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FEDERAL REGISTER

VOLUME 4 NUMBER 178

Washington, Friday, September 15, 1939

The President

GOLD STAR MOTHER'S DAY—1939

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the preamble to Public Resolution 123, 74th Congress, approved June 23, 1936 (49 Stat. 1895), recites:

"Whereas the service rendered the United States by the American mother is the greatest source of the country's strength and inspiration; and

"Whereas we honor ourselves and the mothers of America when we revere and give emphasis to the home as the fountainhead of the state; and

"Whereas the American mother is doing so much for the home and for the moral and spiritual uplift of the people of the United States and hence so much for good government and humanity; and

"Whereas the American Gold Star Mothers suffered the supreme sacrifice of motherhood in the loss of their sons and daughters in the World War;"

AND WHEREAS the said Public Resolution 123 provides:

"That the President of the United States is hereby authorized and requested to issue a proclamation calling upon the Government officials to display the United States flag on all Government buildings, and the people of the United States to display the flag and to hold appropriate meetings at their homes, churches, or other suitable places, on the last Sunday in September, as a public expression of the love, sorrow, and reverence of the people of the United States for the American Gold Star Mothers.

"SEC. 2. That the last Sunday in September shall hereafter be designated and known as 'Gold Star Mother's Day', and it shall be the duty of the President to request its observance as provided for in this resolution."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by the aforesaid public resolution, do request the observance of Sunday, September 24, 1939, as Gold Star Mother's Day, do direct the officials of the Government to have the flag of the United States displayed on all Government buildings, and do call upon the people of the United States to display the flag and to observe Gold Star Mother's Day in their homes, churches, and other suitable places as a public expression of their love and reverence for the American Gold Star Mothers.

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

DONE at the City of Washington this 11" day of September, in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

[SEAL]

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL
Secretary of State.

[No. 2364]

[F. R. Doc. 39-3363; Filed, September 13, 1939; 1:54 p. m.]

MARK TWAIN NATIONAL FOREST—MISSOURI

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS certain lands within the State of Missouri have been acquired or are in process of acquisition by the United States under authority of the act of March 1, 1911, c. 186, 36 Stat. 961, 962 (U. S. C., title 16, sec. 516), as amended by the act of June 7, 1924, 43 Stat. 653 (U.S.C., title 16, sec. 515), the act of March 31, 1933, c. 348, 48 Stat. 22 (U.S.C., title 16, sec. 585), the National Industrial Recovery Act, approved June 16, 1933, 48 Stat. 195, 202 (U.S.C., title 40, sec. 403), and the Emergency Relief Appropriation

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THE PRESIDENT

RULES REGULATIONS, ORDERS

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FEDERAL REGISTER

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Act of 1935, approved April 8, 1935, 49 Stat. 115; and

WHEREAS it appears that it would be in the public interest to give such lands, together with certain intermingled public lands, a national-forest status:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by section 24 of the act of March 3, 1891, 26 Stat. 1095, 1103 (U.S.C., title 16, sec. 471), the act of June 4, 1897, 30 Stat. 34, 36 (U.S.C., title 16, sec. 473), and the acts above mentioned, do proclaim (1) that there are hereby reserved and set apart as the Mark Twain National Forest all lands of the United States within the area hereinafter described, and shown on the diagram attached hereto and made a part hereof,[1] and (2) that all lands within such area which are now in process of acquisition by the United States under authority of any of the above-mentioned acts shall upon the acquisition of title thereto become and be administered as part of the said Mark Twain National Forest:

FIFTH PRINCIPAL MERIDIAN

Tps. 21 N., Rs. 23, 24, 25, 26, and 27 W., all north of the Missouri State Line.
T. 22 N., R. 17 W., secs. 1 to 18, inclusive.
T. 22 N., R. 18 W., secs. 1 to 18, inclusive.
Tps. 22 N., Rs. 23, 24, 25, and 26 W., all.
Tps. 23 N., Rs. 15, 16, 17, and 18 W., all.
T. 23 N., R. 23 W., secs. 19 to 36, inclusive.
T. 23 N., R. 24 W., secs. 19 to 36, inclusive.
Tps. 23 N., Rs. 25, and 26 W., all.
Tps. 24 N., Rs. 10, 11, 15, 16, 17, 18, and 19 W., (fractional) all.
Tps. 25 N., Rs. 9, 10, and 11 W., all.
T. 25 N., R. 16 W., secs. 18 to 21, inclusive; and secs. 28 to 33, inclusive.
T. 25 N., R. 17 W., secs. 13 to 36, inclusive.
T. 25 N., R. 18 W., secs. 4 to 9, inclusive; and secs. 13 to 36, inclusive.
Tps. 25 N., Rs. 19 and 20 W., all.
Tps. 26 N., Rs. 9, 10, and 11 W., all.
T. 26 N., R. 12 W., secs. 1 to 24, inclusive.
T. 26 N., R. 18 W., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; and secs. 28 to 33, inclusive.
T. 26 N., R. 19 W., secs. 1 to 3, inclusive; secs. 10 to 15, inclusive; and secs. 19 to 36, inclusive.
T. 26 N., R. 20 W., secs. 19 to 36, inclusive.
Tps. 27 N., Rs. 10, 11, and 12 W., all.
T. 31 N., R. 12 W., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; and secs. 28 to 30, inclusive.
T. 31 N., R. 13 W., secs. 1 to 3, inclusive; secs. 10 to 15, inclusive; and secs. 22 to 25, inclusive.
Tps. 32 N., Rs. 10, 11, and 12 W., all.
T. 32 N., R. 13 W., secs. 1 to 18, inclusive; secs. 22 to 27, inclusive; and secs. 34 to 36, inclusive.
T. 33 N., R. 9 W., sec. 6.
Tps. 33 N., Rs. 10, 11, 12, and 13 W., all.
T. 34 N., R. 9 W., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; and secs. 28 to 33, inclusive.
Tps. 34 N., Rs. 10, 11, 12, and 13 W., all.
Tps. 35 N., Rs. 10, 11, 12, and 13 W., all.
T. 36 N., R. 9 W., all.
T. 36 N., R. 10 W., secs. 1 to 3, inclusive; secs. 10 to 15, inclusive; secs. 22 to 27, inclusive; and secs. 34 to 36, inclusive.
T. 37 N., R. 9 W., all.
T. 37 N., R. 10 W., secs. 1 to 3, inclusive; secs. 10 to 15, inclusive; secs. 22 to 27, inclusive; and secs. 34 to 36, inclusive.

The reservation made by this proclamation shall as to all lands which are at this date legally appropriated under the public-land laws or reserved for any public purpose other than classification, be subject to and shall not interfere with or defeat legal rights under such appropriation, or prevent the use for such public purpose of land so reserved, so long as such appropriation is legally maintained or such reservation remains in force.

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

DONE at the City of Washington this 11" day of September, in the year of our Lord nineteen hundred and [SEAL] thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL
Secretary of State.

[No. 2362]

[F. R. Doc. 39-3361; Filed, September 13, 1939; 1:53 p. m.]

[1] See page 3909.

CLARK NATIONAL FOREST—MISSOURI

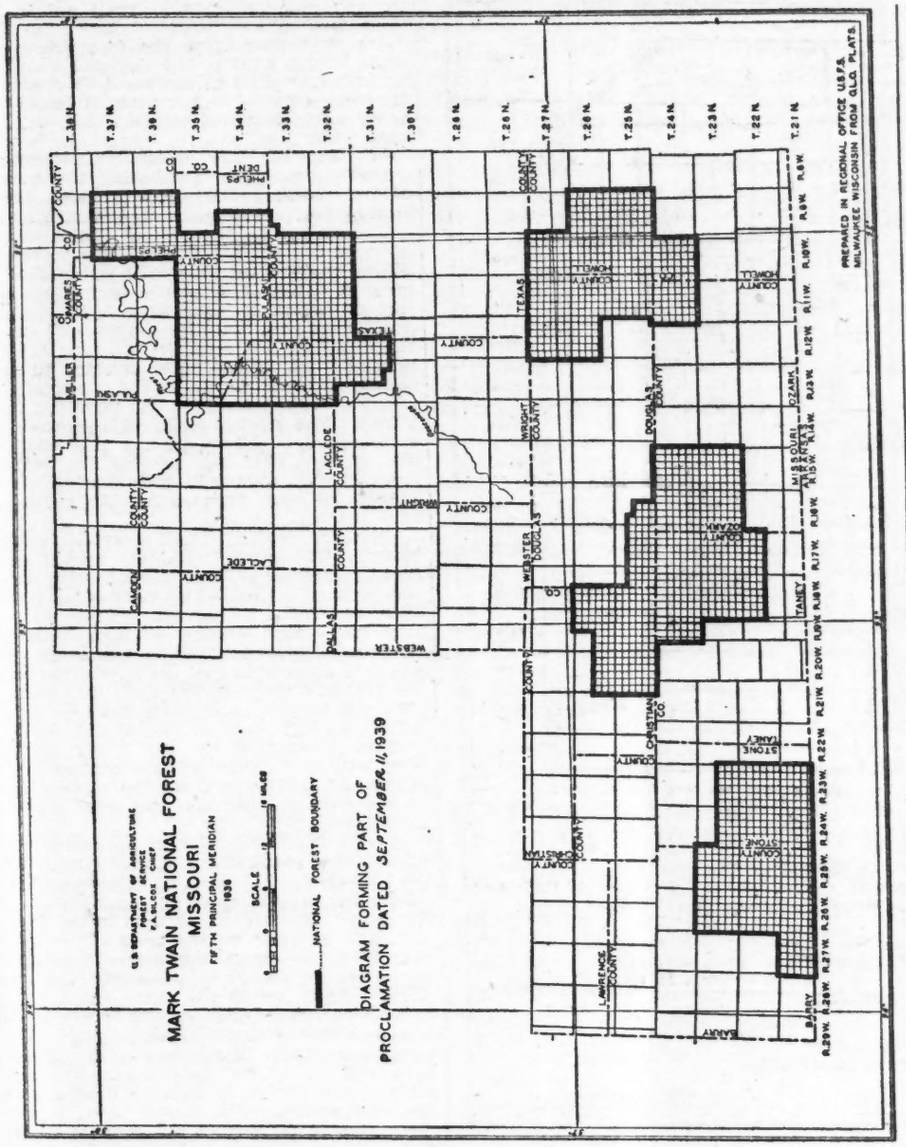
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS certain lands within the State of Missouri have been acquired or are in process of acquisition by the United States of America under authority of the act of March 1, 1911, c. 186, 36 Stat. 961 (U.S.C., title 16, sec. 516), as amended by the act of June 7, 1924, 43 Stat. 653 (U.S.C., title 16, sec. 515), the act of March 31, 1933, c. 348, 48 Stat. 22 (U.S.C., title 16, sec. 585), the National Industrial Recovery Act, approved June 16, 1933, 48 Stat. 195, 202 (U.S.C., title 40, sec. 403), and the Emergency Relief Appropriation Act of 1935, approved April 8, 1935, 49 Stat. 115; and

WHEREAS it appears that it would be in the public interest to give such lands, together with certain intermingled public lands, a national-forest status:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the power vested in me by section 24 of the act of March 3, 1891, 26 Stat. 1095, 1103 (U.S.C., title 16, sec. 471), the act of June 4, 1897, 30 Stat. 34, 36 (U.S.C., title 16, sec. 473), and the acts above mentioned, do proclaim (1) that there are hereby reserved and set apart as the Clark National Forest all lands of the United States within the area hereinafter



described, and shown on the diagram attached hereto and made a part hereof,[1] and (2) that all lands within such area which are now in process of acquisition by the United States under authority of any of the above-mentioned acts shall upon the acquisition of title thereto become and be administered as part of the said Clark National Forest:

FIFTH PRINCIPAL MERIDIAN

T. 23 N., R. 1 E., all.
T. 23 N., R. 2 E., secs. 4 to 9, inclusive; and secs. 16 to 18, inclusive.
T. 23 N., R. 1 W., all.
T. 24 N., R. 1 E., all.
T. 24 N., R. 2 E., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; and secs. 28 to 33, inclusive.
Tps. 24 N., Rs. 1, 2, and 3 W., all.
T. 25 N., R. 1 E., all.
T. 25 N., R. 2 E., secs. 19 to 21, inclusive; and secs. 28 to 33, inclusive.
T. 25 N., R. 4 E., secs. 1 to 5, inclusive; secs. 8 to 17, inclusive; secs. 22 to 27, inclusive; and secs. 34 to 36, inclusive.
T. 25 N., R. 5 E., all.
T. 25 N., R. 6 E., secs. 1 to 18, inclusive, and sec. 24.
T. 25 N., R. 7 E., sec. 3, W½; secs. 4 to 9, inclusive; sec. 10, NW¼; sec. 16, NW¼; and secs. 17 to 19, inclusive.
Tps. 25 N., Rs. 1, 2, 3, and 4 W., all.
T. 25 N., R. 5 W., secs. 1 to 3, inclusive; secs. 10 to 15, inclusive; secs. 22 to 27, inclusive; and secs. 34 to 36, inclusive.
Tps. 26 N., Rs. 3, 4, 5, and 6 E., all.
T. 26 N., R. 7 E., secs. 7 to 11, inclusive; secs. 12, and 13, all that part west of St. Francis River; secs. 14 to 23, inclusive; sec. 24, all that part west of the St. Francis River; sec. 25, all that part north of St. Francis River; sec. 26 to 34, inclusive; and sec. 35, NW¼.
T. 26 N., R. 1 W., secs. 1 to 11, inclusive; sec. 12, SW¼; sec. 13, SW¼; secs. 14 to 23, inclusive; sec. 24, NW¼ and S½; and secs. 25 to 36, inclusive.
Tps. 26 N., Rs. 2, 3, and 4 W., all.
T. 26 N., R. 5 W., secs. 1 to 3, inclusive; secs. 10 to 15, inclusive; secs. 22 to 27, inclusive; and secs. 34 to 36, inclusive.
Tps. 27 N., Rs. 3, 4, 5, and 6 E., all.
Tps. 27 N., Rs. 1, and 2 W., secs. 19 to 36, inclusive.
Tps. 27 N., Rs. 3, and 4 W., all.
Tps. 28 N., Rs. 4, 5, and 6 E., all.
T. 30 N., R. 2 W., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; and secs. 28 to 33, inclusive.
T. 30 N., R. 3 W., all.
T. 30 N., R. 4 W., secs. 1 to 4, inclusive; secs. 9 to 16, inclusive; secs. 21 to 28, inclusive; and secs. 33 to 36, inclusive.
T. 31 N., R. 2 W., secs. 5 to 8, inclusive; secs. 17 to 20, inclusive; and secs. 29 to 32, inclusive.
T. 31 N., R. 3 W., all.
T. 31 N., R. 4 W., secs. 1 to 5, inclusive, secs. 8 to 17, inclusive; secs. 20 to 29, inclusive; and secs. 32 to 36, inclusive.
T. 32 N., R. 1 E., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; and secs. 28 to 33, inclusive.
Tps. 32 N., Rs. 4, 5, 6, 7, and 8 E., all.
Tps. 32 N., Rs. 1, 2, 3, and 4 W., all.
T. 33 N., R. 1 E., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; and secs. 28 to 33, inclusive.
Tps. 33 N., Rs. 4, 5, and 8 E., all.
Tps. 33 N., Rs. 1, 2, 3, and 4 W., all.
Tps. 34 N., Rs. 1, 2, 4, 5, 6, 7, and 8 E., all.
T. 34 N., R. 9 E., secs. 4 to 9, inclusive; secs. 16 to 21, inclusive; secs. 28 to 33, inclusive.
Tps. 34 N., Rs. 1, 2, and 3 W., all.
T. 34 N., R. 4 W., sec. 1, Lot 1, W½ Lot 2, Lots 6, and 7 of NE¼; Lots 1, 2, 5, 6, and 7 of NW¼; and S½; sec. 2, Lots 1, 2, and W½ Lot 3 of NE¼; Lots 1, 2, and W½ Lot 3 of NW¼; and S½; sec. 3, Lots 1, 2, 3, and 4 of NE¼; and S½; sec. 4, Lots 1, and 2 of NE¼; and S½; sec. 5, W½ Lot 4; W½ Lot 5 of NE¼; Lots 1, 2, 3, and E½ Lot 4 of NW¼; and S½; sec. 6, Lots 1, 2, 3, 4, and W½ Lot 5 of NE¼; Lots 1, 2, 3, 4, 5, 6, and 7 of NW¼; and S½; secs. 7 to 36, inclusive.
T. 35 N., R. 1 E., all.
T. 35 N., R. 2 E., secs. 19 to 21, inclusive; and secs. 28 to 33, inclusive.
T. 35 N., R. 4 E., all.
T. 35 N., R. 7 E., secs. 1 to 4, inclusive; secs. 9 to 16, inclusive; secs. 21 to 28, inclusive; secs. 33 to 36, inclusive.
T. 35 N., R. 8 E., all.
Tps. 35 N., Rs. 1, 2, and 3 W., all.
T. 35 N., R. 4 W., sec. 36, S½.
T. 36 N., R. 1 E., all.
Tps. 36 N., Rs. 1, and 2 W, all.
T. 36 N., R. 3 W., secs. 1 to 4, inclusive; secs. 9 to 16, inclusive; secs. 21 to 28, inclusive; and secs. 33 to 36, inclusive.
T. 37 N., R. 1 E., all.
Tps. 37 N., Rs. 1, and 2 W., all.
T. 37 N., R. 3 W., secs. 1 to 4, inclusive; secs. 9 to 16, inclusive; secs. 21 to 28, inclusive; and secs. 33 to 36, inclusive.
T. 38 N., R. 1 E., secs. 19 to 21, inclusive; and secs. 28 to 33, inclusive.
T. 38 N., R. 1 W., secs. 19 to 36, inclusive.
T. 38 N., R. 2 W., secs. 19 to 36, inclusive.
T. 38 N., R. 3 W., secs. 19 to 36, inclusive.

