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[ACP-1939—Alaska]

PART 702—1939 AGRICULTURAL CONSERVATION PROGRAM BULLETIN—ALASKA*

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SECTION 702.1 Authority, availability of funds, and applicability—(a) Authority. Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act (49 Stat. 1148), as amended, and in connection with the effectuation of the purposes of section 7 (a) of said Act in 1939, payments and grants of aid will be made for participation in the 1939 Agricultural Conservation Program in Alaska

(hereinafter referred to as the 1939 program) in accordance with the provisions hereof and such modifications thereof or other provisions as may hereafter be made.

(b) *Availability of funds.* The provisions of the 1939 program are necessarily subject to such legislation affecting said program as the Congress of the United States may hereafter enact; the making of the payments and grants of aid herein provided are contingent upon such appropriation as the Congress may hereafter provide for such purpose; and the amounts of such payments and grants of aid will necessarily be within the limits finally determined by such appropriation, the apportionment of such appropriation under the provisions of the Soil Conservation and Domestic Allotment Act, as amended, and the extent of national participation. As an adjustment for participation the rates of allowance, payment, and deduction with respect to any commodity or item of payment may be increased or decreased from the rates set forth herein by as much as 10 percent.

(c) *Applicability.* The provisions of the 1939 program contained herein, except where the context otherwise indicates, are applicable only to the Territory of Alaska.*

Sec. 702.2 Soil-building practices—

(a) *Allowance in connection with soil-building practices.* The soil-building allowance for a farm is the maximum amount of payment which will be made for carrying out on the farm the soil-building practices specified in subsection (c) of this section. This allowance for any farm will be the sum of the following:

(1) \$4.00 per acre, not in excess of 10 acres, and \$1.00 per acre, in excess of 10 acres, of cropland in the farm; and

(2) 40 cents per acre, not in excess of 1,000 acres, and 10 cents per acre, in excess of 1,000 acres, of pasture land included in the farm but not included in the cropland.

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*Sections 702.1 to 702.9 are issued under the authority contained in Sections 7 to 17, as amended, 49 Stat. 1148, 1915; 50 Stat. 329; 52 Stat. 31, 204; 16 U. S. C., Sup. IV, 590g-590q.



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(b) *Payment in connection with soil-building practices.* Payment will be made, within the limit of the soil-building allowance established for the farm in accordance with subsection (a) of this section, for carrying out in the calendar year 1939 any of the soil-building practices listed in subsection (c), at the rate of \$1.00 per unit of such practices, provided the practice is carried out by such methods and with such kinds of seeds, trees, and other materials as conform to good farming practice, and in accordance with the specifications listed herein and such additional specifications as may be issued by the regional director to assure that the soil-building practices will be performed in workmanlike manner and in accordance with good farming practices for the locality.

No payment will be made with respect to practices carried out with labor and materials (other than trees) furnished entirely by any Federal or Territorial agency. If a portion of the labor, seed, or other materials (except trees) used in carrying out any practice is furnished by a Federal or Territorial agency and such portion represents one-half or more of the total cost of carrying out such practice, no payment will be made with respect to such practice; if such portion represents less than one-half of the total cost of carrying out such practice, payment will be made with respect to one-half of such practice: *Provided*, That labor, seed, trees, and materials furnished to the Territory of Alaska, or a political subdivision or agency thereof, by an agency of the Territory shall not be deemed to have been furnished by "any * * * Territorial agency" within the meaning of this paragraph.

(c) *Schedule of soil-building practices.* The following practices in the amounts specified will be counted as the number of units specified for each:

(1) Planting land entirely to forest trees or windbreak trees. Each acre will be counted as five units.

(2) Planting forest trees on the sides or crests of gulches or on erosion scars. Each 50 trees will be counted as one unit.

(3) Constructing a sufficient amount of continuous terrace to give adequate protection against erosion, not including more than 300 feet of terrace per acre and not including Mangum type terraces on land of 20 percent or more slope. Each 100 feet of terrace will be counted as one unit.

(4) Constructing permanent ditching, on land of 6 percent or more average slope, with suitable outlets, and the slope of ditches not exceeding 4 percent, for the diversion of surface water to prevent soil washing, not including any temporary field ditching nor any ditching primarily for purposes of irrigation, sub-surface drainage, or under-drainage, or primarily for any purpose other than the prevention of soil washing. When constructed on land where the topography, stoniness, or size of fields requires that the ditching be constructed entirely by hand labor, each 250 linear feet of ditching will be counted as one unit; when constructed on other land, each 500 linear feet of ditching will be counted as one unit.

(5) Filling shallow gullies, not more than 4 feet deep, when accompanied by the construction of adequate check dams properly spaced along the gully to prevent washing out. Each 8 cubic yards of fill or construction will be counted as one unit.

