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The President

[Public Resolution No. 20—76th Congress]
[S. J. Res. 138]

JOINT RESOLUTION PROVIDING THAT REORGANIZATION PLANS NUMBERED I AND II SHALL TAKE EFFECT ON JULY 1, 1939

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of reorganization plan numbered I, submitted to the Congress on April 25, 1939, and the provisions of reorganization plan numbered II, submitted to the Congress on May 9, 1939, shall take effect on July 1, 1939, notwithstanding the provisions of the Reorganization Act of 1939.

SEC. 2. Nothing in such plans or this joint resolution shall be construed as having the effect of continuing any agency or function beyond the time when it would have terminated without regard to such plans or this joint resolution or of continuing any function beyond the time when the agency in which it was vested would have terminated without regard to such plans or this joint resolution.

WM. B. BANKHEAD
Speaker of the House of Representatives.

JNO N GARNER
Vice President of the United States and President of the Senate.

Approved, June 7, 1939.
FRANKLIN D ROOSEVELT

REORGANIZATION PLAN NO. 1

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 25, 1939, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939

PART 1.—EXECUTIVE OFFICE OF THE PRESIDENT

SECTION 1. Bureau of the Budget.—The Bureau of the Budget and all of its functions and personnel (including the Director and Assistant Director) are hereby transferred from the Treasury Department to the Executive Office of the President; and the functions of the Bureau of the Budget shall be administered by the Director thereof under the direction and supervision of the President.

SECTION 2. Central Statistical Board.—The Central Statistical Board and all of

its functions and personnel (including the Chairman and the members of the Board) are hereby transferred to the Bureau of the Budget in the Executive Office of the President. The Chairman of the Board shall perform such administrative duties as the Director of the Bureau of the Budget shall direct.

SECTION 3. Central Statistical Committee Abolished and Functions Transferred.—The Central Statistical Committee is hereby abolished, and its functions are transferred to the Director of the Bureau of the Budget to be administered by him under the direction and supervision of the President. The Director of the Bureau of the Budget shall promptly wind up any outstanding affairs of the Central Statistical Committee.

SECTION 4. National Resources Planning Board.—(a) The functions of the National Resources Committee, established by Executive Order No. 7065 of June 7, 1935, and its personnel (except the members of the Committee) and all of the functions of the Federal Employment Stabilization Office in the Department of Commerce and its personnel are hereby transferred to the Executive Office of the President. The functions transferred by this section are hereby consolidated, and they shall be administered under the direction and supervision of the President by the National Resources Planning Board (hereafter referred to as the Board), which shall be composed of five members to be appointed by the President. The President shall designate one of the members of the Board as Chairman and another as Vice Chairman. The Vice Chairman shall act as Chairman in the absence of the Chairman or in the event of a vacancy in that office. The members of the Board shall be compensated at the rate of \$50 per day for time spent in attending and traveling to and from meetings, or in otherwise exercising the functions and duties of the Board, plus the actual cost of transportation: *Provided*, That in no case shall a member be entitled to receive compensation for more than thirty days' service in two consecutive months.

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(b) The Board shall determine the rules of its own proceedings, and a majority of its members in office shall constitute a quorum for the transaction of business, but the Board may function notwithstanding vacancies.

(c) The Board may appoint necessary officers and employees and may delegate to such officers authority to perform such duties and make such expenditures as may be necessary.

SEC. 5. National Resources Committee Abolished.—The National Resources Committee is hereby abolished, and its outstanding affairs shall be wound up by the National Resources Planning Board.

SEC. 6. Federal Employment Stabilization Office Abolished.—The Federal Employment Stabilization Office is hereby abolished, and the Secretary of Commerce shall promptly wind up its affairs.

SEC. 7. Transfer of Records and Property.—All records and property (including office equipment) of the several agencies transferred, or the functions of which are transferred, by this Part are hereby transferred to the Executive Office of the President for use in the administration of the agencies and functions transferred by this Part.

SEC. 8. Transfer of Funds.—So much of the unexpended balances of appropriations, allocations, or other funds available (including those available for the fiscal year ending June 30, 1940) for the use of any agency in the exercise of any functions transferred by this Part, or for the use of the head of any department or agency in the exercise of any functions so transferred, as the Director of the Bureau of the Budget shall determine, shall be transferred to the Executive Office of the President for use in connection with the exercise of functions transferred by this Part. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided*, That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

SECTION 9. Personnel.—Any personnel transferred by this Part found to be in excess of the personnel necessary for the efficient administration of the functions transferred by this Part shall be retransferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

PART 2.—FEDERAL SECURITY AGENCY

SECTION 201. Federal Security Agency.—(a) The United States Employment Service in the Department of Labor and its functions and personnel are transferred from the Department of Labor; the Office of Education in the Department of the Interior and its functions and personnel (including the Commissioner of Education) are transferred from the Department of the Interior; the Public Health Service in the Department of the Treasury and its functions and personnel (including the Surgeon General of the Public Health Service) are transferred from the Department of the Treasury; the National Youth Administration within the Works Progress Administration and its functions and personnel (including its Administrator) are transferred from the Works Progress Administration; and these agencies and their functions, together with the Social

Security Board and its functions, and the Civilian Conservation Corps and its functions, are hereby consolidated under one agency to be known as the Federal Security Agency, with a Federal Security Administrator at the head thereof. The Federal Security Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary at the rate of \$12,000 per annum. He shall have general direction and supervision over the administration of the several agencies consolidated into the Federal Security Agency by this section and shall be responsible for the coordination of their functions and activities.

(b) The Federal Security Administrator shall appoint an Assistant Federal Security Administrator, who shall receive a salary at the rate of \$9,000 per annum, and he may also appoint such other personnel and make such expenditures as may be necessary.

(c) The Assistant Administrator shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in that office and shall perform such other duties as the Administrator shall direct.

(d) The several agencies and functions consolidated by this section into the Federal Security Agency shall carry with them their personnel.

SECTION 202. Social Security Board.—The Social Security Board and its functions shall be administered as a part of the Federal Security Agency under the direction and supervision of the Federal Security Administrator. The Chairman of the Social Security Board shall perform such administrative duties as the Federal Security Administrator shall direct.

SECTION 203. United States Employment Service.—(a) The functions of the United States Employment Service shall be consolidated with the unemployment compensation functions of the Social Security Board and shall be administered in the Social Security Board in connection with such unemployment compensation functions under the direction and supervision of the Federal Security Administrator.

(b) The office of the Director of the United States Employment Service is hereby abolished, and all of the functions of such office are transferred to, and shall be exercised by, the Social Security Board.

(c) All functions of the Secretary of Labor relating to the administration of the United States Employment Service are hereby transferred to, and shall be exercised by, the Federal Security Administrator.

SECTION 204. Office of Education.—(a) The Office of Education and its functions shall be administered by the Commissioner of Education under the direction and supervision of the Federal Security Administrator.

(b) All functions of the Secretary of the Interior relating to the administra-

tion of the Office of Education are hereby transferred to, and shall be exercised by, the Federal Security Administrator.

SECTION 205. Public Health Service.—(a) The Public Health Service and its functions shall be administered by the Surgeon General of the Public Health Service under the direction and supervision of the Federal Security Administrator.

(b) All the functions of the Secretary of the Treasury relating to the administration of the Public Health Service, except those functions relating to the acceptance and investment of gifts as authorized by sections 23 (b) and 137 (e), title 42, U. S. Code, are hereby transferred to, and shall be exercised by, the Federal Security Administrator.

SECTION 206. National Youth Administration.—The National Youth Administration and its functions shall be administered by the National Youth Administrator under the direction and supervision of the Federal Security Administrator.

SECTION 207. Civilian Conservation Corps.—The Civilian Conservation Corps and its functions shall be administered by the Director of the Civilian Conservation Corps under the direction and supervision of the Federal Security Administrator.

SECTION 208. Transfer of Records and Property.—All records and property (including office equipment) of the several agencies which, with their functions, are consolidated by section 201 into the Federal Security Agency are hereby transferred to the jurisdiction and control of the Federal Security Agency for use in the administration of the agencies and functions consolidated by that section.

SECTION 209. Transfer of Funds.—So much of the unexpended balances of appropriations, allocations, or other funds (including those available for the fiscal year ending June 30, 1940) available for the use of any agency in the exercise of any functions transferred by this Part, or for the use of the head of any department or agency in the exercise of any functions so transferred, as the Director of the Bureau of the Budget shall determine, shall be transferred for use in connection with the exercise of the functions transferred by this Part. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided*, That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

SECTION 210. Administrative Funds.—The Director of the Bureau of the Budget shall allocate to the Federal Security Agency, from appropriations, allo-

cations, or other funds available (including those available for the fiscal year ending June 30, 1940) for the administrative expenses of the agencies and functions consolidated by this Part, such sums, and in such proportions, as he may find necessary for the administrative expenses of the Federal Security Agency.

SECTION 211. Personnel.—Any personnel transferred by this Part found to be in excess of the personnel necessary for the efficient administration of the functions transferred by this Part shall be re-transferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

PART 3.—FEDERAL WORKS AGENCY

SECTION 301. Federal Works Agency.—

(a) The Bureau of Public Roads in the Department of Agriculture and its functions and personnel (including the Chief thereof) are transferred from the Department of Agriculture; the Public Buildings Branch of the Procurement Division in the Treasury Department and its functions and personnel are transferred from the Treasury Department; the Branch of Buildings Management of the National Park Service in the Department of the Interior and its functions and personnel (except those relating to monuments and memorials), and the functions of the National Park Service in the District of Columbia in connection with the general assignment of space, the selection of sites for public buildings, and the determination of the priority in which the construction or enlargement of public buildings shall be undertaken, and the personnel engaged exclusively in the administration of such functions, and the United States Housing Authority in the Department of the Interior and its functions and personnel (including the Administrator) are transferred from the Department of the Interior; and all of these agencies and functions, together with the Federal Emergency Administration of Public Works and its functions, and all of the Works Progress Administration and its functions (except the National Youth Administration and its functions) are hereby consolidated into one agency to be known as the Federal Works Agency, with a Federal Works Administrator at the head thereof. The Federal Works Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary at the rate of \$12,000 per annum. He shall have general direction and supervision over the administration of the several agencies consolidated into the Federal Works Agency by this section and shall be responsible for the coordination of their functions.

(b) The Federal Works Administrator shall appoint an Assistant Federal Works Administrator, who shall receive a salary at the rate of \$9,000 per annum, and he

may also appoint such other personnel and make such expenditures as may be necessary.

(c) The Assistant Administrator shall act as Administrator during the absence or disability of the Administrator, or in the event of a vacancy in that office, and shall perform such other duties as the Administrator shall direct.

(d) The several agencies and functions consolidated by this section in the Federal Works Agency shall carry with them their personnel.

SECTION 302. Public Roads Administration.—(a) The Bureau of Public Roads and its functions shall be administered as the Public Roads Administration at the head of which shall be the Chief of the Bureau of Public Roads whose title shall be changed to Commissioner of Public Roads. Hereafter the Commissioner of Public Roads shall be appointed by the Federal Works Administrator.

(b) All functions of the Secretary of Agriculture relating to the administration of the Bureau of Public Roads are hereby transferred to, and shall be exercised by, the Federal Works Administrator.

SECTION 303. Public Buildings Administration.—(a) The Public Buildings Branch of the Procurement Division and its functions, the Branch of Buildings Management of the National Park Service and its functions (except those relating to monuments and memorials) and the functions of the National Park Service in the District of Columbia in connection with the general assignment of space, the selection of sites for public buildings, and the determination of the priority in which the construction or enlargement of public buildings shall be undertaken, are hereby consolidated and shall be administered as the Public Buildings Administration, with a Commissioner of Public Buildings at the head thereof. The Commissioner of Public Buildings shall be appointed by the Federal Works Administrator and shall receive a salary at the rate of \$9,000 per annum. The Commissioner of Public Buildings shall act under the direction and supervision of the Federal Works Administrator.

(b) All functions of the Secretary of the Treasury and the Director of Procurement relating to the administration of the Public Buildings Branch of the Procurement Division and to the selection of location and sites for public buildings, and all functions of the Secretary of the Interior and the Director of the National Park Service relating to the administration of the functions of the Branch of Buildings Management and the functions of the National Park Service in the District of Columbia in connection with the general assignment of space, the selection of sites for public buildings, and the determination of the priority in which the construction or enlargement of public buildings shall be undertaken, are hereby transferred to,

and shall be exercised by, the Federal Works Administrator.

SECTION 304. United States Housing Authority.—(a) The United States Housing Authority and its functions shall be administered by the United States Housing Administrator under the direction and supervision of the Federal Works Administrator.

(b) All functions of the Secretary of the Interior relating to the administration of the United States Housing Authority are hereby transferred to, and shall be exercised by, the Federal Works Administrator.

SECTION 305. Public Works Administration.—The Federal Emergency Administration of Public Works and its functions shall be administered as the Public Works Administration with a Commissioner of Public Works at the head thereof. The Commissioner of Public Works shall be appointed by the Federal Works Administrator and shall receive a salary at the rate of \$10,000 per annum. The Commissioner of Public Works shall act under the direction and supervision of the Federal Works Administrator.

SECTION 306. Work Projects Administration.—The Works Progress Administration and its functions (except the National Youth Administration and its functions) shall be administered as the Work Projects Administration, with a Commissioner of Work Projects at the head thereof. The Commissioner shall be appointed by the Federal Works Administrator and shall receive a salary at the rate of \$10,000 per annum. The Commissioner shall act under the direction and supervision of the Federal Works Administrator.