The reservation made by this proclamation shall as to all lands which are at this date legally appropriated under the public-land laws or reserved for any public purpose other than classification, be subject to and shall not interfere with or defeat legal rights under such appropriation, or prevent the use for such public purpose of lands so reserved, so long as such appropriation is legally maintained or such reservation remains in force.

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

DONE at the City of Washington this 11" day of September, in the year of our Lord nineteen hundred and [SEAL] thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D ROOSEVELT

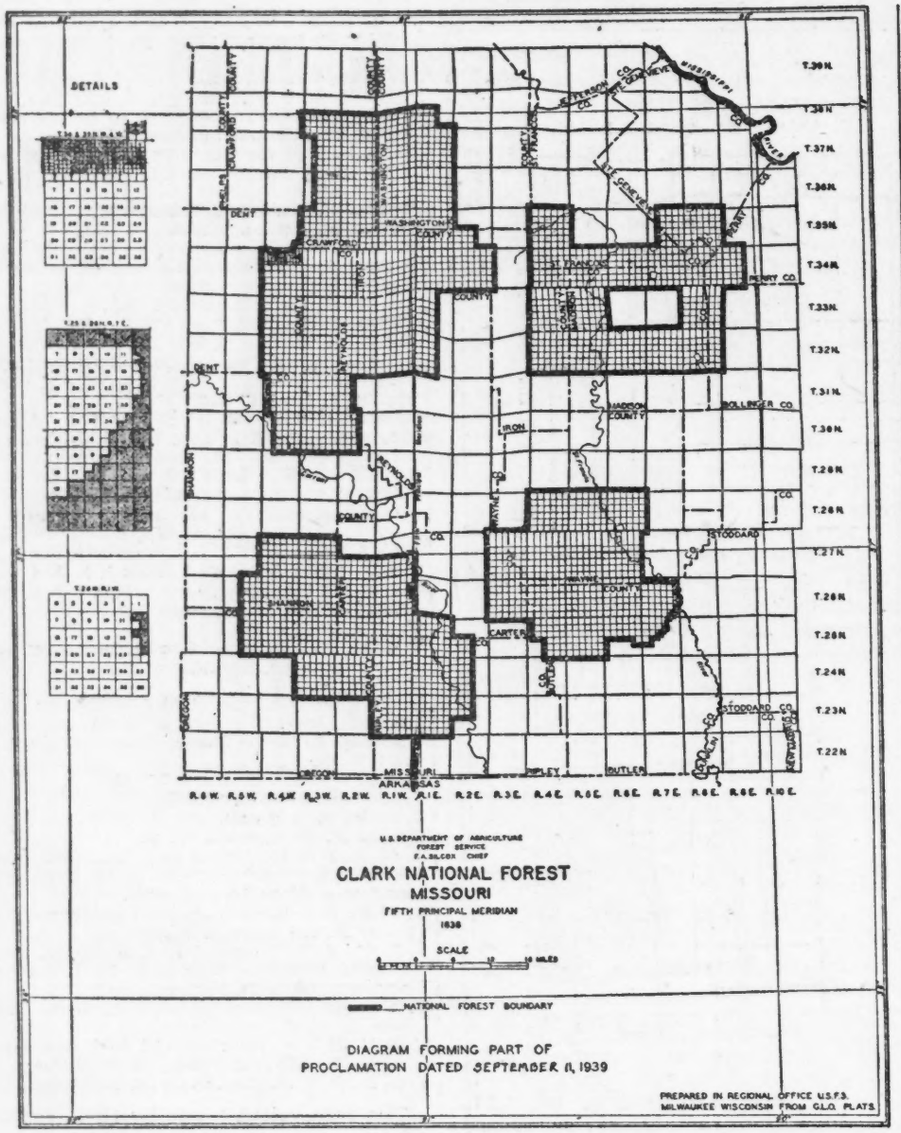
By the President:

CORDELL HULL
Secretary of State.

[No. 2363]

[F. R. Doc. 39-3362; Filed, September 13, 1939; 1:53 p. m.]

[1] See page 3910.



Rules, Regulations, Orders

TITLE 7—AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

[Cotton 1940–1]

PART 722—COTTON MARKETING QUOTAS, 1940–41 MARKETING YEAR

Whereas the Agricultural Adjustment Act of 1938, as amended, provides:

SEC. 342. Not later than November 15 of each year the Secretary [of Agriculture] shall find and proclaim (a) the total supply, the normal supply, and the carry-over of cotton as of August 1 of such year, (b) the probable domestic consumption of American cotton during the marketing year commencing August 1 of such year, (c) the probable exports of American cotton during such marketing year, and (d) the estimated carry-over of cotton as of the next succeeding August 1. * * *

SEC. 345. Whenever the Secretary determines that the total supply of cotton for any marketing year exceeds by more than 7 per centum the normal supply thereof for such marketing year, the Secretary shall proclaim such fact not later than November 15 of such marketing year * * *, and marketing quotas shall in be in effect during the next succeeding marketing year with respect to the marketing of cotton. Cotton produced in the calendar year in which such marketing year begins shall be subject to the quotas in effect for such marketing year notwithstanding that it may be marketed prior to August 1.

SEC. 343. (a) Not later than November 15 of each year the Secretary shall find and proclaim the amount of the national allotment of cotton for the succeeding calendar year in terms of standard bales of five hundred pounds gross weight. The national allotment shall be the number of bales of cotton adequate, together with the estimated carry-over as of August 1 of such succeeding calendar year, to make available a supply of cotton, for the marketing year beginning on such August 1, equal to the normal supply. * * *

(b) If the national allotment for 1938 or 1939 is determined to be less than ten million bales, the national allotment for such year shall be ten million bales for such year, as the case may be. If the national allotment for 1938 or 1939 is determined to be more than eleven million five hundred thousand bales, it shall be eleven million five hundred thousand bales for such year, as the case may be. The national allotment for any year (after 1939) shall not be less than ten million bales.

(c) Notwithstanding the foregoing provisions of this section, the national allotment for any year shall be increased by a number of bales equal to the production of the acres allotted under section 344 (e) for such year.

SEC. 344. (a) The national allotment for cotton for each year (excluding that portion of the national allotment provided for in section 343 (c)) shall be apportioned by the Secretary among the several States on the basis of the average, for the five years preceding the year in which the national allotment is determined, of the normal production of cotton in each State. The normal production of a State for a year shall be (1) the quantity produced therein plus (2) the normal yield of the acres diverted in each county in the State under the previous agricultural adjustment or conservation programs. The normal yield of the acres diverted in any county in any year shall be the average yield per acre of the planted acres in such county in such year times the number of acres diverted in such county in such year.

(b) The Secretary shall ascertain, on the basis of the average yield per acre in each State, a number of acres in such State which will produce a number of bales equal to the allotment made to the State under subsection (a). Such number of acres plus the number of acres allotted to the State pursuant to subsection (e) (2) is referred to as the "State acreage allotment". The average yield per acre for any State shall be determined on the basis of the average of the normal production for the State for the years used in computing the allotment to the State, and the average, for the same period, of the acres planted and the acres diverted in the State.

(c) (1) The State acreage allotment (less the amount required for apportionment under paragraph (2)) shall be apportioned annually by the Secretary to the counties in the State. The apportionment to the counties shall be made on the basis of the acreage planted to cotton during the five calendar years immediately preceding the calendar year in which the State allotment is apportioned (plus, in applicable years, the acreage diverted under previous agricultural adjustment and conservation programs), with adjustments for abnormal weather conditions and trends in acreage during such five-year period.

(2) Not more than 2 per centum of the State acreage allotment shall be apportioned to farms in such State which were not used for cotton production during any of the three calendar years immediately preceding the year for which the allotment is made, on the basis of land, labor, and equipment available for the production of cotton; crop rotation practices; and the soil and other physical facilities affecting the production of cotton.

* * * * *

(e) (1) For 1938, 1939, and any subsequent year, the Secretary shall allot to the several counties, to which an apportionment is made under subsection (c), a number of acres required to provide a total acreage for allotment under this section to such counties of not less than 60 per centum of the sum of (1) the acreage planted to cotton in such counties in 1937, plus (2) the acreage therein diverted from cotton production in 1937 under the agricultural adjustment and conservation program. The acreage so diverted shall be estimated in case data are not available at the time of making such allotment.

(2) The Secretary shall allot to each State to which an allotment is made under subsection (b), and in which at least three thousand five hundred bales were produced in any of the five years immediately preceding the year for which the allotment is made, a number of acres sufficient to provide a total State acreage allotment for such State of not less than five thousand acres.

Whereas said Act contains, in section 301 (b), the following definitions of terms here pertinent:

"Carry-over" of cotton for any marketing year shall be the quantity of cotton on hand either within or without the United States at the beginning of such marketing year, which was produced in the United States prior to the beginning of the calendar year then current.

"Marketing year" means, in the case of the following commodities, the period beginning on the first and ending with the second date specified below:

* * * * *

Cotton, August 1-July 31 * * *.

"Normal supply" in the case of * * * cotton * * * shall be a normal year's domestic consumption and exports of the commodity, plus * * * 40 per centum in the case of cotton * * * of a normal year's domestic consumption and exports, as an allowance for a normal carry-over.

"Normal year's domestic consumption", in the case of cotton * * *, shall be the yearly average quantity of the commodity produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

"Total supply" of * * * cotton * * * for any marketing year shall be the carry-over of the commodity for such marketing year plus the estimated production of the commodity in the United States during the calendar year in which such marketing year begins.

Whereas said Act provides, in section 301 (c), that "The latest available statistics of the Federal Government shall be used by the Secretary [of Agriculture] in making the determinations required to be made by the Secretary under this Act"; and

Whereas said Act provides, in section 350, that the provisions of Part IV (Marketing Quotas—Cotton) of subtitle B of Title III thereof "shall not apply to cotton the staple of which is 1⅛ inches or more in length":

§ 722.201 *Findings and determinations.* Now, therefore, be is known that I, H. A. Wallace, Secretary of Agriculture of the United States of America, acting under and pursuant to, and by virtue of, the authority vested in me by the Act of Congress known as the Agricultural Adjustment Act of 1938, as amended, upon the basis of the latest available statistics of the Federal Government, do hereby find, determine, and proclaim under sections 342, 343, and 345 of said Act:

(a) That the "total supply" of cotton as of August 1, 1939, was 25,550,000 running bales;

(b) That the "normal supply" of cotton as of August 1, 1939, was 18,200,000 running bales;

(c) That the "carry-over" of cotton as of August 1, 1939, was 14,150,000 running bales;

(d) That the "probable domestic consumption of American cotton" during the marketing year commencing August 1, 1939, is 7,000,000 running bales;

(e) That the "probable exports of American cotton" during the marketing year beginning August 1, 1939, is 6,000,000 running bales;

(f) That the estimated "carry-over" of cotton as of August 1, 1940, is 13,550,000 running bales;

(g) That the "total supply" of cotton for the marketing year begining August 1, 1939, exceeds by more than 7 per centum the "normal supply" of cotton for such marketing year; and

(h) That the national allotment of cotton for the calendar year beginning on January 1, 1940, shall be 10,000,000 standard bales of five hundred pounds gross weight, increased by that number of standard bales of five hundred pounds gross weight equal to the production in the calendar year 1940 of that number of acres required to be allotted for 1940 under the terms of section 344 (e) of said Act.

Done at Washington, D. C., this 14th day of September 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-3386; Filed, September 14, 1939; 12:45 p. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

BUREAU OF ANIMAL INDUSTRY

[Amendment 35 to Declaration No. 12[1]]

DECLARING NAMES OF COUNTIES PLACED IN MODIFIED TUBERCULOSIS - FREE ACCREDITED AREAS

SEPTEMBER 1, 1939.

In accordance with Section 2 of Regulation 7 of B. A. I. Order 309, as amended effective September 10, 1936,[2] the following named counties are hereby declared "Modified Accredited Areas" until the date given opposite each county named.

California.—Monterey, September 1, 1942; and Tulare, September 1, 1942.

In accordance with Section 2 of Regulation 7 of B. A. I. Order 309, as amended effective September 10, 1936, the following named counties, having completed the necessary retests for re-accreditation, are hereby continued in the status of "Modified Accredited Areas" until the date given opposite each county named.

Alabama.—Autauga, September 1, 1942; and Montgomery, September 1, 1942.

Arkansas.—Grant, September 1, 1942; and Montgomery, September 1, 1942.

California.—Butte, September 1, 1942; and Imperial, September 1, 1942.

Florida.—Dixie, September 1, 1942.

Georgia.—Madison, September 1, 1942; and Oconee, September 1, 1942.

Illinois.—Henry, September 1, 1942; and Marshall, September 1, 1942.

Indiana.—Fayette, September 1, 1942; Lawrence, September 1, 1942; Martin, September 1, 1942; Orange, September 1, 1942; Parke, September 1, 1942; Union, September 1, 1942; and Warren, September 1, 1942.

Iowa.—Buchanan, September 1, 1942; and Humboldt, September 1, 1942.

Kansas.—Crawford, September 1, 1942; Ford, September 1, 1942; Labette, September 1, 1942; and Linn, September 1, 1942.

Kentucky.—Ballard, September 1, 1942.

Maryland.—Kent, September 1, 1942.

Minnesota.—Cass, September 1, 1942; Mahnomen, September 1, 1945; and Pennington, September 1, 1945.

Missouri.—Mississippi, September 1, 1942; Montgomery, September 1, 1942; and Scott, September 1, 1942.

Nebraska.—Douglas, September 1, 1942; and Washington, September 1, 1942.

New York.—Fulton, September 1, 1942; and Ontario, September 1, 1942.

North Carolina.—Mecklenburg, September 1, 1942.

Oregon.—Baker, September 1, 1942; Benton, September 1, 1942; Crook, September 1, 1942; Deschutes, September 1, 1942; Gilliam, September 1, 1942; Grant, September 1, 1942; Hood River, September 1, 1942; Jackson, September 1, 1942; Jefferson, September 1, 1942; Josephine, September 1, 1942; Marion, September 1, 1942; Morrow, September 1, 1942; Sherman, September 1, 1942; Umatilla, September 1, 1942; and Union, September 1, 1942.