(6) Constructing and maintaining check dams in gullies. Each 10 linear feet of dams constructed will be counted as one unit.

(7) Establishing a good stand of erosion-resistant perennial grasses in gullies. Each 4,000 square feet will be counted as one unit.

(8) Plowing (unless plowed in 1938 in preparation for planting in 1939), planting, and cultivating land of 2 percent or more slope along lines of less than 2 percent slope. In the case of land planted to truck crops, each acre will be counted as two units; in the case of land planted to other crops, each two acres will be counted as one unit.

(9) Listing land along contour lines for fallowing or for planting protective nondepleting cover crops. Each 2 acres will be counted as one unit.

(10) Strip-cropping land of 2 percent or more slope along contour lines with protective nondepleting cover crops or perennial varieties of crops which will prevent soil washing. Each acre will be counted as one unit.

(11) Interplanting protective nondepleting cover crops with other crops. Each acre will be counted as two units.

(12) Planting protective nondepleting cover crops in rotation with other crops. Each acre will be counted as three units.

(13) Plowing under crops for green manuring or planting perennial varieties of protective nondepleting cover crops on properly prepared land for permanent pasture or for cutting green for livestock feed. Each acre will be counted as four units.

(14) Seeding pasture land with good seed of adapted varieties of perennial grasses or legumes which do not require preparation of a seed bed. Each 5 pounds of seed sown will be counted as one unit.

(15) Applying ground limestone or its equivalent. Each ton will be counted as five units but credit will not be given for the application of more than 2 tons per acre.

(16) Applying 20 percent superphosphate or 50 percent muriate of potash, or both, or their equivalent, to, or in connection with the seeding of, protective nondepleting cover crops. Each 100 pounds will be counted as one unit but credit will not be given for the application of more than 200 pounds per acre.

(17) Applying crop residue on the surface of soil subject to serious wind erosion to promote the establishment of a permanent vegetative cover. Each 10 cubic yards applied will be counted as one unit.*

SEC. 702.3 *Division of payments.* The amount of payment earned in connection with soil-building practices carried out on the farm shall be made to the landlord, tenant, or sharecropper who carried out the soil-building practices thereon. If more than one such person contributes to the carrying-out of soil-building practices on the farm in 1939, such payment shall be divided in the proportion that the units contributed by each such person to such practices bear to the total units of such practices carried out on the farm in 1939. Each person contributing to the practice carried out on a particular acreage shall be deemed to have contributed equally to the units of such practice unless such persons establish to the satisfaction of the State office that their respective contributions thereto were not in equal proportion, in which event such units shall be divided in the proportion which the State office finds each such person contributed thereto.*

SEC. 702.4 *Increase in small payments.* The total payment computed under sections 702.2 and 702.3 for any person with respect to any farm shall be increased as follows:

(1) Any payment amounting to 71 cents or less shall be increased to \$1.00;

(2) Any payment amounting to more than 71 cents but less than \$1.00 shall be increased by 40 percent;

(3) Any payment amounting to \$1.00 or more shall be increased in accordance with the following schedule:

Amount of payment computed:	Increase in payment
\$1.00 to \$1.99	\$0.40
\$2.00 to \$2.99	.80
\$3.00 to \$3.99	1.20
\$4.00 to \$4.99	1.60
\$5.00 to \$5.99	2.00
\$6.00 to \$6.99	2.40
\$7.00 to \$7.99	2.80
\$8.00 to \$8.99	3.20
\$9.00 to \$9.99	3.60
\$10.00 to \$10.99	4.00
\$11.00 to \$11.99	4.40
\$12.00 to \$12.99	4.80
\$13.00 to \$13.99	5.20
\$14.00 to \$14.99	5.60
\$15.00 to \$15.99	6.00
\$16.00 to \$16.99	6.40
\$17.00 to \$17.99	6.80
\$18.00 to \$18.99	7.20
\$19.00 to \$19.99	7.60
\$20.00 to \$20.99	8.00
\$21.00 to \$21.99	8.20
\$22.00 to \$22.99	8.40
\$23.00 to \$23.99	8.60
\$24.00 to \$24.99	8.80
\$25.00 to \$25.99	9.00
\$26.00 to \$26.99	9.20
\$27.00 to \$27.99	9.40
\$28.00 to \$28.99	9.60
\$29.00 to \$29.99	9.80
\$30.00 to \$30.99	10.00
\$31.00 to \$31.99	10.20
\$32.00 to \$32.99	10.40
\$33.00 to \$33.99	10.60
\$34.00 to \$34.99	10.80
\$35.00 to \$35.99	11.00
\$36.00 to \$36.99	11.20
\$37.00 to \$37.99	11.40
\$38.00 to \$38.99	11.60
\$39.00 to \$39.99	11.80
\$40.00 to \$40.99	12.00
\$41.00 to \$41.99	12.10
\$42.00 to \$42.99	12.20
\$43.00 to \$43.99	12.30
\$44.00 to \$44.99	12.40
\$45.00 to \$45.99	12.50
\$46.00 to \$46.99	12.60
\$47.00 to \$47.99	12.70
\$48.00 to \$48.99	12.80
\$49.00 to \$49.99	12.90
\$50.00 to \$50.99	13.00
\$51.00 to \$51.99	13.10
\$52.00 to \$52.99	13.20
\$53.00 to \$53.99	13.30
\$54.00 to \$54.99	13.40
\$55.00 to \$55.99	13.50
\$56.00 to \$56.99	13.60
\$57.00 to \$57.99	13.70
\$58.00 to \$58.99	13.80
\$59.00 to \$59.99	13.90
\$60.00 to \$185.99	14.00
\$186.00 to \$199.99	(¹)
\$200.00 and over	(²)