SECTION 307. Transfer of Records and Property.—All records and property (including office equipment) of the several agencies which, with their functions, are consolidated by section 301 into the Federal Works Agency are hereby transferred to the jurisdiction and control of the Federal Works Agency for use in the administration of the agencies and functions consolidated by that section.

SECTION 308. Transfer of Funds.—(a) So much of the unexpended balances of appropriations, allocations, or other funds available (including those available for the fiscal year ending June 30, 1940) for the use of any agency (except the United States Housing Authority) in the exercise of any functions transferred by this Part, or for the use of the head of any department or agency in the exercise of any functions so transferred, and so much of such balances available to the United States Housing Authority for administrative expenses, as the Director of the Bureau of the Budget shall determine, shall be transferred for use in connection with the exercise of the functions transferred by this Part. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of

obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided*, That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

(b) All unexpended balances of appropriations, allocations, or other funds available (including those available for the fiscal year ending June 30, 1940) for the use of the United States Housing Authority, other than those transferred by subsection (a) of this section, are hereby transferred with the United States Housing Authority and shall remain available to it for the exercise of its functions.

SECTION 309. Administrative Funds.—The Director of the Bureau of the Budget shall allocate to the Federal Works Agency, from appropriations, allocations, or other funds available (including those available for the fiscal year ending June 30, 1940) for the administrative expenses of the agencies and functions consolidated by section 301, such sums, and in such proportions, as he may find necessary for the administrative expenses of the Federal Works Agency.

SECTION 310. Personnel.—Any of the personnel transferred by this Part found to be in excess of the personnel necessary for the efficient administration of the functions transferred by this Part shall be re-transferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

PART 4.—LENDING AGENCIES

SECTION 401. (a) Transfers to the Department of Agriculture.—The Farm Credit Administration, the Federal Farm Mortgage Corporation, and the Commodity Credit Corporation, and their functions and activities, together with their respective personnel, records, and property (including office equipment), are hereby transferred to the Department of Agriculture and shall be administered in such Department under the general direction and supervision of the Secretary of Agriculture, who shall be responsible for the coordination of their functions and activities.

(b) *Transfer of Administrative Funds.*—So much of the unexpended balances of appropriations, allocations, or other funds available (including those available for the fiscal year ending June 30, 1940) for the administrative expenses of any agency transferred by this section, as the Director of the Bureau of the Budget shall determine, shall be transferred to the Secretary of Agriculture for such use; and the Director of the Bureau of the Budget shall allocate to the Secretary of Agriculture from such funds, such sums, and in such proportions, as he may find necessary for the administrative expenses of the Secretary of Agriculture in

connection with the agencies and functions transferred by this section. In determining the amount to be transferred, the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer. The use of the unexpended balances of appropriations, allocations, or other funds transferred by this subsection shall be subject to the provision of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

(c) *Transfer of other funds.*—All unexpended balances of appropriations, allocations, or other funds, other than those mentioned in subsection (b) of this section, available (including those available for the fiscal year ending June 30, 1940) for any agency transferred by subsection (a) of this section shall be transferred with such agency and shall remain available to it for the exercise of its functions.

(d) *Personnel.*—Any of the personnel transferred by this section to the Department of Agriculture which the Secretary of Agriculture shall find to be in excess of the personnel necessary for the administration of the functions transferred by this section shall be re-transferred under existing law to other positions in the Government, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

SECTION 402. (a) Federal Loan Agency.—There shall be at the seat of the Government a Federal Loan Agency, with a Federal Loan Administrator at the head thereof. The Federal Loan Administrator shall be appointed by the President by and with the advice and consent of the Senate, and shall receive a salary at the rate of \$12,000 per annum.

(b) *Assistant Federal Loan Administrator.*—The Federal Loan Administrator shall appoint an Assistant Federal Loan Administrator, who shall receive a salary at the rate of \$9,000 per annum. The Assistant Administrator shall act as Administrator during the absence or disability of the Administrator, or in the event of a vacancy in that office, and shall perform such other duties as the Administrator shall direct.

(c) *Powers and Duties of Administrator.*—The Administrator shall supervise the administration, and shall be responsible for the coordination of the functions and activities, of the following agencies: Reconstruction Finance Corporation, Electric Home and Farm Authority, RFC Mortgage Company, Disaster Loan Corporation, Federal National Mortgage Association, Federal Home Loan Bank Board, Home Owners' Loan Corporation, Federal Savings and Loan Insurance Corporation, Federal Housing Administration, and Export-Import Bank of Washington. The Administrator may appoint such officers and employees and make such expenditures as may be necessary.

(d) *Administrative Funds.*—The Director of the Bureau of the Budget shall allocate to the Federal Loan Agency, from appropriations, allocations, or other funds available (including those available for the fiscal year ending June 30, 1940) for the administrative expenses of the agencies named in this section, such sums, and in such proportion, as he may find necessary for the administrative expenses of the Federal Loan Agency.

REORGANIZATION PLAN NO. II

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1939, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939

PART 1.—DEPARTMENTS

SECTION 1. State Department.—Transfers and consolidations relating to the Department of State are hereby effected as follows:

(a) *Foreign Commerce Service and Foreign Agricultural Service.*—The Foreign Commerce Service of the United States and its functions in the Bureau of Foreign and Domestic Commerce of the Department of Commerce and the Foreign Agricultural Service of the United States and its functions as established by the Act of June 5, 1930 (46 Stat. 497), in the Department of Agriculture are hereby transferred to the Department of State and shall be consolidated with and administered as a part of the Foreign Service of the United States under the direction and supervision of the Secretary of State.

(b) *Functions of the Secretary of Commerce and the Secretary of Agriculture Transferred to the Secretary of State; Exceptions.*—The functions of the Secretary of Commerce with respect to the Foreign Commerce Service and the functions of the Secretary of Agriculture with respect to the Foreign Agricultural Service (other than functions with respect to such services pertaining to activities in the United States and to the compilation, publication, and dissemination of information) are hereby transferred to, and shall be exercised by, the Secretary of State, except and provided that under regulations prescribed by the President—

(1) The Secretary of State shall cause to be made such investigations relating to commercial and industrial conditions and activities in foreign countries and such other specific investigations relating to foreign commerce as the Secretary of Commerce shall determine to be in the public interest, and shall report to the Secretary of Commerce the results of, and the information secured through, such investigations. He shall also cause to be made such investigations relating to world competition and demand for agricultural products, to production, marketing, and disposition of such products in foreign countries, and to farm management and other phases of agri-

cultural industry in foreign countries, and shall conduct abroad such activities (including the demonstration of standards for cotton, wheat, and other American agricultural products), as the Secretary of Agriculture shall determine to be in the public interest, and shall report to the Secretary of Agriculture the results of, and the information secured through, such investigations and activities.

(2) The Secretary of Commerce may from time to time when he deems it in the public interest designate any officer in his Department to render temporary service under the provisions of, and subject to the conditions named in, section 5 of the Act of March 3, 1927, (44 Stat. 1396).

(3) The Secretary of Agriculture may from time to time when he deems it in the public interest designate any officer in his Department to render temporary service under the provisions of, and subject to the conditions named in, section 2 of the Act of June 5, 1930, (46 Stat. 498).

(4) The Secretary of Commerce and the Secretary of Agriculture may each designate an officer in his Department, acceptable to the Secretary of State, to serve in the Department of State as liaison officer in connection with the administration of the foreign service of the United States.

(5) One officer in the Department of Commerce designated by the Secretary of Commerce and acceptable to the Secretary of State and one officer in the Department of Agriculture designated by the Secretary of Agriculture and acceptable to the Secretary of State shall be added to the membership of the Board of Foreign Service Personnel for the Foreign Service.

(c) *Status of Foreign Service Officers.*—Foreign Commerce Service officers and Foreign Agricultural Service officers who by reason of transfer to the Foreign Service of the United States and by appointment according to law acquire status of Foreign Service officers therein shall not be included in the total number of officers in such Service for the purpose of determining the percentage limitation established by section 10 of the Act of February 23, 1931 (46 Stat. 1207), as amended.

(d) *China Trade Act Registrar.*—Such officer of the Foreign Service as the Secretary of State shall make available for that purpose may be authorized by the Secretary of Commerce to perform the duties of China Trade Act Registrar provided for in the Act of September 19, 1922 (42 Stat. 849), under the direction of the Secretary of Commerce.

(e) *Foreign Service Buildings Commission.*—The Foreign Service Buildings Commission and its functions are hereby transferred to the Department of State. The Commission shall exercise advisory functions, but all other functions (including administrative functions) shall be exercised under the direction and supervision of the Secretary of State by such division, bureau, or

office in the Department of State as the Secretary shall determine.

SEC. 2. Treasury Department.—Transfers, consolidations, and abolitions relating to the Department of the Treasury are hereby effected as follows:

(a) *Bureau of Lighthouses.*—The Bureau of Lighthouses in the Department of Commerce and its functions are hereby transferred to and shall be consolidated with and administered as a part of the Coast Guard in the Department of the Treasury.

(b) *Director General of Railroads: Office Abolished and Functions Transferred.*—The office of Director General of Railroads is hereby abolished. The functions and duties of the Director General of Railroads are hereby transferred to the Secretary of the Treasury to be exercised and performed by him personally or through such officer or officers of the Department of the Treasury as he may authorize. The Secretary of the Treasury is hereby designated as the agent provided for in section 206 of the Transportation Act, 1920 (41 Stat. 461).

(c) *War Finance Corporation Abolished.*—All of the functions, property, and obligations of the War Finance Corporation not heretofore transferred by statute to the Secretary of the Treasury are hereby transferred to the Department of the Treasury. The War Finance Corporation is hereby abolished and the Secretary of the Treasury shall complete the winding up of its affairs and shall dispose of its assets in accordance with the Act of March 1, 1929 (45 Stat. 1442), not later than December 31, 1939.

SEC. 3. Department of Justice.—Transfers, consolidations, and abolitions relating to the Department of Justice are hereby effected as follows:

(a) *Federal Prison Industries, Inc.*—The Federal Prison Industries, Inc. (together with its Board of Directors) and its functions are hereby transferred to the Department of Justice and shall be administered under the general direction and supervision of the Attorney General.

(b) *National Training School for Boys.*—The National Training School for Boys and its functions (including the functions of its Board of Trustees) are hereby transferred to the Department of Justice and shall be administered by the Director of the Bureau of Prisons, under the direction and supervision of the Attorney General.

(c) *Board of Trustees of the National Training School for Boys Abolished.*—The Board of Trustees of the National Training School for Boys (including the consulting trustees) is hereby abolished.

SEC. 4. Department of the Interior.—Transfers, consolidations, and abolitions relating to the Department of the Interior are hereby effected as follows:

(a) *Functions of the National Bituminous Coal Commission Transferred.*—The functions of the National Bituminous Coal Commission (including the functions of the members of the Com-

mission) are hereby transferred to the Secretary of the Interior to be administered under his direction and supervision by such division, bureau, or office in the Department of the Interior as the Secretary shall determine.

(b) *National Bituminous Coal Commission Abolished.*—The National Bituminous Coal Commission and the offices of the members thereof are hereby abolished and the outstanding affairs of the Commission shall be wound up by the Secretary of the Interior.

(c) *Office of Consumers' Counsel Abolished and Functions Transferred.*—The office of Consumers' Counsel of the National Bituminous Coal Commission is hereby abolished and its functions are transferred to, and shall be administered in, the Office of the Solicitor of the Department of the Interior under the direction and supervision of the Secretary of the Interior.

(d) *Bureau of Insular Affairs.*—The Bureau of Insular Affairs of the War Department and its functions are hereby transferred to the Department of the Interior and shall be consolidated with the Division of Territories and Island Possessions in the Department of the Interior and administered in such Division under the direction and supervision of the Secretary of the Interior. The office of the Chief of the Bureau and offices subordinate thereto provided for in section 14 of the Act of June 4, 1920 (41 Stat. 769), are hereby abolished and all of the functions of such offices are transferred to, and shall be exercised by, the Director of the Division of Territories and Island Possessions.

(e) *Bureau of Fisheries.*—The Bureau of Fisheries in the Department of Commerce and its functions are hereby transferred to the Department of the Interior and shall be administered in that Department under the direction and supervision of the Secretary of the Interior. The functions of the Secretary of Commerce relating to the protection of fur seals and other fur-bearing animals, to the supervision of the Pribilof Islands and the care of the natives thereof, and to the Whaling Treaty Act, are hereby transferred to, and shall be exercised by, the Secretary of the Interior.

(f) *Bureau of Biological Survey.*—The Bureau of Biological Survey in the Department of Agriculture and its functions are hereby transferred to the Department of the Interior and shall be administered in that Department under the direction and supervision of the Secretary of the Interior. The functions of the Secretary of Agriculture relating to the conservation of wild life, game, and migratory birds are hereby transferred to, and shall be exercised by, the Secretary of the Interior. The provisions of the Act of May 18, 1934 (c. 299, 48 Stat. 780), as amended by the Act of February 8, 1936 (c. 40, 49 Stat. 1105), insofar as they relate to officers or employees of the Department of Agriculture designated by the Secretary of Agriculture to

enforce any act of Congress for the protection, preservation or restoration of game and other wild life and animals shall apply to officers and employees of the Department of the Interior designated by the Secretary of the Interior to exercise and discharge such duties.

(g) *Officers of Biological Survey May Administer Oaths.*—The provisions of the Act of January 31, 1925 (c. 124, 43 Stat. 803), shall be applicable to such officers, agents, or employees of the Department of the Interior performing functions of the Bureau of Biological Survey as are designated by the Secretary of the Interior for the purposes named in the Act.