Oklahoma.—Grady, September 1, 1942.

South Carolina.—Oconee, September 1, 1942; and Richland, September 1, 1942.

Tennessee.—Cocke, September 1, 1942.

Texas.—Dallas, September 1, 1942; DeWitt, September 1, 1942; Duval, September 1, 1942; and Fisher, September 1, 1942.

Utah.—San Pete, September 1, 1942; Utah, September 1, 1942; and Wasatch, September 1, 1942.

Virginia.—Arlington, September 1, 1942; Bland, September 1, 1942; Fairfax, September 1, 1942; Goochland, September 1, 1942; Mathews, September 1, 1942; and Middlesex, September 1, 1942.

Washington.—Cowlitz, September 1, 1942.

West Virginia.—Lewis, September 1, 1942;

Puerto Rico.—Aguada, September 1, 1942.

Declaration No. 12, dated October 1, 1936, as amended,[3] is hereby further amended accordingly.

[SEAL] A. W. MILLER,
Acting Chief of Bureau.

[F. R. Doc. 39-3367; Filed, September 14, 1939; 9:18 a. m.]

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[1] Supplements footnote to 9 CFR 77.3.
[2] 1 F.R. 1338.
[3] 1 F.R. 2024.

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

[Docket No. 3679]

IN THE MATTER OF ZENDEJAS PRODUCTS CORPORATION, ET AL.

§ 3.6 (c) *Advertising falsely or misleadingly—Composition of goods:* § 3.6 (l) *Advertising falsely or misleadingly—Indorsements and testimonials:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y) *Advertising falsely or misleadingly—Safety:* § 3.18 *Claiming indorsements or testimonials falsely.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondents' "Zendejas Medicine" and "Zendejas Ointment", or other similar medical preparations, which advertisements represent, directly or through implication, (1) that said medicinal preparation, "Zendejas Medicine", contains well-known curative properties of many plants, barks and roots, contributes to the purification of the blood, is an alternative for the general digestive system, promotes a formation of new and healthy elements and regulates the circulation of the blood and prevents blood clots, eliminates useless and obnoxious elements from the system, is a cure and remedy for all ailments for which an iodized medicine could be prescribed, or for rheumatism, or is of great value in the treatment of gout and arthritis, or that millions of rheumatics recommend its use; or which advertisements fail to reveal that said preparation "Zendejas Medicine", whether sold under the aforesaid name or any other name, contains potassium iodide and that said preparation may be injurious to persons afflicted with latent tuberculosis, or toxic goiter, and that its indiscriminate use by the lay public is dangerous; or which advertisements represent, directly or through implication, (2) that the medicinal preparation "Zendejas Ointment" is a competent and effective treatment, or cure for eczema, rash, ringworm, itching and other skin diseases, is a cure or remedy for skin diseases or that its use gives immediate relief to sufferers from skin eruptions and causes such eruptions to disappear; or which advertisements fail to reveal that said preparation "Zendejas Ointment", whether sold under the aforesaid name or under any other name, contains betanaphthol and that said ingredient is a dangerous drug which should be used only under a physician's supervision; prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Zendejas Products Corporation, et al., Docket 3679, September 7, 1939]

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 7th day of September, A. D. 1939.

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

IN THE MATTER OF ZENDEJAS PRODUCTS CORPORATION, A CORPORATION, AND JOSE SILVA, AN INDIVIDUAL TRADING AS ZENDEJAS PRODUCTS COMPANY

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of the respondents, in which answer the respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusions that respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Zendejas Products Corporation, a corporation, its officers, representatives, agents and employees, and Jose Silva, individually and trading as Zendejas Products Company, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medical preparations containing drugs now designated by the names "Zendejas Medicine" and "Zendejas Ointment", or any other medical preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or any other name or names or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medical preparations, which advertisements represent directly or through implication that said medicinal preparation, "Zendejas Medicine" contains well-known curative properties of many plants, barks and roots; that it contributes to the purification of the blood; that it is an alternative for the general digestive system; that it promotes a formation of new and healthy elements and regulates the circulation of the blood and prevents blood clots; that it eliminates useless and obnoxious elements from the system; that it is a cure and remedy for all ailments for which an iodized medicine could be prescribed; that it is a cure or remedy for rheumatism; that it is of great value in the treatment of gout and arthritis; that millions of rheumatics recommend its use; or which advertisements fail to reveal that said preparation "Zendejas Medicine", whether sold under the aforesaid name or any other name, contains potassium iodide and that said preparation may be injurious to persons afflicted with latent tuberculosis or toxic goiter, and that its indiscriminate use by the lay public is dangerous; or which advertisements represent directly or through implication that the medicinal preparation "Zendejas Ointment" is a competent and effective treatment, or cure, for eczema, rash, ringworm, itching and other skin diseases; that it is a cure or remedy for skin diseases or that its use gives immediate relief to sufferers from skin eruptions and cause such eruptions to disappear; or which advertisements fail to reveal that said preparation "Zendejas Ointment", whether sold under the aforesaid name or under any other name, contains betanaphthol and that said ingredient is a dangerous drug which should be used only under a physician's supervision.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-3374; Filed, September 14, 1939; 10:19 a. m.]

[Docket No. 3708]

IN THE MATTER OF UNITED DISTRIBUTORS, INC.

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly — Results:* § 3.6 (y1) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Wittone" medicinal, or other similar, preparation, which advertisements represent, directly or indirectly, that constipation causes a swelling of the digestive organs or that the generation of poisons is a usual consequence of constipation, or that a distention of the digestive organs is caused by poisons or that a distention of such organs causes any significant pressure on the nerves in the locality of

such organs, or that bilious spells, dizziness, headaches, sour stomach, dull tired feelings, sleepless nights, coated tongue, bad taste, or loss of appetite are due to pressure on the nerves caused by a distention of the digestive organs, or that the use of said preparation will, by relieving pressure on the nerves, eliminate any of such conditions, or that professional medical opinion is to the effect that 87 per cent of all ailments are traceable to constipation as the fundamental cause, or that such opinion is to the effect that any other percentage of ailments are so traceable unless such percentage is the percentage generally recognized by the consensus of the medical profession, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, United Distributors, Inc., Docket 3708, September 7, 1939]

§ 3.6 (c) *Advertising falsely or misleadingly—Composition of goods:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Wittone" medicinal, or other similar, preparation, which advertisements represent, directly or indirectly, that the use of said preparation will lift mental depression regardless of its cause, render the mind active or alert, or afford any significant immediate relief for all stomach disorders, or that the action thereof is gentle or that its use will assure, in all cases, good health, vitality, well being or a healthy condition of the blood stream, or that it contains seven carminatives or any specified number of carminatives other than the number which is in fact contained in said preparation, or that the use thereof will strengthen the nerves or assure or impart physical beauty to the user, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, United Distributors, Inc., Docket 3708, September 7, 1939]

§ 3.6 (ja) *Advertising falsely or misleadingly—History of product:* § 3.6 (t) *Advertising falsely or misleading—Qualities or properties of products:* § 3.6 (x) *Advertising falsely or misleading—Results.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Wittone" medicinal, or other similar, preparation, which advertisements represent, directly or indirectly, that said preparation has any beneficial effect in stimulating the appetite or digestive processes or nourishing the blood stream unless such representation is limited to the effectiveness of the tonic, laxative and cathartic properties of said preparation, or that it relieves the liver of any portion of its normal functions or is a notable discovery, or that it is a remedy or an adequate treatment for all deranged stomachic conditions, inactive livers, weak kidneys or similar disorders, or that it has any therapeutic value in the treatment of constipation other than inducing an artificial bowl movement or that the use thereof will tone up or improve the natural action of the bowels, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, United Distributors, Inc., Docket 3708, September 7, 1939]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Wittone" medicinal, or other similar, preparation, which advertisements represent, directly or indirectly, that said preparation is a remedy or a competent treatment for rheumatic aches or pains or is beneficial to women passing through the period of change of life, or possesses significant analgesic properties, or has any therapeutic value in the treatment of kidney troubles, unless such representation is limited to those conditions in the treatment of which a mild diuretic is indicated, or will relieve nervous indigestion, pains in the legs or sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate or gall bladder trouble or ulcers of the stomach, or will avert the common cold, or restore to normal all abnormal functioning of the nervous system, blood stream, liver, or stomach, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, United Distributors, Inc., Docket 3708, September 7, 1939]

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 7th day of September, A. D. 1939.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides, among other things, that without further evidence the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding (respondent and counsel for the Commission having elected not to exercise their privilege, which was reserved in said stipulation, of filing briefs and making application for oral argument), and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, United Distributors, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of its medicinal preparation now designated "Wittone" or any other preparation or preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under said name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or indirectly:

1. That constipation causes a swelling of the digestive organs or that the generation of poisons is a usual consequence of constipation;

2. That a distention of the digestive organs is caused by poisons or that a distention of such organs causes any significant pressure on the nerves in the locality of such organs;

3. That bilious spells, dizziness, headaches, sour stomach, dull tired feelings, sleepless nights, coated tongue, bad taste, or loss of appetite are due to pressure on the nerves caused by a distention of the digestive organs, or that the use of said preparation will, by relieving pressure on the nerves, eliminate any of such conditions;

4. That the use of said preparation will lift mental depression regardless of its cause, render the mind active or alert, or afford any significant immediate relief for all stomach disorders;

5. That the action of such preparation is gentle or that its use will assure in all cases, good health, vitality, well being or a healthy condition of the blood stream;

6. That such preparation contains seven carminatives or that said preparation contains any specified number of carminatives other than the number which is in fact contained in said preparation;

7. That said preparation has any beneficial effect in stimulating the appetite or digestive processes or nourishing the blood stream unless such representation is limited to the effec-

tiveness of the tonic, laxative and cathartic properties of said preparation:

8. That said preparation relieves the liver of any portion of its normal functions or that said preparation is a notable discovery;

9. That said preparation is a remedy or an adequate treatment for all deranged stomachic conditions, inactive livers, weak kidneys or similar disorders;

10. That said preparation has any therapeutic value in the treatment of constipation other than inducing an artificial bowel movement or that the use of said preparation will tone up or improve the natural action of the bowels;

11. That the use of said preparation will strengthen the nerves or assure or impart physical beauty to the user:

12. That professional medical opinion is to the effect that 87% of all ailments are traceable to constipation as the fundamental cause, or that such opinion is to the effect that any other percentage of ailments are so traceable unless such percentage is the percentage generally recognized by the consensus of the medical profession:

13. That said preparation is a remedy or a competent treatment for rheumatic aches or pains or is beneficial to women passing through the period of change of life, or that said preparation possesses significant analgesic properties;

14. That said preparation has any therapeutic value in the treatment of kidney troubles unless such representation is limited to those conditions in the treatment of which a mild diuretic is indicated;

15. That said preparation will relieve nervous indigestion, pains in the legs or sides, sick headaches, high blood pressure, heart trouble, nervousness, insomnia, prostate or gall bladder trouble or ulcers of the stomach, or that said preparation will avert the common cold, or that said preparation will restore to normal all abnormal functioning of the nervous system, blood stream, liver, or stomach.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-3375; Filed, September 14, 1939; 10:19 a. m.]

[Docket No. 3857]

IN THE MATTER OF G. BERNARDI

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Benaris" medicinal, or any other similar, preparation, which advertisements represent, directly or indirectly, that said preparation is a cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, hoarseness, rose or hay fever, irritation or inflammation of the throat, inflamed or enlarged tonsils, or congestion of the nasal passages, or that it is an effective treatment for, or will prevent, rose or hay fever, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, G. Bernardi, Docket 3857, September 7, 1939]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Benaris" medicinal, or any other similar, preparation, which advertisements represent, directly or indirectly, that the use of said preparation neutralizes the tissues or eliminates colds or will insure a healthful or efficient day or bring new life or sensation to the user thereof, or causes greater diaphragmatic breathing, or results in finer head tones or increases the resonance or volume or quality of the voice, or that it will relieve headaches, unless such representation is limited to headaches which are due to congestion of the mucous membranes of the air passages, or will penetrate the openings to the sinuses or relieve sinus congestion, unless such representations are limited to those cases in which the openings to the sinuses are not clogged so as to prevent the penetration therein of said preparation, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, G. Bernardi, Docket 3857, September 7, 1939]

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 7th day of September, A. D. 1939.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and hearing as to said facts and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, G. Bernardi, an individual, his agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of his medicinal preparation now designated "Benaris" or any other preparation or preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under said name or any other name or names, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent directly or indirectly:

(1) That said preparation is a cure or remedy for colds, chronic colds, catarrh, bronchitis, laryngitis, dryness of the throat, hoarseness, rose or hay fever, irritation or inflammation of the throat, inflamed or enlarged tonsils, or congestion of the nasal passages;

(2) That the use of said preparation neutralizes the tissues or eliminates colds or will insure a healthful or efficient day or bring new life or sensation to the user thereof;

(3) That the use of said preparation causes greater diaphragmatic breathing, or results in finer head tones or increases the resonance or volume or quality of the voice;

(4) That said preparation will relieve headaches unless such representation is limited to headaches which are due to congestion of the mucous membranes of the air passages;

(5) That said preparation will penetrate the openings to the sinuses or relieve sinus congestion unless such representations are limited to those cases in which the openings to the sinuses are not clogged so as to prevent the penetration therein of said preparation;

(6) That said preparation is an effective treatment for, or will prevent, rose or hay fever.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-3376; Filed, September 14, 1939; 10:20 a. m.]

TITLE 43—PUBLIC LANDS

GENERAL LAND OFFICE

[Circular No. 1460]

Recognition as Attorneys and Agents Before the District Land Offices, of Former Employees of the Department of the Interior

Departmental Order No. 615, dated March 24, 1933 (54 I. D. 194), relative to admission of former employees to practice before the Department of the Interior and its bureaus, was held applicable to applications to practice before the district land offices, by Circular No. 1374, dated November 29, 1935 (55 I. D. 423), and was incorporated as a part of Sec. 212.19 of the Code of Federal Regulations.

By Departmental Order No. 1397, dated June 29, 1939,[1] substitute regulations were adopted. The said Sec. 212.19, therefore, is hereby amended to read as follows:

§ 212.19. *Practice by former employees of the Department of the Interior.* Departmental Order No. 1397, dated June 29, 1939, substituted the following regulations for the regulation contained in Departmental Order No. 615, dated March 24, 1933 (54 I. D. 194):

(1) No person shall appear before the Department or before any bureau, board, division or other agency thereof as attorney, agent or practitioner in any matter to which as an officer or employee of the United States he gave personal consideration or as to the facts of which he gained knowledge while in the Government service. No person shall knowingly (a) assist a person who has been employed by a client to represent him before the Department of the Interior in connection with any matter to which such person gave personal consideration or as to the facts of which such person gained personal knowledge while in the Government service, (b) accept assistance from any such person in connection with any such matter, or (c) share fees with any such person in connection with any such matter.

(2) No former officer, clerk or employee of the Department of the Interior shall act as attorney, agent or practitioner or as the employee of an attorney, agent or practitioner within two years after the termination of such employment with the Department in any matter pending in such Department during the period of his employment therein, unless he shall first obtain the written consent thereto of the Secretary of the Interior or his duly authorized representative. Such applicant shall file an application in the form of an affidavit to the effect that he gave no personal consideration to such matter, and had no knowledge of the facts involved in such matter while he was employed in the Department, and that he is not now associated with, and will not be associated with, any former employee who has gained knowledge of the case while employed by the Department of the Interior, and his employment is not prohibited by Title 5, section 99, United States Code, or other law, or by the regulations of the Department of the Interior. The statements contained in such affidavit shall not be sufficient if disproved by an examination of the files, records and facts pertaining to the case. Such affidavit should state the former connection of the applicant with the Department and identify the matter in which the applicant desires to appear. The application should be directed to the Secretary of the Interior. The applicant shall be promptly advised as to his privilege to appear in the particular matter, and this notice shall be filed by him in the record of the case.