¹ Increase to \$200.00.
² No increase.*

SEC. 702.5 *Payments limited to \$10,000.* The total of all payments made in connection with programs for 1939 under section 8 of the Soil Conservation and Domestic Allotment Act to any individual, partnership, or estate with respect to farms, ranching units, and turpentine places located within a single State, territory, or possession, shall not exceed the sum of \$10,000. The total of all payments made in connection with programs for 1939 under section 8 of the Soil Conservation and Domestic Allotment Act to any person other than an individual, partnership, or estate with respect to farms, ranching units, and turpentine places in the United States (including Alaska, Hawaii, and Puerto Rico) shall not exceed the sum of \$10,000.

All or any part of any payment which has been, or otherwise would be made to any person under the 1939 program may be withheld or required to be returned if he has adopted or participated in adopting any scheme or device, including the dissolution, reorganization, or formation of any corporation, partnership, estate, trust, or by any other means, which was designed to evade, or would have the effect of evading, the provisions of this section.*

SEC. 702.6 *General provisions relating to payments—(a) Payment restricted to effectuation of purposes of the program.* All or any part of any payment which otherwise would be made to any person under the 1939 program may be withheld (1) if he has adopted any practices which the Secretary determines tend to defeat any of the purposes of the 1939 or previous agricultural conservation programs, (2), if, by means of any corporation, partnership, estate, trust, or any other device, or in any manner whatsoever, he has offset, or has participated in offsetting, in whole or in part, the performance for which such payment is otherwise authorized, or (3) if, with respect to forest land or woodland owned or controlled by him, he has adopted any practice which the regional director finds is contrary to sound conservation practices.

(b) *Payment computed and made without regard to claims.* Any payment or share of payment shall be computed and made without regard to questions of title under State law, without deduction of claims for advances (except as provided in subsection (c) of this section 702.6) and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

(c) *Assignments.* Any person who may be entitled to any payment in connection with the 1939 program may assign his interest in such payment as security for cash loaned or advances made for the purpose of financing the making of a crop in 1939. No such assignment will be recognized unless the assignment is made in writing on Form ACP-69 in accordance with instructions (ACP-70-Insular) issued by the Agricultural Adjustment Administration.

Nothing contained in this section 702.6 shall be construed to give an assignee a right to any payment other than that to which the farmer is entitled nor shall the Secretary or any disbursing agent be subject to any suit or liability if payment is made to the farmer without regard to the existence of any such assignment.*

SEC. 702.7 *Application for payment—(a) Persons eligible to file applications.* An application for payment with respect to a farm may be made by any person for whom, under the provisions of section 702.3, a share in the payment with respect to the farm may be computed and (1) who at the time of harvest is entitled to share in the crops grown or livestock produced on the farm under a

lease or operating agreement, or (2) who is owner of such farm and participates thereon in 1939 in carrying out approved soil-building practices.

(b) *Time and manner of filing application and information required.* Payment will be made only upon application submitted through the State office on or before March 31, 1940. The Secretary reserves the right (1) to withhold payment from any person who fails to file any form or furnish any information required with respect to any farm which such person is operating or renting to another person for a share of the crops grown thereon, and (2) to refuse to accept any application for payment if any other form or information required is not submitted to the State office within the time fixed by the regional director. At least two weeks' notice to the public shall be given of the expiration of a time limit for filing prescribed forms. Such notice shall be given by mailing the same to the office of each local agricultural extension agent and making copies of the same available to the press.*

SEC. 702.8 *Appeals.* Any person may, within 15 days after notice thereof is forwarded to or available to him, request the State office in writing to reconsider its recommendation or determination with respect to any of the following matters affecting any farm in which he has an interest: (a) eligibility to file an application for payment; (b) the division of payment; or (c) any other matter affecting the right to or the amount of his payment with respect to the farm. The State office shall notify such person of its decision in writing within 15 days after receipt of such written request for reconsideration. If such person is dissatisfied with the decision of the State office, he may, within 15 days after such decision is forwarded to or made available to him, request the regional director to review the decision of the State office.*

SEC. 702.9 *Definitions.* For the purposes of the 1939 program, unless the context otherwise requires:

Secretary means the Secretary of Agriculture of the United States.