(h) *Migratory Bird Conservation Commission.*—The Secretary of the Interior shall be chairman of the Migratory Bird Conservation Commission, and the Secretary of Agriculture shall be a member thereof.

(i) *Mount Rushmore National Memorial Commission.*—The Mount Rushmore National Memorial Commission and its functions are hereby transferred to the National Park Service in the Department of the Interior. The functions vested in the Commission by section 3 and 4 (a) of the Act of June 15, 1938, (c. 402, 52 Stat. 694) shall continue to be exercised by the Commission. All other functions of the Mount Rushmore National Memorial Commission shall be administered by the National Park Service under the direction and supervision of the Secretary of the Interior.

Sec. 5. Department of Agriculture: Rural Electrification Administration Transferred.—The Rural Electrification Administration and its functions and activities are hereby transferred to the Department of Agriculture and shall be administered in that Department by the Administrator of the Rural Electrification Administration under the general direction and supervision of the Secretary of Agriculture.

SEC. 6. Department of Commerce: Transfer of Inland Waterways Corporation.—The Inland Waterways Corporation and all of its functions and obligations are hereby transferred to the Department of Commerce and shall be administered in that Department under the supervision and direction of the Secretary of Commerce. The capital stock of the Corporation shall continue to be held for the United States by the Secretary of the Treasury, but all other functions, rights, privileges, and powers and all duties and liabilities of the Secretary of War relating to the Inland Waterways Corporation are hereby transferred to, and shall be exercised, performed, and discharged by, the Secretary of Commerce. The Secretary of Commerce shall be substituted for the Secretary of War as, and shall be deemed to be, the incorporator of the Inland Waterways Corporation.

PART 2.—INDEPENDENT AGENCIES

SECTION 201. Federal Security Agency.—Transfers and consolidations

relating to the Federal Security Agency are hereby effected as follows:

(a) *Radio Service and United States Film Service Transferred.*—The functions of the Radio Division and the United States Film Service of the National Emergency Council are hereby transferred to the Federal Security Agency and shall be administered in the Office of Education under the direction and supervision of the Federal Security Administrator.

(b) *American Printing House for the Blind.*—The functions of the Secretary of the Treasury with respect to the administration of the appropriations for the American Printing House for the Blind (except the function relating to the perpetual trust fund) are hereby transferred to the Federal Security Agency and shall be administered under the direction and supervision of the Federal Security Administrator. The annual report and vouchers required to be furnished to the Secretary of the Treasury by the trustees of the American Printing House for the Blind shall be furnished to the Federal Security Administrator.

Sec. 202. National Archives.—Transfers, consolidations, and abolitions relating to the National Archives are hereby effected as follows:

(a) *Functions of Codification Board Transferred.*—The functions of the Codification Board, established by the Act of June 19, 1937 (50 Stat. 304), are hereby transferred to the National Archives and shall be consolidated in that agency with the functions of the Division of the Federal Register and shall be administered by such Division under the direction and supervision of the Archivist.

(b) *Codification Board Abolished.*—The Codification Board is hereby abolished and its outstanding affairs shall be wound up by the Archivist through the Division of the Federal Register in the National Archives.

PART 3.—EXECUTIVE OFFICE OF THE PRESIDENT

SECTION 301. Transfers and abolitions relating to the Executive Office of the President are hereby effected as follows:

(a) *Functions of National Emergency Council Transferred.*—All functions of the National Emergency Council other than those relating to Radio Service and Film Service (transferred by section 201 (a) of this plan to the Federal Security Agency) are hereby transferred to the Executive Office of the President and shall be administered under the direction and supervision of the President.

(b) *National Emergency Council Abolished.*—The National Emergency Council is hereby abolished and its outstanding affairs shall be wound up under the direction and supervision of the President.

PART 4.—GENERAL PROVISIONS

SEC. 401. *Transfer of Functions of Heads of Departments.*—Except as otherwise provided in this Plan, the functions of the head of any Department relating to the administration of any agency or function transferred from his Department by this Plan, are hereby transferred to, and shall be exercised by, the head of the department or agency to which such transferred agency or function is transferred by this Plan.

SEC. 402. *Transfer of Records, Property, and Personnel.*—All records and property (including office equipment) of the several agencies, and all records and property used primarily in the administration of any functions, transferred by this Plan and, except as otherwise provided, all the personnel used in the administration of such agencies and functions (including officers whose chief duties relate to such administration) are hereby transferred to the respective departments or agencies concerned, for use in the administration of the agencies and functions transferred by this Plan: *Provided*, That any personnel transferred to any department or agency by this section found by the head of such department or agency to be in excess of the personnel necessary for the administration of the functions transferred to his department or agency shall be retransferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

SEC. 403. *Transfer of Funds.*—So much of the unexpended balances of appropriations, allocations, or other funds available for the use of any agency in the exercise of any function transferred by this Plan, or for the use of the head of any department or agency in the exercise of any function so transferred, as the Director of the Bureau of the Budget with the approval of the President shall determine, shall be transferred to the department or agency concerned for use in connection with the exercise of the function so transferred. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided*, That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

SEC. 404. *Transfer of Functions Relating to Personnel.*—Except as prohibited by section 3 (b) of the Reorganization Act of 1939, all functions relating to the appointment, fixing of compensation, transfer, promotion, demotion, suspension, or dismissal of persons to or from offices and positions in any department vested by law in any officer of such department other than the head thereof

are hereby transferred to the head of such department and shall be administered under his direction and supervision by such division, bureau, office, or persons as he shall determine.

Rules, Regulations, Orders

TITLE 8—ALIENS AND CITIZENSHIP IMMIGRATION AND NATURALIZATION SERVICE

[Supp. 6 to General Order No. C-1¹]

PORT OF ENTRY FOR ALIENS AT ROSEAU, MINNESOTA

JUNE 29, 1939.

Pursuant to the authority contained in Section 23 of the Immigration Act of 1917 (Act of February 5, 1917, 39 Stat. 892; 8 U.S.C. 102), Title 8 CFR, Chapter 1, Subchapter A—Immigration Rules and Regulations—Part 3, Section 3.1 (Rule 3, Subdivision (a), paragraph 1 of the Immigration Rules and Regulations of January 1, 1930, Edition of December 31, 1936), is amended by inserting Roseau, Minnesota in lieu of Richardson's Bridge, Minnesota (Roseau P. O.), in the list of designated ports for the entry of aliens into the United States.

[SEAL] JAMES L. HOUGHTELING,
Commissioner.

Approved:

FRANCES PERKINS,
Secretary.

[F. R. Doc. 39-2268; Filed, June 30, 1939; 9:51 a. m.]

[Supp. 3 to General Order No. C-2¹]

PORT OF ENTRY FOR ALIENS ARRIVING BY AIRCRAFT—JOHN G. HINDE AIRPORT, SANDUSKY, OHIO

JUNE 29, 1939.

Pursuant to the authority contained in Subdivision (d) of Section 7 of the Air Commerce Act of 1926 (Act of May 20, 1926, 44 Stat. 572; 49 U. S. C. 177 (d)), Title 8 CFR, Chapter I, Subchapter A—Immigration Rules and Regulations—Part 3, Section 3.3 (b), (Rule 3, Subdivision (a), paragraph 3 (b) of the Immigration Rules and Regulations of January 1, 1930, Edition of December 31, 1936), is amended by inserting Sandusky, Ohio, John G. Hinde Airport, in lieu of Sandusky, Ohio, Sandusky Municipal Airport, in the list of airports designated as temporary ports for the entry into the United States of aliens arriving by aircraft.

[SEAL] FRANCES PERKINS,
Secretary.

Approval recommended:

JAMES L. HOUGHTELING,
Commissioner.

[F. R. Doc. 39-2267; Filed, June 30, 1939; 9:51 a. m.]

¹ 4 F.R. 1947 DI.
² 3 F.R. 1951 DI.

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[T. D. 4909]

SUBCHAPTER A—PART 16—EXCESS PROFITS ON ARMY CONTRACTS FOR AIRCRAFT

REGULATIONS UNDER SECTION 14 OF THE ACT OF APRIL 3, 1939, AND OTHER PROVISIONS*†

To Officers and Employees of the Treasury Department, the War Department, and Others Concerned:

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§ 16.0 *Introductory.* (a) Section 14 of the Act entitled "An Act to provide more effectively for the national defense by carrying out the recommendations of the President in his message of January 12, 1939, to the Congress," approved April 3, 1939 (Public, No. 18, 76th Cong., 1st sess.; I.R.B. 1939-20, 13), provides:

SEC. 14. All the provisions of section 3 of the Act of March 27, 1934, as amended (48 Stat. 505; 49 Stat. 1926), and as amended by this section shall be applicable with respect to contracts for aircraft or any portion thereof for the Army to the same extent and in the same manner that such provisions are applicable with respect to contracts for aircraft, or any portion thereof for the Navy: *Provided*, That the Secretary of War shall exercise all functions under such section with respect to aircraft for the Army which are exercised by the Secretary of the Navy with respect to aircraft for the Navy: *Provided further*, That section 3b of the Act of March 27, 1934 (48 Stat. 505), as amended (49 Stat. 1926; 34 U.S.C. Supp. IV 496), is hereby further amended by inserting in the first sentence after the words "in excess of 10 per centum of the total contract prices" the words "for the

*Sections 16.0 to 16.18 issued under the authority contained in section 14 of the Act of April 3, 1939 (Public, No. 18, 76th Cong., 1st sess.) and section 3 of the Act of March 27, 1934, 48 Stat. 505 (34 U.S.C. 496), as amended by the Act of June 25, 1936, 49 Stat. 1926 (34 U.S.C., Sup. IV, 496) and as further amended by section 14 of such Act of April 3, 1939.

†The source of sections 16.0 to 16.18 is Treasury Decision 4909, approved by the Acting Secretary of the Treasury June 16, 1939, and approved by the Acting Secretary of War June 28, 1939.

construction and/or manufacture of any complete naval vessel or portion thereof, and in excess of 12 per centum of the total contract prices for the construction and/or manufacture of any complete aircraft or portion thereof"; by inserting in the first proviso after the words "That if there is a net loss on all such contracts or subcontracts" the words "for the construction and/or manufacture of any complete naval vessel or portion thereof"; and by inserting at the end of the first proviso after the words "income taxable year" a comma and the words "and that if there is a net loss, or a net profit less than 12 per centum, as aforesaid on all such contracts or subcontracts for the construction and/or manufacture of any complete aircraft or portion thereof completed by the particular contractor or subcontractor within any income taxable year, such net loss or deficiency in profit shall be allowed as a credit in determining the excess profit, if any, during the next succeeding four income taxable years, and that the method of ascertaining the amount of excess profit, initially fixed upon shall be determined on or before June 30, 1939": *Provided further*, That when aircraft are procured by the Secretary of War as a result of competitive bids requiring the submission of sample aircraft with bid, the Secretary is authorized, in his discretion, to purchase sample aircraft of competitors to whom an award is not made, not more than one each from not more than three such competitors, in order of merit, at prices not exceeding 75, 60, and 50 per centum, respectively, of the cost applicable in the opinion of the Secretary to the development and manufacture of such sample aircraft.

(b) Section 3 of the Act entitled "An Act to establish the composition of the United States Navy with respect to the categories of vessels limited by the treaties signed at Washington, February 6, 1922, and at London, April 22, 1930, at the limits prescribed by those treaties; to authorize the construction of certain naval vessels; and for other purposes," approved March 27, 1934, 48 Stat. 505 (34 U.S.C. 496), as amended by the Act of June 25, 1936, 49 Stat. 1926 (34 U.S.C., Sup. IV, 496) and as further amended by the Act of April 3, 1939 (Public, No. 18, 76th Cong., 1st sess.; I.R.B. 1939-20, 13), reads as follows:

SEC. 3. The Secretary of the Navy is hereby directed to submit annually to the Bureau of the Budget estimates for the construction of the foregoing vessels and aircraft; and there is hereby authorized to be appropriated such sums as may be necessary to carry into effect the provisions of this Act: *Provided*, That no contract shall be made by the Secretary of the Navy for the construction and/or manufacture of any complete naval vessel or aircraft, or any portion thereof, herein, heretofore, or hereafter authorized unless the contractor agrees—

(a) To make a report, as hereinafter described, under oath, to the Secretary of the Navy upon the completion of the contract.

(b) To pay into the Treasury profit, as hereinafter provided shall be determined by the Treasury Department, in excess of 10 per centum of the total contract prices for the construction and/or manufacture of any complete naval vessel or portion thereof, and in excess of 12 per centum of the total contract prices for the construction and/or manufacture of any complete aircraft or portion thereof, of such contracts within the scope of this section as are completed by the particular contracting party within the income taxable year, such amount to become the property of the United States, but the surety under such contracts shall not be liable for the payment of such excess profit: *Provided*, That if there is a net loss on all such contracts or subcon-

tracts for the construction and/or manufacture of any complete naval vessel or portion thereof completed by the particular contractor or subcontractor within any income taxable year, such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding income taxable year, and that if there is a net loss, or a net profit less than 12 per centum, as aforesaid on all such contracts or subcontracts for the construction and/or manufacture of any complete aircraft or portion thereof completed by the particular contractor or subcontractor within any income taxable year, such net loss or deficiency in profit shall be allowed as a credit in determining the excess profit, if any, during the next succeeding four income taxable years, and that the method of ascertaining the amount of excess profit, initially fixed upon shall be determined on or before June 30, 1939: *Provided further*, That if such amount is not voluntarily paid the Secretary of the Treasury shall collect the same under the usual methods employed under the internal-revenue laws to collect Federal income taxes: *Provided further*, That all provisions of law (including penalties) applicable with respect to the taxes imposed by Title I of the Revenue Act of 1934, and not inconsistent with this section, shall be applicable with respect to the assessment, collection, or payment of excess profits to the Treasury as provided by this section, and to refunds by the Treasury of overpayments of excess profits into the Treasury: *And provided further*, That this section shall not apply to contracts or subcontracts for scientific equipment used for communication, target detection, navigation, and fire control as may be so designated by the Secretary of the Navy, and the Secretary of the Navy shall report annually to the Congress the names of such contractors and subcontractors affected by this provision, together with the applicable contracts and the amounts thereof: *And provided further*, That the income-taxable years shall be such taxable years beginning after December 31, 1935, except that the above provisos relating to the assessment, collection, payment, or refunding of excess profit to or by the Treasury shall be retroactive to March 27, 1934.

