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Coordination Service

DIGESTS OF INTERPRETATIONS OF
SPECIFIC PRICE SCHEDULES
AND REGULATIONS

This Service is a compilation of digests of interpretations of price schedules and regulations. The interpretative material contained herein has been digested from interpretations issued by responsible OPA officials to members of industry and OPA field offices. Consequently, this interpretative material shows the trend of official opinion. The interpretations which are the basis of this material are subject to reconsideration and revision at any time by OPA.

INTRODUCTION

This Service contains digests of general materials and of interpretations applicable to price schedules and regulations of the various commodity branches.

Supplements in the form of insert pages will be issued periodically in order to bring the Service up to date. These supplements will contain digests of new interpretations that may be issued and any corrections, revisions and deletions of previously published digests that may be necessary.

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October 20, 1944

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INTRODUCTION

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See: Governmental agencies - nature of sale

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See: Licensing - Supp. Order No. 5

wholesale sale:

69-17:8

95-1:1

137-19:7

See also: Subtopic - distributive function and other subtopics

wholesaler etc. also selling in another capacity:

See: Same person selling in more than one capacity - as wholesaler, jobber etc.

miscellaneous:

35-5:6

215-15:21

270-9:5

"Would have been price"

See: Base period price - "would have been price"

Zone price

See: Geographical coverage of regulation - quoted prices for areas; Listed, advertised catalogue price

1. The first part of the report is a general
description of the project and its objectives.
2. The second part is a detailed description of the
methodology used in the study.

3. The third part is a description of the results
of the study.

4. The fourth part is a discussion of the results
and their implications.

5. The fifth part is a conclusion and a summary
of the findings.

6. The sixth part is a list of references.

7. The seventh part is an appendix containing
additional data and figures.

8. The eighth part is a glossary of terms.

9. The ninth part is a list of abbreviations.

10. The tenth part is a list of symbols.

11. The eleventh part is a list of figures.

12. The twelfth part is a list of tables.

Terrestrial globes are "maps" under Supplementary Regulation Nos. 1 and 11 to the General Maximum Price Regulation. Since such globes do not fall within any of the listed items in Appendix A of Regulation No. 225, they are exempt from price control.

Exempt sales - persons "primarily engaged" in publishing printing, etc. An exemption is granted under the Regulation to small printing and publishing concerns, provided that they were "engaged primarily" in such business in 1941, Section 1347.451(c). A concern in 1941 took orders for the sale and delivery of letterheads and envelopes. It did no printing itself but hired a job printer. This concern is not within the exemption, because it was not "engaged primarily" in the printing business, doing no printing; nor was it engaged in the publishing business, since it was not the creator of any commodity.

However, a small company which was engaged in the business of creating and selling copyrighted accounting books and duplicate pads is within the exemption, since it was primarily engaged in the business of publishing, even though the printing work was done by a job printer.

Services - mailing services. A person is employed by a telephone company to perform a mailing service. The service consists of the insertion of printed notices into envelopes and sealing and mailing the envelopes. The printed notices and envelopes are supplied by the telephone company. This service is subject to the Regulation as a service related to printing, publishing, etc., Section 1347.476. Other allied services covered by the Regulation are filling in, folding, assembling, flapping, sealing, labeling, addressing, stamping and any variations thereof.

Tax bill forms. The sale of tax bill forms to a municipality is a sale of "printed paper commodities", covered by the Regulation.

Commercial and thermometer-calendars. Sales by manufacturers of commercial calendars and thermometer-calendars are subject to the Regulation even though they bear advertising matter. Section 2.4 of Revised Supplementary Regulation No. 1 does not exempt advertising matter printed on paper when the commodity is in such form as to serve another purpose.

Price Determination

Sale of commodity since base period. The maximum price for any commodity or service which was not sold, delivered, or offered for sale in March 1942, is determined under Section 1347.453.

Base period "margin". In pricing a commodity under Section 1347.453, the seller must use the margin employed by him in pricing the "most nearly comparable commodity or service" sold to a purchaser of the same class in March 1942. Only one commodity, sold to a purchaser of the same class, may be considered the "most nearly comparable commodity."

"Same commodity or service". The delivery of letterheads which are identical with those sold or supplied during the base period, March 1942, except for differences in name, address and telephone number, constitute the delivery of the "same commodity or service" under the Regulation.

"Same or similar" service - pricing on overtime basis. A job which was priced on the basis of overtime during the base period may not be used to determine the maximum price of the same job which is now priced on the basis of regular time. The base period overtime job is not the "same or similar" as the one performed on regular time, since the factor of overtime constitutes a substantial change in job specifications. If the seller did not perform the same or similar job on the basis of regular time during the base period, he must price it under Section 1347.453, or Section 1347.456, whichever is applicable.

Adjustment of prices. Where a person seeks authorization to establish maximum prices under Section 1347.456, he may quote the proposed prices immediately after they have been filed with OPA without waiting for the expiration of the 20-day period. However, the quoted prices are subject to adjustment for any sale made during this period pursuant to Section 1347.455, entitled Similar commodities or services subsequently sold.

Transfer of business - consolidation of businesses. A corporation was incorporated in July 1942, as a consolidation of two corporations operating in the same city. The new corporation carries on its business at one of the plants formerly operated by one of the predecessor corporations. The Regulation provides that if the business, assets or stock in trade of any business are sold on otherwise transferred after April 28, 1942, and the transferee carries on the business in an establishment separate from any other establishment previously owned or operated by him, his maximum prices are the same as those of his transferor, Section 1347.457. The maximum prices of the new corporation are those of the business establishment at whose premises the new business is now being operated, since the new corporation is carrying on the business at the establishment of one of its former owners.

Exempt sales. Two persons operated a publishing and printing company as a partnership until July 15, 1941. On that date the company was sold to a third person who continued to operate it as an individual proprietor during the balance of the year. The total gross sales by the partnership and the individual proprietor during the entire year of 1941 were less than \$20,000. The company is exempt from the Regulation pursuant to Section 1347.451(c), even though there was a change of ownership in the middle of the calendar year of 1941. Section 1347.457, entitled, Transfer of business or stock in trade, provides that status of the transferee shall be the same as his transferor under Section 1347.451(c).

"Same or similar" service or commodity - substitution of steel for copper plate. Due to the War Production Board's curtailment of the use of copper in engraving plates, many sellers are using steel plates. The service of engraving on steel is not the "same or similar" to the service of copper engraving, since the two are not a type which would ordinarily be sold for the same price, and they are not produced according to the same specifications or by the same productive operations. Hence, the prices charged in March 1942 for copper engraving services do not establish maximum prices for steel engraving. Similarly, the maximum prices for commodities listed in Appendix A which are produced by the use of steel plates are not determined by the maximum price of commodities produced by copper plates. Therefore, the maximum charges for engraving on steel as a substitute for copper, should be determined under Section 1347.453, and "resales" of such a commodity, determined under Section 1347.454.

Records and Reports

"Entire calendar year." See page 18:11.

Sale by printer through a distributor. A printer sells commodities subject to the Regulation through a distributor. The distributor takes the order from the customer and transmits it to the printer. The printer quotes a net price to the distributor who in turn quotes his own price to the customer. The printer sends the commodity directly to the customer, billing him the price agreed upon between the distributor and the customer. When payment is remitted to the printer, he deducts the amount due him from the distributor and transmits the remainder to the distributor as his commission. The printer has the option of accepting or refusing any order, and the distributor does not guarantee payment by the customer so that the risk of financial loss rests upon the printer. This transaction is an "original sale" by the printer, for which maximum prices must be filed pursuant to Section 1347.463(c). The printer must use his best efforts to determine the distributor's base period pricing practice, including the distributor's markup. This statement may be filed as a supplementary report in the form of a letter.

Violations and Evasions

Reduction of allowances. A typographers association furnishing composition services during March 1942, customarily credited its customers with 15¢ per pound for all metal returned to it. It now desires to reduce the credit to 14¢ per pound. The reduction in credit for the metal from 15¢ to 14¢ per pound constitutes in effect an increase in the price of a service related to printing, and therefore is a violation of the Regulation.

Maximum Price Regulation No. 257

PULPWOOD PRODUCED IN OR SOLD INTO THE STATES
OF MINNESOTA, MICHIGAN, AND WISCONSIN

Applicability

Manufacture of pulpwood into items other than woodpulp. The sale of a species of wood listed in Section 1347.358(a)(4) for manufacture into items other than "woodpulp", as defined in Regulation No. 114 (Woodpulp), is not subject to the Regulation. Thus, the sale of a listed species of wood for the manufacture of box lumber is not covered.

Poplar wood used exclusively in the production of "insulite pulp" for manufacture into wood fibre structure insulation board, is not subject to the Regulation, since "insulite pulp" is not "woodpulp" as defined in Regulation No. 114, Section 1347.229(a)(2).

Commissions

Commissions. While no commissions may be added to the maximum prices, the Regulation does not prohibit a mill from hiring persons to procure wood on a fixed monthly salary basis, provided that the amount of the salary is not dependent on the amount of wood procured.

Violations and Evasions

Sale of timber. The Regulation applies to the sale of pulpwood cut from the stump; it does not apply to a sale of standing timber or stumpage. However, it is an evasion of the Regulation to purchase stumpage at a cost in excess of the maximum price for the pulpwood cut from the stump.

Cooperative association. Producers of pulpwood form an association which buys pulpwood produced by its members as well as by non-members. The association thereafter sells the pulpwood to consumers and charges a trader's commission. This arrangement constitutes a violation of the Regulation with reference to that portion of the sales involving the pulpwood produced by the members, since these producers are receiving a dealer's or trader's commission in violation of Appendix A(c)(2). The association may, however, charge the dealer's commission on sales of pulpwood produced by the non-members.

Maximum Price Regulation No. 266

CERTAIN TISSUE PAPER PRODUCTS

Applicability

Retailers. A retailer who proposes to sell paper towels for the first time must determine his maximum price under the provisions of the General Maximum Price Regulation for the reason that there is no method in the Regulation whereby he may determine his "March 1942 percentage mark-up".

Price Determination

Retailer's "net cost." Where a retailer has not purchased toilet paper towels since November 26, 1942, the effective date of the Regulation, he cannot determine his "net cost" under the Regulation, and therefore, until such a purchase is made, he continues to price these products under the provisions of the General Maximum Price Regulation.

Distributor's markup. In the sale of paper towels, the amount of the distributor's markup varies with the number of cases sold. Where a container is packed with 7,500 paper towels, it may be counted as two cases, since "case" is defined as a shipping container in which 3,750 paper towels are packed.

Sales not on a uniform nationally delivered basis - "established differentials". A manufacturer ships toilet tissue and paper towels in pool cars to a railroad siding and hires a local firm to deliver the merchandise to wholesale grocers. In no event may the wholesaler pass on this delivery charge, because it is not an "established differential" under Sections 1347.515(b)(3) and 1347.516(b)(2), and therefore is not part of the manufacturer's maximum price on which the wholesaler's markup is based.

Retailer's "net cost" - advertising allowance. In determining "net cost" under Section 1347.515(d)(2), the retailer need not deduct advertising allowances granted to him for advertising and promotional services which he actually renders. However, a retailer must be consistent, and therefore, if he includes this item in his "net cost", he must also include it when determining his "March 1942 percentage markup".

Reduction in basis weight of paper towels. Basis weight of paper towels may be reduced by 10% without revising maximum prices subject to the following qualifications.

1. Where the maximum price for the product is established under the table set forth in Section 1347.516(a)(1), the reduction basis weight may be made from the lowest basis weight listed in each basis weight class according to the table.

2. Where the maximum price for the product is based upon the October 1-15, 1941 price, the basis weight from which the reduction may be made must be that basis weight as it existed during October 1-15, 1941.

Maximum Price Regulation No. 307

WAXED PAPER

Price Determination

"Published list price." A manufacturer of "miscellaneous waxed papers" (Appendix G) had no published price list during the base period. Each job was priced on an individual basis, usually in reply to a request for bids. The manufacturer determines his maximum prices in accordance with the formula set forth in Section 1347.621(b).

Maximum Price Regulation No. 344

NEW COTTON, LINEN AND UNDERWEAR CUTTINGS

Applicability

Sale to industrial user. The sale of new cotton cuttings by a producer directly to an industrial user who manufactures small bag containers from them, is covered by the Regulation unless the cuttings constitutes pound goods, remants, mill ends or segregated large pieces, in which case Regulation No. 118 (Cotton Products) or the General Maximum Price Regulation applies, depending on the type of goods involved.

Maximum Price Regulation No. 349

DISTRIBUTORS' MAXIMUM PRICES FOR CERTAIN COARSE PAPER PRODUCTS

Applicability

Colored Kraft paper. See page 18:9.

Coat hangers. See page 18:10.

Price Determination

Sales of less than one unit lots - distributor not in business during base period. In order to determine his markup on sales of less than one unit lots under Section 15(1), the distributor must have been in business during March 1942. A distributor who was not in business during the base period must determine his maximum prices for these sales under the General Maximum Price Regulation.

Definitions

Distributor. Under Section 13(a)(10), a distributor means "any reseller commonly known and recognized as a wholesale paper merchant or jobber . . ." A person who normally buys commodities listed in the Regulation from a manufacturer or converter, and resells them in substantially the same form to consumers, industrial users, etc., is commonly known as a wholesale paper merchant or jobber, and therefore is a distributor under the Regulation. Converters of any of the products listed in the Regulation are not deemed to be "distributors" within the meaning of Regulation No. 349.

"Case" of drinking and soda straws. The term "case", which is the pricing unit for "straws, drinking and soda", item 41, Section 1(c), refers to the shipping case, and not to the smaller cartons enclosed in the outer shipping case.

Maximum Price Regulation No. 359

CERTAIN CONVERTED PAPER PRODUCTS

Price Determination

Terms of sale - guarantee against price decline. Price list of seller contains the following guarantee against price declines of its products:

"The prices of the X Company are guaranteed against their own decline, not only up to and including date of shipment but are so guaranteed up to and including the date that products reach destinations to which they are shipped from the factory".

In order to meet competitive conditions the seller occasionally would grant to carload distributors a guarantee against its price declines for a period of 90 days subsequent to the date the goods were shipped.

Since the 90 day type of guarantee was not in effect during the period October 1-15, 1941, but was only temporary and occasional in effect prior to that date, the seller may discontinue this type of guarantee.

Maximum Price Regulation No. 361

PULPWOOD PRODUCED IN OR SOLD INTO THE STATES OF
MAINE, VERMONT, NEW HAMPSHIRE AND NEW YORK

Price Determination

Maximum zone price. Under the Regulation, the zone where the pulpwood is cut from the stump, and not the zone where the consumer's mill or producer's residence is located, controls the maximum price. Hence, if pulpwood is cut in a zone where a higher maximum price exists, and is loaded on cars for delivery into an area where there is a lower maximum price, the higher maximum price may be charged.

Where the pulpwood is cut partly in one zone and partly in another, the maximum price for each portion must be determined separately, by reference to the particular zone where each portion is produced.

Dealer's allowance. Section 9(f) permits a dealer's allowance of \$1 per cord for deliveries to consumer of 1000 cords or more of wood under certain conditions:

A dealer agrees to sell 1000 cords to a consumer, but only delivers 500 cords, intending to deliver the remainder in the future. In order to receive the allowance, the dealer must have delivered the entire order of 1000 cords within the period from May 1 of any year to April 30 of the following year; he may not receive the allowance for the 500 cords until the entire order of 1000 cords is delivered.

Classification

"Producer." When a paper mill cuts wood, which it cannot use in its own paper manufacture, for the purpose of selling such wood, it is a "producer" with respect to such wood.

Maximum Price Regulation No. 365

WOOD MATCHES AND RESALE BOOK MATCHES

Applicability

Billboard matches. "Billboard" matches are "special reproduction" book matches, a classification not covered by the Regulation; the General Maximum Price Regulation applies.

"Resale book matches" packed 50's - 1000 per case are covered by the Regulation. The ceiling prices listed in Appendix C(a) must be prorated to be equivalent to \$3.60 for 2500, e.g., \$1.44 for 1000.

Classification

Billboard matches. See page 18:18.

Maximum Price Regulation No. 369

DRY ROOFING FELT

Applicability

Sales in rolls of less than 100 sq. feet. The Regulation establishes maximum prices for sales of dry roofing felt in rolls of 100 sq. feet or more by any person at any level of distribution. Sales in rolls of less than 100 sq. feet (which are usually made by persons other than manufacturers) are subject to the General Maximum Price Regulation.

Maximum Price Regulation No. 387

PULPWOOD PRODUCED IN THE STATES OF SOUTH CAROLINA,
GEORGIA, FLORIDA, TENNESSEE, MISSISSIPPI, ALABAMA AND LOUISIANA
EAST OF THE MISSISSIPPI RIVER

Price Determination

Sale by contractor. A subcontractor has been in the practice of selling wood to a dealer and then reselling to contractor's mill. The subcontractor is not a producer of wood. The contractor has been financing the subcontractor who pays cash for the wood as it is loaded. The subcontractor has made his profit on these transactions either by receiving a part of the contractor's profit or on his sale to the contractor.

Revised Maximum Price Regulation No. 387 has made this way of doing business impossible. The subcontractor and the contractor now propose to form a partnership for the purchase and sale of wood. It is proper for the subcontractor to enter into this arrangement, provided that neither of the partners have anything whatever to do with the production of the wood.

Taxes

Severance taxes.

Question: What should be done with the severance taxes assessed by the States of Louisiana and Mississippi against the owners of stumpage? It has been the practice in the past to collect this tax for the State government. If the price was \$6.50 per cord, the buyer would actually bill a transaction at \$6.53, then deduct the 3¢ severance tax and remit same to the State. The problem now is whether this practice can be continued.

Answer: The practice which has been followed in the past cannot be considered legal now. Revised Maximum Price Regulation No. 387 establishes a maximum price which may be paid. If, in addition to this amount, the buyer should pay the stumpage owner's liability on the tax it would exceed the ceiling. If it is wished to continue collecting and paying over the tax, the price paid should be less than the maximum price by the amount of the tax.

Maximum Price Regulation No. 449

GROUNDWOOD SPECIALTY PAPERS

Applicability

"Novel news" or "novel paper" averaging over .004 inch thick per sheet and used in "pulp" magazines is a "groundwood specialty paper" within the meaning of Regulation No. 449, and therefore is covered by it; it is not "newsprint" under Regulation No. 130 (Newsprint Paper).

Maximum Price Regulation No. 459

GUMMED KRAFT SEALING TAPE

Applicability

Gummed tape made from cloth. The term "gummed kraft sealing tape" does not include gummed tape made from material other than paper. A gummed tape made from paper and cloth is "gummed paper", covered by Regulation No. 129 (Miscellaneous Paper Products).

Maximum Price Regulation No. 484

UNWASHED AND WASHED WIPING CLOTHS

Applicability

Wiping cloth. A rag or cloth is not a wiping cloth within the meaning of the Regulation unless it meets the dimension specifications stated in the Regulation. Any rag or cloth, washed or unwashed, which fails to qualify as a wiping cloth, is covered by Regulation No. 47 (Waste Rags, Waste Ropes and Waste Strings) provided that it satisfies the requirements of that regulation.

Sales and rentals by linen supply house. Where linen supply companies rent service cloths or rags to restaurants, soda fountains, taverns and similar establishments for use as mops, wiping cloths or rags, the maximum price applicable to such rentals is governed by Regulation No. 165. Where, however, the cloths or rags are supplied with the understanding that they do not have to be returned, the transaction must be treated as a sale and not as a rental and the maximum prices applicable are those established by the Regulation.

New material used for wiping cloths. The Regulation applies to the sale of old rags for use as wiping cloths. The sale of new material for use as wiping cloths is covered by the General Maximum Price Regulation, Regulations No. 118, or No. 127 whichever is appropriate.

Price Determination

Inbound transportation costs. A broker purchasing wiping cloths has them delivered to his warehouse where they are transferred into trucks and delivered to his customer. The inbound transportation costs incurred by the broker for the delivery to the warehouse must be absorbed by him, since the warehouse is the "point of shipment" within the meaning of Appendix A(e) entitled, Transportation charges.

PETROLEUM AND PETROLEUM PRODUCTS.

Price Schedule No. 42.

PARAFFIN WAX.

Price Determination.

Shipment of mixed lots. The maximum prices listed in the Schedule for shipments of paraffin wax in quantities of 10,000 pounds or more apply to shipments of 10,000 pounds or more if made to a single purchaser irrespective of the number of grades included in the shipment.

Transportation charges - charges from refinery or port of entry to shipping point. Where paraffin wax in quantities of 10,000 pounds or more was shipped from the refinery at which it was last processed to New York City and purchased at that city by a San Francisco purchaser and shipped to San Francisco for resale, the actual transportation charges may be added from the refinery to New York and from that city to San Francisco, provided that such charges are shown as separate items on all records and invoices. Where the seller's shipping point is other than a refinery, the Schedule provides for the addition of the actual transportation charges from the refinery at which it was last processed to the seller's shipping point.

Transportation charges - delivered price. When wax is shipped from other than a refinery in quantities of 10,000 pounds or more, the Schedule allows the addition to the maximum price of the cost of transporting the wax from the refinery to the actual point of shipment. However, that addition may not be made when wax is shipped in quantities of less than 10,000 pounds, since the maximum price established by the Schedule for wax shipped in quantities less than 10,000 pounds is a delivered price.

Transportation charges - charges for transporting crude wax from place of purchase to refinery. The cost of transporting crude wax from the place where it was purchased to the refinery where it is converted into refined wax may not be added to the maximum prices for fully refined wax; the provision for adding transportation charges when paraffin is shipped from a place other than the refinery at which the wax was last processed would not permit such an addition inasmuch as the refinery where the wax is converted into refined wax is the refinery at which the wax was last processed.

Charges for containers. The maximum prices set forth in the Schedule include the cost of the containers listed in the Schedule. Tank car shipments are listed in the Schedule. Accordingly, where the buyer furnishes a tank car, the maximum price for the paraffin wax must be reduced by an amount equivalent to the rental charge for the tank car.

Weight of bag or barrel. The weight of the bag or barrel in which paraffin is sold may not be included in calculating the maximum price of a quantity of paraffin wax.

Maximum Price Regulation No. 88.

FUEL OIL, GASOLINE, AND LIQUEFIED PETROLEUM GAS.

Applicability.

Retail sales. Sales made at retail service stations, garages, and stores are expressly exempted from the Regulation; sales made at other outlets, whether or not the sales are retail,

the burden of proof is on the seller to show that it was the latter.

Discounts during base period - Section 5.2. The requirement in Section 5.1 that discounts granted during October 1-15, 1941, be continued does not apply to a seller whose maximum prices are based on Section 5.2, since the maximum prices determined under this Section are based on the net price received on the last sale of a substantial quantity. However, the fact that no discount was given for payment within 10 days to a particular person on the last sale of a substantial quantity does not necessarily mean that no discount need be given to any other class of persons for payment within 10 days. Presumptively, if the seller normally gave a discount for payment within 10 days, but failed to give it on the last sale of a substantial quantity, the person to whom he failed to give the discount is in a different general class from those to whom he gave it since the seller customarily charged them different prices.

Discount offered but not taken - Section 5.2. Where a purchaser was offered a discount for early payment on the "last sale of a substantial quantity" but did not receive the discount because of his failure to make early payment, the sale to him is to a different class of purchaser than a sale to one who was offered and took the discount.

Bottled gas - charge for installing gas tank. A distributor of bottled gas may add to the maximum prices an installation charge for connecting a storage tank to the gas range of the consumer, provided that the price at which gas was sold during the base period did not include this installation charge.

Containers. Where a seller of petroleum products furnished a container or drum free of charge during the base period, October 1-15, 1941, and now requires the return of the container, the price of the product must be reduced to allow for the value of the empty container during the base period if the price of the product plus the value of the container exceeds the maximum price for the petroleum product. If the container is of no value to the purchaser, no downward adjustment of the price of the product is necessary.

Deposit for containers. A reasonable sum designed to induce the purchaser to return the empty container may be required as a deposit. However, the seller may not deduct from the deposit the cost of cleaning the container or transportation charges involved in the return of the container.

Increased container costs. The increased cost of containers may not be added to the maximum prices. Thus, where a seller previously sold a petroleum product in steel drums and now sells the product in wooden barrels, he may not add the increased cost of the wooden barrels to the maximum price.

Gasoline - addition to maximum price in certain areas. The addition to the maximum prices of gasoline, permitted in the eastern seaboard area, may be charged on delivered sales to any point in that area, regardless of the point of shipment. However, if the sale is f.o.b. a shipping point outside such area, the additions may not be made to the maximum price even though the shipment is destined for a point in that area.

Propane sold as a liquefied petroleum gas. Propane, when sold as a liquefied petroleum gas is subject to Section 5.2; it is not a "dry gas" subject to Regulation No. 436. When sold at retail at service stations, garages, and stores, the General Maximum Price Regulation applies.

Grade of Gasoline. See page 19:8.

Ration allotments of gasoline. A consumer's ration allotments of gasoline as of July 1, 1943 control the price which he will have to pay for gasoline during the last six months of 1943, see Section 7.3(c). This is so even though the actual amount of gasoline delivered to him during this period varies from the amount allotted, because of subsequent changes in ration allotments by the Office of Defense Transportation.

Continuance of price distinctions maintained by reference seller. Where a seller adopts the price of a reference tank wagon seller, he must also adopt the customary price distinctions

maintained by such reference seller for its various classes of purchasers.

Delivery point. Where the freight rates are different from a refinery to places located in the same general area and it has been a customary practice for the refinery, in setting prices under similar conditions, to take the added delivery cost into consideration, each place constitutes a different delivery point within the meaning of the Regulation.

Excess volume. If a seller's maximum price for fuel oil to a particular purchaser is determined in accordance with a base period price charged pursuant to an adjustable contract, then the maximum price for any volume in excess of that provided for in the contract is presumptively the same as that for the amount stipulated in the agreement. The presumption can be rebutted by a showing that for excess amounts the seller, prior to October 15, 1941, customarily charged more or less than the contract price.

Commissions

Broker's commissions. Where a seller employs a broker to find a buyer, then the seller, being the party in need of the broker's services, must absorb the charges as part of the seller's expense of doing business, and the buyer cannot be charged more than the maximum price. On the other hand, if a buyer needs assistance in finding available oil, it is not an evasion of the Regulation to employ a broker or any one else to render such service and to pay the party so employed. In such case the buyer's acquisition cost is higher than the maximum price, but the buyer is paying not only for oil but for services. Where a broker's participation increases the buyer's acquisition cost over maximum selling price, it must appear that the buyer was in bona fide and legitimate need of the broker's services, that the buyer actually hired the broker, and that the services performed by the broker were intended for and were for the benefit of the buyer. This is true only where formula maximum prices determined under Article V are employed; on sales where dollar-and-cents prices apply, brokerage charges are regulated in Articles II, III and IV of the Regulation.

Classification

Farmers' cooperative. See page 19:2

Violations and Evasions

Refusal to sell quantity ordered. Where a seller is attempting to treat his customers equitably by voluntarily rationing his supply of fuel oil, he may charge the maximum price for the amount actually delivered without regard to the quantity discount which would have been applicable if the full amount ordered had been delivered.

Broker's commissions. See page 19:7.

Definitions

"Contract." The term "contract" is defined in the Regulation as "an agreement, the existence of which is established by written evidence." Thus an oral contract, the existence of which is established by an invoice and a voucher check by which the invoice is paid, is a "contract" under the Regulation.

Records and Reports

Person both wholesaler and retailer. See page 19:9

Maximum Price Regulation No. 137

PETROLEUM PRODUCTS SOLD AT RETAIL ESTABLISHMENTS

Applicability

Sale at farmers' cooperative store. The sale of petroleum products at a farmers' cooperative

store is a sale at a "retail establishment", and therefore, subject to the Regulation.

Bulk plants. Sales by rural bulk plants which deliver motor fuel by tank trucks directly to farmers' storage tanks for use in farm tractors, etc., are not "retail establishments" within the meaning of that term in the Regulation, and therefore, are not subject to the Regulation. Such sales are subject to Regulation No. 88.

Sale of motor fuel oil in barrels at bulk plants. The sale of fuel oil in barrels at the

- (a) Sales to mills in listed consuming centers. Maximum prices are established in dollar and cents for designated consuming centers. The maximum prices for listed consuming centers are applicable to the sale of scrap rubber to any consumer for use in a consuming mill located in such center regardless of the place from which the rubber scrap is shipped or where the sale is made. The price for tire parts, peelings and inner tubes listed in Table II are uniform for all consuming centers except Los Angeles, California.
- (b) Sales to mills in other than listed consuming centers. Maximum prices on sales to mills in other than the listed centers are the maximum prices of the listed consuming centers to which the freight charge from such mill is lowest.

Demurrage charges arising after the arrival of a car containing a shipment of scrap rubber are not part of the transportation costs of making delivery to the consumer's mill within the meaning of Section 1315.1263(d). Accordingly, such demurrage charges are not included in the specified maximum prices and may be paid by the consumer in addition to the maximum prices.

Adjustment of maximum prices for moisture content. Where scrap containing a substantial moisture content is sold, an adjustment must be made for moisture content by the method customary in the trade in that locality or customary between the particular buyer and seller. Appendix A(c) provides that the listed prices in the Schedule represent the maximum prices for the highest grade specified for each type of scrap rubber and further provides that any sale of scrap rubber of lower quality shall be made at an appropriate differential below the listed price.

Maximum Price Regulation No. 119

ORIGINAL EQUIPMENT, TIRES AND TUBES

Applicability

Molded-on solid industrial truck tires. The Regulation applies to molded-on solid industrial truck tires.

Maximum Price Regulation No. 131

CAMELBACK AND TIRE AND TUBE REPAIR MATERIALS

Price Determination

Royalty charges may be added to the maximum prices for camelback only if they are truly charges for something in addition to the camelback, and are not charges added to evade the maximum prices. The royalties usually involved are charges for the use of machinery or a process or for supervision. Whether such royalty has been charged in the past will have a bearing on whether it is permissible, or an evasion of the maximum prices.

Classification

Change of container. A change in the style of a bottle container is not a change in the specifications of rubber cement; the rubber cement sold in the old style bottle is the same item as the rubber cement sold in the new style bottle and takes the same maximum price.

Records and Reports

Royalties. Where a royalty charge is added to the maximum price, the records of the seller must set forth such charge as a separate item.

Maximum Price Regulation No. 143

WHOLESALE PRICES FOR NEW RUBBER TIRES AND TUBES

Applicability

Solid rubber tires. The sale at wholesale of new solid rubber tires is covered, provided that such tires are for the types of vehicles listed in the Regulation.

Violations and Evasions

Additional charge for transfer of rationing certificate. On and after June 1, 1944 the effective date of amendment to Tire Rationing Regulations which prohibits transfer of Part B of tire rationing certificate except in connection with the transfer of a tire, it is a violation of the Regulation if seller of a tire charges maximum price and in addition makes a charge for transfer of a certificate to the buyer.

Maximum Price Regulation No. 149

MECHANICAL RUBBER GOODS

Applicability

Industrial tape made in whole or part of rubber is subject to the Regulation as "tape, except cable wrapping tape and surgical adhesive tape", see Appendix A. Adhesive discs, adhesive squares, double-faced adhesive tape, pico tape, adhesive strip and adhesive "thread protectors" are "tape" within the meaning of the Regulation; however, if used for medical or surgical purposes such tape is subject to Maximum Price Regulation No. 188 (Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel).

Rubber separators. Rubber separators used in electric storage batteries are covered by the Regulation under the heading "all other mechanical rubber goods, except those listed in Appendix A", see Section 1315.35, Appendix B.

Hinges, washers, and bumpers for toilet seats which are made of "reclaimed mud" are covered by the Regulation under the classification "Plumbers' supplies and specialties", see Section 1315.34, Appendix A.

Rubber cord is not classified as rubber covered thread within the meaning of Section 1315.34 and therefore is not covered by the Regulation.

Price Determination

Costs. In determining the maximum price for V-belts, the costs of the manufacturer as of January 5, 1942 cannot be used. Since belting made in whole or in part of rubber is listed in Appendix A, October 1, 1941 costs must be used in determining the maximum price.

Charge for special service. Where a manufacturer of mechanical rubber goods incurs extra expenses such as overtime labor, starting of machinery during a weekend, closedown, etc., in order to accelerate delivery to a customer, he may not add any charge for such special service over and above the maximum price, even though such charge does not exceed the actual cost of the special service.

Goods not the same as those dealt in on the base date. On the base date, October 1, 1941, a manufacturer regularly quoted prices for a mechanical rubber item whose rubber portion was made from natural rubber. The rubber portion of this item is presently manufactured from neoprene. The use of neoprene instead of natural rubber in the manufacture of the item results in the production of a new mechanical rubber goods for which the manufacturer had no regularly quoted price in effect on the base date. Accordingly, the maximum price of

the item must be determined under Section 1315.21a(a)(2)(iii).

Definitions

"Mechanical rubber goods." The following are mechanical rubber goods if made in whole or in part of rubber, abrasive wheels, brake lining, chute lining, clutch facings, engraving rubber, horseshoe pads, keg bumpers, leak-proof gasoline tanks, lineman's blankets, off-set blankets, oil well specialties, printer's blankets, printing plate material, rubber paint, rubber putty, rubber molds (i.e., molds made of rubber), sheet rubber, slab rubber, stamp rubber, table tops, type and logotype rubber, and windshield wiper blades.

In addition to the products specifically excluded by Appendix C of the Regulation, the following are not "mechanical rubber goods": household goods, laboratory supplies, and accessories and repair materials.

"Container sealing compounds", as used in Appendix A of the Regulation includes latex compositions, or mixtures of unvulcanized rubber that may be used as sealing containers in commercial food canning or in the packing of inedible products.

Records and Reports

Price determining methods on tailor-made articles. Section 1315.28(a)(2) requires the manufacturer of tailor-made articles to report the method by which he ascertained his maximum price and the rates used in calculating the gross margin, but does not require a report showing the calculations of actual prices on these articles. If the manufacturer used different methods or rates for different articles, he must report all the methods and rates, and state to what articles these methods and rates were applicable. If the manufacturer used only one method and one rate in calculating his gross margin, he need report only that method and rate, together with a statement that the method and rate was applicable to all his sales on January 5, 1942.

Closed plant in liquidation. A manufacturer who has closed his plant and expects to liquidate his stock of mechanical rubber goods on hand must file the report required by Section 1315.28 since the sale of these goods by the manufacturer is covered by the Regulation.

Maximum Price Regulation No. 200

RUBBER HEELS, RUBBER HEELS ATTACHED, AND ATTACHING OF RUBBER HEELS

Applicability

Attaching rubber heels to orthopedic shoes. The replacing of regular rubber heels on orthopedic shoes, and the replacing of orthopedic rubber heels on orthopedic shoes is subject to the Regulation. The maximum price for either operation includes all repairs made by the shoe repairman in the process of attaching the rubber heels.

Sales by hardware and five-and-ten cent stores. The Regulation does not apply to the sale of rubber heels by hardware or five-and-ten cent stores; only "rubber heels sold in the shoe repair trade" are covered by the Regulation. Sales by hardware or five-and-ten cent stores are covered by Maximum Price Regulation No. 477.

Price Determination

Attachment of rubber heels for department store's customers. A department store furnished a shoe repair service, including the attachment of rubber heels. Unknown to the customer, the department store has the rubber heels attached by an independent shoe repair shop. The maximum price the department store may charge its customers for such service is established by the fourth column of Table 1-A, entitled "Maximum prices to consumers for heels attached by shoe repairmen"; if the shoe repair shop charges the maximum prices under the Regulation, the department store may not add any profit or mark-up in passing this price on to its customers.

Maximum Price Regulation No. 220

CERTAIN RUBBER COMMODITIES

Applicability

Baby pants. The sale of baby pants is covered by the Regulation.

Price Determination

Change to substitute rubber material. A manufacturer may not use the highest price charged during March 1942 for articles made of rubber as the maximum price for articles now made of a substitute rubber material unless the substitution is only a minor change as defined in the Regulation. The applicable pricing method contained in the Regulation for such articles must be used.

Taxes

Deduction of Federal excise tax- Amendment No. 3. Amendment No. 3 to Regulation 220, Section 1315.1553(b), requires in certain cases the deduction of the Federal excise tax which was formerly paid on rubber commodities. The deduction to be made shall be figured on the basis of each entire sale or delivery. The maximum price for the entire sale or delivery shall be calculated to the nearest cent by dropping fractions less than $\frac{1}{2}$ cent and increasing to the nearest cent where the fraction is $\frac{1}{2}$ or more, after the exact amount of tax on the entire order has been deducted. By requiring manufacturers to figure the deduction of the tax in this manner, it becomes immaterial that the amount of the tax on each individual item may be a figure involving fractional cents. Printed price lists which quote prices on each item need not be reprinted in fractional cents. It is sufficient that the list include a written statement to the effect that the amount of the tax should be deducted on sales by the manufacturer.

Violations and Evasions

Pricing - incorrect computation. Prices figured and filed by manufacturers of corsets and allied products containing rubber or rubber substitutes under the second or third pricing methods of the Regulation are not their maximum prices unless the prices are correctly computed. If the prices are incorrectly computed they are not the manufacturer's maximum prices even though the OPA does not disapprove them within fifteen days from the date of mailing the price report. The provision that prices do not apply retroactively if adjusted after the fifteen day period applies only to those prices which were correctly computed by the manufacturer in the first place.

The burden of submitting correct information as to costs and choice of pricing method rests with the manufacturer. A reasonable error which results in a higher price for the first sale will not be considered a violation. But subsequent sales at the same price without an adjustment having been made will be in violation of the Regulation. Such adjustments are required by Section 1315.1557(c).

Maximum Price Regulation No. 300

MAXIMUM MANUFACTURERS' PRICES FOR RUBBER DRUG SUNDRIES

Applicability

Industrial gloves made of rubber, synthetic rubber, rubberized fabric, or synthetic coated fabric. Regulation No. 300 and Regulation No. 301 apply to industrial gloves made of rubber, synthetic rubber, rubberized fabric or synthetic rubber coated fabric.

Doctor of medicine. See page 20:6.

Price Determination

Combination syringe not listed in Appendix B. Where a combination syringe does not fall within any of the groups listed in Appendix B, because it has an additional pipe, the maximum price is determined by adding to the maximum price for the combination syringe listed in the Regulation, the maximum price of the third pipe as determined under Section 1315.1753.

Taxes

Distributors - excise tax. The definition of "manufacturer" in Section 1315.1769(a)(2) includes a "distributor." However, the pricing provisions for manufacturers do not apply to distributors since the Regulation provides specific provisions for distributors, see Sections 1315.1755a and 1315.1755b. Accordingly, the requirement in Section 1315.1753(d) that manufacturers of rubber drug sundries, other than victory line, deduct the federal excise tax in the manner indicated if on December 1, 1941 the manufacturer did not bill such tax separately does not apply to distributors of such rubber drug sundries.

In determining his maximum prices under Section 1315.1755a, a distributor must determine "the price in effect to him" on December 1, 1941, which means the manufacturer's selling price on that date inclusive of tax.

Definitions

"Distributor". A chain drug store company purchases rubber drug sundries under the company's private branch from a manufacturer. The sundries are not finished, packaged or assembled. The manufacturer also sells the **sundries** under its brand name. If the chain store company resells the sundries primarily to wholesalers or resells them primarily other than at retail under its brand, the company is a "distributor" since the sundries sold by the company bear a different brand and therefore are different articles than those sold by the manufacturer under his brand.

Maximum Price Regulation No. 301

RETAIL AND WHOLESALE PRICES FOR RUBBER DRUG SUNDRIES

Applicability

Doctor of medicine who sells or delivers at retail or wholesale any rubber drug sundries listed in Appendix A which were produced after January 31, 1943 is subject to the Regulation; if a doctor of medicine buys or receives from a manufacturer any rubber drug sundries listed in Appendix A of Regulation No. 300 (Maximum Manufacturers' Prices for Rubber Drug Sundries) which are produced after February 1, 1943, the prices charged him are subject to that Regulation.

Marking and Posting

Marking of retail ceiling price. Under Section 1315.1787(b), mail order houses may mark their retail ceiling price "Our Ceiling \$...." instead of "Retail Ceiling \$...", provided the seller only sells at retail.

Maximum Price Regulation No. 403

CERTAIN RUBBER COMMODITIES PURCHASED FOR GOVERNMENTAL USE

Applicability

Lump sum sale. Where commodities subject to the Regulation are sold together with commodities not covered by it, for a lump sum, the Regulation is applicable only to those commodities covered by the Regulation. The commodities not covered must be priced separately under the appropriate price regulations.

Maximum Price Regulation No. 435

NEW BICYCLE TIRES AND TUBES

Price Determination

Volume discounts. The volume bonus discounts to jobbers under Appendix A(a)(5) may be based on the seller's net volume of sales during the year, only if it was his customary practice to so calculate volume bonus discounts during March 1942.

Maximum Price Regulation No. 477

SALES OF RUBBER HEELS AND SOLES IN THE SHOE
FACTORY AND HOME REPLACEMENT TRADE

Applicability

Soling containing neoprene. The sale of soling material containing neoprene is covered by the Regulation.

Maximum Price Regulation No. 528

TIRES AND TUBES, RECAPPING AND REPAIRING

Applicability

General. The regulation applies to transactions in the United States, territories and possessions.

Retail prices for new rubber tires and tubes. Appendix A applies to the sale at retail of all rubber tires and tubes for the types of vehicles listed in the Regulations, if such tires and tubes have been used less than 1,000 miles.

Solid rubber tires. The sale at retail of new solid rubber tires is covered, provided such tires are for the types of vehicles listed in the Regulation.

New tires with beads removed. New tires from which the beads have been removed are not covered by the Regulation.

New tires and tubes damaged by fire. A rubber tire that has been used less than 1,000 miles is a new tire under the Regulation even though it has been damaged by fire, water, and smoke. If the damaged tire is sold as is at retail, it is covered by Appendix A as a new tire. However, if the damaged tire is recapped, it is covered by Appendix C as a retreaded or recapped tire.

Sale at retail. A sale of new tires to a State Highway Department for the use of that department is a sale at retail and is covered by the Regulation and not by Maximum Price Regulation 143.

Used tractor and farm implement tires. The Regulation covers sales of used tractor and farm implement tires of the sizes specifically listed in Appendix B. The captions to the tables refer only to the usual use of the listed tire sizes. Used tires and tubes of sizes not specifically listed in Appendix B are covered by the General Maximum Price Regulation.

Used motorcycle tires. Used motorcycle tires are covered by the Regulation if they are of the sizes specifically listed in Appendix B.

Purchase of used tires by a used-car dealer. A used-car dealer who purchases used tires and places them on used cars which he sells as a unit is subject to the maximum prices for used tires with respect to such purchases; he is buying used tires in the course of trade and business, since the purchase of used tires is part of his business of selling used cars.

Sales for reuse. The Regulation covers all sales of used tires and tubes at wholesale as well as at retail. Exception in Section 1(a)(2) of sales for a purpose other than use on a wheel of a vehicle refers to ultimate use, for example, scrap rubber, and does not include sales to purchasers who will resell for ultimate use on vehicles.

Price Determination

Trade-in allowance. The allowance for a used tire traded in on the purchase of another tire cannot exceed the maximum price established by Appendix B for a used tire.

Passenger car tire to be used on a truck. A used 6-ply passenger car tire to be mounted on a truck takes the maximum price for a used passenger car tire.

Truck tires. A tire must be a truck tire as recognized by the trade to entitle the seller to the maximum price established for used truck and bus tires. The tire markings will generally indicate whether the tire is a truck tire.

Extra charges for enlarging or cutting down used tubes. A seller who enlarges or cuts down

a used tube may not sell the tube at a price higher than the maximum price for a used tube of the resulting size. The seller may not make a charge for the enlarging or cutting down of the tube to the extent that the total price charged exceeds the maximum price of the resulting size of the tube.

Basis on which recapping price is determined. The applicable maximum price under Appendix C for recapping is determined by the type of tread applied and not by the kind of carcass to which it is applied. Thus, applying a passenger car tread on a truck tire carcass is subject to the maximum price established for applying passenger car types of tread.

Stop-start treads. The maximum price for recapping with stop-start treads apply, regardless of the original tread upon the basic tire carcass. However, the maximum prices for stop-start type of tread apply only when such treads are applied to tires of a listed stop-start size or of a size generally recognized as equivalent to one of the listed stop-start sizes.

Credit sales. If the seller during March 1942 had two prices, one for cash and one for credit sales, so that he was in fact making a demonstrable separate extra charge for the extension of credit, he may continue the charge for the extension of credit provided that the posting requirements are complied with, he bills the extra charge separately, and the extra charge truly reflects the actual difference in the selling price of March 1942 between a cash sale and a credit sale.

Taxes

Excise tax on camelback used in recapping may not be added to the maximum prices for recapping and for recapped tires.

Classification

Ground grip, mud and snow. As used in Appendix C, ground grip type of tread includes the tread design known in the trade as mud and snow.

Violations and Evasions

Tying agreements. It is a violation of the Regulation to agree to sell a tire or tube or recapping or repairing service only upon the condition that the purchaser agree to purchase another commodity or service, regardless of the price placed upon the additional items.

SOLID FUELS

General Interpretations

Taxes - 1942 Revenue Act. The four cents per net ton transportation tax imposed on coal by the 1942 Revenue Act may be passed on to the ultimate consumer by a seller who paid the tax, provided the tax is stated separately on the invoice. Under the Revenue Act, the term "coal" includes bituminous, anthracite, lignite, coke, and several other miscellaneous solid fuels.

Leasing land and other real property for mining purposes. The leasing of land and other real property for mining purposes has been held not to be subject to OPA price regulations for solid fuels, including the following situations:

A company leases land from which it mines coal and pays the lessor stipulated royalties per ton.

A company, in addition to leasing land from which it mines coal, leases a tipple site, a mule pasturage, and a site on which are located houses for occupancy by miners.

Compensatory Adjustment Regulation No. 1

WARTIME INCREASES IN THE COST OF TRANSPORTING BITUMINOUS COAL

Eligibility for Compensation

Shipment in barges. In determining eligibility for compensatory adjustment, the restriction in Section 1411.1(a) on shipments in cargo boats of 1,000 gross tons or more does not apply to shipments in barges regardless of capacity.

"Normally received" southern bituminous coal. A person who received at his "establishment, southern bituminous coal transhipped from Hampton Roads via tidewater . . ." for a number of years prior to January 1, 1942, with the exception of a short period in 1941 when such coal was not available to him has "normally received . . . southern bituminous coal" prior to January 1, 1942, and is eligible for compensatory adjustment if he otherwise qualifies under Section 1411.1(a)

Where the route specified in Section 1411.1(a) was not used to ship southern bituminous coal to a retail dealer during the year 1941, such coal was not "normally received" over the specified route, and the retail dealer is not eligible for compensatory adjustment even though such route was customarily used for a number of years. However, a retail dealer who purchased southern bituminous coal in 1941 from other suppliers whose coal was received over that route in 1941 may apply for compensatory adjustment if he otherwise qualifies under the Regulation and now purchases southern bituminous coal from the supplier f.o.b. mine and pays the transportation costs, since he qualifies as a "receiver" of bituminous coal under Section 1411.4(a)(12).

Receiver of Anthracite briquets. A receiver of anthracite briquets, having a solid fuel content made up entirely of Pennsylvania anthracite, is eligible for compensatory adjustments if he otherwise qualifies under Section 1411.5(a).

A dock operator is a "bituminous coal dealer" within the meaning of Section 1411.3(a)(1) and may, therefore, apply for compensatory adjustment under that Section even though he did not normally purchase coal on a free alongside delivery basis. Thus, a dock dealer who normally purchased coal f.o.b. mines or piers and arranged for his own transportation may apply for special adjustment under the Section where he now receives coal by an all-rail route.

Public competitive bidding. A sale "under contract awarded the dealer in public competitive bidding" under Section 1340.256(b) means a sale under a contract awarded a dealer after the submission of bids in which all dealers who are in a position and desire to bid may do so, and where competitive bidding could reasonably be expected. The competitive bidding may be solicited through telephone as well as public advertisement.

Coal intended for one purchaser inadvertently delivered to another. See page 21:18.

Transportation charges. A seller computed his maximum price during the base period December 1941 on an f.o.b. dock basis. Deliveries from the dock were made by truck for which the seller customarily charged the then prevailing common carrier rate for the same haul. The maximum charges for deliveries by truck must now be based on the common carrier rate for the same haul in December 1941 and not on the present common carrier rate, since under Section 1340.252(b) a delivery service charge may not be increased over that charged by the seller in December 1941 for the same service. Where the seller makes deliveries in his trucks to a point other than that to which he made deliveries during the base period, the delivery service charge must be based on the December 1941 common carrier rate to that point for the same hauls.

Rule 1 - increased freight rate. Under Rule 1, Section 1340.254(b), a retail dealer may add to his highest December 1941 price certain increases in his "supplier's maximum price". An increase in the cost of transporting the coal from the supplier's mine to the Retailer's yard is not an increase in the supplier's price for coal at the mine, and therefore, may not be added.

Change in nature of operations.

Question: A company desires to change the nature of its operations from that of trucker to equipped dealer. May the company increase its maximum prices to cover increased expenses of storage, handling, weighing, etc.?

Answer: No. A change in the nature of the operations from that of trucker to equipped dealer does not permit a change in maximum prices. The company must determine its maximum prices under Rule 1, Section 1340.254.

Newly incurred service charge. A dealer who for the first time is charged for a service, such as anti-freeze treatment on anthracite, by a producer may not add the producer's charge to his maximum price since the definition of "supplier's maximum price" states such price is to be taken before the addition of any special service charge.

Taxes

Transportation tax - "the amount of tax paid by any of his prior suppliers". Where the increased transportation tax effective December 1, 1942, was paid by the dealer's supplier and passed on to the dealer, he may in turn pass on this increase to his purchasers of such coal, Section 1340.265. The dealer may identify the coal on which the tax increase may be passed on to his purchasers by: (a) identifying the tonnage upon which the tax increase was paid and passed on to him, or (b) passing on the tax increase to his purchasers after he has delivered an amount equal to his inventory as of November 30, 1942, the day preceding the effective date of the Amendment which first permitted the tax increase to be passed on by the dealer.

Invoices - posted prices - separately stating Federal transportation tax. See page 21:25.

Posted prices. See page 21:25.

Definitions

"Cocktail coal" which is a mixture of freshly mined coal and reclaimed coal is not the "same fuel" or the "same solid fuel" as reclaimed coal.

"Supplier who is the same person as the dealer". The term "supplier who is the same person as the dealer" in Section 1340.254(b)(2) means any person or form of business enterprise which performs the functions of supplying itself with the fuel it deals in. An "affiliated supplier" may or may not be the same person as the dealer. The phrase does not apply to corporate suppliers with wholly-owned subsidiaries. Thus, a wholly-owned subsidiary which receives its fuel from a parent corporation is not a "supplier who is the same person as the dealer".

Records and Reports

Reports to War Price and Rationing Boards. Retail dealers in solid fuels are required to file reports of their maximum prices with the appropriate War Price and Rationing Board.

Invoices - posted prices - separately stating Federal transportation tax. A rubber stamp notation on a sales invoice that the "above price includes Federal Transportation Tax of 4¢ per ton" is sufficient as a separate statement of such tax within Section 1340.265(b).

Posted prices. A dealer may not include the Federal transportation tax in his prices which are posted in his place of business. The ruling is the same as to his maximum prices filed with his War Price and Rationing Board and advertised prices appearing in newspapers or other mediums, even though he has a notation that the prices include the tax.

The distinction between notations on invoices and on posted or advertised prices is that invoices show the "price charged" while the prices which are posted or filed with the Rationing Board and advertised prices are "maximum prices". Since the transportation tax is an addition to the maximum price, it is not part of the maximum price and must be stated separately therefrom. A rubber stamp notation on the invoice is also permitted because the billing machines used by many dealers are not adaptable to setting forth both the price charged and the transportation tax.

SERVICES TRADES

Maximum Price Regulation No. 165

SERVICES

Applicability

Commodity sold in connection with service. "Services" under the Regulation includes the work done, and any commodity or article sold in connection with the sale of such services, and the itemized billing of the part or commodity separate from the cost of the service will not take the part or commodity out of the definition.

Photographic service rendered by a commercial or portrait photographer in taking and making a picture specifically ordered by a purchaser is covered by the Regulation since "service" includes any commodity or article sold in connection with the sale of a particular service.

The sale of pictures not taken or made upon the specific order of the purchaser is covered by the GMPR, as being the sale of a commodity.

Rentals. The leasing of a commodity under a rental contract which enables the lessee to acquire title thereto at any time during the term of the lease by payment of a stated valuation less allowance for depreciation is a "rental" under the Regulation if the allowance is not related to the amount of rent paid under the rental contract.

If, however, a rental agreement is a substitute for a conditional sale, as when it gives the lessee an option to buy by making a nominal payment at the end of the term, the transaction is not a "rental" within the definition.

Unloading coal. Where coal to be consumed in Alaska is purchased from a Utah coal company and shipped to Seattle, at which point another coal company performs the service of unloading the coal from railroad cars into barges (sacking all or some of it), whence it is shipped by the Army to Alaska, the services rendered by the coal company in Seattle, not being rendered in connection with its own sale of coal, are not in such instance subject to MPR No. 120, but rather to R 165.

Taxicab rentals and storage services. Where a taxicab company owns cabs and leases them to drivers at a stipulated daily rental, the transaction is covered by the Regulation as a rental of automobiles.

Where the drivers own the cabs and pay the company a certain sum per day for use of cab stands, the service is covered by the Regulation as the storage of automobiles.

Charges made by the company to the drivers for use of call boxes and PBX services are exempted from price regulation as telephone secretarial services (Supplementary Regulation No. 11, Section 1499.46(b)(80).

Taxicab fares are exempted from price regulation under Section 1499.46(b)(92) of Supplementary Regulation No. 11.

Freight forwarding. A company engaged in the freight forwarding business whose function includes the preparation of ocean bills of lading, dock receipts, export customs declarations and consular invoices, but which is not interested in the purchase or sale or physical handling of merchandise is covered by the Regulation.

"Carloading and unloading." means such services in the generic sense, and covers loading and unloading not only of railroad cars, but barges, lighters, trucks, wagons and similar conveyances.

Automobile and truck rentals. The rental of used automobiles and trucks is covered by the Regulation. Where, however, the transaction actually is a sale of the service of hauling, even though called a rental, it is covered by the GMPR. Thus truck "rentals" in which the truck-owner retains possession and control of the truck (as is usually the case when he furnishes the driver) are covered by the GMPR as a sale of the service of hauling.

Truck leasing. The leasing of a delivery truck to a creamery company by a truck leasing company under a rental agreement which provides for fixed weekly charges for each vehicle, plus a charge for each mile traveled, the lessor to furnish gasoline, oil, tires, garage facilities, and all expenses of operation and maintenance, is subject to the provisions of the Regulation.

Contract transportation. The Regulation covers rental of transportation equipment, but does not cover trucking, local hauling or transportation by contract carriers since such services do not involve any rental of the equipment which remains in the possession and control of the owner. Contract transportation by other than common carrier is covered by the GMPR.

Servicing of transportation equipment preparatory to shipment of commodities. Pre-cooling or icing of refrigerator cars, cleaning or sandblasting of tank cars, etc., are covered by the Regulation.

Contract to build house. A contract to build a house is subject to the regulation because the service involved is rendered in connection with the installation of the commodities making up the house.

Grading and excavating are subject to the regulation since these services facilitates the building of a structure or involve the moving of a commodity, to wit, earth.

Machinery repair and maintenance. The following services are subject to the Regulation and not to MPR No. 136 when they are rendered in connection with the repair, maintenance or rebuilding of automotive vehicles:

Crankshaft regrinding	Overhauling and reconditioning
Cylinder reboring	carburetors
Repairing and rebuilding	Rebabbitting connecting-rods
Automotive generators	Align boring of main bearings
and starters	Truing brake drums
Reconditioning and re-	Brake lining installation
building motors	Clutch rebuilding
Clutch refacing	Cylinder head resurfacing
Brake-shoe relining	Valve refacing

Maintenance of scales by a common carrier. Rates and charges for maintenance, rental or repair of scales by a common carrier which operates scale maintenance equipment are covered by the Regulation since those services are not performed by the carrier in its capacity as a "common carrier."

Packing of household goods by a common carrier. Packing or packaging services not required to be done in order to transport household goods properly are not services accessory to transportation, and are, therefore, subject to the Regulation even though they are rendered by a common carrier in connection with commodities actually transported by it. See also page

Rental of truck-mounted winch. The rental of a truck-mounted winch powered from the truck motor is considered to be a rental of automotive rather than construction equipment and primarily a transportation service. Therefore, the bare rental is subject to Regulation No. 165; Regulation No. 134 is not applicable.

Sales and rentals by linen supply houses. See page 18:19.

Rental of transportation equipment. The rates for the rental of buses where the driver

is not furnished are subject to the Regulation.

Purchase of furniture through an interior decorator. The charge made by an interior decorator for purchasing furniture on behalf of a customer is subject to the Regulation since such a service, where the decorator buys in the name of and for the account of the customer, is a transaction in the nature of commission selling. However, if the decorator sells furniture which he had in stock the transaction is a sale of a commodity and subject to the General Maximum Price Regulation.

Arranging for blood donors and blood transfusions. A bureau on the request of hospitals or individual patients contacts blood donors arranges for blood transfusions, and on collecting the donor's fee from the hospital or patient retains a portion thereof for its services. The fees which the bureau may receive are governed by the Regulation.

Commission selling of auto repair services. Gasoline filling stations which refer customers to an auto repair shop for repair work and which receive a "cut" on the bill are commission sellers. The charges of the service station may make are regulated by the Regulation.

Foreign agents' commissions. The fees a broker located in this country may charge for locating and purchasing machine tools in a foreign country for a domestic buyer are subject to the Regulation.

Farm equipment rented for non-farm use. The rental of farm equipment, such as non-crawler type farm tractors, drills, disc plows, etc., is covered by the Regulation regardless of the use to which the equipment is to be put. Thus, the fact that such equipment may be used in building an air field will not exempt such rentals from the Regulation.

Carloading or unloading as a part of storage. Although the rates and charges for car loading and unloading are ordinarily covered by the Regulation, the rates for such services may be subject to the General Maximum Price Regulation if the loading or unloading operation is a part of a storage or warehousing service, and if such charges are not billed separately.

Metal work, plating and replating of materials. Prices charged commercial or industrial typewriter rebuilders for metal work, plating, and replating of materials used in the rebuilding of typewriters are subject to the Regulation.

Engraving of print rollers for textile printing is governed by the Regulation.

Depreciation allowance in a truck rental with a recapture clause. An agreement providing for the rental of a truck specifies that the lessee may purchase the truck at any time during the term of the lease at a stated value less an allowance for depreciation. Although the regulation covers the "rental" of trucks, the Regulation provides that an agreement which gives the lessee "an option to buy the leased commodity at a stipulated price from which all or a portion of the payments made as rent are to be deducted" is not a "rental" covered by the Regulation. If the allowance provided for is truly an allowance for depreciation rather than a rebate of rental, (i.e., the allowance is actually an amount commensurate with the normal figure allowed for depreciation of such a truck over the stated period of time), the agreement is a "rental", and the rent paid is governed by the Regulation. However, if the allowance although called an allowance for depreciation is really a rebate of rental, then the agreement is not a rental covered by the Regulation but is controlled by the GMPR.

Packing and wrapping-incidental supply of a container. The charge that a company whose main business is packing and wrapping may make for packing and wrapping commodities for shipment (and incidentally supplying a packing case) is governed by the Regulation. The Regulation governs the price that may be charged, including an amount for the container in which the commodity is wrapped, even though the company manufactures the containers itself, and despite the fact that but for its connection with the packing operation, the container's maximum price would be governed by another Regulation.

For example, a company manufactures containers in which to ship aircraft. It also packs the aircraft in the containers. About two-thirds of the company's employees are engaged in the packing and wrapping operations and the packing cases are supplied as part of these operations. In such a case, the maximum price the company may charge for the entire operation is governed by the Regulation provided that the container is not separately sold or billed, but its price is merely included in the total charge made. It is immaterial that the maximum price for the container if it were sold separately would be governed by MPR 195--Industrial Wooden Boxes.

Commission Selling - negotiation of contracts. Fees charged per barrel by a company for negotiating contracts for the purchase of crude oil by its refining corporation affiliate are governed by the Regulation.

Commission selling by a marketing co-operative. A marketing co-operative, operating on a non-profit basis, markets for the account of its grower-members citrus fruit produced by its members. It sells the fruit and performs all services incidental thereto for a specified sum which it deducts from the sale price of the fruit, turning the balance of the proceeds over to the growers. The co-operative is engaged in commission selling under the Regulation. The co-operative cannot be classed as an "employee" of the growers who are members of the co-operative.

Resident buyer services. The charges that a resident buyer may make for his services are governed by the Regulation. Such services involve, mainly, the purchasing of commodities on behalf of a reseller. The arrangements may provide either that the buyer's compensation be a commission on each item purchased, or that it be a fixed monthly fee. (Such services should be distinguished from those rendered by a merchandising counsellor. The latter are exempted from price control by Section 1499.46(b)(56), Revised Supplementary Regulation No. 11 to the GMPR).

Privately owned bowling alleys. The limitations of Revised Supplementary Service Regulation No. 4 on the charges that may be made by bowling alleys apply to privately owned alleys which service only a limited clientele (such as YMCA alleys on which only members may play) as well as to other alleys.

Microfilming is a photographic service under the Regulation.

Services in connection with miscellaneous solid fuels. Charges made for any special service rendered in connection with miscellaneous solid fuels delivered from producing facilities (including, specifically but not exclusively, bags and bagging, specially prepared sizes, split cars containing more than one size, box carloading and truck loading from any producing facility), are covered by Maximum Price Regulation No. 121; they are not subject to Maximum Price Regulation No. 165, Section 101(c)(11), or to the General Maximum Price Regulation.

Testing milk for butter fat content. See page 22:10.

Urinalysis and blood count services. See page 22:10.

Bean grading charges by a State Department of Agriculture. See page 22:10.

Human watchman services. See page 22:9.

Care of lawn. See page 22:9.

Price Determination

Discontinuance of low-priced laundry services. A laundry which during March of 1942 offered several types of service at different prices, the lower-priced services being steps in the laundering process which made up the highest-price service, may not now discontinue the lower-price services while continuing to offer the higher-priced service to its customers. "Price" includes not only the dollars-and-cents amount charged, but the terms and conditions of sale as well. If the terms of sale are made more burdensome than they were in March of 1942, the price is increased in violation of the Regulation. Requiring a person to purchase additional steps making up laundry services in order to obtain the lower-priced services which were available in March 1942 constitutes a tying requirement which, by making the terms of sale more onerous, results in an increase in the March 1942 price.

Discontinuance of cash-and-carry service. A laundry which in March 1942 maintained a cash-and-carry service as well as pickup and delivery service, charging 10 per cent less for the cash-and-carry service than for pickup service, may not discontinue the cash-and-carry service or prices (unless it extends the discount to its delivery service) even though its agreement with a laundry drivers' union calls for a discontinuance of the cash-and-carry service. A discontinuance of the cash-and-carry service would be a tying requirement forcing a customer to purchase a more expensive service.