Administrator means the Administrator of the Agricultural Adjustment Administration.

Regional Director means the director of the division of the Agricultural Adjustment Administration in charge of the agricultural conservation programs in the Insular Region.

Insular Region means the area included in the Territory of Alaska, the Territory of Hawaii, and Puerto Rico.

State Office means the office of the Agricultural Adjustment Administration in Fairbanks, Territory of Alaska.

Person means an individual, partnership, association, corporation, trust, or estate, and, wherever applicable, a State, territory, or possession, or a political subdivision or agency thereof.

Landlord or owner means a person who owns land and rents such land to another person or operates such land.

Sharecropper means a person who works a farm in whole or in part under the general supervision of the operator and is entitled to receive for his labor a share of a crop produced thereon or the proceeds thereof.

Tenant means a person other than a sharecropper who rents land from another person (for cash, a fixed commodity payment or a share of the proceeds of the crops) and is entitled under a written or oral lease or agreement to receive all or a share of the proceeds of the crops produced thereon.

Farm means all tracts of cropland, pasture land, and other farm land in Alaska, operated by one or more persons in 1939 as a single farming unit, with cropping practices, work stock, farm machinery, management, and labor substantially separate from that for any other such unit.

Cropland means farm land which is tilled annually or in a regular rotation or is devoted to bearing or nonbearing orchards other than abandoned orchards.

Orchards means the acreage in planted fruit trees, nut trees, vineyards, or bush fruits.

Pasture land means farm land on which the predominant growth is forage suitable for grazing and on which the number and spacing of any trees or shrubs is such that the land could not fairly be considered as woodland.

Protective nondepleting cover crops means any of the following: (1) all grasses, (2) field peas, cow peas, and soy beans, provided the vines are not removed from the land, (3) alfalfa, vetch, clover, lespedeza and lupines, and (4) any other crops specified by the Administrator.*

Done at Washington, D. C., this 4th day of April, 1939. Witness my hand and the seal of the Department of Agriculture.

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

[F. R. Doc. 39-1142; Filed, April 4, 1939; 12:19 p. m.]

[ACP-1939-Hawaii]

PART 703—1939 AGRICULTURAL CONSERVATION PROGRAM BULLETIN—HAWAII*

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*Sections 703.1 to 703.11 are issued under the authority contained in Sections 7 to 17, as amended, 49 Stat. 1148, 1915; 50 Stat. 329; 52 Stat. 31, 204; 16 U. S. C., Sup. IV, 590g-590q.

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SECTION 703.1 *Authority, availability of funds, and applicability*—(a) *Authority*. Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act (49 Stat. 1148), as amended, and in connection with the effectuation of the purposes of section 7 (a) of said Act in 1939, payments and grants of aid will be made for participation in the 1939 Agricultural Conservation Program in Hawaii (hereinafter referred to as the 1939 program) in accordance with the provisions hereof and such modifications thereof or other provisions as may hereafter be made.

(b) *Availability of funds*. The provisions of the 1939 program are necessarily subject to such legislation affecting said program as the Congress of the United States may hereafter enact; the making of the payments and grants of aid herein provided are contingent upon such appropriation as the Congress may hereafter provide for such purpose; and the amounts of such payments and grants of aid will necessarily be within the limits finally determined by such appropriation, the apportionment of such appropriation under the provisions of the Soil Conservation and Domestic Allotment Act, as amended, and the extent of national participation. As an adjustment for participation the rates of allowance, payment, and deduction with respect to any commodity or item of payment may be increased or decreased from the rates set forth herein by as much as 10 percent.

(c) *Applicability*. The provisions of the 1939 program contained herein, except where the context otherwise indicates, are applicable only to the Territory of Hawaii.*

SEC. 703.2 *Soil-building practices*—
(a) *Allowance in connection with soil-*

building practices. The soil-building allowance for a farm is the maximum amount of payment which will be made for carrying out on the farm the soil-building practices specified in subsection (c) of this section. This allowance for any farm will be the sum of the following:

(1) \$4.00 per acre, not in excess of 10 acres, and \$1.00 per acre, in excess of 10 acres, of cropland in the farm in excess of the sum of the largest acreage devoted to sugarcane at any one time in 1939 and the rice acreage allotment established for the farm; and

(2) 40 cents per acre, not in excess of 1000 acres, and 10 cents per acre, in excess of 1000 acres, of range land (for which the Territory tax-assessment valuation is 50 cents or more per acre) included in the farm but not included in the cropland.