(c) To make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this Act, but any subdivision of any contract or subcontract involving an amount in excess of \$10,000 shall be subject to the conditions herein prescribed.

(d) That the manufacturing spaces and books of its own plant, affiliates, and subdivisions shall at all times be subject to inspection and audit by any person designated by the Secretary of the Navy, the Secretary of the Treasury, and/or by a duly authorized committee of Congress.

(e) To make no subcontract unless the subcontractor agrees to the foregoing conditions.

The report shall be in form prescribed by the Secretary of the Navy and shall state the total contract price, the cost of performing the contract, the net income, and the per centum such net income bears to the contract price. A copy of such report shall be transmitted to the Secretary of the Treasury for consideration in connection with the Federal income tax returns of the contractor for the taxable year or years concerned.

The method of ascertaining the amount of excess profit to be paid into the Treasury shall be determined by the Secretary of the Treasury in agreement with the Secretary of the Navy and made available to the public. The method initially fixed upon shall be so determined on or before June 30, 1934: *Provided*, That in any case where an excess profit may be found to be owing to the United States in consequence hereof, the Secretary of the Treasury shall allow credit for any Federal income taxes paid or remaining to be paid upon the amount of such excess profit.

The contract or subcontracts referred to herein are limited to those where the award exceeds \$10,000.

Pursuant to the authority prescribed by section 14 of the Act of April 3, 1939 (Public, No. 18, 76th Cong., 1st sess.) and section 3 of the Act of March 27, 1934, as amended, the following regulations are hereby prescribed: *†

§ 16.1 *Definitions*. As used in these regulations the term—

(a) *Act* means the Act of April 3, 1939 (Public, No. 18, 76th Cong., 1st sess.; I.R.B. 1939-20, 13), together with the applicable provisions of section 3 of the Act of March 27, 1934, 48 Stat. 505 (34 U.S.C. 496) as amended by the Act of June 25, 1936, 49 Stat. 1926 (34 U.S.C., Sup. IV, 496) and as further amended by the Act of April 3, 1939 (Public, No. 18, 76th Cong., 1st sess.; I.R.B. 1939-20, 13).

(b) *Person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation or venture is carried on.

(c) *Contract* means an agreement made by authority of the Secretary of War for the construction or manufacture of any complete aircraft or any portion thereof for the Army.

(d) *Contractor* means a person entering into a direct contract with the Secretary of War or his duly authorized representative.

(e) *Subcontract* means an agreement entered into by one person with another person for the construction or manufacture of any complete aircraft or any portion thereof for the Army, the prime contract for such aircraft or portion thereof having been entered into between a contractor and the Secretary of War or his duly authorized representative.

(f) *Subcontractor* means any person other than a contractor entering into a subcontract.

(g) *Contracting party* means a contractor or subcontractor as the case may be.

(h) *Contract price* or *total contract price* means the amount or total amount to be received under a contract or subcontract as the case may be.

(i) *Income-taxable year* means the calendar year, the fiscal year ending during such calendar year, or the fractional part of such calendar or fiscal year, upon the basis of which the contracting party's net income is computed and for which its income tax returns are made for Federal income tax purposes.*†

§ 16.2 *Contracts and subcontracts under which excess profit liability may be incurred*. Except as otherwise provided with respect to contracts or subcontracts for certain scientific equipment (see section 16.3 of these regulations), every contract awarded for an

amount exceeding \$10,000 and entered into after the enactment of the Act of April 3, 1939 for the construction or manufacture of any complete aircraft or any portion thereof for the Army, is subject to the provisions of the Act relating to excess profit liability. Any subcontract made with respect to such a contract and involving an amount in excess of \$10,000 is also within the scope of the Act. If a contracting party places orders with another party, aggregating an amount in excess of \$10,000, for articles or materials which constitute a part of the cost of performing the contract or subcontract, the placing of such orders shall constitute a subcontract within the scope of the Act, unless it is clearly shown that each of the orders involving \$10,000 or less is a bona fide separate and distinct subcontract and not a subdivision made for the purpose of evading the provisions of the Act.*†

§ 16.3 *Contracts or subcontracts for scientific equipment.* No excess profit liability is incurred upon a contract or subcontract entered into after the enactment of the Act of April 3, 1939, if at the time or prior to the time such contract or subcontract is made it is designated by the Secretary of War as being exempt under the provisions of the Act pertaining to scientific equipment used for communication, target detection, navigation, and fire control.*†

§ 16.4 *Completion of contract defined.* The date of delivery of the aircraft or portion thereof covered by the contract or subcontract shall be considered the date of completion of the contract or subcontract unless otherwise determined jointly by the Secretary of War and the Secretary of the Treasury or their duly authorized representatives. Except as otherwise provided in the preceding sentence, the replacement of defective parts of delivered articles or the performance of other guarantee work in respect of such articles will not operate to extend the date of completion. As to the treatment of the cost of such work as a cost of performing a contract or subcontract, see section 16.8 (h) of these regulations. As to a refund in case of adjustment due to any subsequently incurred additional costs, see section 16.18 of these regulations. If a contract or subcontract is at any time cancelled or terminated, it is completed at the time of the cancellation or termination.*†

§ 16.5 *Manner of determining liability.* The first step in the determination of the excess profit to be paid to the United States by a contracting party with respect to contracts and subcontracts completed within an income-taxable year is to ascertain the total contract prices of all contracts and subcontracts completed by the contracting party within the income-taxable year. As to total contract prices, see section 16.7 of these regulations.

The second step is to ascertain the cost of performing such contracts and subcontracts and to deduct such cost from the total contract prices of such contracts and subcontracts as computed in the first step. See section 16.8 of these regulations.

The amount remaining after such subtraction is the amount of net profit or net loss upon the contracts and subcontracts completed within the income-taxable year.

The third step, in case there is a net profit upon such contracts and subcontracts, is to subtract from the amount of such net profit as computed in the second step the sum of—

(1) An amount equal to 12 percent of the total contract prices of the contracts and subcontracts completed within the income-taxable year;

(2) The amount of any net loss sustained in a prior income-taxable year and allowable as a credit in determining the excess profit for the income-taxable year (see section 16.9 of these regulations); and

(3) The amount of any deficiency in profit sustained in a prior income-taxable year and allowable as a credit in determining the excess profit for the income-taxable year (see section 16.9 of these regulations).

The amount remaining after such subtraction is the amount of excess profit for the income-taxable year.

The fourth step is to ascertain the amount of credit allowed for Federal income taxes paid or remaining to be paid upon the amount of such excess profit (see section 16.10 of these regulations) and then subtract from the amount of such excess profit the amount of credit for Federal income taxes.

The amount remaining after this subtraction is the amount of excess profit to be paid to the United States by the contracting party for the income-taxable year.*†

§ 16.6 *Computation of excess profit liability.* The application of the provisions of section 16.5 of these regulations may be illustrated by the following example:

Example: On September 1, 1939, the B Corporation which keeps its books and makes its Federal income tax returns on a calendar year basis entered into a contract coming within the scope of the Act, the total contract price of which was \$200,000. On March 10, 1940, the corporation entered into another such contract, the total contract price of which was \$40,000. Both contracts were completed within the calendar year 1940, the first at a cost of \$155,000 and the second at a cost of \$45,000. During the year 1939 the B Corporation sustained a net loss of \$2,500 and a deficiency in profit of \$1,000 on contracts and subcontracts entered into after April 3, 1939 and completed within the income-

taxable year 1939. For purposes of the Federal income tax, the net income of the B Corporation for the year 1940 amounted to \$96,000, which included the total net profit of \$40,000 upon the two contracts. For the year 1940 the B Corporation paid a Federal income tax of \$13,240 upon its entire net income. The excess profit liability is \$6,700 computed as follows:

Total contract prices:		
Contract No. 1.....	\$200,000	
Contract No. 2.....	40,000	
		\$240,000
Less: Cost of performing contracts:		
Contract No. 1.....	155,000	
Contract No. 2.....	45,000	
		200,000
Net profit on contracts.....		40,000
Less: 12 percent of total contract prices (12 percent of \$240,000).....		\$28,800
Net loss from 1939.....		2,500
Deficiency in profit from 1939.....		1,000
		32,300
Excess profit for year 1940.....		7,700
Less: Credit for Federal income taxes (Federal income tax on \$7,700 at the rates for 1940)....		1,000
Amount of excess profit payable to the United States.....		6,700

*†

§ 16.7 *Total contract price.* The total contract price of a particular contract or subcontract (see section 16.1 of these regulations) may be received in money or its equivalent. If something other than money is received, only the fair market value of the thing received, at the date of receipt, is to be included in determining the amount received. Bonuses earned for bettering performance and penalties incurred for failure to meet the contract guarantees are to be regarded as adjustments of the original contract price. Trade or other discounts granted by a contracting party in respect of a contract or subcontract performed by such party are also to be deducted in determining the true total contract price of such contract or subcontract.*†

§ 16.8 *Cost of performing a contract or subcontract—(a) General rule.* The cost of performing a particular contract or subcontract shall be the sum of (1) the direct costs, including therein expenditures for materials, direct labor and direct expenses, incurred by the contracting party in performing the contract or subcontract; and (2) the proper proportion of any indirect costs (including therein a reasonable proportion of management expenses) incident to and necessary for the performance of the contract or subcontract.

(b) *Elements of cost.* No definitions of the elements of cost may be stated which are of invariable application to all contractors and subcontractors. In general, the elements of cost may be defined for purposes of the Act as follows:

(1) Manufacturing cost, which is the sum of factory cost (see paragraph (c) of this section) and other manufacturing cost (see paragraph (d) of this section);

(2) Miscellaneous direct expenses (see paragraph (e) of this section);

(3) General expenses, which are the sum of indirect engineering expenses, usually termed "engineering overhead" (see paragraph (f) of this section) and expenses of distribution, servicing and administration (see paragraph (g) of this section); and

(4) Guarantee expenses (see paragraph (h) of this section).

(c) *Factory cost.* Factory cost is the sum of the following:

(1) *Direct materials.* Materials, such as those purchased for stock and subsequently issued for contract operations and those acquired under subcontracts, which become a component part of the finished product or which are used directly in fabricating, converting or processing such materials or parts.

(2) *Direct productive labor.* Productive labor, usually termed "shop labor," which is performed on and is properly chargeable directly to the article manufactured or constructed pursuant to the contract or subcontract, but which ordinarily does not include direct engineering labor (see subparagraph (3) of this paragraph).

(3) *Direct engineering labor.* The compensation of professional engineers and other technicians (including reasonable advisory fees), and of draftsmen, properly chargeable directly to the cost of the contract or subcontract.

(4) *Miscellaneous direct factory charges.* Items which are properly chargeable directly to the factory cost of performing the contract or subcontract but which do not come within the classifications in subparagraphs (1), (2), and (3) of this paragraph, as for example, royalties which the contracting party pays to another party and which are properly chargeable to the cost of performing the contract or subcontract (but see paragraph (d) of this section).

(5) *Indirect factory expenses.* Items, usually termed "factory overhead," which are not directly chargeable to the factory cost of performing the contract or subcontract but which are properly incident to and necessary for the performance of the contract or subcontract and consist of the following:

(A) *Labor.* Amounts expended for factory labor, such as supervision and inspection, clerical labor, timekeeping, packing and shipping, stores supply, services of tool crib attendants, and services in the factory employment bureau, which are not chargeable directly to productive labor of the contract or subcontract.

(B) *Materials and supplies.* The cost of materials and supplies for general use in the factory in current operations, such as shop fuel, lubricants, heat-treating, plating, cleaning and anodizing supplies, nondurable tools and gauges, stationery

(such as time tickets and other forms), and boxing and wrapping materials.

(C) *Service expenses.* Factory expenses of a general nature, such as those for power, heat and light (whether purchased or produced), ventilation and air-conditioning and operation and maintenance of general plant assets and facilities.

(D) *Fixed charges and obsolescence.* Recurring charges with respect to property used for manufacturing purposes of the contract or subcontract, such as premiums for fire and elevator insurance, property taxes, rentals and allowances for depreciation of such property, including maintenance and depreciation of reasonable stand-by equipment; and depreciation and obsolescence of special equipment and facilities necessarily acquired primarily for the performance of the contract or subcontract. In making allowances for depreciation, consideration shall be given to the number and length of shifts.

(E) *Miscellaneous indirect factory expenses.* Miscellaneous factory expenses not directly chargeable to the factory cost of performing the contract or subcontract, such as purchasing expenses; ordinary and necessary expenses of rearranging facilities within a department or plant; employees' welfare expenses; premiums or dues on compensation insurance; employers' payments to unemployment, old age and social security Federal and State funds not including payments deducted from or chargeable to employees or officers; pensions and retirement payments to factory employees; factory accident compensation (as to self-insurance, see paragraph (g) of this section); but not including any amounts which are not incident to services, operations, plant, equipment or facilities involved in the performance of the contract or subcontract.