The registers of the district land offices will be governed by the provisions of the substitute regulations, in the recognition as attorneys and agents, of former employees of the Department of the Interior.[1]

Fred W. Johnson,
Commissioner.

Approved, August 21, 1939.

Harry Slattery,
Undersecretary.

[F. R. Doc. 39-3372; Filed, September 14, 1939; 9:24 a. m.]

Stock Driveway Withdrawal No. 256, Colorado No. 24

September 1, 1939.

It appearing that the following-described public lands in Colorado are necessary for the purpose, it is ordered, under and pursuant to the provisions of section 10 of the act of December 29, 1916, 39 Stat. 862, as amended by the act of January 29, 1929, 45 Stat. 1144, that such lands, excepting any mineral deposits therein, be, and they are hereby, withdrawn from all disposal under the public-land laws and reserved for use by the general public as a stock driveway, subject to valid existing rights and the withdrawals for power-site purposes and the Juniper Reservoir affecting the lands:

Sixth Principal Meridian

T. 6 N., R. 93 W.,
sec. 21, E½NE¼, SW¼NE¼, W½SE¼,
sec. 33, those parts of the W½NE¼, NW¼SE¼ and SE¼SE¼, lying east or north of the Yampa River;
aggregating 236 acres.

Any mineral deposits in the lands shall be subject to location and entry only in the manner prescribed by the Secretary of the Interior in accordance with the provisions of the aforesaid act of January 29, 1929, and existing regulations.

Harry Slattery,
Under Secretary of the Interior.

[F. R. Doc. 39-3371; Filed, September 14, 1939; 9:24 a. m.]

TITLE 46—SHIPPING

UNITED STATES MARITIME COMMISSION

[General Order No. 15, Sup. 14a]

Minimum Manning Scales for the S. S. President Adams, President Garfield, President Harrison, President Hayes, President Monroe, President Polk and President Van Buren—Subsidized Vessels of the American President Lines, Ltd.

At a regular session of the United States Maritime Commission held at its offices in Washington, D. C., on the 12th day of September 1939.

The Commission having adopted, pursuant to Section 301 (a) of the Merchant Marine Act, 1936, General Order No. 15[1] providing for minimum wage scales, minimum manning scales, and reasonable working conditions for all subsidized vessels, and now desiring to complete the minimum manning scales for the S. S. *President Adams, President Garfield, President Harrison, President Hayes, President Monroe, President Polk,* and *President Van Buren,* subsidized vessels of the American President Lines, Ltd. (referred to herein as Operator); and

The Commission finding that the minimum scales hereinafter adopted for the above named subsidized vessels of the Operator are reasonable, proper and lawful, such finding being based upon investigations referred to in General Order No. 15 and investigations of the Commission made thereafter; it is, therefore

Ordered, That the minimum manning scales attached hereto for the S. S. *President Adams, President Garfield, President Harrison, President Hayes, President Monroe, President Polk* and *President Van Buren,* subsidized vessels of the Operator, be and the same hereby are adopted; *Provided,* That under extraordinary circumstances such as casualty or desertion, where it is impossible to procure sufficient officers or unlicensed seamen of any required grade or rating to permit the sailing of any of said vessels without undue delay, the said scales shall be inoperative to the extent required by such emergency, and the Operator shall forthwith report to the Commission any departure from said scales, stating in such report the extent of the departure and showing to the satisfaction of the Commission that

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[1] 4 F.R. 3141 DI.

[1] Issued under authority of Sec. 5, 23 Stat. 101 and R. S. 161 (5 U.S.C. 493, 22), and in the exercise of the inherent power of the Secretary of the Interior.

[1] 2 F.R. 2257.

sufficient reasons for such departure existed; and it is further

Ordered, That the minimum manning scales hereby adopted shall not relieve said Operator from complying with the manning requirements of the Bureau of Marine Inspection and Navigation and shall be without prejudice to the carrying of seamen in addition to those required hereby; and it is further

Ordered, That the minimum manning scales hereby adopted shall become effective for each of said vessels upon the first signing after October 1, 1939 of shipping articles for a subsidized voyage of said vessel, unless otherwise specified in the scales, and that the Operator be immediately served by registered mail with a copy of this Order and of the minimum manning scales hereby adopted.

By order of the United States Maritime Commission.

[SEAL] W. C. PEET, Jr.
Secretary.

Minimum Manning Scale To Be Observed on the Vessels S. S. "President Adams," "President Garfield," "President Harrison," "President Hayes," "President Monroe," "President Polk," and "President Van Buren," Subsidized Vessels of the American President Lines, Ltd.

Rating: Deck department:	Minimum Freighter	Passenger
Master	1	1
Chief Mate	1	1
Second Mate	1	1
Third Mate	1	1
Cadet Officers or Cadets	[1] 3	[1] 2
Radio Operators	[2] 1	3
Boatswain	1	1
Carpenter	1	1
Quartermasters	—	3
A. B. Seamen	6	11
Ordinary Seamen	3	6
Fire Watchmen	—	3
Engine Department:		
Chief Engineer	1	1
First Assistant Engineer	1	1
Second Assistant Engineer	1	1
Third Assistant Engineer	1	1
Engineer Cadet Officers or Cadets	[1] 3	[1] 2
Junior Engineers	3	3
Deck Engineer	[3] 1	[3] 1
Refrigerating Engineer	1	1
Oilers	6	6
Watertenders	3	3
Firemen	6	6
Wipers	[3] 5	[3] 5

[1] It shall not constitute a violation of this Manning Scale to detail any Cadet Officer or Cadet required to be carried hereby, to shore training after notice to, and approval by, the Director of the Division of Maritime Personnel of this Commission, and in such case entry shall be made in the official logbook to this effect and no replacements of such Cadet Officers or Cadets shall be required. Such cadets also may be removed from vessel's complement at any time upon notice to the operator by the Director of the Division of Maritime Personnel, and such action shall not constitute a violation of this Manning Scale.

[2] With radio auto-alarm.

[3] The Deck Engineer and Wipers required by this Manning Scale are ratings covered by, and in no sense additions to, the respective ratings provided for by the Manning Scales set forth in General Order No. 15, issued October 21, 1937.

Rating: Steward's Dep't:	Minimum Freighter	Passenger
Steward	1	1
Chief Cook	1	1
Second Cook & Butcher	1	1
Baker	1	1
Utility Men	2	2
Messmen	4	4
Messboys	2	2

General Note.—Requirements of this Manning Scale will be deemed satisfied in the event that an employee is carried whose rating in the same department is superior to the rating prescribed.

[F. R. Doc. 39-3383; Filed, September 14, 1939; 12:43 p. m.]

[General Order No. 15, Sup. 14b]

MINIMUM MANNING SCALES FOR THE S. S. "PRESIDENT COOLIDGE"—SUBSIDIZED VESSEL OF THE AMERICAN PRESIDENT LINES, LTD.

At a regular session of the United States Maritime Commission held at its offices in Washington, D. C., on the 12th day of September 1939.

The Commission having adopted, pursuant to Section 301 (a) of the Merchant Marine Act, 1936, General Order No. 15 providing for minimum wage scales, minimum manning scales, and reasonable working conditions for all subsidized vessels, and now desiring to complete the minimum manning scales for the S. S. *President Coolidge,* subsidized vessel of the American President Lines, Ltd. (referred to herein as Operator); and

The Commission finding that the minimum scale hereinafter adopted for the above named subsidized vessel of the Operator is reasonable, proper and lawful, such finding being based upon investigations referred to in General Order No. 15 and investigations of the Commission made thereafter; it is, therefore

Ordered, That the minimum manning scale attached hereto for the SS. *President Coolidge,* subsidized vessel of the Operator, be and the same hereby is adopted; *Provided,* That under extraordinary circumstances such as casualty or desertion, where it is impossible to procure sufficient officers or unlicensed seamen of any required grade or rating to permit the sailing of said vessel without undue delay, the said scale shall be inoperative to the extent required by such emergency, and the Operator shall forthwith report to the Commission any departure from said scale, stating in such report the extent of the departure and showing to the satisfaction of the Commission that sufficient reasons for such departure existed; and it is further

Ordered, That the minimum manning scale hereby adopted shall not relieve said Operator from complying with the manning requirements of the Bureau of Marine Inspection and Navigation and shall be without prejudice to the carrying of seamen in addition to those required hereby; and it is further

Ordered, That the minimum manning scale hereby adopted shall become effective for each of said vessels upon the first signing after October 1, 1939 of shipping articles for a subsidized voyage of said vessel, unless otherwise specified in the scale, and that the Operator be immediately served by registered mail with a copy of this Order and of the minimum manning scale hereby adopted.

By order of the United States Maritime Commission.

[SEAL] W. C. PEET, Jr.
Secretary.

Minimum Manning Scale to be Observed on the Vessel S. S. "President Coolidge," Subsidized Vessel of the American President Lines, Ltd.

Rating: Deck Department:	Minimum
Master	1
Chief Mate	1
First Mate	1
Second Mate	1
Third Mate	1
Cadet Officers or Cadets	[1] 3
Radio Operators	3
Carpenter	1
Boatswain	1
Quartermasters	6
Fire Watchmen	4
A. B. Seamen	19
Ordinary Seamen	13
Engine department:	
Chief Engineer	1
First Assistant Engineer	1
Second Assistant Engineer	1
Senior Third Assistant Engineer	1
Third Assistant Engineer	1
Engineer Cadet Officers or Cadets	[1] 3
Junior Engineers	6
Refrigerating Engineers	3
Electricians	4
Deck Electrician	1
Plumber	1
Oilers	6
Watertenders	3
Firemen	9
Wipers	[2] 5
Steward's department:	
Steward	1
Chief Cook (crew)	1
Assistant Cook (crew)	1
Butcher	1
Baker	1
Utility Men	3
Messmen	9

[1] It shall not constitute a violation of this Manning Scale to detail any Cadet Officer or Cadet required to be carried hereby, to shore training after notice to, and approval by, the Director of the Division of Maritime Personnel of this Commission, and in such case entry shall be made in the official logbook to this effect and no replacements of such Cadet Officers or Cadets shall be required. Such cadets also may be removed from vessel's complement at any time upon notice to the operator by the Director of the Division of Maritime Personnel, and such action shall not constitute a violation of this Manning Scale.

[2] The Engineers and Wipers required by this Manning Scale are ratings covered by, and in no sense additions to, the respective rating provided for by the Manning Scales set forth in General Order No. 15, issued October 21, 1937.

General Note.—Requirements of this Manning Scale will be deemed satisfied in the event that an employee is carried whose rating in the same department is superior to the rating prescribed.

[F. R. Doc. 39-3384; Filed, September 14, 1939; 12:43 p. m.]

[General Order No. 15, Sup. 14c]

MINIMUM MANNING SCALES FOR THE S. S. "PRESIDENT CLEVELAND," "PRESIDENT LINCOLN," PRESIDENT PIERCE," AND "PRESIDENT TAFT"—SUBSIDIZED VESSELS OF THE AMERICAN PRESIDENT LINES, LTD.

At a regular session of the United States Maritime Commission held at its offices in Washington, D. C., on the 12th day of September 1939.

The Commission having adopted, pursuant to Section 301 (a) of the Merchant Marine Act, 1936, General Order No. 15 providing for minimum wage scales, minimum manning scales, and reasonable working conditions for all subsidized vessels, and now desiring to complete the minimum manning scales for the S. S. *President Cleveland, President Lincoln, President Pierce*, and *President Taft*, subsidized vessels of the American President Lines, Ltd. (referred to herein as Operator); and

The Commission finding that the minimum scales hereinafter adopted for the above named subsidized vessels of the Operator are reasonable, proper and lawful, such finding being based upon investigations referred to in General Order No. 15 and investigations of the Commission made thereafter; it is, therefore

Ordered, That the minimum manning scales attached hereto for the S. S. *President Cleveland, President Lincoln, President Pierce* and *President Taft*, subsidized vessels of the Operator, be and the same hereby are adopted; *Provided*, That under extraordinary circumstances such as casualty or desertion, where it is impossible to procure sufficient officers or unlicensed seamen of any required grade or rating to permit the sailing of any of said vessels without undue delay, the said scales shall be inoperative to the extent required by such emergency, and the Operator shall forthwith report to the Commission any departure from said scales, stating in such report the extent of the departure and showing to the satisfaction of the Commission that sufficient reasons for such departure existed; and it is further

Ordered, That the minimum manning scales hereby adopted shall not relieve said Operator from complying with the manning requirements of the Bureau of Marine Inspection and Navigation and shall be without prejudice to the carrying of seamen in addition to those required hereby; and it is further

Ordered, That the minimum manning scales hereby adopted shall become effective for each of said vessels upon the first signing after October 1, 1939 of shipping articles for a subsidized voyage of said vessel, unless otherwise specified in the scales, and that the Operator be immediately served by registered mail with a copy of this Order and of the minimum manning scales hereby adopted.

By order of the United States Maritime Commission.

[SEAL] W. C. PEET, Jr.,
Secretary.

Minimum Manning Scales to be Observed on the Vessels S. S. "President Cleveland," "President Lincoln," President Pierce," and "President Taft," Subsidized Vessels of the American President Lines, Ltd.

Rating:	Minimum
Deck Department:	
Master	1
Chief Mate	1
Second Mate	1
Third Mate	1
Cadet Officers or Cadets	[1] 2
Radio Operators	3
Boatswain	1
Carpenter	1
Quartermasters	3
Fire Watchmen	3
A. B. Seamen	14
Ordinary Seamen	9
Engine Department:	
Chief Engineer	1
First Assistant Engineer	1
Second Assistant Engineer	1
Third Assistant Engineer	1
Engineer Cadet Officers or Cadets	[1] 2
Junior Engineers	3
Deck Engineer	[2] 1
Oilers	6
Watertenders	6
Firemen	12
Wipers	[2] 5
Steward's Department:	
Steward	1
Chief Cook	1
2nd Cook and Butcher	1
Baker	1
Utility Men	2
Messmen	4
Messboys	2

[1] It shall not constitute a violation of this Manning Scale to detail any Cadet Officer or Cadet required to be carried hereby, to shore training after notice to, and approval by, the Director of the Division of Maritime Personnel of this Commission, and in such case entry shall be made in the official logbook to this effect and no replacements of such Cadet Officers or Cadets shall be required. Such cadets also may be removed from vessel's complement at any time upon notice to the operator by the Director of the Division of Maritime Personnel, and such action shall not constitute a violation of this Manning Scale.

[2] The Engineers and Wipers required by this Manning Scale are ratings covered by, and in no sense additions to, the respective ratings provided for by the Manning Scales set forth in General Order No. 15, issued October 21, 1937.

General Note.—Requirements of this Manning Scale will be deemed satisfied in the event that an employee is carried whose rating in the same department is superior to the rating prescribed.

[F. R. Doc. 39-3385; Filed, September 14, 1939; 12:43 p. m.]

Notices

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[40-Tob-16]

INSTRUCTIONS FOR HOLDING REFERNDUM ON BURLEY TOBACCO MARKETING QUOTAS

In the event that the Secretary of Agriculture, pursuant to the provisions of section 312 (a) of the Agricultural Adjustment Act of 1938, proclaims a national marketing quota for Burley tobacco for the marketing year beginning October 1, 1940, a referendum of farmers who were engaged in production of the 1939 crop of Burley tobacco will be held, pursuant to the provisions of section 312 (c) of said act and in accordance with the regulations hereinafter set forth, on a date to be announced by the Secretary of Agriculture, to determine whether such farmers are in favor of or opposed to such quota.