(b) *Payment in connection with soil-building practices*. Payment will be made, within the limit of the soil-building allowance established for the farm in accordance with subsection (a) of this section, for carrying out in the calendar year 1939 any of the soil-building practices listed in subsection (c), at the rate of \$1.00 per unit of such practices, provided the practice is carried out by such methods and with such kinds of seeds, trees, and other materials as conform to good farming practice, and in accordance with the specifications listed herein and such additional specifications as may be issued by the regional director to assure that the soil-building practices will be performed in workmanlike manner and in accordance with good farming practices for the locality.

No payment will be made with respect to practices carried out with labor and materials (other than trees) furnished entirely by any Federal or Territorial agency. If a portion of the labor, seed, or other materials (except trees) used in carrying out any practice is furnished by a Federal or Territorial agency and such portion represents one-half or more of the total cost of carrying out such practice, no payment will be made with respect to such practice; if such portion represents less than one-half of the total cost of carrying out such practice, payment will be made with respect to one-half of such practice; *Provided*, That labor, seed, trees, and materials furnished to the Territory of Hawaii, or a political subdivision or agency thereof, by an agency of the Territory shall not be deemed to have been furnished by "any * * * Territorial agency" within the meaning of this paragraph.

(c) *Schedule of soil-building practices*. The following practices in the amounts specified will be counted as the number of units specified for each:

(1) Planting land entirely to forest trees or windbreak trees. Each acre will be counted as five units.

(2) Planting forest trees on the sides or crests of gulches or on erosion scars. Each 50 trees will be counted as one unit.

(3) Planting shade trees in established coffee groves by planting seedling trees. Each 10 trees will be counted as one unit.

(4) Constructing a sufficient amount of continuous terrace to give adequate protection against erosion, not including more than 300 feet of terrace per acre and not including Mangum type terraces on land of 20 percent or more slope. Each 100 feet of terrace will be counted as one unit.

(5) Constructing, and maintaining during 1939, individual terraces or catch pits around coffee trees. Each 50 terraces or catch pits constructed will be counted as one unit.

(6) Constructing permanent ditching, on land of 6 percent or more average slope, with suitable outlets, and the slope of ditches not exceeding 4 percent, for the diversion of surface water to prevent soil washing, not including any temporary field ditching nor any ditching primarily for purposes of irrigation, sub-surface drainage, or under-drainage, or primarily for any purpose other than the prevention of soil washing. When constructed on land where the topography, stoniness, or size of fields requires that the ditching be constructed entirely by hand labor, each 8 cubic yards of excavation will be counted as one unit; when constructed on other land, each 500 linear feet of ditching will be counted as one unit.

(7) Constructing temporary ditching on fields of 6 percent or more average slope, with suitable outlets and the slope of ditches not exceeding 4 percent, for the diversion of surface water to prevent soil washing, not including any ditching primarily for the purpose of irrigation, sub-surface drainage, or under-drainage, or primarily for any purpose other than the prevention of soil washing. When constructed on land where the topography, stoniness, or size of fields requires that the ditching be constructed entirely by hand labor, each 25 cubic yards of excavation will be counted as one unit; when constructed on other land, each 1,500 linear feet of ditching will be counted as one unit.

(8) Lining ditches carrying water on a grade of 2 percent or more, including ditches constructed in accordance with the specifications of practice (6). Credit of one unit will be given for each 12 square feet of ditch surface lined with concrete or stone set in mortar, for each 24 square feet of ditch surface lined with plaster, and for each 24 square feet of the inside surface of concrete, iron, or composition pipe used.

(9) Filling shallow gullies, not more than 4 feet deep, when accompanied by the construction of adequate check dams properly spaced along the gully to pre-

vent washing out. Each 8 cubic yards of fill or construction will be counted as one unit.

(10) Constructing and maintaining check dams in gullies. Each 10 linear feet of dams constructed will be counted as one unit.

(11) Establishing a good stand of erosion-resistant perennial grasses in gullies. Each 4,000 square feet will be counted as one unit.

(12) Plowing (unless plowed in 1938 in preparation for planting in 1939), planting, and cultivating land of 2 percent or more slope along contour lines of less than 2 percent slope. In the case of land planted to truck crops, each acre will be counted as two units; in the case of land planted to other crops, each two acres will be counted as one unit.

(13) Ridging land, with furrows not more than 40 feet apart and not less than 8 inches vertically between the tops and bottoms thereof, along contour lines or, in areas subject to wind erosion, at approximately right angles to the direction of prevailing winds: *Provided*, That if the land is of 6 percent or more average slope, it is protected from erosion by adequate ditching. Each 4 acres will be counted as one unit for each such ridging operation performed thereon.