Discontinuance of "free" repair service. If a laundry furnished repair service in connection with its dry cleaning or laundry work in March, 1942, without extra charge, and now discontinues this repair service, the laundry must refigure its price by making a reduction based upon the value of the repair service discontinued, except as otherwise provided in Supplementary Service Regulation 17.

Laundry's class of purchasers. In order to retain the business of a hotel which it had 18 months previously lost to a competitor, a laundry charged the hotel \$2.50 per hundred pounds for commercial flat work during the base period. This rate was lower than that charged during the same period to the laundry's other customers. The one hotel is in a separate class of purchasers, and the laundry may not now charge it \$2.75, the rate charged its other customers.

Class of purchasers - contract purchaser. An automobile service station whose rate for servicing cars was \$1.50 per hour to all its customers in July, 1941, entered into a yearly contract on July 1, 1941 with the U.S. Soil Conservation Service whereby it agreed to service its cars at the rate of \$1.50 per hour. When entering into a new contract in July, 1942, it may raise its rate to the Soil Conservation Service to \$1.75 per hour, the rate charged to all its other customers in March, 1942. The Soil Conservation Service is in the same class of purchasers as the station's other customers since the seller did not differentiate in price at the time of setting the price to the Soil Conservation Service (i.e., at the time of making the contract).

Classes of purchasers - safe deposit boxes. A bank, which, for the past several years has had an established practice of charging lower prices for less accessible safe deposit boxes than it charged for conveniently located boxes, has two classes of purchasers with different prices. Therefore, it may not now charge for all its safe deposit boxes the rates charged for the more accessible boxes.

Discontinuance of free service. Where a person in March 1942 did photo finishing work at a fixed rate and made no charge for the incidental service of developing the film he may not now charge for developing if he keeps the same rates for the finishing.

Charges for failure to pay promptly. A person storing, repairing and rendering other services in connection with United States government trucks may make no charge for the government's failure to pay within the second 10 days of the billing month if no such charge was made in March 1942.

Transportation costs of repair parts. In March 1942, when it sold repair parts as an incident to its repair service, an automotive repair shop absorbed the costs

of transporting such parts from the factory to its shop. The shop may not now pass on to the purchaser those transportation costs if the shop charges its March 1942 prices for the service.

Change of equipment used in rendering a service. The use of new or different equipment in a photo-finishing service does not in itself change the character of the service offered even though an improved quality of service results, and hence the supplier is limited to the prices he charged in March 1942.

Laundries - discontinuance of week-end discounts. Many laundries customarily offered a week-end discount to all their customers, pickup and delivery as well as cash and carry to encourage people to send their laundry out on what were otherwise slow days. The laundry would, however, also pick up in each zone on a non-discount day if customers so desired. Now, because of governmental orders restricting truck mileage, many laundries have had to zone their delivery routes so that they no longer pick up or deliver in some zones on a discount day; and in other cases, they now pick up in some zones only on a discount day. In cases where the laundry has introduced such zoning practices, it may discontinue granting discounts to those customers whose laundry is picked up on what were formerly discount days inasmuch as pickup and delivery is now made on the discount day because of the customer's location, rather than because of his choice.

However, customary week-end discounts must be continued for cash and carry customers since they are in no way affected by the truck mileage restrictions. Furthermore, if a laundry zones its delivery area so that it picks up in each area on one of the discount days, it must continue the week-end discount even as to its pick-up and delivery customers.

Discontinuance of linen supply service by a laundry. It is not a violation of the Regulation for a laundry to discontinue its linen supply service while continuing its regular laundering services. A linen supply service is not merely an additional step in the laundering of linen; it is a different type of service. Accordingly dropping such a service is not the same as dropping lower priced laundering services which are steps in the laundering process which make up higher priced services.

Carload commissions - increase in the size of a standard carload. In March 1942 the commission charged by a citrus brokers' exchange was a flat fee per carload of fruit. At that time each car contained a standard number of boxes. ODT orders issued since March 1942, have had the effect of increasing the number of boxes shipped as a carload. The exchange, in determining the maximum commission it may now charge on the sale of a carload, may increase its March rate proportionately to the number of boxes added to the standard carload.

For example, a broker in March 1942 charged \$20.00 commission for selling a "carload", and at that time a standard carload contained 400 crates of a given size. If the ODT rulings require a car to be loaded with 500 crates, the broker may now charge \$25.00 as his commission for selling the new carload. (\$20.00 plus 100/400 of \$20.00 equals \$25.00).

Discontinuance of free services in connection with dry cleaning. In March 1942, a dry cleaning establishment made no charge for such miscellaneous services as sewing rips, seaming pockets, etc., when performed on articles sent to the plant for cleaning and pressing. The plant may not now make a charge in addition to its March 1942 prices for such services, nor may the plant discontinue these free services without making a compensating reduction in its charges equal to the value of the free services no longer offered except as otherwise provided in Supplementary Service Regulation 17.

Discontinuance of options to purchase in a rental agreement. During March 1942 a manufacturer-lessor included in all of his office machine leasing arrangements a lessee's option to purchase. Inasmuch as the option feature of the rental contract is a valuable right, the lessor may not now omit such an option without reducing his rental charges by an amount sufficient to compensate for the difference in value between a contract which includes the option and one which does not.

League Bowling - foul line judges supplied free. During the base period, some bowling alley operators made no charge to bowling leagues for supplying foul line judges. Such operators may not now make a charge for supplying foul line judges.

Free diaper service as an advertisement. As a promotional plan in March 1942 a laundry offered two weeks' free diaper service of a dozen diapers a day for babies not over 4 weeks old. The plan was offered without any restrictions as to the continued use of the service at the expiration of the trial period. Since it was an entirely free offer in the nature of an advertisement, the offer may now be discontinued.

Increased excise taxes on photographic materials. A supplier of a photographic service may not increase his maximum prices to compensate for increased excise taxes on the photographic materials he must purchase in order to render the service, since such taxes are not imposed on the sale of the service as such.

Deposit on rented equipment. Laundries which maintain a diaper service may require a reasonable deposit for diapers, containers, baby scales, bottle sterilizers and other infant necessities of a durable nature which they rent to customers, but in no case may the deposit exceed the ceiling price for the article rented. When the articles are returned after the service is terminated, the deposit must be refunded to the customers in full without any deduction for reasonable wear and tear inasmuch as the normal rental fee is calculated to include reimbursement for normal wear and tear.

Transfer of business. A service station which, during the base period, permitted patrons and non-patrons to leave their automobiles on adjoining vacant lot, for which it made no charge, now leases the lot. Lessee is not a transferee of a "business" and therefore does not have to take as its maximum price (zero) that of the service station but establishes maximum prices under first available pricing method of Sections 4 and 5 of the Regulation. Service station was not conducting a business by allowing patrons and others to use the vacant lot as an accomodation.

Records and Reports

Companies using Flat Rate Manuals. Service companies who use Flat Rate Manuals must include the following in the statements required by Section 14(b)(11):

- (a) An identification of the Manual by name, edition, number and date.
- (b) The rate per hour for work done where Manual requires use of a rate or where a rate was actually used.
- (c) An enumeration of all cases where the Manual was not followed as a matter of custom, and the prices used in such cases.

Exemptions

Book rentals. The rental of books is not regulated by either the General Maximum Price Regulation nor Maximum Price Regulation No. 165. Since books are specifically excepted from the definition of the term "commodity" in Section 302(c) of the Emergency Price Control Act of 1942, the rental of books is neither a sale of a commodity nor a service rendered in connection with the processing, storage, etc., of a commodity.

Rental of motion pictures. Prices charged for the rental of motion picture films are not regulated since the Emergency Price Control Act of 1942 excludes motion pictures from the definition of "commodity".

Rental of motion picture trailers. The rental of trailer motion pictures advertising forthcoming productions is not subject to price control.

Barber services. Services rendered by barbers are not regulated, since they are not rendered in connection with the processing, distribution, storage, installation, re-

pair, or negotiation of purchases or sales of a commodity. Of course, sales of commodities by barbers (e.g., bottles of hair tonic) are regulated.

Bank charges for checking accounts. Bank charges for the maintenance of checking accounts are not regulated as the charges do not involve a commodity.

Messenger delivery service. Package and letter delivery service such as are performed by Western Union and Postal Telegraph messengers, consisting of calling for and delivering letters and packages in cities usually by bicycle, is a common carrier service and hence excepted from price control. Since any member of the public can call in and obtain the service of a messenger and equipment are available, the supplier meets the common carrier test of holding itself out to perform transportation service for hire for the public generally.

Drugs sold by physicians. The price which a physician charges for drugs sold in the course of and as a part of medical treatment of a patient, is not regulated since the charge for the drugs is regarded as being a part of the unregulated service supplied by the physician. However, where a physician's sale of drugs is in no way a part of his medical treatment of the patient, the sale is governed as the sale of a commodity.

Packing of household goods by a common carrier. Those services in connection with the packing and packaging of household goods which must be performed by the common carrier in order to move the goods properly, are common carrier services since they are accessory to the transportation service, and are therefore not subject to price control.

Press clipping services. Prices charged by press clipping bureaus for clipping excerpts from books, magazines, periodicals and newspapers are not subject to price control; such services are not rendered in connection with a commodity since the Emergency Price Control Act of 1942 excludes books, magazines, periodicals and newspapers from the definition of "commodity."

Distribution of trade and text books. Prices charged by a company for distributing general trade and text books for publishing houses are not subject to price control since the Emergency Price Control Act excludes books from the definition of "commodity."

Dues of automobile club members. Annual dues of automobile clubs are not subject to price regulation. Such clubs customarily perform the following services: traffic safety programs, schoolboy patrols, legislation service, highway and street safety and improvements, emergency road service, travel information, automobile and drivers' license service, claim and adjustment service, personal accident insurance, instructions for driving, bail bond, and auto theft prevention.

The services performed are not for the most part rendered in connection with a commodity. In the few instances when they are rendered in connection with a commodity, such as emergency road services, it is impossible to segregate the portion of the dues charged to cover this service and the portion of the dues charged to cover the other services.

Services of an oculist. The services of an oculist in examining eyes and prescribing glasses are not under price control.

Printing company acting as an advertising agency. The exemption in Section 46(b)(3) of Revised Supplementary Regulation No. 11 for rates charged by advertising agencies extends to the rates charged by a printing company when it acts in the capacity of an advertising agency. In performing the following services, a printing company would be considered as acting as an advertising agency for the purposes of the exemption:

- (1) Mailing of premiums to persons sending in product labels in response to radio advertising campaign;
- (2) Conducting contests for companies through the radio and the selection of prize winners;
- (3) Preparation of lists for direct mail advertising;

- (4) Distribution of advertising coupons by door-to-door canvassers on behalf of clients who advertise;
- (5) Distribution of grocers' orders for advertised products to local jobbers to satisfy the anticipated demand from the advertising campaign.

Farm services with equipment. When a farmer, using his own equipment, does custom work for other farmers, the transaction is not the rental of the equipment but is the rendering of services on a farm in connection with the planting, etc., of agricultural commodities, and is therefore not subject to price control unless the service is specifically covered by regulation.

Distribution and folding of newspapers and magazines. Prices charged by a distributor for delivering and for folding newspapers and magazines are not subject to price control since the Emergency Price Control Act excludes newspapers and magazines from the definition of "commodity".

Rental of a private garage. The prices charged for the rental of a private garage where the lessee has full control over the premises and where the lessor renders no services such as protection, or cleaning of the premises are not subject to price control. Such a situation should be distinguished from the case where a person rents space in a public garage to store his car. In the latter case, the lessor is supplying a service in connection with a commodity and the rates he may charge are therefore subject to RMPR 165.

Charges for dumping privileges. Charges which the owner of real property collects from a scavenger company for the privilege of dumping garbage on the property are not governed by the Regulation; the scavenger company is paying for the privilege of using the property and not for a service performed by the owner of the property.

Sharpening of bits used in compressed air jacks hammers. The prices charged for sharpening bits used in compressed air jack hammers in mining operations are governed by MPR No. 136 and not by Regulation 165. Such bits are "expendable tools" and are deemed a part of "mining machinery" or "portable power driven tools."

Human watchman services. Charges for human watchman services are excepted from the GMPR and Revised Maximum Price Regulation No. 165 by Section 1499.46(b)(98) of Revised Supplementary Regulation No. 11.

Care of lawn. The service of mowing, trimming, raking and tidying a lawn is exempted by Section 1499.46(b)(127) of RSR 11.

Rental of display cards, photographs and stills of moving pictures. Prices charged for the rental of advertising matter (such as display cards, photographs and stills of moving pictures) which is used in connection with the commercial showing of motion pictures are not subject to price control because the services involved come within the exceptions for "advertising agencies" and "window display services" in Section 1499.46(b)(3) and (100) of Revised Supplementary Regulation No. 11.

Jewelry. The following articles are considered jewelry, and charges for their repair or engraving are exempt from price control under Section 1499.46(b)(48) of Revised Supplementary Regulation No. 11 to the General Maximum Price Regulation:

- (1) Gold compact.
- (2) Compact set with precious stones.
- (3) Compact set with semi-precious stones.
- (4) Platinum cigarette case.

Charges for ambulance services are exempt from regulation under Section 46(b)(92) of Revised Supplementary Regulation No. 11 since they are charges for the transportation of persons

rather than for the rental of transportation equipment.

Compilation and analysis of statistical data. The compilation and analysis of statistical data pertaining to freight tariffs is a research service within the meaning of Section 46(b)(68) of Revised Supplementary Regulation No. 11 of the General Maximum Price Regulation; the charges made for such services are, therefore, not subject to price control.

Services in connection with oil wells. Services such as the building and dismantling of pumping derricks, the installation and maintenance of production equipment, general oil well servicing, and oil lease roustabout work are operations necessary for the drilling of oil or gas wells. Accordingly, charges therefor are exempted by Section 1499.46(b)(106) of Revised Supplementary Regulation No. 11 to the GMPR.

Screening and sanding - snow removal. Screening and sanding performed in connection with the control of snow and ice on highways fall within the general category of "Snow Removal Services" which are exempted from price control by Section 1499.46(b)(109) of Revised Supplementary Regulation No. 11 to the GMPR.

Testing milk for butter fat content is not a research service within the meaning of Section 1499.46(b)(68) of Revised Supplementary Regulation No. 11, but is a mere routine operation in the nature of an inspection performed by simple and standardized mechanical means. Hence charges for the Service are not excluded from control by the Revised Supplementary Regulation and are covered by R 165.

Taxicab rentals and storage services. See page 22:1.

Urinalysis and blood count services are not services rendered in connection with the processing, etc. of a commodity. They are personal services and not performed to ascertain the value of an article of trade, but rather to ascertain the health status of the person submitting the specimen for testing.

Bean grading charges by a State Department of Agriculture. Charges made by the Michigan State Department of Agriculture for bean grading are subject to the Regulation. Bean grading is not a type of grading contemplated by the exemption of Section 46(b)(42) of Revised Supplementary Regulation No. 11 to the General Maximum Price Regulation, nor are the charges made by the State Department of Agriculture "approved" by the United States Department of Agriculture within the meaning of the above exemption.

Resident buyer's services. See page 22:4

REGULATIONS OF GENERAL APPLICABILITY

Maximum Price Regulation No. 188

MANUFACTURERS' MAXIMUM PRICES FOR SPECIFIED BUILDING MATERIALS AND CONSUMERS' GOODS OTHER THAN APPAREL

Applicability

Scope of the Regulation. The scope of the Regulation is limited and defined by the list of broad commodity classification headings used in the Appendix. The lists of particular commodities under the headings are merely illustrative, and indicate only some of the commodities which are included under the appropriate heading.

Offer to sell prior to end of waiting period. The Regulation, under certain circumstances, prohibits a person from selling or offering to sell a commodity covered by the Regulation prior to the expiration of the 15-day waiting period after filing a tentative price with the OPA. Section 1499.151 of the Regulation incorporates by reference the definition of "sell" found in Section 20(v) of the General Maximum Price Regulation, which states that nothing in the Regulation shall be construed to prohibit the making of a contract to sell at a price not to exceed the maximum price at the time of delivery. Accordingly, the prohibition against selling prior to the end of the waiting period does not operate to prevent a person, prior to that time, from informally divulging his tentative price to a prospective purchaser, and thereafter selling the commodity pursuant to a contract which names no price, but which provides that the price is "not to exceed the maximum price at the time of delivery".

Sale of mattress. See page 1:4

Cotton floor coverings. Cotton floor coverings manufactured on the same type of looms as ordinarily used for fabricating wool floor coverings, and simulating the appearance of wool floor coverings, are "comparable articles" as defined in Section 1499.157(d), and therefore subject to the Regulation. They have the same general use and construction, even though different materials are used.

Copper water light. A copper water light, a chemical preparation with a flare placed in a copper cylinder attached to a life preserver, is subject to the Regulation as "life saving equipment", see Appendix A(b)(9).

Container for rouge. A one-eighth ounce container made of plastic and sold to cosmetic manufacturers as a container for rouge is subject to the Regulation as a "notion", Appendix A(b)(10)(ii).

Wire stretchers. Wire stretchers are "farm and garden tools and supplies" and therefore covered at the manufacturer level by the Regulation.

Glass parts of lighting fixture for airports, airways and seadromes. See page 16:19.

Arc lamps and glass reflectors for arc lamps. See page 16:20.

Coat hangers. See page 18:10.

Manual valves. See page 16:21.

"Industrial boilers." See page 16:17.

Government subcontracts. "Sales to the United States Government", as used in the Regulation, does not include sales under subcontracts to government contractors. Accordingly the special provisions for sales to the United States Government are not applicable to contracts between a mattress manufacturer and a hotel company even though the contract bears a priority number and an end use symbol from the United States army or navy.

Common brick. The term "structural clay products, brick and hollow tile (glazed and unglazed)", Appendix A(a)(2), includes what is uniformly known in the trade as "common brick".

Burial casket interiors. Burial casket interiors, i.e., upholstery for caskets, which are finished products sold to casket manufacturers who insert them into the box containers, are subject to the Regulation as "funeral supplies and appurtenances", Appendix A(b)(2).

Leather wallets. Leather wallets are covered by the Regulation at the manufacturers' level as "personal and household accessories: (ii) notions", Appendix A(b)(10).

Lighter fluid. Lighter fluid is covered by the Regulation at the manufacturers' level as "Smokers' articles", Appendix A(b)(10)(xviii).

Mattress covers. Mattress covers are not subject to Regulation No. 188; the General Maximum Price Regulation applies.

"United States Government or any agency thereof". A sale to a company operating under a Defense Plant Corporation contract, where the contract is made on behalf of the United States Maritime Commission, is not a sale to the "United States Government or any agency thereof", within the meaning of Section 1499.163(a)(5).

Cigar and cigarette holders made of hard or balata rubber. Cigar and cigarette holders made of hard or balata rubber are covered by the Regulation as "smokers' articles ... cigarette and cigar holders", Appendix A(b)(10)(xviii); even though made of rubber they are not covered by Regulation No. 149 or Regulation No. 220.

Crutches. Crutches are covered by the Regulation as "health supplies, equipment", etc., Appendix A(b)(17).

Dehydrator units. Dehydrator units are installed in various machinery to remove moisture from oil and air, and are sold by the manufacturers of refrigeration equipment and compressors. The unit is also used in other types of equipment, including communication and signaling apparatus and radio transmitting and receiving apparatus. The dehydrator unit is a specialty product subject to the Regulation as "commercial refrigeration and summer air conditioning", Appendix A(a)(1)(vi).

Domestic concrete incinerators. Domestic concrete incinerators are subject to the Regulation as "masonry and construction materials: concrete products: cast shapes and cast stone", Appendix A(a)(2).

Fireplace grates. Order No. 104 under Section 1499.158, effective December 24, 1942, covering all fireplace grates made of welded steel or iron scrap which weigh 26 to 30 pounds, inclusive, does not apply to grates which manufacturers had already delivered to that date. Fireplace grates which are not within the terms of any orders issued under Section 1499.158 of Regulation No. 188 are subject to Regulation No. 210 as "andirons and fireplace equipment", Appendix A(h)(8).

Manufacturers' sales of cast iron fireplace grates. See page 13:26.

Lime rock and residue. Lime rock used for sugar refining and lime rock residue (small pieces of lime rock which drop through the screen) are subject to the Regulation as "lime, chemical", Appendix A(a)(2).

"Notions", Appendix A(b)(10)(ii), includes billfolds, key cases, card cases, identification card holders, and wallets made of leather, leatherette, fabricoid, and paper products.

Poker chips. Poker chips are not "games" within the meaning of the Regulation, Appendix A(b)(15); the General Maximum Price Regulation applies.

Grave monuments and markers. The Regulation covers sales of manufacturers of granite or marble grave monuments or markers under the classification "dimension stone", Appendix A(a)(2).

Fine pulverized dried sand. The sale of fine pulverized dried sand used as filler in fertilizer mixture is subject to the Regulation as "sand and gravel", Appendix A(2).

Grave vaults. Grave vaults are specifically covered by the Regulation, and the maximum price includes the cost of placing the vault in the grave. The fact that some installation services are rendered in connection with such sales does not make Regulation No. 251 applicable.

Building materials sold on an installed basis. Building materials which are sold on an installed basis are subject to Regulation No. 251, even though they are items specifically listed in Appendix A of Regulation No. 188.

Special industrial paints. The list of articles under the description "oil paints and varnishes" in Appendix A, Section 1499.166, does not include any form of industrial finishes and, therefore, special industrial paints are not covered by the Regulation; the General Maximum Price Regulation applies.

Rock slag. Rock slag, used in the construction of roads, is covered by the Regulation, Section 1499.167, Appendix B. Antimony slag, however, is exempt from price control, Section 2.9(b)(4) of Revised Supplementary Regulation No. 1 to the General Maximum Price Regulation.

Coverage of "cash and carry baskets." "Cash and carry baskets" used in retail grocery establishments for customers to carry their groceries from shelves to cashier are covered at the manufacturing level by the Regulation and not by Regulation No. 320 because such items are "store equipment". Regulation No. 320 is not applicable to those baskets since they are not "customarily used" for packing, handling, storing or shipping fresh fruits and vegetables. The criterion is the use to which the baskets are customarily put.

Facial compounds. See page 3.8.

Price Determination

Price adjustment between affiliated corporations. The Regulation controls the prices charged by a manufacturing corporation to a sales corporation even though the two corporations are under common ownership.

Change from foreign to domestic silver. A finished product made from domestic silver is the "same article" as a product which differs from it only in that the latter is made from foreign silver. Accordingly, where the article made from foreign silver was finally priced before August 1, 1942, the article made from domestic silver is likewise considered for the purpose of Section 1499.153 as being finally priced before August 1, 1942. A manufacturer may not, therefore, make the additions permitted in Section 1499.156 of the Regulation (i.e., additions for increased unit costs where the article to be priced differs from an article already priced "only because of changes necessitated by shortage of materials or parts used in the original article"), since that section is applicable only if the "same article" was not finally priced before August 1, 1942.

Pre-season discount. A manufacturer in figuring his maximum price under Section 1499.153 (goods finally priced before August 1, 1942) must continue to allow all discounts which he customarily allowed in March 1942, unless such discounts were "special deals" offered for not more than 123 days. This is true even though March was an out-of-season period and the discount was a pre-season allowance.

Discontinuance of customary supply of fixtures with roofing asphalt. See page 2:2.

Printer's kit. In determining the maximum price for a master printer's kit, the manufacturer considers the entire kit as one "article".

Manufacturer's excise taxes - photographic supplies. Under the Revenue Act of 1941 cameras, lenses, unexposed photographic film (excluding x-ray), photographic plates, sensitized paper, and certain other photographic apparatus and equipment were subject to a 10 per cent manufacturers' excise tax. This tax has been increased to 15 per cent on films and 25 per cent on cameras and photographic apparatus in the Revenue Act of 1942. Section 1499.7 of the General Maximum Price Regulation, which is incorporated by reference into Regulation No. 188,

governs the tax increase.

Question: During March 1942 the manufacturer invoiced the film or cameras at a price which included the excise tax in effect at that time. The amount of the tax was not separately stated and collected. May he pass on the tax increase?

Answer: Yes, provided that he invoices the tax increase as a separate item.

Question: The manufacturer did not separately state the tax in March 1942. If he subtracts the amount of the original tax from his March 1942 price, may he separately state and collect as one item the full amount of the increased tax?

Answer: No. He must separately state the tax increase in order to collect it in addition to his March 1942 price.

Question: During March 1942 the manufacturer invoiced the 10 percent excise tax as a separate item. May he now separately state and collect as one item the full amount of the increased tax?

Answer: Yes. He is not required to separately state the tax increase, but may lump it with the original tax and collect the entire increased tax as one item.

Some of the manufacturer's wholesalers and retailers may not have separately stated the original tax in March 1942. Such a wholesaler or retailer would have to separately state the tax increase in order to collect it in addition to his March 1942 price. Where the wholesalers and retailers were not separately stating the original tax in March 1942, the manufacturer should advise those purchasers that they can only pass on the amount of the tax increase which is in addition to their maximum prices, and that the amount of the tax increase must be separately stated.

Minor changes in material, design, or construction. See page 26:5.

Substitution of materials. See page 26:5.

Change from delivered pricing to f.o.b. pricing. A lime company sold its lime during the base period at a delivered price of \$11.80 per ton which included an \$.80 trucking charge. The company pricing under Section 1499.153(a) now desires to change its price to an \$11.00 per ton f.o.b. plant price, and apply the established railroad freight hauling rate of \$3.00 per ton. The company may not adjust its truck hauling charges to that of the railroad freight hauling charge. If the lime company desires to change its maximum delivered price to an f.o.b. price it must reduce its delivered maximum price by the exact amount of the purchaser's freight cost.

Anticipation deductions. A seller who customarily allowed a deduction during the base period to customers who paid their invoices before the due date may not now discontinue such deduction, even though the invoices rendered to the customers did not refer to any anticipation privilege, see Section 1499.159(a).

Cost of changed items. In determining whether the cost of materials have been reduced under Section 1499.155 the manufacturer should compute the cost for the changed item as well as for the original item upon the basis of his March 1942 figures.

Resumption of the manufacture of upholstered furniture. A manufacturer of upholstered furniture who subsequent to March 1942 closed his factory and discontinued the manufacture of such furniture but who now desires to reopen his factory and resume manufacturing will determine his maximum prices for upholstered furniture under Order 1298 rather than Sections 1499.153 to 1499.158.

New organization. A principal stockholder of a toy manufacturing corporation is about to establish a similar organization and will receive one of the corporation's plants together with its machinery and equipment and the right to make all of the items now produced by the corporation. The new organization's maximum prices are to be determined under Section 5 of the General Maximum Price Regulation.

Manufacturers who sell direct. Order No. 1052 permits manufacturers to add the 5% adjustment charge to their existing maximum prices to all classes of purchasers, including consumers, for articles covered by the Order which are properly priced and reported.

Sales at open billing.

Question: Does the Office of Price Administration have the power to allow manufacturers to sell and deliver at open billing pending the receipt of an order to be issued pursuant to Section 1499.158 of the Regulation?

Answer: Section 1499.152(c) states that manufacturers shall not sell or deliver any article for which a maximum price must be determined under Section 1499.158 until he has complied with the reporting and waiting provisions of that section. Section 1499.158(b) states that prior to first offering the article for sale, the manufacturer shall submit to the Office of Price Administration a report applying for specific authorization of a maximum price. That section further states that upon receipt of the authorization the manufacturer may offer the article for sale in accordance with the terms of the Authorization. Once the manufacturer has filed application pursuant to Section 1499.158, he has complied with the reporting provision of the Regulation. A letter or telegram from the Office of Price Administration allowing the manufacturer to sell at open billing constitutes an authorization to deliver the article on those terms. If he does not offer to sell or deliver the article before authorization, he complies with the waiting provision. This is not in violation of the Emergency Price Control Act, which requires that maximum prices be established by order of the Administrator, in that the authorization to sell at open billing is not an establishment of a maximum price.

Classification

"Industrial boilers". See page 16:17.

Common brick. See page 26:2.

Notions. See page 26:2.

Definitions

"Marine lights and equipment". "Marine lights" includes any light designed and manufactured for use on a ship or boat; "marine light equipment" includes all appurtenances necessary for the installation of marine lights, but does not include cable or other equipment which could be used as well for the installation of other than marine lights.

"United States Government or any agency thereof". See page 26:2.

Minor changes in material, design, or construction. The substitution of a wooden lock for a metal lock in chairs is a "minor change" within the meaning of Section 1499.155.

Substitution of materials. The substitution of California pine plywood for Oregon pine plywood in the manufacture of wardrobes, chairs, tables, bunk beds and bookcases is a "minor change" within the meaning of Section 1499.155 of the Regulation.

Records and Reports

Any change in construction of burial caskets which reduces the cost of materials involved must be reported by the casket manufacturer. For example, casket interior which are reduced in cost as a result of the reduction in yardage ordered by WPB must be priced and reported under the provisions of the second pricing method, see Section 1499.156 (changes necessitated by shortages of materials or parts). Also, the substitution of one fabric used as a covering material for another material must be reported unless the substitute material costs are at least as much as the original material costs, both calculated as of the March 1942 price.

Assemblers of burial caskets must keep complete base period and current price records even though they do not manufacture the component parts of caskets they assemble.

Maximum Price Regulation No. 204

SPECIAL SALES OF INDUSTRIAL MATERIALS

Applicability

Sales by Alien Property Custodian. Sales by the Alien Property Custodian of foreign owned property subject to Priorities Regulation No. 13 are governed as to maximum price by Regulation No. 204 since it is a sale of material "not in a form normally sold by the seller in the ordinary course of his business".

Sales by the War Department. Sales by the War Department of materials subject to Priorities Regulation No. 13 are governed as to maximum prices by Regulation No. 204 since it is a sale of materials "not in a form normally sold by the seller in the ordinary course of his business". Where the War Department acquired the material pursuant to a contract which gives the War Department title to any goods already manufactured in the event the contract was cancelled, the manufacturer is the War Department's "supplier" for the purpose of determining maximum prices.

Sale of copper wire by one utility company to another. The sale of copper wire by one utility company to another utility company is governed by the Regulation.

Used or discarded materials. The Regulation is not applicable to materials which have been withdrawn from use or discarded by the seller, although subject to Priorities Regulation No. 13, since the pricing formulae of Regulation No. 204 are not suitable for establishing a price for material, which the seller bought new and is now disposing of as used or reusable material.

"Ordinary course of business" - accommodation sales. Some of the factors which should be considered to determine when a sale is not in the "ordinary course of business" are (1) the frequency of the sales, (2) the number of persons with whom the seller deals, (3) the type of product being sold, (4) availability to the buyer of other sources of supply, (5) the reasons for like sales in the past, and (6) whether the seller normally purchased larger inventories than required for his own use. For a sale to be deemed to be made in the ordinary course of business, there must be some element of repetition. It is not necessary that the sales constitute a sizable portion of a seller's business or that they be carried on at a profit. For example, if a steel fabricator gave up some of his inventory as an accommodation to another fabricator because the latter had an unusual need for the material, and regular suppliers unexpectedly lacked such material, the sale would not be made in the ordinary course of business; but if such emergencies recurred, and the seller in question regularly met the emergency, such sales would be considered as being made in the ordinary course of business. In the case of sales of iron or steel products by persons other than producers, such sales cannot be considered warehouse sales unless the seller is operating under the WPB quota and actually operates a warehouse and the merchandise has been put through the process commonly known as warehousing.

Price Determination

Processing of material. One hundred foot lengths of tubing were cut into 1 foot lengths, just prior to sale at the buyer's request. Since at the time that such material was frozen, or became idle, or excess inventory, it was still in the form in which originally purchased by the seller, the maximum price should be determined under Section 1499.502(a), which gives a pricing method for material which is in the form in which originally purchased by the seller. A cutting charge may be added thereto. The provisions of paragraph (b) which gives a pricing method for material which has been processed by the seller can only be applied where the holder legitimately started the processing of material in the normal course of his business and where such processing was brought to a halt by the WPB limitation or conservation order.

Material in form in which originally purchased by seller-inability to identify quantity originally purchased. Where a company has 1,600 pounds of copper wire of which it wishes to sell 1,200 pounds, and the material was originally purchased at three different times and at three different prices, the last purchase being 100 pounds at a high quantity differential,

the maximum price is not the supplier's price for the 100 pounds or the supplier's price for 1,600 pounds. When the quantity of material being sold is larger than the quantity which the seller most recently purchased from his original supplier, "the maximum price which the original supplier would be allowed to charge" shall be figured on the basis of the quantity sold.

Trucking charges. Where the Regulation establishes the maximum price of idle or frozen material as f.o.b. the present location of the material, "the actual delivered cost" to the seller includes only the amount "actually paid" by the present seller. Accordingly, in figuring his maximum f.o.b. price under the Regulation, a seller may add to the price he paid for the material delivered to the siding nearest his plant any charges paid to a trucker for carting the material from the siding to his plant; he may not, however, include any amount for trucking if he transported the material in his own truck.

Finder's Fees. See page 13:13.

Additions to supplier's maximum price. The sale of lumber by a furniture manufacturer out of his inventory is a special sale of industrial materials within the meaning of Regulation No. 204. In computing his maximum price under Section 6(b) (entitled Industrial material which is in the same, or substantially the same form in which the seller originally purchased it) the manufacturer may add to the supplier's current maximum price his inbound freight and out of pocket cost of unloading. Storage costs or reloading expenses, however, may not be added.

Classification

Wool in the grease is an "industrial material" within the definition of Section 2(b).

Maximum Price Regulation No. 210

RETAIL AND WHOLESALE PRICES FOR FALL AND
WINTER SEASONAL COMMODITIES

Applicability

Commodities sold throughout the year. The Regulation is applicable to all commodities listed in Appendix A whether or not they are exclusively sold during the fall and winter season, provided that the listed article is not subject to any specific regulation or specific schedule, or is not exempted from the General Maximum Price Regulation by any supplementary regulation thereto.

Manufacturer selling at retail. The Regulation applies to sales at the wholesale and the retail level. However, commodities sold at retail by the manufacturer are not covered by the Regulation because "average cost" and "current cost" as defined in the Regulation cannot be computed by a manufacturer.

"Fur fabrics sold as piece goods" are covered by Section 1372.112(g)(8) of the Regulation. The term "fur fabric" means a pile fabric made up to simulate fur. A pile fabric is a three dimensional fabric composed of backing, warp, filling, and pile which is woven at right angles to the backing, warp, and filling. The following items are "fur fabrics": Jacobson's imitation baby tiger, quality 3333, made of 100% wool pile and 100% cotton backing; Jacobson's fur cloth, qualities 1034 and 1080, 100% wool; Jacobson's black broadtail coat, quality 2102, mohair pile. The term "sold as piece goods" may include fabrics sold by the piece or pound, as well as by the yard.

Brushed nylon gowns. Section 1372.112(f)(1) covers the sale of girls' gowns made of brushed rayon; gowns made of brushed nylon are covered by the General Maximum Price Regulation.

Gowns, etc., made of spun rayon. Female gowns, pajamas, and bed jackets made of spun or filament rayon yarn are covered by Section 1372.112(f)(1), provided that the yarn is "brushed rayon".

Robes, housecoats, etc. Section 1372.112(f)(2) covering specified garments made of quilt, suede, or corduroy excludes garments made of other fabrics. Hence a chenille robe is not covered by the Regulation.

Girls' corduroy jackets. Corduroy jackets designed for girls are not covered by the Regulation; these jackets, except in infants' sizes, are covered by Regulation No. 330 as to garments delivered to the seller on or after February 24, 1943.

Children's Indian and cowboy suits. Children's Indian suits and cowboy suits, sold mostly around Christmas time, do not fall within the description of "holiday costumes for fall and winter holidays", and, therefore, are not covered by the Regulation under Section 1372.112(g)(7).

Gym suits and football suits. Gym suits and football suits are not "related sundries" to basketball knee pads and goals, see Section 1372.112(h)(23), and, therefore, are not covered by the Regulation.

"Cotton string knit gloves". The sale of "cotton string knit gloves" is not subject to the Regulation since such gloves do not fall within any of the commodities listed in Appendix A.

"Sueded" rayon gloves. Gloves made of "sueded" rayon are not gloves made of "brushed rayon" within the meaning of Section 1372.112(d)(3) and, therefore, are not covered by the Regulation. The term "brushed rayon" refers to a brushing or napping process of heavier woven or knitted materials producing a longer nap than that used in the brushing or napping process of "sueded" rayon. It is only the heavier type of brushed rayon which is ordinarily considered seasonal and therefore included in the Regulation.

Lined jumpers. Under trade usage, garments in the nature of jackets are commonly called jumpers. If the lined jumpers are jacket types of garments, they are lined jackets covered by the Regulation.

Silk and wool combination hosiery. The sale of silk and wool combination hosiery at the wholesale and retail levels is subject to the Regulation as "hosiery made of wool or part wool . . .", see Section 1372.112(c); a sale of such hosiery at the manufacturing level is covered by the General Maximum Price Regulation.

Stadium boots. A form of sport boots, commonly known as a stadium boots, are not "snowboots" within the meaning of Section 1372(e)(3), and therefore are not covered by the Regulation.

Price Determination

Sale of two or more listed commodities as one unit. A seller may sell two or more of the commodities listed in Appendix A, Section 1372.112, as one unit if he sold the same or similar commodities as one unit during the base period (last six months of 1941). The maximum price of the set is then determined as one unit under Section 1372.102 even though the constituent commodities were purchased from different manufacturers. If the commodities in the set were offered for sale separately, as well as in a unit, the seller may not refuse to sell them separately while selling them in combination. If the seller did not offer for sale the same or similar set during the base period, he may sell the set at one price not to exceed the sum of the prices determined for the individual commodities, provided that he also sells the commodities separately.

"Same commodity" - definitions. See page 26:13.

"Same commodity" - different styles. In determining the maximum prices for leather coats, lots of different styles are not grouped. For instance, where a retailer purchased two different lots of leather coats lot S of style No. 60 at a cost of \$8.00 each, and lot T of style No. 80 at a cost of \$12.50 each, his initial percentage mark-up under the Regulation for each style of leather coat is calculated separately since each style is treated as a different commodity, and the maximum price of each lot is calculated separately.

Calculation of "initial percentage mark-up" under Rule 2. Rule 2, setting forth the method of calculating "initial percentage mark-up" by a department or store, directs the seller to consider the total of the costs and prices received for the commodities he bought during the last six months of 1941, the base period, and also "the extent to which the prices received may have been lower than the prices at which he first offered the commodities for sale". The purpose of the clause quoted is to direct the attention of the seller, having no department average initial percentage mark-up figures to the fact that the difference between his total costs and his total prices during the base period will, if he took mark-downs, show less than the average initial percentage mark-up which he is entitled to take. That difference reflects the average of percentage mark-ups actually taken rather than the average of initial percentage mark-ups. The deduction of the mark-downs in determining the average initial percentage mark-up is not required.

Election to price under Rule 2. A retailer who has elected to price a commodity in a department under Rule 2 pursuant to the option provided in Amendment 3, Section 1372.102(b)(3), must price all commodities in that department under Rule 2 and may not change back to Rules 1 and 3; if the seller priced some of the commodities in the department under Rules 1 and 3 prior to the effective date of the amendment, October 9, 1942, he must reprice such commodities under Rule 2.

Computation of average cost. Section 1372.102(b)(1)(ii) provides that only the cost of commodities delivered for sale during the 1942-43 fall and winter season should be included in calculating "average cost". Where winter underwear was purchased in 1940 for resale in the 1941-42 fall and winter season, but due to the delay in deliveries only a portion of the goods was sold during the season, the costs of the underwear may not be included in computing "average cost"; the seller's intention to resell the goods in a season other than the 1942-43 season is clearly shown by the time of purchase, and by the fact that some of the goods arrived in time for some sales in the prior season.

Seller's "current cost". Where a commodity is offered by the seller's principal supplier at a variety of prices depending upon the quantity ordered, the "current cost" under Section 1372.102(b)(2) should be based upon the price which the seller would pay for the purchase of such commodity on the terms most commonly used by him in acquiring his principal supplies for the season. Higher prices employed only for small "fill-ins" may not be used. The fact that the price of the seller's supplier has risen or fallen since May 11, 1942, has no effect on determining his current cost.

"Current cost" of retailer and wholesaler's and manufacturer's maximum price. The fact that a manufacturer's offering price for a commodity under Regulation No. 221 is different from (i.e., higher or lower than) his offering price on May 11, 1942 has no effect on the "current cost" which is calculated on the basis of the customary supplier's price on May 11, 1942, or if the supplier did not offer the commodity until a later date, the price on that date. However, if the supplier did not offer a commodity (now under Regulation No. 221) until the effective date of Regulation No. 221, November 23, 1942, the "current cost" of that commodity under Regulation No. 210 to the retailer or wholesaler is the supplier's offering price under Regulation No. 221.

Seller who cannot determine average or current cost. Where a seller was engaged in the business of selling fall and winter seasonal commodities during the last six months of 1941, he may not determine his maximum prices under Section 1372.103, even though he cannot price the commodity under Section 1372.103. Thus, where neither the "average cost" nor the "current cost" of a particular commodity can be determined under Section 1372.102 because it was purchased several years before and was not offered for sale on May 11, 1942 or any time thereafter by either the seller's supplier or the supplier's competitor, the seller must determine the maximum price of the commodity under the provisions of the General Maximum Price Regulation.

Rule 2 - same item having different mark-ups. Where during the last six months of 1941 a seller sold the same item in two different departments having different mark-ups, the seller cannot avail himself of the option to use Rule 2 to price the commodity in the higher mark-up department since he has not satisfied the condition contained in Section 1372.192(b)(3)(iii). However, the seller may use Rule 2 in the higher mark-up department, if he removes from that department this item and other items which were sold during the last six months of 1941 in departments having a lower "average initial percentage mark-up", and if he meets the other requirements set forth in Section 1372.102(b)(3).

Rule 2 - department store. A large department store had a men's furnishing department in 1941 which was broken down into sections, each of which handled a separate type of men's furnishings such as men's shirts, hosiery, underwear, etc. There was one buyer for the entire men's furnishings department. However, purchases, sales and mark-ups were recorded separately for each section. Each section in the men's furnishing department may be considered a separate department for purposes of Rule 2 since the seller's practice during the last six months of 1941 was to treat each section as a separate department and his records so indicate.

"Current costs" - "usual discounts". All "usual discounts", except for cash, granted a seller by a supplier from whom he has customarily bought fall and winter seasonal commodities in substantial quantities must be deducted in determining "current cost" and cost for purposes of computing "initial percentage mark-up". "Usual discounts" are those customarily granted by a seller's supplier for the same quantities of an item which were delivered during the period between January 1, 1942, and August 26, 1942.

Calculation of maximum price by use of markup based on cost and selling price. Where a seller during the last six months of 1941 customarily used a markup based on selling price rather than cost, he may determine his maximum prices on the selling price basis, provided that the maximum prices so determined are the same as the maximum prices resulting from the use of the cost price method.

The following is an example of determining the maximum price by use of a markup based on cost: The cost price and the first offering price of an item during the base period were \$1.00 and \$1.50 respectively. The "initial percentage markup" according to the Regulation is 50 cents, that is, the cost is subtracted from the first offering price and the result is di-

vided by the cost. The maximum price is obtained by applying to the cost used in the Regulation the "initial percentage markup".

The following is an example of determining the maximum price by use of a markup based on selling price: The cost price and the first offering price of an item during the base period are \$1.00 and \$1.50 respectively. The markup under this method is $33 \frac{1}{3}\%$, that is, the cost price is subtracted from the first offering price and the result is divided by the first offering price. The maximum price under this method is obtained by dividing the cost used in the Regulation by the complement of the base period markup, that is, dividing \$1.00 by $66 \frac{2}{3}\%$.

Sale of same commodity in different departments of same sellers. Where a seller sells the same commodity in two different departments, the cost and initial percentage markup under Rules 1 and 3 should not be determined separately for each department since under Section 1499.20(a) of the General Maximum Price Regulation (incorporated by reference into Regulation No. 210) the separate departments are not deemed separate sellers. In use of Rule 1, for example, the initial offering price and costs during the last six months of 1941 of the same commodity should be grouped together in determining the markup on that commodity. Thus, if the same commodity were sold in a basement and upstairs department during the last six months of 1941, and the costs of the commodity during this period in the basement totaled \$250 and the first offering price totaled \$300, while the costs of the commodity in the upstairs department totaled \$300 and the first offering price totaled \$400, the markup on this commodity obtained through use of Rule 1, would be calculated by adding the basement and the upstairs costs (\$550), subtracting this sum from the sum of basement and upstairs first offering price (\$700), and dividing the difference (\$150) by the sum of the costs (\$550). By applying the initial percentage commodity markup obtained through the use of Rule 1 to the lower of the average or current costs of the commodity being priced, the maximum price of that commodity is determined. However, if a customary differential in price prevailed between the commodities sold in the upstairs department and those sold in the basement, the same commodity cannot be sold both upstairs and in the basement at the same price since under Section 1372.104, the maximum price calculated for the commodity must be reduced in the basement to reflect the customary differential between the basement and upstairs prices.

This is also the case in the use of Rule 3 where the similar commodity most nearly like the one being priced was sold in different departments during the last six months of 1941.

"Infants' sizes". The term "infants' sizes", referred to in Section 1372.112, means garments designed for infants. It is not possible to designate infants' garments by specific sizes because infants' sizes 1 to 3 or 1 to 4 overlap with children's sizes starting with size 2 or 3 and running to 8 or 10. Thus the test is not whether the garment is 0, 1, 2, or 3 but whether the garment is designed for infants' wear.

Anticipation privileges.

Question: Must a seller who has allowed anticipation in the past continue to allow anticipation?

Answer: In freeze and formula type Regulations, which provide that the seller may not change customary allowances, discounts or other price differentials, the seller, who has allowed anticipation during the base period, may not now discontinue the privilege. In dollars-and-cents Regulations, terms other than those specifically provided are not required to be maintained.

Question: Must a retailer, in pricing under Regulations Nos. 210, 330 or Section 3(a) of the General Maximum Price Regulation, consider anticipation in arriving at his net cost?

Answer: Under Regulation No. 210, where the retailer must deduct all discounts except for cash, anticipation need not be deducted since the invoice does not indicate whether either cash discounts or anticipation were taken.

Under Regulation No. 330, the retailer uses the same cost basis as during the base period.

Under the General Maximum Price Regulation, Section 3(a), in figuring his net cost the retailer must deduct all discounts allowed, including anticipation.

Transportation

"Average" and "current" costs - transportation and insurance charges. In determining his "average cost" and "current costs" under the Regulation, a dealer may include transportation and insurance charges as part of the cost of the goods, only if he also included these charges in determining his "initial percentage markup".

Definitions

"Same commodity" - definition. In determining the "initial percentage mark-up" of a commodity under Rule 1 (Section 1372.102), the seller determines the cost and initial offering prices of the "same commodity". The term "same commodity" has the same meaning as under the General Maximum Price Regulation. Thus, different items may not be grouped under one commodity unless (a) all basic elements are identical, (b) they are made from the same materials, (c) they are regarded as identical by the trade, and (d) they invariably sold at the same price under the same conditions.

Records and Reports

Supplementary statements. Changes in the prices for cost-of-living commodities for which prices have already been filed by a seller, need not be shown in a supplementary statement. Only commodities and their prices newly offered for sale should be listed in any supplementary statement.

Operating charges, etc. - retroactive effect. Where a lessor supplier of services is required by the Regulation to establish his charge for a service or rental (such as an operating and maintenance, or rebuilding and repair service, by Section 1399.5; a fully-operated rental of equipment by Section 1399.6; a partially operated rental, by 1399.16(b)(5); etc.), the charge eventually established in conformity with the applicable provision is the maximum charge payable for all such service or rental furnished since the effective date of the pertinent provision of the Regulation, regardless of delay in filing a required report for requesting an approved rate.

Thus, where services had been supplied or equipment rented during the effective period of such a provision, and the supplier or lessor was late in filing his charges and securing an approved rate, the rate secured is nevertheless the legal maximum rate or charge which can and may be requested or received for the service or rental. In this limited sense, the effect of the determination may be described as retroactive; actually, it is rather the subsequent determination of the permissible maximum rate or charge.

Upon the establishment of an applicable maximum charge, the recipient of service or rental supplied prior thereto is not authorized by the Emergency Price Control Act or the Regulation to refuse payment on the ground that the supplier had no established charge at the time the service or rental was furnished.

Terms of rental agreements. Where equipment is rented on a bare basis, subject to the Regulation, the terms of the agreement of rental and the rights of the parties thereunder are not affected by the Regulation except insofar as the charge or payment made pursuant to the agreement (whether rental alone, or rental plus repair costs) exceeds the maximum charge permitted by the scheduled rates plus permissible charge for actual overtime use, if any. In such case, there will be no violation if the lessee assumes the responsibility of making repairs to the equipment so long as the cost of those repairs in addition to the rental stipulated by the contractor does not exceed the applicable maximum charge permitted by the Regulation. On the other hand, the fact that the lessor is permitted under the Regulation to make such additional charges does not deprive the lessee of the defenses available to him at civil law under the agreement, which may relieve him of the obligation to pay such additional charges.

Repair and rebuilding services performed by the lessee of construction equipment. The charges for the supply of repair and rebuilding services by a lessee to the lessor of construction equipment on a bare rental, where such charges are permissible under the Regulation, must be established pursuant to Section 1399.5(c) of the Regulation.

Pumps - rentals. The rates listed in Appendix A for plunger pumps include separately mounted gasoline pumps.

Most favorable rate base. Equipment rented by the month was in use for two weeks then broke down owing to wear and tear. The equipment was then taken by the lessor for repair and returned to the lessee in one week. The lessee continued to use the equipment for the fourth week. Under Section 1399.3(b) the rental must be calculated as if the rental periods were consecutive.

Taxes

Personal property tax. Where personal property taxes are levied against the owner of the leased machinery, the amount of such taxes cannot be paid by the lessee in addition to the maximum rates under the Regulation for the rental of the machinery, notwithstanding the terms of the lease.

Classification

Gasoline and Diesel engine powered crane. A crane which contains a gasoline engine is "gasoline engine powered", even though it uses Diesel fuel. The type of engine in the equipment, rather than the kind of fuel used, determines the classification of the crane.

Violations and Evasions

Recapture clause - taxes and repairs during rental period. A clause in a rental purchase

agreement to the effect that in the event of recapture of the machinery, the lessee shall bear the expense of taxes and repairs (including repairs due to ordinary wear and tear) during the rental period, does not constitute a violation of the Regulation even though such expenses are paid in addition to the maximum price of the machinery.

Maximum Price Regulation No. 136

MACHINES AND PARTS, AND MACHINERY SERVICE

Applicability

Casual sales. The Regulation is applicable to casual and sporadic sales as well as sales in continuous volume.

Wholesale sales by retail establishment. The exclusion from the Regulation of retail sales, Section 1390.2(f), does not exclude any wholesale sales, even though such sales are made by a store, shop, or mail-order house which sells predominantly to ultimate consumers.

Sale pursuant to rental contract. While the sale of a machine pursuant to a rental contract entered into prior to July 22, 1942, is specifically excluded from the Regulation, Section 1390.2(j), the rental of such a machine is subject to Regulation No. 136, or if construction or road maintenance equipment to Regulation No. 134 (Construction and Road Maintenance Equipment Rental Prices and Charges for Operating and Maintenance or Repair and Rebuilding Services). Sales pursuant to a rental contract entered into on or after July 22, 1942, are subject to Regulation No. 136, and the condition of the machine at the time the contract is entered into, i.e., new, rebuilt and guaranteed, or other second-hand conditions, determines the applicable maximum price. The "valuation" agreed upon at the time the rental contract is entered into may not exceed the maximum price applicable to the machine. Carrying charges to reimburse the lessor for financing, insurance and other expenses applicable to the renting of the machine are not part of the purchase price when transfer of title takes place, but rather are part of the rent paid for the machine. Hence, under a contract containing a recapture clause, where the option to purchase is exercised prior to the time the total rental payments over and above the carrying charges equal the valuation of the machine, the carrying charge may be deducted from the rental payments before the purchase price is computed. The payment made upon exercise of the option, plus the rental payments already made, less the carrying charge payments already made, may not exceed the maximum price under the Regulation.

Rental charges by public utility for substation equipment. Where a public utility rents to its customers equipment in any of the categories covered by the Regulation, such as transformers and substation devices, and the utility's rental charges therefor are a separate transaction with its customers and not an integral part of its regular rate charges for electric service, the rentals are subject to the Regulation, Section 1390.1 (b).

Navy Department facilities contracts and Defense Plant Corporation lease agreements. Under Navy Department facilities contracts, a company acts as a general contractor in purchasing and installing machinery and equipment and is reimbursed by the Navy Department at cost. Title to the machinery passes from the manufacturer to the company and thereafter from the company to the Navy Department, the latter transfer often occurring after the machinery has been used. In purchases in excess of \$200 the company must get the Navy Department's prior approval in writing, and the company is reimbursed for all authorized or approved expenditures made by it for or on account of the contract.

Under Defense Plant Corporation lease agreements, a company acts as agent for the Corporation in purchasing machinery and equipment, and the Corporation makes payment directly to the sellers. Title is transferred directly to the Corporation but, in some cases, to expedite execution of the lease and production, the company has taken title in its name with the understanding that title will later be transferred to the Corporation at cost, in which latter cases the transfers of title are often not completed until the machinery has been used.

The transfer of title by the company to the Navy Department or the Defense Plant Corporation, under the circumstances outlined above, may be made at cost to the company, provided that the cost does not exceed the maximum price established for the machinery or machine tools, new, under Regulation No. 136 or Schedule No. 67 (New Machine Tools); the company is acting only as nominee for the real parties in interest in the purchase of the machinery, where the transaction is later ratified by the acceptance of title to the machinery by the Navy Department or the Defense Plant Corporation.

Electrical contractors. The Regulation is applicable to electrical contractors as follows:

(1) Equipment or material listed in Appendix A or Appendix B which is sold by a contractor at a retail price to an ultimate consumer, whether made inside or outside his shop or place of business, is exempt from the Regulation; the General Maximum Price Regulation applies to sales of such equipment or material, except as to sales of building and industrial equipment and materials on an installed or erected basis which are covered by Regulation No. 251 (Construction and Maintenance Services and Sales of Building and Industrial Equipment and Materials on an Installed or Erected Basis).

(2) Sales of material or equipment covered by the Regulation when made by a contractor to an industrial, commercial or governmental user, whether made inside or outside his shop or place of business, are subject to the Regulation, unless such sales involve items usually sold to private consumers, such as householders, and are made at the retail prices which would be used in making sales to that class of purchasers. In the latter case the General Maximum Price Regulation applies, except that sales of building and industrial equipment and materials on an installed or erected basis, within the meaning of Regulation No. 251, are subject to that Regulation.

(3) The Regulation applies to the sale of material and equipment covered by Appendix A or B involved in contract work of the contractor, where the contract is on the basis of: (a) material, labor, and services, or (b) time and material, or (c) any other basis where payment is separately made for materials for equipment, except (d) a true "cost-plus" basis, which includes only those contracts in which a flat fee or percentage is added to actual costs, i.e., costs which include no element of profit, or margin of overhead, or other mark-up or addition.

(4) Although strict cost-plus contracts are excluded from the Regulation, as explained above, a contractor entering into such a contract involving sales of equipment or material covered by the Regulation must file a report thereof under Section 1390.14 (Reports on Cost-Plus Contracts).

(5) Compensation which a contractor receives solely for his services in making installations of material and equipment covered by the Regulation is specifically excluded for the Regulation by Section 1390.10(f); compensation for such services is controlled by Regulation No. 251, except for that portion covered by Regulation No. 165 (Services) concerning the contractor's services principally as they relate to repair and maintenance of household, retail establishment and institutional equipment. In calculating maximum charges under Regulation No. 251, materials and equipment covered by Regulation No. 136 go in at maximum prices as determined under Regulation No. 136.

(6) A contractor's work in repairing, rebuilding, maintaining, or performing any of the other acts defined as "machinery services" by the Regulation, upon any material or equipment covered hereby, is included in the Regulation. If the contractor's work is not within the coverage of Regulation No. 136, Regulation No. 251, or Regulation No. 165 apply to such services.

(7) To the extent that a contractor's sales of material includes wire, cable, and cable accessories, as defined by Schedule No. 82 (Wire, Cable, and Cable Accessories), such sales are covered by that Schedule.

Maintenance services formerly subject to Regulation No. 136. See page 16:11.

Elevator maintenance contracts which include the furnishing of materials are contracts involving the sale of a service and the sale of machines and parts under the Regulation.

Erecting and dismantling typesetting machines. See page 2:5.

Lumber carriers. The Regulation applies to the rental of and the repair services on lumber carriers as the rental or repair of "material handling equipment, industrial (cars, trucks, racks, etc.)," Appendix A(g).

Plating service. The service of plating perishable tools, jigs, and parts is a "machinery service" covered by the Regulation.

Repair services on tractors. The Regulation is applicable to repair services on industrial and crawler tractors, even though the tractors are used for agricultural purposes.

Components of combatant products - electrical subassemblies. The Regulation applies to subassemblies listed in Appendices A or B, such as electrical subassemblies, even though such subassemblies ultimately become components of combatant products listed as exceptions in Supplementary Regulation No. 1.

Traded-in motors. The value of motors which are traded-in for new motors is determined by Section 1390.11, sales of second-hand machines and parts.

Air coolers. The Regulation is not applicable to electrically driven room conditioners (air coolers).

Aircraft diesel engines used in tanks. Diesel engines designed for aircraft are not subject to the Regulation even though actually used in tanks.

Bakery equipment. Bakery pans, knives, pastry brushes, pastry guns, decorating tubes and sets, bread racks, and dough troughs are not subject to the Regulation; the General Maximum Price Regulation applies. Hand trucks used to move bread pans are subject to the Regulation.

Rentals of barges equipped with pile drivers or derricks. The rental of barges equipped with pile drivers is covered by the Regulation as a rental of "pile drivers," Appendix A(d); the rental of barges equipped with derricks is subject to the Regulation as a rental of "cranes (overhead, crawler, and locomotive) hoists and derricks," Appendix A(d).

Used transmission and trolley wire. See page 16:7

Barge with drag line. A barge with a drag line is subject to the Regulation as "dredging machinery," Appendix A(d).

Hand or motor-driven blowers for blacksmith forges. Motor-driven blowers for blacksmith forges are subject to the Regulation under the item "fans and blowers," Appendix A.

"Industrial boilers," Appendix A(b), are steel boilers which are manufactured essentially for power or processing purposes. They include water tube, horizontal returns tubular, oil country, locomotive type, vertical tubular and scotch marine boilers. Cast iron boilers and steel boilers manufactured essentially for heating purposes are covered by Regulation No. 188 (Manufacturer's Maximum Prices for Specified Building Materials and Consumers' Goods Other Than Apparel). Parts manufactured for "industrial Boilers" are covered by Regulation No. 136; they are not subject to Regulation No. 236 (Heating Boiler Conversion Parts).

Boiler tubes - sales by a boiler manufacturer:

Fabricated boiler tubes. Sales by a boiler manufacturer of fabricated tubes manufactured by him are covered by Appendix A(j). Sales by a boiler manufacturer of fabricated tubes which he did not manufacture are covered by Appendix B.

Unfabricated boiler tubes. Sales by a boiler manufacturer of unfabricated tubes manufactured by him are covered by Schedule No. 6 (Iron and Steel Products). Sales by a boiler manufacturer of unfabricated tubes which he did not manufacture are covered by Schedule No. 49 (Resale of Iron and Steel Products).

Coaxial cable (insulated with ceramic beads and compressed dry nitrogen) is subject to the Regulation as "Electrical wire, cable and cable accessories", Appendix B, since it is made of copper tubes or a tube and rod; it is not made of wire or assembly of wire and therefore is not covered by Section 1349.12 of Schedule No. 82 (Wire, Cable and Cable accessories).

Car movers are subject to the Regulation as "machines, tools, devices and appliances designed specifically for the installation, operation, maintenance and protection of tracks, yards, signals, rolling stock and motive power", Appendix A(f).

Cameras used by manufacturers in the making of patterns or templates, and special map-making cameras manufactured for the Federal Government are exempt as "photographic equipment," Appendix C of the Regulation.

Chucks and accessories. Chucks sold separately or with accessories, such as a hand control operating valve, air filter, automatic lubricator, or regulating valve unit, are covered by Appendix B of the Regulation. If the hand control operating valve is sold separately, the valve is not subject to the Regulation. If the automatic valve unit is sold separately, it is covered by Appendix A of the Regulation.

Clocks and clock works, interval timers, service recorders, etc., and repairs thereto. The Regulation applies to service recorders used in connection with machine operations, trucks, airplane flights, etc. under Section 1390.32(h), Appendix A.

The Regulation applies to spring-driven or electric clocks and clock works, when used as parts or subassemblies of industrial instruments used for driving instrument charts, Section 1390.32(i), Appendix A. However, watchman's clocks, pay-roll clocks, clock time stamps, etc., used in industrial plants or factories are not covered by the Regulation, since usage is not determinative. An item must fall within one or more of the groups specifically mentioned in Appendix A or B of the Regulation, and clocks as such are not listed.

The Regulation applies to the repair of clock works, interval timers, service recorders, etc., as a machinery service, since those items are covered by the Regulation.

Coated electrodes for arc welding are included in the coverage of the Regulation, Appendix A, under "arc and resistance welding equipment, electrodes and supplies."

Discarded or worn drills and augers from mine drilling machines. The purchase and sale of discarded or worn drills and augers from mine drilling machines are covered by the Regulation and the maximum price is established by Section 1390.11.

Forged steel grinding balls. The Regulation is applicable to forged steel grinding balls used in mines and for grinding ingredients of cement.

Grab buckets are covered by Appendix A, "excavating and earth-moving machinery," when they are manufactured by the manufacturer of the complete machine on which they are used, and by Appendix B when manufactured by a person other than the manufacturer of the complete machine.

Gum tape dispensing machine. The Regulation is applicable to gum tape dispensing machines of the type used in shipping rooms.

Handwriting recorders. A recording device which produces two to five hand-written copies of sales slips, delivery tickets, receiving records, bills of lading, or other business records is not a "machine" within the meaning of the Regulation; the General Maximum Price Regulation applies to the sale of such recorders.

Metal belt fasteners and joiners. The Regulation is applicable to the sale of metal belt fasteners and belt joiners used for industrial power transmission and conveying equipment.

Sale of parts in unassembled condition. Where a company sells mechanical supports, sockets, tubes and wiring for commercial and industrial lighting equipment in unassembled condition to a purchaser who assembles a complete device therefrom, the sale by the company is covered by Section 1390.32(j) of the Regulation.

Electrically operated blueprinting and reproduction equipment and parts. The Regulation applies to electrically operated blueprinting and reproduction equipment and parts.

Peel blades are not "machines" as defined in the Regulation; the General Maximum Price Regulation applies.

Plate coating machines, manufactured according to specifications of Federal Government agencies and used to make plates for offset printing, although differing from the manufacturer's standard plate coating machines, are subject to the Regulation as "printing machinery," Appendix A of the Regulation.