(d) *Other manufacturing cost.* Other manufacturing cost as used in paragraph (b) of this section includes items of manufacturing costs which are not properly or satisfactorily chargeable to factory costs (see paragraph (c) of this section) but which upon a complete showing of all pertinent facts are properly to be included as a cost of performing the contract or subcontract, as for instance, payments of royalties and amortization of the cost of designs purchased and patent rights over their useful life; and "deferred" or "unliquidated" experimental and development charges. For example, in case experimental and development costs have been properly deferred or capitalized and are amortized in accordance with a reasonably consistent plan, a proper portion of the current charge, determined by a ratable allocation which is reasonable in consideration of the pertinent facts, may be treated as a cost of performing the contract or subcontract. In the case of general experimental and development expenses which may be charged off currently, a reasonable portion thereof may

be allocated to the cost of performing the contract or subcontract. If a special experimental or development project is carried on in pursuance of a contract, or in anticipation of a contract which is later entered into, and the expense is not treated as a part of general experimental and development expenses or is not otherwise allowed as a cost of performing the contract, there clearly appearing no reasonable prospect of an additional contract for the type of article involved, the entire cost of such project may be allowed as a part of the cost of performing the contract.

(e) *Miscellaneous direct expenses.* Miscellaneous direct expenses as used in paragraph (b) of this section include—

(1) *Cost of installation and construction.* Cost of installation and construction includes the cost of materials, labor and expenses necessary for the erection and installation prior to the completion of the contract and after the delivery of the product or material manufactured or constructed pursuant to the contract or subcontract.

(2) *Sundry direct expenses.* Items of expense which are properly chargeable directly to the cost of performing a contract or subcontract and which do not constitute guarantee expenses (see paragraph (h) of this section) or direct costs classified as factory cost or other manufacturing cost (see paragraphs (c) and (d) of this section), such as premiums on performance or other bonds required under the contract or subcontract; State sales taxes imposed on the contracting party; freight on outgoing shipments; fees paid for wind tunnel and model basin tests; demonstration and test expenses; crash insurance premiums; traveling expenses. In order for any such item to be allowed as a charge directly to the cost of performing a contract or subcontract, (1) a detailed record shall be kept by the contracting party of all items of a similar character, and (2) no item of a similar character which is properly a direct charge to other work shall be allowed as a part of any indirect expenses in determining the proper proportion thereof chargeable to the cost of performing the contract or subcontract. As to allowable indirect expenses, see paragraphs (c) (5), (f), (g) and (j) of this section.

(f) *Indirect engineering expenses.* Indirect engineering expenses, usually termed "engineering overhead," which are treated in this section as a part of general expenses in determining the cost of performing a contract or subcontract (see paragraph (b) of this section), comprise the general engineering expenses which are incident to and necessary for the performance of the contract or subcontract, such as the following:

(1) *Labor.* Reasonable fees of engineers employed in a general consulting capacity, and compensation of employees for personal services to the engineering

department, such as supervision, which is properly chargeable to the contract or subcontract, but which is not chargeable as direct engineering labor (see paragraph (c) (3) of this section).

(2) *Material.* Supplies for the engineering department, such as paper and ink for drafting and similar supplies.

(3) *Miscellaneous expenses.* Expenses of the engineering department, such as (A) maintenance and repair of engineering equipment, and (B) services purchased outside of the engineering department for blue printing, drawing, computing, and like purposes.

(g) *Expenses of distribution, servicing and administration.* Expenses of distribution, servicing and administration, which are treated in this section as a part of general expenses in determining the cost of performing a contract or subcontract (see paragraph (b) of this section), comprehend the expenses incident to and necessary for the performance of the contract or subcontract, which are incurred in connection with the distribution and general servicing of the contracting party's products and the general administration of the business, such as—

(1) *Compensation for personal services of employees.* The salaries of the corporate and general executive officers and the salaries and wages of administrative clerical employees and of the office services employees such as telephone operators, janitors, cleaners, watchmen and office equipment repairmen.

(2) *Bidding and general selling expenses.* Bidding and general selling expenses which by reference to all the pertinent facts and circumstances reasonably constitute a part of the cost of performing a contract or subcontract. The treatment of bidding and general selling expenses as a part of general expenses in accordance with this paragraph is in lieu of any direct charges which otherwise might be made for such expenses. The term "bidding expenses" as used in this section includes all expenses in connection with preparing and submitting bids.

(3) *General servicing expenses.* Expenses which by reference to all the pertinent facts and circumstances reasonably constitute a part of the cost of performing a contract or subcontract and which are incident to delivered or installed articles and are due to ordinary adjustments or minor defects; but including no items which are treated as a part of guarantee expenses (see paragraph (h) of this section) or as a part of direct costs, such as direct materials, direct labor, and other direct expense.

(4) *Other expenses.* Miscellaneous office and administrative expenses, such as stationery and office supplies; postage; repair and depreciation of office equipment; contributions to local charitable or community organizations to the extent constituting ordinary and necessary busi-

ness expenses; employees' welfare expenses; premiums and dues on compensation insurance; employers' payments to unemployment, old age and social security Federal and State funds not including payments deducted from or chargeable to employees or officers; pensions and retirement payments to administrative office employees and accident compensation to office employees (as to self-insurance, see the following subparagraph).

Subject to the exception stated in this subparagraph, in cases where a contracting party assumes its own insurable risks (usually termed "self-insurance"), losses and payments will be allowed in the cost of performing a contract or subcontract only to the extent of the actual losses suffered or payments incurred during, and in the course of, the performance of the contract or subcontract and properly chargeable to such contract or subcontract. If, however, a contracting party assumes its own insurable risks (a) for compensation paid to employees for injuries received in the performance of their duties, or (b) for unemployment risks in States where insurance is required, there may be allowed as a part of the cost of performing a contract or subcontract a reasonable portion of the charges set up for purposes of self-insurance under a system of accounting regularly employed by the contracting party, as determined by the Commissioner of Internal Revenue, at rates not exceeding the lawful or approved rates of insurance companies for such insurance, reduced by amounts representing the acquisition cost in such companies, provided the contracting party adopts and consistently follows this method with respect to self-insurance in connection with all contracts and subcontracts subsequently performed by him.

Allowances for interest on invested capital are not allowable as costs of performing a contract or subcontract.

Among the items which shall not be included as a part of the cost of performing a contract or subcontract or considered in determining such cost, are the following: Entertainment expenses; dues and memberships other than of regular trade associations; donations except as otherwise provided above; losses on other contracts; profits or losses from sales or exchanges of capital assets; extraordinary expenses due to strikes or lockouts; fines and penalties; amortization of unrealized appreciation of values of assets; expenses, maintenance and depreciation of excess facilities (including idle land and building, idle parts of a building, and excess machinery and equipment) vacated or abandoned, or not adaptable for future use in performing contracts or subcontracts; increases in reserve accounts for contingencies, repairs, compensation insurance (except as above provided with respect to self-insurance) and guarantee work; Federal and State income and excess-profits taxes and surtaxes; cash discount earned up to one percent of the amount of the

purchase, except that all discounts on subcontracts subject to the Act will be considered; interest incurred or earned; bond discount or finance charges; premiums for life insurance on the lives of officers; legal and accounting fees in connection with reorganizations, security issues, capital stock issues and the prosecution of claims against the United States (including income tax matters); taxes and expenses on issues and transfers of capital stock; losses on investments; bad debts; and expenses of collection and exchange.

In order that the cost of performing a contract or subcontract may be accounted for clearly, the amount of any excess profits repayable to the United States pursuant to the Act should not be charged to or included in such cost.

(h) *Guarantee expenses.* Guarantee expenses include the various items of factory cost, other manufacturing cost, cost of installation and construction, indirect engineering expenses and other general expenses (see paragraphs (c) to (g), inclusive, of this section) which are incurred after delivery or installation of the article manufactured or constructed pursuant to the particular contract or subcontract and which are incident to the correction of defects or deficiencies which the contracting party is required to make under the guarantee provisions of the particular contract or subcontract. If the total amount of such guarantee expenses is not ascertainable at the time of filing the report required to be filed with the collector of internal revenue (see section 16.15 of these regulations) and the contracting party includes any estimated amount of such expenses as part of the claimed total cost of performing the contract or subcontract, such estimated amount shall be separately shown on the report and the reasons for claiming such estimated amount shall accompany the report; but only the amount of guarantee expenses actually incurred will be allowed. If the amount of guarantee expenses actually incurred is greater than the amount (if any) claimed on the report and the contracting party has made an overpayment of excess profit, a refund of the overpayment shall be made in accordance with the provisions of section 16.18 of these regulations. If the amount of guarantee expenses actually incurred is less than the amount claimed on the report and an additional amount of excess profit is determined to be due, the additional amount of excess profit shall be assessed and paid in accordance with the provisions of section 16.18 of these regulations.

(i) *Unreasonable compensation.* The salaries and compensation for services which are treated as a part of the cost of performing a contract or subcontract include reasonable payments for salaries, bonuses, or other compensation for services. As a general rule, bonuses paid to employees (and not to officers) in pursuance of a regularly established incentive bonus system may be allowed

as a part of the cost of performing a contract or subcontract.

The test of allowability is whether the aggregate compensation paid to each individual is for services actually rendered incident to, and necessary for, the performance of the contract or subcontract, and is reasonable. Excessive or unreasonable payments whether in cash, stock or other property ostensibly as compensation for services shall not be included in the cost of performing a contract or subcontract.

(j) *Allocation of indirect costs.* No general rule applicable to all cases may be stated for ascertaining the proper proportion of the indirect costs to be allocated to the cost of performing a particular contract or subcontract. Such proper proportion depends upon all the facts and circumstances relating to the performance of the particular contract or subcontract. Subject to a requirement that all items which have no relation to the performance of the contract or subcontract shall be eliminated from the amount to be allocated, the following methods of allocation are outlined as acceptable in a majority of cases:

(1) *Factory indirect expenses.* The allowable indirect factory expenses (see paragraph (c) (5) of this section) shall ordinarily be allocated or "distributed" to the cost of the contract or subcontract on the basis of the proportion which the direct productive labor (see paragraph (c) (2) of this section) attributable to the contract or subcontract bears to the total direct productive labor of the production department or particular section thereof during the period within which the contract or subcontract is performed, except that if the indirect factory expenses are incurred in different amounts and in different proportions by the various producing departments consideration shall be given to such circumstances to the extent necessary to make a fair and reasonable determination of the true profit and excess profit.

(2) *Engineering indirect expenses.* The allowable indirect engineering expenses (see paragraph (f) of this section) shall ordinarily be allocated or "distributed" to the cost of the contract or subcontract on the basis of the proportion which the direct engineering labor attributable to the contract or subcontract (see paragraph (c) (3) of this section) bears to the total direct engineering labor of the engineering department or particular section thereof during the period within which the contract or subcontract is performed. If the expenses of the engineering department are not sufficient in amount to require the maintenance of separate accounts, the engineering indirect costs may be included in the indirect factory expenses (see paragraph (c) (5) of this section) and allocated or distributed to the cost of performing the contract or subcontract as a part of such expenses,

provided the proportion so allocated or distributed is proper under the facts and circumstances relating to the performance of the particular contract or subcontract.

(3) *Administrative expenses (or "overhead").* The allowable expenses of administration (see paragraph (g) of this section) or other general expenses except indirect engineering expenses, bidding and general selling expenses, and general servicing expenses shall ordinarily be allocated or distributed to the cost of performing a contract or subcontract on the basis of the proportion which the sum of the manufacturing cost (see paragraph (b) of this section) and the cost of installation and construction (see paragraph (e) of this section) attributable to the particular contract or subcontract bears to the sum of the total manufacturing cost and the total cost of installation and construction during the period within which the contract or subcontract is performed.

(4) *Bidding, general selling, and general servicing expenses.* The allowable bidding and general selling expenses and general servicing expenses (see paragraph (g) (2) and (3) of this section) shall ordinarily be allocated or distributed to the cost of performing a contract or subcontract on the basis of—

(i) The proportion which the contract price of the particular contract or subcontract bears to the total sales made (including contracts or subcontracts completed) during the period within which the particular contract or subcontracts is performed, or

(ii) The proportion which the sum of the manufacturing cost (see paragraph (b) of this section) and the cost of installation and construction (see paragraph (e) of this section) attributable to the particular contract or subcontract bears to the sum of the total manufacturing cost and the total cost of installation and construction during the period within which the contract or subcontract is performed,

except that special consideration shall be given to the relation which certain classes of such expenses bear to the various classes of articles produced by the contracting party in each case in which such consideration is necessary in order to make a fair and reasonable determination of the true profit and excess profit. See section 16.13 of these regulations.*†

§ 16.9 *Credit for net loss or for deficiency in profit in computing excess profit.* The term "net loss" as used in the Act and as applied to contracts and subcontracts coming within these regulations means the amount by which the total costs of performing all such contracts and subcontracts entered into after April 3, 1939 and completed by a particular contracting party within the income-taxable year exceeds the total contract prices of such contracts

and subcontracts. As to the meaning of income-taxable year, see section 16.1 of these regulations.

The term "deficiency in profit" as used in the Act and as applied to contracts and subcontracts coming within these regulations means the amount by which 12 percent of the total contract prices of all such contracts and subcontracts entered into after April 3, 1939 and completed by a particular contracting party within the income-taxable year exceeds the net profit upon all such contracts and subcontracts.