The following forms will be used:

40-Tob-16—Instructions for Holding Referendum on Burley Tobacco Marketing Quotas
40-Tob-17—Register of Eligible Voters and Ballots Cast
40-Tob-18—Notice—Burley Tobacco Marketing Quota Referendum
40-Tob-19—1940 Burley Tobacco Marketing Quota Referendum Ballot
40-Tob-20—Community Summary of 1940 Burley Tobacco Marketing Quota Ballots
40-Tob-21—County Summary of 1940 Burley Tobacco Marketing Quota Ballots
40-Tob-22—State Tabulation of 1940 Burley Tobacco Marketing Quota Ballots

A. VOTING ELIGIBILITY

All farmers who were engaged in the production of Burley tobacco in 1939 are eligible to vote in the Burley tobacco marketing quota referendum. Any person who shares in the proceeds of the 1939 Burley tobacco crop as owner (other than a landlord of a standing-rent or fixed-rent tenant), tenant, or sharecropper is considered as having been engaged in the production of Burley tobacco in 1939. If several members of the same family participated in the production of Burley tobacco on a farm in 1939, the only member or members of such family who shall be eligible to vote shall be the member or members of the family who had an independent bona fide status as operator, share-tenant, or sharecropper and was entitled as such to share in the proceeds of the 1939 crop.

For any farm on which records have been obtained in connection with the 1939 agricultural conservation program showing correctly those persons entitled to receive a share of the proceeds of the tobacco crop grown on the farm in 1939, only those persons so shown as entitled to receive such share shall be eligible to vote in the referendum.

No person shall be eligible to vote in any community other than the community in which he resides, except, as follows: (a) Any person who resides in a community in which there is no polling place shall be eligible to vote at the

polling place designated for the community nearest to the community in which he was engaged in the production of tobacco in 1939. (b) Any person who does not reside in the county in which he was engaged in the production of tobacco in 1939 may obtain a ballot at the most conveniently located polling place and may cast his ballot by signing his name thereto and mailing it to the county office of the county in which he was engaged in the production of tobacco in 1939 not later than the date of the referendum (the postmark on the envelope in which the ballot was mailed shall be conclusive evidence of the date of mailing).

There shall be no voting by mail (except as provided above) by proxy, or by agent, but a duly authorized officer of a corporation, firm, association, or other legal entity, or a duly authorized member of a partnership, may cast its vote.

Farmers who planted Burley tobacco in the field in 1939, but harvested no tobacco on such acreage for any reason except neglect to farm the planted acreage shall be regarded as having been engaged in the production of Burley tobacco in 1939 and therefore eligible to vote in the referendum. Any farmer who did not plant tobacco in the field shall not be eligible to vote.

No farmer (whether an individual, partnership, corporation, association, or other legal entity) shall be entitled to more than one vote in the referendum, even though he may have been engaged in the production of Burley tobacco in two or more communities, counties, or States in 1939.

In the event two or more persons engaged in producing Burley tobacco in 1939 not as members of a partnership but as tenants in common or joint tenants or as owners of community property, each such person shall be eligible to vote.

The following statements will serve as examples to illustrate the eligibility of persons to vote in particular instances.

(a) In the case of a husband and wife who engaged in the production of Burley tobacco as joint owners of a farm each is eligible to vote; and similarly in the case of a husband and his wife or a father and his son who engaged in the production of Burley tobacco in 1939 as joint tenants the husband and wife or the father and son, as the case may be, are each eligible to vote.

(b) A person who is considered as a wage hand on a farm but who receives part or all of the proceeds from a fixed acreage of tobacco and thus shares in the proceeds of the 1939 crop of Burley tobacco produced on the farm would be considered as a sharecropper and shall be eligible to vote.

(c) If any person gives a member of his family a part of the tobacco crop or its proceeds but such member of the family does not have an independent status on the farm as a share-tenant or share-cropper then such member of the family is not eligible to vote.

(d) A person acting as administrator, executor, or guardian, or in some similar fiduciary capacity, is eligible to vote for each estate or person for whom he acts in such capacity if such estate or person was engaged in the production of the 1939 Burley tobacco crop. In such event the heirs of the estate for whom the administrator or executor acts are not eligible to vote by virtue of being such heirs nor is the person for whom the guardian or other fiduciary acts eligible to vote.

(e) A minor is eligible to vote only if he was the owner-operator of a farm on which Burley tobacco was produced in 1939 or if as a party to a bona-fide lease or operating agreement he had an independent status as operator, share-tenant or sharecropper and as such was entitled to share in the proceeds of the 1939 Burley tobacco crop.

B. INSTRUCTIONS TO COUNTY COMMITTEES

The county agricultural conservation committee (hereinafter referred to as the county committee) shall be responsible for the proper holding of the referendum in the county and shall:

1. Have prepared in duplicate, prior to the date of the referendum, a registration list on 40–Tob–17 showing the name and other information required on the form for each farmer in the county who was engaged in the production of Burley tobacco in 1939. The registration list should be prepared by communities using as far as possible the records obtained under the 1939 agricultural conservation program. For those farms on which performance has not been checked the county committee should have the respective community committeeman or farm supervisor obtain the following information:

(a) The name of the farm operator;
(b) The name of each share-tenant or sharecropper growing Burley tobacco on the farm in 1939;
(c) The acreage share of each such person in the tobacco grown on the farm;
(d) The tenure of each such person; and
(e) The name and location of every other farm on which each such person engaged in the production of Burley tobacco in 1939.

In obtaining the above information, the farm operator may be requested by letter to visit the county office or a designated place in the community within a specified time for the purpose of furnishing the information; or a community committeeman or supervisor may visit the farm operator and obtain the information. In preparing the registration list (40–Tob–17) it is suggested that the procedure indicated by the example below be followed:

	Farm serial No.	Names of farmers eligible to vote	Tenure of farmer	Initials of committeeman issuing ballot
	A	B	C	D
1	100	Adams, A. A.	O	
2		Black, B. B.	C	
3		White, W. W.	O	
4	106	Brown, B. B. (nonresident)		

If the registration list is prepared in accordance with the example above, the name of the farm operator will be listed in the left side of Column B, and in the lines immediately beneath the line on which the name of the farm operator is listed there will be listed in the right side of Column B the name of each share-tenant or sharecropper on the farm who shares in the proceeds of the 1939 Burley tobacco crop. Preferably all farms operated by the same person in any community should be listed in order and the name of such operator listed only once. However, if the name of any person who resides in a community is listed more than once in that community the words "Vote other farm" should be written beside his name for each farm with respect to which it is listed except for the first farm listed for him on the registration list. If the name of any person is listed in any community and such person does not reside in such community the word "Nonresident" should be written beside such person's name.

2. Designate one readily accessible place for balloting in each community and give public notice of the date of the referendum and of the time and place for balloting. Such notice shall be given by posting the notice form (40–Tob–18) at one or more places open to the public within each community as soon as possible after the date of the referendum has been announced.

3. Make use (without advertising expense) of all available agencies of public information, including newspapers and radio, to give Burley tobacco farmers in the county full and accurate public notice of the day and hours of voting, the location of polling places, and the rules governing eligibility to vote. Such notice shall be given as soon as possible after the date of the referendum has been announced.

4. Designate three local farmers residing in each community who produced Burley tobacco in the community in 1939 as the members of the community referendum committee to conduct the referendum on the national marketing quota for Burley tobacco in such community, and name one of the members chairman of the committee. Designate also one such farmer as an alternate to serve on

the committee in the event that any of the three regular members cannot serve.

5. In counties with a combined total of less than 200 Burley tobacco farms, the county committee may treat the county as one community for the purpose of the referendum and hold the referendum and perform the duties both of county committee and community referendum committee.

6. See that each community referendum committee is provided with a suitable ballot box in which to place the ballots cast in the referendum.

7. See that 40–Tob–17 has been prepared, in accordance with the instructions herein, to show the persons eligible to vote in the referendum in each community.

8. Deliver the original of 40–Tob–17 and a supply of 40–Tob–19 and 20 to the chairman of the community referendum committee. Retain 40–Tob–17a in the county office.

9. See to it that the community referendum committees understand their duties as to (a) issuing ballot forms, (b) recording and challenging votes, (c) tabulating ballots, and (d) certifying results of the referendum in the community.

10. Notify the State committee by telephone, telegraph, or in person, as soon as possible after the closing of the polls, as to the preliminary count of "Yes" and "No" votes in the referendum held in the county.

11. Meet not later than two days after the date of the referendum for the purpose of receiving and summarizing on 40–Tob–21 the data contained on 40–Tob–20. Such meeting shall be open to the public. 40–Tob–21, showing the results in the county, shall be prepared and certified in quadruplicate, the original and one copy shall be sent to the State agricultural conservation committee (hereinafter referred to as the State committee) not later than four calendar days after the date of the referendum, one copy posted for sixty days in a conspicuous place accessible to the public in or near the office of the county committee (hereinafter referred to as the county office) and one copy permanently filed in the county office, where it shall be open to public inspection.

12. Notify the State committee as soon as possible by mail (on 40–Tob–21) as to the final outcome of the referendum in the county.

13. Make an investigation in each case of controversy or dispute regarding the eligibility of a voter. In each case where a ballot is marked "Challenged" by the community referendum committee, the eligibility of such person shall first be determined. If it is determined that such person is eligible, the ballot shall be placed with the challenged ballot of every other person found to be eligible, and when all the challenged ballots shall have been passed upon by the committee those ballots found to be valid shall be tabulated in the county summary. If it is determined that such person is not eligible the ballot shall be preserved with other ballots, as provided in paragraph 15 of this section B.

14. Make an immediate investigation in each case of dispute regarding the correctness of the summary of the referendum in a community. No dispute shall be investigated by the county committee unless it is brought to its attention within ten calendar days after the date on which the referendum in question was held. The county committee shall promptly decide the dispute and immediately report its findings to the State committee. All voted ballots, register forms, and community summary sheets involved in the dispute shall be mailed or delivered in person to the State office.

15. Seal the voted ballots, challenged ballots found ineligible, register sheets, and community summary sheets for the county in one or more envelopes or packages (marked "Burley Tobacco Referendum 1940", followed by the name of the county) and place them under lock and key in a safe place under the custody of the secretary of the county agricultural conservation association for a period of sixty calendar days from the date of the referendum. If no notice to the contrary is received by the end of such time, the ballots shall be destroyed and the register and community summary sheets permanently filed in the county office, where they shall be open to public inspection.

C. INSTRUCTIONS TO COMMUNITY REFERENDUM COMMITTEES

Each community referendum committee designated by the county agricultural conservation committee shall:

1. Arrange, with the assistance of the county committee, for conducting the referendum.

2. Assist the county committee in giving adequate public notice of the time and place for casting ballots in advance of the date on which the referendum will be held.

3. Provide a place where each voter can prepare and cast a ballot in secret and without interference.

4. Provide ballot boxes. Any container so arranged that ballots cannot be seen and cannot be removed without breaking seals on the container will be suitable. If strip adhesive paper or similar seals are used, such seals should be signed or initialed so that breaking or replacing the seal will affect or destroy the identifying marks and show that the seal has been tampered with.

5. Open the polls not later than 9:00 o'clock A. M., local standard time, on the date fixed for the referendum.

6. Hold the referendum in a fair unbiased manner.

7. Initial the ballot and also the registration list (40–Tob–17) opposite the name of the voter prior to issuance of the ballot to the voter. The initials of one committeeman will be sufficient but the committeeman who initials the ballot for a voter also should initial the registration list for such voter. If the eligibility of the voter is challenged make entries on the ballot form as required in paragraph 9 prior to issuance of the ballot to the voter.

8. Instruct each voter, as he is handed a ballot form, to mark his ballot so as to show which way he votes and then to fold the ballot and place it in the ballot box.

9. Issue a ballot to each person who claims to be eligible to vote and requests a ballot, even though his eligibility is challenged by the committee. The committee shall challenge the eligibility of any person to vote:

(a) If his name is not recorded on the register of eligible voters (40–Tob–17) prior to the date of the referendum;

(b) If he was not engaged in production of Burley tobacco in 1939 in the community where the community referendum committee has jurisdiction over the polls, or if there is some indication beside his name that he should vote in another community; or

(c) If the committee is not certain that he has a bona-fide status as a farmer engaged in the production of Burley tobacco in 1939.

In every case where the eligibility of any person to vote is challenged, the community referendum committee shall, prior to the issuance of the ballot to such person, write across the back of the ballot in large letters the word "Challenged" and underneath such word the following:

(a) The name of such person;

(b) The name or number or letter of the community in which such person claims to have produced Burley tobacco in 1939;

(c) The name of the operator of the farm on which such person claims to have produced Burley tobacco in 1939; and

(d) A concise statement of the reason for challenging the eligibility of such person to vote.

The committee shall provide each farmer whose ballot is challenged as provided above an envelope in which the farmer may seal the ballot before placing it in the ballot box.

10. For each farmer to whom a ballot form is issued but who is not already listed on 40–Tob–17 prior to the time the ballot is issued to him, record thereon the information required is columns A to D, inclusive.

11. Close the polls and discontinue acceptance of ballots at 5:00 o'clock P. M., local standard time, on the date of the referendum, or such later hour as is fixed by the State committee.

12. Immediately after closing the polls, open the ballot box and canvass the ballots cast, which canvass shall be kept open to the public.

13. Tabulate and record the results of the referendum on 40–Tob–20. The number of challenged ballots cast shall be entered on 40–Tob–20, in the space provided, and will not be shown as being either for or against the marketing quotas. If any ballot is found to be mutilated or marked in such a way that it cannot be determined whether the voter favored or opposed marketing quotas, it shall not be counted as a ballot cast, the number of such spoiled ballots shall be entered in the space provided and such ballots placed in an envelope marked "Spoiled Ballots", followed by the designation of the community.

14. The total number of ballots issued as shown by the entry on the registration list of the initials of committeemen who issued the ballots shall be determined. The total number of ballots cast (including challenged, spoiled and invalid ballots) shall be determined. If any ballot was cast which was not initialed by a committeeman such ballot shall be marked "Invalid" and included among the spoiled ballots as provided in paragraph 13 above.

15. Certify to the accuracy of the executed 40–Tob–17 and 40–Tob–20 by signing in the spaces provided.

16. Notify the county committee by telephone, or in person, as soon as possible after the closing of the polls as to the preliminary count of "Yes" and "No" votes in the community.

17. Seal the voted ballots (including those challenged), the spoiled ballots, the register sheets, and the community summary sheets in one or more envelopes appropriately identified by the designation of the community and deliver them to the county committee not later than two calendar days after the date of the referendum, with the unused ballots and other forms. The chairman of the community referendum committee shall be responsible for the safe delivery of such reports, ballots, and forms to the county committee.

18. Post an executed copy of 40–Tob–21, as soon as it is executed, at a conspicuous place at the polling place and see that it remains posted and accessible to the public for at least three calendar days after the date of the holding of the referendum.

D. INSTRUCTIONS TO STATE COMMITTEES

The State committee shall be in charge of and responsible for the conducting of the referendum in the State and shall:

1. Notify the applicable regional director by telegraph as to the preliminary count in the referendum in the State of votes for and votes against marketing quotas.

2. Summarize on 40–Tob–22 the information contained on 40–Tob–21 and mail two fully executed 40–Tob–22's to the applicable regional director not later than seven calendar days after the date of the referendum. If one sheet proves insufficient for listing the information with respect to all counties in the State, additional sheets properly numbered and identified and securely attached to the first sheet may be used for continuation, in which case totals and signatures should be entered only on the last sheet. One fully executed copy of 40–Tob–21 and 40–Tob–22 shall be permanently filed in the State office of the Agricultural Adjustment Administration where it shall be open to public inspection.

3. Complete the investigation of any report from any county regarding controversies, irregularities, or disputes over the correctness of summaries of the referendum, not later than fifteen calendar days after the date of the referendum, and promptly forward its findings in such cases to the applicable regional director.

E. RESULTS OF REFERENDUM

Final and official tabulation of the votes cast in the referendum will be made by the Agricultural Adjustment Administration and the results of the referendum announced by the Secretary of Agriculture. The reports on 40–Tob–22 and related papers shall be permanently filed with such tabulation and shall remain available for public inspection.

Each county committee is authorized to release to the public press and to other inquirers unofficial reports of the total "Yes" and total "No" votes in the referendum in the county.

The State committee is authorized to release to the press and to other inquirers the unofficial results of the referendum for the respective State by counties as rapidly as the votes in the various counties are tabulated.