(14) Furrowing range land along contour lines with furrows not less than 8 inches in width and 4 inches in depth, dammed at intervals of not more than 100 feet, and with intervals between furrows not more than 25 feet. Each 2 acres will be counted as one unit.

(15) Strip-cropping land of 2 percent or more slope along contour lines with protective nondepleting cover crops or perennial varieties of crops which will prevent soil washing. Each acre will be counted as one unit.

(16) Interplanting protective nondepleting cover crops with other crops. Each acre will be counted as two units.

(17) Planting protective nondepleting cover crops in rotation with other crops. Each acre will be counted as three units.

(18) Using protective nondepleting cover crops for green manuring or planting perennial varieties of such crops on properly prepared land for permanent pasture or for cutting green for livestock feed. Each acre will be counted as four units.

(19) Seeding depleted range land with good seed of adapted varieties of perennial grasses or legumes which do not require preparation of a seed bed. Each 5 pounds of seed sown will be counted as one unit.

(20) Planting slips or stools of adapted varieties of perennial grasses on depleted range land. Each acre will be counted as two units.

(21) Applying ground limestone or its equivalent. Each ton will be counted as five units but credit will not be given

for the application of more than 2 tons per acre.

(22) Applying 20 percent superphosphate or 50 percent muriate of potash, or both, or their equivalent, to, or in connection with the seeding of, protective non-depleting cover crops. Each 100 pounds will be counted as one unit but credit will not be given for the application of more than 200 pounds per acre.

(23) Applying coffee pulp around coffee trees to which coffee pulp was not applied in 1938. Each ton of pulp (unfermented weight) will be counted as one unit but credit will not be given for the application of more than 5 tons per acre.

(24) Incorporating in the soil the entire residue of a pineapple crop. Each acre will be counted as two units.

(25) Applying crop residue on the surface of soil subject to serious wind erosion to promote the establishment of a permanent vegetative cover. Each 10 cubic yards applied will be counted as one unit.

(26) Eradicating serious infestations of aalii (*Dodonaea viscosa*), barbwire grass (*Cymbopogon refractus*), firebush (*Myrica americana*), guava (*Psidium guajava*), Hawaiian holly (*Schinus terebinthifolius*), joe (*Stachytarpheta dichotoma*, *Verbena bonariensis*), lantana (*Lantana camara*), melastoma (*Melastoma decemfidum*), Opiume (*Pithecellobium dulce*), pamakani (*Eupatorium adenophorum*), pukiaue (*Styphelia tamelameiae*), or sour grass (*Tricachne insularis*) on range land. Each acre will be counted as two units.

(27) Removing all livestock from range land which was pastured in 1938 (including range land which was withheld from use in 1938 for the purpose of eradicating range-destroying plants), for a continuous period of more than four months between January 1, 1939, and December 31, 1939: *Provided*, (1) Such practice shall not be applicable to more than 25 percent of the range land included in the farm; (2) On lands on which cattle or horses are grazed, the area to be kept free of grazing is fenced and the fence is maintained sufficiently to prevent the entry of livestock; (3) On lands used exclusively for grazing sheep, either the area to be kept free of grazing is fenced and the fence maintained sufficiently to prevent the entry of livestock or the entry of livestock is prevented by herding; (4) The remaining range land in the farm is not pastured to such extent as will decrease the stand of grass or injure the forage, tree growth, or watershed; (5) Such practice shall not be applicable to land which normally is not used for grazing during the period in which livestock are excluded; and (6) The operator has submitted to the State office in writing the designation of the non-grazing area of the farm prior to the carrying-out of such practice. Each acre will be counted as one-tenth of one unit for each

month, in excess of four, during which livestock are removed.

Developing stock water on range land. Payment will be made with respect to the following water development practices (numbered 28, 29, 30, and 31): *Provided*, (1) Carrying out the practice results in supplying ample water, at points remote from the ranch headquarters, for the number of livestock using the adjoining range during the grazing season; (2) The purpose of the development is solely to bring about such a distribution of stock on the range as will conserve and restore the vegetative cover thereof; (3) No part of the water impounded or supplied is used for irrigating purposes; (4) The operator has submitted to the State office in writing a designation of the point at which the practice is to be carried out and the nature thereof; and (5) The carrying-out of the practice has been approved by the State office prior to the carrying-out of such practice.

(28) Drilling or digging wells, provided a windmill or power pump is installed and the water is conveyed to a tank or storage reservoir. The drilling of an artesian well will qualify for payment provided adequate stock water is made available during the grazing season and the water is conveyed to a tank or trough. Each linear foot of the well will be counted as one unit.

(29) Developing springs or seeps, provided the source is protected from trampling, and the water is conveyed to a tank or storage reservoir. Credit of one unit will be given for each 3 cubic feet of excavation in soil or gravel and for each 2 cubic feet of excavation in rock.