A net loss or a deficiency in profit sustained by a contracting party for an income-taxable year is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts coming within these regulations and completed during the four next succeeding income-taxable years. Credit for such a net loss or deficiency in profit may be claimed in the contracting party's annual report of profit filed with the collector of internal revenue (see section 16.15 of these regulations), but it shall be supported by separate schedules for each contract or subcontract involved showing total contract prices, costs of performance and pertinent facts relative thereto, together with a summarized computation of the net loss or deficiency in profit. The net loss or deficiency in profit claimed is subject to verification and adjustment. As to preservation of books and records, see section 16.13 of these regulations.

Net loss or deficiency in profit sustained on contracts and subcontracts completed within one income-taxable year may not be considered in computing net loss or deficiency in profit sustained on contracts and subcontracts completed within another income-taxable year.

The provisions of this section may be illustrated by the following example:

Example: The A Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into and completed contracts for aircraft for the Army coming within the scope of the Act as follows: Contracts were completed within the calendar year 1939 on which the A Corporation sustained a net loss of \$30,000 and a deficiency in profit of \$10,000; contracts totaling \$175,000 were completed in 1940 at a cost of \$155,000, the A Corporation thereby realizing a net profit of \$20,000 but sustaining a deficiency in profit of \$1,000 (i. e., 12 percent of \$175,000, or \$21,000, less \$20,000); contracts totaling \$400,000 were completed in 1941 at a cost of \$300,000, or at a net profit of \$100,000. After deducting from the net profit of \$100,000 for the year 1941 the amount of \$48,000 (i. e., 12 percent of the total contract prices of \$400,000), there remains \$52,000 in excess profit on the contracts completed in the year 1941. The net loss of \$30,000 and the deficiency in profit of \$10,000 sustained in 1939 and

the deficiency in profit of \$1,000 sustained in 1940 may be deducted from such \$52,000 in determining the amount of excess profit payable by the A Corporation for the year 1941 with respect to the contracts completed in such year.*†

§ 16.10 *Credit for Federal income taxes.* For the purpose of computing the amount of excess profit to be paid to the United States, a credit is allowable against the excess profit for the amount of Federal income taxes paid or remaining to be paid on the amount of such excess profit. The "Federal income taxes" in respect of which this credit is allowable include the income taxes imposed by Titles I and IA of the Revenue Act of 1938, and chapter 1 and subchapter A of chapter 2 of the Internal Revenue Code, and the excess-profits taxes imposed by section 602 of the Revenue Act of 1938 and subchapter B of chapter 2 of the Internal Revenue Code. This credit is allowable for these taxes only to the extent that it is affirmatively shown that they have been finally determined and paid or remain to be paid and that they were imposed upon the excess profit against which the credit is to be made. In case such a credit has been allowed and the amount of Federal income taxes imposed upon the excess profit is redetermined, the credit previously allowed shall be adjusted accordingly.*†

§ 16.11 *Failure of contractor to require agreement by subcontractor.* Every contract or subcontract coming within the scope of the Act and these regulations is required by the Act to contain, among other things, an agreement by the contracting party to make no subcontract unless the subcontractor agrees—

(a) To make a report, as described in the Act, under oath to the Secretary of War upon the completion of the subcontract;

(b) To pay into the Treasury excess profit, as determined by the Treasury Department, in the manner and amounts specified in the Act;

(c) To make no subdivision of the subcontract for the same article or articles for the purpose of evading the provisions of the Act;

(d) That the manufacturing spaces and books of its own plant, affiliates, and subdivisions shall at all times be subject to inspection and audit as provided in the Act.

If a contracting party enters into a subcontract with a subcontractor who fails to make such agreement, such contracting party shall, in addition to its liability for excess profit determined on contracts or subcontracts performed by it, be liable for any excess profit determined to be due the United States on the subcontract entered into with such subcontractor. In such event, however, the excess profit to be paid to the United States in respect of the subcontract en-

tered into with such subcontractor shall be determined separately from any contracts or subcontracts performed by the contracting party entering into the subcontract with such subcontractor.*†

§ 16.12 *Evasion of excess profit.* Section 3 of the Act of March 27, 1934, as amended, provides that the contracting party shall agree to make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of the Act. If any such subdivision or subcontract is made it shall constitute a violation of the agreement provided for in the Act, and the cost of completing a contract or subcontract by a contracting party which violates such agreement shall be determined in a manner necessary clearly to reflect the true excess profit of such contracting party.*†

§ 16.13 *Books of account and records.* It is recognized that no uniform method of accounting can be prescribed for all contracting parties subject to the provisions of the Act. Each contracting party is required by law to make a report of its true profits and excess profit. Such party must, therefore, maintain such accounting records as will enable it to do so. See section 16.8 of these regulations. Among the essentials are the following:

(1) The profit or loss upon a particular contract or subcontract shall be accounted for and fully explained in the books of account separately on each contract or subcontract.

(2) Any cost accounting methods, however standard they may be and regardless of long continued practice, shall be controlled by, and be in accord with, the objectives and purposes of the Act and of any regulations prescribed thereunder.

(3) The accounts shall clearly disclose the nature and amount of the different items of cost of performing a contract or subcontract.

In cases where it has been the custom priorly to use so-called "normal" rates of overhead expense or administrative expenses, or "standard" or "normal" prices of material or labor charges, no objection will be made to the use temporarily during the period of performing the contract or subcontract of such methods in charging the contract or subcontract, if the method of accounting employed is such as clearly to reflect, in the final determination upon the books of account, the actual profit derived from the performance of the contract or subcontract and if the necessary adjusting entries are entered upon the books and they explain in full detail the revisions necessary to accord with the facts. As to the elements of cost, see section 16.8 of these regulations.

All books, records, and original evidences of costs (including, among other

things, production orders, bills or schedules of materials, purchase requisitions, purchase orders, vouchers, requisitions for materials, standing expense orders, inventories, labor time cards, payrolls, cost distribution sheets) pertinent to the determination of the true profit, excess profit, deficiency in profit or net loss from the performance of a contract or subcontract shall be kept at all times available for inspection by internal-revenue officers, and shall be carefully preserved and retained so long as the contents thereof may become material in the administration of the Act. This provision is not confined to books, records, and original evidences pertaining to items which may be considered to be a part of the cost of performing a contract or subcontract. It is applicable to all books, records, and original evidences of costs of each plant, branch or department involved in the performance of a contract or subcontract or in the allocation or distribution of costs to the contract or subcontract.*†

§ 16.14 *Report to Secretary of War.* Upon the completion of a contract or subcontract coming within the scope of the Act and these regulations, the contracting party is required to make a report, under oath, to the Secretary of War. As to the date of completion of a contract or subcontract, see section 16.4 of these regulations. Such report shall be in the form prescribed by the Secretary of War and shall state the total contract price, the cost of performing the contract, the net income from such contract, and the per centum such income bears to the contract price. The contracting party shall also include as a part of such report a statement showing—

(1) the manner in which the indirect costs were determined and allocated to the cost of performing the contract or subcontract (see section 16.8 of these regulations);

(2) the name and address of every subcontractor with whom a subcontract was made, the object of such subcontract, the date when completed and the amount thereof; and

(3) the name and address of each affiliate or other organization, trade or business owned or controlled directly or indirectly by the same interests as those who so own or control the contracting party, together with a statement showing in detail all transactions which were made with such affiliate or other organization, trade or business and are pertinent to the determination of the excess profit.

A copy of the report required to be made to the Secretary of War is required to be transmitted by the contracting party to the Secretary of the Treasury. Such copy shall not be transmitted directly to the Secretary of the Treasury but shall be filed as a part of the annual

report. See section 16.15 of these regulations.*†

§ 16.15 *Annual reports for income-taxable years*—(a) *General requirements.* Every contracting party completing a contract or subcontract within the contracting party's income-taxable year ending after April 3, 1939 shall file with the collector of internal revenue for the collection district in which the contracting party's Federal income tax returns are required to be filed an annual report on the prescribed form of the profit and excess profit on all contracts and subcontracts coming within the scope of the Act and these regulations and completed within the particular income-taxable year. There shall be included as a part of such report a statement, preferably in columnar form, showing separately for each such contract or subcontract completed by the contracting party within the income-taxable year the total contract price, the cost of performing the contract or subcontract and the resulting profit or loss on each contract or subcontract together with a summary statement showing in detail the computation of the net profit or net loss upon all contracts and subcontracts completed within the income-taxable year and the amount of the excess profit, if any, for the income-taxable year covered by the report. A copy of the report made to the Secretary of War (see section 16.14 of these regulations) with respect to each contract or subcontract covered in the annual report, shall be filed as a part of such annual report. In case the income-taxable year of the contracting party is a period of less than twelve months (see section 16.1 of these regulations), the report required by this section shall be made for such period and not for a full year.

(b) *Time for filing annual reports.* Annual reports of contracts and subcontracts coming within the scope of the Act and these regulations completed by a contracting party within an income-taxable year must be filed on or before the 15th day of the ninth month following the close of the contracting party's income-taxable year. It is important that the contracting party render on or before the due date an annual report as nearly complete and final as it is possible for the contracting party to prepare. An extension of time granted the contracting party for filing its Federal income tax return does not serve to extend the time for filing the annual report required by this section. Authority consistent with authorizations for granting extensions of time for filing Federal income tax returns is hereby delegated to the various collectors of internal revenue for granting extensions of time for filing the reports required by this section. Application for extensions of time for filing such reports should be addressed to the collector of internal revenue for the district in which the contracting party files its Federal in-

come tax returns and must contain a full recital of the causes for the delay.*†

§ 16.16 *Payment of excess profit liability.* The amount of the excess profit liability to be paid to the United States shall be paid on or before the due date for filing the report with the collector of internal revenue. See section 16.15 of these regulations. At the option of the contracting party, the amount of the excess profit liability may be paid in four equal installments instead of in a single payment, in which case the first installment is to be paid on or before the date prescribed for the payment of the excess profit as a single payment, the second installment on or before the 15th day of the third month, the third installment on or before the 15th day of the sixth month, and the fourth installment on or before the 15th day of the ninth month, after such date.*†

§ 16.17 *Liability of surety.* The surety under contracts entered into with the Secretary of War for the construction or manufacture of any complete aircraft or any portion thereof for the Army shall not be liable for payment of excess profit due the United States in respect of such contracts.*†

§ 16.18 *Determination of liability for excess profit, interest and penalties; assessment, collection, payment, refunds.* The duty of determining the correct amount of excess profit liability on contracts and subcontracts coming within the scope of the Act and these regulations is upon the Commissioner of Internal Revenue. Under section 3 (b) of the Act of March 27, 1934, as last amended, all provisions of law (including the provisions of law relating to interest, penalties and refunds) applicable with respect to the taxes imposed by Title I of the Revenue Act of 1934 and not inconsistent with section 3 of the Act of March 27, 1934, as last amended, are applicable with respect to the assessment, collection, or payment of excess profits on contracts and subcontracts coming within the scope of the Act and these regulations and to refunds of overpayments of profits into the Treasury under the Act. Claims by a contracting party for the refund of an amount of excess profit, interest, penalties, and additions to such excess profit shall conform to the general requirements prescribed with respect to claims for refund of overpayments of taxes imposed by Title I of the Revenue Act of 1934 and, if filed on account of any additional costs incurred pursuant to guarantee provisions in a contract, shall be supplemented by a statement under oath showing the amount and nature of such costs and all facts pertinent thereto.

Administrative procedure for the determination, assessment and collection of excess profit liability under the Act and these regulations and the examination of reports and claims in connection therewith will be prescribed from time to time

by the Commissioner of Internal Revenue.*†

[SEAL] HAROLD N. GRAVES,
Acting Commissioner of
Internal Revenue.

Approved, June 16, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

Approved, June 28, 1939.

LOUIS JOHNSON,
Acting Secretary of War.

[F. R. Doc. 39-2262; Filed, June 29, 1939;
12:03 p. m.]

UNITED STATES PROCESSING TAX BOARD OF REVIEW

RULES OF PRACTICE

Correction

F. R. Doc. 39-2233, filed, June 27, 1939, at 4:01 p. m., appearing in the issue for Thursday, June 29, 1939, should be corrected as indicated below:

§ 601.5 (a) appearing in the first column on Page 2515 should read as follows:

(a) A caption in the following form:

UNITED STATES PROCESSING TAX BOARD OF
REVIEW

PETITIONER,
v.
COMMISSIONER OF INTERNAL
REVENUE, RESPONDENT

} Docket No. —

(The respondent shall be the *Commissioner of Internal Revenue*, and the name of the incumbent of that office shall not appear in the caption of the petition.)

The second paragraph in the first column of Page 2516 should read as follows:

"If a motion, other than one relating to the receipt of evidence during a hearing, is made orally at the hearing, the presiding officer may direct that it be reduced to writing and, unless he directs otherwise, it shall be filed with the Board at Washington, D. C."

TITLE 30—MINERAL RESOURCES

NATIONAL BITUMINOUS COAL COMMISSION

[Order No. 278]

AN ORDER REQUIRING DISTRIBUTORS WHO
PHYSICALLY HANDLE COAL OVER DOCKS
TO REPORT CERTAIN INFORMATION TO THE
COMMISSION

The Commission having, by Order in General Docket No. 12 on the 20th day of June, 1939, amended the definition of a "distributor" as previously defined in "Rules and Regulations for Registration of Distributors" dated March 24, 1939, as amended June 6, 1939,¹ so as to include a

¹ 4 F. R. 2486 DL.

dock operator who physically handles coal with respect to transactions which have been recognized by custom to be definitely wholesale in character, and it appearing to the Commission that the "Rules and Regulations for Registration of Distributors" dated March 24, 1939, as amended June 6, 1939 and June 20, 1939, as such rules and regulations relate to dock operators, would be more effectively administered by requiring that certain information be filed with the Commission by such distributors.