Power-driven rotary scrubbers used for scrubbing, polishing and deterging floors, are subject to the Regulation as "brushes, industrial power-driven," Appendix B of the Regulation.

Radio head sets and similar apparatus attachable to radios in lieu of loud speakers, are subject to the Regulation as "radio transmitting and receiving apparatus and parts," since most of the use of such apparatus today is of a commercial rather than of a consumer nature.

Rock wool blankets. The Regulation is not applicable to the sale of rock wool blankets manufactured for industrial use, particularly for boiler insulation.

Street-sweeping machines. Self-propelled street-sweeping machines are subject to the Regulation as "road building and maintenance machinery," Appendix A(d).

Surgical instruments. The Regulation is not applicable to surgical instruments, such as knives, scalpels, lancets, and dissecting instruments; Regulation No. 188 applies.

Rental of lighting plants. The rental of Diesel driven lighting plants of 25,000 watts is subject to the Regulation as "commercial lighting equipment," Appendix A(e); it is not subject to Regulation No. 134 (Construction and Road Maintenance Equipment Rental Prices and Charges for Operating and Maintenance or Repair and Rebuilding Services).

Glass parts of lighting fixture for airports, airways and seadromes are covered by

Appendix B of the Regulation when sold with the complete lighting fixture or other parts thereof; if manufactured by the manufacturer of the complete lighting fixture,

they are covered by Appendix A as "airport, airways and seadromes lighting." If the parts are sold separately, they are covered by Regulation No. 188 (Manufacturers' Maximum Prices for Specified Building Materials and Consumer's Goods Other Than Apparel).

Mechanical supports for industrial and commercial lighting equipment sold with wiring and lamp sockets, but without bulbs or reflectors, are "commercial lighting equipment" subject to the Regulation, Appendix A.

When such supports are parts of complete items manufactured and sold by the same company, but sold without sockets or wiring, they are subassemblies of "commercial lighting equipment" subject to the Regulation, Appendix A.

Arc lamps and glass reflectors for arc lamps designed and sold for use as motion picture photographic equipment are not subject to the Regulation (Section 1390.34, Appendix C); they are covered at the manufacturing level by Regulation No. 188 (Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods other than Apparel), and at other distribution levels by the General Maximum Price Regulation.

Portable lamps used for industrial and marine purposes are covered by the Regulation, Appendix A, while domestic portable lamps for household use are covered by the General Maximum Price Regulation.

Leads and leveling equipment. The Regulation is applicable to leads and leveling equipment.

Special repair parts. The Regulation is applicable to the sale of special repair parts for machine listed in Appendix A or Appendix B.

Parts and assemblies sold unassembled. Parts or subassemblies of an item covered by Appendix A, when manufactured by the manufacturer of the complete item, are covered by the Regulation, even though such parts of subassemblies are sold unassembled to another person who uses them to assemble a complete item different from that sold by the manufacturer of the parts and subassemblies.

Telephone calculagraph, a mechanical instrument which mechanically calculates the elapsed time of long distance telephone conversations and prints such elapsed time on a toll ticket together with the time the call started, is subject to the Regulation as "mechanical instruments for measuring, testing, recording, or indicating," etc., Appendix A(h).

Textile spinning machinery and thread and textile guides, whether made of steel or porcelain-coated steel, or synthetic sapphire, are subject to the Regulation as "textile preparatory and finishing machinery and equipment (including accessories designed exclusively for use with such machinery)," Appendix A(c).

Tire retreading equipments. The Regulation is applicable to retreading equipment.

Hand tools designed for military purposes. Where hand tools originally designed for the repair and maintenance of civilian vehicles have not been produced for civilian use since 1937, and are now to be manufactured only for the purpose of supplying tools for the repair and maintenance of military vehicles, such hand tools are "especially designed for manufacture, repair, or maintenance of aircraft, military vehicles or other predominantly military equipment" within the meaning of Appendix B and are covered by the Regulation.

Valves. The specific exemption under the Regulation for "manual valves" includes check valves and flap valves, valves operated by hand wheel, chain, lever, or crank. Valves which would otherwise be considered manual valves, e.g., gate, globe, and angle valves, are not automatic valves merely because they are operated by an electric motor, although the electric motor and remote control devices are covered by the Regulation. Valves

which are operated or operable by fluid pressure are, however, covered by the Regulation as "valves, automatic."

Manual valves. The exclusion from the Regulation of "manual valves" Appendix C, is applicable irrespective of their use; they are subject to Regulation No. 188 (Manufacturers' Maximum Prices for Specified Building Materials and Consumers' Goods other than Apparel).

Valves on airplanes. The Regulation is applicable to the sale of automatic valves used for oil hydraulic systems which control landing gears, wing flaps, etc., on airplanes.

Winches are considered "hoists" and are therefore covered by paragraph (d) of Appendix A of the Regulation.

Scales. The Regulation is applicable to weighing scales of all types, including postal scales, balancing scales, and spring scales.

Metal scale beams mounted on a tripod and used for weighing cotton in the field, are subject to the Regulation as "weighing scales, industrial, and platform," Appendix A(h).

Used sucker rods sold for use as oil well equipment are subject to the Regulation, Section 1390.11, entitled Sales of second-hand machines and parts. If sold for concrete reinforcing they are covered by the General Maximum Price Regulation. Neither Schedule No. 49 (Resale of Iron or Steel Products) nor Regulation No. 159 (Fabricated Concrete Reinforcing Bars) is applicable.

Addressograph machines are not subject to Regulation No. 136 as "printing machinery", Appendix A(c), but rather are exempt as "office machines", Appendix C; the General Maximum Price Regulation applies.

Bronze and cast iron welding rods used in connection with gas welding and cutting equipment are subject to the Regulation as "gas welding and cutting equipment", Appendix A(h).

Corner air drills are subject to the Regulation as "portable power driven tools", Appendix A(d).

Gasoline pumps used at gasoline service stations, unless hand operated, are subject to the Regulation as "pumps and compressors, except automotive, hand operated and farm pumps", Appendix A(h).

Oil cleaning unit used with Diesel or other types of engines is covered by the Regulation since it is a part of the engine; if made by the manufacturer of the engine on which it is used, the maximum price is established by Appendix A; if made by someone else, Appendix B applies.

Radio parts adapted solely for military and police use. Where a manufacturer formerly made a part for civilian radios and modified the part so that it is now sold and used solely for military and police radios, such part is subject to the Regulation as "radio transmitting and receiving apparatus and parts", Appendix B.

Repair service to oil well pumps is a "machinery service" within the meaning of Section 1390.1(b). Where a supplier performed such service free on March 31, 1942, he may not now charge therefor, Section 1390.9(a)(1).

Electric fence controllers. See page 16:28.

"Extra". See page 16:6.

Machines for processing carbon black are subject to the Regulation as "chemical process machinery", Appendix A(c).

"Open tanks and vessels (metal)", etc. The term "open tanks and vessels", Appendix A(g), means tanks or vessels in which the internal surfaces are exposed to atmospheric pressure; therefore, open top tanks, as well as enclosed tanks which are vented to atmosphere and thus not capable of sustaining pressures higher than atmospheric pressure, are "open tanks". Fuel oil container storage tanks, if incapable of sustaining pressures greater than atmospheric pressure, are "open tanks" or "vessels". Domestic oil storage tanks are always vented to atmosphere and, therefore, are "open tanks"; however, "domestic fuel oil storage tanks" are specifically excepted by the Regulation and are covered by Schedule No. 96 (Domestic Fuel Oil Storage Tanks).

The Regulation applies to tanks which are factory fabricated and assembled; any tank which is assembled in the field, even though partially fabricated in a factory, is covered by Order No. 61 of the General Maximum Price Regulation.

Air craft testing machine. A manufacturer makes a gear box with an outside power shaft and purchases a small electric motor which is attached to the gear box. The machine is sold as a complete unit to aircraft companies and is specially designed for moving wing flaps, raising and lowering landing gears, opening and shutting the bomb bays, and testing superchargers. When sold as a complete unit this item is not covered by Regulation No. 136 or any other price Regulation; it is specifically excepted from the General Maximum Price Regulation by Revised Supplementary Regulation No. 1.

Metal velvet frames upon which velvet is wrapped for shipping are not covered by the Regulation. They are not "textile preparatory and finishing machinery and equipment (including accessories designed exclusively for use with such machinery)", Appendix A(b), since they are not used in industrial manufacturing operations. They are designed primarily for use in shipping finished goods and are subject to the General Maximum Price Regulation.

Transfer of security interest in machinery - locomotives. A bank purchased three locomotives from the manufacturer and transferred them to a railroad under a lease-with-option-to-buy. The bank's interest in the locomotives was transferred to a Federal agency. This transfer was not subject to Regulation No. 136, since it was not a sale or delivery of the locomotives but only a transfer of the bank's security interest in the locomotives coupled with its rights under the lease.

Services - rubber dipping service on electronic devices. A rubber dipping service performed on electronic devices is covered by the Regulation since it is a service performed on a commodity listed in Appendix A.

Steel scaffolding. The Regulation applies to the rental of steel scaffolding equipped with hoists since "hoists" are listed in Appendix A(d).

"Trackless trolleys." Rubber-tired electric busses with overhead trolleys are subject to the Regulation as "passenger cars" under the heading of "Railroad Equipment" in Appendix A(f).

Used shafting. The sale of used line shaft with attachments to be used for industrial power transmission is subject to Regulation No. 136; Regulation No. 310 (Reusable Structural Steel Shapes and Plates, and Shafting) applies to the sale of a used line shaft, if reusable, and if stripped of all attachments.

Airplane pumps. Airplane fuel pumps and hydraulically operated pumps for operating de-icers, bomb bays, landing gear, and other aircraft mechanisms are subject to the Regulation as "pumps and compressors", Appendix A(h).

Crawler tractor sold by one farmer to another. The sale of a crawler tractor by one farmer to another is subject to the Regulation. Such a sale is not a sale "at retail", exempt pursuant to Section 1390.2(f), because a farmer is a commercial user. A farmer is considered a commercial user since he operates his farm as a commercial activity

and purchases the equipment for use in carrying on that activity.

Note: "Crawler and nonagricultural tractors" are subject to Regulation No. 136, while retail sales of "Farm tractors (except crawler tractors)" are subject to Regulation No. 133 (Retail Prices for Farm Equipment).

Experimental pumps. A manufacturer at the request of a customer designs an experimental aircraft pump which is invoiced to the customer at a nominal price. If the customer finds, after inspection and testing, that the pump is satisfactory, he orders a large quantity of the pumps and pays a price representing their actual value. The delivery of the test pump does not constitute a sale or delivery under the Regulation so if the manufacturer receives a quantity order for the pumps and prices them in accordance with Section 1390.7, at a price in excess of the nominal price for the test pump, no report need be made under Section 1390.18(g).

Jacks. The sale of power-operated jacks is covered by Regulation No. 136 and that of hand-operated jacks by Regulation No. 188 (Manufacturers' Maximum Prices for Specified Building Materials and Consumers Goods Other Than Apparel). Maximum Prices for rentals of hydraulic jacks which are listed in Appendix A, Section 1399.159, Regulation No. 134 (Construction and Road Maintenance Equipment Rental Prices and Charges for Operating and Maintenance or Repair and Rebuilding Services) are covered by that Regulation.

Non-standard item. Section 1390.5, setting forth the maximum price for machines or parts for which the manufacturer had published price lists or established prices in effect on the base date applies to non-standard as well as standard items.

Outdoor and indoor sub-stations. The term "outdoor and indoor substations" in Appendix A of the Regulation refers only to portable substations enclosed in metal cages. Therefore, a sale of a portable electrical substation located in an establishment without the good will of the business is covered by the Regulation as a sale of "machines and parts." However, permanent substations, which are in the nature of fixtures to real property are not covered by the Regulation.

Power operated churns. See page 16:10.

Rebuilt motors are "machines and parts" within the meaning of the Regulation. The applicable base date governing sales of rebuilt motors is March 31, 1942, Appendix B, Section 1390.33

Tanks. A field erected tank, equipped with heating coils, baffles, etc., that produces physical or chemical changes in the product it stores, is covered by the Regulation as "Chemical process machinery"; it is not considered to be a tank for pricing purposes.

Manufacturing services on military airplanes and tanks. The Regulation is applicable to machinery services on material owned by others where these services result in a part covered by the Regulation, even if that part is specially designed for a military airplane or tank.

Freight car axles. Sales of used freight car axles to a consumer, as defined in Regulation No. 4, are covered by that Regulation. Sales of second-hand freight car axles for reuse under freight cars are covered by Regulation No. 136.

Tungsten rods, 95 to 100 percent pure, are fabricated products used by the electrical industry and are subject to the Regulation as "Metals and alloys in fabricated form " under the heading (e) Electrical Equipment in Section 1390.32.

Card clothing is covered by Appendix A of the Regulation as a part or accessory of textile machinery; Regulation No. 149 does not apply.

Machine cleaning equipment. A machine which cleans, rinses, polishes and dries component parts of instruments, electronic tubes and related units is covered by Section 1390.33, Appendix B, as "parts washing and cleaning equipment."

Mattress-making machinery is covered by Section 1390.32, Appendix A(c), as "Textile preparatory and finishing machinery and equipment."

Paper balers are covered by Section 1390.32(c), Appendix A, as "packaging, wrapping, filling and labeling machinery."

Skidders. Steel Tom Houston skidders with Fordson tractor motor units are classified as "material handling equipment" under Section 1390.32 Appendix A(f).

Watch cleaning machine is covered by Section 1390.33(b) of the Regulation as "unclassified industrial machinery."

Sixty-day guarantee. The requirement that a machine sold as rebuilt and guaranteed be guaranteed for 60 days of satisfactory operation is not subject to any time limitation of its application. The period of its application is subsequent to its sale and delivery and is a guarantee of beneficial use to the purchaser.

Lease of entire business. The lease of a machine shop, including real estate space, power supply, light, heat, janitor service, use of rail siding and use of machine tools and machines, is not covered by the Regulation if the transaction actually involves a bona fide lease of an entire business.

Emergency purchase. In order that a sale or delivery to a governmental agency be exempted as a "sale or delivery pursuant to any emergency purchase" the sale must be made "for immediate delivery", Section 1390.23. A contract entered into in September 1943, stipulating for periodic deliveries begin in April 1944, and to end in December 1944, was held not to be an emergency purchase "for immediate delivery" within the meaning of the Regulation.

Repair of oil well survey instruments. Oil well survey instruments are "oil well equipment" within the meaning of Section 1390.32, Appendix A, and therefore repairs of such instruments constitute machinery services covered by the Regulation.

Battery separators with grooves on one side and which can be used only for batteries are considered parts for batteries, and therefore are covered by the Regulation. Where the battery separators are made in whole or in part of rubber, Regulation No. 149 (Mechanical Rubber Goods) applies.

Cloth-cutting machines are classified as textile machines and therefore are covered by the Regulation, Section 1390.32, Appendix A.

Electrical equipment sold and installed on ships. The sale and installation on ships of electrical equipment such as speaker systems, lighting fixtures, instrument panels, wiring for gun mounts by a manufacturer are covered by the Regulation.

"Integral" and "combination" trucks. See page 16:1.

Lens tempering unit, used for tempering lenses so that they may resist breakage is covered by Section 1390.33, Appendix B, as an optical processing machine.

Machine gun parts for civilian purposes are classified as "material handling equipment", Section 1390.32, Appendix A, and therefore are covered by the Regulation when sold at the manufacturer's or wholesale level. When sold at the retail level, the General Maximum Price Regulation applies.

Parts used interchangeably in industrial and farm machines. Engine and tractor parts which may be used interchangeably in industrial and farm tractors are covered by the Regulation; Regulation No. 246 (Manufacturers' and Wholesale Prices for Farm Equipment) is not applicable since that Regulation only applies to equipment which is used primarily in connection with the production of agricultural products.

Patcher. A patcher which meets the definition of "industrial sewing machines" under Regulation No. 375 (Sales of Used Industrial Sewing Machines and Rental Rates for New and Used Industrial Sewing Machines) but cannot be priced under that Regulation because it is assembled

from parts of old standard sewing machines, must be priced under Sections 1390.5 or 1390.7 of Regulation No. 136.

Screws which are part of textile machines. Screws manufactured by a person who does not manufacture the textile machinery in which they are used, are not covered by Section 1390.32, Appendix A of the Regulation, unless the screws can be classified as "accessories" designed exclusively for use with textile machinery. A screw used for fastening together the basic machine is not such accessory, whereas a screw used with a bobbin, for example, is considered to be an accessory.

A screw which is not an accessory is covered by Section 1390.33, Appendix B as a "screw machine product", if it is made complete or in its first operation on an automatic or hand screw machine from rod, bar or tube stock, and is sold unassembled, provided that the screw is not covered by Regulation No. 147 (Bolts, Nuts, Screws and Rivets).

Price Determination

New contracts.- production experience. In determining the maximum price for new contracts, Section 1390.18(f), the manufacturer's production experience up to the date of determining the new contract price must be used since subparagraph Section 1390.7(b)(2) specifically states: "The permitted labor cost . . . is to be determined by applying to each classification of labor estimated to be required on the basis of previous production experience."

Machines formerly sold under special contract. Where a company manufactured lubricating machines never before manufactured, under a special contract for one purchaser only, and delivered the machines to such purchaser on the base date, October 1941, its maximum price for lubricating machines sold under a new contract with the same purchaser is determined by Section 1390.7, sales by the manufacturer without list prices.

Sale pursuant to rental contract. See page 16:15.

shop's former customers. The manufacturer's maximum prices for machinery services are those of the transferor, pursuant to Section 1390.28 entitled, Transfer of business stock in trade. A manufacturer who sells his products operates a different type of establishment than one who sells machinery services. Hence, as used in Section 1390.28, "establishment" refers to the type of business being transferred, and since the manufacturer of machines and parts maintained a different type of establishment than a shop rendering machinery services, the manufacturer has acquired an "establishment separate from any establishment which he may previously have owned or operated."

Firm-price contracts - new list prices. A manufacturer entered into a firm-price contract for the sale of a product covered by the Regulation at a price properly computed under Section 1390.7. During the pendency of the contract the manufacturer filed a report under Section 1390.13 and received approval of a new list price for the same product which is lower than the contract price. The manufacturer need not adjust his contract price on the balance of his deliveries under the contract to the level of his new list price, Section 1390.18(b). A contract price, properly computed under Section 1390.7, need be recomputed only where the manufacturer's estimates of the prices of materials or services are found to exceed the supplier's actual prices therefor under Section 1390.7(c)(4)(ii). Conversely, where the manufacturer's contract price was lower than the approved list price under Section 1390.13, the Regulation does not relieve him of his contract obligation to complete contract deliveries at the lower price.

Oil cleaning unit. See page 16:21.

Machines without list or established prices - dealers - freight charges. In computing maximum prices of machines and parts without list or established prices, Section 1390.10 (c), a dealer may include freight charges actually paid by him from the manufacturer's plant to the dealer's warehouse as part of his "net invoiced cost".

Rental of components of rock crushing plant. See page 16:13.

Reduction or waiver of 60-day guarantee. Where second-hand machinery is sold at the maximum price of the nearest equivalent new machine, the 60-day guarantee of satisfactory performance, Section 1390.11(a)(2), may not be reduced to 20 days where the purchaser operates the machinery 24 hours per day; nor may it be waived because of the difficulty of servicing the machinery during the 60-day period of the guarantee in the case of sales to purchasers outside the United States.

New or converted plant. Where a tractor distributor built a new addition to its plant which is a separate building on a separate piece of property, the new building is a "newly constructed plant" for purposes of Section 1390.9(c).

Rebuilt and guaranteed machine - adequacy of method of invoicing. A provision in a sales contract that the "above machinery is guaranteed free from extra worn parts or cracks to impair the operation of machinery" does not meet the requirement of the Regulation that the machine be "expressly invoiced as a rebuilt and guaranteed machine", see Section 1390.11(b).

Adding pattern charges to maximum prices. See page 13:25.

Increase in labor costs. Section 1390.7 provides a formula for determining the maximum price of a machine or part for which the manufacturer had no published list price or established price in effect on the base date. Where the cost of a commodity for which a maximum price is determined under this section is increased due to labor inefficiency, the manufacturer may increase his maximum price of the particular commodity to reflect the increased labor cost since a change in efficiency of labor will necessarily affect his estimate of labor hours. The increased price for the commodity must be reported pursuant to Section 1390.18(g).

Discounts - sale through agent. Under Section 1390.20, a seller may not change his customary discounts or price differentials among his classes of purchasers. Where a manufacturer who formerly sold the machines direct to the customer, now sells through a sales agent who does not take title to the machinery, the sales agent is bound by the customary discounts of the manufacturer.

Sales by commission agent. An agent selling machines for a manufacturer on a commission basis without taking title to the machines is bound by the maximum prices of his principal, the manufacturer; he does not determine his maximum price as a "seller other than the manufacturer" under Section 1390.10. Also since the agent is not selling on his own behalf, but on behalf of his principal, he need not report list prices under Section 1390.5.

Direct labor cost - overtime rates. During the base period a manufacturer operated an automotive engine division and an aircraft engine division in a single plant. The overtime expenses in the automotive engine division were not substantial, and therefore the manufacturer did not consider them in establishing his factory overhead rates for the purpose of establishing selling prices for automotive engines?

However, the overtime expenses in the aircraft division were substantial and were considered as a factor in determining factory overhead rates for purposes of establishing selling prices of the aircraft engines. May the manufacturer receive a markup on his overtime expense in the automotive engine division, which are at present substantial, in computing the maximum prices of the automotive engines under Section 1390.7.

Since Section 1390.7(b)(3) provides that in the computation of maximum prices the manufacturer may not receive a mark-up on overtime expense, except to the extent that this was reflected in his overhead or machine hour rate during the base period, the manufacturer may not receive a mark-up on overtime expenses incurred in the automotive engine division in computing the maximum prices for the engines manufactured in that division.

Established price in effect on October 1, 1941.

Question: Where a manufacturer has accepted one order during the six months period prior to October 1, 1941, but has made three deliveries pursuant to that Order, has he an established price within the meaning of Section 1390.5(c)?

Answer: No. Only one charge has been made and the requirement is that the price be quoted or charged more than twice.

Question: What date is actually used to determine the maximum prices?

Answer: The date the contract was accepted. This is in keeping with the intent of the Regulation.

Question: Which controls, the date of the acceptance of the contract or the date when the first delivery is made?

Answer: The date of acceptance of the contract controls.

Question: If three separate orders at the same price were placed by the same company during the six months period prior to and including the base period date, is there an established price within the meaning of the Regulation?

Answer: Yes. The same price has been charged to the same class of purchasers more than twice during the six month's period prior to and including the base period date. It is not necessary that this charge be made to three different purchasers.

Question: Is it necessary for the manufacturer to file established prices in effect on the base date?

Answer: No. Section 1390.5(d) only requires the filing of published price lists and discounts in effect on the base date.

Taxes

Federal transportation tax. Under Supplementary Order No. 31--Tax on Transportation of Property Imposed by Revenue Act of 1942, the 3% tax on freight bills is treated by OPA as an increase in freight. Where a manufacturer's maximum price is f.o.b. factory, with a specified allowance for freight of 50 cents per cwt., he is not required to increase the amount of such allowance by reason of the fact that the transportation costs have been increased by the amount of the Federal transportation tax, effective December 1, 1942.

Classification

Appendix B "perishable (expendable) tools." Tools that wear or are consumed in the process of production and require regrinding or sharpening including devices used on machines to remove material by cutting or abrading, or for shaping and forming such materials, are "perishable (expendable) tools," including the following:

- (a) Cutting tools of carbon steel, high speed steel, and cemented carbide (carbide), stellite and other tipped tools, including diamond tipped tools.
- (b) Lathe, planer and shaper tools for turning, cut-off, boring and counter-boring, facing, and planing.
- (c) Milling cutters hobs, broaches, twist drills, deep hole drills, reamers, etc.

Oil well beans. Automatic and manual oil well beans (valve devices used in conjunction with an oil well Christmas tree to control the flow and measure the pressure of oil) are complete items of "oil well equipment" covered by Appendix A.

"Industrial boilers." See page 16:17.

Violations and Evasions

Refusal to sell to distributors. A manufacturer of machines and parts who sold machinery to ultimate purchaser on the base date or had an established price differential between distributors and ultimate purchasers, may refuse to sell to distributors and sell only to ultimate purchasers. However, if the manufacturer had only one price for all purchasers, that price is his maximum price for all purchasers.

Second-hand machines - repairs. Buyer of second-hand crane "as is" wants the boiler repaired. The seller is engaged to do the repair work before delivering the crane to the buyer. The resulting total compensation is less than rebuilt and guaranteed price but more than the "as is" price. This procedure is a violation of the Regulation. If seller performs repair work before delivering machine to buyer, total price cannot exceed either the "as is" or "rebuilt and guaranteed" price, depending on condition of machine. If the machine has actually been delivered to buyer, seller can then be engaged to do repair work and paid for his services without regard to the charges for the machine, provided that the engagement of the services was not agreed upon by the parties prior to delivery. This means that in order for the seller to be able to sell the service of repair independently of the sale of the machine, the buyer of the machine must when buying the machine, have been completely free to engage a person other than the seller of the machine to do the repair work. Even where machine is first delivered to buyer before repair work is done, if end result is that the seller received compensation totaling more than the rebuilt and guaranteed price, a strong presumption of evasion exists.

Rebuilt and guaranteed second-hand machines - necessity for tearing down and rebuilding. While Section 1390.11(b) contains no specific requirement that a machine which has been in use for five years or more must be torn down and rebuilt to qualify as a "rebuilt and guaranteed" machine, if such a machine has not actually been put through this reconditioning process there is a strong presumption of a violation if it is sold as "rebuilt and guaranteed", since the machine is likely to have worn or missing parts which must be repaired or replaced for satisfactory operation.

Guarantee of satisfactory operation. Used machines were sold to the Lend Lease Administration for shipment to India at the maximum price for rebuilt and guaranteed machines and invoiced as such pursuant to Section 1360.11(a)(2). It is not an evasion or violation of the Regulation to charge the maximum price for the machines as rebuilt and guaranteed where defective operation of the machine is due to improper installation or damage while in transit.

Recapture clause - taxes and repairs during rental period. See page 16:14(a).

Definitions

"Material handling equipment, industrial (cars, trucks, racks, etc.)." The material-handling equipment covered by this item is equipment used for the movement of goods from place to place. Hence, "racks" which are fixtures are not covered.

"Extra". See page 16:6.

"Open tanks and vessels (metals)", etc. See page 16:22.

Screw machine product. Screw machine products include all items made complete or in their first operation on automatic or hand screw machines from rod, bar, or tube stock when sold unassembled, but excluding items made on screw machines which are subject to Maximum Price Regulation No. 147 (Bolts, Nuts, Screw, and Rivets).

"Portable heating, melting, burning and thawing equipment", etc. This term, as used in Appendix A(h), means burners, forges, furnaces, heaters, kettles, melting pots and

torches used for industrial or transportation purposes, which are not designed to be set on, or fastened to a permanent base or foundation, but which are capable of being easily carried or moved from one location to another, and use gasoline, kerosene, fuel oil, illuminating gas, coal, coke, charcoal or wood as fuel to generate heat for the purpose of heating, melting, burning or thawing materials of any kind. Oxy-acetylene and electrically operated equipment is not included, and mechanic's fire pots and blow torches are specifically excluded.

Maximum Price Regulation No. 246

MANUFACTURERS' AND WHOLESALE PRICES FOR FARM EQUIPMENT

Applicability

Electric fence controllers. Electric fence controllers sold by manufacturers or wholesalers are subject to Regulation No. 246 since practically all of these controllers are manufactured and marketed for farm use. Sales at retail are subject to Regulation No. 133 (Retail Prices for Farm Equipment). Regulation No. 136 (Machines and Parts, and Machinery Services) is not applicable.

Saddles, harness, etc. Sales by manufacturers of saddles, saddle trees, stirrups, harness, chinchas and cowboy boots are not subject to Regulation No. 246; the General Maximum Price Regulation applies. The sale at retail of harness and saddlery is subject to Regulation No. 133 (Retail Prices for Farm Equipment).

Parts used interchangeably in industrial and farm machines. See page 16:22(a).

Galvanized pipe. See page 16:10

Hatchery equipment. See page 16:9

Price Determination

Manufacturer's increased freight costs. In March 1942, a farm equipment manufacturer charged retail dealers in area A freight from transfer point A which he has since discontinued, and now proposes to charge a higher freight from transfer point B. The increased freight costs may not be added to the maximum price under Regulation No. 246. Therefore, the retail dealers may not increase their maximum prices under Regulation No. 133 (Retail Prices for Farm Equipment) since their freight costs have not changed.

Maximum Price Regulation No. 341

MAXIMUM PRICES FOR USED COMMERCIAL MOTOR VEHICLES

Applicability

"Integral" and "combination" trucks. See page 16:1.

Converted passenger automobile. The Regulation applies to the sale of a used passenger automobile converted to a commercial motor vehicle.

Sales of used commercial motor vehicles by Army Post Exchanges. Supplementary Order No. 27 was intended to exempt from price control only commodities or services customarily sold or furnished by Army and Navy Post Exchanges or canteens. It was not intended to exempt sales of equipment of such exchanges or canteen such as used commercial motor vehicles.

Sales of used trucks by Army Post Exchange are subject to the Regulation and Supplementary Order No. 82.

Used "carry-alls". Motor vehicles designed for use on the highway to transport property and persons such as Army "carry-alls", are used commercial vehicles and subject to the Regulation upon resale.

Price Determination

"As is" and "warranted" prices. Only dealers who give the warranty specified in Section 8 may charge "warranted" prices for used commercial motor vehicles. All other sellers of such vehicles may not charge higher than the "as is" prices established in the Regulation.

Federal Use Tax. A seller of a used commercial motor vehicle may charge in addition to the maximum price of the vehicle the value of the unused portion of the Federal Use Tax paid by him since this tax is a tax on the use of the vehicle.

Classification

New and used trailers. A "Reassembled trailer" was manufactured from 70% used material and 30% new material. The question arises whether the trailer is a "used" motor vehicle subject to Regulation No. 341, or a new vehicle, subject to the General Maximum Price Regulation. In order to qualify as a new trailer, the vehicle must have undergone a manufacturing operation, rather than a repair or reconditioning operation of a used unit, and such operation must have been performed by a manufacturer of new trailers, i.e., one who is engaged customarily in the business of manufacturing, has catalogue or list prices, and has a manufacturing establishment.

Equipment considered as an "extra". Equipment attached to a used commercial motor vehicle is an "extra" and priced under the pricing provisions of the Regulation when it meets the following requirements:

- (1) When it is designed for attachment to such a vehicle when new;
- (2) Is not provided for in the price of the vehicle when new; and
- (3) Is operated by power from the vehicle, or if not power operated, its use is dependent on its attachment to the vehicle.

A corn sheller not designed for attachment to a commercial motor vehicle when new is not an "extra". However, equipment designed both for use either attached to a commercial motor vehicle or in some other capacity may be an "extra".

Machinery which is attached to a vehicle but is not an "extra" is priced under the Regulation that would be applicable if it were not attached to the vehicle.

Fire trucks. A used fire truck is a used commercial motor vehicle within the meaning of Section 1 since it is self-propelled and "designed for use on the highways for the transportation of property."

Definition

New body. A "new body", as that term is used in the Regulation, means one that has never been used before for any purpose.

Maximum Price Regulation No. 375

SALES OF USED INDUSTRIAL SEWING MACHINES AND RENTAL RATES FOR NEW AND USED INDUSTRIAL SEWING MACHINES

Applicability

Sale by municipality at public auction. The sale of used industrial sewing machines by a municipality at public auction is covered by the Regulation.

Patcher. See page 16:22(a).

Maximum Price Regulation No. 452

MANUFACTURERS' MAXIMUM PRICES FOR AUTOMOTIVE PARTS

Applicability

Rebuilt automotive parts. The following pricing situations illustrate when rebuilt parts are subject to Regulation Nos. 165 or 453.

Case 1.

Question: Truck owner makes repairs to truck. He has garage make a replacement valve. The garage makes the valve to specification and furnishes all the materials. Under what Regulation should the part be priced?

Answer: The garage is a manufacturer with respect to this part and should price the part under Regulation No. 452.

Case 2.

Question: The circumstances are the same as in Case 1 except that the truck owner furnishes to the garage the material for the valve.

Answer: The garage renders only a service in this case. This service should be priced under Regulation No. 165.

Case 3.

Question: Truck owner in Case 1 has the garage make the repairs to truck. Garage makes the valve or has it made. Garage furnishes the material for the valve. How is valve priced?

Answer: If the garage bills the labor and parts jointly as a service the total price for the service is determined under Regulation No. 165. The allowance for the part to be included in the service price is determined under Regulations Nos. 453 or 452. If labor and parts are billed separately by the garage, the price for labor is determined under Regulation No. 165 and the price for the part is determined under Regulations Nos. 453 or 452.

Maximum Price Regulation No. 453

WHOLESALEERS' AND RETAILERS' MAXIMUM PRICES FOR
AUTOMOTIVE PARTS

Applicability

Hose is under the Regulation when sold for use as a connection for automobile hot water heater.

Rebuilt automotive parts. See page 16:30.

Scrap truck axles. Truck axles which are being sold to machine shops as scrap truck axles, if they are reusable truck axles or axles which could be made reusable within the definitions contained in the Regulation, are governed by the Regulation.

If scrap truck axles are not covered by the Regulation, they would be free from price control if removed from the coverage of Regulation No. 4 because of the waste and scrap material provision of Revised Supplementary Regulation No. 1 to the General Maximum Price Regulation.

Regulation No. 310 is not applicable since a scrap truck axle is not a reusable structural steel shape or plate or shafting within the meaning of that Regulation.

Maximum Price Regulation No. 465

USED PRESSURE VESSELS AND USED ENCLOSED ATMOSPHERIC PRESSURE VESSELS

Price Determination

Blocking and tying charges. Regulations of the Interstate Commerce Commission require that used pressure vessels which are to be loaded on a flat car for shipment must be blocked and tied securely before acceptance by the railroad. The seller of a used pressure vessel may not make an additional charge for the expense incurred in blocking and tying since such service constitutes dismantling and loading of the used vessel for shipment to a purchaser within the meaning of Section 7(c)(2)(ii), for which no extra charge is permitted.

Maximum Price Regulation No. 523

PLASTIC PRODUCTS

Applicability

Sheets made of thermoplastic scrap are covered by the Regulation when sold by a manufacturer who does not sell molding compounds produced by him.

NON-FERROUS METALS

GENERAL INTERPRETATIONS

Price Determination

Sales to exporters - delivery to an emergency port of exit. When a seller's maximum price is a delivered price, he may not, on a sale to an exporter, make a charge to cover the amount by which his freight to emergency port of exit at which he makes delivery exceeds freight to the normal port of exit.

Price Schedule No. 2

ALUMINUM SCRAP AND SECONDARY ALUMINUM INGOT

Applicability

Aluminum oxide is not covered by the Schedule.

Aluminum sulphate is not covered by the Schedule.

Price Determination

Transportation charges. See page 17:6.

Commissions

Commission payments to employees purchasing aluminum scrap. It is not permissible for a consumer of aluminum scrap to pay a commission to a party, other than an employee, on the purchase of aluminum scrap when the price paid for the scrap plus the commission exceeds the ceiling price established for the material. A commission may be paid in addition to the maximum price only when a bona fide employer-employee relationship exists between the parties. The arrangement, if undertaken, must be entered into in utmost good faith and not used as a device for the purpose of evading the provisions of the Regulation.

Premiums

Quality premium. A premium for the sale of briquetted aluminum turnings may not be charged by a seller.

Taxes

Secondary aluminum ingot - delivery charges. Under Supplementary Order No. 31 - Tax on Transportation of Property Imposed by Revenue Act of 1942, the 3% tax on freight bills is treated by OPA as an increase in freight. Therefore, the "lowest carload rate of rail freight" is the carload rate plus the 3% tax on the amount of the carload rate. The resulting amount must be allowed by the seller to the extent of 75¢ per hundredweight. In the case of less than carload shipments, the amount of the freight allowance is calculated in the same way.

Classification

Scrap aluminum pattern forms are classified as "old castings and forgings".

"Old castings and forgings". Large pieces of obsolete 27-S aluminum scrap, obtained in the dismantling of a bridge, are classified as "old castings and forgings".

Violations and Evasions

Sale of ingots in conjunction with purchase of scrap. Where aluminum ingots are sold at the maximum price, and pursuant to a WPB requirement, the sale is made in conjunction with the purchase of the scrap, the seller of the ingot may not insist upon a lower price than is ordinarily paid for the scrap, since the ingot seller would, in effect, receive a higher price for the aluminum ingot than that established by the Schedule. The Schedule expressly prohibits such evasion, see Section 1302.6.

Maximum Price Regulation No. 3

ZINC SCRAP MATERIALS AND SECONDARY SLAB ZINC

Applicability

General. The Regulation is applicable to the seller and the buyer who is a consumer of zinc scrap materials of the kinds and grades set forth in Appendix A of the Regulation, and is applicable to the seller and the buyer of secondary slab zinc.

Die cast borings and die cast dross slab are not subject to the Regulation.

Zinc tax tokens are subject to the Regulation as "old zinc scrap".

Secondary electrolytic zinc is subject to the Regulation as "intermediate and higher grade" of secondary slab zinc.

Thread protectors. The Regulation is not applicable to the sale of "thread protectors" made from an alloy containing 95% zinc and 5% copper, since such material is not one of the forms of scrap subject to the Regulation.

Zinc die cast shavings are exempt from price control.

Price Determination

Freight charges prior to reaching point of shipment. Since the maximum prices established by the Regulation for zinc scrap are f.o.b. point of shipment, a seller, on shipping zinc scrap from his plant to a refinery, may not add to the maximum price the freight charges he incurred before the material reached his plant.

Freight charges to local railhead. Transportation charges from the seller's plant to the local railhead may not be added by the seller to the maximum price of the Regulation. However, if the seller loads the scrap at his plant on a common carrier for continuous transportation to the buyer on a through rate which includes no specific charge for the cartage or the trans-shipment, then the buyer may pay the entire freight from the seller's plant.

Transportation charges. See page 17:6.

Definitions

Truck charges - zinc and lead scrap. Truck charges means charges on the gross weight of the shipment within the meaning of Regulation No. 3, Section 1303.15, and Schedule No. 70, Section 1355.70.

Price Schedule No. 8

PURE NICKEL SCRAP, MONEL METAL SCRAP, STAINLESS
STEEL SCRAP, NICKEL STEEL SCRAP, AND OTHER SCRAP
MATERIALS CONTAINING NICKEL: SECONDARY MONEL INGOT,
SECONDARY MONEL SHOT, AND SECONDARY COPPER-NICKEL SHOT

Applicability

Electrolytic nickel plates that are scrap material are covered by the Schedule.

Electrolytic nickel plates that are not scrap material are not covered by the Schedule.

Nickel anodes made from nickel residues and nickel scrap are not covered by the Schedule.

Secondary nickel chrome ingots are not covered by the Schedule.

Nickel steel scrap and ferro-nickel-iron scrap. All nickel steel scrap and ferro-nickel-iron scrap containing over 5.25% nickel are covered by Schedule No. 8. The maximum price of ferro-nickel-iron scrap containing 14% up to 90% nickel and no chrome is specifically set forth under Section 1308.10(a) of Schedule No. 8, and the maximum price of ferro-nickel-iron scrap containing less than 14% nickel but more than 5.25% is determined by applying the normal differential below the established maximum price, as provided by Section 1308.10. Nickel steel scrap containing 5.25% nickel or less is covered by Schedule No. 4 (Iron and Steel Scrap).

Price Determination

Nickel steel scrap and ferro-nickel-iron scrap. See page 17:2.

Transportation charges. See page 17:6.

Premiums

Computation of premium. The premium for ferro-nickel-chrome-iron scrap is applicable to all of the ferro-nickel-chrome-iron scrap in shipments of 10,000 pounds or more of such material, and not to the nickel content alone.

Converter's premium - reasonable chemical analysis. To receive a converter's premium the converter must sort, grade, and otherwise prepare scrap for direct industrial consumption, on the basis of a reasonable chemical analysis, made of a reasonable sample of each sale and shipment of material, and the material must ultimately turn out to be fit for direct industrial consumption. In making a reasonable chemical analysis, it is not necessary to maintain a laboratory or employ an accredited chemist, but it is clear that a single application of nitric acid to one clipping in a carload does not constitute a reasonable chemical analysis.

Premium for mixed lots. The schedule permits quantity premiums for stated quantities of different kinds of nickel-bearing scrap. A shipment composed of different grades of the same kind of scrap, as classified in paragraph (a) of Appendix A, is eligible for the quantity premium. For example, a shipment of two lots of ferro-nickel-iron scrap, one of 8,000 pounds containing 30% nickel, the other 6,000 pounds containing 40% nickel, would be eligible for the quantity premium allowed on 10,000 pounds of ferro-nickel-iron scrap. The quantity premium may not be obtained, however, by combining lots of different kinds of nickel-scrap to total the quantity required for the premium. Thus, 6,000 pounds of ferro-nickel-iron scrap could not be added to 15,000 pounds of monel metal scrap, to obtain the premium available on 20,000 pounds of monel or 10,000 pounds of ferro-nickel-iron.

Brokerage fee. To qualify for a brokerage fee, Section 1308.10(b), the broker must have purchased the scrap for the consumer's account after he was employed for such purpose by the consumer; otherwise the broker could not comply with the requirement that the brokerage fee may not be split with, or paid to the seller of the material.

Price Schedule No. 12

BRASS MILL SCRAP

Applicability

Cuttings from copper bronze screen wire are not brass mill scrap and are not covered by the Schedule; Maximum Price Regulation No. 20 (Copper Scrap and Copper Alloy Scrap) applies.

"Clean fired rifle shells." See page 17:6.

Brass rifle shells discarded in the process of manufacture because of defects, and which never contained a primer cap, are brass mill scrap.

Mouth trim from cartridge cases. Scrap resulting from final mouth trimming of cartridge cases is classified as "turnings" and not as "heavy scrap".

Price Determination

Yellow brass containing 2% to 3% lead. No specific price is established for yellow brass containing 2% to 3% lead, and hence the maximum price is determined pursuant to the normal differential clause of the Schedule, Section 1309.19(b)(1). During the period July 22, 1941 to February 11, 1942, leaded brass generally sold at the same price as heavy yellow brass and

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Price Schedule No. 17

FIG TIN

Price Determination

General. The Schedule establishes maximum prices in cents per pound, ex dock or store, Port of New York for foreign pig tin, and ex producer's plant for domestic pig tin.

Differentials for small lot sales. A differential in cents per pound is provided for the sale in lots of less than five gross tons. The differentials vary with the size of the lot sold.

Sales on a CIF basis. Sales may be made on a CIF basis so long as the CIF price is based on a price ex dock or store, Port of New York, which does not exceed the maximum established by the Schedule.

Violations and Evasions

Conversion to solder dross. The Schedule does not prevent conversion of a car of tin and solder dross into solder metal, on toll, for a customer outside of the United States.

Maximum Price Regulation No. 20

COPPER SCRAP AND COPPER SCRAP ALLOY

Applicability

Return of excess scrap materials. Where castings are sold and the seller retains title to any excess material, such as chucking ends, the return of the excess material by the buyer of the castings does not constitute a sale of scrap under the Regulation.

Discarded evaporators. The sale of discarded evaporators on the basis of their copper and brass content is subject to the Regulation, since it is a sale of copper scrap or copper alloy scrap.

Sale of tableware to replaters. The Regulation does not apply to silver plated copper alloy tableware sold to replaters, since it is sold for reuse and not as scrap.

"Clean fired rifle shells." Clean but defective rifle shells of thirty to fifty caliber, the primer caps of which had been fired by machine and not by regular rifle firing on the range, and 37, 75, 90 and 105 mm. shells made of the same material as the rifle shells, are subject to the Regulation as "clean fired rifle shells"; they are not subject to Price Schedule No. 12 (Brass Mill Scrap).

Sales by a dealer to a partnership in which he is a member. An individual is a copper scrap dealer and is also a member of a partnership which is a copper scrap consumer. By virtue of Section 1309.69(a)(2), this individual is a "consumer". His purchase prices are subject to the Regulation and his sales to the partnership are also covered and must be made at or below ceiling prices, since the Regulation does not exempt sales from one consumer to another.

Price Determination

Transportation charges. Where delivery is made in a vehicle owned or controlled by the seller or by a private carrier not owned or controlled by the consumer, the maximum transportation charges which the consumer may pay is determined by the mileage traversed on a one-way haul from the shipping point to the consumer's receiving point. The allowance for bridge, tunnel, and ferry tolls is also for the one-way haul only. The following schedules and regulations have such provisions:

- No. 2 (Aluminum) Section 1302.14(b)
- No. 3 (Zinc) Section 1303.15(b)
- No. 8 (Nickel) Section 1308.10(e)
- No. 12 (Brass Scrap) Section 1309.19(d)
- No. 20 (Copper Scrap) Section 1309.70(e)
- No. 70 (Lead Scrap) Section 1355.70(b)

Premiums

Quantity premium - substitution of scrap materials. While there may be a substitution of an item of scrap, in order to qualify the shipment for a quantity premium, the substitution must meet the requirements of the Regulation concerning "shipment at one time".

Method. It is not a violation to use a pricing method that differs from that of the Regulation, providing the price paid does not exceed the maximum price. For instance, it is not a violation of the Regulation where the seller fails to make a required deduction but more than offsets this amount by adding less than the allowable premium so that his price is less than the maximum price. However, in order that the filing of reports by the consumer may be simplified, it is preferable, to determine the price as provided in the Regulation by making the applicable reductions and then adding such quantity premium.

Quantity premiums - mixed shipment of brass mill scrap and copper alloy scrap. See page 17:4.

Premium for copper in excess of analysis. The permitted charge of .11775 cents per pound for each 1% of additional copper content above 96% for Group No. 2 copper wire and mixed heavy copper must be based upon an actual analysis of the material. In the absence of such analysis of copper content above 96%, any payment made for excess copper content would constitute a violation of the Regulation.

Classification

Bronze borings analyzing 80-10-10 are classified as "High Lead Bronze Borings".

Asbestos covered copper wire is classified as "refinery brass".

Insulated copper wire. Rubber covered, cotton and silk covered, glass covered, and enameled and varnished copper wire are classified as "Insulated Copper".

"Clean fired rifle shells". See page 17:6.

Definitions

"Scrap." Brass pipe purchased from scrap dealers and building wreckers and cleaned, out, and threaded is still useful in its existing state for its original purpose, and therefore is not "scrap" as defined in Section 15(3).

Violations and Evasions

Compensation of a referee chemist. The consumer may pay, in addition to the maximum price, all or any part of the compensation of a referee chemist, employed by the consumer and the seller to determine the analysis of a given lot of material, provided the seller does not receive any portion of the chemist's fee.

Price Schedule No. 69

PRIMARY LEAD

Applicability

General. The Schedule is applicable to the sale of all grades of primary lead. The seller

and the purchaser are subject to the Schedule.

Die cast borings and die cast dross are not covered by the Schedule.

Type metal ("lead type") which is not lead but ternary (lead-tin-antimony) alloy is not covered by the Schedule.

Price Determination

Carload lots. The maximum prices for carload lots are prices delivered at basing point. The basing points are (1) St. Louis, (2) New York, and (3) other basing points which are listed by cities in the Schedule. If the buyer's rail delivery point is not a listed basing point, the price listed for the nearest point in distance to the point of delivery prevails.

Less than carload lots. The maximum prices for less than carload lots are f.o.b. point of shipment by (1) the producer of the lead sold, and (2) all other persons except plumbing supply houses. The f.o.b. point of shipment is a listed basing point, and if point of shipment is not listed, the price listed for the nearest point in distance to the point of shipment prevails. An additional amount per pound may be added to the maximum price, varying with the size of the lot sold and whether sold by the producer, or person other than the producer, except plumbing supply house.

Same company both a producer and distributor. A company which buys pig lead for use in the manufacture of ingots, or other special shapes, may charge in the sale of the ingots, or other special shapes made from that particular lead, no more than the maximum prices established for producers. If the same company resells lead without changing its form, it may charge no more than the maximum prices established for distributors. Thus, the same company may have both a producer's and a distributor's maximum price.

Plumbing supply houses. The maximum prices for sales by plumbing supply houses are the dollar-and-cents prices established for carload lot sales, plus a percentage markup. The markup may be no higher than the same percentage markup obtained by the supply house on an October 1, 1941 sale of a similar quantity of the same grade of lead, see Section 1355.9(b)(3).

Premiums

Quantity premiums - mixed carload shipments. If a shipment of pig lead and ingots, which together total a carload quantity, is the subject of a single sale to a single purchaser, or is shipped in one car to a single purchaser, the carload maximum prices are applicable. If such a quantity is sold to two different purchasers, the less-than-carload maximum prices are applicable, regardless of whether or not the material is shipped for part of its journey in a single car as a carload quantity, taking the carload rate which is applicable thereto. In the latter case, the material is not sold in a carload lot, nor is it shipped to the purchaser's destination in a carload lot.

Maximum Price Regulation No. 70

LEAD SCRAP MATERIALS; SECONDARY LEAD; BATTERY LEAD
SCRAP; AND PRIMARY AND SECONDARY ANTIMONIAL LEAD

Applicability

General. The Regulation is applicable to the sale of the following grades or types of lead scrap:

- (a) Lead scrap materials other than battery lead. The Regulation is applicable to the seller and the purchaser who is a consumer of the following grades or types: soft lead scrap, hard lead scrap, battery lugs, lead content of lead covered copper cable, and cable lead scrap.

- (b) Secondary lead as defined means lead of which more than 50% of the lead content is obtained from scrap material.
- (c) Battery lead plates. The Regulation is applicable to the purchase and the sale by a broker, and the sale to or purchase from brokers.
- (d) Battery lead scrap purchased by smelter or battery manufacturers. The Regulation is applicable to the purchaser and the sale by a broker, and the sale to or purchase from brokers.
- (e) Primary and Secondary antimonial lead. The Regulation is applicable to the seller and the purchaser of antimonial lead.

Ludlow and linotype metal which are composed of tin, lead, and antimony are not covered by the Regulation.

Sales of battery lead scrap to dealers. The Regulation is not applicable to the sale of battery lead scrap to scrap dealers, but the sale of such scrap to smelters or battery manufacturers and the sale of battery lead plates to brokers are subject to the Regulation

Price Determination

General. The Regulation establishes dollar-and-cents maximum prices per pound f.o.b. point of shipment for the following:

- (a) Lead scrap materials other than battery lead scrap. The base price is set forth by listed basing points in Appendix F; and differentials are provided for the grade or type of scrap material.
- (b) Secondary lead. The base price is set forth by listed basing points in Appendix F, and differentials are provided for sales in:
 - (1) Carload lots;
 - (2) less than carload lots;
 - (i) by the producer of the lead sold,
 - (ii) all other persons, except plumbing supply houses,
 - (iii) sales by plumbing supply houses.
- (c) Battery lead plates purchased and sold by brokers.
- (d) Battery lead scrap purchased by smelters or battery manufacturers.
- (e) Primary and secondary antimonial lead.

Transportation charges. See page 17:6.

Freight charges. Transportation charges from the seller's plant to the local railhead may not be added by the seller to the maximum price set forth in the Regulation. However, if the seller loads the scrap at his plant on a common carrier for continuous transportation to the buyer on a through rate, which includes no specific charge for the cartage or the trans-shipment, then the buyer may pay the entire freight from the seller's plant.

"Used storage batteries (in boxes)". The term "used storage batteries (in boxes)" refers to the complete storage battery, including the structure in which the elements are housed. When the outer housing is a part of the complete battery, and cannot be easily separated from it, the housing will be included in the term in question. This is true regardless of what substance the housing is composed. However, a structure which is a mere tray and serves as a platform to support the battery, or its parts, and can easily be detached therefrom, is not included within the term "used storage batteries (in boxes)".

Commissions

Quality of minimum tonnage. The minimum tonnage for a broker's commission on battery lead plates may not be made up of soft lead, or hard lead, but must consist only of battery lead plates.

Shipment of battery lead plates from broker's warehouse. Where a broker ships a portion of the 300-ton minimum shipment of battery lead plates from his own warehouse, he may not charge a commission on the remaining tonnage which he has shipped from a point other than his plant, warehouse or yard.

"Delivered within a 30-day period". See page 17:10.

Brokerage sales. Section 1355.66(b) provides for a commission on brokerage sales. This commission is in the nature of an addition to the maximum price and the conditions set out must be met in full in every case where this commission increases the total price to an amount in excess of the maximum price as determined under Section 1355.66 (a). An extra or commission may, however, be added, even though the conditions are not met, provided the contract base price plus such extra or commission does not exceed the maximum price as determined under Section 1355.66(a).

Violations and Evasions

Refusal to ship in carload lot. The sale or delivery of antimonial lead in quantities less than requested by the buyer, in order to enable the seller to obtain a higher differential, is a violation of the Regulation, provided the buyer would have been willing to accept delivery in a single shipment. Furthermore, the carload maximum price applies when antimonial lead is sold in carload lots, even though it is shipped in less-than-carload lots.

Definitions

"Delivered within a 30-day period." The clause "delivered within a 30-day period" is complied with as to a broker's commissions on battery lead plates, where the 300-ton minimum of such scrap is loaded and turned over to a common carrier not under the ownership or control of the broker, and is consigned to a smelter-purchaser within a period of 30 days.

Truck charges - zinc and lead scrap. See page 17:2.

Price Schedule No. 71

PRIMARY AND SECONDARY CADMIUM

Price Determination

Delivered prices - extra expense due to delivery by express. Appendix A, Section 1357.9 states maximum prices as delivered prices. Where, however, a purchaser buys a quantity of cadmium which would customarily be shipped by rail freight but requests shipment by express to expedite delivery, it is permissible for the purchaser to defray the express charges to the extent that those charges exceed rail freight. In such a case the seller may charge the maximum base price, allow for transportation at the rail freight rate, and ship the material by express, charges collect.

Price Schedule No. 81

PRIMARY SLAB ZINC

Price Determination

Taxes

Federal transportation tax - Federal agencies. Under Supplementary Order No. 31 - Tax on Transportation of Property Imposed by Revenue Act of 1942, the 3% tax on freight is treated by OPA as an increase in freight. Under Schedule No. 81, maximum carload prices are determined by adding the carload freight from East St. Louis to the point of delivery, regardless of the actual freight paid. The 3% tax on such freight charges, treated by OPA as an increase in freight rates, may therefore be added. It follows that a Federal agency, for example, Metals Reserve Company, even though exempt from the payment of the 3% tax, may add the amount of such tax to the transportation charges in determining its maximum price.

Classification

Zinc dross and zinc skimmings. The Schedule does not require the submission of toll contracts where the substance treated is zinc dross or zinc skimmings, since those materials are not regarded as "primary material" within the meaning of Section 1303.54(b) of the Schedule.

Maximum Price Regulation No. 125

NON-FERROUS CASTINGS

Price Determination

Replacement of defective casting. A company which delivered castings for naval vessels was advised that such castings were defective. The rejected castings were replaced after the Regulation was revised, effective February 1, 1943. The Regulation does not require the Company to give effect to the reduction in prices effected by the Regulation as revised, where the defective castings had been sold and delivered to the buyer before February 1, 1943, provided that no charge is made by the seller for the replacement of the defective casting. This interpretation was held to be applicable where the casting must be re-poured, as well as where the defect can be corrected by repairs.

Quantity discount - rate of delivery as test. Where an order is placed for amount entitled to a quantity discount but delivery is made at a rate which is not entitled to a discount, the determination as to whether the quantity discount should be granted is made by reference to the rate of delivery, rather than the size of the order, see Sections 1395.3 and 1395.4.

Maximum Price Regulation No. 126

FLUORSPAR

Price Determination

High commercial grade. Ground fluorspar meeting the specifications of 85% CaF_2 and 5% SiO_2 and sold for ceramic or glass uses, and ground fluorspar meeting the specifications of 90% to 95% CaF_2 and 5% SiO_2 , are ceramic grades of fluorspar, and the maximum price is the highest price which the seller had in effect for those grades on January 2, 1942. Unground fluorspar, meeting the specifications of 85% CaF_2 and 1% SiO_2 , is a metallurgical grade of fluorspar and subject to the maximum price for that grade.

Maximum Price Regulation No. 198

IMPORTS OF SILVER BULLION

Applicability

Shipments on an in-transit bond. The shipment of silver through the United States on an in-transit bond is not an import of silver covered by the Regulation. Thus, silver which is sold while still located in Mexico, to buyers in South America, and is thereafter shipped under such a bond through this country for delivery to the buyer abroad, is not covered by the Regulation.

Maximum Price Regulation No. 258

CHROME ORES

Violations and Evasions

Charge for weighing car before loading. The charge for weighing the car before loading may be added to the maximum price where the buyer requests it, since he is buying the ore f.o.b. railroad cars, and the weighing is for his protection. It is a violation of the Regulation to add the charge for such weighing to the maximum price unless the weighing is requested by the buyer.

REPORT OF THE

APRIL 1950

The purpose of this report is to provide a summary of the work done during the past year. The work has been divided into three main sections: the first section deals with the general situation, the second section deals with the specific work done, and the third section deals with the conclusions reached. The first section deals with the general situation. The second section deals with the specific work done. The third section deals with the conclusions reached.

CONCLUSIONS

The conclusions reached in this report are that the work done during the past year has been successful in achieving the objectives set out in the report of the previous year. The work has been carried out in a systematic and thorough manner, and the results have been of a high standard. The conclusions reached are that the work done during the past year has been successful in achieving the objectives set out in the report of the previous year.

RECOMMENDATIONS

The recommendations made in this report are that the work should continue to be carried out in a systematic and thorough manner, and that the results should be of a high standard. The recommendations made are that the work should continue to be carried out in a systematic and thorough manner, and that the results should be of a high standard.

APPENDIX

The appendix contains a list of the names of the persons who have been involved in the work done during the past year. The appendix contains a list of the names of the persons who have been involved in the work done during the past year.

REFERENCES

The references listed in this report are those which have been consulted during the course of the work. The references listed are those which have been consulted during the course of the work.

PAPER AND PAPER PRODUCTS

Maximum Price Regulation No. 30

WASTEPAPER

Applicability

General. The Regulation is applicable to the seller and the purchaser in a sale of any kind, grade or type of wastepaper in any quantity. The Regulation is not limited to persons who grade and pack wastepaper. Sales to a purchaser, who uses the paper for wrapping or packing purposes, are not sales of wastepaper and therefore not subject to the Regulation.

The Regulation covers all kinds, grades and types of wastepaper, not merely those specifically listed in the Regulation. See Section 1347.14(c), entitled Maximum Prices for unlisted grades of wastepaper.

Import sales. The Regulation applies to sales of wastepaper purchased from abroad.

State officials. A State procurement officer may not accept bids for wastepaper in excess of maximum prices.

Unsorted paper. The Regulation exempts the sale of unsorted wastepaper which contains two or more grades, if the purchaser warrants that he will not use such paper as a consumer, but will sort and grade it for resale into grades listed in the Regulation, at prices not exceeding the appropriate maximum prices. If a portion of the unsorted paper is reusable and resold for printing, wrapping or writing purposes, and not as wastepaper, the sale of the reusable paper is not subject to the Regulation. The original purchaser's warrant must be as prescribed by the amendment with respect to that portion of paper which he resells as wastepaper, and must further provide that the purchaser will not resell the reusable paper at prices in excess of those provided by the General Maximum Price Regulation.

Sale for reuse as containers. While the sale of cardboard boxes for reuse as containers is not subject to the Regulation, the sale of such boxes to paper mills for the manufacture of paperboard is subject to the Regulation. The seller should require from the purchaser satisfactory assurance that the boxes are to be used as containers, if they are sold above the maximum price.

Cardboard boxes sold for reuse as containers are not subject to the Regulation. However, if they are sold to be manufactured into paperboard, then the Regulation is applicable.

Old corrugated containers sold to mills as raw materials to manufacture new containers are covered by the Regulation.

Old corrugated containers sold for reuse as containers are not covered by the Regulation.

Overissue newspaper which is ground by the purchaser into a fibre, used as an ingredient in a floor sweeping compound is covered by the Regulation.

All sales of overissue newspaper solely for use as packing and wrapping materials are exempt from the Regulation. The seller should require from the buyer a written statement setting forth the proposed use of the paper, if the sale is considered not subject to the Regulation. However, if only part of the lot of overissue paper sold is for exempt uses, the sale of the entire lot is subject to the Regulation.

Shredded paper for wrapping or packing purposes is not covered by the Regulation.

Waxed paper used for packing purposes is not subject to the Regulation.

Sale of mixed paper before sorting. The sale before sorting of paper consisting of heavy books and magazines, mixed ledger and white ledger mixed with a small quantity of string cannot be made at the prevailing ceiling price for each grade of paper where the buyer must perform the service of sorting. The sale must be made at the ceiling price for mixed paper and is subject to the Regulation. Otherwise, the seller would receive value in the form of services in addition to the ceiling price.

Community of ownership. Where there is no community of ownership between a wastepaper concern and a trucking concern, deliveries of the wastepaper concern's material by the trucking concern are not deliveries by the seller, whether or not the proprietors of the two concerns are related by blood or marriage.

Price Determination

General. The Regulation establishes maximum prices f.o.b. point of shipment. Where sales are made on a delivered basis the price may not exceed the maximum f.o.b. price, plus appropriate transportation allowances. Appropriate allowances for transportation is described in the Regulation for delivery by seller's vehicle and by public carrier.

Sales of less than one ton. The Regulation establishes maximum prices per short ton. The maximum price for one-half ton of wastepaper is one-half the maximum price for a short ton of the particular grade.

"Machine compressed bales." A baling press consisting of any mechanical contrivance or apparatus for compressing wastepaper is a machine, even though it is hand operated. Accordingly, bales of wastepaper produced by such a press are "machine compressed bales" under the Regulation, and the \$2.00 deduction per ton for failure to pack in machine compressed bales need not be made.

Use of purchaser's employees. When the maximum f.o.b. shipping point price is paid for wastepaper, services of the purchaser's employees in assisting in the loading of the purchaser's truck at the seller's place of business, constitute additional compensation to the seller and are not permissible under the Regulation. However, such services may be utilized if the sale price, plus the value of the services will not exceed the maximum price permissible under the Regulation.

Transportation charges. Where a sale is made on an f.o.b. shipping point basis, any payment by the purchaser to a third person for transporting wastepaper to the purchaser's plant subsequent to loading at the shipping point, is not to be considered in computing maximum prices under the Regulation. Thus, if the purchaser sends his own trucks to bring the wastepaper to his plant, or to have it loaded on freight cars or barges, there is no limitation in the Regulation upon the amount of the transportation charge after the material has been loaded on the trucks at the shipping point. However, if the seller has a rail siding, or barge dock upon his premises, he must load the paper upon cars or barges at his own expense, and if the loading is done by the purchaser the value of such loading must be deducted from the maximum price under the Regulation.