If the Administrator of the Agricultural Adjustment Administration or the Secretary of Agriculture deems it necessary, the report of any community referendum committee, county committee, or State committee shall be reexamined and checked by such persons or agencies as may be designated.

Done at Washington, D. C., this 14th day of September 1939. Witness my hand and seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39–3387; Filed, September 14, 1939; 12:45 p. m.]

Food and Drug Administration.

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER IN REGARD TO FILL OF CONTAINER OF CANNED PEACHES

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY, (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the Federal Register, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue N. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries. The notice contained a proposal, in general terms, for defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a public hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1.)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity

for the food commonly known as canned peaches, and the hearing was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 14, 1939, at 9 a. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of fill of container and specifying the form and manner of label statement of substandard fill of container for the food commonly known as canned peaches was convened, and was concluded at 1:45 p. m., on the same day. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and written argument.

5. Within the time announced at the hearing within which interested persons might file proposed findings of fact, written argument, or both, various interested persons filed proposed findings of fact, together with written argument in support thereof, based upon the evidence adduced at the hearing.

6. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested Findings

1. The quantity of the optional peach ingredient which can be placed in a container varies, depending upon the method of packing and upon the shape, size, degree of maturity, and specific gravity of the units of the optional peach ingredient (R. pp. 29, 48, 49).

2. With the exception of comparatively few slack filled cans, canned peaches as they appear on the market at the present time contain the maximum quantity of the optional peach ingredient which, using reasonably good factory practice, can be placed and sealed in each can and processed by heat to prevent spoilage, without crushing or breaking the peach units (R. pp. 30, 32, 49, 50).

3. The maximum quantity of the optional peach ingredient varies, depending on the size of the container, the method of packing, the form, size, firmness of units, the necessity for having sufficient liquid to insure proper processing, and other factors (R. p. 30).

4. The can should contain the greatest number of peach units the canner can place therein and properly seal and process (R. pp. 30, 31, 32, 49, 50).

5. Knowing the form, shape, size, degree of maturity and comparative specific gravity of the peach units in any lot being canned, canners know the greatest amount of peach units which can be placed in a can of any given size without damage, and canners employ inspectors to insure proper filling by packers (R. pp. 30, 31).

6. None of the various methods which have been studied for objective measurements of fill have shown any uniform correlation between the quantity of peach units put in and the quantity of peach units cut out. Assurance to the consumer of a can full of peaches can be obtained only by a requirement as to the quantity put in the container (R. pp. 27–29, 31, 32, 35, 40, 41, 45, 50, 58, 60, 62, 64, 81, 82, 90, 91, 92, 95, 96, 98, 102, 110, 112) (Government's Exhibits Nos. 2 and 3) (Other Interested Parties' Exhibits Nos. 1 and 2).

7. It is necessary and desirable in the interest of the consumer that canned peaches falling below a standard of fill of container bear on the label a simple and understandable statement of that fact (R. pp. 32, 33). "Below Standard in Fill" is such a statement (R. pp. 32, 33).

8. If canned peaches fall below a standard of fill of container, it is necessary and desirable in the interest of the consumer that the label bear the statement "Below Standard in Fill", printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement should be in 12-point type; if such quantity is 1 pound or more, the statement should be in 14-point type. Such statement should be enclosed within lines not less than 6 points in width, forming a rectangle; but if the peaches also fall below the standard of quality for canned peaches and bear the label statement of substandard quality specified in the standard of quality for canned peaches, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, should be on a strongly contrasting, uniform background, and should be so placed as to be easily seen when the name "Peaches" or any pictorial representation of a peach is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase (R. p. 33).

9. The substandard statement now required by the regulations issued pursuant to the McNary-Mapes Amendment is "Below U. S. Standard" followed by "Slack Fill", in the case of excess head space; and by the statement "Contains Excessive Added Liquid", in the case of excessive packing medium (R. pp. 33, 34). These statements are required to appear in substantially the same form as herein proposed (R. p. 34).

10. The phrase "Below Standard" as proposed, differs from the present requirement "Below U. S. Standard". The term "U. S." on a food product has been found to imply to consumers that the product has been packed under the supervision of the U. S. Government. The phrase "In Fill", as proposed, differs from the present requirement of "Slack Fill" or "Contains Excessive Added Liquid". The standard herein proposed is based on a can filled to its maximum capacity with fruit. If adopted and met, the headspace will not be excessive, nor will there be excessive liquid present. If not met, the expression "Below Standard in Fill" is simpler and more understandable in describing a product which fails to meet a standard based on the amount of peaches present rather than on the amount of liquid and peaches or the quantity of liquid present (R. pp. 34, 35).

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable standard of fill of container and the form and manner of label statement of substandard fill of container for the food commonly known as canned peaches is hereby suggested to be promulgated as a regulation:

§ 27.002 *Canned peaches—Fill of container; label statement of substandard fill.* (a) The standard of fill of container for canned peaches is the maximum quantity of the optional peach ingredient which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned peaches fall below the standard of fill of container prescribed in subsection (a), the label shall bear the statement "Below Standard in Fill," printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle; but if the statement specified in Section 27.001 (d) is also used, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Peaches" or any pictorial representation of a peach is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the Federal Register containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the same time each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where

relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

SEPTEMBER 9, 1939.

[F. R. Doc. 39-3365; Filed, September 14, 1939; 9:18 a. m.]

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER IN REGARD TO QUALITY OF CANNED PEACHES

IN THE MATTER OF PUBLIC HEARINGS FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED (A) (1) FIXING AND ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY (2) REQUIRING LABEL DECLARATION OF CERTAIN OPTIONAL INGREDIENTS; (B) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF QUALITY, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD QUALITY; (C) (1) FIXING AND ESTABLISHING A REASONABLE STANDARD OF FILL OF CONTAINER, (2) SPECIFYING FORM AND MANNER OF LABEL STATEMENT OF SUBSTANDARD FILL OF CONTAINER; FOR EACH OF THE FOODS COMMONLY KNOWN AS CANNED PEACHES, CANNED APRICOTS, CANNED PEARS AND CANNED CHERRIES

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], the Secretary of Agriculture on his own initiative published on March 7, 1939, which appeared on page 1143 of the FEDERAL REGISTER, a notice of a public hearing to be held on April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, Twelfth Street and Pennsylvania Avenue N. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U.S.C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries. The notice contained a proposal, in general terms, for defining and so standardizing each of such foods. John McDill Fox was designated as presiding officer to conduct such hearing. Thereafter, a public hearing was held at the time and place specified, and John McDill Fox acted as presiding officer. (Government's Exhibit No. 1.)

2. At said hearing the presiding officer announced that he would first hold a hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches.

3. In pursuance of such announcement, a hearing was held for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable definition and standard of identity for the food commonly known as canned peaches, and was continued with reference to the other proposals, to dates subsequently to be announced.

4. On April 13, 1939, at 9:45 a. m., the hearing for the purpose of receiving evidence upon the basis of which a regulation may be promulgated fixing and establishing a reasonable standard of quality and specifying the form and manner of label statement of substandard quality for the food commonly known as canned peaches was convened, and was concluded at 5:30 p. m., on the same date. All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and argument.

5. Within the time announced at the hearing within which interested persons might file written argument, proposed findings of fact, or both, various interested persons filed proposed findings of fact, together with written argument in support thereof, based upon the evidence adduced at the hearing, which, if granted, would modify the proposal contained in the FEDERAL REGISTER.

6. There was controversy with respect to (a) the amount of adhering peel in peeled canned peaches, (b) the degree to which a peach or a unit of a peach may be trimmed, (c) the number of peach units in a container which are crushed or broken, (d) label statements.

7. Testimony was introduced tracing the development of standards with reference to the McNary-Mapes Amendment to the Food and Drugs Act of 1906, passed in 1930, and the formulation of a standard of quality under that amendment.

Various factors which go to make up a quality standard were considered, together with objective measurements for determining such factors. These factors and objective measurements were made up after conferences with canners, with the trade, with consumers and with expert graders in all sections of the country. The factors which enter into the quality of canned peaches differ somewhat, depending upon the form of the unit of the peach ingredient. Tenderness is a factor. The size of the unit is a factor if the units are halves or quarters. Uniformity of size of unit is a factor in the cases of whole peaches, halves and quarters. Absence of peel is a factor in peeled peaches. Freedom from blemishes is a factor. The contour of the units is a factor in the cases of whole peaches, halves and quarters, and freedom from crushed or broken units is a factor.

An objective test for determining the factor of tenderness, as set forth in the Government's proposal (Government's Exhibit No. 1, Sec. 27.001, subsection (b)), was described. No other objective test for this factor was offered.

It was agreed that in peeled peaches absence of peel is a factor of quality. Pieces of peel are unsightly and have an unpleasant feel if taken into the mouth. All canners recognize this fact and do not intentionally pack peaches bearing pieces of peel. In most cases, peaches are peeled with a hot lye solution which is immediately washed off. This is very efficient and pieces of adhering peel are not very common. When present, the most casual examination reveals them and such pieces easily can be removed by hand trimming. Other methods of removing peel require a little more care to insure complete removal, but the amount of care required is not unreasonably great so that it is commercially practicable to pack peaches completely free from peel. Except for some unpeeled packs, almost no cans with peel present had been encountered by the Department in the past several years out of the thousands of cans examined.

It was testified that peaches may be blemished with scab, hail injury, discoloration or other minor abnormalities such as bird pecks. Scab leaves a section of scar tissue on the peach which is hard and unsightly. Hail injury results in brown, unsightly spots. Discoloration is usually the result of bruises, frost bite or other undesirable conditions. In the opinion of many qualified witnesses, canned peaches are, for practical canning purposes, free from blemishes if not more than 1/5 of the units in the container are blemished. Peaches are relatively large units and blemishes are not common so they can be readily sorted and trimmed to remove such blemishes. A tolerance of 20 percent would be sufficient, from the thousands of cans of peaches examined, to make due allowance for such small and not too apparent blemishes.

It was testified that a tolerance of 5 percent of crushed or broken units would be reasonable. Many containers carry less than 20 units. In a container of less than 20 units, 1 crushed or broken unit is as close to absolute freedom as reasonably can be required. If, however, the number of crushed or broken units is 20 percent, or more, experience would indicate that either they must have been added as such or that the peaches were

canned by some method which crushed or broke more units than is usual in good commercial practice.

The changes in the standards of quality were traced since the first promulgation of quality standards under the McNary-Mapes Amendment. In 1931, a standard of quality for canned peaches was promulgated, and the minimum standard requirement for tender units was raised in 1932 from 80 percent to 90 percent, which is the present standard for quality. The present proposal (Government's Exhibit No. 1) suggests the abolishment of tolerance for units not tender and requires all units to meet the test for tenderness.

The requirements for uniformity of size under the McNary-Mapes Amendment, promulgated in 1931, were changed on two occasions, once in 1932 so that this quality factor was based on weight rather than on diameter, and the second change made in 1937 provided that the units are uniform sized when the weight of the largest unit in the can is not more than twice the weight of the smallest unit in the can. This requirement is now in effect under such amendment and is the requirement for this factor set forth in the present proposal (Government's Exhibit No. 1).

Except for the elimination of raggedness as a blemish in the present proposal (Government's Exhibit No. 1), the factor with reference to blemishes is substantially the same as in the McNary-Mapes Amendment.

The requirement with respect to untrimmed units, which was suggested in the proposal of the Government (Government's Exhibit No. 1) and supported by testimony, differs from the previous requirement under the McNary-Mapes Amendment in that the present suggestion separates the two quality factors, namely, excessively trimmed and broken units, and proposes that the tolerance for units so trimmed that their normal contour is destroyed be eliminated. This elimination was proposed because trimmed units are easily segregated and packed separately by the cannery. In addition, consumers objected to the presence of even one unit so trimmed as to destroy its normal contour.

Testimony was adduced that the expression "Below Standard in Quality" would best describe the condition of canned peaches which fall below a standard of quality and that this phrase should be qualified, showing in what respects such peaches fall below the standard, or if the product falls below the standard in several respects, the statement "Below Standard in Quality Good Food—Not High Grade" was recommended.

Evidence was adduced that freestone peaches are peeled by scalding and then slipping the skin by hand rather than by lye peeling.

The weight of the evidence adduced at the hearing by other interested parties was to the effect that the requirement in the proposal (Government's Exhibit No. 1) that no peel be present in standard canned peaches was unreasonably stringent, and that the tolerance of one square inch of peel per pound of net contents, which is the present requirement under the McNary-Mapes Amendment, is reasonable and capable of being complied with commercially.

It was recommended that the expression "normal shape" be substituted for the expression "normal contour". Witnesses at the hearing regarded the terms as synonymous.

It was suggested that peaches not of uniform size be labeled as below standard in quality because they consisted of "irregular pieces" rather than because they consisted of "mixed sizes" as proposed. This suggestion was made in connection with the suggestion that peaches ungraded for size may not be regarded as substandard in quality. Government witnesses testified that uniformity of size is a factor in the quality of peaches. Indeed, all witnesses concurred therein.

8. Pursuant to the rules of procedure, the presiding officer, therefore, makes this his report and suggests that the Secretary issue the regulation hereinafter set forth and make, on the basis of the substantial evidence of record at the hearing, the findings of fact herein contained as part of the order promulgating and making public such regulation.

Suggested Findings

1. Factors which go to make up quality in canned peaches are tenderness of the peach ingredient; size of units in the case of peach halves and quarters; uniformity of size of units in the cases of whole peaches, halves, and quarters; absence of peel in all forms of the peach unit except in the case of unpealed peaches; freedom from blemishes; the shape of the units in the cases of whole peaches, halves, quarters, and slices; freedom from crushed or broken units (R. pp. 24–25, 80–81).

2. In canned peaches, the biting or chewing characteristic of the peach is an index of the quality factor, tenderness. This factor involves the maturity of the peach and the extent to which it has been cooked (R. p. 25).

3. Such tenderness is measurable objectively by the following method:

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 1⅛ inches inside diameter, with vertical sides; or rectangular in shape, ¾ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of ¾ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least ½ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{5}{32}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness (R. pp. 25–29, 81, Government's Exhibit No. 1).

4. Forms of units of the peach ingredient too small for such testing or too soft for such trimming need not be tested for tenderness (R. p. 28).

5. The foregoing method outlined in Finding No. 3 is directly correlated with the consensus of consumer opinion of what constitutes tenderness in canned peaches (R. p. 29).

6. Size of units, as measured by the weight of the unit, is not a factor of quality in canned peaches except in the cases of halves and quarters (R. pp. 31, 81).

7. Canned peaches which are of standard quality have a minimum size for halves and quarters at the present time (R. pp. 31, 58–61, 81). Halves and quarters smaller than such minimum size are commonly packed as substandard peaches at the present time (R. pp. 31–32, 58–61, 81).

8. Halves and quarters have a minimum size of ⅗ ounce and $\frac{3}{10}$ ounce, respectively (R. pp. 32, 81). These minima are less than the minima adopted by the packers of over 97 percent of the canned peaches produced in the United States (R. pp. 32, 81).

9. Such weights are determinable as follows: The unit is placed on a screen and the liquid is allowed to drain therefrom for two minutes. The unit is then weighed. (R. pp. 32, 81–82.)

10. Uniformity of size of units is not a factor of quality in canned peaches unless the units are whole, halves, or quarters (R. pp. 32–33, 81–82). Uni-

formity of size cannot be controlled under the best commercial practice in the cases of slices and dice (R. pp. 33, 81–82). Discrepancies in size are not objectionable to the consumers when the units are small, such as slices or dice (R. pp. 33, 81–82). Uniformity of size is obviously not a factor in the quality of the product when the units are mixed pieces of irregular size (R. pp. 33, 81–82).

11. Uniformity of size of units in the cases of whole, halves, or quarters is necessary in order to prevent variant numbers of units in servings of desserts and salads on the same table (R. pp. 33, 81–82).