Now, therefore, Pursuant to the provisions of subsection (f) of Section III, entitled "Terms of 'Agreement by Registered Distributor'", of the "Rules and Regulations for Registration of Distributors" dated March 24, 1939, as amended June 6, 1939 and June 20, 1939, and to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That a "distributor", as such distributor is defined in the aforesaid rules and regulations, who has been registered by the Commission, shall file with the Statistical Division of the Commission at Washington, D. C., on or before the 15th day of each month from and after the effective date of Minimum Prices and Marketing Rules and Regulations, a report as to each dock operated during the preceding month by such distributor, giving the following information:

(a) Total net tons of coal received on each dock during the preceding month, by sizes and grades, the f. o. b. mine price thereof, the name of mine and producer from whom such coal was purchased, and the amount of discount to be received as to each transaction.

(b) Number of net tons sold during the preceding month as to transactions which, by custom, are recognized to be definitely wholesale in character.

(c) Number of net tons sold during the preceding month as to transactions which are not wholesale in character.

2. That the initial report required herein shall contain an inventory showing the amount of coal, and the sizes and grades of such coal, on each dock on the effective date of Minimum Prices and Marketing Rules and Regulations.

3. That the reports required to be filed under this Order shall be signed by the distributor if an individual, by a member of the firm if a partnership, or, if a corporation, by a responsible officer thereof who is familiar with the facts.

The Secretary of the Commission is hereby directed to cause a copy of this Order to be published forthwith in the FEDERAL REGISTER, and to cause a copy hereof to be mailed to the Consumers' Counsel, to the Secretary of each District Board, and to all parties who have filed their appearances in Docket No. 12, and to mail a copy of this Order to all Code Members and to all applicants who have filed with the Commission, on Form

No. 326-W, application for Registration as a "distributor", and to cause copies of this Order to be made available for inspection by interested parties at the Office of the Secretary of the Commission, Washington, D. C., and at the office of each Statistical Bureau of the Commission.

By order of the Commission.
Dated this 29th day of June 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

[F. R. Doc. 39-2281; Filed, June 30, 1939; 12:13 p. m.]

TITLE 50—WILDLIFE

BUREAU OF FISHERIES

SUBCHAPTER B—ALASKA AQUATIC MAMMALS OTHER THAN WHALES

PART 242—ALASKA WALRUSES AND SEA LIONS

Sec.

242.1 Purposes for which walruses may be taken.

242.2 Purposes for which sea lions may be taken.

§ 242.1 *Purposes for which walruses may be taken.* The killing of walruses in the Territory of Alaska or in any of the waters of Alaska over which the United States has jurisdiction is prohibited from July 1, 1939, to June 30, 1941, both dates inclusive. This prohibition shall not apply to the killing of walruses by natives for food or clothing, by miners or explorers when in need of food, or to the collection of specimens for scientific purposes under permits issued by the Secretary of Commerce. (§ 2, 35 Stat. 102) (41 Stat. 716; 48 U.S.C. 191)

§ 242.2 *Purposes for which sea lions may be taken.* The killing of sea lions in the Territory of Alaska, or in any of the waters of Alaska over which the United States has jurisdiction, is permitted as follows:

(a) By natives for food or clothing, and by miners or explorers when in need of food.

(b) By anyone in the necessary protection of property, or while such animals are destroying salmon or other food fish.

(c) Under permits issued by the Secretary of Commerce authorizing the taking of specimens for scientific purposes. (48 Stat. 976; 16 U.S.C. 659)

[SEAL] EDWARD J. NOBLE,
Acting Secretary of Commerce.

JUNE 29, 1939.

[F. R. Doc. 39-2275; Filed, June 30, 1939; 11:32 a. m.]

Notices

WAR DEPARTMENT.

APPOINTMENT OF CHAPLAINS IN THE REGULAR ARMY

1. Examination of applicants for appointment as chaplains in the grade of

first lieutenant in the Regular Army under provisions of AR 605-30 and the following special conditions will be held on September 12, 13, 14, and 15, 1939, in Washington, D. C.

2. In order to provide for existing or prospective denominational vacancies, applications will be restricted to clergymen duly accredited to the following denominations:

Colored (any Protestant denomination).

Baptist, South.

Churches of Christ.

Disciples of Christ.

Lutheran (except Missouri Synod).

Methodist.

Roman Catholic.

3. Eligibility to compete in the examination will be confined to candidates who are at the time of the examination—

a. Male citizens of the United States between the ages of 23 and 34 years.

b. Regularly ordained, duly accredited by, and in good standing with one of the religious denominations listed above.

c. Graduates of both a 4-year college course and a 3-year theological seminary course.

d. Actively engaged in the ministry as the principal occupation in life and credited with 3 years' experience therein.

4. Formal applications on WD, AGO Form No. 62, accompanied by at least three letters of recommendation, small photographs of applicants, and proper ecclesiastical indorsements must reach The Adjutant General not later than August 30, 1939. Application received after that date will not be considered.

[SEAL] E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 39-2266; Filed, June 30, 1939; 9: 23 a. m.]

DEPARTMENT OF THE INTERIOR.

National Bituminous Coal Commission.

[Order No. 279]

AN ORDER AMENDING ORDER NO. 277 WITH RESPECT TO THE DESIGNATION OF THE EMPLOYEE MEMBER OF DISTRICT BOARD NO. 18

Pursuant to Act of Congress entitled "An Act to regulate interstate commerce in bituminous coal and for other purposes" (Public No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders and directs:

1. That paragraph 2 of Order No. 277 of the Commission be and the same is hereby amended by striking opposite the words "District 18—New Mexico:" the name of Eben Jones, 736 South 5th Street, Raton, New Mexico, and inserting

in lieu thereof the name of Earle Stucker, 110 East Mesa Avenue, Gallup, New Mexico.

2. Except as herein modified, Order No. 277 shall remain in full force and effect.

By order of the Commission.

Dated this 29th day of June 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

[F. R. Doc. 39-2282; Filed, June 30, 1939;
12:13 p. m.]

[Docket No. 602-FD]

ORDER IN THE MATTER OF THE WEST KENTUCKY COAL COMPANY; COMPLAINT OF THE UNITED MINE WORKERS OF AMERICA, DISTRICT NO. 23, ALLEGING VIOLATION OF SECTION 9 OF THE BITUMINOUS COAL ACT OF 1937

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 28th day of June 1939.

It appearing that on the 19th day of January, 1939, the United Mine Workers of America, District No. 23, a party of interest within the meaning of Section 9 (c) of the Bituminous Coal Act of 1937, hereinafter referred to as the Act, filed with the Commission a complaint alleging violation of Section 9 of the Act on the part of the West Kentucky Coal Company, a corporation actively engaged in the production of bituminous coal in the State of Kentucky, said Company being hereinafter referred to as the respondent; and

It appearing that after copy of said complaint had been duly served on the respondent, notice of a hearing¹ on said complaint before an authorized Examiner of the Commission was promptly served on all parties of interest, said hearing to be held at the Hearing Room of the Commission, Washington, D. C. on the 25th day of January, 1939, but pursuant to the request of the respondent continued until the 6th day of February, 1939, on which date said hearing was begun; and

It further appearing, That at said hearing all parties of interest were represented by counsel and evidence adduced and testimony heard, said hearing was continued for the purpose of permitting the respondent to take depositions of 50 witnesses which respondent claimed were necessary in the proper presentation of its defense, and such depositions having been taken and made a part of the record in this case, the Examiner submitted a Report together with the Proposed Findings of Fact to the Commission, and copies of such Report and Proposed Findings were duly served upon all interested parties; and

It appearing, That on the 4th day of April 1939, the respondent duly filed with the Commission its Exceptions to the Report and Proposed Findings of Fact of the Examiner and a Brief in

¹ 4 F.R. 464 DI.

support thereof, together with a Motion for Rehearing and Request for Oral Argument; and

The Commission having granted the respondent's Request for Oral Argument and having heard the same on the 15th day of June 1939, and the Commission being fully advised of the testimony, evidence, exhibits and depositions as contained in the official transcript of the proceedings as filed herein, and after thorough consideration of the Pleadings, Record, Briefs, Objections and Arguments in the premises, the Commission made its Findings and Conclusions thereon, a copy of which is attached hereto and made a part hereof by reference;

Now, therefore, It is hereby ordered:

1. That the respondent's Motion for a Rehearing in this matter is denied.

2. That the objections of the respondent to the aforesaid Report and Proposed Findings of Fact of the Examiner are overruled insofar as said Report and Proposed Findings conform with the Findings and Conclusions of the Commission.

3. That the Secretary of the Commission is directed forthwith to certify the Findings and Conclusions of the Commission and this Order to all United States departments or agencies concerned; to cause to be published in the FEDERAL REGISTER this Order together with the Findings and Conclusions of the Commission;² and to cause copies of the same to be mailed to the Secretary of each District Board, to the Consumers' Counsel, and to all interested parties.

By Order of the Commission.

Dated this 28th day of June 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

[F. R. Doc. 39-2278; Filed, June 30, 1939;
12:12 p. m.]

[Docket No. 619-FD]

ORDER IN THE MATTER OF THE APPLICATION OF SOUTHWEST COAL COMPANY FOR PROVISIONAL APPROVAL AS A MARKETING AGENCY

At a session of the National Bituminous Coal Commission, held at its offices in Washington, D. C., on the 28th day of June 1939.

It appearing, That the above-named applicant, Southwest Coal Company, a Missouri corporation authorized to engage in business in the State of Missouri, filed its application for provisional approval as a marketing agency on the 6th day of April 1939, pursuant to Order No. 6³ of the Commission, and the matter being assigned to Trial Examiner Edward J. Hayes, and proper

² Filed as a part of the original document with the Division of the Federal Register, The National Archives. Requests for copies should be addressed to the National Bituminous Coal Commission.

³ 2 F.R. 1078.

notice having been given, the same came on for hearing before the said Examiner on the 1st day of May 1939,⁴ and at said hearing the applicant having duly appeared and representatives of the Legal Division of the Commission and of the Consumers' Counsel having entered their respective appearances therein, the evidence was adduced; and

It further appearing, That the Trial Examiner having received said evidence, did, on the 10th day of June 1939, file, with the Commission, his report and proposed findings of fact, together with his recommendations that said application be granted, and it appearing that true copies of said report and proposed findings of fact of the Examiner were duly served upon all parties appearing at said hearing, on the 12th day of June 1939, and more than fifteen days having elapsed since the service of said report, no exceptions having been filed thereto; and

The Commission having considered the application, the Report, the Proposed Findings of Fact, and Recommendation of the Examiner, and being fully advised of the evidence as the same is contained in the official transcript thereof, finds that the "Findings of Fact" as proposed by the Examiner are in all respects true and correct, and are hereby adopted as the findings of the Commission.

Now, therefore, pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

That the application of the Southwest Coal Company for provisional approval as a marketing agency be and the same is hereby granted and the said Southwest Coal Company be and the same is hereby considered to be a marketing agency and provisionally approved as such within the purview of Section 12 of the Bituminous Coal Act of 1937 until further order of the Commission.

By order of the Commission.

Dated this 28th day of June 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

[F. R. Doc. 39-2279; Filed, June 30, 1939;
12:12 p. m.]

[Docket No. 498-FD]

ORDER IN THE MATTER OF THE APPLICATION OF WESTERN PENNSYLVANIA COAL CORPORATION FOR PROVISIONAL APPROVAL AS A MARKETING AGENCY

IN RE: PETITION OF WESTERN PENNSYLVANIA COAL CORPORATION FOR PROVISIONAL AUTHORIZATION OF MODIFICATION OF MARKETING AGENCY CONTRACT

At a regular session of the National Bituminous Coal Commission held at its offices in Washington, D. C., on the 28th day of June 1939.

⁴ 4 F.R. 1642 DI.

It appearing that the above named petitioner, Western Pennsylvania Coal Corporation, a Pennsylvania corporation authorized to engage in business in the State of Pennsylvania, on June 26, 1939 filed its petition for provisional authorization of modification of form of marketing agency contract, which was heretofore approved by Order of the Commission dated the 21st day of December, 1938, requesting that there be deleted from Section 2, paragraph 1 of said form of marketing agency contract the following clause:

"such coal as Producer may sell from its mines or from truck loading facilities adjacent to any of Producer's mines for delivery by truck,"

so that said paragraph of said section as revised will read as follows:

"2. The Producer hereby appoints the Selling Agent as its exclusive agent for the sale of the coal produced by it in its mines, in above-mentioned area, and the Selling Agent hereby accepts the appointment of such Selling Agent, all on the terms and conditions hereinafter contained; provided, however, that the Producer hereby expressly reserves from the terms of this Agreement such coal as may be produced and used by it in the operations of its mines; such coal as it may furnish or sell to its employees for their use; such coal as is used by Producer in the production of coke; such coal as is transported by the Producer to itself for consumption by it or is sold or delivered to a subsidiary of the Producer for consumption by such subsidiary, or is sold or delivered by the Producer to a corporation of which the Producer is a subsidiary for consumption by such corporation of which Producer is a subsidiary; and such coal as remains to be delivered on legally enforceable bona fide written contracts entered into prior to June 16, 1933 and not yet completed at the date of the taking effect of this agreement.";

and

It appearing to the Commission upon due consideration of said petition that such modification and revision in the form of marketing agency contract between petitioner and its agency members will not unreasonably restrict the supply of coal in interstate commerce, will not prevent the public from receiving coal at fair and reasonable prices, and will not operate against the public interest,

Now, therefore, Pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

That the Western Pennsylvania Coal Corporation be and hereby is granted provisional authorization to modify its form of marketing agency contract as hereinabove set forth, effective thirty (30) days from the date of this Order, unless within such time any interested party files a protest to this Order and requests that a hearing be held upon the aforesaid petition.