Shipment in seller's vehicle. The Regulation provides that when the point of shipment and the buyer's business are not located in the same city, town or municipality and are at a distance of more than ten miles from each other by the shortest available public highway route, the maximum charge for transportation in the seller's vehicle must not exceed the lowest published rail rate. When two carload rail rates are published for different minimum quantities, the one for the larger quantity is the one that must be used; e.g., if the rate per cwt., for carload containing a minimum of 30,000 pounds is 8¢ and the rate for a carload containing a minimum of 24,000 pounds is 9¢ the 8¢ rate is applicable.

Differential for loading at team truck or public siding. A differential is allowed when freight cars are loaded at a team truck or public siding under the circumstances specified in the Regulation. A differential is not allowed when freight cars are loaded at a private siding.

Unlisted grade. Where a maximum price for an unlisted grade of wastepaper is proposed pursuant to Section 1347.14(c), and it is subsequently approved by OPA, the maximum price is effective as of the date the application was filed.

Export packaging. The following operations do not constitute "special packaging" within the meaning of Section 1347.4, which permits an addition for "specially packaging wastepaper for export": packaging in 500 pound bales, rather than the customary 1000 pound bales; affixing labels which show the bale number and weight of each bale; preparing a loading record showing the number and weight of each bale.

"Mixed books" sold for use in manufacture of paperboard. Where wastepaper meets the requirements of the grade "mixed books" but is sold for use in the manufacture of paperboard, the maximum prices of the wastepaper is that of "No. 1 mixed paper", Section 1347.14 footnote 23. In accordance with the understanding of the trade, this price limitation applies only where the purchaser uses the mixed books for making paperboard, without first sorting out the higher grade fibers for other uses. Consequently, the price limitation does not apply where the purchaser sorts out the No. 1 heavy books and magazines and uses them in the manufacture of book paper or book paper liner, even though he uses the remainder of the material in the manufacture of paperboard.

Unlisted grade - effective date of maximum price. Before an unlisted grade of wastepaper may be sold the seller is required to file a statement setting forth the facts concerning the unlisted grade, Section 1347.14(c). The maximum price for the unlisted grade is effective as of the date of the seller's statement, provided that the statement substantially complies with the requirements of Section 1347.14(c). The maximum price so established is subject to adjustment by OPA.

Loading charges. Where a buyer arranges to have a contract carrier take delivery of wastepaper at dealer's warehouse and load the wastepaper on cars for shipment to the buyer, the buyer may pay the carrier the proper and legal rate for this service without violating the Regulation.

"No. 1 news" of the highest quality consists of 100% waste newspapers, entirely free of objectionable papers and foreign materials. Lower quantities of this grade may sell at the maximum price listed in Section 1347.14, only if they meet the minimum specifications of the grade, i.e., the packing is sufficiently free of objectionable papers, foreign materials and fibres other than newspaper, to form a commercially acceptable delivery by the customary standards of the trade.

Transportation charges - delivered sales. Where a seller makes delivery by public carrier, he may add to the established maximum f.o.b. price an amount not in excess of the "lowest established transportation rate for such shipment". This refers to the lowest rate applicable considering both the size of the delivery made (e.g., carload or less than carload) and the type of carrier actually used (e.g., railroad or truck). Thus, where a less than carload delivery is made by railroad, the lowest established less than carload railroad rate may be added.

Commissions

Brokerage allowance. The Regulation provides for a broker's allowance when wastepaper is purchased by a consumer and when the transaction fulfills the specified requirements. Only one broker's allowance may be paid for each ton purchased. A packer selling a consumer ten tons of wastepaper, two tons of which were packed by himself, and eight tons of which were packed by others, is entitled to a brokerage allowance on the eight tons, if the transaction with respect to the eight tons conforms with all the requirements of the Regulation.

Imports - broker's commissions. A domestic mill entered into a contract to purchase wastepaper through an agent residing in Canada. The agent is to pay the maximum price for the paper f.o.b. a Canadian dealer's place of business. The agent pays for the wastepaper with his check and the mill reimburses the agent this amount, plus all transportation charges to its mill, plus a specified commission of \$1 per ton, or a minimum of \$500 per month, plus \$200 a month for the agent's increased office expenses. The contract is in violation of the Regulation because: (a) the price paid by the mill is in excess of the maximum price for imported wastepaper f.o.b. port or city of entry in the United States (the maximum price is not f.o.b. a Canadian dealer's place of business) Section 1347.5; and (b) the agent is not entitled to any commissions over and above the maximum price, since he does not perform

the functions of a broker within the meaning of the Regulation. A brokerage operation, as contemplated by the Regulation, involves an independent operation where the broker is the actual principal and not as in this situation, an agent acting for an undisclosed principal.

Brokerage commission - inter-company sale. Under the Regulation a person may not receive brokerage commission "on wastepaper packed by him or by any person with whom he has any connection consisting of any community of ownership . . .". Hence, a broker corporation may not receive brokerage commission over and above the maximum price, upon wastepaper purchased from a packer corporation, when the stock of both corporations is owned by the same person or persons.

Broker's commission. (1) A wastepaper broker may take a merchandising profit as well as his commission provided he complies with all pertinent provisions of the Regulation.

(2) A wastepaper broker is not necessarily disqualified as such because a shipper loads wastepaper into a car at the broker's place of business, provided the broker has had nothing to do with the preparation of the material for delivery.

Premiums

Premium for special packings. Charges for so-called "special packings" of the grades of wastepaper may not be added to the maximum price.

Classification

"Overissue news." Colored newspaper supplements (e.g., colored comic supplements) cannot be classified as "over-issue news" and should be classified as "No. 1 news", although, because of their color, they are not the highest quality of that grade.

Note: This interpretation applies to overissue consisting solely of the colored supplements. Where the overissue being disposed of is the entire newspaper, including colored supplements along with the regular newsprint, the "overissue news" classification applies.

Unused overissue newspapers with the rotogravure and stapled sections removed are included in the classification "overissue news".

Boxboard cutting. Overissue moving picture poster which is printed and has a regular chip-board back is included in this grade.

New 100% kraft corrugated cuttings. Cuttings from corrugated paper with two liners 100% kraft and a corrugating medium of .009 straw are classified as a lower quality of "New 100% Kraft Corrugated Cuttings". Cuttings from corrugated paper with two liners of 80% kraft and a corrugating medium of .009 straw are classified as "New Corrugated Cuttings."

No. 1 assorted kraft (old kraft). This grade includes wastepaper known as empty scrap kraft chemicals bags.

Printed wall paper waste. Printed wall paper is classified as "No. 1 Mixed Paper".

Violations and Evasions

Tying agreements. The Regulation expressly forbids the transfer of wastepaper in conjunction with any other material, if it will constitute a direct or indirect method to evade the maximum prices provided therein. A tying agreement or other device in connection with the sale of paperboard, which in effect creates a higher price for wastepaper than established in the Regulation, is an evasion thereof; where a mill forces its paperboard customers to sell to it their wastepaper, a violation of the Regulation exists.

Furnishing of equipment by purchaser. It is a violation of the Regulation for a purchaser of wastepaper to furnish his supplier with baling equipment or other facilities free of charge

while paying the supplier the ceiling price. In all such cases, the fair rental value of the facilities loaned must be deducted from the ceiling price.

Delivery by leased truck. It is a violation of the Regulation for a mill to lease a truck from a wastepaper dealer when the effect is that the lessee gets more per ton for wastepaper he sells to the mill than he would if it was delivered in his own truck.

Return load. It is not a violation of the Regulation for a mill to give its wastepaper supplier a return load of a finished product of the consumers at common carrier rates where the supplier is operating under a license from a common carrier.

Definitions

Magazines. The term "magazines" as used in the footnotes to Section 1347.14, defining the listed grades of wastepaper, includes mail order catalogues.

"Prior to present war." Amendment 5 to the Regulation allows certain grades of wastepaper to contain groundwood where such grades contained no groundwood "prior to the present war". The term "prior to the present war" means prior to the entry of the United States in the Second World War, December 7, 1941.

Records and Reports

Invoicing - unlisted grades. The Regulation provided that all wastepaper must be invoiced by the appropriate grade name provided by the Regulation. Where the seller has obtained the approval of his maximum price for a grade not listed in the Regulation, and has been advised by OPA that his specialty is equivalent to one of the listed grades, he should use the listed grade name, adding his specialty designation if he desires. If the specialty is not equivalent to one of the listed grades, the dealer may invoice the wastepaper under the specialty designation.

Price Schedule No. 32

PAPERBOARD SOLD EAST OF THE ROCKY MOUNTAINS

Applicability

General. The Schedule is applicable to the sales and purchases from any producer, agent, or representative of a producer of paperboard. Paperboard is defined to mean all kinds, grades, types, calipers, colors and patterns of paperboard. "East of the Rocky Mountains" include all the area of the continental United States except the States of California, Oregon, Washington, Idaho, Utah, Nevada, New Mexico, Arizona, Colorado, Wyoming and Montana.

Corrugated boxes made from purchased corrugated sheets cut to size and ready to use, and which sheets are then put together by slotting and attaching tape, are not paperboard and are not covered by the Schedule; Regulation No. 187 (Certain Paperboard Products) applies.

Grades and types of paperboard listed in Appendix A are subject to the Schedule, whether or not they are pasted. The grades and types of paperboard listed in Appendix B are not subject to the Schedule when laminated.

Sales of less than one ton. The sale of all quantities of paperboard are regulated by the Schedule, including sales of less than one ton.

Shipment into Western area. The sale of paperboard produced east of the Rocky Mountains and shipped into the Western area is subject to the Schedule.

Wholesaler. The Schedule is applicable only to sales by and purchases from any producer,

agent or representative of a producer. Accordingly, sales of paperboard by wholesalers or distributors who do not act, directly or indirectly, as agents of producers, are not covered.

Corrugated sheets made from paperboard are not subject to the Schedule; Regulation 187 (Certain Paperboard Products) applies.

Cracker shell board fulfilling all the definitions in the trade of full bending chipboard is covered by the Schedule.

Newsboard is covered by the Schedule.

Paperboard used in manufacture of corrugated sheets is subject to the Schedule.

School pads with paperboard backers are not covered since the Schedule does not apply to items only part of which consists of paperboard.

Strawboard is subject to the Schedule.

White lined news is subject to the Schedule.

Waste from original sources. Amendment 9 to the Schedule does not prevent board mills from buying waste from original sources except when those sources are box manufacturers or similar converters and the wastepaper is not part of the box manufacturers or converters waste resulting from his operation.

Price Determination

General. The Schedule establishes maximum prices in dollars and cents per ton or per M square feet of paperboard of the types described in Appendices A and B. These maximum prices are prices delivered to the purchaser's plant actually using the paperboard. Freight adjustments are allowed in certain cases as is set forth in the Schedule. The maximum prices for paperboard and specialty paperboard, not covered by Appendix A or B, are the highest price per ton or per M square feet charged by the producer during the period October 1, 1940, to October 15, 1941, Appendix C. The maximum prices provided for in Appendix C are (1) either f.o.b. mill price, or (2) delivered price, or f.o.b. the mill full freight allowances, or (3) partial freight allowance.

Several shipments. The maximum price established by the Schedule is based upon the quantity or quantities deliverable in conformity with the terms of the order accepted by the seller. Thus, if delivery, in conformity with the terms of one accepted order, is made in several shipments over a period of time, the price per ton of such shipments may not exceed the maximum price established for the quantity specified in the order for that shipment.

Differentials for less than one ton sale. Sales in quantities of less than one ton must not exceed the base price, plus the proper differentials for quantities up to three tons.

Transportation charges - delivery to warehouse. The maximum prices are stated as prices for deliveries "to the purchaser's plant actually using the paperboard." The prices so stated are applicable to deliveries to the purchaser's warehouse and hence include the transportation costs to the warehouse.

Adjustable pricing. Under Section 1347.58a, a seller may agree to charge the maximum prices in effect at the time of delivery. Where paperboard is sold f.o.b. the mill, "delivery" takes place upon receipt of the paperboard by a carrier, not owned or controlled by the shipper, for shipment to the purchaser.

Differential for special characteristics. A producer of paperboard having special characteristics may add to the standard grade price the differential applied during the base period October 1, 1940 to October 15, 1941, if the following conditions are met:

(1) The differential must have been charged in fact as an extra charge for special characteristics during the base period. Proof of this fact may be indicated through invoices or by any other accepted means of evidence.

(2) The differential must be computed on the same basis as it was charged or quoted during the base period; for example, a differential invoiced during the base period on a per thousand square feet basis may not now be computed into the equivalent base period per ton charge.

Where the producer cannot properly establish a differential under Section 1347.62(g)(1), he may apply to the Office of Price Administration for an approval of the differential under the provisions of Section 1347.62(g)(2).

Commissions

Broker's commission. An arrangement entered into between a box plant and a broker, whereby the broker will find and acquire paperboard for the box plant and receive a commission for such services, does not contravene the provisions of the Schedule provided that the broker has no financial connection with or interest in the board mill and his commission will not be shared by such mill.

Classification

Pinewood is under the classification of "Bogus' Corrugated Material."

Violations and Evasions

Purchases in excess of needs. An agreement to sell paperboard, which is customarily sold on a spot or contract basis, over a period of five years, the deliveries to be in installments based on the purchaser's requirements for the term of the contract, with a proviso that the quantity delivered may in no event exceed a certain amount, is not a violation of the Schedule if the seller was prepared to sell on a spot basis but the buyer desired the contract basis.

The requirement that the buyer obligate himself to purchase tonnage in excess of his immediate requirements is clearly a consideration moving from him in addition to the maximum price for the quantity desired and, therefore, is a price for that quantity desired and, therefore, is a price for that quantity in excess of the maximum prescribed by the Regulation.

Records and Reports

Records to be made. The recording of a purchase must be made when the purchase is completed, not when the order is placed. A purchase has been made when the ownership of the particular material sold passes, regardless of where the material may be at that time.

Maximum Price Regulation No. 47

WASTE RAGS, WASTE ROPES, AND WASTE STRINGS

Applicability

General. The Regulation is applicable to the seller and purchaser of waste, rags, ropes, and strings in any quantity of the kinds and grades described in the Regulation.

Imports. The maximum prices established by the Regulation apply to the sale of waste rags, ropes, and strings purchased from abroad.

No. 1 manila rope broken up into fibres. The sale of fibre obtained from No. 1 Old Manila Rope by sorting, grading, and breaking up into fibres is not a sale of No. 1 Old Manila Rope, and therefore is not covered by the Regulation.

Sale of old manila rope to be reused as rope. The sale of old manila rope which is to be reused as rope is not subject to the Regulation. A seller of old manila rope for this use should require of the purchaser satisfactory proof in writing of the proposed use.

"Wiping rags" are not subject to the Regulation.

Scrap or gunny bagging which is to be shredded and made into bagging is not subject to the Regulation.

Price Determination

General. The Regulation establishes maximum prices per short ton f.o.b. point of shipment. Where sales are on a delivered basis the maximum price is the established point of shipment price, plus transportation allowances set forth in the Regulation.

Transportation charges to the dealer's place of business. A dealer purchased waste rags at towns A, B and C, and shipped them to his place of business in Chicago, Illinois. The waste rags were accumulated at his place of business until he had a carload shipment. The carload of rags was sold and shipped to a consumer. The dealer may not add to the maximum price the transportation charges from towns A, B and C to his place of business in Chicago. The Regulation provides that maximum prices are "f.o.b. point of shipment, which means that they are established at the point where the goods are first loaded on freight cars, trucks or barges for transportation to the buyer", Section 1347.114(d). Therefore, transportation charges from the point of origin to the dealer's place of business where the rags are accumulated for shipping in carload quantities may not be added to the dealer's maximum prices.

Transportation charges - unloading. Section 1347.114(d)(1) sets forth the amount of transportation charges that may be added to the maximum f.o.b. prices by a seller who delivers in his own vehicle. Although the industry has generally considered that "delivery" is completed before unloading, and therefore the seller could require the buyer to unload, nevertheless, by trade custom, sellers who in fact did unload, have not been considered as having done any service after delivery for which they were entitled to extra payment. Hence, charges for unloading or for time spent waiting for unloading at the buyer's plant, may not be added to the maximum price by the seller. This interpretation is based upon the customary practice of this industry, and hence is not necessarily applicable to regulations other than Regulation No. 47.

Premiums

Premiums for trimming or dressing. A premium may not be charged above the maximum prices for old rags for operations known as trimming or dressing which consists of the removal of buttons, rubber, etc.

Premium for old manila rope. A premium cannot be charged above the maximum price for old manila rope because such rope is extra dry.

Definitions

Wiping cloth. See page 18:19.

Maximum Price Regulation No. 114

WOODPULP

Applicability

Manufacture of pulpwood into items other than woodpulp. See page 18:14(a).

Effective date. The Regulation provides that on or after April 20, 1942, the effective date of the Regulation, no person in the course of trade or business shall buy or "receive" woodpulp in the continental limits of the United States at more than the maximum prices set forth in the Regulation. Hence, woodpulp may not be imported from Canada after April 20, 1942 at prices in excess of the maximum prices, even though title to the woodpulp passed to the purchaser in Canada prior to that date.

Price Determination

Taxes

Freight tax under 1942 Revenue Act. Under the Regulation the producers of woodpulp may add to the maximum delivered prices any freight in excess of the appropriate basic transportation allowances specified in Section 1347.232(a)(3). Under Supplementary Order No. 31, Tax on Transportation of Property Imposed by Revenue Act of 1942, the 3% tax on freight is treated by OPA as an increase in freight. As a result, producers of woodpulp must absorb the 3% tax in every case where the freight involved in a shipment, plus the tax, is less than or equal to the appropriate freight allowance. Producers need not, however, absorb more than the appropriate freight allowance in the Regulation, treating the tax as if it were freight. Consequently the consumer may absorb any excess freight including the tax, over and above the amount of the allowance.

Violations and Evasions

Advance payments. Where the Regulation makes no specific provision with regard to the terms of payment, payment of the ceiling price in advance is a violation; where the usual trade terms are net cash 30 days, the ceiling price may be demanded on delivery.

Adjustable pricing. An adjustable pricing provision does not allow for retroactive price relief; that is, adjustable contracts cannot be made effective before the date of actual filing of the petition for adjustment.

Maximum Price Regulation No. 129

MISCELLANEOUS PAPER PRODUCTS

Applicability

Manufacturer. A purchaser of base paper who treats it with a preparation to obtain a finished product of gummed or waxed paper is a manufacturer of gummed or waxed paper subject to the Regulation. Waxed papers, including cutter box or household rolls, are subject to Regulation No. 307.

Paper tubes, cones and cores. The Regulation is not applicable to the sale of paper tubes, cones and cores; Regulation No. 187 (Certain Paperboard Products) applies.

Paper containers, "set-ups" and folding boxes. Paper containers, as that term is understood in the trade, are subject to the Regulation. However, "set-ups", folding boxes or "knock downs" and corrugated containers are not usually regarded in the trade as paper containers and are not subject to the Regulation. They are covered by Maximum Price Regulation No. 187 (Certain Paperboard Products).

Tuck-in cartons. Tuck-in cartons are not included under the definition of "paper cups, paper containers and liquid tight containers" and therefore are not subject to the Regulation. Tuck-in cartons are subject to Regulation No. 187.

Paper jackets for bank pass books. Paper jackets for bank pass books, whether plain or printed are subject to Regulation No. 129 as "envelopes". Where the paper jackets are printed by a person other than the manufacturer, this service is subject to Regulation No. 225 (Printing and Printed Paper Commodities).

Specialty bags. Specialty bags are not "Paper containers", Section 1347.11(a)(2), and hence are not subject to Regulation No. 129; MPR 463 applies.

Sputum cup. See page 18:10

Colored Kraft paper. See page 18:9.

Gummed tape made from cloth. See page 18:19.

Price Determination

Transportation charges - absorption of freight costs by buyer. Manufacturers of industrial paper and converted paper products may not add increased freight costs to their delivered maximum prices. Manufacturers who allowed partial freight must absorb the 6-percent increase in freight rates, effected in March 1942, and any other increase in freight costs incurred as the result of wartime emergency conditions, such as the rerouting of shipments by rail instead of water, in whatever amount is necessary so that their buyers shall not pay a larger proportion of transportation costs incurred in the delivery than they paid during the applicable base period. If the manufacturer customarily paid all freight costs he must continue to do so. For example, a manufacturer of paper products who made a specific allowance of 50¢ per hundred-weight during the applicable base period (October 1-5, 1941 and December 1-15, 1941) used in the Regulation, must adjust his allowance to 53¢ per hundredweight.

Maximum Price Regulation No. 130

NEWSPRINT PAPER

Applicability

Product manufactured from newsprint paper. Where a company purchases newsprint paper from which it manufactures another product, the sale of such product is not subject to the Regulation.

"Novel news" or "Novel paper". See page 18:19.

"Port prices" for newsprint apply where newsprint is delivered at a port, irrespective of whether the newsprint reaches the port by boat or by rail.

Price Determination

No extra charge for less than carload lot and waterlining treatment. A differential may not be added to the maximum price for deliveries in less than carload lots, or for waterlining treatment.

Freight increase under 1942 Revenue Act. Under Section 1347.273, the 3% tax on freight bills imposed by the 1942 Revenue Act may be added to the maximum f.o.b. prices, provided that the seller invoices it separately and it is paid by the purchaser. (This Regulation is expressly excepted from the provisions of Supplementary Order No. 31).

indicate on the invoice.

Maximum Price Regulation No. 19A

LOG-RUN SOUTHERN PINE LUMBER

Applicability

Distribution yard mark-up. The distribution yard mark-up for direct-mill sales of Southern pine lumber provided in Section 6(a)(3) of Regulation No. 19 is not applicable to sales of log-run Southern pine subject to Regulation No. 19A.

Better grades or larger sizes. Timbers larger than 8 x 8 are not log-run sizes and are subject to Regulation No. 19. Sales of these timbers made by mills subject to Regulation No. 19A may be made at Regulation No. 19 prices. Section 3 of Regulation No. 19A does not require the mill to sell its remaining log-run sizes at \$20 per MBM because of the sale governed by Regulation No. 19.

Relation to Regulation No. 19. The Regulation and Regulation No. 19 should be considered as totally separate Regulations. For example, the wholesalers mark-up established in Regulation No. 19 does not apply to Regulation No. 19A. Average estimated weights established in Regulation No. 19 for distances are not strictly applicable but these weights may be used for purposes of comparison when calculating addition for long hauls.

Maximum Price Regulation No. 26

DOUGLAS FIR AND OTHER WEST COAST LUMBER

Applicability

General. The Regulation applies to all sellers of Douglas fir or other West Coast lumber produced in the geographical area covered where the shipment originates at the mill rather than at a distribution yard regardless of the quantity sold.

Mills consecutively subject to Regulation. It is quite possible for two mills to be consecutively subject to the Regulation. Thus, where the first mill processes logs into rough lumber and the second processes the same rough lumber into finished lumber, both are subject to the Regulation. Similarly, when one company operates both a sawmill and a planing mill, sales out of both mills are subject to the Regulation, and on any lumber which goes through both mills, the f.o.b. mill price means f.o.b. the second mill.

Pool-car shipments. See page 15:6.

Quantity limitation. The Regulation is applicable to all sales where the shipment originates at the mill, regardless of the quantity shipped and whether the sale is at retail or otherwise. The quantity limitation in the definition of retail sales (carload lots or sales of less than 18,000 feet) is not a limitation on the applicability of the Regulation, but is merely one of the limitations in the definition of retail sales for which the \$3.50 retail premium may be charged.

Douglas fir flitches. Direct-mill sales of Douglas fir flitches are covered by the Regulation and must be priced by application under Section 12.

Price Determination

General. The Regulation establishes maximum prices in dollars-and-cents, f.o.b. the mill.

Retail sales mark-up. A mark-up not in excess of \$3.50 per 1000 ft. board measure is per-

mitted by the Schedule for direct-mill retail sales. A sale cannot be so classified unless the order involves less than a carload quantity or where shipment is by water or truck, less than 18,000 feet board measure, and satisfies all the other requirements of the definition. An order for a larger quantity will not constitute a "retail sale" even though delivery is made or an invoice is prepared which attempts to so indicate. The \$3.50 mark-up does not include trucking expenses, which may be added to delivered prices in retail sales.

Delivered pricing. See page 15:12.

Random-length shipments. See page 15:6.

Combination grades. A grade may be quoted with specified percentages of better grades at a price which is the average of the separate grades weighted by the respective percentages, provided that when the lumber is shipped each grade is tallied on a board foot basis and invoiced separately at prices not exceeding the maximum prices for the respective grades.

The maximum price for lumber sold as No. 2 Common and better is the maximum price fixed for No. 2 Common lumber. Similarly, the maximum price for any other combination grade is the maximum price fixed for the lowest grade named in the combination. But it is permissible to quote a grade with specified percentage of higher grades, provided that when the lumber is shipped, lumber of each grade is tallied on a board foot basis and invoiced separately at prices not in excess of ceiling prices for the respective grades.

Addition for pool cars. There is no addition for pool cars as such. If a pool car also qualifies as a mixed car, the mixed car addition may be added. If however, a pool car does not qualify as a mixed car no addition to the regular schedule prices can be made.

Discounts. Under the Regulation, discount and credit terms prevailing on October 1, 1941, must be maintained by the seller. If however, the purchaser cannot or does not wish to avail himself of the discount by paying cash within the discount period, the seller may sell the lumber on a 30-day net or other basis. The option of paying cash within the discount period belongs to the purchaser.

Service charges. Charges for the following services may not be added to the maximum prices (except as specially provided for export sales):

- (a) Loading to prevent shifting in transit.
- (b) Bundling.
- (c) Marking.
- (d) Branding.
- (e) Partial drying. No addition can be made for a reduction of the moisture content of green lumber, whether by air drying or kiln drying, if the moisture content or the lumber actually sold is above that prescribed by the W.C.L.A. Standard Grade Rules for dry lumber.

Charge for inspection. No charge for furnishing an inspection certificate of the West Coast Lumberman's Association may be added to the maximum prices.

Retail mark-up and pool-car shipment. See page 15:6.

Delivered pricing by use of estimated weights. A seller customarily quoted a delivered price and the purchaser paid the freight and deducted it from the total invoice billing, remitting the balance to the seller. This practice is a customary trade practice and may be continued by the seller whether he is a "mill" or wholesaler, even though estimated weights are used in such delivered sales.

Computation of transportation charges on actual cost or estimated weight basis. In selling on a delivered basis, lumber may be sold on the basis of actual transportation added to the f.o.b. mill ceiling, or on the basis of estimated weights. However, where a transaction is pending, the seller may not elect to determine the transportation charge according to which basis is the more favorable to him. Thus, where the seller quoted a price based upon estimat-

ed weights, he must carry the transaction through on that basis and if the actual weights turn out to be higher than the estimated weights, he merely suffers the usual risks present in all sales on an estimated weight basis. If the rule were otherwise, a seller would be permitted to make a quotation on the basis of the permitted estimated weights, and then ship and bill on actual weights simply because the lumber proves to be heavier than anticipated.

Mixed car and mixed truck shipments. See page 15:28.

Unlisted widths. Under footnote 4 to Table 16 the maximum price for even widths wider than those listed is determined by adding \$1 for each additional inch or fraction thereof. Thus, the maximum price of a 14" width railroad structural bridge material is the ceiling for the 12" width plus \$2.00. The listed maximum price for 13 3/4" lumber may not be made the basis for pricing even widths.

Selling to Government for shipment on Government bill of lading. In case of a mill entitled under Section 7(g) to use the Portland rate for delivered sales to California, but selling to Government for shipment to California on Government bill of lading, maximum price payable f.o.b. mill is the ordinary ceiling price plus the difference between estimated weights times the Portland commercial rate and actual weight times actual (shipping point) commercial rate.

Transportation Charges

California mills. Where a shipment of lumber originates at a mill located in California, the transportation charges that may be added for sales on delivered basis must be determined in accordance with Section 7(g), even though shipment is made by a truck which is owned and controlled by the seller.

Buyer formerly in free delivery zone. See page 15:8.

Demurrage. See page 15:8.

Quotation where actual cost cannot be determined in advance. Where a seller must quote a delivered price and the exact amount of transportation charges cannot be determined in advance of shipment, the seller may bid on the basis of the maximum price plus maximum estimated transportation rates, if he will agree to, and does later, refund to the buyer any excess by which the estimated maximum transportation rate exceeds the actual transportation rate.

When "averaging-out" is permitted. The seller may "average-out" freight only as between shipments on a single order on which a single price was quoted or bid. Thus, if a wholesaler bids \$33.00 on a hundred thousand feet of lumber, the maximum price being \$30.00, and the estimated rate being one which will result in a \$3 per M charge, he may ship half of it on a rate resulting in a \$2 charge, and half on a rate resulting in a \$4 charge. On his invoices, however, he must show that each shipment is part of a larger order, otherwise the \$34.00 shipment would appear to be above the bid price. He should not show \$33.00 on both invoices since this would be showing more than the maximum price plus actual freight in the case of the short haul shipment. At the completion of the transaction, he should render a final invoice, showing the prices of each item f.o.b. mill separately, the quantity of each item shipped from the mill, the exact amount of freight applying to each shipment and a reconciliation of the total amount so computed with the agreed delivered price and with the Schedule price.

The privilege of averaging out freight is limited to cases in which a single order is split between several sources. If in the above illustration the wholesaler had one order of 50,000 ft. of boards at \$33.00 and one order of 50,000 ft. of dimension at \$33.00, the maximum price on each being \$30.00, and if he shipped his boards at a "\$2.00 rate" and his dimension at a "\$4.00 rate", he would have to absorb \$1.00 of the freight on the longer haul. On the shorter haul, however, he would have to sell the boards at \$32.00 regardless of the price bid. In other words, when the wholesaler has to ship an order at a higher rate than he had anticipated, he must absorb the difference; but if he happens to be able to place the order at a lower rate than he had anticipated, he still cannot sell the order at a price higher than the maximum price plus the actual transportation cost.

Incidental handling in delivery to purchaser. In sales of lumber on a delivered basis, the cost of transportation incurred by the seller after the lumber has left the mill may be added to the maximum f.o.b. mill price. Actual expenses incurred by the seller in making delivery to the purchaser are part of the cost of transportation, e. g., the cost of unloading from a scow and reloading on trucks as well as any other necessary intermediate sorting or handling which is incidental to the Delivery.

Computation of transportation charges on actual cost or estimated weight basis. See page 15:10.

Independent handling is delivery to purchaser. In sales of lumber on a delivered basis, the cost of transportation is included in the delivered price. The cost of independent delivery to the purchaser is the cost of transportation. The cost of independent delivery to the purchaser is the cost of transportation. The cost of independent delivery to the purchaser is the cost of transportation.

Comparison of transportation charges on actual cost or estimated weight basis. See page 15, 16.

How much weight does not enter into the calculation of a standard weight. The weight of a standard weight is not the same as the weight of a standard weight. The weight of a standard weight is not the same as the weight of a standard weight. The weight of a standard weight is not the same as the weight of a standard weight.

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Transportation Charges. Where a shipment is made to a point in California, the cost of transportation is included in the delivered price. The cost of transportation is included in the delivered price. The cost of transportation is included in the delivered price. The cost of transportation is included in the delivered price.

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charged by the carrier is less than the estimated weights.

Addition for surfacing. See page 15:17.

Tough ash specialty establishment. An ash establishment which is operated in conjunction with a sawmill is not a "tough ash specialty establishment" under the Regulation. Where the sawmill and ash establishment are under common ownership, the owner must demonstrate to the satisfaction of OPA (see Section 1382.112(b)(1)) that the ash establishment is operated separately from the mill and does not receive any lumber produced at the common owner's mill before it may be classified as a "tough ash specialty establishment".

"Extras not ordered". 1. No addition may be made for kiln-drying unless the purchaser specifies that the material is to be kiln-dried. The applicable addition is dependent on the moisture content specified by the purchaser and the material shipped must meet these specifications.

2. An addition of fifty cents may be made for anti-stain treatment provided that the treatment is actually applied.

3. The five percent addition for inspection, grading and measurement after kiln-drying is not applicable unless this procedure is requested by the purchaser.

4. The additions for "mixed cars" or small quantities may not be made merely because the seller ships mixed grades at his own option and includes small quantities of each item. The Regulation specifically states that the additions may be made where the purchaser "..... orders an item consisting of one species, thickness and grade". The additions are not to be made under any other conditions.

Definitions

Tough ash specialty establishment. See page 15:16.

Maximum Price Regulation No. 109

AIRCRAFT LUMBER

Applicability

Unlisted grade. The Regulation does not apply to the sale of spruce lumber which does not meet the grade specifications of the lowest grade specified in the Regulation since grades lower than those named in the Regulation are not considered aircraft lumber.

Lumber machined to "exact tolerance". Lumber which is machined or remanufactured to the "exact tolerance" required for incorporation into aircraft is not aircraft lumber and therefore is not subject to the Regulation, see Section 1312.352(b). Stock is machined to "exact tolerance" even if crosscutting remains to be done. However, if any other working is necessary before incorporation into aircraft, the stock is not machined to "exact tolerance."

Price Determination

Thin stock-weights and kiln-drying. Conversion of kiln-drying and inbound freight charges from board measure to surface measure should be made by applying the same percentages as used in the pricing table. This may be ascertained by reading the dollar price in Line 1, Table 1A, as percentage figures, i.e., Column 1, 52%; Column 3, 63%; etc. Kiln-drying on Column 1 items would thus be 52% of \$30.00, or \$15.60, Column 2 items 57% or \$17.00 etc. Air drying or inbound freight would be figured at similar percentages of board measure costs of such services.

Maximum Price Regulation No. 117

USED EGG CASES AND USED COMPONENT PARTS

Applicability

Sales by the Army. The Regulation applies to sales of used egg cases and used component parts by any agency of the Government including the Army.

Price Determination

Transportation Charges

Transportation charges for delivered prices. In determining maximum delivered prices, a charge may be added for the transportation of cases to the purchaser from the place from which continuous transportation to the purchaser originates. Continuous transportation to the purchaser means that the cases do not come to rest in a warehouse or other resting place in the sense that the cases are placed in a general stock.

Labeling

Reconditioning of cases by person other than seller. Where a seller secures the services of a person to recondition cases for him, the labeling requirements are satisfied if the labels affixed by the reconditioner contain the name and address of the seller who is responsible for the reconditioning of the cases.

Violations and Evasions

Complete, unreconditioned egg cases. The Regulation applies to buyers as well as sellers of used egg cases. An egg case dealer who purchases complete unreconditioned egg cases need not examine each case to ascertain whether the cases are complete in accordance with the requirements of the Regulation. The dealer, if he is otherwise acting in good faith and makes a reasonable examination of the lot, may rely on a statement by the seller to the effect that the cases are complete in accordance with the requirements of the Regulation.

Tying requirement. It is a violation of the Regulation, in the form of a tying requirement, if the purchaser is required to take a given amount of new cases in order to purchase used cases.

Maximum Price Regulation No. 146

APPALACHIAN HARDWOOD LUMBER

Price Determination

Addition for surfacing. The addition provided in the Regulation for surfacing may be added but once even if the lumber is put through the surfacing machine twice, unless the lumber is double surfaced at the written request of the purchaser and the seller separately invoices such charge.

Maximum Price Regulation No. 155

CENTRAL HARDWOOD LUMBER

Applicability

Direct mill - retail sale. See page 15:18.

Price Determination

Select red oak is a grade not specifically listed in Regulation No. 155. Therefore, the maximum price for direct-mill sales of select red oak must be specifically authorized by OPA. The maximum prices for distribution yard sales must be computed pursuant to Section 7 of Regulation No. 467.

Maximum Price Regulation No. 161

WEST COAST LOGS

Applicability

Spar logs. The sale of spar logs is subject to the Regulation.

Logs produced in Canada. While logs produced, purchased and delivered in Canada are not subject to the Regulation, the subsequent sale of such logs in the United States is subject to the Regulation.

Price Determination

Cost of furnishing boom gear. Boom gear must be furnished by the logger or purchaser in accordance with the particular custom in each district.

Towable waters - Snohomish River. The maximum price for deliveries in the Puget Sound district include deliveries at any point on the waters of the Snohomish River up to the city of Snohomish since these waters historically have been considered to be part of the Puget Sound waters for purpose of log deliveries.

Price Determination

Article 101 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Article 102

Article 102 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Article 103

Article 104

Article 105

Article 105 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Price Determination

Article 106 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Article 107 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Article 108 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Article 109

Article 110

Article 111

Article 112 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Article 113

Article 114

Article 115

Article 116 is a grade not specifically listed in Regulation No. 122. Therefore, the maximum price for this article must be determined by the Commission pursuant to Section 7 of the Act.

Resale under allocation - original sale made in Canada. Section 1381.157 provides that the maximum price on a resale of west coast logs under an allocation order of the War Production Board shall consist of the maximum delivered price of the logs to the first buyer plus other items specified in that Section. Where the original sale and delivery of the logs to the first buyer was made in Canada and therefore was not subject to Regulation No. 161, the maximum price on a resale in the United States is determined as follows: (1) the maximum delivered price to the first buyer is that established in the tables of Section 1381.154 at towable waters or in mill pond, whichever is the present location of the logs, (2) all additions in paragraph (b) of Section 1381.157 may be made except inbound transportation, (3) the overtime addition in paragraph (c) may not be made, and (4) grading and scaling must be made in conformity with the Regulation and not Canadian rules.

Towing charges. The seller may not add towing charges to the maximum prices until after the logs are boomed, rafted and in condition to be towed to the purchaser.

Tolling arrangement. A sells stumpage to B at less than market price, with the understanding that the logs resulting therefrom are to be resold to A at the maximum price for the logs established by Regulation No. 161. This arrangement constitutes an evasion since B is in effect receiving a higher price for the logs than that established by the Regulation.

Additions and deductions to maximum prices. The maximum prices for West Coast logs listed in Section 1381.154 are the absolute maximum prices. Thus, in making the additions or deductions allowed by Section 1381.153, the resulting prices may not exceed those listed in the tables.

Maximum Price Regulation No. 164

RED CEDAR SHINGLES

Applicability

Unlisted items. The following items are not specifically listed in the Regulation, and therefore maximum prices must be authorized for them pursuant to Section 1381.2: (a) Shingles subjected to staining or other treatment or processing and (b) "Special Pak" shingles consisting of No. 2, 3 and 4 grades.

Direct-mill - retail sale. The Regulation applies to the retail sale of red cedar shingles by a mill or by a retail department of a mill. Sales by the retail department of a mill are not covered by Regulation No. 215, (Distribution Yard Sales of Softwood) since such establishment does not qualify as a "distribution yard" within the meaning of that regulation, because it does not regularly maintain varied stock of lumber from different regions, receive stocks mostly by rail shipment, or meet other tests required by the definition of "distribution yard".

Records and Reports

Invoicing sales on a delivered basis. Where shingles are sold on a delivered basis, the invoice must set forth the f.o.b. mill price, the point of origin of the shipment, the destination and the applicable freight rate. If the estimated weights set forth in the Regulation are not used, the weight of the shingles must also be set forth in the invoice.

Maximum Price Regulation No. 186

WESTERN WOOD AGRICULTURAL CONTAINERS

Applicability

Army ration supply boxes. See page 15:19.

Manufacture of agricultural shook. The manufacturing of agricultural shook is a service; it is not covered by Regulation No. 186.

Price Determination

Octagon potato crate. The maximum price for Navy octagon potato crates set forth in Table 4 includes the cost of cutting corners since cut corners are standard with this type of crate.

Maximum Price Regulation No. 195

INDUSTRIAL WOODEN BOXES

Applicability

Cylindrical plywood containers. A container manufactured by rolling plywood into cylindrical form and stitching the seam and installing heads on top and bottom is an industrial wooden box under the regulation; it is not a cooperage product since it is not composed of staves.

Wooden wagon trays used by bread makers for delivering their product to sellers are industrial wooden boxes under the Regulation.

Army ration supply boxes. The sale of army ration supply boxes is subject to this Regulation rather than Regulation No. 186 since these boxes are of different specifications than the regular containers for canned goods and are used for general purposes and only incidentally as containers for canned goods.

Burial boxes - caskets. The sale of burial boxes is subject to Regulation No. 195; caskets are not subject to the Regulation.

Tobacco hogshead. A round tobacco hogshead which is composed of staves that do not have a bilge is an "industrial wooden box" under the Regulation; it is not a cooperage product because the staves do not have a bilge.

Cigar boxes are "industrial wooden boxes" and therefore are covered by the Regulation.

Wooden reels. Reels made almost entirely of wood and used for winding wire and cable are covered by the Regulation.

Poultry boxes. Wooden poultry boxes used in shipping poultry are covered by the Regulation.

Produced lumber. The term "lumber" in Section 1377.154(b) includes veneer and plywood as well as sawn lumber.

Pallet stock. See page 15:1.

Price Determination

Increases in material costs. In determining the maximum prices under a method based on cost or the "lumber-cost method", Section 1377.153(a) and (b), increases in cost of materials other than lumber may be added in accordance with Sec. 1377.154, entitled "How to figure material costs".

Cost of purchased lumber. In determining the manufacturer's cost of purchased lumber under Section 1377.154(a), lumber "under contract" must be considered along with the lumber actually in inventory. Lumber is "under contract" when it is ordered under a firm purchase commitment.

"Principal competitor" - geographical proximity. A lumber dealer who converted part of his equipment into the manufacture of wooden boxes wishes to determine the maximum prices for his boxes under Section 1377.153(c) entitled "competitor's price method". The only competitors in his particular locality are well established and experienced box manufacturers. The "principal competitor" of the lumber dealer is not necessarily the competitive sellers nearest his establishment, where for instance, there is a lumber dealer in another locality, but within the same general part of the country, who also converted part of his equipment into the production of the same or similar boxes and has an established price. Geographical proximity is not the

sole test for determining "principal competitor".

Cost-plus contract. Sales of industrial wooden boxes may not be made under cost-plus contracts unless the cost plus contract price is equal to, or less than, the established maximum price.

F.o.b. mill maximum price.

Question: A mill received specific authorization pursuant to Section 7(d) of Regulation No. 19 to make an addition for truck hauls preceding rail shipment, and makes a sale under this authorization to a distribution yard. May the distribution yard making a sale under Regulation No. 215 include the addition in computing its f.o.b. mill cost before adding freight and other permissible additions?

Answer: No. The authorized additions for the truck haul preceding the rail shipment may not be included in computing the f.o.b. mill cost under Regulation No. 215.

Sales out of distribution yard stock. A storage yard which performs services incident to the handling of lumber and makes charges therefor on a footage basis without maintaining a stock of lumber does not meet the requirements of a distribution yard under Section 16. Therefore, sales of lumber from such a yard, whether by the operator of the yard or by any other person, are not distribution yard sales and the mark-ups provided for such sales are not applicable.

Finished flooring. Under the Regulation a distribution yard must compute its price on the basis of the end product sold if the end product is an item in a standard size of boards or dimension. Flooring is a standard item. Therefore, the maximum distribution yard price must be computed on the basis of the f.o.b. mill price for flooring. The fact that a purchaser may have ordered rough lumber and requested that the distribution yard remanufacture it into finished flooring is immaterial.

Addition of milling charges. The milling charges shown in the Regulation may be added by the distribution yard if the service is required by the purchaser and if the end product is an item of non-standard size or is an item larger than boards or dimension. The milling additions may be made to the maximum price of the item from which the desired item can be most economically produced.

Milling-in-transit charges. Distribution yards may not pass on to its customers the cost of milling-in-transit even though the items are non-standard size or larger than boards or dimension.

Kiln-drying by distribution yards. Addition for kiln-drying is applicable only if the distribution yard actually performs the service. Custom kiln-drying charges may not be added by yards having kiln-drying facilities.

Delivery by rail. Under Section 12(b)(s), the amount added for delivery by rail may not exceed the actual amount paid by the seller or the amount computed on the basis of estimated weight and actual rate paid by the seller. If the seller has a transit rail shipping agreement, the rate may not exceed his transit rate.

Transportation Charges

Inbound transportation charges- cost of transporting from railroad siding to yard. Appendix A provides that the maximum price for softwood lumber shall be the sum of certain specified items, one of which is inbound transportation charges to the distribution yard, Section 7. Where a distribution yard is not located at a railroad siding or dock, the expense of transporting the lumber from the siding or dock to the yard is not part of the inbound transportation charges and hence may not be added to the maximum price.

Additions for workings. See page 15:21.

Definitions

Sales to political subdivisions of State Government - public schools. Sales to public schools are within the definition of "wholesale type distribution yard sales" as sales to agents or political subdivisions of State Governments, see Section 16(g)(2).

"Lower bracket" items. The phrase "No. 3 Common and lower" in the list of "lower bracket" items, Section 5(d), means No. 3 Common and lower in boards, and equivalent grades in other classes. For example, No. 1 dimension is equivalent to No. 3 boards.

No. 3 shop, No. 1 and 2 box and No. 1, 2, and 3 dimension in ponderosa pine are "lower bracket" items within the meaning of the Regulation.

No. 3 Common and lower California white fir under Western Pine Association rules is also in the "lower bracket" classification. No. 1 common white fir WCLA rules is the same as No. 3 common Western Pine Association rules and therefore is a "lower bracket" item.

Southern pine grades lower than No. 2 box. The term "grades lower than No. 2 box" in Southern yellow pine, which are reduced to a mark-up of \$5 and 10 percent, includes No. 2 box, No. 4 common, and dunnage. It does not include No. 3 common boards and dimension.

Industrial user does not include home builders whether under individual contract or whether building for sale or rent. Classes of builders for determining "wholesale type sale" are specifically listed in the Regulation, see Section 16(g)(3).

Classification

Bridging $1\frac{1}{2}$ and 2 feet long, cut to size, is a non-standard item under the Regulation.

Wholesale and retail distribution yards. Total footage of softwood lumber and hardwood flooring sold in 1940 or 1941 determines yard classification.

Maximum Price Regulation No. 216

EASTERN PRIMARY FOREST PRODUCTS

Applicability

Used products. The Regulation does not cover the sale of used products; the General Maximum Price Regulation applies.

Price Determination

Sale on basis other than f.o.b. the cars at the railroad loading out point. The maximum prices in the Regulation are f.o.b. the cars at the railroad loading-out point within the area of production. Where railroad ties are bought from a producer at the point of cutting and then hauled to a railroad siding in the purchaser's own truck, the maximum price must be reduced by an amount equal to the cost of trucking to the nearest available railroad loading-out point in the producer's area as well as by the deductions to be made for non-loading.

"Full time employee". A "full time employee" means an employee in addition to complying with the requisites of the definition serves one tie contractor or user exclusively, and does not engage in any other dealings in forest products for his own account or for the benefit of others.

Estimated weights. Where estimated weights are not provided for any product in the Tables of the Regulation, the maximum price of the product must be computed on the basis of actual weights.

Classification

All sizes over 6" x 7". The term "all sizes over 6" x 7" " as used in tables 3(c), 4(b) and 5(b) of Section 17, setting prices for cross bars in certain zones, means any size of cross bar which measures more than 42 square inches, thus a 5" x 8" piece (40 square inches) would take a price lower than that for size "over 6" x 7", while a 5" x 9" (with 45" end

measurement) would take a higher price.

Maximum Price Regulation No. 219

NORTHEASTERN SOFTWOOD LUMBER

Price Determination

Surtax on prepaid freight may not be added to transportation charges applicable to Canadian shipments of lumber subject to the Regulation and Regulation No. 222.

Transportation charges - domestic lumber - private truck. When a mileage charge for private trucking or a \$3 flat charge for distance over 30 miles is used for round-edge white pine, the charge is to be added to the loaded-on-truck price. When comparable rail charge for distances over 30 miles is used, transportation addition may be added to the loaded-on-rail price.

Additions for "direct-mill retail sales" provided for in Section 4 of the Regulation cannot be made where the buyer makes the "pick-up at the mill". Section 3(c) is inapplicable to the sales under Section 4.

Graded lumber. Mills may not charge prices established for graded lumber based on buyer's inspection. If the lumber is not properly inspected and graded by the mill prior to shipment, price may not exceed that for the lowest grade in the shipment or log-run price where applicable, i.e., white pine under Table 2 of the Regulation.

Maximum Price Regulation No. 222

NORTHERN SOFTWOOD LUMBER

Applicability

Balsam lumber. The Regulation covers all species of softwood lumber even though not specifically listed, see Section 3(b). Therefore, balsam lumber, a softwood specie, is covered by the Regulation and is priced pursuant to Section 18 by application to OPA.

Price Determination

Import duty on lumber from mills located in Canada may not be added to maximum prices since the maximum prices for imported lumber subject to the Regulation are f.o.b. the domestic points, Spokane, Washington and Baudette, Minnesota.

Surtax. See page 15:24.

Violations and Evasions

Invoicing under special trade name. It is not an evasion of the Regulation to invoice a standard grade of lumber under the purchaser's special trade name for that grade provided that the standard grade name is also shown on the invoice.

Non-standard special items. Hard maple and soft elm lumber out to 5/8" thickness at the mill are "non-standard special" items, for which maximum prices may be computed under Section 1382.165(c).

Maximum Price Regulation No. 253

REDWOOD LUMBER AND MILLWORK

Price Determination

Delivery in Western area. Where the buyer of redwood lumber or millwork takes delivery in the Western area or the sale is f.o.b. the mill, the maximum prices for the Western area are applicable even though shipment is destined for the Eastern area.

Maximum Price Regulation No. 284

WESTERN PRIMARY FOREST PRODUCTS

Price Determination

Treating addition. On full length treatment with guaranteed ground-line penetration, price must be reduced 5% under footnote 2 since incising is made and included in the price in any case.

Transportation Charges

Loading out point.

Question: A purchaser buys Canadian poles at British Columbia booming and rafting grounds, ships them by water to Seattle and sells them f.o.b. Seattle. What "transportation addition", if any, may he make to the f.o.b. Seattle price?

Answer: No transportation addition may be made since the poles are not sold for delivery beyond Seattle. Seattle is the point of entry, and therefore is the original loading-out point within the meaning of Section 4. The maximum price is the "table" price listed for the applicable species and grades.

Maximum Price Regulation No. 290

SITKA SPRUCE LUMBER

Applicability

Spruce "flare stock", $3\frac{1}{4}$ x $3\frac{1}{4}$ material cut to length and not surfaced or further refined, is lumber" and priced under the Regulation. It is not a "prefabricated material".

Maximum Price Regulation No. 293

STOCK MILLWORK

Applicability

Storm sashes, storm doors, combination doors. The regulation applies to the sale of storm sashes and storm doors at all levels and to the sale of combination doors at the manufacturing level. The sale of combination doors at the wholesale and retail levels is covered by Regulation No. 381.

Special millwork. The sale of special millwork manufactured by a distribution yard to individual specifications are not covered by the Regulation; the General Maximum Price Regulation applies.

Price Determination

Jobbers' increased costs. The increase which a jobber may add to his March 1942 price is limited to increases in carload direct-mill cost. For example, if since August 1, 1943, the jobber lost a price concession from a mill but the mill price to the jobber is still within the Regulation, the jobber may add the increased carload cost resulting from the loss of the concession. However, the jobber may not reflect any increased cost resulting from buying in less than carload quantities or buying through other distributors instead of buying directly from the mill.

Special discounts. A manufacturer who prior to the effective date of the Regulation gave special discounts in excess of those provided for in the Regulation is not required by Section 11 to continue to extend such special discounts. The prohibition against changing discount practices refers to devices to get the effect of higher-than-ceiling prices. No manufacturer is required to sell at less than the maximum prices f.o.b. mill full freight allowed which are established by the Regulation.

Maximum Price Regulation No. 320

EASTERN AND CENTRAL WOODEN AGRICULTURAL CONTAINERS

Price Determination

Identity of seller. The maximum prices established by the Regulation do not depend on the identity of the seller but upon the type of sale made by the seller. Thus, the additions for a "warehouse sale" are applicable, regardless of whether the particular seller is a wholesaler, retailer, etc.

Basic maximum price. The basic maximum price referred to in the Regulation is the maximum price in effect in "the zone in which the producing factory is located", Section 1377.216(a). Therefore, where a manufacturer in Zone 1 sells completed, stamped baskets to a manufacturer in Zone 2 for resale, the basic maximum price to which inbound transportation charges may be added is the maximum price in effect in Zone 1 where the producing factory is located. Conversely, if a like shipment were made from a manufacturer in Zone 2 to a manufacturer in Zone 1, the basic maximum price is that in effect in Zone 2, the location of the producing factory. The same rule is applicable to markups on less than truckload quantities. The mark-up should be applied to the basic maximum price in effect at the producing factory.

Discounts. Section 1377.210(a) provides: "Any practice which is a device to get the effect of a higher-than-ceiling price without actually raising the dollar-and-cents price is as much a violation of this Regulation as an out-right over-ceiling price. This applies to devices making use of commissions . . . trade understandings and the like". Section 1377.210(b)(1) further lists a specific prohibited practice: "getting the effect of a higher price by changing credit practices or cash discounts from what they were on October 1, 1941". It is, therefore, a violation of the Regulation for a buyer systematically to forego the taking of a cash discount for payment in 10 days, when it has been his practice in the past to take the discount unless he can show some special reason for changing his payment practice.

Maximum Price Regulation No. 324

EASTERN FENCE POSTS

Applicability

White cedar fence posts over 14 ft. in length. The Regulation establishes specific prices for Northern white cedar fence posts up to 14 feet in length, see Section 4, Table 1. In accordance with the understanding of the trade, posts greater than 14 feet are not "posts" but "poles" which are not covered by Regulation No. 324.

Price Determination

Sales to consumers. The maximum prices for treated posts calculated under Section 7, apply only to sales by treating plants to buyers other than consumers. A retailer cannot ordinarily determine the maximum prices of treated posts under this Section. Therefore, the maximum prices for treated yellow fence posts sold by retailers to consumers shall be determined by adding the allowable 25% markup under Section 3(b) to the cost of the treated posts, f.o.b. the retailer's yard (including the transportation addition allowed by Section 5).

Inbound transportation. In computing the retail price under Section 3(c)(1), a seller may not use actual weights in figuring inbound transportation. The section specifically requires that estimated weights from Section 4 must be used.

Maximum Price Regulation No. 338

AIRCRAFT AND NO. 1 SHEET STOCK VENEER

Applicability

Aircraft propeller maple veneer. Dimension cut aircraft propeller maple veneer is not "aircraft and No. 1 sheet stock grade veneer" within the meaning of Section 2(a) and therefore is not covered by the Regulation.

Classification

Ponderosa pine. Since maximum prices for fence posts of Ponderosa Pine are not listed in Section 4 of the Regulation, such posts are classified as "unlisted species".

Maximum Price Regulation No. 348

LOGS AND BOLTS

Applicability

Saw log slabs. The sale of round woods, including the upper parts of trees is covered by the Regulation. However, saw log slabs used by wood distillation plants are not subject to price control since they are not covered by any specific regulation and are exempted from the coverage of the General Maximum Price Regulation by Section 2.10(e) of Revised Supplementary Regulation No. 1.

Chips, slabs and edgings. Chips, slabs and edgings are not covered by the Regulation since they are not logs or bolts; the General Maximum Price Regulation applies.

Price Determination

Dollar-and-cents area pricing.

Question: Four or more buying plants petition for the establishment of dollar-and-cents prices by areas. Other plants wish to join in the petition but do not agree entirely with the petition. May these plants join in the petition?

Answer: Yes. Such plants should limit or qualify their participation by indicating parts of the petition with which they do not agree.

Buying plant not in business during base period. A buying plant not in business during the base period September and October 1942 must compute its maximum prices for logs and bolts under Section 3(c)(2).

Maximum Price Regulation No. 381

STOCK SCREEN GOODS

Applicability

Storm sashes, storm doors, combination doors. See page 15:25.

Discounts set forth in Section 3(b) of the Regulation apply to all patterns listed in Tables 1, 2 and 4 and patterns N and Q in Table 5.

Price Determination

Free delivery zone. Prior to and during March 1942, a company had an established list price for screen doors delivered to customer's receiving point anywhere in Kansas or Oklahoma. The company's price list further provided that if a customer elected to call at its place of business in Wichita, Kansas, and pick up his order at the plant, the customer was allowed a five percent discount from the list price. The company contends that in view of this five percent discount for an f.o.b. warehouse sale, its customers who purchased on a delivered basis were actually paying five percent for such delivery service, and therefore it had no "free delivery zone" within the meaning of Section 4(a)(2).

Under these facts, the company established a free delivery zone for customers in the states of Oklahoma and Kansas. The company's price list shows that during the base period its delivered price to a customer in Wichita was the same as its delivered price to a customer in Oklahoma or any other town in Kansas. The fact that the company granted customers a five percent discount on its list price if they took delivery at its warehouse is not controlling since free delivery service was available to any point within the two states, irrespective of actual transportation cost.

Maximum Price Regulation No. 402.

WESTERN RED CEDAR LUMBER

Price Determination

Mixed car and mixed truck shipments. Under Section 8, a mixed car or mixed truck shipment must contain at least four different items of lumber. Where a mixed car containing both Douglas fir and Western red cedar lumber is shipped under a single order and a straight-car shipment of neither species can be made, the different classifications in each species may be counted as separate "items". Thus a car composed of three fir and one cedar item may constitute a mixed car shipment within the meaning of the Regulation.

Maximum Price Regulation No. 424.

TIGHT COOPERAGE STOCK AND SAWED TIGHT COOPERAGE

Applicability

New and used barrels. New barrels that fall within the definition in Section 3(b) are covered by the Regulation. Used tight barrels are covered by Maximum Price Regulation 524.

Maximum Price Regulation No. 432

NORTHERN HARDWOOD FLOORING

Price Determination

Additions for working. See page 15:21.

Maximum Price Regulation No. 458

OAK, PECAN AND MISCELLANEOUS HARDWOOD FLOORING

Price Determination

Additions for working. See page 15:21.

Maximum Price Regulation No. 491

PRESSURE PRESERVATIVE TREATMENT OF FOREST PRODUCTS
AND PRESSURE TREATED FOREST PRODUCTS

Applicability

Fir piling produced and pressure treated in Canada. The Regulation does not apply to the sale of Douglas Fir Piling produced and pressure treated in Canada. Since piling and other round primary forest products are not included in the exception of "lumber and wood shingles" in Section 1 of the Maximum Import Regulation, the sale is covered by that Regulation.

Price Determination

Retail yard sales of pressure-treated poles. The Regulation covers sales of pressure-treated forest products at all levels except yard sales of lumber (under Regulation No. 215) and fence posts (under Regulation No. 324). Retail yards selling pressure-treated poles must price under Section 18(b), depending upon species of the product. The General Maximum Price Regulation does not apply.

"Pole and piling distribution yards" not located at a treating plant or within production area of the species sold may request approval under Section 8 of an addition over the maximum prices in Section 18(b) or 19(b).

Maximum Price Regulation No. 501

HARDWOOD SMALL DIMENSION

Applicability

Plywood built with core and veneer. Hardwood plywood built to thickness with hardwood core and veneer is not covered by the Regulation. The General Maximum Price Regulation applies.

Maximum Price Regulation No. 513

YELLOW CYPRESS LUMBER

Definition

Green lumber as used in the Regulation, means lumber which requires further air seasoning before it is kiln-dried or used. In any case, lumber which runs more than 15 percent over air-dried weights in the Regulation is presumed to be green.

"Second-hand extra" is defined as any used attachment which is standard supplementary equipment furnished by the manufacturer at additional cost to his price of the machine tool. Extras should be sold separately and priced separately, and are subject to the same maximum price percentage that is applicable to the basic second-hand machine tool to which the extras are added. In general, the custom of the trade is to be followed in determining what is to be treated as an "extra."

Freight. The maximum price of the equipment new machine referred to in the appendix to the Regulation is the list price f.o.b. factory. Therefore, charges for freight paid by a dealer who sells a second-hand machine tool may not be added to the seller's maximum price.

Delivery and finance charges. Outgoing delivery and finance charges may be made in addition to the maximum price fixed under the Regulation for the sale of second-hand No. 6 Warner and Swasey Turret Lathes, since the Regulation has been interpreted to set maximum prices f.o.b. the plant. The seller may add only such delivery charges as he actually incurred and those credit charges which he customarily imposed, and shall itemize and invoice them separately.

Machine tool unpainted pursuant to WPB Limitation Order. Under Limitation Order L-108, a manufacturer of milling machines is restricted from painting metal equipment except as stated in the Order. A person receiving a machine at this time with the finish as specified in the Limitation Order may pay the same price for this machine as he would have paid for the same machine with the better finish before the Limitation Order.

Loading charges. Where a second-hand machine tool is sold "as is, where is" at the maximum price for the machine, the cost of loading must be paid by the seller and may not be added to the maximum price of the machine tool. Pursuant to trade custom, used machine tools are sold f.o.b. the seller's place of business, and hence the maximum prices under the Regulation include all dismantling and loading charges. If the purchaser elects to dismantle and load the machine tool, the selling price plus the cost of dismantling and loading may not exceed the maximum price established by the Regulation.

Lease of entire business. See page 16:22(a).

Reinstallation charges. The installation charges provided for by Section 6(c) are for services normally performed by the lessee. Reinstallation of a machine in the plant of the lessor is not such a service and therefore expense for such service must be borne by the lessor.

Sale of undivided interest.

Question: Two persons own 3 machine tools in common. One sells his undivided one-half interest to the other. How is the maximum price determined?

Answer: Since the property is subject to price control, a sale of an undivided interest in the property is likewise covered. The maximum price of a half of a machine tool is determined by dividing the maximum price of the whole machine tool by two. Similarly, the maximum price of any other fractional undivided interest would bear to the maximum price of the entire item the same proportion that the fractional interest itself bears to the entire item.

Commissions

Professional commissions. The price paid for a used machine tool, including all ordinary selling and buying commissions, may not exceed the maximum price established by the Regulation. The purchaser may not pay a commission to a broker in addition to the maximum price for such machine tool as established by the Regulation. However, if the broker's services were not ordinary, but of a professional (engineering) nature, a charge in addition to the maximum price may be made provided that the charge is bona fide and no part of such charge is paid to the seller.

Finders' fees. No fee or commission may be paid for locating machines if the fee plus the cost of the machine exceeds the maximum price of the Regulation.

Classification

Age of machine. If the seller is unable to establish the correct age of a machine, it is necessary to classify such machines in Class 4 as being manufactured prior to January 1, 1920. In case the manufacturer of the machine is no longer in business, this information can usually be obtained from the company which has taken over its lines of business. If no such company exists, it will be necessary to establish the age of the machine by other means. If the seller cannot establish the age of the machine it will be presumed for reclassification purposes that the machine was built prior to January 1, 1920.

Violations and Evasions

Sale of machine at higher than maximum price where total price of all machines sold in same transaction does not exceed aggregate maximum price. The sale of a second-hand machine tool at a price in excess of the maximum price is a violation of the Regulation even though the total price for that machine and other machines sold in the same transaction does not exceed the aggregate maximum price for all of the machines.

Auctions - sale by winning bidder of his right to buy. The winning bidder at an auction, bid the maximum price for a second-hand machine tool and sold his right to buy the machine to A. This is a violation of the Regulation by both the bidder and A. A has violated the Regulation since he paid a total consideration in excess of the maximum price for the machine, and the bidder has violated the Regulation since the total consideration he received on the sale of the machine to A (including the assumption by A of the bid price) was in excess of the maximum price.

Definitions

"Second-hand extra." See page 16:3.

Repossessed machine is a second-hand machine tool within the meaning of the Regulation, since it has previously been used.

