure tank cars and storage facilities shall remain subject to review and adjustment by the Department of Commerce to the end (a) that no producer, supplier or distributor of any Schedule X material shall be deprived of an opportunity to share equitably in the available supply of such material and the use of transportation

[1] 11 F. R. 12971, 13114.

and storage facilities, (b) that no consumer shall be inequitably treated in the distribution of Schedule X materials, by reason of such arrangements, and (c) that such arrangements shall not go beyond the purpose and objective of this request.

SEC. 2. *Reports.* All persons who effect purchases, sales, exchanges or loans of Schedule X materials or arrangements for common use of transportation in high pressure tank cars and storage facilities pursuant to section 1 hereof, shall inform the Office of Materials Distribution, Department of Commerce by letter giving the following information:

1. Names and addresses of parties, including names and addresses of persons to whom inquiries concerning the report should be directed.
2. Effective date and duration of arrangement.
3. Kind and quantity of material involved.
4. Location of points of origin and destination of Schedule X materials to be shipped or location of storage facilities to be jointly used.
5. A statement that to the best of the informant's knowledge and belief, no supplier, distributor or producer of the material involved in the arrangement is or will be deprived by the arrangement of an opportunity to share equitably in the available supply and use of transportation and storage facilities.
6. A statement that to the best of the informant's knowledge and belief, no consumer of the material involved in the arrangement is or will be treated inequitably in the distribution of such material by reason of the arrangement.

A separate letter for each Schedule I material involved shall be filed. Further information may be specifically requested in particular cases.

SEC. 3. *Certification of this request.* Having consulted with the Attorney General, the Secretary of Commerce has amended Certificate 216, under section 12, Public Law 603, 77th Congress (56 Stat. 357), with respect to this Haulage Request TR–3, as amended.

SEC. 4. *Communications.* All communications concerning this request and all information filed hereunder shall, unless otherwise directed, be addressed to: Office of Materials Distribution, Department of Commerce, Washington 25, D. C., Reference TR–3 (Specify Schedule X material).

SEC. 5. *Time limit on making arrangements on this request.* No arrangements pursuant to this request shall be entered into after September 15, 1947 and this request shall not extend to any purchase, sale, exchange, loan arrangement or act occurring after December 15, 1947 or after the withdrawal of this request if an effective date of withdrawal prior to December 15, 1947 is established.

Issued this 18th day of June 1947.

DEPARTMENT OF COMMERCE, OFFICE OF MATERIALS DISTRIBUTION,
By J. JOSEPH WHELAN,
Issuance Officer.

SCHEDULE X

1. Anhydrous ammonia.
2. Liquefied petroleum gas.
3. Chlorine.

[F. R Doc. 47-6343; Filed, July 3, 1947; 9:00 a. m.]

FEDERAL DEPOSIT INSURANCE CORPORATION

INSURED MUTUAL SAVINGS BANKS NOT MEMBERS OF FEDERAL RESERVE SYSTEM

CALL FOR REPORT OF CONDITION AND ANNUAL REPORT OF EARNINGS AND DIVIDENDS

Pursuant to the provisions of paragraph (3) of subsection (k) of section 12B of the Federal Reserve Act, as amended, be it resolved that each insured mutual savings bank not a member of the Federal Reserve System be, and hereby is, required to submit to the Federal Deposit Insurance Corporation within ten days after receipt of notice of this resolution a report of its condition as of the close of business Monday, June 30, 1947, on Form 64 (Savings).[1] Said report of condition shall be prepared in accordance with, "Instructions for the Preparation of Report of Condition on Form 64 (Savings) and Report of Earnings and Dividends on Form 73 (Savings) by Insured Mutual Savings Banks," issued December 1945.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.

[F. R. Doc. 47-6271; Filed, July 3, 1947; 8:46 a. m.]

INSURED STATE BANKS NOT MEMBERS OF FEDERAL RESERVE SYSTEM, EXCEPT BANKS IN DISTRICT OF COLUMBIA AND MUTUAL SAVINGS BANKS

CALL FOR REPORT OF CONDITION AND ANNUAL REPORT OF EARNINGS AND DIVIDENDS

Pursuant to the provisions of paragraph 3 of subsection (k) of section 12B of the Federal Reserve Act, as amended, be it resolved that each insured State bank not a member of the Federal Reserve System, except a bank in the District of Columbia and a mutual savings bank, be, and hereby is, required to submit to the Federal Deposit Insurance Corporation within ten days after receipt of notice of this resolution a report of its condition as of the close of business Monday, June 30, 1947, on Form 64 (Short form)[1]—Call No. 27. Said report of condition shall be prepared in accordance with "Instructions for the Preparation of Report of Condition on Form 64 (Short form)," issued December 1946.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.

[F. R. Doc. 47-6270; Filed, July 3, 1947; 8:46 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-852]

UNION GAS SYSTEM, INC.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

JUNE 30, 1947.

Notice is hereby given that, on June 30, 1947, the Federal Power Commission issued its findings and order entered June 27, 1947, issuing certificate of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-6275; Filed, July 3, 1947; 8:46 a. m.]

[Docket No. G-885]

CITIES SERVICE GAS CO.

NOTICE OF FINDINGS AND ORDER AUTHORIZING AND APPROVING ABANDONMENT OF FACILITIES

JUNE 30, 1947.

Notice is hereby given that, on June 30, 1947, the Federal Power Commission issued its findings and order entered June 27, 1947, authorizing and approving abandonment of facilities in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 47-6276; Filed, July 3, 1947; 8:46 a. m.]

SECURITIES AND EXCHANGE COMMISSION

WILLARD YORK CO.

ORDER DISMISSING PROCEEDINGS AND CANCELING REGISTRATION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 23d day of June A. D. 1947.

In the matter of Willard Harris York, doing business as Willard York Co., 419 South Texas Bank Building, San Antonio, Texas.

The Commission having instituted proceedings on April 7, 1947 to determine whether it was in the public interest to revoke the broker-dealer registration of Willard Harris York, doing business as Willard York Company, or to permit withdrawal thereof without conditions, and whether to suspend or to expel respondent from membership in the National Association of Securities Dealers, Inc.;

Hearings having been held and the hearing officer having recommended the revocation of respondent's registration;

The Commission having been advised of respondent's death following the filing of the hearing officer's recommended decision, and deeming it appropriate to dismiss the proceedings and to cancel the registration of Willard York Company;

It is ordered, That the proceedings be and they hereby are dismissed and that the registration of Willard Harris York, doing business as Willard York Company, be, and it hereby is, cancelled.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 47-6284; Filed, July 3, 1947; 8:46 a. m.]

[1] Filed as part of the original document.