(30) Constructing permanent water-sheds of galvanized iron or other approved material for accumulating rain-water for range livestock, provided other methods of furnishing or accumulating water are not available and the water is conveyed to a tank or storage reservoir. Each 40 square feet of shed constructed will be counted as one unit.

(31) Constructing water storage tanks of redwood, steel, or other approved material on adequate foundations. Each 200 gallons of capacity of the tank will be counted as one unit.

(32) Completing field experiments. No payment.

For plantation farms on which field experiments established under the 1936, 1937, or 1938 Agricultural Conservation Programs are not completed during the calendar year 1939. The proper control and continuation of such experiments during the calendar year 1939.

For plantation farms on which field experiments established under the 1936, 1937, or 1938 Agricultural Conservation Programs are completed in 1939. The proper control of such experiments to the time of harvest and a report, prior to March 1, 1940, to the State office including:

A brief history of each experiment with a summary showing the kind and

variety of crop used, the dates of planting and harvesting, the location, type of soil, size of plots, number of replications, quantities and formulas of fertilizer used, whether irrigated or not, and data concerning the presence of disease or pests.

A tabulation of data showing the weight and quality of the produce of each plot and, in the case of sugarcane, an analysis of the cane juice from each plot showing brix, purity, sucrose, and yield of sugar.

A statement of any significant relationships which may appear between the applications of various quantities or kinds of fertilizer and the chemical and textural composition of the soils on which the experiments were carried out.

A statistical analysis of the yield data for each experiment indicating whether the yield differences observed have any statistical significance, and a statement of general conclusions which may be drawn from the data obtained, in the light of this analysis.*

Sec. 703.3 Rice—(a) National goal. The national goal for rice in connection with the 1939 program shall be 850,000 to 880,000 acres.

(b) *State allotment.* The State allotment of rice for Hawaii is 924 acres.

(c) *Farm allotment.* The State office shall establish rice acreage allotments in accordance with the provisions of this subsection and instructions issued by the Agricultural Adjustment Administration.

(1) A rice acreage allotment shall be determined for each producer who is participating in the production of rice in 1939 and who participated in the production of rice in one or more of the five years, 1934 to 1938, inclusive, on the basis of the past production of rice adjusted to the acreage adapted to the production of rice, taking into consideration crop rotation practices, soil fertility, and other physical factors affecting the production of rice, including the labor and equipment available for the production of rice on the farm.

(2) An acreage not to exceed 3 percent of the State rice acreage allotment shall be apportioned among producers who are participating in the production of rice for the first time in 1939 since 1933 on the basis of the applicable standards of apportionment set forth in this subsection (c): *Except* that the rice acreage allotment to any farm operated by any person(s) who is participating in the production of rice for the first time in 1939 since 1933 shall not exceed 75 percent of the rice acreage allotment that would have been made to the farm had such person(s) participated in the production of rice in one or more of the five years 1934 to 1938, inclusive.

(3) The sum of the farm allotments shall not exceed the State allotment.

(d) *Normal yield.* The State office shall determine for each farm for which a rice acreage allotment is established

or a deduction is computed a normal yield for such crop in accordance with the provisions of this subsection and instructions issued by the Agricultural Adjustment Administration.

(1) Where reliable records of the actual average yield of rice per acre for the five years 1934 to 1938, inclusive, are presented by the farmer or are available to the State office, the normal yield of rice for the farm shall be the average of such yields.

(2) If for any year of such five-year period records of the actual average yield are not available or there was no actual yield because rice was not planted on the farm in such year, the State office shall ascertain from all the available facts, including the yield customarily made on the farm, weather conditions, type of soil, drainage, production practices, and general fertility of the land, the yield which was or could reasonably have been expected on the farm for such year, and the yield so determined shall be used as the actual yield for such year under subdivision (1) of this subsection (d).

(3) If the average of the normal yields for all farms participating in the 1939 program in the State (weighted by the rice acreage allotments therein) exceeds the average yield per acre for the State during the five years 1934 to 1938, inclusive, established by the Secretary, the normal yields for such farms, determined under subdivisions (1) and (2) of this subsection (d) shall be reduced pro rata so that the average of such normal yields shall not exceed such State average yield.

(e) *Payment in connection with rice acreage allotment.* Payment will be made with respect to any farm at the rate of 10 cents per 100 pounds (rough rice) of the normal yield per acre of rice for the farm for each acre in the rice acreage allotment; or, if the acreage planted to rice is less than 80 percent of the rice acreage allotment, payment will be computed on the normal yield of an acreage equal to 125 percent of the acreage planted to rice unless the State office finds that failure to plant 80 percent of such rice acreage allotment was due to flood or drought.