Records and Reports

Charges for information. The imposition of a charge for furnishing information deters the filing of reports required by the Regulation. It would not appear to be unreasonable for the manufacturer to absorb the nominal clerical cost of answering requests for such information. While OPA is opposed to the imposition of any charge made by manufacturers to dealers and others for furnishing information necessary for reporting, a regularly established policy of making a nominal charge for furnishing information concerning old machines is not objectionable. Accurate information on old machines may permit a classification of the machine which is beneficial to the seller who requests the information.

Content of reports. The name of the purchaser is essential. It permits the tracing of a particular machine from seller to buyer and is a check on the purchaser's inventory filed with OPA, and provides a ready verification of the report filed by the seller.

If certain information is lacking at the time a report should be filed, it should nevertheless be filed and labeled "incomplete." When the missing data is obtained, a completed report should be filed with the notation "completed" written on it.

Photographs of machines are needed in the coordination of defense activities to assist in determining whether the machine meets the requirements of a prospective purchaser.

Extras should be listed separately on the report form and itemized in the same order as set forth in the invoice.

Leased machine tools. Where second-hand machine tools were leased prior to March 15, 1941, such tools were not "in stock" on that date within the meaning of Section 1301.9(b)(2), and therefore, during the period of the lease, it was not necessary to file the inventory reports required by that section. However, upon the termination of the lease, the machines covered thereby are "added to stock" within the meaning of Section 1301.9(b)(2), and it is necessary to file the inventory reports required by that section.

Lump sum sales. See page 16:2.

Price Schedule No. 67

NEW MACHINE TOOLS

Applicability

General. The Schedule is applicable to every person buying or selling new machine tools and extras after January 20, 1942, except to deliveries made after the Schedule went into effect on contracts entered into by the Army, Navy, Defense Plant Corporation, Procurement Division of the Treasury, or any other agency of the United States prior to the effective date of the Schedule. The fact that only manufacturers and dealers are required to file reports does not mean that the Schedule applies only to manufacturers and dealers.

Deliveries pursuant to letter of intent. A letter of intent issued by a governmental agency does not constitute a contract within the meaning of the Schedule. Thus, deliveries of machine tools made pursuant to a letter of intent issued by a governmental agency before the effective date of the Schedule are not exempt from the operation of the Schedule, which exempts deliveries made under contracts with governmental agencies entered into prior to the effective date of the Schedule.

Navy Department facilities contracts and Defense Plant Corporation lease agreements. See page 16:15.

Agents of manufacturers of new machine tools are covered by the Schedule.

Sub-contractors who manufacture complete machines are manufacturers under the Schedule, but a person who machines certain castings for manufacturers and does not make the castings, merely working on the castings on an hourly basis, is not a manufacturer under the Schedule.

Reconditioners. A person who reconditions or repairs machine tools is not covered by the Schedule, provided that he does not buy or sell the machine tool on which he works.

British Purchasing Commission. The Schedule applies to sales to the British Purchasing Commission.

Brake shoe grinders. The Schedule is applicable to the sale of new pedestal type brake shoe grinders used for repairing airplane brake shoes. The grinders are regarded as machine tools by the trade.

Die-casting machinery is not subject to the Schedule because it is not a machine for cutting, abrading, shaping and forming of metals.

Plastic moulding machinery is not subject to the Schedule because it is not a machine for cutting, abrading, shaping and forming of metals.

Endless steel file of the band variety is not a machine tool and therefore is not subject to the Schedule; it is regarded in the trade as a replaceable part or accessory; it is sold separately and under separate listing by machine tool people and persons engaged solely in supplying such parts and accessories.

"Extra". See page 16:6

Price Determination

Adjustment clauses. Paragraph (c) of Section 1301.51 permits adjustment clauses in contracts on deliveries actually made more than 9 months after the date of execution of the contract if the clause expressly limits payments to the maximum price established by OPA on the date of delivery. Prices may also be adjusted up to, but not in excess of

the maximum prices of the Schedule. For instance, where the contract containing an adjustment clause is entered into after October 1, 1941 (the base date in the Schedule) and the price fixed by the contract, without adjustment, is below the October 1, 1941 price, the parties may renegotiate the contract to specify a price equivalent to the price of such machinery on October 1, 1941. The specified contract price may be increased by any provision in the contract for price adjustment to the price on October 1, 1941, if the adjustment provision would have been automatically applicable had delivery been made prior to October 1, 1941. If the adjustment provision provides only for an increase at the discretion of the seller, with or without the right of the buyer to cancel the contract, the seller may also require an increase in the contract price up to the maximum price. If the price fixed in the contract without adjustment is above the maximum price of the Schedule, the price adjustment clause is invalidated, and the contract price must be reduced to the maximum price of the Schedule.

Under the Schedule, price adjustment clauses in a contract must be limited to deliveries made more than 9 months after the date of execution of the contract. The 9 months are to be calculated from the date the contract of sale is executed, and not from the date the order for the machine is placed unless the placement of the order constitutes a contract for sale without the seller's express acceptance.

"Last price" at which such new machine tool or extra was sold. Section 1301.51(a)(2) provides that if there was no list price in effect on October 1, 1941, the maximum price shall be the "last price" at which such new machine tool or extra was sold from January 1, 1941 to October 1, 1941. The term "last price" refers to the price of the pricing method designated in the contract of sale last entered into between January 1, 1941 and October 1, 1941 for the sale of the particular machine tool or extra being priced.

Definitions

"Extra", as defined in Section 1301.58(1), is equipment which has three components: (a) designed for use on or with a machine tool, (b) standard as to a particular tool or line of tools, and (c) furnished by the manufacturer of the machine tool at extra cost. If the equipment is manufactured by someone other than the manufacturer of the machine tool, it does not meet these requirements and is subject to Regulation No. 136 (Machines and Parts, and Machinery Services).

"Last price." See page 16:6, "Last price" at which such new machine tool or extra was sold.

Records and Reports

General. While all persons buying or selling new machine tools and extras after January 20, 1942 are subject to the Schedule, only manufacturers and dealers are required to keep records or to file reports.

Replacement of motors. Where complete motors are replaced, the cost of the new motor and the allowance made on the old motor must be set forth separately in the sellers' records and in the invoice given the buyer.

Re-wiring charges are extras, and the records kept and the reports filed must show such charges separately.

Price Schedule No. 82

WIRE, CABLE AND CABLE ACCESSORIES

Applicability

Electrotrim. Since the Schedule is applicable to the sale of all copper wire used for

conducting electricity, "electrotrim," which is basically a copper wire used for conducting electricity, is covered by the Schedule.

Coaxial cable. See page 16:18.

Battery cable. The sale of molded battery cables is covered by the Schedule; Regulation No. 149 (Mechanical Rubber Goods) is not applicable.

Compounding of synthetic rubber. The service of compounding synthetic rubber for a manufacturer of wire who has supplied certain chemicals used in the process is not a service governed by Section 1349.1(c)(2). The subparagraph applies to the processes involved in the assembly of component parts and not to processing of materials used in the assembly.

Ironing cord. The sale of an ironing cord at the manufacturers', distributors' and wholesalers' levels is covered by the Regulation. Its sale at the retailers' level (except by the manufacturer thereof) is subject to the General Maximum Price Regulation.

Price Determination

Used wire and cable. In determining maximum prices for used wire and cables, if a seller sold used wire and cable on October 15, 1941, he should apply to his sales the average percentage margin over his net invoice and cost, see Section 1349.20(c); if the seller did not sell used wire and cable on October 15, 1941, he must report to OPA his proposed price, which may be disapproved by OPA within 30 days after receipt of the report, see Section 1349.20(d).

Sales and excise taxes. Where the manufacturer did not include sales and excise taxes in his price sheet in effect on October 15, 1941, he may add the amount of the taxes actually paid, but the manufacturer may not add to his maximum price any excise or sales taxes on products used in his manufacturing operations.

Records and Reports

Sales and excise taxes. Where sales and excise taxes may properly be added to the maximum price by the seller, they must be set forth separately in the invoice.

Price Schedule No. 85

NEW PASSENGER AUTOMOBILES

Applicability

Used 1942 cars. The Schedule is applicable to the sale of all 1942 model automobiles, whether new or used, including repossessed automobiles.

Sales to Army. Sales of 1942 model passenger automobiles to the Army are covered by the Schedule.

Acquisition of title to car pursuant to option under a rental agreement. A person rented a 1942 model automobile under a rental agreement, and after using it for some time acquired title to the automobile pursuant to an option under the rental agreement. The acquisition of title pursuant to the option was a sale subject to the Schedule.

Ambulances. The sale of an ambulance is not covered by the Schedule; the General Maximum Price Regulation applies.

Maintenance - cooling system. In localities having war climates where antifreeze is never used or necessary, a rust-inhibiting solution, even though not antifreeze, need not be drained from the cooling system, see Item 13, Section 1360.62(b).

Used 1942 model year jeeps. 1942 model year jeeps would be subject to Schedule No. 85 if

list prices, f.o.b. factory, for sales at retail of such vehicles were included in Appendix A of that Schedule, or it were possible to obtain a price for a sale at wholesale under Section 1360.51. No prices for jeeps are listed in Appendix A, nor is it possible to obtain a price at wholesale under Section 1360.51. These vehicles, therefore are under the General Maximum Price Regulation which exempts used passenger automobiles from price control. Therefore, jeeps of all model years are not subject to price control.

Price Determination

Extra equipment. Where new passenger automobiles are sold with extra equipment and the equipment is listed in the invoice or bill of sale, the allowance of 5% permitted by Section 1360.52(d) and the allowance of 1% permitted by Section 1360.52(e) are based on the list price for automobiles with standard equipment as of October 15, 1941, see Appendix A; such allowances may not be based on a figure higher than the list price, whether or not the automobile has extra equipment.

Two-color paint job. The cost of a special two color paint job for passenger automobiles may be added to the maximum price. Pursuant to Section 1360.52c, the cost of such additional extra or nonstandard "equipment" must be separately listed on the invoice given the buyer.

Maintenance operations - storage allowance - cars in display rooms. Cars which are kept in sales rooms by dealers who are using sales room space for storage purposes are "in storage," and are subject to the maintenance provisions of Section 1360.62, and the storage allowance of Section 1360.51(c) and Section 1360.52(e).

Maintenance operations - turning engine over. Where cars are stored with gasoline completely drained or where dealers are not permitted to start the engines indoors, the maintenance operation required under Item 6(b) of Section 1360.62, may be complied with by turning the engine over while the spark plugs are removed with (1) the starter, or (2) revolving the rear wheel with the car in gear. The latter may be done by a portable electric motor or manually, but if turned manually the wheel must be turned a sufficient number of times so that the interior surfaces of the crankcase will be thoroughly covered with rust-inhibitor.

Allowance for carrying period. The allowance permitted by Section 1360.52(e), "for each calendar month, or greater part thereof, within the period from February 1, 1942 up to and including, whichever is earlier, April 30, 1944 or the date of the delivery of the automobile to the purchaser," may not be added for any period after title to the automobile has passed to the purchaser, even though physical possession of the automobile remains with the seller. Where a contract permits the purchaser to inspect the automobile and accept or reject it, the allowance does not stop with the making of the contract. If, as is usually, the case, title does not pass until delivery and acceptance, and the risk of loss is until then on the seller, the allowance continues until the date of the delivery and acceptance.

Transportation allowance. An automobile manufacturer's zone freight charge does not determine the maximum transportation allowance which may be added to the retail price, since Section 1360.52(c) provided that the allowance "shall not exceed the actual rail freight charge at carload rate, by the most direct route," etc. Thus, a Los Angeles dealer who pays a manufacturer's zone freight charge of \$132.75, may charge \$141.75 although he actually pays only \$132.75, since the actual rail freight charge at carload rate by the most direct route from Detroit to Los Angeles is \$141.75. However, an Arizona dealer who is required to pay a manufacturer's zone freight charge of \$132.75, while the actual of published rail freight charge from Detroit to his place of business is less than that amount, may not include an allowance of \$132.75 in the computation of his maximum retail price, but only the actual or published rail freight charge at carload rate by the most direct route from Detroit to his place of business in Arizona.

Freight allowance. No amount may be charged under paragraph (c) of Section 1360.52 for moving an automobile from a warehouse to the dealer's floor. Such expense is included

in the handling charge allowed under paragraph (d) of Section 1360.52.

Maintenance operations - sales between dealers. A dealer purchased a new automobile in December 1942 from another dealer. The automobile received, while in storage from October 31, 1942 until the date of delivery to the purchasing dealer, all the maintenance operations set forth in Appendix B of the Schedule. The selling dealer may add the allowance provided for in Section 1360.52(e), and the purchasing dealer may on resale of the automobile add these allowances to the maximum price, plus the allowance for maintenance operations which he has performed since December 1942. The allowance is based

upon maintenance operations which "the automobile shall have received" rather than the operations which the seller has performed.

Advertising costs. Advertising costs incurred by a retailer may not be added to the maximum prices of new automobiles.

Termination of increment. Under Section 1360.52(e), an increment is permitted for the period "from February 1, 1942, up to and including, whichever is earlier, April 30, 1944, or the date of the delivery of the automobile to the purchaser". "Date of the delivery" is synonymous with the date of sale. Date of sale is the date on which title passes.

Taxes

Federal excise taxes. The retailer's allowance for "Federal excise taxes," Section 1360.52 (b), is 7% of the list price of the automobile set forth in Appendix A; tire tax, extra overhead charge, or other cost factors may not be included in determining this allowance.

Maximum Price Regulation No. 133

RETAIL PRICES FOR FARM EQUIPMENT

Applicability

Retail sales. The Regulation is applicable to all retail sales of farm equipment, including retail sales made by manufacturers. Other sales of farm equipment by manufacturers are covered by Regulation No. 246 (Manufacturers' and Wholesale Prices for Farm Equipment).

Manufacturers who sell to users. Section 1361.9(a)(2), which defines "retail dealer" as any person engaged in the business of selling farm equipment to users, does not exclude manufacturers who sell to users. Hence, if a manufacturer has issued a suggested list price, this determines the maximum price for its company stores as well as for dealers.

"Farm equipment". In determining whether or not certain equipment is "farm equipment" subject to the Regulation, reference should be made to the general use of the equipment as sold by the entire industry and not the use by the particular purchaser. Thus, if a hammer mill is of a type designed for and usually sold for farm use, it is included in the term "farm equipment" as used in the Regulation, even though it may be sold to a feed manufacturer. Conversely, food machinery designed for and usually sold at retail for industrial use is not "farm equipment," and sales thereof are subject to Regulation No. 136 (Machines and Parts, and Machinery Services), even though the particular sale may be for agricultural purposes.

Hatchery equipment. The Regulation is applicable to retail sales of hatchery equipment; Regulation No. 246 (Manufacturers' and Wholesale Prices for Farm Equipment) is applicable to sales by the manufacturer of such equipment.

Farm fencing, gates and poultry netting. The Regulation is applicable to the sale at retail of farm fencing, gates, poultry netting and barbed wire.

Cotton rope and tarpaulins. The Regulation is not applicable to cotton rope sold to a farmer at retail for use as plow lines, or to tarpaulins sold by a dealer to farmers for use in covering machinery, wagons and farm crops, since the general use of these items as sold by the entire industry is not for farm use.

"Back bands," which are cotton textile materials made in web form and used as part of the harness for horses and mules, are subject to the Regulation as "harness and saddlery," see Section 1361.9(a)(3).

Sale by a farmer of a used farm tractor (except a crawler tractor) to an implement company is subject to the maximum price established by the Regulation, Section 1361.3a(b), since this section applies to sales of the eight items listed in paragraph (a) thereof by any person other than the retail dealer.

Electric fence controllers. See page 16:28.

Tin dairy pails and milk cans. The Regulation applies to tin dairy pails and milk cans under the classification "dairy farm equipment," see Section 1361.9(a)(3).

Disinfecting duster, a hand spray used for spraying powder on garden produce, is not covered by the Regulation as "agricultural spraying equipment"; the General Maximum Price Regulation applies.

Power operated churns. A sale at retail of power operated churns is subject to the Regulation as "a sale of dairy farm equipment." If used in connection with creamery operations, power operated churns are considered dairy machinery covered by Regulation No. 136 (Machinery and Parts and Machinery Services).

Resale by a farmer of new farm equipment and machinery purchased for use. New farm machinery or equipment which has been purchased for use but has never been used is new farm machinery or equipment. The resale of such machinery by a farmer is not covered by the Regulation, since the only sellers of new machinery and equipment subject to that Regulation are "retail dealers". Farmers are not "retail dealers" within the meaning of Section 1361.9(a)(2), and therefore sales of such machinery by farmers are covered by the General Maximum Price Regulation.

Galvanized pipe. A portable, galvanized sheet metal pipe manufactured with holes to be used as sprinkler pipe is a "farm equipment" within the Regulation, since it is used primarily in the production of agricultural products. The sale of this pipe at the retailer's level is covered by Regulation No. 133, and at the manufacturer's or wholesaler's level by Regulation No. 246 (Manufacturer's and Wholesale Prices for Farm Equipment).

Hay baling wire. Retail sales of hay baling wire in quantities of 2500 pounds or less are covered by Regulation No. 133, Section 1361.9(a)(3).

Used woven-wire hog fencing. The sale of used woven-wire hog fencing by a retail dealer is not covered by the Regulation since it is not a "complete item of used farm equipment" within the meaning of Section 1361.3a(a); the General Maximum Price Regulation applies.

Price Determination

Manufacturer's increased freight costs. See page 16:28.

Manufacturer's suggested retail price - discounts. Section 1361.4 forbids changes in discounts only for items for which the manufacturer has no suggested retail price. Discounts on sales of items for which the manufacturer has issued a suggested retail price need not be continued.

Where a manufacturer has issued a suggested retail price together with recommendations for cash discount, the retail dealer need not adopt the suggested discounts. The trade does not consider such discounts to be part of the suggested retail price.

Transportation costs. Section 1361.3(a)(2) permits the retailer dealer to add to the manufacturer's suggested retail price f.o.b. factory, actual transportation costs "from the factory to the dealer". Where a retail dealer sells a machine which he purchased from a second retail dealer, only the actual transportation costs from the factory to the second dealer may be added; the transportation costs from the second dealer's establishment to the first dealer's place of business may not be added.

Increase in transportation costs since April 1, 1942 is not an increased cost within the meaning of Section 1361.3(c)(2)(ii).

Violations and Evasions

Purchase in the course of business - purchase by a farmer. The Regulation provides that "no person in the course of trade or business shall buy or receive any farm equipment at a price higher than the maximum fixed by this Regulation," see Section 1361.1(a)(2). Farm equipment purchased by a farmer is a purchase "in the course of trade or business" since the farmer operates his farm as a commercial activity and purchases the equipment for use in carrying on that activity.

Tying agreement. The refusal of a dealer to sell a spare part to a purchaser unless he also buys another item or part constitutes a violation of the Regulation, Section 1361.4. However, an unconditional refusal to sell spare parts is not a violation or evasion.

Definitions

"Retail dealer." See page 16:9, Manufacturers who sell to users.

"Farm equipment." See page 16:9.

"In the course of business." See page 16:10(a), Purchase in the course of business - purchase by a farmer.

"Back bands." See page 16:9.

Records and Reports

Parts. While the Regulation requires the seller to keep a record of each individual sale of farm implement parts, when a group of parts is sold as an assembled unit it is not necessary to list each part separately.

Invoice. The itemized invoice required by Section 1361.5 must be furnished in connection with every retail sale of farm equipment for \$15 or more for which there is a suggested retail price, whether or not the particular sale is below the suggested retail price or below the maximum price established by the Regulation.

Filing of notices by auctioneer. Section 1361.6(d) requires an auctioneer of used farm equipment to send a notice six days before the sale to the nearest district office of the Office of Price Administration. Where an auctioneer resides in one OPA district and sells machinery located in another OPA district, the notice should be filed with the OPA district where the machinery to be sold is located.

Maximum Price Regulation No. 134

CONSTRUCTION AND ROAD MAINTENANCE EQUIPMENT RENTAL PRICES AND CHARGES FOR OPERATING AND MAINTENANCE OR REPAIR AND REBUILDING SERVICES

Applicability

Lease made prior to effective date of Regulation. The Regulation applies to rental charges after the effective date of the Regulation, even though the lease was made and the equipment delivered before that date.

Maintenance services formerly subject to Regulation No. 136. Pursuant to Amendment No. 3, effective October 22, 1942, Regulation No. 134 is applicable to maximum charges for operating or maintenance services and services rendered on "fully operated" and similar service contracts on construction and road maintenance equipment; such services are no longer subject to Regulation No. 136 (Machines and Parts, and Machinery Services). Therefore, the maximum charges for such services are established by Regulation No. 134, even though they are lower than the rates which were specifically approved under the then applicable provisions of Regulation No. 136.

Sale pursuant to rental contract. See page 16:15.

Rental of lighting plants. See page 16:19.

Pile driving equipment, hammers. The Regulation is applicable to hammers attached to pile driving equipment.

Jacks. See page 16:23.

"Integral" and "combination" trucks. See page 16:1.

Price Determination

Sale pursuant to rental contract. See page 16:15.

Contract price less than maximum price. The Regulation was extensively revised by Amendment No. 3, effective October 22, 1942, and the maximum rental prices were increased in some instances. Where equipment was rented prior to October 22, 1942, at contract prices equal to the maximum prices then in effect, and was on the job continuously until after that date, Amendment No. 3 does not permit the lessor to increase the contract price to the new maximum price, unless the lessee consents.

Change of rates in contract continuing through October 22, 1942. Where equipment was rented prior to October 22, 1942, the effective date of Amendment No. 3, and worked, or was in possession of the lessee continuously until some time after that date, the maximum rental for the equipment is computed by treating the time elapsing before and after October 22, 1942, as a single period of a week, or month, or a fraction thereof, and applying pro rata to that portion of the period elapsing prior to October 22, 1942, the pertinent rates for such period prior to Amendment No. 3, and applying pro rata to that portion of the period elapsing after October 22, 1942, the pertinent rates subsequent to Amendment No. 3.

Hourly rental. The rental of construction and maintenance equipment on an hourly basis may be continued under the Regulation, so long as the rental charge does not exceed the maximum daily, weekly, or monthly rental charge established by the Regulation. The maximum rental price for equipment rented by the hour and used for less than eight hours in one day is the applicable daily rate under the Regulation.

Additional accessories for welding machine. The maximum rental rates for an equipped welding machine include on helmet, 60 feet of cable, and one electrode holder; charges for additional accessories except extra cable are subject to Regulation No. 136 (Machines and Parts, and Machinery Services). Where a lessee does not require all the accessories included in an equipped welding machine, the lessor may charge any rental rate which does not exceed the maximum rental for the equipped machine.

Standby equipment. Construction and road maintenance equipment which is merely standby equipment for emergency purposes is not in "actual use" for the entire daily period under the Regulation, and therefore a charge may only be made for "possession" rental, i.e., rental not exceeding 8 hours per day, 48 hours per week, or 240 hours per month. However, the actual use of jack hammers, pumps, and similar small equipment which are on the job and ready for use, but ordinarily used at irregular and intermittent periods and to which a specific operator is not assigned, shall be determined by job hours.

Centrifugal pumps. The rental established under the Regulation for centrifugal pumps operated by gasoline engines does not include the rental of the hose. A separate rental for the hose may be charged.

Transportation charges. Transportation charges which were customarily added, prior to the effective date of the Regulation, to the rental price of the equipment for the first month may continue to be charged. However, any new or additional transportation charge, put in effect after the effective date of the Regulation, is an evasion of the Regulation.

Rental of truck crane - liability for maintenance and repair.

(1) Where a truck crane was rented on an hourly basis, in any period prior to October 22, 1942, (effective date of Amendment No. 3 which substantially revised the Regulation), the burden of all maintenance was specifically imposed upon the lessor; the burden of all repair, including repair due to normal wear and tear as well as that due to other causes, was also upon the lessor.

(2) Where a truck crane is rented on an hourly basis in any period on or after October 22, 1942, the burden of all maintenance and all repair continues to be upon the lessor, except as is set forth in (4) below.

(3) Where a truck crane is rented on a daily, weekly or monthly basis in any

price of the item, as a used mechanical refrigerator under Regulation No. 139 is only \$22.

The transaction between S and T involves the sale of a used mechanical refrigerator. Therefore, the consideration for it may not be in excess of the maximum price for the refrigerator under the Regulation, i.e. \$22. The result would be the same if the transaction were framed as an assignment of P's right to pay the balance instead of as an assignment of S's right to recapture the refrigerator.

Maximum Price Regulation No. 158

RESALE OF WAR BICYCLES - DISTRIBUTORS AND DEALERS

Price Determination

Carrying charges. A dealer may add a carrying charge to the maximum price established by the Regulation, not in excess of his customary credit charges. The customary free time during which credit charges have not been made should be continued, and the receipt to the purchaser should specifically set forth any additional charge for the extension of credit.

Retail stores owned by wholesaler. A company sells war bicycles at both wholesale and retail. Its retail sales are made through company-owned retail stores; its wholesale establishments sell to company-owned stores and to independent affiliated retailers. The company-owned stores and the affiliated stores customarily sell at the same prices.

Maximum Price Regulation No. 162

CEILING PRICES FOR THE SALE AND RENTAL OF USED TYPEWRITERS

Applicability

Front-feed typewriters. A used typewriter equipped with Elliott Stencil Cutting attachment is a front feed machine and therefore not covered by the Regulation; the General Maximum Price Regulation applies.

Price Determination

Sale in which two dealers participate. In the sale of typewriters to a consumer in which two dealers participate, the first dealer supplying the typewriters to a customer of the second dealer who assumes the guarantee to the customer, the customer cannot be required to pay more than the maximum retail price specified in the Regulation. The extent to which the dealers share the profit on the transaction is not controlled, since there is no sale as between the two dealers.

Monthly payment for three-month rental. The maximum price for the rental of used typewriters is established on the basis of the period for which the rental is made, regardless of the time of payment. Thus, where a company rented typewriters for a period of three months and payment was made on a monthly basis, the applicable rate is that for three months.

Maximum Price Regulation No. 263

NEW PHONOGRAPH RECORDS AND RECORD SCRAP

Applicability

Sale of records listed in a former manufacturer's catalogue for 1940. A company is the owner of the right to use a former manufacturer's name on phonograph records, from which a number of

new pressings are to be made. The Manufacture of the records was discontinued in 1941, and the manufacturer disposed of all its stock of records by January 1, 1942. In March 1942 no sales were made by the former manufacturer or distributors of the records, but some sales were still being made by retail stores. The last catalogue for these records was printed in 1940. The regulation does not apply to sales by the company of the new pressings since the manufacturer's 1940 catalogue is not the "manufacturer's catalogue during March 1942", or "manufacturer's catalogue in effect during March 1942"; the General Maximum Price Regulation applies

Imported phonograph records. The resale of imported phonograph records in this country is not covered by the Regulation; the General Maximum Price Regulation applies.

Price Determination

Mail order house- postage. Where a dealer sells new phonograph records on a retail mail order basis, he may require the customer to pay the postage in addition to the maximum price of the records provided that the amount of the postage is separately stated.

Discounts "generally in effect" during base period. The Regulation requires manufacturers and distributors to maintain discounts "generally in effect" during March 1942 to a purchaser of the same class, Section 1392.54(a). The use of the term "generally in effect" in this section permits a manufacturer or distributor to discontinue temporary or special discounts granted to a few favored purchasers and to allow such purchasers to pay a price which is as high as that generally paid by purchasers of the same class.

Violations and Evasions

Scrap records required to be turned in. It is not a violation of the Regulation in selling new phonograph records to require that scrap records be turned in, even though no such requirement was made during March 1942, provided that the required allowance is made for the scrap records, see Section 1392.51(b).

Maximum Price Regulation No. 294.

USED HOUSEHOLD VACUUM CLEANERS AND ATTACHMENTS FOR USED HOUSEHOLD VACUUM CLEANERS

Applicability

Repossessed vacuum cleaner. Where a purchaser of a new household vacuum cleaner is unable to complete payments on the cleaner which he has used in his home, and the seller repossesses the cleaner for the purpose of reselling it, the cleaner is subject to Regulation No. 294 as a "used household vacuum cleaner" under Section 1370.79(a)(7).

Sale not "in the course of trade or business". A person who sells a used vacuum cleaner is subject to the Regulation whether or not the sale is made in the course of trade or business. The phrase "in the course of trade or business" as used in Section 1370.71 refers only to purchasers of used vacuum cleaners.

Price Determination

Charge for additional work in rebuilding a used vacuum cleaner. A company performed the 14 requirements for a "rebuilt" vacuum cleaner and also performed a buffing, polishing, finishing and painting job. An additional charge for this work may not be added to the maximum price. The 14 items listed in the Regulation are the minimum requirements for rebuilding a used vacuum cleaner.

Violations and Evasions

Purchaser required to trade in used cleaner-trade in allowance. See page 4:7.

Maximum Price Regulation No. 320

EASTERN AND CENTRAL WOODEN AGRICULTURAL CONTAINERS

Applicability

Coverage of "cash and carry baskets". See page 26:3.

Maximum Price Regulation No. 429

CERTAIN USED CONSUMER DURABLE GOODS

Applicability

Factory rebuilt musical instruments. The sale of factory rebuilt musical instruments other than pianos is covered by the Regulation, see Section 1(i).

Used musical instruments. Used radios and used radio-phonograph combination sets are not used "musical instruments" within the meaning of Section 1(i), and therefore are not covered by the Regulation; the General Maximum Price Regulation applies.

Exempt sale - wholesale sale. The sale of a used frozen food cabinet is covered by Section 1(m) of the Regulation. Where the sale is made to a person who is engaged in the business of renting such cabinets it is not exempt as a wholesale sale within the meaning of Section 4a(4), since a purchase for the purpose of rental is not a purchase for the purpose of "re-selling".

Maximum Price Regulation No. 476

LUGGAGE

Applicability

Luggage items excepted from WPB Limitation Order L-284. Every sale of leather or non-leather luggage, whether of newly purchased items or of stock already on dealers' shelves, is subject to the Regulation, except small leather goods, such as billfolds, key containers, cardcases, and the like. While the War Production Board's Limitation Order L-284 does except from its control certain very low-priced articles of luggage, sales of all such items are still covered by the OPA Regulation.

Miscellaneous. Items such as duffle bags fall within the definition of luggage contained in Section 1. Such articles as laundry cases, toilet kits, brief cases, ring binders, small utility kits, and cases designed for carrying cosmetics, are not included within the purview of the definition.

Maximum Price Regulation No. 516

USED PHOTOGRAPHIC EQUIPMENT

Price Determination

"Price of a new article" - federal excise tax. In determining ceiling prices for items of used photographic equipment under Section 5, the term "price of a new article" refers to the retailer's selling price inclusive of the federal excise tax which was in effect in March 1942.

COTTON AND SYNTHETIC TEXTILE
PRODUCTS

Price Schedule No. 7

COMBED COTTON YARNS AND THE PROCESSING
THEREOF

Applicability

General. The Schedule is applicable to (a) the seller and the purchaser of combed yarn, except where specifically excluded, and (b) the service of mercerizing, bleaching, and/or gassing of combed yarn.

Intercompany sales. The Schedule applies to intercorporate sales, i.e., sales between the various affiliates and subsidiaries of a corporation.

Dyed yarn is not subject to the Schedule.

Gassed plied yarn is subject to the Schedule even though unmercerized and unbleached.

Gassed single yarn is not subject to the Schedule.

Price Determination

General. The Schedule establishes maximum prices in dollars-and-cents. The maximum prices for sales by producers include freight up to one cent per pound to the purchaser's place of business, and the maximum prices for sales of stock yarn are f.o.b. the seller's shipping point. "Stock yarn" is defined in footnote 1 of Section 1307.12(b) (1)(ii).

Purchase by war procurement agencies. The maximum prices for imported combed yarns listed in Section 1307.12, Table I, Column B, apply not only where the purchase is made by war procurement agencies, but also by any purchaser who has been designated by a war procurement agency as its agent for making the particular purchase. Agency designations may be used by the Army and Navy even though they are the consumer of a product made from the yarn, rather than of the yarn itself, as for example, where the army buys cloth from a weaver who in turn has to buy yarn from a spinner. OPA has also ruled that agency designation can be used to procure yarn for officers uniform cloth, even though the Government does not buy the cloth or the uniforms; also, that a thread converter can use agency designation to replenish his stock where he makes a sale of thread out of stock to a uniform manufacturer.

Premiums

Premium for "base-grade yarn." The description of "base-grade yarn" does not cover yarns which are put up to meet guaranteed dimensions. A premium may, therefore, be charged in the amount of the actual additional cost of a put-up, of guaranteed size required by a purchaser, regardless of the size of the cone or tube used.

Premium for combed yarn. The 6% premium for combed yarn sold to a manufacturer or converter of thread for use solely in the manufacture of thread, Section 1307.12(d) (4)(vii)(c), is applicable if the seller receives a written statement from the buyer that the yarn is to be used solely in the manufacture of thread. Thus, the premium may be charged even though such buyer does not manufacture the thread himself, but buys the yarn for purposes of resale to a manufacturer, provided the second buyer also certifies that the yarn is to be used solely in the manufacture of thread.

Seconds and shorts. The Schedule covers all sales of rayon grey goods irrespective of quality. Hence, the sale of seconds and shorts of rayon grey goods is subject to the Schedule.

Broker. A broker may not sell or offer to sell a construction of rayon grey goods at a higher price than the maximum price provided in the Schedule, whether or not he has title to the goods, and whether he acts on behalf of a disclosed or undisclosed principal.

Price Determination

General. The Schedule established maximum prices in dollars-and-cents, f.o.b. seller's mill.

Unlisted constructions. Maximum prices for constructions not specifically listed must be in line with the maximum price for the nearest related listed construction set forth in the Schedule.

Burling and sewing. A purchaser of grey goods, in a state requiring burling and sewing (inspecting and finishing worsted fabrics prior to delivery in the grey state), may add his cost of burling and sewing, even though the fabrics were purchased as first quality material. However, his selling price for the grey goods, plus the cost of burling and sewing may not exceed the maximum prices for goods upon which these operations have been performed.

Discounts. The grade or source of yarns to be used in manufacturing rayon cloth has not been specified in the Schedule for the reason that one manufacturer may make a very acceptable cloth with inferior yarn, properly warped and woven, whereas another mill, using first quality yarn may make a less desirable quality, due to poor workmanship. Therefore, where yarns, through processing by the manufacturer, are made serviceable for the production of a standard first quality cloth, the goods are not substandard and no discount need be made.

Violations and Evasions

Barter or exchange. In a barter or exchange of specific lots of grey goods for other fabrics, the barter must be on the basis of the ratio between the maximum prices of the goods involved. An exchange of goods upon "premium values" over and above the maximum prices, assigned to the goods by the persons making the exchange, is not based upon such a ratio and hence violates the Schedule.

Records and Reports

Reports by commission weavers. Section 1337.6 requires all manufacturers to make reports. Since commission weavers actually manufacture goods, they are also covered by the section and their reports should bear a notation that they are commission weavers.

Fiscal month basis. The Office of Price Administration has permitted the filing of reports on basis of a fiscal month, in order not to interfere with the accounting or record-keeping system of the manufacturer of rayon grey goods. However, such a report must show the exact period of time covered by the report.

Maximum Price Regulation No. 33

CARDED COTTON YARNS AND THE PROCESSING THEREOF

Applicability

Dyed yarn is not covered by the Regulation.

Sale for use as wrapping twine or for resale for ultimate use. The sale of the yarn by persons, other than producers, for use as wrapping twine, or for resale for ultimate use as wrapping twine, is not covered.

Hemp twine. The sale of hemp twine or hop twine made of hemp is exempt from the Regulation.

Sewing bag twine. The sale of sewing bag twine is subject to the Regulation.

Price Determination

Commissions

Broker's commission. The maximum prices include all commissions, therefore no broker's commission may be collected from the purchaser in addition to the maximum prices.

Premiums

Premium for chain or ball warps. A mercerizer who purchases cotton yarns put-up on chain or ball warps and who after processing the yarn delivers it on cones may charge his purchaser the 1¢ premium for chain or ball warps set forth in Section 1307.67(c)(5). Section 1307.69 provides that the maximum price for processed carded cotton yarn shall be the established ceiling for the grey yarn adjusted in accordance with the premiums provided in Section 1307.69 plus the appropriate premium for processing. Although the yarn is not delivered to the ultimate purchaser in chain or ball warps the mercerizer must have it in that form for mercerizing and no allowance for the extra cost of that put-up is included in the mercerizing premium itself.

Violations and Evasions

Open price clause. It is a violation of the Regulation to sell or offer to sell carded cotton yarns for future delivery at the maximum price in effect at the time of delivery.

Price Schedule No. 35

CARDED GREY AND COLORED-YARN COTTON GOODS

Applicability

General. The Schedule is applicable to sales and purchases of carded grey and colored-yarn cotton goods of the types and specifications listed in Appendix A, Sales by wholesalers, jobbers, or retailers in the performance of a recognized distributive function are not covered. However, sales to converters or finishers and sales by manufacturers or an agent of the manufacturers, or an agent of the manufacturer are subject to the Schedule.

Sales to the U.S. Government or to a Government contractor are subject to the Schedule.

Sale at wholesale level. See page 5:11.

Pound goods. See page 5:10.

Jobber to jobber sale. See page 5:9.

Jobber's recognized distributive functions. See page 5:2.

Jobbers, wholesalers - not recognized distributive function. The following have been held not to be jobbers "in the performance of a recognized distributive function" within the meaning of that term in Section 1316.51:

(1) Sales by a department store of grey cloth to a bag manufacturer. (If the grey cloth is not normally sold by the department store in the ordinary course of its business, the sale

is subject to Regulation No. 204.)

(2) A manufacturer of buffing and polishing wheels who occasionally sold cotton sheeting in the full bale to dispose of excess inventory, and sometimes to make profit.

(3) Sales by one wholesaler or jobber to another wholesaler or jobber are, presumptively, not sales in the performance of a recognized distributive function,

is subject to regulation No. 323. (1) A manufacturer of lifting and polishing wheels who occasionally sells certain articles in the retail sale to dispose of excess inventory, and sometimes to make profit, is not subject to the provisions of the law. (2) Sales by one wholesaler or jobber to another wholesaler or jobber are, presumably, not sales in the performance of a recognized distributive function. (3) Sales by one wholesaler or jobber to another wholesaler or jobber are, presumably, not sales in the performance of a recognized distributive function.

EXHIBIT A

EXHIBIT A

EXHIBIT A is a copy of the original document, and is subject to regulation No. 323.

EXHIBIT B

EXHIBIT B is a copy of the original document, and is subject to regulation No. 323. (1) A manufacturer of lifting and polishing wheels who occasionally sells certain articles in the retail sale to dispose of excess inventory, and sometimes to make profit, is not subject to the provisions of the law. (2) Sales by one wholesaler or jobber to another wholesaler or jobber are, presumably, not sales in the performance of a recognized distributive function. (3) Sales by one wholesaler or jobber to another wholesaler or jobber are, presumably, not sales in the performance of a recognized distributive function.

EXHIBIT C

EXHIBIT C is a copy of the original document, and is subject to regulation No. 323.

EXHIBIT D

EXHIBIT D is a copy of the original document, and is subject to regulation No. 323.

EXHIBIT E

EXHIBIT E is a copy of the original document, and is subject to regulation No. 323. (1) A manufacturer of lifting and polishing wheels who occasionally sells certain articles in the retail sale to dispose of excess inventory, and sometimes to make profit, is not subject to the provisions of the law. (2) Sales by one wholesaler or jobber to another wholesaler or jobber are, presumably, not sales in the performance of a recognized distributive function. (3) Sales by one wholesaler or jobber to another wholesaler or jobber are, presumably, not sales in the performance of a recognized distributive function.

EXHIBIT F is a copy of the original document, and is subject to regulation No. 323.

EXHIBIT G is a copy of the original document, and is subject to regulation No. 323.

EXHIBIT H is a copy of the original document, and is subject to regulation No. 323.

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EXHIBIT L is a copy of the original document, and is subject to regulation No. 323.

Enameled cloths and artificial leathers. The Regulation is not applicable to the sale of enameled cloths and artificial leathers, even though such materials are occasionally used for furniture coverings.

"Monks cloth" is a woven decorative fabric under the Regulation and therefore covered by it.

Linens and fabrics made from glass fibers. Woven decorative fabrics of linen or glass fiber, predominantly sold for the purposes listed in Section 1400.161(a), are within the coverage of the Regulation. It is the intent of the Regulation to regulate the maximum prices on sales of all woven decorative fabrics and the definition does not limit such coverage to fabrics composed of the fibers listed therein. The fibers listed are illustrative rather than restrictive. If this was not the case the words "such as" would be unnecessary. Stress is to be placed on the predominant use of the fabrics in question.

Price Schedule No. 89

BED LINENS

Applicability

Same person jobber and manufacturer. A jobber who is otherwise exempt by the Schedule, but is also a manufacturer subject to the Schedule must not sell at prices in excess of the established maximum prices.

Sale at wholesale level. See page 5:11.

Sales in performance of a recognized distributive function. The following sales are usually in the performance of a recognized distributive function: Sales by a prime jobber to an institutional jobber; and institutional jobber to an institution; and by an importer to another wholesaler.

Jobber's recognized distributive function. See page 5:2.

Jobbers, wholesalers - not recognized distributive functions. See page 5:2.

Jobber to jobber sale. See page 5:9.

Grey sheeting. See page 5:10.

Pound goods. See page 5:10.

Price Determination

Pound goods or remnants. See page 5:6.

Service charges for stamping. A reasonable charge, over and above the maximum price, may be made for the service of stamping sheets with indelible ink in accordance with the purchaser's specifications. The invoice for the goods should set forth separately, the price of the sheets and the charge for stamping.

Premiums

Premiums for hemstitching. The premium for hemstitching may be charged in addition to the maximum prices established in the Schedule. It is not an addition to the base prices stated in Table II of the Schedule, and therefore is not subject to the discounts provided in Table III.

Labeling

General. All bed linens must be labeled as specified in the Schedule.

Responsibility for labeling. The obligation to affix labels is imposed on the manufacturer not the retailer. In so far as OPA is concerned, however, the manufacturer's responsibility for the accuracy of the statements made on the label extends only to the statements required by the Schedule.

Description of particular type. A statement of the warp and fill thread count on labels does not constitute a sufficient compliance with the labeling requirements of the Schedule. The particular type of bed linens, set forth in the Schedule, must be stated.

Labeling "second selection." The requirements of the Schedule concerning labeling of seconds are not met by the use of the term "second selection." Bed linens which are seconds should be labeled "second."

Use of stamp. The labeling requirements set forth in Section 1316.104, are satisfied where the required information is stamped on each piece in the lot, provided that such marking is readily observable and is at least as durable as a label.

Maximum Price Regulation No. 118

COTTON PRODUCTS

Applicability

Imports. The Regulation expressly exempts the importation of cotton products, or their resale in this country. The exemption also applies to the sale in this country of goods finished from imported grey goods.

Note: If the goods are finished in this country in a manner which brings them under Regulation No. 127 (Finished Piece Goods), they are covered by that Regulation.

Sale at wholesale level. See page 5:11

Products customarily fabricated by vertical organizations. See page 5:12

"Vertical concern." In this Regulation the term "vertical concern" means a person who, both, weaves the grey goods and sells the finished goods; it does not include an integrated converter who does not weave the goods, even though he may both finish and market them himself.

Sales in performance of a recognized distributive function. The sale of an excess stock of grey goods by a converter is not a sale in the performance of a recognized distributive function. Such sales are subject to Regulation No. 204 (Idle or Frozen Materials Sold Under Priorities Regulation No. 13).

Jobber to jobber sale. A sale by one jobber to another jobber is, generally, subject to the Regulation, since such a sale is, presumptively, not in the performance of a recognized distributive function. A jobber to jobber sale may be in the performance of a recognized distributive function, where the buying jobber is not a competitor of the selling jobber in the same line of goods, and if the buying jobber has, in the normal course of his business, previously bought goods from jobbers of the same class as the seller.

Sale by jobber to converter. The sale of cotton goods by a jobber to a converter, or finisher is subject to the Regulation, whether or not the goods are to be used for consumption in the finishing plant or in the processing of cotton fabrics.

Sale to converter. The sale to a converter of a product subject to the Regulation is covered by the Regulation, even though the converter uses the product to manufacture a commodity specifically exempted from the Regulation.

Pound goods (remnants) of fabrics subject to the Regulation are also subject thereto. The Regulation is also applicable to pound goods of fabrics which in the full piece are subject to Price Schedule No. 35 and Price Schedule No. 89.

Grey goods exempt by another Regulation. See page 5:11.

Grey sheeting. The sale of grey sheeting, 42 inches or wider, predominantly used in the manufacture of products other than "domestics" is subject to Regulation No. 118 and not Regulation No. 89, or Regulation No. 157. Grey sheeting under 42 inches, predominantly used in the manufacture of products other than "domestics", is subject to Schedule No. 35.

Waistbands, waistband canvas. See page 5:13.

Cotton interliners made from laundry padding cut and stitched to fit between innertube and tire casings are not subject to the Regulation; the General Maximum Price Regulation applies.

Carded cotton sateen. The sale of carded filling sateens in the grey is specifically covered by the Regulation. Finished, carded cotton sateen is covered by Regulation 127.

Yarn-dyed carded cotton dress goods, cotton webbing, etc. The following are covered by the Regulation: yarn-dyed carded cotton dress goods, duck for tarpaulin (wagon cover duck) and if six inches or more in width, cotton webbing and webbing straps.

Piece-dyed cottonades which are woven in a woolen or worsted mill are not covered by Regulation No. 118; such products are covered by Regulation No. 127 if they otherwise meet the definition of "finished piece goods".

Sale to industrial user. See page 18:16.

Seconds and shorts. If discounts for seconds and shorts are not specified for a particular fabric, a seller must continue to allow the same discounts from firsts as he allowed in the base period.

Filter cloth. See page 5:14.

Price Determination

Adjustment for cotton content. Where the maximum price for a cotton product is determined by a base period price plus 5 cents per pound of cotton content, the 5-cent adjustment may be increased by the cost of the terms of purchase, e.g., where the terms are 3 $\frac{1}{2}$ 10 days, the 5-cent adjustment may be increased by dividing it by .97, thereby increasing the adjustment to .0515. However the additional 2 $\frac{1}{2}$ ¢ adjustment which is granted to bedspread manufacturers by Section 1400.118(d)(22) may not be increased by use of any division factor.

Pound goods or remnants. See page 5:6.

Enameling duck less than 38" wide. Section 1400.118(d)(8)(viii) set forth the maximum prices for enameling duck more than 38" wide. Enameling duck, less than 38" wide is priced in accordance with Section 1400.101(b)(1)(ii).

Sale of gem duck by wholesaler and jobber. The maximum prices provided in Section 1400.118(d)(8)(iii)(e) for sales of gem ducks by wholesalers and jobbers are gross prices, and are subject to the discount and credit terms set forth in Section 1400.118(d)(8)(iii)(a).

Anticipation allowance. The seller is required to continue credit terms at least as favorable to the buyer as his base period credit terms, including the customary anticipation allowances where the purchaser is willing to anticipate payment, since Section 1400.108(b)(3) provides that: "no seller shall discontinue or alter to the prejudice of a purchaser any discount or service granted or rendered to purchasers of the same general class during the base period".

Remnants. Osnaburg remnants (less than 10 yards in length), accumulated by a bleachery from goods that are used to wrap bales of finished goods, are priced under Section 1400.101(f).

Definitions

"Vertical concern." See page 5:9

Records and Reports

Invoicing - adjustable pricing. See page 5:17

Maximum Price Regulation No. 127

FINISHED PIECE GOODS

Applicability

Effective date - Worth Street Rules. The Regulation exempts from its operation the sale of goods, "if within the terms of the Worth Street Rules, title to such finished piece goods had passed to the purchaser prior to May 4, 1942," Whether or not title passed to the purchaser under the terms of the Worth Street Rules prior to May 4, 1942, is a question of private law, as to which OPA will not make a ruling, except under unusual circumstances.

The Regulation exempts from its operation the sale or delivery of finished piece goods, where title passed to the purchaser before May 4, 1942, within the terms of the Worth Street Rules, whether or not the particular contract of sale was made under those Rules.

Returned goods. The return of goods purchased on memorandum prior to the effective date of the Regulation pursuant to a right to return, is not a sale or delivery subject to the Regulation.

Imports. See page 5:9

Exemption of fabrics covered by Regulation No. 118. Section 1400.78(c)(32) exempts "any fabric" covered by Regulation No. 118 (Cotton Products). Where the fabric is sold at wholesale in the finished state, and is covered by Regulation No. 118 because it is predominantly finished and marketed by the producer, the sale at wholesale is exempt from Regulation No. 127, but subject to the General Maximum Price Regulation. If, on the other hand, the fabric is subject to Regulation No. 118 only in the grey state and, when finished, comes within the definition of "finished piece goods," then the sale of such fabrics at wholesale is subject to Regulation No. 127.

Grey goods exempt by another Regulation. The Regulation applies to the products described therein, even though the constituent parts of those products in the earlier stages of manufacture were subject to the General Maximum Price Regulation. Thus, piece goods which in the grey are exempt from Regulation No. 118 (Cotton Products) and therefore subject to the General Maximum Price Regulation, may be covered by Regulation No. 127 when they are sold as finished piece goods.

Sale at wholesale level. Fabrics covered at the producer level by Price Schedule No. 35 (Carded Grey and Colored-Yarn Cotton Goods), No. 99 (Bed Linens), and No. 118 (Cotton Products) are subject to the General Maximum Price Regulation at the wholesale level (if sold in the performance of a recognized distributive function), except in specific cases where wholesalers' prices are also established by these Schedules. In no case are such fabrics subject to Regulation No. 127 at the wholesale level. Specifically, sales of the following fabrics at the wholesale level are subject to the General Maximum Price Regulation: woven awning stripes, cheesecloth, chambray,

or by a "dressmakers' supply house" is exempt, pursuant to Section 1400.78(h) and (i). The sale of finished piece goods to tailors, furriers and dressmakers by a jobber who fails to qualify as a "tailor trimming store" or as a "dressmakers" supply house, because his "principal business" is not done with any one of these classes of purchasers, is nevertheless within the exemption if his sales to the exempt classes constitutes his principal business. This jobber's sales are subject to the General Maximum Price Regulation.

Exempt sales - sale of "better rayon fabrics" by converter. The word "predominantly" in Section 1400.78(1), exempting sales of "better rayon fabrics" by certain converters, refers to the dollar volume of business, not to "yardage" volume. Thus, a converter whose receipts from the sale of "better rayon fabrics" during the stated period exceeded 50% of his dollar volume of business during that period, qualifies for the exemption under this section.

Crinoline, a starched cloth predominantly finished and marketed by independent converters, is covered by the Regulation; "cheese bandages" and "cheese circles", commodities fabricated from Crinoline, are covered by the General Maximum Price Regulation.

Filter cloth yard goods are exempt from the Regulation by Section 1400.78(c)(17). Filter cloths which are of a type customarily finished, fabricated and marketed by weavers rather than independent converters should be priced under Regulation No. 118 unless sold by a jobber; other types would be subject to the General Maximum Price Regulation.

Swatches. The sale of swatches or sample pieces of cloth less than one foot square furnished to retailers is not covered by the Regulation since small pieces of this type are exempt under Section 1400.78(c)(35); the General Maximum Price Regulation applies.

Special limitations on use of entire finishing cost. Section 1400.82(e)(8) prescribes special limitations on the use of entire finishing costs in determining the converter's maximum price for printed fabrics. Section 1400.82(e)(8)(ii)(d) defines the "specified finishes" which are subject to these restrictions.

Question: Does the definition of "specified finishes" in inferior subdivision (d) cover multi-color roller printing which (1) is done on the same type of machine and copper rollers as are used by the so-called discharge printers except that the print job does not have to go through an ageing process; (2) is applied to both dyed piece goods and unfinished piece goods; (3) is applied to goods which are returned by the printer to the dyer to be finished; (4) is done by the use of emulsion such as aridye emulsion colors and not lacquer; and (5) in appearance is similar to a printed cloth converted by so-called discharge roller printers?

Answer: No. Any type of printing which meets all the elements enumerated above is more akin to discharge roller printing than to the types of finishes expressly listed in inferior subdivision (d) and therefore is not covered by the definition.

"Finished piece goods" and "specified finishes". Free-hand painting on textile fabrics is a finish within the meaning "otherwise finished" as that term is used in the definition of piece goods, and fabrics processed in that manner are subject to the Regulation. However, free-hand painting is not included in the "specified finishes" set forth in Section 1400.82(e)(8)(ii)(d). Therefore, it is not subject to the special limitations prescribed in the Regulation on the use of entire finishing cost in determining the ceiling price of the fabric.

Price Determination

Jobbers who previously acted as converter-jobbers. The Regulation contains no quota restrictions upon persons who act solely as jobbers. However, if an order has been issued permitting a converter-jobber to charge a jobber's markup on goods not converted by it, the order must be revoked before the person to whom it is applicable may act solely as jobber and charge the jobber's markup permitted in Section 1400.82(i)(1). This is the case since the order restricts the volume of goods upon which a jobber's markup may be charged.

Table of division factors. In determining the maximum selling price of fabrics converted by free-hand painted brush work, the seller must use the division factor specified for "plain dye" and not the division factor specified for "printed fabrics".

Person controlled by a converter. There is no restriction on a converter's right to charge a converter's markup even though the sale is made to his subsidiary. On the resale of such goods by the subsidiary, however, the ceiling is the same as for the converter; the goods remain "converted" goods and do not become "jobbed" goods because the parent and the subsidiary together constitute a single converter-jobber as defined in Section 1400.81(a)(9). If the sale is made by a person as a jobber to its subsidiary it presumably would not be a sale in the performance of a recognized distributive function since the goods presumably would not be advanced to the next stage of distribution. Therefore, the parent may not charge a jobber's markup upon the resale of such goods to its subsidiary.

Converter-jobber subsidiary. A newly formed subsidiary of a person who has been granted permission to act as a converter-jobber is automatically extended permission to act as converter-jobber. However, in determining the amount of jobbing and converting done by the parent under the permission granted by an order under Section 1400.82(1)(3) the total converting and jobbing done by the parent and the subsidiary must be considered.

Export sales. The Maximum Export Price Regulation supersedes the provisions of Section 1400.82(1)(2)(iv). The effect of this ruling is that export merchants may charge a 7% premium in addition to the jobber markup applicable to a sale to the same class of purchaser in this country.

Wholesalers and jobbers. Where a retailer sells finished piece goods to another retailer, he must sell at actual cost plus transportation and cannot charge a jobber's markup.

Example: Assume the following facts:

- (1) Retailer A purchased finished piece goods from a converter at the converter's ceiling price of 60¢ a yard and paid 1¢ a yard incoming transportation.
- (2) Retailer A purchased finished piece goods from a jobber at the ceiling price of 75¢ a yard and paid 1¢ a yard incoming transportation.
- (3) Retailer A wishes to sell the goods to retailer B.

On the above facts:

- (1) The maximum price for retailer A sales to retailer B of the goods acquired from the converter is 61¢ a yard;
- (2) The maximum price for retailer A sales to retailer B of goods acquired from the jobber is 76¢ a yard.

Where a retailer or any other Class II purchaser resells to a jobber of any other Class I purchaser, the maximum price for such a sale cannot exceed the original supplier's maximum price for sales to a Class I purchaser, even though it is below the present seller's cost of acquisition.

Example: Assume the following facts:

A retailer purchased finished piece goods from a converter at the converter's ceiling to a Class II purchaser of 60¢ a yard. The converter's ceiling to a Class I purchaser is 55¢ a yard. The retailer wishes to sell the goods to a jobber.

On the above facts: The maximum price for retailers sales to a Class I purchaser is 55¢ a yard.

Sale of goods purchased by subsidiary of a converter-jobber. On the resale of goods

purchased from a converter of a converter-jobber by a person controlled by or under common control with the seller, the maximum price is the purchaser's cost of acquisition and the converter's (seller's) ceiling price.

However, a subsidiary of a converter-jobber, who purchases finished piece goods converted by the parent organization, may apply for special permission to resell such goods at the parent's maximum price irrespective of the cost of acquisition. This permission will be granted only in cases where the parent organization acted as a converter-jobber prior to 1942.

Manufacturer's agent. A manufacturer's agent who acts as selling agent for a mill or converter is deemed to be under the control of a converter, and therefore insofar as he also jobs goods, is a converter-jobber subject to the provisions of Section 1400.82 (1)(2)(v).

Retailer. A person whose business is predominantly that of a retailer is a "Class II purchaser", and the fact that he may incidentally manufacture some dresses does not make him a "cutter" or "manufacturer" within the meaning of Section 1400.81(a)(3).

Sale by producers. The restriction on sales of finished piece goods by producers in Section 1400.82(s) applies to all sales of finished piece goods by the producer, except as is otherwise provided in (2)(i) and (ii) of this Section, whether or not the goods were woven in his own mill.

Sale of shoe-lining fabrics by converter-jobber. The maximum prices in Section 1400.82(p) apply to any person, including a converter-jobber, who sells shoe-lining fabrics to shoe manufacturers, and a petition for exception by a converter-jobber Section 1400.82(1)(3), need not be filed. However, Section 1400.82(1) applies to the sale of an unlisted shoe-lining fabric, or a listed one if sold to some one other than a shoe manufacturer, and in such cases a converter-jobber who wishes to charge a markup must petition for an exception pursuant to Section 1400.82(1)(3).

Evening fractional cent. Where the seller's maximum price per yard figures at cents and a fraction, the seller may not bill the purchaser at the nearest higher fraction. Thus, where the seller's maximum price figures .1298 cents, he may not bill for .13 cents; he may, of course, even out the figure by billing at a lower fraction, as, in the illustration given, by billing at .129 cents or .12 cents.

Jobber's actual cost. A mill agent, who also acts as a jobber, may not include his commissions as agent in computing his actual cost for purposes of determining his jobber's maximum price.

Dividing jobber's mark-up. In sales to Class II purchasers through two jobbers the 17% mark-up may not be divided in any ratio the jobbers desire, since the first jobber's mark-up may not exceed 12%. A jobber, who buys from a converter, has a specific maximum price (12% mark-up) in sales to Class I purchasers, and a higher maximum price (17% markup) for sales to Class II purchasers. Because jobbers are

Class I purchasers, the first jobber selling to a second jobber may take no greater mark-up than 12%. If the first jobber took the full 12% mark-up, then the second jobber could charge no mark-up whatever on a sale to a Class I purchaser, and he could charge a Class II purchaser no higher price than the first jobber might have charged the same purchaser.

Jobber's mark-up - converter-jobber. A converter, who is also regularly engaged in performing in addition to his converting business the function of a jobber, is a converter-jobber under Section 1400.81(a)(9), even though less than 1% of his sales are made as a jobber; he may not charge the jobber's mark-up on sales of jobbed goods unless authorized under Section 1400.82(i)(3).

Salesmen's commissions. A jobber who employs salesmen to sell finished piece goods must absorb the expenses of salesmen's commissions.

Substandard goods. Section 1400.82(L)(1) setting forth specified discounts which must be granted on the sale of substandard goods, does not apply to goods which are substandard solely as a result of defects in the grey goods, or because they contain minor dye imperfections which are so slight that they do not warrant description as "dye house seconds."

Discounts. A jobber may not quote a gross price in excess of the maximum price established by the Regulation, even though the price paid after a discount is taken will result in a price, not in excess of the maximum price under the Regulation, since such a quotation would be an offer to sell at a price higher than the maximum price.

Distress sale of exported merchandise stopped in shipment. See page 5:6

Jobber's "actual cost" - handling and packaging charges. The jobber's "actual cost" for purposes of Section 1400.82(i)(1) consists of the invoice price, less discounts, plus actual transportation charges. No other costs, such as those for handling and packaging the goods, may be computed as items of "actual cost." However, he is now authorized to charge not more than $\frac{1}{2}$ ¢ per yard for special folding under circumstances set forth in Section 1400.82(i)(5).

Working allowance charge. The working allowance, which under Section 1400.82(d)(1), is determined by reference to the working allowance specified in the finisher's contract, may not vary therefrom even though the working loss is actually more than the contract specification. Therefore, a contract which provides for a usual 3% working allowance, but also states that in case of excess shrinkage the working allowance would be automatically raised from 3% to 4% or 5%, does not give the finisher the right to increase his working allowance above 3%.

Charge for moireing and embossing. The restriction contained in Section 1400.82 (k) against charging for reprinting, redyeing, or overprinting subsequent to the original finishing operation, does not apply to finishing charges for moireing and embossing; such charges may be included as a part of the finishing cost.

Charge for putting up in bundles. An extra charge for putting up in bundles may not be added to the maximum price since it is not authorized by either Section 1400.82 (e)(6) dealing with special folding, or by Section 1400.82(f)(1) which restricts put-up charges to papers, boards, tubes and packing cases.

Charges for engraving and designing. A converter may not add his engraving and designing costs to the maximum price of the fabric, whether or not the designs are made up exclusively for a particular customer.

F.o.b. seller's point of shipment. The term "f.o.b seller's point of shipment," under the Regulation is to be construed in the light of the general custom prevailing throughout the finished piece goods industry. It has been the general practice

Maximum Price Regulation No. 478

COATED AND COMBINED FABRICS

Applicability

Multiple woven cotton fabric which is impregnated but not coated is not covered by the Regulation; the General Maximum Price Regulation applies.

Maximum Price Regulation No. 508

RAYON KNIT FABRICS AND THE KNITTING THEREOF

Applicability

Free-hand painted rayon knit fabrics. The Regulation covers sales of converted rayon knit fabrics which are free-hand painted.

Price Determination

"Jobber". Under the Regulation the maximum price for resales of rayon knit fabrics, other than 54" tricot fabric for outerwear covered by Table VI, by persons who did not job such fabrics in March 1942, must be a price authorized in writing by the Office of Price Administration, Washington, D. C. (Section 22(e)). The price authorized will depend on whether the seller is a "jobber" as that term is defined in the Regulation (Section 7(a)). The definition reads that a "jobber" is a person who resells the fabric in the "performance of a recognized distributive function". In normal times, rayon knit fabrics other than those priced under Table VI of the Regulation were in the main sold directly to cutters, retailers, and manufacturers. They have been jobbed in quantities only in the period subsequent to March 1942. Under these circumstances persons who started to job recently or who now wish to become jobbers of the fabric are performing no function other than the one which the producer has normally performed in the past. In other words, the operation of purchasing from a producer and selling to a cutter, manufacturer or retailer, does not, in view of former practice in this particular trade, constitute the performance of a "recognized distributive function". Rather, since multiplication of middlemen is a natural consequence of scarcity, this operation is to be regarded as one which pyramids markups without promoting the supply or flow of merchandise. Accordingly, any maximum price authorized for jobbing sales by persons who did not job such fabrics in March 1942 cannot exceed the producer's and converter's maximum price.

Definitions

"Jobber". See page 5:19(a).

EXPORT-IMPORT

Maximum Export Price Regulation

Applicability

Commodities not under domestic price ceilings. The Export Regulation applies to the export price of only those commodities for which a maximum domestic price has been established by OPA. The export prices of commodities for which no domestic maximum prices are fixed by any specific Schedule or Regulation or the General Maximum Price Regulation are not regulated by the Export Regulation.