12. Such units are of reasonable uniformity of size if the weight of the largest unit is not more than twice the weight of the smallest unit in the container (R. pp. 33–34, 68–69, 81–82, 87, 165–167, 173–174, 178–180). Weights of such units are determined in the same manner as weights for minimum size of units (R. pp. 34, 81–82).

13. Absence of peel is a factor of quality in canned peaches except in the case of peaches canned as unpeeled peaches (R. pp. 34, 62, 76, 82, 143–144, 167–170, 174).

14. Adhering peel ordinarily can be removed completely from the peach, but some peel is occasionally left in good commercial practice (R. pp. 35, 62, 63, 82, 107, 140, 151–153, 159–160, 167–170, 174–175). 1 square inch of peel per pound of net content is a reasonable maximum tolerance for peel present in the finished product (R. pp. 143, 151–153, 167–170, 174–175, 176).

15. Freedom from blemishes such as scab, hail injury, discoloration, or other abnormalities is a factor of quality in canned peaches (R. pp. 35, 82).

16. A tolerance for blemishes is necessary because of small blemishes not apparent in hand sorting as carried out under good commercial practice (R. pp. 36, 82). 20 percent blemished units is a reasonable tolerance (R. pp. 36, 82).

17. Normal contour or shape of the peach unit is a factor of quality in canned peaches if the units are whole, halves, quarters, or slices (R. pp. 36–67, 82, 144, 146, 147, 176).

18. When the units are trimmed, normal shape can be preserved (R. pp. 37, 82). It is possible for the canner to meet this quality factor by discarding all units so trimmed that their normal shape is not preserved (R. pp. 37, 82). Consumers uniformly object to unevenly trimmed units (R. pp. 37, 82).

19. Freedom from crushed or broken units is a factor of quality in canned peaches (R. pp. 37–38, 82). A crushed unit is a unit pressed so as to destroy its normal shape. A broken unit is a unit separated into two or more parts. Units which do not have normal contour because of ripeness and which do not show any crushing are not crushed or broken units. (R. pp. 38, 62.) Crushed and broken units are not deliberately packed as canned peaches which are of standard quality at the present time (R. pp. 38, 82). The concussion resulting from the application of the lid to the can at high speeds under great pressure sometimes breaks or crushes the topmost unit of well-filled containers in good commercial practice (R. pp. 39, 82). For this reason, a tolerance for crushed and broken units is necessary, and a tolerance of 5 percent for containers of more than 20 units or of 1 unit for containers of less than 20 units is reasonable (R. pp. 39, 82).

20. A canner employing good commercial practice can meet each of the foregoing factors of quality in canned peaches without difficulty (R. pp. 40, 82, 83).

21. Each factor of quality takes into consideration and makes due allowance for the differing characteristics of the several varieties of peaches. Some varieties can meet the various factors more easily than others, but all varieties can meet the foregoing factors of quality without difficulty under good commercial practice (R. pp. 41, 83–84).

22. Each of the factors hereinbefore referred to has been in effect since 1931 in the standards of quality for canned peaches promulgated by the Secretary of Agriculture pursuant to the McNary-Mapes Amendment to the Food and Drugs Act of 1906 (R. p. 41).

23. There has been no substantial change in the provision with respect to tenderness since the promulgation of such original standard in 1931, except that the tolerance for units not tender was reduced from 20 percent to 10 percent in 1932 (R. pp. 43, 44).

24. There is no substantial difference between the measure of tenderness as referred to herein and the present McNary-Mapes standard except that the tolerance of 10 percent of units not tender is eliminated (R. p. 44). Elimination of such tolerance is justified by present commercial practice (R. p. 44).

25. The objective method of determining tenderness has been the same throughout the history of such standards promulgated under the McNary-Mapes Amendment and is an accurate and reliable method for determining tenderness (R. p. 44).

26. There has been no change in the provisions of the standards promulgated under the McNary-Mapes Amendment for minimum size of units, except in 1932 when the minimum size for halves was reduced from ¾ ounce to ⅝ ounce.

27. Small slices occur inadvertently, and it is impossible to eliminate them under good commercial practice (R. p. 33). Very small whole peaches are a highly desirable quality product (R. p. 31). ⅝ ounce and $\frac{3}{10}$ ounce more truly represent the respective minimum sizes of normal sized halves and quarters than ¾ ounce and ⅜ ounce (R. p. 46).

28. There have been no changes in the standards promulgated under the McNary-Mapes Amendment with respect to uniformity of size of units except that in 1932 such uniformity was placed upon a weight rather than upon a size basis, and except that in 1937 the degree of uniformity was reduced from a variation of 80 percent to 100 percent (R. pp. 47–48).

29. No variation from the present McNary-Mapes requirement with respect to uniformity is desirable (R. p. 48).

30. There have been no changes from the original standard promulgated under the McNary-Mapes Amendment with respect to freedom from blemishes (R. pp. 48–49).

31. It is not desirable to change the present McNary-Mapes standard with respect to freedom from blemishes, except to eliminate raggedness as a blemish (R. p. 49). Raggedness is characteristic of some varieties of peaches (R. pp. 49, 67–68).

32. There have been no changes in the original requirement of the McNary-Mapes standards with respect to the normal shape of the peach units (R. pp. 49–50).

33. No changes in the present McNary-Mapes standard are desirable except the elimination of the tolerance for units not of normal shape (R. pp. 50, 163–165, 176). The elimination of the tolerance is reasonable because canners under good commercial practice can and do remove all excessively trimmed units prior to canning (R. pp. 50, 72–74).

34. There have been no changes in the original McNary-Mapes standard with respect to broken units except that the tolerance was reduced in 1932 from 20 percent to 10 percent of broken units and a proviso added to permit of one crushed unit resulting from the application of the lid (R. p. 51).

35. That all of the foregoing findings of fact are reasonable and will promote honesty and fair dealing in the interest of consumer (R. p. 54).

36. It is reasonable and it will promote honesty and fair dealing in the interest of the consumer to have a simple and understandable statement of substandard quality placed on the label. "Below Standard in Quality" qualified by an explanation wherein the product falls below standard in quality is such a statement (R. pp. 56, 99–100, 102, 188–190, 192, 195, 199, 202–204). If the peaches are not tender, the qualifying statement "Not Tender" furnishes an accurate explanation of the reason the product is below standard. Likewise, the qualifying statement "Small Halves", or "Small Quarters", if under minimum size; "Mixed Sizes", if not of uniform size; "Not Well Peeled", if over the tolerance for peels; "Blemished", if over the tolerance for blemishes; "Unevenly Trimmed", if trimmed to destroy normal shape; "Partly Crushed or Broken", if over the tolerance for crushed or broken units (R. pp. 56, 103, 148, 149, 154, 189–190, 199).

37. It is reasonable and it will promote honesty and fair dealing in the interest of the consumer to have such statement immediately and conspicuously precede

or follow, without intervening written, printed, or graphic matter, the name "Peaches", together with words and statements required or authorized to appear with such name by the definition and standard of identity for canned peaches (R. pp. 56–57).

38. Such label requirements for peaches of substandard quality would not be practicable under good commercial practices in instances such as where the product fell below the standard in several respects (R. p. 57).

39. In such event, the statement "Below Standard in Quality Good Food—Not High Grade" would be reasonable, would be informative to the consumer, and would promote honesty and fair dealing in the interest of the consumer (R. pp. 57, 188–190, 202–204).

40. It is reasonable and it would promote honesty and fair dealing in the interest of the consumer to have such statement printed in two lines of Cheltenham bold condensed caps. The words "Below Standard in Quality" to constitute the first line, and the second to immediately follow. If the quantity of the contents of the container is less than 1 pound, such type of the first line shall be 12-point, and of the second, 8-point. If such quantity is 1 pound or more, such type of the first line shall be 14-point, and of the second, 10-point. Such statement is to be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, is to be on a strongly contrasting, uniform background, and is to be so placed as to be easily seen when the name "Peaches" or any pictorial representation of a peach is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase (R. pp. 57–58, 100–102).

41. The wording of this statement differs from the statement required under the present McNary-Mapes standard only in the elimination of the explanation "U. S.", and a substitution of "Below Standard in Quality" for "Below Standard" (R. p. 96). The explanation "U. S." on labels has been found to be misleading to consumers (R. pp. 97–98). The foregoing findings for manner and form of the label statement differ from the present McNary-Mapes requirements with respect to the elimination of certain technical requirements (R. pp. 95–96).

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable standard of quality and form and manner of label statement of substandard quality for the food commonly known as canned peaches is hereby suggested to be promulgated as a regulation:

§ 27.001 *Canned peaches—Quality; label statement of substandard quality.* (a) The standard of quality for canned peaches is as follows:

(1) All units tested in accordance with the method prescribed in subsection (b) are pierced by a weight of not more than 300 grams;

(2) In the cases of halves and quarters, the weight of each unit is not less than $\frac{3}{5}$ ounce and $\frac{3}{10}$ ounce, respectively;

(3) In the cases of whole peaches, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein;

(4) Except in the case of unpeeled peaches, there is present in the finished canned peaches not more than 1 square inch of peel per each 1 pound of net contents;

(5) Not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormalities;

(6) In the cases of whole peaches, halves, quarters, and slices, all units are untrimmed, or are so trimmed as to preserve normal shape; and

(7) Not more than 5 percent of the units in a container of 20 or more units, and not more than one unit in a container of less than 20 units, is crushed or broken. (A unit which has lost its normal contour because of ripeness and which bears no mark of crushing shall not be considered to be crushed or broken.)

(b) Canned peaches shall be tested by the following method to determine whether or not they meet the requirements of clause (1) of subsection (a):

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of $1\frac{1}{8}$ inches inside diameter, with vertical sides; or rectangular in shape, $\frac{3}{4}$ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of $\frac{3}{4}$ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least $\frac{1}{2}$ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{5}{32}$ inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned peaches falls below the standard prescribed by subsection (a), the label [unless it bears the statement specified in subsection (d)] shall bear the statement "Below Standard in Quality _____", the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned peaches fail to meet, as follows: (1) "Not tender"; (2) "Small halves", or "Small quarters", as the case may be; (3) "Mixed sizes"; (4) "Not well peeled"; (5) "Blemished"; (6) "Unevenly trimmed"; (7) "Partly crushed or broken". Such statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Peaches" and the words and statements required or authorized to appear with such name by Section 27.000 (b).

(d) In lieu of the statement or statements specified in subsection (c), the label may bear the statement "Below Standard in Quality Good Food—Not High Grade", printed in two lines of Cheltenham bold condensed caps. The words "Below Standard in Quality" shall constitute the first line, and the second shall immediately follow. If the quantity of the contents of the container is less than 1 pound, the type of the first line shall be 12-point, and of the second, 8-point. If such quantity is 1 pound or more, the type of the first line shall be 14-point, and of the second, 10-point. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Peaches" or any pictorial representation of a peach is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

Time Within Which to File Objections

Within ten days after the receipt of the copy of the FEDERAL REGISTER containing this report, any interested person who wishes to object to any matter set out in the suggested findings of fact and suggested conclusion in the form of a regulation shall transmit such objection in writing to the Hearing Clerk. At the

same time, each such interested person shall transmit in writing to the Hearing Clerk a brief statement concerning each of the objections taken to the action of the presiding officer upon which he wishes to rely, referring where relevant to the pages of the transcript of evidence.

Respectfully submitted.

[SEAL] JOHN MCDILL FOX,
Presiding Officer.

SEPTEMBER 9, 1939.

[F. R. Doc. 39-3366; Filed, September 14, 1939; 9:18 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF HEARING ON MINIMUM WAGE RECOMMENDATION OF THE MILLINERY INDUSTRY COMMITTEE

Whereas, the Administrator of the Wage and Hour Division of the United States Department of Labor, acting pursuant to Section 5 (b) of the Fair Labor Standards Act of 1938, on March 7, 1939, appointed Industry Committee No. 5 for the Millinery Industry, composed of an equal number of representatives of the public, employers in the industry and employees in the industry, such representatives having been appointed with due regard to the geographical regions in which the industry is carried on, and

Whereas, Industry Committee No. 5, which was convened by the Administrator on April 20, 1939, has duly adopted a report containing recommendations and reasons therefor with respect to the matters referred to it and has filed such report with the Administrator on September 13, 1939, pursuant to Section 8 (d) of the Act and Section 511.19 of the Regulations issued under the Act, and

Whereas, the Administrator is required by Section 8 (d) of the Act, after due notice to interested persons and giving them an opportunity to be heard, to approve and carry into effect by order the recommendations of Industry Committee No. 5 if he finds that the recommendations are made in accordance with law and are supported by the evidence adduced at the hearing before him, and taking into consideration the same factors as the Industry Committee is required to consider by Sections 8 (b) and 8 (c) of the Act, will carry out the purposes of Section 8 of the Act; and, if he finds otherwise, to disapprove such recommendation.

Now, therefore, notice is hereby given that:

I. The full text of the recommendations of Industry Committee No. 5 is as follows:

Forty cents (40 cents) per hour shall be the minimum wage rate to be paid all employees in the millinery industry defined (by Administrative Order No. 23, dated May 6, 1939) as follows:

The manufacture of all headwear, except knitted headwear, for ladies, misses, girls and infants, from any material, but not including the manufacture of felt hat bodies of fur or wool.

II. The full text of the report and recommendations of Industry Committee No. 5 is available for inspection by any person between the hours of 9:00 a. m. and 4:30 p. m. at the following places:

Boston, Mass., 120 Boylston Street.
New York, N. Y., 412 Federal Building, 641 Washington St.
Philadelphia, Pennsylvania, 1630 Widener Building.
Pittsburgh, Pennsylvania, 216 Old Post Office Bldg.
Newark, N. J., 424 Federal Bldg.
Cleveland, Ohio, 728 Standard Bldg., 1370 Ontario Avenue.
Detroit, Michigan, 358 Federal Building.
Chicago, Illinois, 964 Merchandise Mart.
Indianapolis, Indiana, 450 Century Building.
Richmond, Virginia, 215 Richmond Trust Building.
Baltimore, Maryland, 6th Floor-Snow Building, Calvert & Lombard Streets.
Washington, D. C., 5th Floor-Department of Labor.
Atlanta, Georgia, 314 Witt Building, 249 Peachtree Street.
Birmingham, Alabama, 818 Comer Building.
Jacksonville, Florida, 225 Post Office Building.
Charlotte, North Carolina, 235 Post Office Building.
Nashville, Tennessee, 119 Seventh Avenue, North.
St. Louis, Missouri, 314 Old Federal Building, 815 Olive Street.
Kansas City, Missouri, 563 General Post Office Building.
Minneapolis, Minnesota, 406 New Post Office Building.
Dallas, Texas, 618-621 Wilson Building.
San Antonio, Texas, 716 Maverick Building.
New Orleans, Louisiana, 516 Carondelet Building.
San Francisco, California, 785 Market Street.
San Juan, P. R., Box 1431 Post Office.
Juneau, Alaska, B. D. Stewart, Commissioner of Mines.

Copies of the Committee's report and recommendations may be obtained by any person upon request addressed to the Administrator of the Wage and Hour Division, Department of Labor, Washington, D. C.

III. A public hearing on the question of whether the recommendations of Industry Committee No. 5 shall be approved or disapproved pursuant to Section 8 of the Act will be held on October 2, 1939, at Room 208, 939 D St., N. W., Washington, D. C., at 10.00 A. M. before Paul Sifton, Deputy Administrator of the Wage and Hour Division, hereby duly authorized to conduct said hearing, to review the evidence adduced therein and to approve or disapprove said recommendation in accordance with the Act. If Mr. Sifton approves said recommendation, a wage order carrying into effect the recommendation will be promulgated by the Administrator of the Wage and Hour Division. If Mr. Sifton disapproves said recommendation, the Administrator will refer the matter to Industry Committee No. 5 or to another industry committee for the millinery industry for further consideration and recommendations.