No. 127—3

Except as herein modified, the Order of the Commission dated December 21, 1938 in the above entitled matter shall remain in full force and effect.

The Secretary of the Commission is directed forthwith to mail a copy of this Order to the petitioner, to the Consumers' Counsel, to the Secretary of each District Board, and to the Code Members within District No. 2; and shall cause a copy hereof to be filed and made available for inspection at each of the Statistical Bureaus of the Commission; and shall cause a copy hereof to be published in the FEDERAL REGISTER.

By order of the Commission.

Dated this 28th day of June 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

[F. R. Doc. 39-2280; Filed, June 30, 1939; 12:13 p. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF HEARING ON PETITIONS FOR REVIEW OF FINDINGS AND DETERMINATION BY THE PRESIDING OFFICER ON APPLICATION FOR PERMISSION TO EMPLOY LEARNERS IN THE APPAREL INDUSTRY

Whereas, The National Association of Shirt and Pajama Manufacturers, Inc., and sundry other parties pursuant to Part 522¹ (Regulations applicable to the Employment of Learners pursuant to Section 14 of the Fair Labor Standards Act) made application for permission to employ learners in the apparel industry at wages lower than the applicable minimum wage specified in Section 6 of the Act; and

Whereas, a hearing on said application was held before Merle D. Vincent, the representative of the Administrator of the Wage and Hour Division, duly authorized to conduct the said hearing and to determine—

(a) what if any occupation or occupations in the apparel industry require a learning period, and

(b) whether it is necessary in order to prevent curtailment of opportunities for employment to provide for the employment of persons in occupations requiring a learning period at wage rates lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938, and

(c) if such necessity is found to exist, at what wages lower than the minimum wage applicable under Section 6, such employment of learners shall be permitted, and with what limitations as to time, number, proportion and length of service.

and

Whereas, following such hearing the said Merle D. Vincent duly made his find-

¹ 4 F.R. 2088 DI.

ings of fact and determination, and filed same with the Administrator on May 20, 1939, and

Whereas, on May 23, 1939, the Administrator caused to be published in the FEDERAL REGISTER a notice² which set forth in full the findings of fact and determination of the presiding officer and stated that, pursuant to the provisions of Section 522.13 of the aforesaid Regulations, as amended, within fifteen days after May 23, 1939, persons aggrieved by the said findings and determination might file, with the Administrator, petitions for review of the findings and determination of the said representative, and

Whereas, petitions for review, copies of which are on file in the office of the Administrator, Room 5144, Department of Labor Building, Washington, D. C., and available for examination by all interested parties, have been duly filed with the Administrator by the National Association of Shirt and Pajama Manufacturers and sundry other parties.

Now, therefore, notice is hereby given of a public hearing to be held pursuant to Section 522.13 of the aforesaid Regulations, as amended, at 10 o'clock A. M. on July 18, 1939, at the Raleigh Hotel, 12th and Pennsylvania Avenue, N. W., Washington, D. C. before Paul Sifton, Deputy Administrator of the Wage and Hour Division, hereby duly authorized to conduct said hearing and to review the aforementioned findings of fact and determination of the presiding officer and to make a final determination of the questions set forth in the second paragraph of this notice.

Any person interested in appearing, either in support of or in opposition to the matters prayed for in the petition for review, may appear on his own behalf or on the behalf of any other person, provided that he shall file with the Administrator, at his office in Washington, prior to noon on July 15, 1939, A Notice of Intention To Appear, which shall contain the following information:

(1) The name and address of the person appearing.

(2) If he is appearing in a representative capacity, the name and address of the person or persons whom he is representing.

(3) Whether he is appearing in support of or in opposition to any petition for review.

(4) The approximate length of time which his presentation will consume.

(5) Scope of appearance, i. e., for which branch of the apparel industry appearance will be made.

Signed at Washington, D. C., this 30th day of June, 1939.

ELMER F. ANDREWS,
Administrator.

[F. R. Doc. 39-2283; Filed, June 30, 1939; 12:59 p. m.]

² 4 F.R. 2093 DI.

CIVIL AERONAUTICS AUTHORITY.

[Amendment 16 of Civil Air Regulations]

REAPPLICATION FOR PILOT, GROUND INSTRUCTOR AND AIR CARRIER DISPATCHER CERTIFICATES

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C., on the 27th day of June 1939.

Acting pursuant to the Authority vested in it by the Civil Aeronautics Act of 1938, particularly section 205 and subsections (a) and (b) of section 602 of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under, said Act, the Civil Aeronautics Authority hereby amends the Civil Air Regulations as follows:

Subsections (a) and (b) of section 20.39, section 20.47, section 21.29, section 23.29, and section 27.29 are amended by striking the phrase "30 days" appearing in each of such subsections and inserting the phrase "90 days" in lieu thereof.

This amendment shall become effective on and after 12:01 A. M., E. S. T., July 27, 1939.

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 39-2277; Filed, June 30, 1939; 12 m.]

FEDERAL TRADE COMMISSION.

*United States of America—Before
Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 29th day of June, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3774]

IN THE MATTER OF BENJAMIN GOULD, TRADING AS PICCADILLY HOSIERY MILLS AND PICCADILLY HOSIERY COMPANY

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U.S.C.A., Section 41).

It is ordered, That John W. Addison, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Monday, July 10, 1939, at nine o'clock in the forenoon of that day (eastern

standard time), in Room 110, Customs House, Philadelphia, Pennsylvania.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-2269; Filed, June 30, 1939; 9:53 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

*United States of America—Before the
Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 29th day of June, A. D. 1939.

[File No. 31-125]

IN THE MATTER OF HILLMAN LAND CO., J. H. HILLMAN & SONS CO., HECLA COAL & COKE CO., PENNSYLVANIA INDUSTRIES, INC., MOTORS MORTGAGE CORP.

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION UNDER PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANT

Upon the request of the applicants, the Commission consents to the withdrawal of the application of the above-named applicants, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-2270; Filed, June 30, 1939; 10:54 a. m.]

*United States of America—Before the
Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 29th day of June, A. D. 1939.

[File No. 31-186]

IN THE MATTER OF KENTUCKY NATURAL GAS CORPORATION

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION UNDER PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANT

Upon the request of the applicant, the Commission consents to the withdrawal of the application of the above-named applicant, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-2271; Filed, June 30, 1939; 10:54 a. m.]

*United States of America—Before the
Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 29th day of June, A. D. 1939.

[File No. 31-406]

IN THE MATTER OF THE NATIONAL SUPPLY COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION UNDER PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 PURSUANT TO REQUEST OF APPLICANT

Upon the request of the applicant, the Commission consents to the withdrawal of the application of the above-named applicant, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-2272; Filed, June 30, 1939; 10:54 a. m.]

*United States of America—Before the
Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 30th day of June, A. D. 1939.

[File Nos. 34-8, 52-3, 52-5, 52-9, 52-10, and 59-1]

IN THE MATTER OF UTILITIES POWER & LIGHT CORPORATION AND UTILITIES POWER & LIGHT CORPORATION AND CHARLES TRUE ADAMS

NOTICE OF AND ORDER FOR HEARING AND ARGUMENT

The Commission having on August 29, 1938 entered an order entitled "Order for Consolidation of Hearings for Stated Purposes and Governing Certain Procedural Matters" consolidating the above entitled matters for purposes of hearing;

Hearing pursuant to said order with respect to valuation and plans of reorganization having been held before the Commission's Trial Examiner jointly on the same subject matter with a hearing before the Special Master appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division, Cause No. 64605;

Oral arguments having been made before the Securities and Exchange Commission and the Special Master jointly; and the hearing with respect to valuation and plans of reorganization having been closed;

The Commission having on April 14, 1939 entered an order reopening said hearing with respect to valuation and plans of reorganization, and further hearing having been had and further argument made before said Trial Examiner and Special Master jointly; the

transcript of said argument having been submitted to the Commission pursuant to stipulation, and said hearing with respect to valuation and plans of reorganization having again been closed;

Subsequently Atlas Corporation, the proponent of a Plan of Reorganization dated February 1, 1939, comprising the subject matter of the application having file number 52-9, having tendered for filing an amendment of said application for the purpose of amending said plan;

The Commission having considered the amendment so tendered and the record, briefs and arguments herein;

It appearing to the Commission that such amendment should be permitted to be filed;

It is ordered, That said amendment be permitted to be filed and that such hearing be reopened for the purpose of receiving evidence with respect thereto;

It is further ordered, That such hearing be held on July 10, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held.

It is further ordered, That Edward C. Johnson or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the Public Utility Holding Company Act of 1935 and to continue or postpone such hearing from time to time or to a date thereafter to be fixed by such presiding officer.

It is further ordered, That in the event a hearing shall be ordered to be held before said Special Master at said time and place such hearing before an officer of the Commission may be held jointly with such hearing before said Special Master;

It is further ordered, That at the conclusion of such hearing the Commission hear oral argument with respect to such amendment and with respect to whether or not the Commission's approval of said plan as amended, if granted, should be conditioned upon the filing of a further amendment eliminating those provisions of said plan which provide for the granting of rights to subscribe to shares of the new common stock therein mentioned;

Notice of such hearing and of such oral argument is hereby given to the parties and to any other person whose participation may be in the public interest or for the protection of investors or consumers. It is requested that any person not already a party who shall desire to be heard or admitted as a party, file a notice to that effect with the Commission on or before July 7, 1939.

Changes in said plan, effected by said amendment include the following:

(1) Amendment of Article 1 of said plan so as to provide, in substance, that a plan of integration under Section 11 (e) of the Public Utility Holding Company Act of 1935 shall be filed by the New Company contemplated by said plan of reorganization; that Interstate Power Company, Central States Utilities Corporation and Central States Power & Light Corporation (subsidiaries of Utilities Power & Light Corporation, Debtor) shall join in such plan of integration; that such plan of integration shall contain certain provisions more fully set forth in such amendment for the enforcement of such plan of integration (including provisions with respect to the appointment of a trustee) in the event such plan of integration shall not be consummated within two years from the date of filing thereof plus such extension of time as the Commission may grant.

(2) Provisions added to Article II of the plan whereby all holders of outstanding debentures and allowed claims against the Debtor other than Atlas Corporation and its subsidiaries may elect to take (a) in lieu of any or all shares of new common stock which they are entitled to receive under the plan, 1 share of new preferred stock instead of each $8\frac{1}{3}$ shares of new common stock or (b) in lieu of any or all shares of new preferred stock which they are entitled to receive under the plan, $8\frac{1}{3}$ shares of new common stock instead of each 1 share of new preferred stock; and whereby at the expiration of the time fixed for the exercise of such rights of election, Atlas Corporation and its subsidiaries shall have like rights of election except that they shall exercise such rights in such a manner and to such extent that the initial capital structure of the New Company will include no greater amount of preferred stock than would be issuable if the rights of election mentioned in this paragraph (2) were not included in the plan.

(3) Amendments providing in substance (a) that the New Company shall pay over to the trustee for the sinking fund for its debentures 100% of the net proceeds received by the New Company from any sale of assets acquired by it in reorganization, until all such debentures shall have been retired; (b) thereafter the New Company shall set aside 30% of the net proceeds received by it from any such sales, in a sinking fund to be applied to the retirement of its preferred stock; (c) that the initial board of directors of the New Company shall consist of nine or seven members (such number to be determined by Atlas Corporation prior to the final confirmation of the plan by the Court) of whom two members shall be chosen by the holders of the outstanding shares of preferred stock of the Debtor, with the right to vote cumulatively, and of whom the re-

maining members shall be chosen by the holders of outstanding debentures of the Debtor, with the right to vote cumulatively; (d) that in subsequent elections of directors, the preferred stock of the New Company shall be entitled to elect two members, voting as a class, the remaining members to be elected by the holders of the common stock of the New Company, voting as a class, with the right of cumulative voting within each class; except that whenever there shall be dividends of $\$1.87\frac{1}{2}$ accumulated and unpaid on any shares of the preferred stock of the New Company, the holders of such stock as a class shall be entitled to elect two-thirds of the directors until all arrears are paid (such right, however, not to accrue until after the first dividend payment date next succeeding one year from the date from which dividends on such preferred stock shall be cumulative); (e) that the common stock to be issued by the New Company shall have a par value of \$4 per share; (f) that no dividend shall be declared or paid on the common stock of the New Company unless after the payment of such dividend the capital and surplus of the New Company shall be at least equal to \$100 per share of the outstanding preferred stock of the New Company, and the surplus of the New Company shall be at least equal to \$7.50 per share of such preferred stock; (g) that the affirmative vote of the holders of at least two-thirds in interest of the outstanding preferred stock issued by the New Company pursuant to the plan be required, not only for the authorization of any preferred stock senior thereto, but also for the authorization of any preferred stock on a parity therewith; and

(4) Certain other changes set out in the amendment on file with the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-2273; Filed, June 30, 1939; 10:54 a. m.]

United States of America—Before the
Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 30th day of June, A. D. 1939.

[File No. 37-39]

IN THE MATTER OF SOUTHERN UNION
SERVICE COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 13 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on July 7, 1939, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building,

1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under

the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before July 6, 1939.

The matter concerned herewith is in regard to an application for an order of the Commission temporarily exempting Southern Union Service Company as a

subsidiary service company of Southern Union Gas Company from the prohibitions of Section 13 of the Act and the rules promulgated thereunder, and permitting such company to enter into and perform service, sales and construction contracts for associate companies thereof, pending Commission action on an application (File No. 37-39) for approval of such company as a mutual service company.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-2276; Filed, June 30, 1939;
11:54 a. m.]