Free Trade Zone. A sale of material which is in a Free Trade Zone is not governed by the Regulation.

Resale of exported commodity in a territory or possession of the United States. The provisions of the Regulation governing resale of an exported commodity by a foreign agent or subsidiary of a domestic exporter apply when the commodity was originally exported to a foreign country and then resold by such agent or subsidiary to a person in a territory or possession of the United States.

Sale of foreign goods. The Regulation is not applicable to sales which take place in the United States of goods which never enter the United States but are routed in bond directly from the foreign source to a purchaser outside the United States; see Section 9(d).

Agent in the United States. The sale of goods located outside the United States is not an export sale even though the sale is made through an agent in the United States and despite the fact that the goods must be shipped through the United States; there is no sale of goods located in the United States.

Exporter under foreign control. The Regulation defines "export Sale" to include "any sale of the exported commodity by a corporation owned or controlled by the exporter within a period of two years after the date of shipment of the commodity from the Continental United States", Section 1375.8(a)(1). This provision is applicable even though the exporter is owned or controlled by foreign interests.

Sale of manufacturing and trade-mark rights. When an exporter sells the manufacturing rights and the use of a trade name along with some or all of the actual commodities that go into the finished products to be manufactured outside the United States, the export regulation covers only the sale of the commodities; the privilege of manufacturing and the right to use the trade name are not part of the commodity sold, and charges for such privileges must be separately invoiced.

Sales to exporters - delivering to an emergency port of exit. See page 17:1.

Price Determination

Sales of finished piece goods. An export sale by the subsidiary of finished piece goods converted by the parent or for his account is a sale by "an exporter who is the manufacturer or producer" thereof as defined in Section 11(a)(5).

"Manufacturer or producer". The term "manufacturer or producer" includes an exporter who has processed or otherwise substantially changed the commodity to be exported. Repackaging is not such a change.

A person may be the "manufacturer or producer" of some of the commodities he exports and an "exporter other than the manufacturer or producer" of other commodities. The exporter's status is determined by reference to each item he exports.

Resale by a foreign subsidiary. The maximum price at which a foreign subsidiary of a domestic

exporter may resell a commodity exported from the United States is the maximum price that the domestic exporter would be permitted to charge the foreign purchaser if the domestic exporter was selling directly to such purchaser. No additional premium may be added merely because the sale is by the subsidiary. However, if the subsidiary performs a necessary service or function such as warehousing or distributing, this service should be recognized in either a higher premium or in a larger allowance for expenses, depending on the kind of service involved.

Finance charges. Finance charges are not export expenses which may be added pursuant to Section 1375.2(b) of the Regulation; they are part of general overhead expenses. In figuring the export price, provision is made for overhead expenses by the addition of a premium to the base price, pursuant to Section 4(b) of the Regulation.

Packing charges. If the manufacturer's domestic price includes packing charges, he may add as an export expense under Section 4(b) only the cost of export packing over and above the cost of domestic packing. This section does not permit the addition of the entire packing cost, since the manufacturer's domestic price includes the cost of domestic packing.

Cost of acquisition - illegal price. A non-manufacturing exporter, in figuring his cost of acquisition, may not use a price which violated a domestic Regulation at the time he purchased the commodity. The provision, in the Regulation referring to "the price at which the commodity has acquired for export" does not include an illegal price.

Base price. The provision in the regulation that the base price, in certain circumstances, may be the price at which the commodity was acquired for export, does not mean that the exporter must necessarily have intended to export at the time he acquired the commodity. He may use his cost of acquisition as his base in determining his maximum export price, whether or not he intended to export at the time he purchased the commodity.

Premiums

Credit charges. Where, during the base periods, the premium charged on the export of a commodity depended in part on differences in credit risks and in terms of payment, the exporter may now take those factors into consideration in figuring his premium.

Average premium. The "average premium" refers to the premium customary in the trade rather than any mathematical average of premiums charged by other exporters.

Addition of premium. The exporter may add to his base price the average premium charged in the export trade whether or not he actually added such premium during the base periods. Likewise, the fact that several other exporters did not add a premium during the base periods does not prevent an exporter from now adding one, provided the failure to add a premium was not representative of the custom in the export trade on the particular type of sale involved. Conversely, the fact that a particular exporter added a premium in the base period does not entitle him to add a premium now if his practice was not representative of the trade practice.

No premium. Where the export price during either or both of base periods was less than the domestic price, the maximum export price is the domestic price plus export expenses. The export regulation does not require the exporter to sell at less than his domestic price.

Premium on imports to be exported. The average premium that may be added to the base price is not affected by the fact that the material to be exported was originally imported into the United States. Import expenses are part of the cost of acquisition, i.e., part of the base price.

Premium - service and installation charges. Service and installation charges are not export expenses but are reflected in the average premium customarily charged during the base periods.

Manufacturer's premium. The export premium which may be charged by manufacturers is the difference between the domestic and export prices for the same or similar commodities during the base periods, not including the export price any amount that may now be added as export expenses. However, the customary export premium charged by exporters other than

manufacturers or producers is the customary mark-up over the cost of acquisition in the base period, again excluding any amount that may now be added as export expenses. The exporter who is not a manufacturer does not figure his premium on the same basis as the exporter-manufacturer, because the base prices of the two types of exporters are not analogous. The manufacturer's base price (his domestic price) already includes a profit to him whereas the base price of the exporter other than a manufacturer (cost of acquisition) includes only his actual (or potential) outlay without necessarily including any profit.

Resale by a foreign subsidiary. See page 6:1.

Finance charges. See page 6:2

Definitions

Agent of the exporter. The resale abroad of goods exported from the United States is covered by the Regulation, if made within two years after the original export "by an agent of the Exporter", Section 1375.8(a)(1). A person acting as a distributor for the domestic exporter is such an agent where he takes orders for the exporter, attends to shipments and makes financial arrangements. However, if he actually purchases the material from the exporter and takes title thereto, he is no longer an agent but is an independent distributor and his resales are not governed by the Regulation, unless the agent is controlled by the exporter.

CEREALS, FEEDS AND AGRICULTURAL CHEMICALS

Price Schedule No. 73

FISH MEAL

Applicability

Shrimp meal is not covered by the Schedule; the General Maximum Price Regulation applies.

Price Determination

Commissions

Commission paid a distributor. A buyer can pay a distributor a commission only if the distributor takes title to the fish meal. If the distributor does not take title but is merely an agent of the producer, then the buyer cannot pay prices higher than those specified in Section 1363.12 of the Regulation.

Maximum Price Regulation No. 74

ANIMAL PRODUCT FEEDINGSTUFFS

Applicability

Whale scraps are meat scraps under Section 3, and therefore are subject to the Regulation.

Maximum Price Regulation No. 135

MIXED FERTILIZER, SUPERPHOSPHATE AND POTASH

Applicability

Collodial phosphate, composed of pure unmixed phosphate rock, is not subject to the Regulation.

Spray or dusting lime. See page 7:3.

Maximum Price Regulation No. 144

RETAIL PRICES OF AGRICULTURAL INSECTICIDES AND
FUNGICIDES

Applicability

Black strap molasses. The sale of black strap molasses for use as a boll weevil insecticide is not subject to Regulation No. 142 (Seasonal Commodities), or Regulation No. 144, since it is generally sold for purposes other than controlling insects and diseases in relation to plants and crops; the General Maximum Price Regulation applies.

Other Uses. Unless the commodity is advertised, marked and sold for purposes other than as an insecticide or fungicide, commodities which are agricultural insecticides or fungicides are subject to the Regulation, even though they may have a distinct use other than as insecticides or fungicides.

Recalculating net cost under Section 6. The Office of Price Administration has changed a supplier's ceiling price for a food item covered by the Regulation. A wholesaler wished to recalculate the net cost to him pursuant to Section 6.

Question: Does the wholesaler, in recalculating his net cost, base net cost upon the first delivery after the supplier's price has been changed, even though it is not a customary purchase?

Answer: No. Net cost under Section 6 must be determined in accordance with net cost under Section 4, "Directions for applying the rule". Net cost therefore, is based upon purchases of a customary quantity from the customary means of delivery. It follows that after a supplier's price has been changed, the delivery upon which a wholesaler may recalculate his net cost under Section 6 must be based upon a customary purchase.

Combination food packages, which are purchased in packaged form and sold primarily as food, are food units under the classification "Miscellaneous Foods", Table A, item 37. The Regulation applies even though some of the items in the package are excluded from the Regulation or are not foods at all, such as soap. The maximum price is determined by applying to the net cost of the package the permitted mark-up for "Miscellaneous Foods."

However, combination food packages which are packaged by a wholesaler or retailer are priced as follows: If all the items in the package are covered by the Regulation or Regulation Nos. 422 and 423, the seller takes the net cost of each individual item and applies the permitted mark-up for that item. The maximum price for the package will, therefore, be the sum of the maximum prices determined for each item. If some of the items are subject to other Regulations, the seller must determine the maximum price for those items under the appropriate Regulations before totalling the price. No amount may be added for packaging.

Packaged flour as a new item. A wholesaler purchased flour packaged in 10 pound bags, shipped loose in a car, for which he determined his maximum price under the Regulation. He now receives the identical commodity still packaged in 10 pound bags but the bags are shipped in cartons, 5 bags to the carton, instead of loose as formerly. The 10 pound bag of flour packed in a carton is not a new item under Section 5 and the wholesaler is bound by the maximum price he has established for the 10 pound bag shipped loose.

Peanut butter manufacturer who purchases peanut butter. A manufacturer of ordinary type of ground peanut butter purchases from another manufacturer a hydrogenated peanut butter. The first manufacturer determines his maximum price for the purchased hydrogenated peanut butter as a processor under Regulation No. 325 (Peanuts and Peanut Butter). The hydrogenated peanut butter is not a commodity separate from the ordinary type of ground peanut butter and the special pricing provision of Section 23 of this Regulation does not apply.

"Usual receiving point" - branch warehouse. A wholesaler has a general warehouse in Minnesota where he receives merchandise. He then ships the goods to branch warehouses located throughout the Northwest from which he sells and delivers to his customers.

Question: Are the branch warehouses the "usual receiving points" for merchandise sold from them?

Answer: Yes. The branch warehouse is the "usual receiving point" from which the wholesaler customarily distributes goods customarily received from the general warehouse. The wholesaler may therefore include "freight in" to the branch warehouse in figuring his net cost under the Regulation.

Packaging charges. The additions to "net cost", Section 14, are permitted only for the specific packaging as therein provided. A wholesaler who purchases a commodity in bulk and packages it in tin or bottles, even without changing its form, is a manufacturer, Section 30 (c), and is therefore not entitled to the packaging allowance. The manufacturer, pursuant to Section 16, must determine his maximum price for the packaged commodity under the applicable manufacturer's Regulation. Thus for example, a wholesaler who buys peanut

butter in bulk and packages it in tin or bottles is a processor and prices under Regulation No. 335 (Peanuts and Peanut Butter); or a wholesaler who buys green coffee, roasts and packages it, is a manufacturer and prices under the General Maximum Price Regulation.

Enriched flour - new item. Flour, enriched in accordance with new standards promulgated by the Federal Security Administration (Food and Drug) and for which a new price was established under Regulation No. 296 (Flour from Wheat, Semolina and Farina sold by Millers and Blenders), is a "new item" under this Regulation and Regulation Nos. 422 and 423. The maximum price under this Regulation is determined in accordance with Section 5. This ruling is equally applicable to enriched corn meal and corn grits for which a new price was established under Regulation No. 305 (Corn Meal, Corn Flour and other Products made by a Dry Milling Process).

Opening price allowance - canned soup. A soup company sells soup at \$3.95 per case less 35¢ as an opening price allowance. "Net cost", Section 4, is the amount paid by a purchaser to his supplier less all discounts, except cash discounts and swell and label allowances. Therefore, under the Regulation a wholesaler or a retailer, under Regulation Nos. 422 and 423, who purchases canned soup under this arrangement, determines his maximum price by applying the appropriate markup to his "net cost", that is to \$3.60 which is the amount after deducting the 35¢ opening allowance. Furthermore, maximum prices determined on the basis of net cost at \$3.60, may not be recalculated subsequently, when fill-in purchases are made at \$3.95, Section 4(c).

Terminal company charges. Wholesalers pool their purchases in order to receive shipments in carload quantities. The terminal company then breaks the cars and assigns the merchandise.

Question: May the wholesalers add to transportation costs the terminal company's charges for breaking the cars?

Answer: No. The wholesalers may not add to transportation cost any amount paid the terminal company for breaking the cars. The terminal company's charges are "local unloading", Section 4(a), and therefore may not be included as transportation cost.

Label allowance. A company has various commodities packed for it under private labels which it furnishes to the canner. The canner makes a labeling allowance which, however, is less than the company's actual label costs.

Question: May the company add to its "net cost" the difference between the allowance and the actual cost of the labels?

Answer: No. Only the amount of the actual labeling allowance may be included in "net cost" under Section 4(a).

Transportation charges - storage cost incurred in transporting goods. Storage costs incurred by a wholesaler while goods are being shipped to his warehouse are not part of "transportation charges" under Section 4(a). Therefore, they may not be included in determining "net cost".

Definitions

"Delivery." Under the Regulation and Regulation Nos. 422 and 423, "delivery" is defined as follows: "Delivery of an item covered by this Regulation shall be considered to have occurred when the item has been received by you at your receiving point."

"Wagon-wholesaler." In order to qualify as a "wagon-wholesaler", Section 30(e), a wholesaler need not carry an entire inventory in his truck. However, an inventory must be stocked in the truck and sales and deliveries must be made at the same time from that inventory. A wholesaler, employing salesmen who carry samples, would not be a "wagon-wholesaler", exempt from the Regulation.

"Milk, canned", Table A, item 20, of this Regulation and Regulation Nos. 422 and 423 means milk in hermetically sealed containers. It does not include condensed or evaporated milk in containers not hermetically sealed.

"Larger part of business", Section 2(a), means the dollar volume of business of a wholesaler; it does not mean the number of customers.

Definitions

Bluehill cheese is neither Cheddar nor processed cheese, and hence the Regulation does not apply. Regulation No. 280 (Maximum Price for Specific Food Products) applies.

A "Federal School" qualifying for the markup in Section 20(a)(6)(ii), is a school owned and operated by the Federal Government. It includes also a "contract school" which is defined under Section 1598.1(a)(1) of Food Distribution Regulation No. 2 as follows: A contract school "means and includes any person who is feeding, pursuant to a written contract with any agency of the U. S., personnel of the armed services of the U. S., fed under the command of a commissioned or non-commissioned officer or other authorized representative of the armed services of the U. S., and who is specifically authorized by the armed service concerned to purchase, set aside and restrict food pursuant to this regulation." A school under private direction which does not qualify as a "contract school" is not a "federal school", and therefore it may not take the markup on deliveries of butter to "federal schools."

Records and Reports

Invoice - butter. Under Section 5, the invoice or sales slip must contain a description of the butter sold, i.e., the grade or score of the butter, whether it is in bulk or print or packaged, including the particular type of print or package.

Maximum Price Regulation No. 329

PURCHASES OF MILK FROM PRODUCERS FOR RESALE AS FLUID MILK

Applicability

Purchases of bulk milk for fluid uses. The Regulation applies to the purchase of bulk milk from producers where the bulk milk is subsequently used or subsequently resold as fluid skim milk, buttermilk or chocolate milk. However, the Regulation does not apply to the purchase of bulk milk from producers where the bulk milk is used in manufacturing dairy products, Section 1351.405(c) entitled Exempt Sales.

Violations and Evasions

Cooperatives - purchase price determined by use of milk - change in use. During the base period a milk cooperative association paid its producer members upon a use classification basis. The producers received a higher return for milk sold for fluid uses than for that sold for manufacturing uses, because milk sold for manufactured uses was considered "surplus milk". If the co-operative now wishes to sell its "surplus milk" for fluid uses in order to increase its return to its member, it will not be a violation of the Regulation, provided that the price for the purchase of milk for fluid uses does not exceed the maximum price established in the Regulation.

Maximum Price Regulation No. 333

EGGS AND EGG PRODUCTS

Price Determination

Charge for containers. The permitted allowance of 2¢ for each retail carton of one dozen eggs, Section 1429.76(a), is added after determining the maximum price for the eggs without the carton.

Definitions

"Current receipt eggs", pursuant to Section 1429.65(a)(3), must have a "net weight of not less than 43 pounds per 30 dozen for the lot sold." This means that the lot sold must average 43 pounds net weight per case.

IRON AND STEEL

Price Schedule No. 4

IRON AND STEEL SCRAP

Applicability

General. The Schedule is applicable to sales to the consumer or to his broker. Both the seller and the buyer in such sales are subject to the Schedule. The Schedule establishes maximum prices for iron and steel scrap according to the following categories:

- (1) Iron and steel scrap other than railroad scrap.
- (2) Iron and steel scrap originating from railroads.
- (3) Cast iron scrap other than railroad scrap.
- (4) Iron and steel scrap imported into the United States.

Dealer. The maximum prices in the Schedule are not applicable to the sale of scrap to a dealer who must prepare the scrap before reselling it.

Sales to consumers. The Schedule is applicable to sales of iron and steel scrap to consumers or their brokers. The Schedule is not applicable if reusable iron and steel scrap is sold by a wrecker or other person to one who proposes to recondition the scrap and then sell it as a reusable product.

Use of product by purchaser. The Schedule is applicable to the sale of street car axles and shafting bars which the purchaser intends to cut, heat, shape and manufacture into gear forgings, pinion shafts, castings and similar items, since this material is not sold for re-use as car axles, etc., but rather for manufacture into entirely different products.

Mining companies. Mining companies purchasing scrap for precipitation purposes in copper smelting operations are "consumers" within the meaning of Section 1304.11(f).

Purchase of scrap for resale to an affiliated company. A corporation operates a soil pipe foundry on the same premises as a partnership which deals in scrap metal. The senior partner of the partnership is president of the corporation and the partners own 50% of the capital stock of the corporation. The purchases of all scrap by the partnership are subject to the Schedule, because of its close relationship with the consumer corporation.

Cancellation of special permission to basic open hearth consumers to purchase alloy free low phos. and sulphur turnings. The footnote to Section 1304.13(a)(2) of the Schedule, as amended, automatically cancels the special permission previously granted under former footnote 7 to Section 1304.13(a)(2) to basic open hearth consumers to purchase alloy free low phos. and sulphur turnings at the electric furnace price.

Nickel steel scrap and ferro-nickel-steel scrap and ferro-nickel-iron scrap. See page 17:2.

Sale of selected steel plate to trade schools. See page 13:28.

Rail in ground. See page 13:18.

Freight car axles. See page 16:23.

Scrap truck axles. See page 16:30.

Price Determination

Unfilled orders or outstanding contracts. Irrespective of unfilled orders or outstanding

contracts, no payment against deliveries of iron and steel scrap may be made at prices in excess of those established by the Schedule. Whether or not there is an obligation to deliver scrap under outstanding contracts is a matter of private contract law. However, OPA has consistently ruled that no payments against deliveries of iron and steel scrap may be made in excess of the maximum prices effective at the time of delivery.

Subsidiary company scrap. When a railroad is a subsidiary of another railroad and the parent railroad has in the past sold the subsidiary's scrap, OPA has authorized maximum prices for the parent railroad to include the subsidiary railroad. Where two or more joint owners (railroad companies) of a company have sold the scrap of the jointly owned company, they may continue to do so.

Sale of scrap by Navy. Since the Schedule only establishes maximum prices on sales to consumers or their brokers, if the Navy sells to someone other than a consumer or his broker, the Schedule does not apply; the Navy should require an affidavit from the purchasers of the scrap stating that on resale to consumers, the prices will be in accordance with the Schedule.

Mixed shipment. Where No. 1 bundles and machine shop turnings are included in the same car, the mixed shipment provision, Section 1304.13(a)(8)(i), is applicable even though the two grades are segregated in the car by means of a bulkhead.

Mixed cast and steel scrap. The mixed shipment provisions of the Schedule do not apply merely to mixtures of various grades of steel or various grades of cast. These provisions apply where steel and cast scrap are mixed in the same vehicle.

Tube scrap. The maximum price for tube scrap is determined by Section 1304.13(a)(6), which requires prior approval by OPA for unlisted grades deemed superior to No. 1 heavy melting steel. Tube scrap was eliminated as a listed grade in Section 1304.13(a)(2), August 14, 1942, Amendment No. 7. One of the tests applied in determining the premium which this grade of scrap may command over No. 1 heavy melting steel, is the average differential above the price of the base grade, No. 1 heavy melting steel, which the seller received during the base period September 1, 1940, to January 31, 1941.

Black sheet scrap, such as auto body and fender stock, suitable for preparation into No. 2 bundles, is unprepared No. 2 bundles and may be sold at a price not to exceed \$4 per gross ton below the maximum price for No. 2 bundles. Such scrap is not to be considered as the unprepared form of No. 2 busheling.

Unstripped diesel and tractor engines are an inferior, unlisted grade of cast iron scrap, and the maximum price should be determined under Section 1304.15(a)(4), "Grades inferior to No. 1 cupola cast"; in the absence of adequate base period experience, the applicable maximum price for "Heavy Breakable Cast," Item 6, may be used.

Nickel steel scrap and ferro-nickel-steel scrap and ferro-nickel-iron scrap. See page 17:2.

Classification - light galvanized sheets. The maximum price for light galvanized sheets of large sizes and less than 1/8 inch in thickness is \$6.00 per gross ton below No. 1 heavy melting steel. This scrap is classified as unprepared No. 3 bundles, and hence has an adjustment of minus \$2.00 for that grade, and because unprepared, a minus \$4.00 adjustment, or a total of \$6.00 below No. 1 heavy melting steel.

Annealing boxes. Steel annealing boxes are unprepared No. 1 heavy melting steel and are priced at \$3.50 per gross ton below No. 1 heavy melting steel. Cast or malleable iron annealing boxes are unprepared cast iron and are priced at \$2.50 per gross ton below the price of No. 1 cupola cast, that is, at the same price as heavy breakable cast.

Shipment of turnings "direct from industrial producer." Where dealers purchase alloy free turnings and heavy turnings from producers who have no railroad facilities, or do not produce in sufficient quantities to load a railroad car each day, or do not have adequate storage space, and therefore the dealers haul the turnings to railroad cars at yards leased or owned by them for loading purposes only, the shipments are not

"direct from the industrial producer" within the meaning of the footnote to Section 1304.13(a)(2). Accordingly, the maximum price for such turnings is that for shovelling turnings.

Basing point. The amendment to Section 1304.13(d)(4) exception 3(1), making Washington a remote State for purposes of establishing delivered prices, does not remove Seattle, Washington, as a basing point.

Use of any point within basing point in establishing shipping point price. In computing maximum shipping point prices under Section 1304.13(c)(1)(ii), the lowest established charge for transporting scrap from the shipping point to any point within the basing point may be used. Thus, where the freight from Herrin, Illinois, to St. Louis, Missouri, is \$1.97 per gross ton and to East St. Louis is \$1.51 per gross ton, the lower figure (\$1.51) may be deducted from the basing point price, since East St. Louis is included in the St. Louis basing point.

Detinned scrap - preparation in transit. A corporation which purchased tin-coated material and moved the material to its detinning plant where the detinned scrap is baled and sold to a scrap consumer, may not charge the consumer a preparation fee of \$4.00 per gross ton, nor add the transportation charges to the detinning plant under Section 1304.13(e). The maximum shipping point price for the bundles must be computed in the same manner as the maximum shipping point price applicable to an ordinary dealer preparing bundles, and all costs prior to placing the scrap at its shipping point must be absorbed by the preparer.

Preparation in-transit. Where a consumer purchases unprepared remote scrap which is to be prepared in-transit in accordance with Section 1304.13(e)(4), he may not pay a higher price at the remote shipping point than would be allowable on a direct shipment of the scrap from the remote shipping point to the consumer's plant. Thus, if the maximum shipping point price of body and fender stock at a remote shipping point is \$9.00 per gross ton, a consumer purchasing such scrap for preparation in-transit may not pay \$10.00 per gross ton at the remote shipping point, even though the bundler is willing to accept \$3.00 rather than a \$4.00 preparation fee.

Preparation by dealer of scrap in-transit. The Schedule does not apply to the price of unprepared scrap purchased by a dealer in his normal operations as a dealer; however, where a dealer prepares scrap in-transit in accordance with the provisions of Section 1304.13(e)(5), the price paid for the allocated scrap at the original shipping point is subject to the Regulation, since in this case the sale of the unprepared scrap at the original shipping point is a sale to a consumer.

Allocation of remote scrap after preparation. Where, pursuant to Section 1304.13(e)(4), the C Steel Company purchased remote scrap at remote shipping points and routed the material to the D Company's plant for preparation in-transit, and after preparation the War Production Board allocated the scrap to the J Steel Corporation, Section 1304.13(e)(4) is still applicable despite such diversion of the scrap; thus the maximum price of the scrap after preparation and loading on cars at the D Company's plant is the same as it would have been for shipment to the C Steel Company.

Transportation costs where scrap is prepared in-transit. The preparation-in-transit provision for unprepared scrap allocated by the War Production Board to a consumer lacking facilities for preparing the scrap, Section 1304.13(e)(5), is not applicable to truck movements to the preparer's yard, even though carload quantities are allocated; this provision is limited to the scrap moved to the preparer's yard by rail. Therefore, where the scrap was moved to the preparer's yard by truck, the scrap is not at its shipping point until after preparation, and the consumer may not bear the transportation costs incurred in moving the scrap to the preparer's yard.

Shipping point under Appendix A. Where the operator of a scrap yard delivers scrap to the consumer by truck from the scrap yard to a railroad yard and thence by rail to the consumer's plant, the scrap is not at its shipping point until it is placed f.o.b. the railroad car.

Change in classification of products. See page 13:13.

Letters of credit. Setting up of a letter of credit directly in favor of seller by foreign customer in an amount in excess of the maximum prices and the remission of the excess to seller's foreign branch is a violation of the Schedule. It is also a violation if the transaction is handled in this way through a wholly-owned foreign subsidiary of the seller. Permission was granted to carry out arrangements made prior to issuance of the Schedule.

Responsibility of buyer. For the purposes of Section 1306.1 of the Schedule, which imposes a maximum price prohibition on both the seller and the buyer, where the maximum prices are determined by the base period or base date of the seller, the buyer may, in the absence of any reason for him to believe that the price exceeds the maximum, rely upon the seller's statement that the price is not in excess of the maximum price.

Finder's fees. See page 13:13.

Price Schedule No. 10

PIG IRON

Applicability

General. This Schedule is applicable to the sale of pig iron which is (a) purchased from producers of that product, and (b) sold or delivered, or offered for sale or delivery, by such producers. The maximum prices are applicable regardless of any previous commitments.

Foreign production. Pig iron produced and sold abroad by a domestic company is not subject to the Schedule since it is not a sale, delivery or moving into or out of any one of the forty-eight States or the District of Columbia.

Price Determination

Differentials. The silicon, manganese, and phosphorus differentials are applicable to low-phosphorus and high-silicon (silvery) pig iron, as well as all other kinds and grades of pig iron.

Silicon differential. The silicon differential provision means that 50¢ per gross ton may be added to the maximum price of the Schedule for silicon content for each 0.25% silicon content in excess of base grade (1.75% to 2.25%).

Manganese differential. The manganese differential provision means that 50¢ per gross ton may be added to the maximum price of the Schedule for manganese content for each 0.50% manganese content in excess of 1%.

Phosphorus differential. The phosphorus provision means that the maximum price of the Schedule must be reduced 38¢ per gross ton for phosphorus content of 0.70% and over.

Taxes

Federal transportation tax. Under the Schedule, which employs a strict basing point pricing system, and Supplementary Order No. 31, the 3% Federal transportation tax, effective December 1, 1942, applicable to the transportation charge from the governing basing point to the place of delivery, may be added to the maximum price which may be charged to the purchaser; the seller must absorb any tax payments in excess of the tax applicable to freight from the governing basing point to the place of delivery. Where it has been customary in certain switching districts to add a flat delivery rate

(Section 1306.56) and absorb freight increases, the transportation tax on the switching charge must be absorbed by the seller.

Price Schedule No. 41

STEEL CASTINGS

Applicability

General. The Schedule is applicable to the sale by producers and purchasers of steel castings and railroad specialties.

Sale by agent. If a person acts merely as an agent for the producer of steel castings, so that the sale is a sale by a producer with the title passing directly from the producer to the purchaser, the maximum price provided for by the Schedule applies, and no additional charge to the purchaser may be made by the agent.

Price Determination

Subsequently acquired foundry. On December 1, 1942, the G Foundry Corporation purchased the plant, equipment and inventories of the S Foundry Company, but did not acquire any of its capital stock or assume any of its corporate liabilities. Although the S Company has not been dissolved, it no longer produces steel castings. Since December 1, 1941, the G Corporation actually operated the plant acquired from the S Company as a separate division of its corporation. The G Corporation also operated, before July 15, 1941, another steel foundry division, and filed the prices for castings manufactured by such division with OPA pursuant to the Schedule. The G Corporation's applicable maximum prices under Section 1306.112(a), for both the acquired division and its other division are the July 15, 1941 prices filed by the latter division, since the Corporation was a "producer" on that date within the meaning of the Schedule, and those prices apply to its present operations even though it now maintains two foundries.

Valve fittings not requiring Navy specification and inspection. Valve fittings on which Navy specifications and inspection are not required, are "industrial steel castings" subject to the provisions of Section 1306.112(b) and (c).

Average shipping weight. Section 1306.112 provides that the "maximum prices are applicable to the actual shipping weights of the castings." Where the "actual shipping weights" of the castings vary on any one order, the average shipping weight of all the castings on the order is the "actual shipping weight" within the meaning of the Schedule.

Transportation charges. A producer of steel castings who determines maximum prices under Section 1306.112(b) must maintain the prices, terms and conditions in effect on the base date. Thus, where he sold steel castings at an f.o.b. price on the base date, he may charge the purchaser the full transportation costs; where he absorbed a part or all of the transportation costs on the base date, he must continue to do so, except that if the amount he absorbs exceeds 50¢ per 100 lbs., he may now charge the purchaser the amount by which the present transportation costs exceeds 50¢ per 100 lbs.

Violations and Evasions

Escalator clauses. A quotation of prices containing the following provision violates the Schedule: "This quotation is based on present labor and material costs and is subject to adjustment at the time of delivery."

Quotations for estimating purposes. The following practice has been common in the past: A car builder receiving inquiries from a railroad for cars would request the specialty producer for a quotation on specialties for the cars, so that the car builder could give

the railroad a definite price on the cars; no definite specifications were furnished in requesting the quotations and the specialty producers customarily quoted a price substantially higher than the price ultimately charged so as to cover possible complicated designs, extras, etc.; if the quotation was accepted by the car builder, the car builder was billed for the original amount quoted, but the specialty producer paid the railroad a sum representing the balance between the price quoted, and the price it would have charged for the railroad specialties, had specifications been furnished. This procedure cannot be continued insofar as a specialty producer made an offer to sell or sold, and the car builder agreed to purchase, or purchased at prices in excess of the maximum prices. However, it is not a violation of the Schedule for a specialty producer, in response to inquiries of car builders, where no specifications are furnished with the inquiry, to name prices in excess of those set forth in the Schedule to cover possible changes in design, extras, etc., provided that it is specifically stated that prices named are for the purpose of enabling the car builders to estimate, and provided that no sales are made or billed to the car builders at prices in excess of those established by OPA. One specialty producer proposed to reply to car builders' inquiries in cases where no specifications are furnished, as follows:

"In response to your inquiry we submit the following prices for estimating purposes only. If, as, and when we receive the detailed specifications, we will quote net prices not in excess of the maximum prices in effect at that time as established by the Office of Price Administration."

This form of quotation is not an "offer to sell" and is valid.

Maximum Price Regulation No. 43

USED STEEL DRUMS, PAILS AND CONTAINERS, AND RECONDITIONING OF USED STEEL DRUMS

Applicability

Galvanized iron drums. The occasional reference to drums as "galvanized iron drums" is a misnomer; the drums so called are made from hot rolled barrel steel and therefore are subject to the Schedule. A drum called a "galvanized iron drum" is actually a steel drum.

Lease of steel drums. The lease of steel drums by a dealer's organization to the trade on the basis of a charge of 5¢ per day, the title to the drums remaining in the organization and the lessee being responsible for any damage, is not covered by the provisions of the Schedule.

Return of deposit. The transaction involved in an emptier's reclaiming his deposit upon returning drums used as asphalt containers by the seller of the asphalt is not covered by the Schedule, provided that title to the drums remained in the seller; in such a case there is no sale of the drums.

Value of container where seller of commodity retains title thereto. If in March 1942, a seller of a commodity did not retain title to a drum in which the commodity was packed, and now sells the same commodity without giving the purchaser title to the drum, he must reduce his maximum price for the commodity by an amount equal to the March 1942 value of the empty drum.

If a maximum price regulation was in effect during March 1942, establishing a specific maximum price for the used drums, that maximum price is the March 1942 value of the empty drum to the purchaser of the commodity.

The value of an empty drum, to the purchaser of a commodity packed in a drum covered by Regulation No. 43, is the maximum price set forth in the Regulation. This amount must be deducted from the maximum price for the commodity when the seller, contrary to his March 1942 practice, retains title to the drum.

Where containers had no value to the purchaser of the commodity in March 1942, the maximum price for the commodity is the seller's maximum price for the commodity with the container included, and no reduction in such maximum price need be made where the seller now retains title to the container.

Price Determination

Reconditioned drums. A reconditioner of drums may only charge the maximum price under the Schedule for reconditioned drums where he makes alterations and installations to drums to restore them to their original condition which will render them fit for use as containers for which they were originally intended. If, however, the reconditioner alters the drums in such manner as to convert them to a use for which they were not originally fitted when new, he may make an additional charge for labor and material involved in making such alterations. The additional charge may, of course, be made only by the person making the original sale of the altered drum. Illustrative of the second situation is the making of new openings in the drums and furnishing flang and bung for such new openings for the purpose of converting the drums to a use as containers for which they were originally fitted when new.

"Reconditioned drum". Merely washing the drum does not make it a "reconditioned drum." All the requirements of the definition in the Schedule must be met in order to qualify for the maximum price for a reconditioned drum. A tight drum does not qualify as a "reconditioned drum" unless it has a bung.

Reconditioning prior to re-use. A drum which fulfills all the requirements of the definition of a reconditioned drum, may qualify for the maximum price for a reconditioned drum.

Raw used drums shipped from a point not in Washington, Oregon, or California. Raw used drums emptied in Alaska and located there were sold by an Alaskan seller to a purchaser in the State of Washington, delivery being completed in that State. The additional charges allowed by the Schedule where the drums are "purchased and delivery is completed in the States of California, Washington and Oregon" is not applicable under these facts, since the purchase of the drums was not "completed" in the State of Washington.

Return of drum by emptier. (a) Where the emptier sells a drum to the filler and the latter credits the emptier's account with more than the amount specified in the Schedule for a drum of that capacity, the transaction is a violation of the Schedule, since the filler is purchasing the drum in excess of the prescribed maximum price. (b) Where an emptier returns a drum which is his property to a filler and accepts another drum from the filler in exchange, and the returned drum has been reconditioned by the emptier and the freight paid by him, the filler must credit the emptier with the freight cost and the cost of reconditioning. Where a raw drum is returned and the emptier pays the freight, the filler must credit the emptier with the full amount of the transportation charge.

Transportation charges. The maximum prices of the Schedule are prices for drums delivered to the purchaser, except in the case of raw used drums which are sold by the emptier of such drums. The Schedule provides, however, for the addition of charges for transportation in certain cases. When the transportation charge is borne by the buyer it must be deducted from the maximum price, where the drum is sold at the maximum price, unless the charge comes within the provisions for the specified transportation charges permitted by the Schedule.

Raw used drum. Pursuant to Section 1306.211(c)(2), where a raw used drum is purchased from a person other than the emptier, a deduction must be made if the drum is not delivered to the purchaser or, if not placed f.o.b. railroad cars. When the deduction is made, the resulting price is considered the maximum f.o.b. shipping point price of the seller, and the purchaser may absorb transportation charges from the point where the drums are loaded on the vehicle. Thus, where a reconditioner purchases a raw used drum on an f.o.b. shipping point basis from a person other than the person who empties the drum, and absorbs the transportation charges to his reconditioning plant, the delivered cost to the reconditioner may exceed the maximum prices established in Section 1306.211(c)(1). However, the reconditioner may not add this transportation charge to the maximum price upon the resale of the drum.

Value of container where seller of commodity retains title thereto. See page 13:16.

price of the goods exceeded the maximum price.

Auction sales. The sale of iron and steel products at auctions by any jobber, dealer, or warehouse must not exceed the maximum prices for the products sold. Bidders may not exceed the maximum price of the Schedule.

High tee rails - grooved girder rails. See page 13:18.

High carbon steel music spring wire is covered by the Schedule.

Hot-rolled shovel steel sheets are covered by the Schedule.

Insect screen wire cloth is covered by the Schedule.

Lally columns. The Schedule covers lally columns made up entirely of iron or steel. It does not cover lally columns which are made of concrete set in steel.

Lead head nails - 20 gauge wire-galvanized mesh. The Schedule is applicable to the sale of lead head nails 20-gauge wire, and 2-inch mesh prepared in 150-foot roll galvanized before weaving, sold under the trade name of "Hexcel Netting."

Mine ties are not covered by the Schedule.

Pipe nipples which are fabricated fittings of customary limited lengths, made from ordinary lengths of pipe and used to connect fittings are not subject to the Schedule.

Rail spikes. Rail nails 9/15 inches by 5½ inches are rail spikes and as such are covered by the Schedule.

Splice bars and track bolts. New or used splice bars are covered by the Schedule. New track bolts when sold by producers are covered by Regulation No. 147 (Bolts, Nuts, Screws and Rivets) and when sold by a person other than the producer are subject to the General Maximum Price Regulation. Splice bars and track bolts are not included in the definition of "relaying rail" and therefore are not subject to Regulation No. 46 (Relaying Rail).

Stucco netting, and all other woven wire products are subject to the Schedule.

Used sucker rods. See page 16:21.

Boiler tubes - sales by a boiler manufacturer. See page 16:18.

Rods. The Schedule is not applicable to the resale of coated welding rods known as No. 5 Fleetweld.

Wrought iron merchant bars. The Schedule is applicable to wrought iron merchant bars.

Sales by shipyards to other than a consumer. Sales by shipyards of reusable steel plate to a dealer or any other person other than a consumer are subject to the Schedule. Regulation No. 310 applies only to sales to a "consumer" as defined by that Regulation.

Dislocated tonnage. The provision of the Schedule defining and making provision for determining the maximum delivered price for dislocated tonnage is inapplicable to pipe or tube.

Price Determination

Mill prices. Prices in excess of maximum mill prices may not be charged by a jobber who has a mill send the product directly to his customer.

Pipe and tubular products. The maximum prices for pipe and tubular products must be the lower of the April 16, 1941 prices of : (a) the seller, or (b) the standard published prices of National Tube Company et al., set forth in subparagraphs (1) to (5) inclusive, of Section 1306.159(i).

Tool steel. The maximum prices for tool steel must be the lower of the April 16, 1941 prices of: (1) the seller, or (2) the Crucible Steel Company.

Listed city. For products covered by Section 1306.159, Appendix A, the maximum prices for sales by a seller located in a "listed city" (these cities are set forth in Appendix B) must be the lower of the April 16, 1941 prices of: (1) the seller, or (2) list price of large distributor in seller's city. Large distributor is named in Appendix B.

Unlisted city. For products covered by Section 1306.159, Appendix A, the maximum prices for sales by a seller located in an unlisted city, that is, a city not listed in Appendix B, are the lowest combination of country prices for a seller located in a listed city, plus the l.c.l. freight to destination from the listed city.

Dislocated tonnage. The maximum delivered price for dislocated tonnage may be charged only if one of the following provisions is satisfied:

- (a) the shipment is 150 miles or more and,
 - (1) the shipment is through or into any listed city, or
 - (2) the shipment is substantially in the same direction and past any listed city, or
- (b) the shipment is 350 miles or more.

The maximum delivered price at any particular point should be determined without reference to the dislocated tonnage provision of the Schedule. The dislocated tonnage provision gives to any seller the option of adding an additional amount to the otherwise established maximum price in certain limited categories of sale.

Retail sales. Under the provisions of the Schedule exempting therefrom the sales of nails in quantities of 25 kegs or less, or other merchant wire products, and all types of roofing and siding in quantities of 2500 pounds or less, a seller and buyer may not arrange frequent deliveries of small quantities, separately invoiced, in order to evade the Schedule.

Discounts. All deductions and discounts given on April 16, 1941, must be continued. Special prices or discounts in effect on April 16, 1941, to a special customer or to any class of customers such as dealers, must be continued.

Finder's fees. See page 13:13.

Freight charges to cities in free delivery area of listed cities. Listed sellers in Los Angeles, selling in San Diego, and absorbing the freight from Los Angeles to San Diego on April 16, 1941, must continue to absorb such freight when selling in San Diego, since San Diego is within the free delivery area of such sellers. Since San Diego is within the free delivery area of Los Angeles, persons without prices, Appendix A (c), now wishing to sell in San Diego may not exceed the published list prices for that area, and therefore they must absorb the freight from Los Angeles to San Diego.

Cutting operations. The Schedule does not require a warehouseman to perform cutting operations for his customers. Where he does so, the rates for such cutting are established by the applicable tables.

Commissions

Commission. A seller of steel pipe may not add to the maximum price a commission to be paid to a plumber through whom the seller received the order.

Violations and Evasions

Finder's fees. See page 13:13.

Retail sales. See page 13:21.

Destination of shipment. Under Schedule No. 49, the buyer and the seller alike have the responsibility of determining the facts required to establish the maximum delivered price under the provisions of the Schedule. It is the responsibility of the buyer to disclose to the seller the destination of the shipment. The seller, on the other hand, should satisfy himself of the destination since this is a factor required to determine the maximum delivered price for the shipment. The seller may demand from the buyer an endorsement on his order in substantially the following form: "The undersigned certifies to the seller and to the Office of Price Administration that (City), (State) is the destination (as defined in Section 1306.165(a)(3) of Schedule No. 49) of the material specified on this order". Such an endorsement appearing on the order, provided that the seller had reason to believe that the certification was made in good faith, would relieve the seller of the responsibility of further attempting to determine the destination of the shipment.

Concealing the destination or stating a false destination when the failing to disclose or falsifying of the destination is done for the purpose of more easily obtaining material when it has the effect of increasing the total cost to the buyer, is a violation of the Schedule. It is equally a violation of the Schedule for a seller to request or to otherwise influence the buyer to specify a destination other than the true destination when such request or influence has the effect of increasing the total delivered cost to the buyer.

For the purpose of determining the maximum delivered price, the destination may be established at any place other than where the buyer's operation is to be performed only under one or more of the following circumstances:

- (1) Delivery for consolidation with other material owned by the buyer for shipment to some other point when the total delivered cost of iron or steel products purchased shall be equal to or less than the maximum delivered price at the true destination thereby resulting in a savings to the buyer;
- (2) When the disclosure of the true destination of the shipment is a military secret;
or
- (3) When delivery is made at the public carrier's terminal nearest to the true destination if it was customary for the buyer to accept delivery of material at such point when making purchases of iron or steel products from warehouses on or prior to April 16, 1941.

A seller may make delivery within his own free delivery area to a customer having a plant located outside of the seller's own free delivery area, provided that the seller deducts from the maximum delivered price at the destination, the less-than-carload rate of freight from the seller's warehouse to the destination, thus arriving at f.o.b. price seller's warehouse in instances where the seller transports the material in trucks or other equipment owned and operated by himself. In instances where the material is transported in equipment owned by other than the buyer the actual amount of transportation costs incurred should be allowed rather than the less-than-carload rate of freight. The only exception to this is in the case of special delivery services which are defined in Section 1306.159(t) of Schedule No. 49. The commercial tariff rate of freight should be used rather than any special tariffs used by the railroads in transactions between themselves.

Definitions

"Gulf ports." The definition of "Gulf Ports" in the Schedule is intended to cover only those cities which are actually located on the Gulf of Mexico, or close enough to be either effective shipping points for water shipments out of their territory, or effective distribution centers for shipments of iron and steel products coming into the Gulf region by water.

Delivery to "one destination." Where a dealer makes deliveries to a person at two plants adjoining each other in the same city, he is making delivery to only "one destination" within the meaning of Section 1306.164(f)(1). The term "destination", as used in this section, refers to deliveries to a general area of a city (e.g., the switching district), and not to individual points within the city.

Records and Reports

General. The amount of annual sales determines whether or not reports must be filed. The maximum prices of the Schedule are applicable, whether or not the seller is required to file reports.

Filing prices. The requirement in the Schedule that every seller of iron or steel products having annual gross sales of \$100,000 or more during the year ending December 31, 1941, file his prices with OPA, refers to the annual gross sales of all products of the seller even though some of the products sold are not iron or steel products. It is necessary that all the sales of such a seller be reported because of the difficulty, if not impossibility, of segregating sales of such a seller.

Retail consumers. The record provisions of the Schedule require that every person making sales or purchases for resale of iron or steel products keep certain records. Retail sellers are not required to keep any records other than their usual and ordinary records.

Maximum Price Regulation No. 147

BOLTS, NUTS, SCREWS, AND RIVETS

Applicability

Splice bars and track bolts. See page 13:20.

Sales by wholesaler and distributor. In general, sales of bolts, nuts, screws and rivets by wholesalers or distributors are subject to the General Maximum Price Regulation. However, where a wholesaler or distributor purchases these products from a manufacturer and receives a discount thereon, which discount customarily was or would have been given by one manufacturer to another manufacturer between October 1 and 15, 1941, the Regulation is applicable to resales by this wholesaler or distributor of the products on which he received such discount. As a matter of trade practice, such discounts in the case of wholesalers or distributors who were also manufacturers.

Maximum Price Regulation No. 159

FABRICATED CONCRETE REINFORCING BARS

Applicability

Lump sum contracts. The Regulation cuts across all contracts, lump sum or otherwise, existing on June 15, 1942.

On delivery of fabricated concrete reinforcing bars made under lump sum contracts, fabricators invoice for each delivery. Accordingly, the maximum price which may be invoiced or charged for any shipment made on or after June 15, 1942, is the maximum price for the bars so shipped, as established by the Regulation.

If invoices on lump sum contracts which have been cut across were made on such a basis that the allocation thereof bears no close relationship to corresponding shipments, a manufacturer may make such allocation as he deems reasonable and in accord with the spirit and intent of the Emergency Price Control Act of 1942, and Maximum Price Regulation No. 159, invoice accordingly pending completion of the contract and then, upon completion of the contract, submit the full details of his allocation to OPA for approval or disapproval. If disapproved, the payments provided for by his contracts will be subject to adjustment in accordance with the decision of OPA.

Unfabricated concrete reinforcing bars. See page 13:11.

Used sucker rods. See page 16:21.

Price Determination

Mill lengths or random stock lengths. The phrase "25% by weight of the total quantity" in Section 1306.374(a)(9) refers to the total order or contract of sale, rather than the amount shipped. Thus, where a contract of sale calls for 3 separate shipments, the 25% provision is figured on the total quantity sold, rather than the quantity of each individual shipment.

Taxes

State sales tax. Where a State sales tax statute does not prohibit the seller from stating the tax separately, the seller may charge the amount of the sales tax in addition to his maximum price under this Regulation, provided that he states the tax separately.

Maximum Price Regulation No. 214

HIGH ALLOY CASTINGS

Price Determination

Taxes

Federal transportation tax.

Since, in general, maximum prices under the Regulation are on a freight allowed to destination basis, sellers of high alloy castings may not add the 3% Federal transportation tax effective December 1, 1942, to the maximum prices for high alloy castings. They must, in effect, absorb it. The following two circumstances are the only exceptions:

1. In ascertaining a maximum price pursuant to Section 1421.15(b), where the shipment totals less than 100 pounds, the seller may add the 3% tax to the applicable transportation charges;
2. In ascertaining a maximum price pursuant to Section 1421.15(b), where the buyer specifies means of transportation costing in excess of the lowest applicable railroad rates, the 3% tax on the excess may be added.

Maximum Price Regulation No. 310

REUSABLE STRUCTURAL STEEL SHAPES AND PLATES, AND SHAFTING

Applicability

Sales by shipyards to other than a consumer. See page 13:20.

Sale of selected steel plate to trade schools. Selected steel plate sold to government and private trade schools for welding and other classroom demonstration work, is subject to the Regulation, if it meets the specifications set forth in Section 1306.551(a)(2), (3) and (4); otherwise Schedule No. 4 (Iron and Steel Scrap) applies.

Structural shapes and plates in the form of built up beams and trusses - boiler plates. Used structural steel shapes and plates in the form of built up beams and trusses (not complete structures), or which have attachments meet the specifications described in Section 1306.551(a)(2)(3) and (4). Boiler plates which are not true to line, or which have rivets, are covered by the Regulation, provided that the shape or rivets are not detrimental to its reuse for the purpose for which new plate is customarily used.

Scrap truck axles. See page 16:30.

Maximum Price Regulation No. 411

REUSABLE STEEL STORAGE TANKS
(FIELD ASSEMBLED)

Price Determination

Sale of extra attachments. The maximum prices for reusable steel storage tanks include all attachments which are part of the tank itself, i.e., attachments which are ordinary appurtenances of the tank and are necessary to normal storage. Thus, appurtenances such as vents, valves, ladders, stairs, man holes, hand holes, drains, hatches, sleeves, etc., are part of the tank itself and may not be removed and charged for separately. However, pre-heaters, heating coils, thermostats, meters and other measuring devices may be detached from the tank and charged for separately, since they are extras, not necessary to normal storage.

"Capacity (barrels)." The maximum prices for reusable steel bolted tanks are listed according to the barrel capacity of the storage tank, see Section 3(a)(1). The numbers in the column "capacity (barrels)" refer to the number of 42 U.S. gallon barrels which the tank will contain.

Definitions

"Capacity (barrels)". See page 13:28.

LEATHER, WOOL AND MISCELLANEOUS FIBER PRODUCTS

Price Schedule No. 9

HIDES, KIPS AND CALFSKINS

Applicability

General. Sellers and purchasers of hides, kips, and calfskins are subject to the Schedule.

Channels of supply. The Schedule provides that customary channels of supply (as far as practicable) should be maintained, and utilized and that sellers should continue to supply their usual customers.

Cured skins are covered by the Schedule.

Green skins are covered by the Schedule.

"Shearlings" Skins with the wool on are either shearlings or wool skins and, whether raw or tanned, are not subject to this Schedule nor to Schedule 61 (Leather). Shearlings, imported and domestic, raw and tanned for armed forces, are covered by Regulation No. 141 (Raw Shearlings and Tanned Shearlings for the Armed Forces).

Price Determination

General. The Schedule establishes maximum prices in dollar-and-cents, f.o.b. shipping point, for domestic hides and domestic kips and calfskins.

Buttermilks. The maximum prices established by the Schedule for No. 1 kips and calfskins are applicable to No. 1 and No. 2 buttermilks sold flat, although they should sell below the maximum prices therein listed.

Freight charges. The maximum prices in the Schedule are F.O.B. shipping point. "Shipping point" is the point where the commodity is loaded for shipment to the customer. Therefore, the freight charges from the point of origin to the seller's place of business may not be added to the maximum prices. But, it is permissible to have the shipments loaded, for shipment to the customer directly at the point of origin, and charge on an f.o.b. basis from that point.

Shipping point.

Question: A dealer of hides purchases hides located at various points, ships the hides to his warehouse and supplies customers from his warehouse as their orders and allocations are received. As each shipment is received from outlying districts, it is earmarked for a particular customer and set aside in the dealer's warehouse. The dealer pays the slaughterers and suppliers, and in turn is paid by his customer. Is the shipping point the dealer's warehouse or the point of origin in the outlying districts?

Answer: The dealer's warehouse is the shipping point within the meaning of Section 1314.10(j).

Broker rendering storage service. A broker who also acts as warehouseman may collect a storage fee in addition to charging the allowable brokerage commissions.

Tare allowance.

Question: A dealer purchases Pacific Coast hides from a slaughterer who allows the tare allowance of two pounds per hide as required by Section 1314.11(d)(2). Is

applicable to this service when the spinning is done in accordance with military specifications, pursuant to a contract or subcontract with a war procurement agency.

Bradford knitting yarns made from dark laps. See page 14:9.

Bradford yarns. The Schedule does not provide any specific prices for Bradford weaving or Bradford knitting yarns, single on skeins. Therefore, such yarns are priced under the base period freeze provision of Section 1410.51(b).

Price Determination

General. The Schedule establishes maximum prices for the following:

- (a) Domestic pulled wools, for which the maximum prices are in dollar-and-cents per pound, f.o.b. shipping point.
- (b) Wool tops, for which the maximum prices are in dollar-and-cents per pound, f.o.b. combing plant for domestically combed tops, and ex port of entry or domestic warehouse for imported tops.
- (c) Wool noils, for which the maximum prices are in cents per pound, ex combing plant, ex warehouse, or ex carbonizing plant for domestic noils, and duty paid prices, ex port of entry, domestic warehouse, or carbonizing plant for imported noils.
- (d) Scoured domestic shorn wools, for which the maximum prices are in dollar-and-cents per pound, f.o.b. Eastern Seaboard.
- (e) Wool yarns, for which the maximum prices are in dollar-and cents per pound, f.o.b. shipping point.
- (f) Foreign shorn wools, for which the maximum prices are in dollar-and-cents, except for British Wool Control wools.
- (g) Foreign pulled wools, for which the maximum prices are in dollar-and-cents per pound, duty paid, f.o.b. pullery or scouring plant.

Computing actual cost by reweighing. In computing "actual cost" per pound of British Wool Control wools, there is no objection to reweighing wool on arrival in the United States. However, the "actual cost" of the wool must be computed, if the wool is reweighed after arrival, by dividing the total cost of the shipment by the number of pounds shown in the reweighing. For instance, if 1000 pounds were imported at 60 cents per pound, actual cost, and reweighed at 1100 pounds, the "actual cost" per pound is proportionately reduced.

South American dead wool. The maximum prices for South American dead wool, which is pulled or shorn from sheep found dead on the range, are determined by Section 1410.51(b), dealing with unlisted types and grades of wool.

Garnetted noils. The maximum price for garnetted noils is determined by Section 1410.51(b), dealing with unlisted types and grades of wool.

Additions for wool of choice character. The allowable additions established by Section 1410.65(a)(2) for foreign shorn wools of choice character apply to South American second clip wools as well as fleeces, provided that the second clip meets all the specifications for superfleeces as set forth in that section. The allowable additions may not be charged if the wool is only "more or less" free from the defects enumerated, since the section requires complete freedom from the enumerated defects.

Addition for carbonized, neutralized and dusted wools. In determining the total addition which may be added to a lot of carbonized neutralized and dusted wools, Section 1410.65 (d)(6), the seller may add the five cent addition per pound to the weight of the lot before it is processed.

Charges for cables, financing, etc. In the sale of Australian, New Zealand, South African and other British Wool Control wool, the dealer may add only the costs or charges specified in the Schedule. Accordingly, the cost of cables, bank commissions, or financing charges may not be added to the maximum prices.

War-risk insurance charges when trading in futures. The Schedule provides that the maximum price for wool sold by the importer shall be increased or decreased by an amount equal to the actual increase or decrease in war-risk insurance rates and freight rates. Since this provision applies only to increased or decreased rates actually paid, it is not applicable to the maximum prices of grease wool and wool tops futures contracts traded on the Wool Associates of the New York Cotton Exchange, Inc.

War-risk insurance - average rates. The Schedule provides that the maximum price to be paid for tops made of imported wool is to be adjusted to the war-risk insurance rate prevailing on the day the contract of sale of the tops is made. Since the rate varies, depending on whether the wool is going to a West Coast, Gulf, or East Coast port, the adjustment should be made on the basis of an average of the West Coast and Gulf port rates; the East Coast rate is not considered because no substantial amount of wool presently comes in at East Coast ports.

Credit terms. The credit period provided by Section 1410.64(a) for the sale of Bradford weaving yarns may not be removed or reduced, unless the seller compensates the purchaser by a corresponding reduction in the maximum prices established for sales with that credit period.

Marine and war-risk insurance charges for foreign pulled wool. On wools pulled in this country from imported skins, the marine insurance and war-risk insurance charges should be allocated to the wools actually produced from the skins, since the charges which may be added pursuant to Section 1410.66(e) are the "actual charges paid on the wool sold." In order to determine the actual insurance charges paid for the wool produced from skins imported into this country, it is necessary for the seller to determine separately the value of the skins and the wool on the skins, and apportion the insurance charges paid on the basis of that determination.

Bradford knitting yarns made from dark laps. The sale of Bradford knitting yarns made from dark laps is subject to the Schedule, and the maximum price of the yarns is determined under Section 1410.64(b). Although Bradford knitting yarns are ordinarily made from worsted tops, they may properly be made from laps. While laps are classified as waste material, they are no more than broken tops. Before they can be knitted into yarns they must be subjected to a further process to make them into a continuous strand. The resultant yarn, whether made from tops or laps, is identical. Therefore, although raw material costs would ordinarily be less for knitting yarns made from laps, the maximum price is the same.

Undyed merino yarns. The maximum prices for merino yarns, enumerated in Section 1410.64 (e)(2)(i), apply only to undyed yarns. If dyed, such yarns are subject to the General Maximum Price Regulation, or Regulation No. 157 pursuant to Section 1410.64(e)(2)(ii).

Open-price billing. A seller who applies for authority to determine a maximum price under Section 1410.51(b)(3) may bill the wool at an open price or deliver it at a tentatively agreed price, subject to adjustment to the approved maximum price, if the maximum is lower than the tentatively agreed price. The seller may accept part payment of the tentative price or, if he wishes, may have the buyer place the full tentative purchase price in escrow pending the determination of the maximum prices. However, the tentative price may not be used by the purchaser to compute his resale price, where that price is based on the cost of the wool.

Mohair produced in the British Empire. Cape mohair, or any other type of mohair, produced in the British Empire is not controlled by the British Wool Commission, and therefore, is priced under the base period freeze provision of Section 1410.51(b).

Records and Reports

Changing seller's status since base period partnership. See page 14:13.

Maximum Price Regulation No. 106

DOMESTIC SHORN WOOL

Price Determination

Net prices. The maximum prices in the Regulation are net prices and include all commissions and other charges, except brokers' commissions specifically provided for in Section 1410.10 (e). Accordingly, discounts previously granted by the seller for prompt payment, etc., need not be continued.

Sale on "grease basis." The maximum prices for domestic shorn wool are fixed on a "clean" basis. It is permissible for a seller to quote a price on a "grease" basis, provided that such price is not in excess of the maximum price of the wool if it were sold on a "clean" basis.

Commissions

Net prices. See page 14:14.

Maximum Price Regulation No. 123

RAW AND PROCESSED WOOL WASTE MATERIALS

Applicability

Processing services. Processing services performed by an independent contractor who has no title to the wool are not covered by the Regulation.

Roofing rags - wool rags. The sale of wool rags, wool waste, and wool clips is subject to the Regulation and not to Regulation No. 47 (Waste Rags, Waste Ropes and Waste Strings). By definition, the term "waste rags" is limited to the kinds and grades of waste rags specified in Regulation No. 47. The reference to "wool" in the definitions of "no. 1 roofing rags" and "seams and cloth strippings" in footnotes 1 and 2, respectively, to Section 1347.114(b) of Regulation No. 47 includes only the wool and satinet mixtures understood by the industry to constitute "waste rags" rather than "wool rags."

Partially processed blanket. A company buys paper mill felts which it cuts to shape, trims, cleans, and naps with a metal brush, tests for strength, and measures for size, and sells to blanket manufacturers. The resulting product is not a raw and processed wool waste material covered by the Regulation, since it is a partially processed blanket rather than wool fiber stock; nor is the work performed by the company a process within the meaning of the Regulation. The General Maximum Price Regulation is applicable.

All-wool Palmer machine and sanforizing blankets. Sales of used sanforizing blankets and used all-wool Palmer machine blankets are not covered by the Regulation; the General Maximum Price Regulation applies.

Wool rags. According to trade custom, unstripped old black overcoats containing linings, seams, and such other material are considered to be wool rags and, therefore, are covered by the Regulation. They are not "waste rags" under Regulation No. 47 (Waste Rags, Waste Ropes and Waste Strings).

Pricing of mixed lots. Where a lot of wool waste material contains a quantity of "wool ends" which if sorted out would be subject to a higher ceiling price under the General Maximum

Price Regulation than that applicable to the mixture under Regulation No. 123, the seller may separate the mixture into its component parts and sell each under the appropriate Regulation. If the separation is not made, the lower maximum price under Regulation No. 123 is applicable to the entire lot.

Price Determination

Wool rags of old army olive drab. Wool rags composed of old army olive drab trousers and blouses are classified as rough khaki, the maximum price for which is eight cents per pound as established in Table 5, Section 1410.80.

"In-line with" - dusted and undusted materials. The maximum prices in Table I for fine, medium, and coarse worsted card or worsted strips, white and colored, apply to these items when sold in a dusted state; undusted worsted card and worsted strips must be sold "in-line with" these prices, making allowance for the proportionate value of the dusting process, Section 1410.71(a)(2). The maximum prices for woolen card waste and strips in Table I apply to these items when sold on an undusted basis; dusted woolen card waste and strips are priced as processed wool waste materials under Section 1410.71(b).

Shearling scraps. Scraps from raw and tanned shearlings, e.g., shearling clippings, trimmings, and tear-offs, are subject to the Regulation. Since the maximum prices of these waste products are not specifically listed in any price tables of the Regulation, their maximum prices should be in line with the established maximum price for tanners waste, the nearest related type, kind, classification, and grade, pursuant to Section 1410.71(a)(2).

"F.o.b. shipping point" for dealers importing lap waste and other raw wool waste materials from Australia is the port of entry. Hence, freight charges incurred in shipping the waste material to the port of entry may not be added to the maximum prices.

In-line price. The maximum price for manufacturer's 16-ounce Kersey 100% wool clips, sold by the United States Coast Guard to a civilian wool waste dealer, is a price "in-line" with Marine Corps Dark Blue Kersey 16-ounce clips, for which a price of 11¢ is established by Table 6, Government Wool Clips. The maximum "in-line" price for these clips when sold by the civilian waste dealer is the same price, plus the premium set forth in Section 1410.80. (c)(2).

Premiums

In-line price. See page 14:15.

Classification

Pastel color. Buff is classified as a "pastel color" under Table III of Section 1410.80. Powder blue and blossom blue may be classified as pastel color if they are light enough in shade. Olive green, as well as rust, jockey, and scarlet, is usually classified under "all other shades and colors." Olive green is a "pastel color" only if it is in the lightest shades. The materials must be examined to make a definite classification.

Wool rags. See page 14:14.

Definitions

"Blending" as used in the definition of "processing" in Section 1410.78(a)(3) refers to the mechanical process of laying out layers of different kinds of fibres and subjecting the accumulation to a mechanical mixing process. The sorting of different grades, colors, and types of waste materials for baling purposes is not a "blending" operation.

"Waste rags." See page 14:14, Roofing rags - wool rags.