IV. Any interested person supporting or opposing the recommendations of Industry Committee No. 5 may appear at the aforesaid hearing to offer evidence, either on his own behalf, or on behalf of any other person, provided that not later than September 27, 1939, such person shall file with Mr. Sifton at Washington, D. C., a notice of his intent to appear which shall contain the following information:

1. The name and address of the person appearing.
2. If such person is appearing in a representative capacity, the name and address of the person or persons whom he is representing.
3. Whether such person proposes to appear for or against the recommendations of Industry Committee No. 5 and a brief summary of what he intends to show.
4. The approximate length of time requested for his presentation.

Such notice may be mailed to Paul Sifton, Deputy Administrator, Wage and Hour Division, Department of Labor, Washington, D. C., and shall be deemed filed upon receipt thereof.

V. The hearing will be conducted in accordance with the following rules, subject, however, to such modifications as are subsequently deemed appropriate by Mr. Sifton:

1. The hearing shall be stenographically reported and a transcript made which will be available to any person at prescribed rates upon request made to the official reporter.
2. Mr. Sifton may call for production of evidence upon any issue and may continue the hearing from time to time and to a place which shall be shown in the record of the proceedings.
3. In order to maintain orderly and expeditious procedure, Mr. Sifton will notify each person filing a notice of intention to appear of the day on and place at which he may offer evidence at the hearing. If such person does not appear at the time set in the notice, he will not be permitted to offer evidence at any other time except by special permission of Mr. Sifton.

4. Mr. Sifton may permit any person appearing in accordance with paragraph IV to cross-examine any witness offered by another person in so far as is practicable and to object to the admission or exclusion of evidence by Mr. Sifton. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or the grounds of objection relied on. The record shall not include argument thereon except as ordered by Mr. Sifton. The rules of evidence prevailing in courts of law or equity shall not be controlling.

5. The Industry Committee will be represented at the hearing by its counsel who will open and close the proceeding.

6. Written documents and exhibits shall be tendered in duplicate, and the person presenting the same shall be prepared to supply additional copies if such are ordered by Mr. Sifton.

7. All evidence must be presented under oath or affirmation. Written documents or exhibits, except as otherwise permitted by Mr. Sifton, must be offered in evidence by a person who is prepared to testify with respect to the authenticity and trustworthiness thereof and who shall, at the time of offering the document or exhibit, make a brief statement as to the contents and manner of preparation thereof. Where evidence is embraced in a document containing matter not intended to be put in evidence such document will not be received, but the person offering the same may present to Mr. Sifton the original document together with true copies of those portions of the document intended to be put in evidence. Upon presentation of such copies in proper form, the copies will be received in evidence.

8. Subpoenas requiring the attendance of witnesses or the presentation of documents at the hearing may be issued by the Administrator of the Wage and Hour Division of the United States Department of Labor in his discretion and any person may apply in writing for the issuance by the Administrator of a subpoena. Any application for a subpoena must describe as exactly as practicable the evidence proposed to be secured by the subpoena. Witnesses summoned before Mr. Sifton shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

9. Before the close of the hearing, Mr. Sifton may in his discretion offer to all persons who have appeared in the proceeding an opportunity to give oral argument in which case Mr. Sifton shall designate a time and place for such oral argument and shall place such restrictions with respect to time and order of appearance upon persons giving oral argument as he deems appropriate to further the orderly and expeditious conduct of the proceeding.

10. Any person who has appeared in the proceeding may file written briefs (not fewer than 12 copies) with Mr. Sifton within such time and subject to such limitations and restrictions as are prescribed at the hearing. Such briefs shall be available for inspection at the office of the Administrator in Washington, D. C., and copies may be obtained from the official reporter at the prescribed rates. Except upon cause shown, no reply briefs will be accepted.

11. Except as may be expressly permitted in particular instances, Mr. Sifton will not receive in evidence any documents, letters or other written statements submitted for consideration in connection with the proceeding after the close of testimony.

12. No order issued as a result of the hearing will take effect until after due notice is given of the issuance thereof by publication in the FEDERAL REGISTER.

Signed at Washington, D. C., this 13th day of September, 1939.

ELMER F. ANDREWS,
Administrator.

[F. R. Doc. 39-3381; Filed, September 14, 1939; 12:07 p. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE HOSIERY INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Hosiery Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 (Hosiery Wage Order) are issued to the employers listed below effective September 18, 1939 until September 18, 1940, subject to the following terms:

OCCUPATIONS AND WAGE RATES

The employment of learners in the Hosiery Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

[*Here follows, in the original document, a table identical with that appearing on Page 3827 of the "Federal Register" for Thursday, September 7, 1939.*]

NUMBER OF LEARNERS

Not in excess of 5% of the total number of factory workers employed in the plant may be employed under any of these certificates, unless otherwise indicated hereinbelow.

NAME AND ADDRESS OF FIRM

Bell Hosiery Corp., Suffolk, Virginia.

Belmont Hosiery Mills, Boiling Springs, North Carolina.

Bisher Hosiery Mill, Inc., Denton, North Carolina.

C. & M. Hosiery Mills, Inc., 100 South Hanover Street, Baltimore, Maryland (5 learners).

Chester Pure Silk Hosiery Company, Chester, Illinois.

Commonwealth Hosiery Mills, Randleman, North Carolina.

Crown Hosiery Mills, Inc., High Point, North Carolina.

Danita Hosiery Mills, Inc., 200 South Chapel Street, Newark, Delaware.

Danville Knitting Mills, Danville, Virginia.

Dobson Hosiery Mills, Pulaski, Virginia.

Edroy Hosiery Co., Wilmington, Delaware (5 learners).

Fidelity Hosiery Mill, Inc., Shamokin, Pennsylvania.

Franklin Hosiery Mills, Williamsport, Pennsylvania.

Carden State Hosiery Co., Faner Road, Midland Park, New Jersey (5 learners).

Gilman Hosiery, Franklin, New Hampshire (1 learner).

Grace Hosiery Mills, Burlington, North Carolina (5 learners).

Greenwood Hosiery Mill, Greenwood, Delaware (5 learners).

Johnson City Mills, Johnson City, Tennessee.

Largman Gray Co., Croydon, Pennsylvania.

Lawler Hosiery Mills, Carrollton, Georgia.

McGaugh Hosiery Mills, Dallas, Texas (5 learners).

Marshall Field & Co., Manufacturing Division, Fieldale, Virginia.

May Hosiery Mills, Inc., Burlington, North Carolina.

Mock Judson Vochringer Co. of N. Y., Inc., Long Island City, New York.

Mountcastle Knitting Co., Lexington, North Carolina (5 learners).

Phoenix Hosiery, Milwaukee, Wisconsin.

Pine Hosiery Mills, Star, North Carolina (5 learners).

Runnymede Mills, 103 First Street, Tarboro, North Carolina.

Siler City Hosiery Company, Smith Street and High School Avenue, Siler City, North Carolina.

Spalding Knitting Mills, Broad Street, Griffin, Georgia.

Tower Hosiery Mills, Burlington, North Carolina.

Wilmington Hosiery Mills, Inc., Front and Orange Streets, Wilmington, Delaware (5 learners).

Wytheville Knitting Mills, Wytheville, Virginia.

General Hosiery Co., East Pontiac Street, Fort Wayne, Indiana.

Green Lane Hosiery Co., Inc., Walnut Street, Green Lane, Pennsylvania (5 learners).

These Special Certificates are issued ex parte under Section 14 of the said Act, Section 522.5 (b) of Regulations Part 522, as amended. For fifteen days

following the publication of this notice the Administrator wil receive detailed written objections to any of these Special Certificates and requests for hearing from interested persons. Upon due consideration of such objections as provided for in said Section 522.5 (b), such Special Certificates, or any of them, may be canceled as of the date of their issuance and if so canceled, reimbursement of all persons employed under such certificates must be made in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

Signed at Washington, D. C., this 14th day of September 1939.

MERLE D. VINCENT,
Chief of Hearings and Exemptions Section.

[F. R. Doc. 39-3382; Filed, September 14, 1939; 12:40 p. m.]

FEDERAL POWER COMMISSION.

[Docket No. ID-897]

IN THE MATTER OF NEWELL A. CLARK

ORDER FIXING DATE OF HEARING

SEPTEMBER 12, 1939.

Commissioners: Clyde L. Seavey, Chairman; Claude L. Draper, Basil Manly, Leland Olds, John W. Scott.

Upon application filed August 1, 1939, by Newell A. Clark, pursuant to Section 305 (b) of the Federal Power Act for authorization to hold the following interlocking positions:

President-director: Athol Gas and Electric Company.

Vice president-director: Gardner Electric Light Company.

President-director: Winchendon Electric Light and Power Company.

The Commission orders that:

A public hearing be held on this application and that it be consolidated with the hearing in the matter of James G. Armstrong, et al., Docket No. ID-121, et al., at a place and date hereafter to be set by Examiner Norman B. Gray, upon at least two days' notice to the applicant.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39-3368; Filed, September 14, 1939; 9:24 a. m.]

IN THE MATTER OF SOUTHERN PUBLIC SERVICE COMPANY AND KENTUCKY AND WEST VIRGINIA POWER COMPANY, INCORPORATED

Commissioners: Clyde L. Seavey, Chairman; Claude L. Draper, Basil Manly, Leland Olds, John W. Scott.

[Docket No. IT-5556]

ORDER CONSOLIDATING PROCEEDINGS AND FIXING DATE OF HEARING

SEPTEMBER 13, 1939.

Upon application filed June 19, 1939, pursuant to Sec. 203 of the Federal Power Act, by Southern Public Service Company, a Kentucky corporation having its principal business office at 2245 Central Avenue, Ashland, Kentucky, for an order authorizing it to sell and dispose of all of its electric facilities to Kentucky and West Virginia Power Company, Incorporated, a Kentucky corporation having its principal business office at 15th Street and Carter Avenue, Ashland, Kentucky; and

Upon application filed July 29, 1939, pursuant to Sec. 203 of the Federal Power Act, by said Kentucky and West Virginia Power Company, Incorporated, for an order authorizing it to purchase all of the electric facilities of said Southern Public Service Company;

The Commission orders that:

(A) Proceedings on the aforesaid application, filed June 19, 1939, be consolidated with proceedings on the aforesaid application, filed July 29, 1939;

(B) A public hearing on these said applications be held at 10:00 o'clock A. M., September 29, 1939, in the Commission's Hearing Room, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W. Washington, D. C.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39-3370; Filed, September 14, 1939; 9:24 a. m.]

[Docket No. IT-5557]

IN THE MATTER OF SOUTHERN UTILITIES COMPANY AND APPALACHIAN ELECTRIC POWER COMPANY

ORDER CONSOLIDATING PROCEEDINGS AND FIXING DATE OF HEARING

SEPTEMBER 13, 1939.

Commissioners: Clyde L. Seavey, Chairman; Claude L. Draper, Basil Manly, Leland Olds, John W. Scott.

Upon application filed June 19, 1939, pursuant to Sec. 203 of the Federal Power Act, by Southern Utilities Company, a West Virginia corporation having its principal business office at 2245 Central Avenue, Ashland, Kentucky, for an order authorizing it to sell and dispose of all of its electric facilities to Appalachian Electric Power Company, a Virginia corporation having its principal business offices at Roanoke, Virginia, Charleston, West Virginia and Kingsport, Tennessee; and

Upon application filed July 29, 1939, pursuant to Sec. 203 of the Federal Power Act, by said Appalachian Electric Power Company, for an order authorizing it to purchase all of the electric facilities of said Southern Utilities Company;

The Commission orders that:

(A) Proceedings on the aforesaid application, filed June 19, 1939, be consolidated with proceedings on the aforesaid application, filed July 29, 1939;

(B) A public hearing on these said applications be held at 10:00 o'clock A. M., September 29, 1939, in the Commission's Hearing Room, Hurley-Wright Building, 1800 Pennsylvania Avenue, N.W., Washington, D. C.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39-3369; Filed, September 14, 1939; 9:24 a. m.]

RAILROAD RETIREMENT BOARD.

NOTICE OF HEARING IN THE MATTER OF THE EMPLOYER STATUS OF CERTAIN COAL MINING COMPANIES AND OF THE EMPLOYEE STATUS OF THEIR EMPLOYEES

NOTICE is hereby given to all persons interested that under the authority of Board Order No. 39-583, dated September 12, 1939, a hearing will be held beginning September 19, 1939, at 10:00 A. M., in the offices of the Board, 10th and U Streets, NW., Washington, D. C., at which time evidence concerning the employer status under the Railroad Retirement Acts of 1935 and 1937 and the Railroad Unemployment Insurance Act, of the following coal mining companies, namely, Clearfield Bituminous Coal Corporation, Cottonwood Coal Company, Keystone Mining Company, Northwestern Improvement Company, Railway Fuel Company, Republic Coal Company, Superior Coal Company, Union Pacific Coal Company, and Valier Coal Company, and the employee status of the individuals engaged in the operations of these companies, will be received by me.

LESTER P. SCHOENE,
Examiner.

SEPTEMBER 13, 1939.

[F. R. Doc. 39-3378; Filed, September 14, 1939; 9:59 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 11th day of September, A. D. 1939.

[File No. 34-33]

IN THE MATTER OF UTILITIES POWER & LIGHT CORPORATION

ORDER DESIGNATING NEW TRIAL EXAMINER

Robert P. Reeder, an officer of the Commission, having by order entered August 28, 1939[1] been designated to preside at the hearing herein; and

It appearing that said Robert P. Reeder will be unable to preside at said hearing;

It is ordered, That Edward C. Johnson, an officer of the Commission, be and hereby is designated to preside at said hearing hereafter in the place and stead of said Robert P. Reeder.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-3377; Filed, September 14, 1939; 10:57 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 11th day of September, A. D. 1939.

[File No. 44-30]

IN THE MATTER OF CHARLES TRUE ADAMS, TRUSTEE OF THE ESTATE OF UTILITIES POWER & LIGHT CORPORATION, DEBTOR AND CENTRAL STATES POWER & LIGHT CORPORATION

ORDER DESIGNATING NEW TRIAL EXAMINER

Robert P. Reeder, an officer of the Commission, having by order entered August 10, 1939[2] been designated to preside at the hearing herein; and

It appearing that said Robert P. Reeder will be unable to continue to preside at said hearing;

It is ordered, That Edward C. Johnson, an officer of the Commission, be and hereby is designated to preside at said hearing hereafter in the place and stead of said Robert P. Reeder.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-3378; Filed, September 14, 1939; 10:57 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 11th day of September, A. D. 1939.

[File No. 52-9]

IN THE MATTER OF UTILITIES POWER & LIGHT CORPORATION

ORDER DESIGNATING NEW TRIAL EXAMINER

Robert P. Reeder, an officer of the Commission, having by order entered August 28, 1939,[1] been designated to preside at the hearing herein; and

It appearing that said Robert P. Reeder will be unable to continue to preside at said hearing;

It is ordered, That Edward C. Johnson, an officer of the Commission, be and hereby is designated to preside at said hearing hereafter in the place and stead of said Robert P. Reeder.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-3379; Filed, September 14, 1939; 10:57 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 12th day of September 1939.

[File No. 7-424]

IN THE MATTER OF PACIFIC GAS AND ELECTRIC COMPANY-SAN JOAQUIN LIGHT AND POWER CORPORATION 6% UNIFYING AND REFUNDING MORTGAGE GOLD BONDS, SERIES "B", DUE MARCH 1, 1952 (ASSUMED BY PACIFIC GAS AND ELECTRIC COMPANY)

ORDER GRANTING APPLICATION

Continuance of unlisted trading privileges on the New York Curb Exchange in the 6% Unifying and Refunding Mortgage Gold Bonds, Series "B", due March 1, 1952 of the San Joaquin Light and Power Corporation, having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule X-12F-2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, Pursuant to Section 12 (f) and 23 (a) of the Securities Exchange Act of 1934, as amended, and Rule X-12F-2 (b) promulgated thereunder, that the determination sought by said application is made and the application is hereby granted.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-3380; Filed, September 14, 1939; 10:57 a. m.]

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[1] 4 F.R. 3773 DI.

[2] 4 F.R. 3596 DI.

[1] 4 F.R. 3773 DI.