"Wool". In Table I of Section 1410.80, the word "wool" in all column headings except the first (which is restricted to "100% wool, as defined by the wool labeling act") applies to new wool, reused wool or reprocessed wool or any combination of these.

Records and Reports

Processed wool waste materials. Section 1410.71(b) requires that the invoice delivered to the buyer state the quantity of processed wool waste materials shipped and the price thereof, the aggregate quantity, and the aggregate price paid for the raw wool waste materials in the product, an itemization of each of the processing services performed, and the applicable processing margin. It is not necessary to list separately the quantity or price of each type of raw wool waste in the product, or to allocate the processing margin between the various processes.

Maximum Price Regulation No. 163

WOOL AND WORSTED CIVILIAN APPAREL FABRICS

Applicability

Imported fabrics. The sale of imported fabrics is not subject to the Regulation.

Military fabrics sold "for civilian use." The woolen or worsted apparel fabrics covered by the Regulation are fabrics "for civilian use." The phrase "for civilian use" has reference to the use for which the fabrics are made and not the use to which they are put. Therefore, the Regulation does not apply to sales of fabrics manufactured for military use even though sold to civilians.

Woolen fabrics. See page 14:4.

Fabrics for "civilian use." The sale of a fabric to garment manufacturers to be made into overseas caps for retail stores which will in turn sell them to soldiers is not the sale of a woolen or worsted apparel fabric for "civilian use." Since the fabric will be used in making a garment which will primarily be sold to men in the armed services, it is not a fabric for civilian use even though some sales will be made to civilians, such as legionnaires.

Sale of remnants by contractor. See page 14:20.

Under-collar cloth. Under-collar cloth is not a "woolen or worsted apparel fabric" within the definition of that term in Section 1410.115(a)(3) and, therefore, is not covered by the Regulation.

Woolen or worsted civilian fabric manufactured for use as shoe fabric. A woolen or worsted civilian fabric which is manufactured for use as a shoe fabric is not covered by the Regulation, even though it is ultimately used as apparel. If the fabric is manufactured for use as one of the types of apparel fabrics enumerated in Section 1410.115(a)(3), and also as a shoe fabric, it is covered by the Regulation.

Imported fabrics. The definition of woolen and worsted apparel fabrics includes only "domestic" fabrics of the enumerated types. A fabric is a "domestic" one only if it is woven by a mill located within the United States. Therefore, woolen or worsted apparel fabrics imported from a foreign country in the grey are not "domestic" fabrics even though dyed and finished in this country, and are not covered by the Regulation; the Maximum Import Price Regulation applies.

Sales of fabrics by manufacturers of apparel - "special sales." Section 1410.103(e), setting forth maximum prices for sales of woolen or worsted apparel fabrics by manufacturers of apparel, applies to all such sales except those that qualify as "special sales" within the meaning of Regulation No. 204 (Special Sales of Industrial Materials). It should be noted, however, that most apparel manufacturers normally sell some piece goods in the ordinary and regular course of business and, therefore, must price the fabrics under Regulation No. 163.

Fabrics produced on the cotton or rayon systems. The Regulation does not apply to fabrics produced on the cotton or rayon systems of weaving, as distinguished from the woolen or worsted systems, even though such fabrics contain 25% or more of wool.

Price Determination

Open-price billing. A seller who applies for authority to determine a maximum price under Section 1410.119 may bill the fabrics at an open price or deliver the fabrics at a tentatively agreed price subject to adjustment to conform to the approved maximum price, if the maximum is lower than the tentatively agreed price. The seller may accept part payment of the tentative price or, if he wishes to avoid credit-risk, may have the buyer place the full tentative purchase price in escrow pending the determination of the maximum prices. However, the tentative price may not be used by the purchaser to compute his resale price where that price is based on the cost of the fabrics.

Transfer of business. In March 1942, a new corporation acquired its factory site and machinery from the RFC, which had acquired them from a defunct corporation. In addition, the new corporation purchased the defunct corporation's raw stock, semifinished products, and other inventory, but acquired none of that corporation's accounts receivable, accounts payable, good will, customers, or other assets. The shareholders of the new corporation had no connection whatsoever with those of the defunct corporation. Since the new corporation is not the same as, nor the successor to, the defunct corporation, the new corporation does not take over the base period prices of the defunct corporation formerly doing business on the same premises. If the new corporation was engaged in the business of manufacturing and selling fabrics during the base period, its maximum prices are determined by Section 1410.102, and if not then in business, Section 1410.119 applies.

Transfer of inventory to liquidating syndicate. A liquidating syndicate which acquires by an outright bona fide purchase the woolen fabrics inventory of a company discontinuing the manufacture of men's clothing may sell the fabrics at the maximum prices for jobbers, and the invoice prices to be used in applying the division factors are those of the original manufacturer of the fabric. If the liquidating syndicate is an agent of the manufacturer of men's clothing, the syndicate's maximum prices are the same as those of the principal.

Calendar and fiscal year. The base period 1941, as used in Section 1410.102(d) for determining the weighted average selling price and the weighted average manufacturing cost, refers to the calendar year 1941 and not the fiscal year 1941.

"Average" of manufacturer's net invoice prices. The "average" referred to in the last paragraph of Section 1410.103(a)(1) and (c), i.e., "the average of the manufacturer's net invoice prices per yard of all the styles in the range," is an unweighted average rather than a weighted average. This provision for averaging applies only to the case where a jobber has several different styles of the same fabric differing in cost due to the varying style features. It does not permit averaging the prices at which quantities of the same style of the same fabric were purchased.

Manufacturer of apparel - interest charge. Under Section 1410.103(e)(1), in determining the maximum price for the sale of apparel fabric by a manufacturer of apparel, interest on the seller's investment in the fabric from the date of purchase to the date of sale may not be added to the maximum price.

Manufacturer of apparel for rental. A purchaser who buys yardage from a jobber, which he makes into articles of wearing apparel and uniforms to be rented out to the general public for use at masquerades, carnivals, and such functions, is a manufacturer of costumes and a purchaser within categories (i), (ii), and (iii) of Section 1410.103(a)(1) and category (i) of Section 1410.103(c). Such a purchaser does not sell garments, nor are those he hires out made according to a person's individual measurements. Hence, he is not a custom or merchant tailor, or special order department of a manufacturer of apparel, or a retail establishment.

Sale by manufacturer and jobber of mill ends, seconds, remnants, etc. While the maximum price for fabrics in prime condition may be charged by the manufacturer for mill ends, seconds, remnants, etc., the jobber must purchase such goods at a price sufficiently below the maximum price to permit him to sell the goods at a profit, within the price limitations placed upon him by Section 1410.103(b).

Sale of pound goods. Mill ends, second, remnants, and other pound goods may be sold by the pound provided that each fabric sold in the lot does not exceed its applicable maximum price per yard. The seller and purchaser must devise a method of calculation which assures them that the charge on a poundage basis does not exceed the maximum price per yard permitted by the Regulation for each fabric. One method of calculation is for the manufacturer to determine which of the fabrics contained in the lot has the lowest maximum price, when measured by the pound, and multiply the number of pounds in the entire mixed lot by this price.

Jobber's optional maximum price. Where the jobber is unable to determine the manufacturer's invoice price for a fabric, as in the case where the fabric was purchased some years ago, he may be able to use the optional method for determining his maximum prices pursuant to Section 1410.103(d). However, if the optional method is not applicable, he must apply for his maximum price under Section 1410.119.

Sale to merchant or custom tailor. The sale of fabrics to a custom shirt maker who manufactures and sells the shirts directly to consumers is not a sale to a retail store but a sale to a merchant or custom tailor, and the jobber selling to the custom shirt maker is entitled to the mark-up provided in Section 1410.103.

Sale by "tailor to the trade" to customer of a custom tailor. A sale of woollens by a "tailor to the trade" directly to a customer of a custom tailor, the customer taking the woollens to the custom tailor to have them made into a garment, is a retail sale subject to the General Maximum Price Regulation.

"Tailor to the trade." The maximum price for sales of fabrics by a tailor to the trade is determined by Section 1410.103(e).

Term discounts to jobbers - anticipation deductions. In determining the jobber's mark-up, the maximum term discount offered or allowed must be deducted from the manufacturer's selling price, even though it did not appear on the invoice and whether or not the purchaser has taken advantage of any term discount offered. The most common term discount in the trade is 1% 10 days, net 60, and, therefore, the price to which the division factor is applied is customarily the selling price reduced by the 1% term discount. However, the customary practice of a seller in allowing the purchaser to pay in advance of the tenth day and receive a deduction for interest on such advance payment at the rate of 6% per annum is not considered a term discount for purposes of determining the manufacturer's net invoice price.

"Manufacturer" of fabrics. Where a mill weaves a fabric out of yarns supplied by the seller of the fabric, the seller, rather than the mill, is the "manufacturer" of the fabric within the meaning of Section 1410.115(a)(2). The maximum price for the fabric is established under Section 1410.102, entitled Maximum prices for woolen and worsted apparel fabrics sold by the manufacturer.

Sale of remnants by contractor. A contractor who retains and sells the remnant pieces of the woolen and worsted civilian apparel fabrics supplied by his principal must price the remnants in accordance with the provisions of Section 1410.119, which provides for the determination of a price by the seller after specific authorization from OPA.

Sales of odd lots of experimental fabrics. A seller may charge a single price for all fabrics in an odd lot composed of experimental fabrics, provided that the price does not exceed the maximum price applicable for the fabric in the lot which has the lowest maximum price. The price thus determined need not be reported on the forms enumerated in Section 1410.111, since sales of such odd lots constitute a salvage operation.

New woolen or worsted apparel fabrics. The term "woolen or worsted apparel fabrics" includes grey goods as well as dyed or finished fabrics, and, therefore, grey goods must be included in determining the manufacturer's ratio under Section 1410.102(d) of the Regulation.

New fabrics. Section 1410.102(d), entitled New woolen or worsted apparel fabrics, applies only to "new" fabrics which come within the definition of Section 1410.115(a)(5). The term "woolen or worsted apparel fabric," as used in the first sentence of Section 1410.102(d), refers to "new woolen or worsted apparel fabrics."

Comparable fabrics. A manufacturer who has more than one base period fabric "comparable" to the fabric being priced under Section 1410.102(c) may select any one of such base period fabrics. He is not required to use the fabric of which he delivered the greatest quantity during the base period.

Comparable fabrics - customary source of supply. A company wishes to price a comparable fabric which contains waste and yarn end. The base period fabric, to which the fabric is comparable, did not contain any waste or yarn ends, and the company has never purchased such items from any of its suppliers. In order to price the comparable fabric under Section 1410.102(c), it is not necessary that the company would have had a customary supplier of waste and yarn ends during March 1942. It is sufficient if the company had a customary supplier of other raw material who could have supplied the company's needs for waste and yarn ends during this period.

Applicable division factor. Where the regulation establishes different division factors for men's and women's wear fabrics, and the fabric is suitable for both men's and women's wear, the divisional factor for men's wear fabrics is to be used. However, where the fabric is suitable only for women's wear in its finished state, the women's wear divisional factor is to be used, even though the fabric, before finishing, was suitable for both men's and women's wear.

Sales of fabrics by apparel manufacturer - "actual price" paid by manufacturer. Section 1410.103(e)(1) provides that the manufacturer of apparel may not exceed the "actual price" paid for the fabrics, plus cost of transportation and, in certain cases, sponging or shrinking costs. "Actual price" means net price. Thus, where the apparel manufacturer received a discount for prompt payment, he must pass on the benefits of the discount to the purchaser.

Sponging and shrinking. The additions of 4¢ and 7¢ per yard for sponging or shrinking of fabrics, permitted by Section 1410.103(e)(1), is to be computed on the yardage before sponging or shrinking.

Averaging prices of all styles in a range. Under the last paragraphs of Section 1410.103 (a) (1) and (c), it is not permissible to select for averaging purposes from a range of fabrics some of the styles with a price differential not in excess of 25¢ per yard if the differential between the lowest priced and the highest priced styles in this range is in excess of 25¢ per yard. In such case the averaging provision may not be used.

Where all the styles in a range have a differential not in excess of 25¢ per yard but one of the styles was purchased at two or more prices, the prices at which the latter was purchased may be averaged for the sole purpose of averaging its average price with the other styles in the range.

Premiums

Premiums for cut lengths. A manufacturer of fabrics may not add to the maximum price a charge for cutting the fabrics into small yardage cuts, even though he has customarily charged for this service. Section 1410.102(f) requiring maintenance of customary discounts, etc., does not authorize increases over the applicable maximum prices.

Addition of premium prior to adjustment to closest 2½ cents or ¼ cent per yard. The premium for decorations permitted by Section 1410.102(h) must be added to the maximum price of the fabric before, rather than after, the adjustment of the maximum price to the closest 2½ cents per yard, or ¼ cent per yard, as the case may be.

Classifications

Stock-dyed fabric. A fabric which contains stock-dyed yarn in any quantity is classified as a stock-dyed fabric, even though such fabric has also been piece-dyed (cross-dyed).

New woolen or worsted apparel fabrics. See page 14:20.

Definitions

"Tailors to the trade" are classified as "custom or merchant tailors" under the Regulation. "Tailors to the trade" are persons who buy fabrics in small quantities and ordinarily do not carry any stock or finished garments; they make up orders for clothes according to the customer's individual measurements which are obtained either through salesmen, custom tailor, or independent merchants.

"Manufacturer" of fabrics. See page 14:20.

"Necktie fabrics" as used in the definition of "woolen or worsted apparel fabrics," Section 1410.115(a)(3), includes the woolen linings as well as the outer material of the neckties.

"Piece lots" as used in Section 1410.103(a) refers to the standard lengths of each unit of fabrics shipped by the particular woolen or worsted mill and regarded by it as a "piece;" the length of this unit may vary in different mills.

"For civilian use." See page 14:18, Military fabrics sold "for civilian use."

Under-collar cloth. See page 14:18.

Imported fabrics. See page 14:18.

Domestic fabrics. See page 14:18, Imported fabrics.

Records and Reports

Invoicing several deliveries under single sale. Where several deliveries at different times are made of woolen and worsted apparel fabrics under a single order, it is not necessary that the data required by Section 1410.102(g) be repeated on the invoices accompanying each shipment, provided that an invoice accompanying one of the shipments contains all the required information.

Maximum Price Regulation No. 340

JUTE AND ISTLE YARN, ROVE AND ROPE

Price Determination

Additions. The Regulation does not permit an addition to the maximum price for rope manufactured from four strands of fiber rather than from three strands.

Maximum Price Regulation No. 468

BROOMCORN

Price Determination

Handling charge. The maximum prices in Section 9(b) are for broomcorn loaded on a railroad car, truck or other conveyance. Therefore, a handling or "loading in and loading out" charge may not be added to the maximum prices.

Violations and Evasions

Direct delivery. Where a broom manufacturer purchases broomcorn from a dealer prior to harvesting, and he is willing and able to take delivery direct from the field as soon as the broomcorn has been cured and is ready for delivery, the dealer is not permitted to charge a price higher than the price established by Section 9(a).

The practices of charging a higher price or refusing to make delivery except after passing the broomcorn through a warehouse for the purpose of charging the higher price applicable to shipments other than those direct from point of origin are in violation of the Regulation.

Split deliveries. The practice of making deliveries of a larger quantity of broomcorn by installment shipments in order to secure the higher price applicable to the small quantity is a violation. The mere fact that the larger quantity is actually broken into several separate smaller shipments does not legalize the transaction where it is evident that the purchaser desires the larger quantity, is able and willing to receive it and the seller has the entire quantity desired by the purchaser and intends to deliver the larger quantity by a series of small shipments.

LUMBER

GENERAL INTERPRETATIONS

Applicability

Flooring and furniture plants, sale of types of lumber not used. A flooring or furniture plant which regularly sells sizes or grades of lumber not used for its own fabrication is subject to mill prices on such sales with no addition for inbound transportation. Regulation No. 204 does not apply since the sale is made in regular course of business and is not a special sale, i.e., isolated or non-recurring type of sale.

Pallet stock. Any pallet stock which can be priced under the lumber Regulations must be priced as lumber and not under Regulation No. 195.

"F.o.b. mill" means loaded on truck at seller's expense in the case of an all-truck haul. If a common or contract carrier performs loading service for which it charges the seller, the seller cannot add the loading charge to the f.o.b. mill price.

Price Determination

Order filled from various mills of seller. Where an order for lumber is filled from several mills owned by one person, all the mills are considered as one unit in determining whether a shipment meets the quantity requirement (carload or otherwise). However, in determining the transportation costs of the seller in a sale on a delivered basis, the actual freight rates from the various mills may be used.

Average price - computation.

Question: What is the proper method of determining the average price where a bid is made on a number of items of lumber of different specifications?

Answer: The average price is computed by applying a price not in excess of the maximum price to the footage of each item called for in the order.

Commissions

"Purchasing commission." No "purchasing commission" may be paid to wholesalers or other distributors if the commission plus the purchase price is higher than the maximum price permitted by the Regulation except as specifically permitted in the Second Revised Maximum Price Regulation No. 19. It is a violation of the Regulation to add a so-called purchasing commission since the compensation of wholesalers and other distributors of lumber has always been on the basis of a discount or other allowance, and not as a premium added to the sale price. Such commissions are specifically prohibited in Maximum Price Regulation No. 19, Section 14 and Maximum Price Regulation No. 26, Section 16; in all other lumber Schedules and Regulations the evasion Section prohibits such commissions.

Finder's fee or commission. No person buying or receiving lumber in the course of trade or business may pay a fee or commission sometimes called a "finder's fee" to an agent or other person for locating lumber for such purchaser, if the fee or commission, plus the purchase price of the lumber exceeds the maximum price of the applicable Schedule or Regulation.

Expediting fee or commission. A person buying or receiving lumber in the course of trade or business may not pay an expediting service fee or commission to an agent or other person if this fee or commission plus the purchase price of the lumber exceeds the maximum price of the applicable schedule or regulation.

Premiums

Kiln-drying, milling and processing. The provisions in a lumber regulation limiting the amount of the premium for kiln-drying, milling, and processing are not applicable when

these operations are performed by a person other than the seller of the lumber or his agent.

Taxes

Freight tax under 1942 Revenue Act. The 3% Federal Transportation Tax effective December 1, 1942, and Supplementary Order No. 31 - Tax and Transportation of Property Imposed by the Revenue Act of 1942 effects ceiling prices for lumber as follows:

In general this Office will treat the 3 percent tax on the freight bill as if it were equivalent to a 3 percent increase in the freight rate itself. This principle will be followed even if the shipment of lumber is made on estimated weights.

these operations are performed by a person other than the holder of the license of his agent.

Section 1

Provision for 1933 Revenue Act. The 33rd Federal Transportation Tax effective December 1, 1933, and supplementary Order No. 21 - Tax and Transportation of Property imposed by the Revenue Act of 1933 effects certain changes in the following:

Section 1. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 2. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 3. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 4

Section 4. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 5

Section 5. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 6. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 7

Section 7. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 8. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 9. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Section 10

Section 10. This section will treat the 3 percent tax on the license bill as it was previously treated. A 3 percent increase in the license bill itself. This increase will be applied to the bill of lading or invoice or other document which is used for the purpose of determining the tax. The bill of lading or invoice or other document must be in the hands of the carrier at the time the tax is paid.

Direct-mill shipment. A carload of lumber was shipped from a mill to a purchaser who rejected the lumber with the exception of 4,000 feet. Thereafter the car was switched to a planing mill in another town for surfacing and for ultimate return to the mill's distribution yard. The sale of the lumber to a new purchaser before it is surfaced by the planing mill is subject to the Regulation since the sale was made at a point at which the lumber temporarily came to rest en route from the mill.

Pool-car shipments. The Regulation applies to all sales of lumber regardless of the quantity shipped or manner of shipping. The sale of lumber in pool-car shipments is therefore subject to the Regulation.

"Direct-mill sale." A purchaser ordered 20,000 feet of Southern pine lumber from a distribution yard. The yard picked up the lumber at a mill and trucked it to its plant where it was unloaded and sorted for delivery to the purchaser. The transaction is subject to the Regulation since the shipment originated at the mill and not out of the stock of a distribution yard at the time the sale was made, see Section 2(a).

Creosoted or wolmanized lumber. The Regulation does not apply to the sale of creosoted or wolmanized Southern pine lumber.

Pricing of green finish. Since lumber grades are drawn in terms of minimum standards, and since the Regulation covers all Southern pine lumber, green finish must fall in the next lower grade, i.e., green No. 1 common.

Price Determination

Flat price. A flat price may not be quoted or bid for lumber covered both by this Regulation and Regulation No. 215 because of the dissimilarity between sales under these Regulations.

Random length shipments. Where a customer gives an order that does not call for any specific amount of any length, that is, when he orders what is substantially a random or standard length shipment, it is a violation of the Regulation to charge specified length prices on the various lengths which happen to be contained in the shipment. The customer ordered a random or standard length shipment, and it must be priced at an amount not exceeding the maximum prices for random or standard lengths.

A seller's insistence that the purchaser take a restricted random length usually constitutes a violation. However, if, for example, the seller can show that he has a special market for his 6 ft. lengths, it is not unreasonable for him to insist on selling on the basis of 8 ft. and longer.

Where the purchaser does not specify any specific amount of any length, the specified length addition may not be made even though the order names certain lengths. The random or standard length price applies. Where the amounts of lengths are specified, but the shipment is substantially equivalent to a random length shipment, only the random price may be charged.

The nature of the shipment and not the order determines whether the specified length or random length price may be charged. Thus, if the shipment is substantially the equivalent of a random length shipment, it must be sold at the random length price even though it was ordered in those particular quantities on a specified length basis.

Addition for specified lengths. The addition provided under Table 2 (Footnote 10) for 8' to 16', 10' to 16' or longer, may be added only to purchases of "standard length" lumber; it may not be added to orders for specified lengths.

Retail mark-up. The \$3.50 retail mark-up (for less than carload sales) may be made where all the requirements of a retail sale are satisfied even though the shipment is part of a carload of lumber some of which is not covered by the Regulation.

"Direct-mill retail sales." The sale of lumber to be used on a job site 90 miles from the seller's mill is not a "direct-mill retail sale" since the seller is not in a position "immediately to replace deficiencies and adjust complaints from stocks kept on hand for the

purpose" as required by the Regulation.

Retail mark-up and pool-car shipment. The \$3.50 retail mark-up provided in the Regulation may be applied to each individual shipment making up a pool car (a car consigned to more than one buyer), if each shipment otherwise qualifies as a retail sale.

Retail sale "pool car". The fact that sales in small amounts are shipped in a "pool" car does not in itself prevent the sales from being retail sales for which the retail sale mark-up is permissible if all the requirements for a retail sale as set forth in the Regulation are satisfied, and if this method of shipment is not used as a means of evading the Regulation.

Service Charges. Charges may not be made over and above the maximum prices for the following:

- (1) Checking.
- (2) Tallying.
- (3) Bundling.
- (4) Branding.
- (5) Loading to prevent shifting.
- (6) Partial drying. No addition can be made for a reduction of the moisture content of green lumber whether by air drying or kiln drying, if the moisture content of the lumber actually sold is above that prescribed by the S.P.S. Standard Specifications for dry lumber.

Sale on moisture content waived basis. Where part of a shipment of lumber on a moisture content waived basis is above the specified moisture content as provided in the SPIB grading rules for either air dried or kiln dried lumber, the maximum prices established in the Regulation for green lumber apply to the entire shipment. Individual prices for dry and green lumber may not be applied on a shipment containing both of these types of lumber unless the order designates a specific quantity of dry and moisture content waived lumber, and the quantities of each type in the order are actually shipped.

Addition for direct-mill retail sale. Where a mill complies with all the conditions set forth in Section 6, it is entitled to the direct-mill retail sale markup provided in that Section; the direct-mill retail sale markup is not limited to distribution yards.

In order to be entitled to the \$3.50 addition for a direct-mill retail sale the seller must, in addition to meeting the other requirements of Section 6, agree "to make good any shortage promptly from stocks kept on hand for this purpose". Accordingly, wholesalers or commission agents who do not maintain yards, storage facilities, or permanent stocks of lumber cannot qualify for the \$3.50 additions.

Partially dried lumber. The Regulation establishes maximum prices for dry and green lumber. Where lumber is shipped partially dry, the maximum prices for green lumber are applicable.

F.o.b. mill maximum prices. See page 15:22

Inspection certificates. Where the inspection certificate is required pursuant to Section 5(e) of the Regulation, it must be issued by or on behalf of the seller by a qualified inspection agency or inspector. Thus a mill which does not have a qualified grader or certificate issued by an inspection agency may not sell mill-run lumber on grade.

Estimates in bidding. In bidding or quoting a seller may base his price on the Regulation price plus maximum estimated freight rates provided that he agrees to refund, and does refund any excess by which such estimated rates exceed the actual rates.

Estimated average weights. Where the buyer and seller agree to compute the delivered price on the basis of the permitted estimated average weights set forth in the Regulation, the seller need not reimburse the buyer in the event that the actual weight of the shipment as charged for by the carrier is less than such estimated weights.

Grading. Although the grading rules call for 9' and longer as the normal loading practice, an order reading 2 x 4 and wider, 8' and longer is substantially a random length shipment and should be priced in accordance with footnote 10 of the Regulation. Such a shipment must average 14'. If it averages less than 14', the specified length price must be used.

Cash discounts. On sales of Southern pine lumber under CPA allocations made through a wholesaler, the term 30 days net apply only to the wholesaler. Maximum prices charged by the supplying mills must be reduced by the seller's 1941 cash discount or 2 percent if the seller was not in business in August, 1941.

Grades, services or extras not listed. A seller may make an addition for "special soft texture finish" only when specifically authorized as provided in Sub-Section 22(a) and (b) of the Regulation.

"Grade-marking addition." The \$1.00 addition for grade-marking may not be made on lumber not actually grade-marked, notwithstanding the issuance of an inspection certificate.

Short lengths. Where a shipment of Southern pine finish in random lengths and widths contains also short lengths which are not permitted by the grading rules and for which no price is provided in the Regulation, all lumber in the shipment meeting the specification for standard lengths shall be priced as standard lengths and no price may be charged or collected for the short lengths.

Specifically, 3-ft. lengths shipped as finish are culls and must be priced at zero in the absence of a special pricing application preceding the shipment.

Cross-cutting and precision cutting. The maximum price for 4 x 4 S4S No. 2 common short-leaf timbers cut to 4' specified exact lengths is \$33 computed under Table 3 of the Regulation as follows: \$29.00 (price for 8' length), plus \$2.00 for dressing, plus \$2.00 for precision cutting to specified exact lengths (footnote 20). On such short lengths, it is not permissible to add both for cross-cutting and precision cutting.

Premiums

Premium for kiln-drying. The provisions in the Regulation permitting a premium for kiln-drying done by the seller of lumber, do not limit the charges which may be made for contract kiln-drying of lumber not sold by the dryer.

Transportation Charges

Buyer formerly in free delivery zone. A seller may charge a purchaser with permitted transportation costs, even if the purchaser was in an area which had, prior to the effective date of the Regulation, been recognized as a free delivery zone.

Demurrage. Permitted transportation charges do not include demurrage, and demurrage therefore cannot be added to the maximum price.

Estimates in bidding. See page 15:8.

Estimated average weights. See page 15:8.

Classification

Heart content. The heart content of lumber does not in itself determine the grade of Southern pine lumber. Therefore the appearance or non-appearance of heartwood in boards and strips and dimension, does not affect the grade, provided that the lumber meets the requirement of the SPIB for the applicable grade ordered.

Violations and Evasions

Credit terms. The seller may not cut down or refuse his customary period for credit if he sells at the established maximum price. Thus, if prior to the issuance of the Regulation the seller's terms were 90 days net, he must continue to grant the same credit period if he now sells at the maximum price since the credit period is a thing of value.

Discounts. The Regulation prohibits the decreasing of the amount of cash discount below that in effect in August 1941. Thus, if the established maximum price is \$40, and the customary discount in August 1941, was 2% or 80¢ for payment within 30 days, the effective maximum price is \$39.20 for payment within 30 days. However, the seller may offer the lumber at a price of \$39.20 or less without discount, since the result would not be to bring the price above \$40.

Random length shipments. See page 15:6.

Seller's refusal to sell f.o.b. mill. The maximum prices are f.o.b. mill. It is a violation of the Regulation for the seller to refuse to sell except on a delivered price basis. The seller must always give the buyer the option of making his own transportation arrangements.

Waiver of moisture content. Where the moisture content requirements are waived by the purchaser, the price may not exceed the maximum price for green lumber. In such a case the seller may not use the estimated weights for green lumber; he must use the dry weights or actual weights.

Trade discounts. It is not a violation of the Regulation for a seller of Southern Pine Lumber to reduce or eliminate any trade discounts. However, cash discounts in effect during August 1941 must be continued pursuant to Section 5(b).

Definitions

Mill. The definition of a "mill" in the Regulation means an actual manufacturer or concentrator of lumber, and does not include a person who purchases rough lumber and processes or remanufactures it into specialty items such as radio, phonograph or kitchen cabinets.

Wholesaler. In computing the volume percentage of lumber sales for the purpose of testing whether a seller meets the definition of wholesaler under Section 5a(b), the seller should take into account all the species of lumber sold during the stated period, rather than merely sales of Southern pine lumber.

Distribution yard. A yard which unloads, sorts, resells, and redistributes lumber, and for that reason primarily resembles a "typical distribution yard", does not lose its status as a "distribution yard" merely because it also processes some lumber.

Records and Reports

Invoicing transportation charges. The requirement that the point of origin of the shipment, the destination and the applicable freight rate be shown on all invoices applies to all sales subject to the Regulation. Invoicing at a delivered price in excess of the ceiling price without showing the above facts is a direct violation of the Regulation.

Transportation charges - prerail haul. Under Section 7(d), a mill may not add any charge for a truck haul preceding a rail or water shipment unless it is granted special permission to do so on application to OPA. A mill which is authorized to make the addition must so

"Same percentage margin over direct labor costs." During the base period, March 1942, a contractor had one price for each service to all his customers. However, his "direct labor cost," and therefore also his percentage margin over direct labor cost" under Section 1389.53, the contractor may use the highest percentage margin over cost actually obtained by him any time during March 1942.

Contractor who subcontracts part of work. A contractor who performs only some of the services on a garment and subcontracts the remainder, must determine his maximum charges to the principal in the same manner as if he did not employ a subcontractor; his direct labor costs under 1389.53(a) for the services performed by the subcontractor consist of only the direct labor cost of the subcontractor rather than the subcontractor's total charge for services performed. For instance: In March 1942, contractor (C) charged his principal (P) six dollars for a service performed by a subcontractor. The cost to C was five dollars determined as follows: The subcontractor (SC) had a direct labor cost of four dollars, a margin of 25%, and thus charged C five dollars. According to Section 1389.53(a), C determines his maximum price for the same service today in the following manner: SC had an increase in wage rates of 10%, making his direct labor cost \$4.40, SC charges 25% of \$4.40 making his charge to C \$5.50. C calculates 50% of \$4.40 making a margin of \$2.20 and establishes his maximum price as \$6.60 for the same service.

Fur supplied by retailer and attached to coat by manufacturer. See page 1:20.

Direct labor costs. Section 1389.53 provides that any increase in wages subsequent to March 31, 1942, pursuant to a "collective bargaining contract or other wage agreement" executed on or before April 27, 1942, may be considered in arriving at the direct labor cost. Voluntary wage increases granted to nonunion employees of the industry and in effect prior to April 27th, may be considered by the contractor in calculating his direct labor costs.

Incidental materials supplied by contractor. A contractor who did not make any additional charge for incidental materials supplied to his principal during the base period, March 1942, may not now charge for such materials in determining his maximum price under the Regulation.

Direct labor cost.

Question: During March 1942 a contractor's direct labor cost was \$10.00 and he charged his principal \$15.00. The \$10.00 labor cost was computed on basis of 5 men receiving \$2.00 each. The contractor now has only 4 men and supplies the services of the 5th employee himself. May he now charge \$15.00 for the same service?

Answer: Yes. In this situation the contractor may regard his own direct work as direct labor cost.

Question: During March 1942, a contractor employed 4 men at \$2.00 each and charged his principal \$12.00. He then performed direct work on garments himself, but now has substituted an employee to do the work formerly done by him. The direct labor cost is now \$10.00. May the price be increased to \$15.00?

Answer: No. Exactly the same service is being provided. The percentage margin over direct labor cost during March was actually 20 percent and not 50 percent.

Increased labor costs - "unconditional increase." See page 1:23.

Contractor who supplies trimmings.

Question: How does a contractor who supplies trimmings that are incidental to the processing determine his maximum price under Section 1389.53?

Answer: If the service performed by the contractor with respect to the processing and the furnishing of the trimmings are the same as or similar to the March 1942 service and materials, the contractor determines his maximum price under Section 1389.53(a) or (b); otherwise Section 1389.53(c) applies.

Manufacturer entering contract field. A manufacturer during March 1942 wishes to enter the contract field. He must establish his maximum prices under Section 1389.53(c). In calculating his "direct labor cost" under paragraph (c), he must use the wage rates paid him as a manufacturer, computed according to the instructions in paragraph (a) of Section 1389.53.

Vacation pay is not a direct labor cost in computing prices under the Regulation.

Contractor - pricing of services not the same as base period.

Question: May a contractor who fabricated \$3.50 dresses during March 1942 at a service charge of 30% and who did not fabricate any other dresses during that month, charge a percentage margin of more than 30% on any dresses irrespective of the price at which the dress will be sold by his principal?

Answer: No. A contractor who now performs services which are not the same as or similar to services performed during March, 1942, and who therefore cannot price under Section 1389.53 (a) or (b) must price under Section 1389.53(c). Pursuant to Section 1389.53(c)(2)(i), such a contractor may add to his direct labor cost the same percentage margin which he received during March, 1942 for services rendered in connection with the manufacturing of the most closely related article of the same type. Dresses are articles of the same type although they sell for different prices.

Classification

Contractor. In order to qualify as a "contractor" under Section 1389.52(d) and (e)(2), the fabricator's charge for materials supplied may not exceed the cost price. If the fabricator charges a markup on the materials in addition to his service charges, he is classified as a manufacturer, subject to Regulation No. 287 (Manufacturers' Prices for Women's, Girls', Children's, and Toddlers' Outerwear Garments).

Maximum Price Regulation No. 177

MEN'S AND BOYS' TAILORED CLOTHING

Applicability

Last fall's stock. The sale of men's overcoats carried over by a retailer from the 1941 fall season is covered by the Regulation and the additions to the base period prices may be made pursuant to Section 1389.122(a).

Tailored clothing. A cavalry twill coat made of a plain fabric containing 60% wool and 40% cotton and having a full leather lining, zipper front, and bi-swing shoulders is not "tailored clothing" under the Regulation. Although most of the features of construction which characterize tailored clothing are present, the coat is distinguished by additional characteristics, i.e., the leather lining and zipper front, which are seldom found in business and dress clothing and which characterize the garments as a utility or activity item.

Used garment. See page 1:18.

Damaged clothing. The Regulation applies to the sale of smoke-damaged tailored clothing.

"Tailored" blouses. The additional amounts that may be added to the base period prices, Appendices A and C, are those for "separate coats". "Blouses made in the manner commonly used for coats", referred to in Section 1389.102(a)(1)(iv), means "blouses" with such features as padded shoulders and lapels. For example, the article worn over the shirt by an army officer is known in the army as a "blouse" although a civilian would usually call it a coat.

"Rainwear" garment. The Regulation excludes "rainwear" from the definition of "tailored clothing", see Section 1389.119(a)(12). An outer-coat which is cut, made, and trimmed in a manner generally used for business and dress coats and made of fabrics other than those listed in Section 1389.119(a)(12)(iv), is covered by the Regulation though it is treated to repel water and is made by a manufacturer of rainwear who regards it as a "rainwear" garment. For example, the naval officer's wool serge "raincoat" with removable lining, which retails at \$37.50, is considered "tailored clothing", not rainwear.

Uniforms sold by a military academy. The Regulation applies to all persons who sell or deliver men's and boys' tailored clothing. A military academy, even though it is a non-profit institution, is a "person" under the Regulation. Section 1389.199(b) incorporates by reference the definition of "person" set forth in the Act.

Regulation sailor uniforms are not "tailored clothing" and therefore are not covered by the Regulation.

Sale of coat lining. Where the sale of a coat and the sale of a lining are independent of each other, the maximum price of the lining is determined under the General Maximum Price Regulation.

Where a coat and lining are sold as one garment, or sold separately at the same time to the same customer, the combination is subject to and priced under the Regulation.

Where a coat and lining are sold separately to the same customer with an interval of time between the two sales, the applicability of the Regulation depends upon the facts, i.e., the amount of time between the two transactions, the good faith of the parties and whether the sales are in any manner connected or tied together.

Maximum prices established by Regulation No. 142. Section 1389.108(b) of Regulation No. 177 provides that the Regulation is not applicable to the sale of summer seasonal items for which maximum prices are "established" by Regulation No. 142 (Retail Prices for Summer Seasonal Commodities). However, where Regulation No. 142 provides merely that a certain sale shall be governed by the General Maximum Price Regulation, a maximum price is not "established" within the meaning of Section 1389.108(b) and therefore Regulation No. 177 is applicable.

"Extra-fancy" sailor uniforms are not "tailored clothing" and therefore are not covered by the Regulation; the General Maximum Price Regulation applies.

Clothing made of poplin. Slack suits made of McCampbell's medi slub poplin are not "tailored clothing" and are therefore, exempted from the Regulation, (see Section 1389.119(a)(12)(iv)). If the garment is a semi-dress or sport combination consisting of shirt and pants, it is covered by the General Maximum Price Regulation.

Price Determination

Dissolution of corporation and formation of partnership. Where a corporation doing business during the base period was dissolved and its owners and management formed a partnership which manufactured the same garments, used the same trade name and bought from the same supplier, the partnership's maximum prices are the same as those of the corporation and must be determined by reference to the bookings and deliveries of the predecessor corporation.

Sales by salesmen at uniform prices. Where the salesmen of a company are directed to sell the garments at uniform prices, the salesmen are not separate "sellers" and are bound by the maximum prices of the company. If, however, the company merely recommends a list of uniform prices to all its salesmen but permits its salesmen to fix their own selling prices, each salesman is a separate seller under the Regulation, must determine his individual maximum prices under the Regulation, and must prepare and file his price list with his local War Price and Rationing Board.

"Similar" garments. Fabrics differing in weight are not "similar" fabrics under Section 1389.102(b); thus a 13-ounce worsted garment is not "similar" to a 14-ounce worsted garment. A plain fabric of the same construction, weight and fiber content as a decorated fabric is "similar" to the decorated fabric, since they are usually sold at substantially the same price. If, however, different prices were customarily charged during the base period for garments made of these different fabrics, e.g., extra charges for plaids as against plains, the established differentials may not be changed unless the change results in a lower price, see Section 1389.109(b)(2). Garments differing in percentages of wool are not "similar"; thus a garment using a fabric of virgin and reprocessed wool in the proportions of 40 and 60 percent, respectively, is not "similar" to one using the proportions of 60 and 40 percent respectively.

Where a manufacturer dealt in two-pants suits during the base period he must determine the maximum price of a similar one-pants suit under Section 1389.107(a)(2), even though he also sold a similar one-pants suit during that period. Thus, where a manufacturer's base period prices for the two-pants suit and one-pants suit were \$30.00 and \$25.00 respectively, the maximum price for a similar one-pants suit is \$24.90 (83% of \$30.00) and not \$25.00.

Increase for sale at retail of ready-made garment. Under Section 1389.103(a)(4)(i), the 10% increase to sellers in certain geographic areas may be applied only if the seller's "maximum price" is no higher than his highest October 1941 price, for the same or similar garment. "Maximum Price" as used here means the highest March 1942 price before the application of the 10% increase. The maximum price as increased under this subparagraph may exceed (up to the permissible 10% increase) the highest price charged in March for a garment of the same classification.

Tailored clothing. See page 1:8

Customary discount - differentials. The Regulation provides that no seller may change his allowances, discounts, or other price differentials which he customarily made during the appropriate base period unless such change results in a lower net price. This provision does not make it necessary for a seller to maintain the actual discounts or allowances that he made during the base period regardless of his quoted price. Thus, if a seller lowers his quoted price, he may change his terms of payment, provided that the new terms on the lower quoted price do not result under any circumstances in requiring a greater payment than would have resulted under the customary terms in effect during the base period.

Transfer of business. Retailer A had a highest price-line limitation of \$50 for a particular type of men's suits, and B, his competitor, had a limitation of \$40. Retailer B purchased the stock-in-trade, goodwill and fixture of A and continued to do business selling both the newly acquired assets and his other assets at the same place of business as before. The highest price-line limitation of B for this type of suit is \$40. B does not have the highest price-line limitations of A since B does not carry on A's business "in an establishment separate from any other establishment previously owned or operated by him", see Section 1389.110. If store A and store B are owned by the same person or chain, and store A is closed and the stock-in-trade, good-will and fixture are transferred to store B, the highest price-line limitation of the B store is applicable to the sale of A's stock-in-trade at the B store.

Combination sales. During the base period a seller sold a group of suits normally priced at \$11.75 together with a group normally priced at \$14.75 at the combination price of \$14.25. In determining the maximum prices for any suit under Section 1389.104, the seller is required to base it upon the price at which he booked similar suits during the base period. Any price used for a combination sale of dissimilar suits must be disregarded. Hence, the maximum price for the sale of suits normally priced at \$11.75 will be determined by reference to separate sales of similar suits in the base period; the combination price may not be used to increase the maximum price. Neither will the combination price be applicable so as to lower the maximum price on suits similar to those normally sold in the base period at \$14.75. However, if the seller makes a combination sale in the same proportions as last year, the combination price of \$14.25 must be used as the basis of the maximum price for the combination.

"Tailored" blouses. See page 1:8

Limit on retailers' maximum prices. Section 1389.103 (ready-made garments) provides that "No maximum price . . . shall exceed the seller's highest price for a garment of the same classification, the same as or similar to a garment which he dealt in during the base period." Section 1389.105 ("Made to measure" garments) provides that: "No maximum price . . . shall exceed the highest price at which the seller . . . [during the base period] offered a garment of the same classification . . .".

Retailers fixing their limit on maximum prices under each of these sections must segregate their base-period sales of ready-made garments from their base-period sales of "made to measure" garments, since each section applies only to the particular garments therein enumerated and, moreover, different base periods are prescribed in each section.

Retailers clearly "dealt in" ready-made garments during the base period if the garments were delivered during the base period, or were in the store, priced and deliverable during that period. A retailer also "dealt in" a garment, even though it was not carried in his regular stock, but was ordered specially by a particular customer, if he could have delivered the garment to the customer during the base period. A mere readiness to take orders on the basis of a catalog or swatches would not, however, be sufficient unless the retailer offered to a particular customer a specific garment from a catalog or swatch book at a definite price, and unless the retailer could have delivered that garment to the customer during the base period.

With respect to "made to measure" garments, a readiness to take orders on the basis of a catalog or swatches is sufficient, because sellers of "made to measure" garments normally regard catalogs and swatches as their stock-in-trade. The requirements of base-period delivery, or ability to deliver, does not apply to "made to measure" garments.

Replacement cost - discounts and advertising allowance. In calculating "replacement cost" under Sections 1389.103(a)(3) and (b)(3) of Regulation No. 177, and Section 1389.503(b) of Regulation No. 332 (Simplified Men's and Boys' shirts and Pajamas), the seller must deduct available cash and trade discounts, whether or not he actually takes them. He need not subtract advertising allowance unless such allowance was tantamount to a special discount, as where the advertising allowance was extended without actually performing any advertising service.

Charge for providing cuffs. Where it was a retailer's customary practice during the base period, March 1942, to provide regular cuffs on pants without any charge, the retailer must continue to provide such cuffs without additional charge, even though the proportion of French cuffs to regular cuffs is currently larger than during the base period.

Highest price line limitation - departmentalized seller. The owner of a chain sells tailored clothing through two outlets. The highest price line limitation for a particular classification of garments is \$35 in the first store and \$45 in the second. The owner now proposes that his first store carry a \$45 garment of this classification for purposes of display only, and make sales thereof as agent for the second store. The proposed action by the seller would constitute a violation of Section 1389.103(c)(3). An agency is considered to be a department just as much as a leased or a store-owned department.

"Ready-made" clothing. A retailer of "ready-made" clothing may have the following three differentials establishing three separate highest price line limits: (1) for regular suits from stock; (2) for suits ordered from a swatch book where the suits are already made; and (3) for suits ordered from a swatch book where the suits will be manufactured for the retailer as a "fill-in" of the manufacturer's ready-made stock number in a stock size.

Pricing of "made-to-measure" garments by retailers of "ready-made" garments. A retailer of "ready-made" garments now wishes to sell a classification of "made-to-measure" garments which he did not offer to sell during the appropriate base period. He cannot price under Section 1389.105(a)(2) since his sales of "ready-made" garments cannot be used to establish prices for his sales of "made-to-measure" garments. Therefore, he must apply for prices under Section 1389.106.

Definitions

Tailored. Uniforms are tailored if they are cut, made and trimmed in the manner generally used for business and dress clothing, as contrasted with the manner generally used for work clothing, rain wear and furnishings or haberdashery. Thus, sales of most uniforms for use by Army and Navy officers, conductors, brakemen, porters, etc., are covered by the Regulation, except those made of the cotton fabrics which are specifically excluded.

"Tailored to the trade" clothing. Tailored clothing manufactured to individual measurement is "tailored to the trade" clothing even though the clothing is ordinarily a ready-made stock number in stock size.

Records and Reports

Receipts from a leased department in a department store. See page 1:15.

"Manufacturer". In order to be classified as a "manufacturer" the seller need not necessarily perform the cutting and sewing operations at his own plant or premises. Thus, a seller who has the clothing made for his account by an independent contractor is a "manufacturer" required to file the information called for by Section 1389.115 and 1389.116.

Parent and subsidiary corporation - manufacturing-retailer. A holding and service company has several wholly owned subsidiary corporations which sell men's and boys' ready-made tailored clothing at retail. The subsidiaries obtain all their supplies from the holding company. The holding company has the clothing manufactured by independent contractors. The holding company and its subsidiaries are considered to be a single seller of the type known as a "manufacturing-retailer". The holding company should file with OPA the retail selling prices of its subsidiaries, rather than the bookkeeping prices at which the holding company bills the goods to the subsidiaries.

Maximum Price Regulation No. 178

WOMEN'S FUR GARMENTS

Applicability

Used garments. See page 1:18.

Contractor of fur garments. Charges for services performed by contractors in the manufacture of women's fur garments are governed by Regulation No. 172 (Charges of contractors in Apparel Industry). A "contractor" is defined in Regulation No. 172.

Garment manufactured of skins supplied by customer. A retailer who makes up a fur garment from skins supplied to him for that purpose by the customer is performing a service, the maximum price of which is not subject to Regulation No. 178; the General Maximum Price Regulation applies.

Muff made of fur and fabric.

Question: Is a muff of which the entire front is made of fur, and the entire back made of fabric, priced under the Regulation?

Answer: Yes, if the value of the fur is greater than the value of any other single material used in the muff. If the value of any other single material used in the muff is greater than the value of the fur, the General Maximum Price Regulation applies.

Fur handbags which cannot be classified as muffs are not "women's fur garments" within the meaning of Section 1389.165(a)(1) and therefore are not covered by the Regulation; the General Maximum Price Regulation applies.

Price Determination

Sale by manufacturer's representative at retailer's store. Where the representative of a

manufacturer sells a garment to the customer of the retailer at the retailer's store, and after such sale charges the garment to the retailer as a wholesale transaction, the sale by the representative to the retailer's customer is subject to the maximum prices and price limitations of the retailer, since the sale is made on behalf of the retailer and not the manufacturer.

Where retailer was a selling agent during the base period. Where a retailer acted merely as a selling agent for another seller during the base period, and did not purchase and resell, or offer to sell any fur garment for his own account during that period, he determines his present maximum prices under Section 1389.154(a).

Optional provisions for garments purchased prior to July 10, 1942. Where the seller un-



Price Determination

Fraction of cent. Where the maximum price results in a figure containing fractions of a half-cent or quarter-cent, the seller may not adjust the fractional cent to the next higher whole cent.

Deductions. The deductions required to be made from the base price pursuant to Section 1389.203(e) apply to all garments whether or not simplified.

"Finished" drills. Pre-shrunk or sanforized drills are "finished" even though they are not bleached or dyed.

"Finished" cloth. The deductions for certain "finished" cloth provided in Table 1 of Section 1389.203(e) apply to cloth which is pre-shrunk or sanforized after the weaving operation since this post-weaving operation is a finishing process.

Same commodities - differing standards of workmanship. A seller who manufactured work clothing in a union plant during the base period now has the clothing manufactured for him by a non-union contractor. He desires to price a garment under Section 1389.203(a), by reference to his list prices in effect during the base period. In order to price the garment under this section, it must be the "same" as the one shown on the price list. Under Section 1389.203(d)(3), garments are not the "same" unless they are made with the same standards of workmanship. Therefore, the maximum price of the garment presently manufactured for the seller may not be based on the seller's base period list price of the garment unless the same standards of workmanship prevailed in the manufacture of both garments.

Price list. In order for a price list to qualify as having been "generally circulated among the seller's customers or representatives" within the meaning of Section 1389.203(a)(1) it is not necessary that the list be distributed or exhibited to customers. It is sufficient if they be generally distributed, or even exhibited, at the seller's place of business, to the seller's salesmen or representatives to the trade. In general, price lists and changes in price lists may consist of informal memoranda, letters, telegrams, and other written papers.

Maximum Price Regulation No. 221

MANUFACTURERS' PRICES FOR FALL AND WINTER KNITTED UNDERWEAR

Applicability

Commodities sold throughout the year. The Regulation is applicable to the sale by the manufacturer of any commodity listed in Appendix A whether or not it was exclusively sold during the fall and winter season, except that "winter-weight" and "heavy-weight" commodities are subject to the Regulation only if the manufacturer delivered at least 65% of his 1941 production of such commodity from June 1, 1941 to December 31, 1941.

Fleece-lined knitted sweatshirts. Fleece-lined knitted sweatshirts and other commodities listed in the Appendix which are not described as "winter-weight" or "heavy-weight" are covered by the Regulation, whether or not they meet the test prescribed for "winter-weight" and "heavy-weight" garments, i.e., these commodities are covered even if the manufacturer delivered less than 65% of his 1941 production from June 1, 1941 to December 31, 1941.

Manufacturer who sells as distributor. In determining whether a "manufacturer delivered at least 65% of his 1941 production" from June 1 to December 31, 1941 under Section 1389.314, the manufacturer may consider only garments which he manufactured; garments which he purchased for resale may not be included.

Price Determination

"Current cost" of retailer and wholesaler's and manufacturer's maximum price. See page 26:11.

Oral contract or written confirmation during base period. In determining his maximum price under Section 1389.302(a)(1), the manufacturer must refer to written orders or contracts during the base period; he may not refer to an oral contract or to a written confirmation of an oral contract even though shipment was actually made under it for the fall and winter season of 1942.

Open price clause. A clause in a contract which provides that the price to be paid by the purchaser will be the maximum price in effect at the time of delivery of the goods is not a violation of the Regulation. Regulation No. 221 incorporates by reference the General Maximum Price Regulation in which the definition of "sell" specifically permits open-pricing.

Same commodity - different packing. An underwear mill formerly packed its union suits two to a box. It now packs the same underwear four to a box. Since the commodity is the same and the company has never maintained a price differential for different kinds of packaging, this practice will not result in any change in the ceiling price of the underwear.

Maximum Price Regulation No. 274

WOMEN'S SILK HOSIERY

Applicability

Silk and wool combination hosiery. See page 26:10.

Maximum Price Regulation No. 287

MANUFACTURERS' PRICES FOR WOMEN'S, GIRLS', CHILDREN'S AND TODDLERS' OUTERWEAR GARMENTS

Applicability

A garment is "in process of manufacture" on December 15, if it has reached the cutting stage on that date, i.e., the material has been stretched on the cutting table ready for cutting.

Where the manufacturer does not cut garments in his own factory but has them cut by a contractor, the garments are considered to be in the process of manufacture on December 15 if on or before that date (a) the contractor has physical possession of the material, and (b) the manufacturer has forwarded to the contractor specific cutting instructions for this material.

Used garments. The Regulation covers the sale of used as well as new clothing.

"Boys" legging sets in sizes 1 to 10, inclusive, are included within the term "children's" legging sets.

Garments containing wool. The instructions in Section 31(a)(2) apply to garments manufactured from fabrics containing 25% or more than 25% wool, regardless of the type of wool. Selling price lines must be determined under that Section, even though the entire wool contents of the garments consists of "reused wool".

Fur-trimmed suits are subject to the Regulation.

Women's burial garments are not "women's, girls', and children's outerwear garments" within the meaning of Regulation No. 287, or Regulation No. 153 (Women's, Girls' and Children's Outerwear Garments), and therefore are not covered by these Regulations; the General Maximum Price Regulation applies.

Dresses for "utility wear". See page 1:28.

Boys' and children's garments. Garments generally known in the trade as "boys'" rather than "children's garments are not covered by Regulation No. 287.

Housecoats are not "dresses", nor are they included in any category listed in Regulation No. 287 and No. 330 (Retailers' and Wholesalers' Prices for Women's, Girls' and Children's Outerwear Garments), and therefore are not covered by these Regulations; the General Maximum Price Regulation applies.

Sale under lend-lease. The sale of garments covered by the Regulation to the Russian War Relief Agency under lend-lease is subject to the Regulation.

Contractor - retail distributor. A producer manufactures garments for retail distributors (mail order houses and chains). The retail distributors supply the fabrics for the garments. The producer is subject to Regulation No. 287, except in the following cases:

(a) Where the retail distributor consigns the fabrics to the producer and the value of the trimmings and other materials furnished by the producer constitutes less than 30% of the price charged by the producer.

(b) Where the retail distributor sells the fabrics to the producer pursuant to an agreement, providing that garments produced from the fabrics shall be sold only to the distributor at a price based upon the cost of the fabrics to the producer, plus a charge for his services, trimmings and other materials supplied by him, and the trimmings and other materials constitute less than 30% of the total price.

In each of the above cases the producer is subject to Regulation No. 172 (Charges of Contractors in Apparel Industry), and the Retail Distributor is subject to Regulation No. 287 as a manufacturing-retailer.

Children's garments.

Question: A manufacturer makes toddlers' and children's coats and jackets for both boys and girls in sizes 1 to 6. Does he price the boys' garments under the Regulation?

Answer: Yes. He prices both the boys' and girls' coats and jackets under the Regulation if they are "children's" coats and jackets.

Question: A manufacturer of boys' clothing makes boys' coats sizes 2 to 8. He does not manufacture any girls' clothing. The garments in the 2 to 8 size range are not the same sizes as children's garments bearing the same size label. Does he price the boys' coats up to size 6 under the Regulation?

Answer: No. The boys' coats are not children's coats covered by Regulation No. 287. They are boys' clothing, priced under Regulation No. 177 (Men's and Boys' Tailored Clothing) if they are tailored clothing, or Supplementary Regulation No. 14 or the General Maximum Price Regulation if they are not.

Two-piece garments. All two-piece garments consisting of skirt and lined jacket are classified as "suits" under the Regulation. Two-piece garments consisting of separate skirt and blouse or unlined jacket are classified as "dresses".

Garments manufactured under WPB order M-207.

Question: A manufacturer manufactures women's work shirts for a munitions plant from materials obtained by the assignment of an A-2 preference rating by WPB, pursuant to Limitation Order M-207. The munitions plant rejects the material and the manufacturer uses it in the production of children's overalls. Are these overalls covered by the Regulation?

Answer: Yes. The garments produced from such material are no longer excluded by the first paragraph of Section 27 if they come within the listed category descriptions.

Dresses - uniforms. Uniform dresses worn by girls and children attending parochial or other private schools are not covered by the Regulation or Regulation No. 330 since these Regulations do not apply to uniforms ordinarily purchased only for institutional use; the General Maximum Price Regulation applies.

Girl Scout uniforms are not covered by Regulation No. 287 nor No. 330; the General Maximum Price Regulation applies.

Aralac. Although aralac is a wool substitute, it does not meet the definition of "woolen" in Section 31(a)(2) since it is a milk fiber containing no wool fibers.

Fall selling price lines. A manufacturer may not start the sale or delivery of garments at fall selling price lines until June 15.

Price Determination

Garment of different category. During the base period, a manufacturer delivered two-piece women's suits at \$8.75. He also delivered separate jackets which were the same as, or similar to, jackets which were part of the suit. He did not deliver or offer to deliver separate skirts during the base period. His maximum price for separate skirts the same as, or similar to, those which were part of the \$8.75 suit is determined by Rule 3 of Regulation No. 287 and is not \$8.75 less the price charged for the separate jacket.

"Direct labor costs". The following are not "direct labor costs" for the purpose of computing cost under Section 30(a)(10) of Regulation No. 287: salaries of foreman and designers, and employers' contribution to Social Security and Unemployment Compensation. Salaries of examiners are charges to direct labor costs only when the examination is performed in connection with the original factory examination and not in connection with any supervisory examination by the manufacturer after the garment comes from the contractor's shop.

Fur supplied by retailer and attached to coat by manufacturer. A manufacturer of cloth coats who attaches fur trimmings supplied by the retailer is not a contractor pursuant to Regulation No. 172 (Charges of Contractors in Apparel Industry) since more than 30% of the charges by the Manufacturer are for materials supplied by him. The manufacturer is subject to Regulation No. 287 and his maximum price is the maximum price of the cloth coat as determined under that Regulation plus the charge for sewing the fur, provided that this total plus the cost of the fur to the retailer does not constitute a higher price line than that which the manufacturer had for coats during the base period. The retailer's cost for the garment, for purposes of determining his maximum price, is the price paid to the manufacturer plus the cost of the furs.

Cost of materials - customary source of supply. A manufacturer customarily purchased materials and trimmings from mills and jobbers. Because of the current scarcity and tight deliveries of merchandise he now purchases from retail stores. Under the Regulation, "cost of material" and "cost of trimmings" may not exceed the actual net cost or the maximum price of the customary source of supply, whichever is lower, Section 30(a)(8)(i). Since a retailer is not a manufacturer's customary source of supply, the manufacturer's cost of materials and trimmings may not be based on the price charged by the retail stores.

Direct-cost - labels, pin tags, string tags.

Question: Are labels, pin tags, or string tags placed on a garment by a manufacturer, and labor required in sewing such labels on the garments a part of direct cost?

Answer: Labels constituting a permanent part of the garment, such as union labels and brand names, are included in direct cost. Labor of sewing in such labels is also included. Pin or string tags and labels, such as size or wool content labels, are usually removed after purchase, and therefore, are not included in direct cost.

Posting of selling price lines in showroom. Section 16 requires each manufacturer to post his selling price lines in his showroom. Where a number of manufacturers hold a joint showing in a hotel room which orders are taken for the styles shown, each manufacturer must post in the hotel showroom his highest price lines for each category number.

Cost of materials - averaging costs. The costs of all materials used on single cutting may be averaged, regardless of differences in cost and time of purchase. However, the costs of garments or materials in different cuttings may not be averaged.

Direct labor cost - floor girls' wages.

Question: A manufacturer pays floor girls by the week to distribute work in the sewing room. These employees spend part of their time in turning collars and sleeves and cutting tapes used in waistlines of dresses (ordinarily a direct labor operation). May any part of the wages of these floor girls be included in direct labor cost under Section 30(a)(10)?

Answer: Yes. The portion of their weekly wages which represents time spent in direct labor operations may be included in direct labor cost.

Pricing chart - amendment.

Question: May sample deliveries and accomodation sales serve as a basis for amendment of a pricing chart?

Answer: No. Prices not included on the original chart should be authorized only if a substantial number of garments were delivered at those prices in March 1942, or if it meets the definition of a "selling price line" in Section 7(a). Sample deliveries and accomodation sales are excluded by Section 7(a).

Discount terms. Price lines in Appendix G are gross prices and manufacturers must allow customary discount terms.

Fall pricing chart - options. A manufacturer who has filed a fall pricing chart using Option I may not amend the pricing chart to use Option 2 as his option was exercised at the time of filing.

Transferees - new categories. A transferee under Section 18 of the Regulation who wishes to sell a new category not manufactured by the transferor during the base period establishes his ceiling price for the new category under Rule 3 by computing the average of the maximum allowable margins for every selling price line in every category number listed on the spring pricing chart of the transferor.

Additions of pricing chart. A manufacturer is permitted to amend his pricing chart under Section 14(a) to include base period data for misses' blouses under size 30 and boys' garments which have been added to catagories 5 and 15 of the Regulation.

Maximum "net" allowable margins adjusted to reflect terms. In Rule 2, Section 9, the seller is required to use the lower of two specified margins appearing on his pricing chart. In Rule 3, Section 9, the seller must average the margins contained on his pricing chart. In Option 1, Section 4, for the addition of fall selling price lines to the pricing chart, the seller is required to average all margins for that category number on his pricing chart.

If the margins listed on the seller's pricing chart have varying terms, the listed margins must be reduced to "net" margins for purposes of calculating the margin for the new category or selling price in all three of the above cases. Then if the seller desire to sell on terms, the net margin may be adjusted to reflect the terms desired. These terms however, must be unconditional so that the net realized margin remains the same.

Trimming - direct cost. A contractor's overhead and profit margin for trimming performed on a garment may not be included by a manufacturer as part of direct cost and direct material cost in computing cost of trimmings, such as pleating, embroidery, fagoting, etc. Such trimming is a direct labor operation performed as part of the construction of the garment itself, as distinguished from the cost of trimming material, such as yardage of lace, braid, etc.

Price Authorization for new sellers.

Question: How may an order issued under Section 12(a) specify differentials for classes of purchasers, i.e., retailers and wholesalers?

Answer: Since Section 12(a)(9)(i) requires the manufacture to set forth in his application the types of trade to which the garments are to be distributed, the order itself can determine customary differentials to such type of trade by reference to past customary practice, competitors, etc., in the same manner as the margins themselves are determined.

Classification

Dresses. A two-piece garment consisting of a one-piece dress made of sheer material and a full slip which must be worn with the dress is classified as a "dress", see Section 27(e).

A two-piece garment consisting of a blouse and skirt made of matching fabric and sold at a unit price is a dress and falls within Category No. 21, Section 27(e), since it is commonly known as a dress and is sold at retail in dress departments.

Chubby girl dresses, sizes 6½ to 16½. Chubby girl dresses sizes 6½ to 16½, if made by adjusting girls' size patterns, are included in category 24 ("Girls'" dresses); if made by adjusting teen age patterns, they are included in category 23 ("Teen age" dresses).

Bridal gowns. Bridal gowns are classified as "dresses" under the Regulation.

Category of garment - coats.

Question: May a fur trimmed garment, under 30 inches in length and manufactured to be part of an ensemble be priced as a coat?

Answer: No. Garments under 30 inches in length are not considered coats under WFB Order L-85, and therefore are not coats either under Regulation No. 287 or under Regulation No. 330 (Retailers' and Wholesalers' Prices for Women's, Girls' and Children's Outerwear Garments).

Coats made of cloth and fur. A fur-lined coat is covered by Regulation No. 287 and not Regulation No. 178 (Women's Fur Garments). Similarly, a reversible coat made wholly of fur on one side and wholly of cloth on the other, and which may be worn with either the fur side out or the cloth side out, is classified as a "coat" under Regulation No. 287, and not as a fur garment under Regulation No. 178. Regulation No. 178 covers only garments that can be worn only with the fur side out.

Violations and Evasions

Purchase of business, etc., to secure higher selling price lines. Manufacturer X, who by his Pricing Chart is limited to a \$3.75 selling price line for dresses, wishes to buy an interest in corporation Y, which may make dresses for \$7.75. Since Section 18(b) prohibits the purchase of a business, assets, etc. for the purpose of obtaining higher selling prices, X must show that the purchase is made in good faith. A purchase by X of more than 50% of the stock of Y would raise a rebuttable presumption that it was made to obtain higher selling prices. However, this presumption would be weaker if the purchase was made for less than 50% of Y's stock.

Records and Reports

Cutting ticket. The "piece-goods number of the materials used" is the mill's identification

number of each piece of goods used and does not refer to the pattern or style of the material.

Direct labor cost - breakdown by crafts. A manufacturer who uses the suggested cost record form contained in Section 30(c) must break down his direct labor cost by crafts as indicated on the form. A manufacturer who elects to use his customary form in place of the suggested form, pursuant to the option provided in the Section, must also show a similar craft breakdown of labor cost.

Pricing charts. A manufacturer who is authorized to establish maximum prices under an order issued by OPA pursuant to Section 12(a), (b) or (d) of Regulation No. 287 is not required to file any pricing charts. Pricing charts need be filed only when they are based on a seller's base period experience.

Maximum Price Regulation No. 304

SPECIFIED UTILITY SHIRTS

Applicability

"Leisure shirt" or "leisure jacket". A shirt made of cotton flannel with a breast pocket and two lower pockets, sometimes called a "leisure shirt" or "leisure jacket", is a shirt covered by Regulation No. 304, not a jacket covered by the General Maximum Price Regulation. However, the garment is not an "in-and-outer shirt" within the meaning of Section 15(b)(2) since it is designed to be worn only outside the pants. Since no specific prices are set forth in the Regulation for this type of shirt, the manufacturer must apply for a price under Section 5(b)(4) and 5(c).

Carry-over stock. The phrase "carry-over stock" in Section 4(e) refers only to men's in-and-outer shirts and other shirts made with certain features set forth in that paragraph. These shirts, if made before January 25, 1943 and delivered before October 1, 1943, may be sold by the manufacturer at the maximum price established under Section 3.5 of Revised Supplementary Regulation 14 to the General Maximum Price Regulation. On and after October 1, 1943, the manufacturer's maximum price is the RSR 14 price reduced by 10%. When a manufacturer's maximum price is established under this paragraph, the retailer uses that maximum price as his supplier's net ceiling price under Appendix C.

Maximum Price Regulation No. 330

RETAILERS' AND WHOLESALERS' PRICES FOR WOMEN'S, GIRLS' AND CHILDREN'S OUTERWEAR GARMENTS

Applicability

Girls' corduroy jackets. Corduroy jackets designed for girls are not covered by Regulation No. 210. These jackets, except in infants' sizes, are covered by Regulation No. 330 as to garments delivered to the seller on or after February 24, 1943.

"Boys'" legging sets. See page 1:18.

Fur-trimmed suits. See page 1:18.

Housecoats are not "dresses". The General Maximum Price Regulation applies.

Jumpers are subject to the Regulation as "dresses," including sleeveless and other types of jumpers worn with a blouse to complete the ensemble.

Second-hand garments. The sale of used women's outerwear garments by second-hand dealers is

subject to the Regulation. However, the sale of used or second-hand garments acquired by a seller without cost, e.g., a welfare organization, is not covered by the Regulation, since the clothing does not have any cost price line.

Dresses for "utility wear." The category "dresses" in Appendix A specifically includes dresses for "utility wear." The term "utility wear" includes dresses suitable for general use such as house dresses. It does not include garments worn by women in industrial and professional employment if the garments were designed solely for wear on the job, and are of such a character that they would ordinarily not be purchased for any purpose except to be worn on the job. Hence, uniforms or garments designed for wear on the job by the following occupational users are not covered by the Regulation: waitresses, nurses, maids, war service organization volunteers, beauticians, hospital attendants, elevator operators, usherettes, retail store, office, bank and restaurant employees, launderers, dairy and cannery workers, food processors, hotels, industrial plant, and railroad dining car employees, etc.

Boys' and children's garments. See page 1:19.

Women's slips. The sale of women's slips is not covered by the Regulation; the General Maximum Price Regulation applies.

Jodphurs. The sale of men's riding breeches and women's and children's jodphurs is not covered by the Regulation; the General Maximum Price Regulation applies.

Three-piece matched sets. A three-piece matched set of toddlers' slacks with attached bib, jacket and cap which is to be sold at a unit price is not covered by the Regulation since three-piece sets do not fall within any of the listed categories; the General Maximum Price Regulation applies. However, it should be noted that WPB Order L-85 forbids the sale of these sets at a unit price if the garments were cut after May 27, 1943.

Weskits, consisting of a sleeveless garment similar to a man's vest, are covered by the Regulation as a separate jacket.

Price Determination

Transfer of establishment. A retailer who moved his store to a different locality after the end of the base period (December 31, 1941) is bound by the price lines and mark-ups established in his former store since the moving of his store does not make him a new or different seller, except that if he purchased the business or stock in trade of another retailer formerly doing business at the new location, he must use the maximum prices of his transferor.

Cost price of garment. An organization controls the styles of garments sold by member retail stores and acts as a buying agent for the members, the manufacturers billing and shipping the garments directly to the retailers. Ordinarily, the retailer's actual cost price plus the style organization's fees for its services do not exceed the manufacturer's showroom price. Fees paid by the member stores to the style organization may not be included in determining the retailer's cost price of a garment under this Regulation or Regulation No. 178 (Women's Fur Garments) since the organization does not perform the services of a wholesaler.

"Next lower" cost price line. In pricing under Section 1389.554(d)(2) of Regulation No. 330, a garment of a different category than that delivered by the seller during the base period, the seller must refer to the category having a cost price line which is actually the "next lower" to the cost of the garment being priced, and not to "any" category which merely includes a "next lower" cost price line. Thus, in pricing coats costing \$5.00 where there are several categories which have lower cost price line, e.g., jackets costing \$3.00 and skirts costing \$4.00, the next lower cost price is that for skirts costing \$4.00.

New lines or where cost price lines not established. A seller at wholesale who desires to price new lines of garments where the cost to him of the garment being priced does not correspond to the cost price lines of garments of the same category delivered during the base period is governed by Rules 2 and 3, Section 1389.554 of Regulation No. 330. Where a seller at wholesale does not operate with established price lines, the words "cost price lines" mean cost to the seller.

Blouse of three-piece suit. Where a wholesaler or retailer formerly sold women's three-piece suits costing up to \$195.00 and now proposes to sell separately the blouses of three-piece suits, the wholesaler or retailer may not sell blouses in a price line which is higher than the highest price line at which he delivered separate blouses during the period determining his highest price line limitation.

Cost price line - identical garments purchased at different costs. A maximum price once determined by the retailer or wholesaler under Section 1389.553 of the Regulation does not fix the maximum price on identical garments subsequently purchased at a different cost since the garments are in different cost price lines.

Cost price line - change or addition of trimmings to garment. Where a wholesaler or retailer, at his customer's request, changes the trimming or adds trimming to a garment, his cost price line of the garment is determined as follows:

(a) If the new trimming is supplied by the customer, the cost price line is the original cost of the garment less the actual cost, or if actual cost is not known, the estimated cost of the removed trimming.

(b) If the new trimming is supplied by the seller, the cost price is calculated by subtracting the actual cost, or if this is not known, the estimated cost, of the trimming which is removed, from the original cost of the garment, and adding the cost of the new trimming.

However, the selling price of the garment with the new trimming may not in either case exceed the highest permissible selling price line for garments of the same category.

In the normal case a seller may not increase the cost price line of a garment by changing or adding trimming except upon request of a customer, since the Regulation forbids any evasive practices which would increase the price above the maximum price.

Most closely competitive seller of the same class. A seller of women's, girls' and children's outerwear garments who prices by reference to the maximum prices of the most closely competitive seller under Rule 5, Section 1389.554(e), selected the X Company as his competitor. The seller also selected the X Company as its most closely competitive seller for pricing women's fur garments under Regulation No. 178 (Women's Fur Garments). The seller now wishes to select a different competitor on the ground that its initial selection was erroneous in that X Company was not, in fact, the most closely competitive seller. The choice of X Company as Competitor is revocable only if the seller can prove that the original choice was erroneous. OPA will scrutinize carefully the seller's reasons for claiming that its original choice was incorrect, as well as his reasons for selecting the proposed competitor. The fact that the seller previously selected X Company as its closest competitor under Regulation No. 178 is not binding on its selection of a competitor under Regulation No. 330.

Computation of cost of each garment purchased in a lot. Where garments are purchased in job lots, for a lump sum and the specific costs of each garment or type of garment in the lot is not itemized, the seller may determine the cost of each garment by assigning a price for each garment in the lot, provided that the assigned price is made on a reasonable basis and the total of all the assigned prices does not exceed the total price actually paid for all the garments in the lot. The selected cost for each garment should be entered on the invoice. Where garments delivered during the base period were purchased in job lots, the same method should be followed in ascertaining the cost price of such garments.

Bridal gowns. See page 1:26

Closest competitor - importer. Under Section 1389.554(e)(2), Rule 5, a seller who was not in business prior to April 7, 1943, establishes his maximum prices by reference to those of his "most closely competitive seller." When an importer's closest competitor is a non-importing seller, the importer may use as his cost price line the landed, duty-paid cost of the garments being priced, provided that the competitor uses a "freight-included" cost basis under Section 1389.562(g).

Rule 1 - largest number of garments delivered during base period. The phrase "price at which you delivered the largest number of such garments," Rule 1, Section 1389.554(c), means a price at which the largest number of such garments were delivered to the general trade.

Category of garments - coats. See page 1:26.

Price-line limitation. The next to the last undesignated paragraph of Appendix A permits the seller to combine pairs of categories in calculating the maximum price for a particular cost price line. However, the categories used will not necessarily have the same highest price line limitation. Thus, if the seller's records show a base period delivery at a higher price line in one category than the other, then each category has a different "highest price" line limitation.

Highest price-line limitation - sale on "special order" during the base period.

Question: Is a sale of a garment on special order sufficient to establish a highest price line under Regulation No. 330?

Answer: Yes. Sales on "special order" are virtually impossible to distinguish from ordinary sales by inspection of records. A special order sale usually involves a purchase of the garment at the customer's request; if the customer rejects the garment it is placed in stock and offered to other customers. However, where the sale is not to the general trade, (e.g. sale by wholesaler to an ultimate consumer) it does not establish a highest price line limitation for sales to the general trade.

Sale through more than one department - separate sellers. A seller has several women's dress departments in one store. These dress departments are contiguously located but they are separately identified by a department number or name, and each of the departments deals in a different range of price lines, employs a separate buyer, and maintains a separate accounting system. Each department must be regarded as a separate seller with its own highest price line limitation, see Section 1389.554(f).

Transfer of business. A corporation which operated a chain of 14 apparel shops sold 12 of the stores to a newly formed partnership consisting of stockholders of the corporation. The stores continue to deal in the same type of commodities and at the same locations and under the same trade name. The corporation retained some assets belonging to the stores. Under Section 1499.5 of the General Maximum Price Regulation, incorporated into Regulation No. 330, the partnership is a transferee of the corporation since a substantial portion of the assets were transferred to it, and is bound by the maximum prices of the corporation for each of the 12 stores.

Transfer of leased department. During the base period C operated a leased department in the basement of B's large department store, selling garments subject to the Regulation. A, during the same period, operated a leased millinery department in the same basement. On January 2, 1943, A purchased C's business, including C's entire stock-in-trade, and has continued the department. Section 1389.559(a)(2) controls, and A must price on the basis of C's base period mark-ups and C's highest price line limitations. Section 1389.554(f)(1) provides that each separate department of a selling establishment shall be considered a separate seller.

Reopening of discontinued leased department.

Question: During the base period a basement seller leased the women's outerwear department. The lessee discontinued operation, and the lessor now wishes to open the women's outerwear department. The lessor is not a transferee of the lessee. How does the lessor price under Regulation No. 330?

Answer: The lessor prices under Section 1389.554(f)(3). Rule 5 does not apply unless no other department in the basement sold the same category numbers during the base period. In such cases a competitive basement seller must be found.

Anticipation privileges. See page 26:12.

Highest price line limitation - special sales.

Question: A salesman selling from a retailer's store sold cloth coats from samples during March 1942, but no deliveries were made until April 1942. Are such sales in March 1942 adequate to establish highest selling price lines?

Answer: No. Section 1389.553(a) makes delivery during March 1942 essential in determining highest selling price lines.

Pricing chart - separate departments.

Question: A retail department store has several separate departments in its upstairs store and several separate departments in its basement store. Since the Regulation treats basement and upstairs departments as different "selling establishments", and separate departments as "separate sellers", to which does the phrase "you must prepare a pricing chart" in the Regulation refer?

Answer: "You" refers to each separate seller. Each separate department upstairs must prepare a chart and each separate basement department must prepare a chart.

A basement store is defined as a separate selling establishment from an upstairs store for provisions such as Section 1389.554(f). Therefore, new basement departments or new categories sold in basement departments cannot use upstairs margins and highest selling price lines.

Basement Store.

Question: Where a department store opened its only basement department prior to the issuance of Amendment 2 to the Regulation and limited itself to the highest price lines in its upstairs department, does Section 1389.554(f)(1), as amended by Amendment 2, require re-determination of its maximum prices and margins in the basement by the adoption of prices and margins of its most closely competitive basement seller?

Answer: Yes. The amendment applies retrospectively as well as prospectively and therefore requires that the maximum prices of the basement department be determined by reference to the prices of the most closely competitive seller, which will usually be another basement seller.

Pricing new categories. Where a new retailer has established maximum prices by selecting a competitor's price under Rule 5(2), he also uses those prices which the same competitor would establish under Rules 2 and 4 for garments in the same category, but of different costs, and for new categories not dealt in during the base period.

Use of prices adjusted by order under Regulation No. 153 as amended. Prices authorized in adjustment orders granted under Regulation No. 153, as amended, may be used as highest price lines under Regulation No. 330 only during the fall season. These adjustments were issued in Fall, 1942, and authorized prices appropriate for fall sales. Sellers may apply for amendment of adjustment orders which will state spring and fall prices separately. However, adjustment orders may not be amended to grant adjustments in prices of toddler's garments, blouses under size 30, or slacks and slack suits, since these categories of garments were not covered by Regulation No. 153, as amended, and the provision for adjustment in that Regulation did not apply to them. Nor may sellers now apply for adjustment in their prices for these categories since Regulation No. 330 contains no adjustment provision.

Classification

Chubby girl dresses, sizes 6½ to 16½. See page 1:26.

Costume suit. A costume suit consisting of a dress and jacket may not be classified under "suits". Each piece in the suit must be placed in its appropriate category, i.e., "dresses" and "separate jackets," and priced accordingly. Under Limitation Order L-85 of the War Pro-

garment. The term "present maximum price" refers to the maximum price to purchasers of the same class. Thus, a manufacturer who formerly sold only to one class of purchaser cannot establish his maximum prices under this section for a different class of purchasers but must refer to Section 1389.504(a).

Rule 1.

Question: Do shirts differing only in their being white, solid colors, or fancies constitute different styles?

Answer: They may be considered one style or more than one style, in accordance with the established practice of the manufacturer.

Question: Where shirts in the same price line include whites, solid colors and fancies, how are savings averaged?

Answer: If these shirts are considered two or more styles, the average savings are determined by the method given in Section 1389.502(a)(2). If the shirts constitute only one style, the average may be determined by the same method, or by the reference to a fair estimate of current production, or on any other reasonable basis.

Question: Must each fancy pattern in a style be compared to a 1942 or other pattern and weighted in calculating the average?

Answer: No. Savings on different fancy patterns within the same style may be averaged by taking the average cloth cost for all the patterns in current production, and multiplying by the amount of cloth saved.

Question: A manufacturer has a price line of which 50% is made of fine combed-yarn cotton goods and 50% is made of other goods. Simplification savings on fine cotton goods are 45¢, on other goods 40¢. Due to the increase in replacement cost of fine cotton goods, the manufacturer has an offset of 50¢ in accordance with Section 1389.502(a)(3)(iii). Can the 50¢ offset be applied against savings on both fine and other goods or only against savings on fine goods?

Answer: The 50¢ offset can be applied only against the 45¢ savings on fine goods. Thus, there would be no savings on fine goods. But savings on other goods would remain 40¢. Therefore, the average savings on the entire line, in this example, would be 20¢.

Rule 2 - permanency of maximum price. When a wholesaler or retailer determines his maximum price for a simplified garment under Rule 2, Section 1389.503, he may not subsequently increase the maximum price so determined, even though his cost is now higher than the cost at the time he determined his maximum price.

Rule 1 - increase in cost. Section 1389.502(a)(3)(iii) permits a manufacturer to offset increases in replacement cost of fine combed-yarn cotton goods during the stated period, against the savings which result from the curtailments and restriction of the simplified garment. This section applies only to a manufacturer who actually paid such increases; it does not apply to increases in replacement cost of inventory.

Replacement cost - discounts and advertising allowance. See page 1:11.

Same or similar garment. A simplified garment may be the "same" as or "similar" to another simplified garment, even though one is imported and the other is domestically produced. The tests for determining "sameness" or "similarity" are the same as those used under the General Maximum Price Regulation.

Violations and Evasions

Customary discounts, allowances and price differentials. Sellers of men's and boys' shirts and pajamas covered by the Regulation must continue granting their customary discounts, trade allowances, and other price differentials.

Maximum Price Regulation No. 339

WOMEN'S RAYON HOSIERY

Applicability

Manufacturer as "house-to-house" seller. A manufacturer distributes full fashioned women's rayon hosiery through thousands of salespersons located throughout the country. These salespersons make house-to-house sales to consumers. Substantially all risks in the transaction are borne by the manufacturer. The salesperson takes shipment of the hosiery only after accumulating orders from customers and after sending orders to manufacturer. Manufacturer offers to accept for exchange or credit any hosiery salesperson may have. Hosiery rejected by customer may be returned to manufacturer for replacement. In case of loss by fire of hosiery in the salesperson's possession, the manufacturer himself would replace the hosiery. Salesperson has 20 days after shipment to deliver hosiery and collect and remit to manufacturer amount due less salesperson's commission.

On basis of above facts, salesperson is in nature of an agent of the manufacturer and manufacturer is a "house-to-house" seller and ceiling price for hosiery on sales to consumers are prices specified in column (g) of Table 1 of Appendix B.

Price Determination

Sale by chain and mail order house.

Question: If a "chain store" or a "mail order house" buys full fashioned hosiery which carries a brand name or buys full fashioned rayon hosiery from a wholesaler, may it use the ceilings in column (g) of Table 1?

Answer: A "chain store" or "mail order house" (as defined in the Regulation) may never use the ceilings in column (g) of Table 1. The ceiling prices for all sales of full fashioned rayon hosiery by "chain stores" and "mail order houses" are specified in column (e) of Table 1.

Branded percentage - export sales. Export deliveries must be included in figuring "branded percentage" under Section 3(c). Total current deliveries from which "branded percentage" is applied, must also include export deliveries.

Marking branded hosiery.

Question: A manufacturer whose hosiery is qualified as branded under Section 3(b) has delivered hosiery during a calendar-quarter year as "branded" ceilings to the full limit of his "branded percentage." Accordingly, under Section 3(c) his ceilings for all deliveries of full fashioned hosiery during the remainder of the same quarter-year is the ceiling price for unbranded hosiery. In making deliveries of his hosiery during the remainder of the quarter at unbranded ceiling prices, may the manufacturer sell under his brand name? May he mark the letter "T" on the hosiery pursuant to Section 5(a)(1)?

Answer: He may, if he desires, sell under his brand name but he may not use the letter "T" to precede the retail maximum price in marking the hosiery. Under Section 5(a)(1), the letter "T" is used only where the hosiery meets the definition of "branded" as stated in the Regulation and the hosiery is permitted to be sold at branded ceiling prices. In this case the hosiery in question is not permitted to be sold at "branded" ceiling prices because the manufacturer has delivered to the full limit of his "branded percentage."

Marking proportioned hosiery. Section 5(a)(3) requires that the word "proportioned" appear in all proportioned hosiery. A manufacturer is not forbidden to use any other marking, to indicate special fit, provided that he also uses the marking "proportioned".

Wholesaler who also converts rayon hosiery.

Question: A wholesaler of rayon hosiery also converts rayon hosiery. Should he use manufacturers' prices or wholesalers' maximum prices for the converted hosiery?

Answer: If the sales qualify as sales at wholesale, wholesalers' maximum prices apply regardless of whether the wholesaler bought the goods in the greige or in a finished state.

Returned goods. A seller of rayon hosiery sold and priced such hosiery under the provisions of the General Maximum Price Regulation, prior to the effective date of Regulation No. 339. The purchaser now wishes to return the hosiery. The seller may credit the purchaser with the full original selling price even though such price exceeds the present maximum price for the hosiery under Regulation No. 339. The transaction is a "return" or rescission and not a sale or delivery subject to the Regulation.

"Reclaims." The maximum prices in Appendices A and B apply to reclaimed rayon hosiery. In marking the hosiery, it is not necessary to identify the hosiery as "reclaimed."

Sale to exporter. Sales to exporters are priced under the provisions of the Regulation. However, the allowable additions set forth in Section 2 of the Second Revised Maximum Export Price Regulation may be added to the maximum prices.

"Chain stores" - average mark-up. A group of five or more stores that comes into existence as a chain for the first time in the calendar year of 1944 can only establish its average mark-up after the expiration of that calendar year and does not constitute a calendar "chain store" group until January 1, 1945 at the earliest. In the meantime such a group of stores is entitled to sell hosiery purchased from wholesalers at the ceiling prices established in Appendix B, Table 1, Column (g), which sets forth the ceilings for non-chain retailers buying from wholesalers.

Ceilings for drop needle stitch.

Question: How are needle out or drop needle stitch constructions made of spun rayon to be priced?

Answer: A manufacturer who wishes to find his ceiling price for drop needle stitch constructions made of spun rayon takes the same ceiling as for conventional constructions in the appropriate gauge made of spun rayon.

"Branded percentage". In calculating his "branded percentage" a manufacturer includes both his domestic and foreign deliveries of women's full fashioned full length hosiery. In applying his "branded percentage" to current deliveries of women's rayon hosiery, the current deliveries likewise include both his domestic and foreign deliveries.

"Chain stores". A group of stores meeting the definition of "chain stores" (Section 2 (a)(1)) makes purchases of women's rayon hosiery through its own central purchasing and distributing department which functions as a wholesaling establishment.

Question: May its stores charge the prices specified in Appendix B, Table I, Column (g) for retailers buying from wholesalers?

Answer: Since the distributing department only sells to outsiders in a limited way and is therefore not "engaged in the business of selling women's hosiery to retailers generally," sales to its stores cannot therefore be considered sales at wholesale.

Marking with lower ceiling prices.

Question: May a manufacturer, at the request of his retailer customer, mark women's rayon hosiery with chain store ceiling instead of higher ceiling established for that retailer?

Answer: No. Section 5(a) of the Regulation requires marking with correct maximum price. Section 5(b) requires compliance with this marking requirement on part of retailer as well as manufacturer.

Marking. Although Table 1, Appendix B of the Regulation, in stating the ceiling prices for full-fashioned seconds and thirds makes certain groupings by gauge, the exact gauge must be set forth in marking hosiery as required by Section 5 of the Regulation.

Definitions

Drop shipment. A drop shipment is a shipment made otherwise than from the wholesaler's own stock kept on hand for the purpose, i.e., a shipment other than from his stockroom or warehouse. Where a New York wholesaler purchased women's rayon hosiery in the greige from a North Carolina mill and had such hosiery sent to his dyer in Philadelphia, shipments directly from the dyer to the wholesaler's customers were regarded as drop shipments under the Regulation.

Branded hosiery - advertised trade name or trademark.

Question: If a manufacturer did not advertise a trade name or trademark in the consumer press during either 1941 or 1942 but advertised such name or trademark by the use of window displays, display cards, electric or other store signs, would this form of advertising satisfy the requirements of Section 3 (b)(2)?

Answer: No. Advertising matter displayed in and about the store designed to bring the customer into the store from the street is not sufficient. As an illustration of what is meant by the words "advertising directed to the ultimate consumer other than by advertising matter accompanying the hosiery itself" there may be cited such media as radio, newspaper advertising, direct mail advertising and public distribution of brochure and circulars. Such advertising, however, must be paid for in whole or in part by the manufacturer.

Branded hosiery - delivery to wholesalers. One of the requirements for meeting the definition of "branded hosiery" under Section 3(b) is that the manufacturer must have delivered the hosiery to retail establishments. Therefore, if the hosiery meets all the requirements set forth in the section except that it was delivered to wholesalers instead of retailers, the hosiery cannot qualify as "branded hosiery".

"Manufacturer" - assembling hosiery. A seller of cut and sewn hosiery buys the leg, feet and welts separately, and then assembles or puts them together. The seller is a "manufacturer" within the meaning of Section 2(c) since he is a person who "assembles rayon hosiery."

Records and Reports

Branded hosiery - filing of report.

Question: Will OPA, on its own initiative, advise each manufacturer who has filed the branded hosiery report required by Section 3 (d) whether or not and to what extent his hosiery qualifies as "branded" hosiery under the Regulation?

Answer: No. It is the obligation of each manufacturer to correctly determine whether his hosiery qualifies as "branded" under the definition set forth in Section 3(b). The filing of the report does not relieve him of liability if the hosiery which he sells does not qualify as "branded." Any manufacturer who desires may submit the full facts of his case to OPA and specifically request an official interpretation as to whether his hosiery qualifies under the Regulation as "branded".

Correcting incorrectly marked hosiery. A retailer purchases hosiery with a price marking higher than that specified in the Regulation for this type of sale and wishes to correct the marking in accordance with the requirements of Section 5(b). However, it is both impracticable and costly to obliterate the incorrect price or to remove the old tag and replace it with a corrected label. The retailer satisfies the requirements of this section if he attaches a new tag or label which clearly indicates that it supersedes the old marking. Thus, a ticket reading "Corrected ceiling -" followed by the corrected price is sufficient even though the incorrect price still remains visible.

Maximum Price Regulation No. 385

SPECIFIED MILITARY UNIFORMS

Applicability

Uniform manufactured to order. The sale by a tailor of a uniform which he has manufactured to order and sold directly to a United States military officer is not covered by the Regulation since the Regulation applies only to ready-made uniforms.

Price Determination

Net invoice cost. Under Section 2(a) "net invoice cost" means "the price on the face of the invoice, less all discounts available to the retailer, but not including transportation costs". Hence, transportation costs are not included in the base price upon which the retailer figures his markup.

Charges for furnishing regulation buttons. The maximum prices do not include charges for furnishing regulation metal buttons (i.e., buttons with insignia) on military uniforms, except in the case of "Palm Beach" uniforms. Therefore, manufacturers of military uniforms other than "Palm Beach" uniforms may make an additional charge for supplying such buttons pursuant to the provisions of Regulation No. 188 (Manufacturers' Maximum Prices for Specified Building Materials and Consumer's Goods Other Than Apparel); wholesalers and retailers may make the additional charge pursuant to the provisions of the General Maximum Price Regulation.

Maximum Price Regulation No. 438

MANUFACTURERS' PRICES FOR CERTAIN FALL AND WINTER OUTERWEAR

Price Determination

Class 1 purchaser - chain store, mail order house.

Question: A manufacturer sold to chain stores but did not sell to wholesalers in 1942. May the chain stores be considered Class 1 purchasers? Class 1 purchasers are defined in Section 4 as "those who customarily bought at or below the price to wholesalers."

Answer: Yes. If the price customarily paid by the chain stores was competitive with the price customarily paid by wholesalers to other manufacturers (who made sales to wholesaler in 1942), the chain stores may be classified as Class 1 purchasers.

Question: Is a mail order store a Class 1 purchaser?

Answer: A mail order store is a Class 1 purchaser if in 1942 it customarily bought at a price which was at or below a particular seller's price to wholesalers or which was competitive with other sellers' prices to wholesalers.

BUILDING MATERIALS

Price Schedule No. 40

BUILDERS' HARDWARE AND INSECT SCREEN CLOTH

Applicability

General. The Schedule is applicable to the seller of builders' hardware in insect screen cloth to the extent that he sells the articles listed in Appendix A with these two exceptions:

- (a) Contract sales of builders' hardware are subject to Regulation No. 261 (Contract Sales of Finishing Builders' Hardware); and
- (b) Door locks and lock sets are subject to Regulation No. 317 (Locks and Lock Sets).

Metal content. The Schedule is not limited to articles of copper content; it is applicable regardless of the metal content.

Completed products. Where screen cloth and hardware are sold only as a part of completed products, e.g., doors, roller screens, Venetian blinds, casement windows, etc., the screen cloth and hardware are not covered by the Schedule.

Locks. The enumeration of the types of locks subject to the Schedule is qualified by the enumeration of the kinds of doors for which such locks are used. Since the Schedule does not include locker doors specifically, certain combination padlocks and built-in locks for locker doors are not subject to the Schedule unless they are suitable for use in the types of doors listed. Regulation No. 317 (Locks and Lock Sets), now covers door mortise locks and lock sets, and tubular and cylindrical locks and lock sets. Padlocks remain subject to the Schedule. In view of the qualifications indicated, a seller should request an interpretation from OPA before selling padlocks if any doubt exists as to the price regulation applicable to the sale.

Price Determination

Special sale in base period. Where a sale of an article to a particular customer during the base period was made at an unusually low price as a special concession, and no other sale of the same item was made during the base period to the same customer, the "concession" price is the maximum price in a sale to that particular customer of the same or substantially the same article.

Increased freight rates. The Schedule establishes maximum prices for builders' hardware products upon the basis of a delivery during the base period, October 1-15, 1941. In all cases of delivered prices the increased freight rate must be absorbed by the seller. However, if the seller's sales were on an f.o.b. basis during the base period, the Schedule does not compel the absorption of the increased freight rates.

Classification

Glass push plates are included within the classification of "push and kick plates".

Definitions

Retailer. A retailer is a person who maintains an establishment in which 75% of the dollar volume of sales of all products during the six months preceding the effective date of the Schedule consisted of sales without discount (except cash discount) from the said person's regular retail price. The 75% sales provision means 75% of sales of all hardware products. Thus, if a hardware store sold 75% of all its products, such as wash tubs and flashlights, at retail prices, but sold all its builders' hardware at wholesale prices, the store would still be a "retailer" and hence exempt from the Schedule.

Actual cost of materials - calculation of margin. A painting contractor has on hand turpentine which he purchased at 32 cents a gallon in 1939; the March 1942 price is \$1.05 a gallon. He proposes to use the 32 cents turpentine on a job. In determining the "actual cost" of the turpentine under Section 1397.56(a)(1), and the "estimated cost" under Section 1397.57(a)(1), he must use 32 cents, and not \$1.05. However, if the contractor charged \$1.05 for turpentine in calculating the price of a similar job during the January 1, 1939 - March 31, 1942 base period, the difference between 32 cents and \$1.05 is a base period markup which may be considered in determining the "margin" under Sections 1397.56(a)(4) and 1397.56(a)(5), and will thus be included in the final determination of the maximum price. Where the contractor determines his maximum price under Section 1397.55, entitled Maximum prices for sales not exceeding \$500, he may use the \$1.05 figure, since the prevailing rate rather than the actual cost of the material is used in that section.

Taxes

Freight tax imposed by 1942 Revenue Act. Pursuant to Supplementary Order No. 31 - Tax on Transportation of Property Imposed by Revenue Act of 1942, the 3% tax on freight bills is treated by the OPA as an increase in freight. Therefore, the amount of the tax actually incurred by the contractor may be included as part of the "actual cost" of the materials under Section 1397.56(a)(1), and it may also be considered in making the "estimated cost of materials" under Section 1397.57(a)(1).

Records and Reports

Certificate of compliance - sub-contractor. Where a subcontractor is employed by the prime contractor, the prime contractor is a "purchaser" from the sub-contractor within the meaning of Sections 1397.61 and 1397.62, and therefore, must be furnished with the certificate of compliance and the notification required by those sections.

Maximum Price Regulation No. 416

DEAD-BURNED GRAIN MAGNESITE

Applicability

Imported magnesite. The sale of imported magnesite is not subject to the Regulation; the Maximum Import Price Regulation applies.

CHEMICALS AND DRUGS

Price Schedule No. 21

FORMALDEHYDE

Applicability

Sales in "containers of 45 lbs. or more". The Schedule applies to the sale of formaldehyde in containers of 45 lbs. or more, even though the containers are not filled to normal capacity. The size of the containers and not the amount delivered determines the applicability of the Schedule since Section 1335.51 specifically refers to sales in "containers of 45 lbs. or more". The sale of formaldehyde in smaller size containers is covered by the General Maximum Price Regulation.

Maximum Price Regulation No. 28

ETHYL ALCOHOL (EXCLUDING WEST COAST ETHYL ALCOHOL)

Applicability

Jobbers or other distributors are not subject to the Regulation, unless such persons are acting directly or indirectly on behalf of manufacturers as agents or otherwise.

Sale as antifreeze. Sales by the manufacturer of any ethyl alcohol of the formulae specified in the Regulation, in quantities of 50 gallons or more, are covered by the Regulation, unless such formulae are sold as antifreeze. Sales by the manufacturer or any other person of ethyl alcohol or ethyl alcohol formulations, in quantities of less than 50 gallons, when sold as an antifreeze are subject to Regulation No. 170 (Anti-Freeze); when sold for other uses the General Maximum Price Regulation applies.

General. The Regulation applies only to sales of ethyl alcohol by manufacturers; sales by distributors are covered by the General Maximum Price Regulation.

Price Determination

Converted alcoholic beverage distillery-cost of converting brewery. The cost of converting a brewery to the production of industrial alcohol is a capital expenditure and not a cost of production within the meaning of Section 1335.159(e). The provision in that section for "other conversion costs" refers to the costs involved in the conversion of the raw materials into ethyl alcohol.

Report of maximum price for period ending March 31, 1943. Maximum Price Regulation No. 28 superseded Revised Price Schedule No. 28, as of February 27, 1943. However, where a converted alcoholic beverage distillery determined its maximum prices under Revised Price Schedule No. 28, and filed a report of the period ending March 31, 1943, the maximum prices so determined under the Schedule continued in effect until March 31, 1943.

Sales to Defense Supplies Corporation - sales through more than one outlet. Where a seller owns more than one plant and each plant is under contract to sell grain ethyl alcohol to the Defense Supplies Corporation, each plant is considered a separate seller and must compute its maximum prices individually, under the formulae in Section 1412.263(h). The reports required by the section must also be filed separately.

Records and Reports

General. Sellers and buyers subject to the Schedule must keep detailed sales and purchase records for as long as the Emergency Price Control Act of 1942, as amended, remains in effect.

Price Schedule No. 31

ACETIC ACID

Price Determination

Charge for containers. A reasonable charge is permitted for containers in which acetic acid is sold in addition to the established maximum prices. The additional charge for containers is allowed whether or not they are wooden barrels and whether or not they are returnable by the purchaser. Where the container is returnable by the purchaser, such

Price Determination No. 31

ACETIC ACID

Price Determination

Charges for containers. A reasonable charge is permitted for containers in which acetic acid is sold in addition to the established maximum prices. The additional charge for containers is allowed, whether or not they are wooden barrels and whether or not they are returned by the purchaser. Where the containers are returned by the purchaser, the charge for containers is reduced to a reasonable amount. It shall be the duty of the purchaser to return the containers in which the acetic acid was sold to the seller.

By the Commission on War Relocation

WALTER HARRIS, JR., Chairman
JAMES H. HARRIS, Jr., Secretary

Washington

That the Commission on War Relocation has considered the application of the War Relocation Authority for a price determination for acetic acid, and that the Commission has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid, and that the Commission has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid, and that the Commission has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid.

That the Commission on War Relocation has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid, and that the Commission has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid.

Very truly yours,

WALTER HARRIS, JR., Chairman
JAMES H. HARRIS, Jr., Secretary

That the Commission on War Relocation has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid, and that the Commission has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid.

That the Commission on War Relocation has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid, and that the Commission has determined that the price of acetic acid should be fixed at the maximum price established by the War Relocation Authority for acetic acid.

Very truly yours,

WALTER HARRIS, JR., Chairman
JAMES H. HARRIS, Jr., Secretary

in containers of less than five gallon capacity for the purpose of evasion, the regulation applies.

5 gallon containers. The sale of carbon tetrachloride in 65-pound units in five-gallon containers, the containers not being filled to normal capacity of 67 pounds, is subject to the Schedule. The size of the containers and not the volume of the unit of shipment determines the applicability of the Schedule, since the Schedule specifically refers to sales in "containers of 5 gallons or more".

Price Determination

F.o.b. pricing. While the Schedule establishes maximum delivered prices for deliveries in specified zones, prices may be quoted f.o.b. shipping point, provided that the quoted prices, plus the transportation charges, do not exceed the prices established by the Schedule.

Exporter's mark-up. The provisions in the Schedule for exporter's mark-up have been superseded by the Maximum Export Price Regulation effective April 30, 1942.

Carload lot. The minimum quantity making up a carload lot for purposes of the Schedule is the smallest quantity which, under the tariffs of railroad carriers, would move from the point of shipment to the point of destination at a railroad carload rate rather than at a railroad less-than-carload rate, because a lower transportation charge is produced thereby.

Violations and Evasions

Sales in less than five gallon cans. See page 3:3.

Price Schedule No. 80

LITHOPONE

Applicability

Dry form of lithopone is covered by the Schedule.

Oil form of lithopone is not covered by the Schedule.

Paste form of lithopone is not covered by the Schedule.

Powdered form of lithopone is covered by the Schedule.

Price Determination

Charge for export packaging. Where a sale of lithopone is made to a domestic exporter who requires the seller to supply a special export packaging, the seller may add the cost of the special export packaging to the maximum price, provided that the packaging charge does not exceed the ceiling for such service, and the charge is separately invoiced.

Price Schedule No. 98

TITANIUM PIGMENTS

Applicability

Repurified titanium dioxide produced to conform to the standards of the Food, Drug and Cosmetic Division of the Department of Agriculture, and sold only for use in pharmaceuticals and cosmetics is not covered by the Schedule. The Schedule is applicable only to those grades of titanium dioxide listed in the Appendix.

Maximum Price Regulation No. 170

ANTI-FREEZE

Applicability

Sale as anti-freeze. See page 3:1.

Sales by jobbers. Sales of types N and S anti-freeze by a jobber for his own account (and not as an agent of manufacturer) to another jobber or wholesaler are not subject to the Regulation; such sales are exempt from price control, see Section 1412.1(b).

Price Determination

"Delivered" prices in sales to retailers. The maximum prices for the sale of anti-freeze to retailers are on a delivered basis, that is, delivered to the retailer's place of business.

Definitions

Alcohol. Propylene glycol and polyethylene glycol are not alcohols within the meaning of Section 1412.12(a)(3).

"Delivered" prices in sales to retailers. See page 3:5.

"Delivered" Under the Regulation, the term "delivered" means delivered to the buyer at his usual place of business.

Records and Reports

Marking and posting - retailers - sales in containers of more than 5 gallons. The retailer is required to mark the type, strength and the maximum retail price of anti-freeze sold from containers of more than 5 gallons, whether or not it was packaged prior to June 30, 1942, See Section 1412.6(b)(2).

Maximum Price Regulation No. 171

FILM SCRAP

Applicability

Sale by government agency. The sale of film scrap by the United States Government or any of its agencies is covered by the Regulation. The exemption for certain sales of scrap by certain governmental agencies contained in Section 5.2 of Supplemental Regulation No. 1 applies only to scrap covered by the General Maximum Price Regulation.

Price Determination

Charge for clipping or rounding corners.

Question: Under Appendix B(b)(1)(11), is 25 cents per thousand sheets the maximum charge that may be made for clipping or rounding corners, even though more than one corner is clipped or rounded on each sheet?

Answer: Yes. Therefore, when all four corners of each sheet are clipped or rounded, only 25 cents per thousand sheets (not four times 25 cents) may be charged.

Maximum Price Regulation No. 179

PINE OIL

Price Determination

"Reasonable deposit" on drums - return freight. A "reasonable deposit" on drums of pine oil sold to federal agencies for lend-lease shipment abroad should not exceed the actual cost of the drum, the drum to be returned within 90 days or the deposit forfeited. The seller of the pine oil is responsible for the return freight on drums only from the point of delivery of the filled drum to the buyer in the continental United States to the producer's plant.

Maximum Price Regulation No. 192

IMPORTED CRESYLIC ACID

Applicability

"Delivery" after effective date. A contract to sell imported cresylic acid to the A Company was entered into on July 7, 1942, by the X Company. During June the X Company had entered into a contract with an importing company pursuant to which the latter company agreed to import and sell to the X Company cresylic acid in a sufficient quantity to cover its sale to the A Company. On July 31, 1942, when the acid was on the high seas enroute to the United States, the importing company sent the X Company its invoice for the acid. On August 4, 1942, the X Company issued to the A Company its delivery order on the delivery clerk of the vessel, which was still enroute to New York, bearing the acid, and on that date, it issued its invoice for the acid to the A Company at the contract price. The vessel docked in New York on August 10, 1942, and by means of the aforementioned delivery order, the A Company thereupon took physical possession of the acid from the delivery clerk of the vessel. The acid was invoiced to the importing company by its British suppliers on July 13 and the sale to the X Company was exdock New York, duty paid, delivery to be made against presentation of a delivery order made out by the importing company's custom house brokers after clearance through the custom house. The importing company retained the right to receive the acid from the carrier until after August 4, 1942. The Regulation is applicable to the above sale of cresylic acid by the X Company to the A Company, since no "delivery" of the acid effected to the X Company by the importing company, the original consignee, prior to August 4, 1942, the effective date of the Regulation, and therefore, delivery by the X Company to the A Company could not have occurred prior to that date.

Price Determination

Binding contracts to import "after August 5, 1942". Cresylic acid imported after August 5, 1942, pursuant to a contract entered into prior to that date which obligated the importer to accept such cresylic acid, is not a purchase "made after August 5, 1942", Section 1416.60(a)(1); the importer is not limited to the base price of 70¢ per gallon, where he actually paid a higher ex-works price pursuant to such a contract.

Maximum Price Regulation No. 203.

VITAMIN A NATURAL OILS AND CONCENTRATES

Applicability

Sales to oleomargarine manufacturer. The sale of Vitamin A natural oils or concentrates to an oleomargarine manufacturer for incorporation into oleomargarine is subject to the Regulation, since the mixing of such oils and concentrates with oleomargarine and the subsequent packing of the product constitutes "further processing or packing by the buyer".

USP units.

Question: The Regulation establishes maximum prices for vitamin A oils and concentrates in terms of USP units. A USP unit is a unit determined by a biological assay in accordance with the method prescribed by the U. S. Pharmacopeia. Estimates, however, of the number of USP units in a particular oil are made from time to time by other types of assays. Which type of assay controls when a question arises as to the number of USP units in an oil?

Answer: If a sale is made on the spectrophotometric assay or by any other means of estimating USP vitamin A content and if the selling price does not conflict the transfer of a greater number of USP units than a biological assay would warrant, this Office is in no position to criticize the transaction. When, however, a question arises concerning the vitamin A potency, whether as a result of a spot check by the Office of Price Administration, a complaint by the buyer, or otherwise, a USP biological assay shall be the basis for determining whether there has been a violation of the Regulation.

Repackaging by retailer. Sales of vitamin A natural oils and concentrates to a retailer, who in turn repackages or processes the commodity for resale to an ultimate consumer, are covered by the Regulation. Where, however, the commodity is sold to a retailer for sale to an ultimate consumer and no further processing or packaging is required, it is exempted from the Regulation by Section 1396.201(b)(i). Such sales are covered by Regulation No. 392.

Maximum Price Regulation No. 264

INDUSTRIAL WAXES

Price Determination

Addition of transportation charges incurred by the seller. The provision in Section 1415.65(f), that "any actual transportation charges incurred by the seller" may be added to the maximum price, does not include transportation charges incurred by a previous seller. Thus, where a Chicago refiner imports crude beeswax entering at New York and sells the refined beeswax to a Boston firm, the only transportation charge that the Boston firm may add to the maximum price is the transportation charge actually incurred by it, i.e., the charge for transportation from Chicago to Boston.

Resale of crude domestic beeswax by processor. Where a person buys crude domestic beeswax in small quantities from bee keepers and others, and resells it without processing in larger quantities, there is no applicable maximum price for his resale of crude domestic beeswax. However, the sellers of the refined and bleached domestic beeswax may not charge prices in excess of those permitted by the Regulation, regardless of the price paid by them for the crude domestic beeswax.

Beeswax imported from Mexico - export and marine and war risk insurance.

Question: Can an export tax by the Mexican Government on beeswax be added to the maximum price of imported beeswax as established by the Regulation?

Answer: No. Section 1415.65(d) provides that no costs of importation other than those named in that paragraph (d), i.e., freight, marine insurance, and war risk insurance, may be added to the maximum prices. Accordingly, the Mexican export tax may not be added.

Question: Should marine insurance and war risk insurance, provided for in Section 1415.65(d), be deducted from the maximum price as stated in Section 1415.65(d)(4)?

Answer: Yes. Importation of waxes from Mexico does not carry marine insurance and war risk insurance. Therefore, 0.5 percent representing marine insurance, and $1\frac{1}{2}$ percent representing war risk insurance, must be deducted if the sum of these amounts exceeds 25 cents per 100 pounds.

Question: Can transportation costs by rail, if more than the basic freight used in calculating prices of the Regulation, be added to the maximum price?

Answer: Yes. The Regulation specifically states in Section 1415.65(d), that variations in freight cost from \$2.00 per hundred pounds to New York if more than 25¢ per cwt. may be added to or must be subtracted from the maximum price as the case may be. This pertains only to freight from port, country of origin, and in the case of transportation from Mexico would refer only to freight from the point where it leaves Mexico.

Charge for containers. The maximum prices in the Regulation include the cost of the containers, Section 1415.65(i). Therefore, a seller of industrial waxes who retains title to the container must deduct the value of the empty container from the maximum price.

Maximum Price Regulation No. 278.

TOTAQUINA AND TOTAQUINA PRODUCTS

Records and Reports

Chain stores. Stores which are part of a chain-store system must keep the records required by Section 1396.312, if each store is a separate corporate entity; however, if only one corporate entity is involved, deliveries by the chain to its own stores are intra-company transactions and are not subject to the provisions of Section 1396.312.

Maximum Price Regulation No. 282

CERTAIN PRIVATE FORMULA PHARMACEUTICAL, PROPRIETARY DRUG AND COSMETIC PRODUCTS

Applicability

Facial compounds. A facial compound used by morticians as a markup base for cadavers is a "cosmetic" under the definition of the term in Regulations Nos. 282 or 393. If sold by a manufacturer under another person's label or brand name, the manufacturer's sale of the facial compound would be a sale of a private formula cosmetic and subject to Regulation No. 282. If sold by the manufacturer under his own label or brand name, the General Maximum Price Regulation would apply. Regulation No. 393 would not be applicable because facial compound is not packaged in a size or type of package customarily sold to individual consumers, or in a size or type of package customarily sold to beauty or barber shops or similar establishments for use in their work or services. Regulation No. 188 does not apply since a facial compound is not considered a "funeral supply or appurtenance".

Price Determination

Hair tonic - decrease in alcohol content. A manufacturer of hair preparations decreased the alcohol content of its private formula hair tonic from 50% to 35% due to the difficulty of obtaining alcohol. The reduction of the alcohol content of the hair tonic and the substitution of other ingredients in place thereof, resulted in a different commodity than was delivered or offered for delivery during March 1942. Therefore, the manufacturer must determine his maximum price under Section 1396.254, as a product not delivered or offered for delivery during March 1942.

Maximum Price Regulation No. 345

THERMOPLASTIC SCRAP

Applicability

Sheet scrap. Strips or sheets of acrylic scrap 1/4" to 3/8" thick are "sheet scrap" within the meaning of Section 1436.13(a)(3)(b) of the Regulation, not "molding scrap" as defined in Section 1436.13(a)(3)(a), even though such strips or sheets are fabricated by a molding process.

Price Determination

Unground or reground methacrylate. The Regulation establishes the same maximum price for unground and reground methyl methacrylate scrap. Therefore, no extra charge may be made for regrounding (even though done pursuant to customer's specifications), or for removing impurities.

Violations and Evasions

Tolling arrangement. A delivers unground cellulose nitrate plastic scrap (plain color) to B for grinding, title remaining with A until after the scrap is ground. A bills B at the ground scrap maximum price, 17¢ per lb., with an allowance of a 3¢ service charge for the grinding by B. The maximum price of the scrap unground is 9¢ per lb. The above arrangement is a violation of the Regulation since A is actually delivering unground scrap at a price which is 5¢ per lb. above the maximum price for that commodity. This is so, even though A might claim that the fiction of passage of title delays actual sale until after the scrap is ground.

Maximum Price Regulation No. 390

HOUSEHOLD SOAPS AND CLEANSERS SOLD BY RETAIL FOOD STORES

Applicability

"Borax" and "Boraxo". "Borax" and "Boraxo" are not "household soaps or cleansers" within the meaning of Regulation No. 390 or Regulation No. 391, and therefore are not covered by those regulations; the General Maximum Price Regulation applies.

Price Determination

Unlisted brands - optional pricing. The option to determine the maximum prices of unlisted brands of household soaps and cleansers under the General Maximum Price Regulation, given to a retail food store by Sections 17, 18 and 19 of Regulation No. 390, and to manufacturers and certain wholesalers by Section 6(1) of Regulation No. 391 may be used by a person first selling household soaps and cleansers after the effective dates of these regulations.

Violations and Evasions

Tying agreement. An increase of the maximum price of a bar of soap is a violation of the Regulation even though the seller is giving away free another bar of soap with every purchase. This practice constitutes a tying agreement since a purchaser cannot buy one bar of soap at the maximum price without buying two.

Maximum Price Regulation No. 391

HOUSEHOLD SOAPS AND CLEANSERS SOLD BY MANUFACTURERS AND CERTAIN WHOLESALERS

Applicability

"Borax" and "Boraxo". See page 3:9

Price Determination

Unlisted brands - optional pricing. See page 3:9

Discounts. The maximum prices listed in Section 6 are net prices. Accordingly, discounts previously extended by a wholesaler to a retailer of household soaps and cleansers need not be continued. Customary discounts may also be discontinued on sales of unlisted household soaps and cleansers, where the wholesaler uses the margin factors specified in Section 6(i). Where, however, the wholesaler exercises the option to determine the maximum prices for unlisted items under the General Maximum Price Regulations, he must continue his customary discounts.

Violations and Evasions

Tying agreements. Due to the shortage of soap, a company conducts a voluntary rationing plan under which it allots a certain amount of soap to its customers. However, customers who participate in the company's advertising campaign, whose primary purpose is to urge housewives to save waste fats and oils, are allowed extra soap. The customers must pay the maximum prices for his extra soap as well as contribute to the cost of the advertisement. Under the Regulation, this plan constitutes a violation as a tying agreement, since the retailer is required to purchase advertising space in order to get the extra allotment of soap.

Definitions

"Delivered" price. The term "delivered" as used in Section 5 establishing maximum delivered prices for sales by manufacturers means delivered at the buyer's place of business.

Maximum Price Regulation No. 392

PACKAGED DRUGS

Applicability

Exempt sale. Sales of packaged drugs by a registered pharmacist on prescription, or by a physician or other authorized practitioner to his patients, are exempted from the Regulation, Section 3(a)(1) and (2). The manufacturer or reseller from whom the packaged drugs are purchased by the registered pharmacist or physician, are not within the exemption.

Animal and poultry medicants. The question has been asked as to the applicability of the Regulation to "animal and poultry tonics, condiments, medicants and other special foods not used as the entire normal or customary diet for animals or poultry but for necessary special treatment or care" which are exempt from the General Maximum Regulation by Section 2.3(n) of Revised Supplementary Regulation No.1. To the extent that these products are packaged by or for a manufacturer in a "package of a size or type customarily sold to individual ultimate consumers or of a size or type customarily sold to retailers or institutional users" (Section 1(a)(4) and are also products "for internal or external administration intended to be used for the diagnosis, cure, mitigation, treatment or prevention of diseases of man or animals" (Section 1(a)(2), these products are subject to Regulation No. 392.

If maximum prices for the manufacturer's sales of any such product were established

under the General Maximum Price Regulation prior to February 1, 1943, the effective date of Amendment 41 to the General Maximum Price Regulation first incorporating the exemption now found in Section 2.3(n) of Revised Supplementary Regulation No. 1, the product is to be priced under Section 5 of Regulation No. 392. If no such maximum prices were established under the General Maximum Price Regulation prior to February 1, 1943, the product is to be priced under Section 6 of Regulation No. 392.

A product which is both a cosmetic and a drug. A product which may be both a cosmetic and a drug is classified as a drug and therefore is covered by the Regulation and not by Regulation No. 393.

Surgical dressings. Medicated absorbent cotton, gauze bandages and other types of surgical dressings are not "drugs" within the meaning of the Regulation even though they are considered "drugs" under the Pure Food and Drug Act. The sale of these bandages and other types of surgical dressings is covered by Regulation No. 188.

Luden's cough drops is a "packaged drug" and, therefore, is covered by the Regulation.

Repackaging by retailer. See page 3:7

Price Determination

Combination sale. Where a seller customarily sold two items of "packaged drugs" separately, it is permissible to sell both items as one unit at a price equivalent to the sum of the maximum prices for the items. However, each item must also be offered for sale separately.

Excise tax on alcohol in packaged drugs. A seller of drugs which is made partly of ethyl alcohol may not pass on the Federal excise tax which he is obligated to pay upon the alcohol since such tax is not imposed on the packaged drug but upon the ethyl alcohol and therefore is not a tax "upon, or incident to, the sale or delivery of any packaged drug" within the meaning of Section 15.

Maximum Price Regulation No. 393

PACKAGED COSMETICS

Applicability

Packaged cosmetics sold under buyer's brand name. A company purchases cases and lipsticks from other manufacturers, assembles and packages them and then sells them under his customer's special brand name. The company does not qualify as a manufacturer within the meaning of Section 1(a)(4). Sales by the company are covered by Regulation No. 282 as sales of "private formula products".

Facial compounds. See page 3:8.

Violations and Evasions

Prohibited practices. It is a violation of the Regulation for a manufacturer of packaged cosmetics, who customarily required a \$2.50 minimum order for c.o.d. purchases, to increase the minimum to \$5.00. This is a change in customary trade practices forbidden by Section 17(b).

Imposition of a requirement that a purchaser of packaged cosmetics return empty jars and bottles as a condition of making a new purchase is a tying agreement prohibited by Section 17(a) unless such requirement was embodied in the maximum price of the packaged cosmetic in question.

Maximum Price Regulation No. 406

SYNTHETIC RESINS AND PLASTIC MATERIALS
AND SUBSTITUTE RUBBER

Applicability

Tygon shoe sole stock, a modified halide polymer resin that can be formulated to give physical characteristics similar to rubber, is covered by the Regulation.

"Non-slip deck covering", a synthetic mastic product applied by trowel to steel or galvanized iron decks and gun mounts, passageways, hospital areas, etc., on ships, where flame resistant and non-slip qualities are required, is covered by the Regulation. It is not exempt under Section 4.3(c) of Revised Supplementary Regulation No. 1 (incorporated in Regulation No. 406 by Section 3 (b) thereof) as a component part or subassembly of a ship as listed in paragraph (a) of Section 4.3 since (1) this material is not a completed commodity until it is spread on the deck of the ship and (2) can be used on products other than those excepted in Section 4.3(a) and (b).

Classification

Vinyl resin compounded with plasticizers and other ingredients is a synthetic resin or plastic material within the meaning of Section 17(a)(5) of the Regulation.

"Helmet fibre" is covered by the Regulation under the classification "Vulcanized fibre", Section 17(a)(5)(i)(q).

Maximum Price Regulation No. 431

CHARCOAL

Applicability

Sales of hardwood charcoal by producers in quantities of less than one ton, Appendix A(a) of the Regulation establishes maximum prices for sales of hardwood charcoal by producers in quantities of one ton or more. The sale of such charcoal by producers in smaller amounts is covered by the General Maximum Price Regulation.

Price Determination

Dealer's maximum price. The only dealers who are permitted to make the additions provided in Section 10(b), are those who purchase hardwood charcoal from producers for whom specific maximum prices are listed in Section 10(a). A dealer who purchases charcoal from a producer not subject to the Regulation, but who has increased his maximum price pursuant to an order issued under Section 18(c) of the General Maximum Price Regulation, may not increase his resale price under Section 10(b) of Regulation No. 431, unless such order makes provision for such increase by the dealer.

Maximum Price Regulation No. 446

PINE TAR AND PINE TAR OIL

Applicability

Dealer provisions in resales of pine tar. Appendix A of the Regulation establishes dollar-and-cents maximum prices for sales of pine tar by producers and a formula maximum price for sales by dealers. Sales by producers under paragraph (a) are limited to tank car quantities and carload and less than carload quantities in drums or barrels having a capacity of over

five gallons. However, a "sale by a dealer of pine tar" under paragraph (b) is not limited to the quantities, represented by drums or barrels having a capacity of over five gallons, specified for sales by producers in paragraph (a) since increases in the producer's price can be reflected in the resale price of the dealer for any quantity.

Commodities Practices Regulation No. 1

BAR OR PACKAGE SOAPS OR CLEANERS

Applicability

Saddle soap. The Regulation applies to saddle soap if sold to the retail trade as a packaged cleaner.

Paste soap. The Regulation does not apply to paste soap since it is not included within the definition of "bar soap or cleanser" or "package soap cleaner" as set forth in Section 1382.2.

Definitions

"Same general class of dealer". Where a wholesale dealer classified his purchasers (retail dealers) into four classes on the basis of his estimate of the annual volume of purchases which could be expected, and granted discounts ranging from 30 to 40 percent for these classes and all his purchasers are now small volume purchasers, he may reduce his discount to 30 percent for all purchasers, since they are all small volume purchasers.

Gas utility company. See page 4:6.

Maximum Price Regulation No. 111

NEW HOUSEHOLD VACUUM CLEANERS AND ATTACHMENTS

Applicability

Discontinued models of new household vacuum cleaners are subject to the Regulation.

Sales between dealers. Sales of used household mechanical refrigerators by one secondhand furniture store to another second-hand furniture store are not subject to the Regulation since they are not sales "to a consumer" within the meaning of the Regulation; the General Maximum Price Regulation applies.

Repossessed vacuum cleaner. See page 4:10.

Price Determination

Cost of labor in replacing defective part of reconditioned refrigerator. A seller of reconditioned refrigerator may not impose a labor charge for the installation of a replacement part in the refrigerator where the replacement is made in accordance with the guaranty "that any part proving defective within one year from the date of installation will be replaced free of charge".

Sales to agency of the United States. A sale of a new household vacuum cleaner by a manufacturer to a person acting solely as agent for the account of an agency of the United States, which will become the owner of the vacuum cleaner, is deemed a sale to the agency of the United States for purposes of Section 1370.12(f) which requires the granting of percentage discounts off retail price on sales "to the United States or any agency of the United States".

Labeling

Tags. In all sales of household vacuum cleaners a label must be attached reciting the legend set forth in the Regulation. The labeling requirement also applies to vacuum cleaners in the seller's stock but purchased prior to the issuance of the Regulation. The word "label" is not restricted to a gummed sticker. A tag or any other device may be attached to the vacuum cleaner, but in such a way as to enable purchasers to examine it without difficulty.

Violations and Evasions

Purchaser required to trade in a used cleaner - trade in allowance. Certain sellers of new and used household vacuum cleaners require that the purchaser trade in a used vacuum cleaner and in some cases require that a specified brand or model be traded-in. These sellers refuse to sell to purchasers who are unable or refuse to turn in a used cleaner. It is not a violation of Regulation No. 111, or of Regulation No. 294 for the seller to refuse to sell to such purchasers. However, when the purchaser does turn in a used cleaner, the seller of the new vacuum cleaner may not receive more than the maximum price under Regulation No. 111, which must include a fair allowance for the traded-in cleaner. The fair allowance for the traded in cleaner is the dollar value of the used cleaner. Regulation No. 294 specifies the minimum trade-in allowance (75% of maximum wholesale "as is" price) when a used cleaner is traded in for another used cleaner, see Section 1370.83.

Maximum Price Regulation No. 116.

CHINA AND POTTERY

Price Determination

Discount granted by mistake. A seller customarily allowed his purchasers a 2% discount for payment within 15 days. One company customarily received a 5% discount, but the seller added a plus differential to its price so that the net prices for the company as well as other purchasers were the same. Owing to a clerical error, the plus differential was omitted from the invoices during the base period and the company actually received a 5% discount. Even though the seller used different methods of quoting prices, his practice was to charge the same net prices to all purchasers including the company. The granting of a 5% discount by mistake did not establish the company as a separate or distinct class of purchaser. Hence the seller need not continue the 5% discount. However, he must extend the 2% discount to the company and other purchasers who are members of the same class.

Definitions

"Art pottery" includes products of the general nature of vases, flower bowls, bric-a-brac, figurines and lamp bases.

Maximum Price Regulation No. 139

USED HOUSEHOLD MECHANICAL REFRIGERATORS

Applicability

Use by buyer. The sale of a used mechanical refrigerator of 10 cubic feet capacity designed for use in homes and as an auxiliary box for commercial users is subject to the Regulation, irrespective of the use to which it is put by the purchaser, since it was designed primarily as a household refrigerator.

Sale by bank, finance company, etc., under a chattel mortgage. The sale of a repossessed used household mechanical refrigerator by a bank, finance company or other lending institution under a chattel mortgage is covered by the Regulation.

Sale of refrigerator placed by owner on floor of appliance dealer. Where a household refrigerator is placed by the owner thereof on the floor of an appliance dealer and sold by the dealer for the owner, the sale is subject to the Regulation, since such sale by the dealer is "in the course of trade or business" within the meaning of the Regulation, irrespective of whether the dealer acts for himself or as agent for the owner.

Ice cream cabinets. See page 4:5.

Violations and Evasions

Sale of "as is" refrigerator with reconditioning by seller. The sale of an "as is" refrigerator by a reconditioner, with the sale contingent upon the buyer's willingness to have the reconditioning done by the seller, is a violation of the Regulation, if the "as is" price plus the reconditioning charge exceeds the maximum price for the reconditioned refrigerator.

Sale after default by conditional vendee. In August of 1941, P purchased a new mechanical refrigerator from S under a conditional sales contract which contained the usual provisions regarding title, forfeiture of payments and right to recapture the refrigerator. P has now defaulted on his installments, leaving a balance due of \$72.84. S desired to enter into an agreement with T whereby T, upon payment of the balance due, will be permitted to exercise S's right to recapture the refrigerator from P, and to gain title in himself. The maximum

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