(f) *Deduction for excess rice acreage.* The payment computed for any farm under sections 703.2 and 703.3 shall be subject to a deduction of 80 cents per 100 pounds of the normal yield for the farm for each acre planted to rice in excess of the rice acreage allotment established for the farm.*

Sec. 703.4 Division of payments and deductions—(a) Payments in connection with soil-building practices. The amount of payment earned in connection with soil-building practices carried out on the farm shall be made to the landlord, tenant, or sharecropper who carried out the soil-building practices thereon. If more than one such person contributes to the carrying-out

of soil-building practices on the farm in 1939, such payment shall be divided in the proportion that the units contributed by each such person to such practices bear to the total units of such practices carried out on the farm in 1939. Each person contributing to the practice carried out on a particular acreage shall be deemed to have contributed equally to the units of such practice unless such persons establish to the satisfaction of the State office that their respective contributions thereto were not in equal proportion, in which event such units shall be divided in the proportion which the State office finds each such person contributed thereto.

(b) *Payments and deductions in connection with rice acreage allotments.*

The net payment or net deduction computed for any farm with respect to rice shall be divided among the landlords, tenants, and sharecroppers in the same proportion (as indicated by their acreage shares expressed in terms of either acreages or percentages) that such persons are entitled at the time of harvest to share in the proceeds (other than a fixed commodity payment) of the rice crop grown on the farm in 1939: *Provided*, That if because of crop failure the harvested acreage of rice is less than the planted acreage of such crop and the State office finds, in accordance with instructions issued by the Agricultural Adjustment Administration, that use of the harvested acreage as a basis for the division of the net payment or net deduction would result in a materially different division from that which would result from the use of the planted acreage, such net payment or net deduction shall be divided among the landlords, tenants, and sharecroppers in the proportion that the State office determines that such persons would have shared in the proceeds of the rice crop if the entire acreage planted to such crop in 1939 had been harvested: *Provided further*, That if rice is not grown on the farm in 1939, the net payment or net deduction shall be divided among the landlords, tenants, and sharecroppers in the proportion that the State office determines that such persons would have shared in the proceeds of the rice crop if the entire acreage in the rice acreage allotment had been planted and harvested in 1939.

(c) *Proration of net deductions.* If the sum of the net payments computed for all persons on a farm exceeds the sum of the net deductions computed for all persons on such farm for whom a net deduction computed for all persons on such farm shall be prorated among the persons on such farm for whom a net payment is computed, on the basis of such computed net payments. If the sum of the net deductions computed for all persons on a farm equals or exceeds the sum of the net payments computed for all persons on such farm, no payment will be made with respect to such farm and the amount of such net deductions in excess of the net payments shall be

prorated among the persons on such farm for whom a net deduction is computed, on the basis of such computed net deductions.*

SEC. 703.5 *Increase in small payments.* The total payment computed under sections 703.2 to 703.4, inclusive, for any person with respect to any farm shall be increased as follows:

- (1) Any payment amounting to 71 cents or less shall be increased to \$1.00;
- (2) Any payment amounting to more than 71 cents but less than \$1.00 shall be increased by 40 percent;
- (3) Any payment amounting to \$1.00 or more shall be increased in accordance with the following schedule:

Amount of payment computed:	Increase in payment
\$1.00 to \$1.99	\$0.40
\$2.00 to \$2.99	.80
\$3.00 to \$3.99	1.20
\$4.00 to \$4.99	1.60
\$5.00 to \$5.99	2.00
\$6.00 to \$6.99	2.40
\$7.00 to \$7.99	2.80
\$8.00 to \$8.99	3.20
\$9.00 to \$9.99	3.60
\$10.00 to \$10.99	4.00
\$11.00 to \$11.99	4.40
\$12.00 to \$12.99	4.80
\$13.00 to \$13.99	5.20
\$14.00 to \$14.99	5.60
\$15.00 to \$15.99	6.00
\$16.00 to \$16.99	6.40
\$17.00 to \$17.99	6.80
\$18.00 to \$18.99	7.20
\$19.00 to \$19.99	7.60
\$20.00 to \$20.99	8.00
\$21.00 to \$21.99	8.20
\$22.00 to \$22.99	8.40
\$23.00 to \$23.99	8.60
\$24.00 to \$24.99	8.80
\$25.00 to \$25.99	9.00
\$26.00 to \$26.99	9.20
\$27.00 to \$27.99	9.40
\$28.00 to \$28.99	9.60
\$29.00 to \$29.99	9.80
\$30.00 to \$30.99	10.00
\$31.00 to \$31.99	10.20
\$32.00 to \$32.99	10.40
\$33.00 to \$33.99	10.60
\$34.00 to \$34.99	10.80
\$35.00 to \$35.99	11.00
\$36.00 to \$36.99	11.20
\$37.00 to \$37.99	11.40
\$38.00 to \$38.99	11.60
\$39.00 to \$39.99	11.80
\$40.00 to \$40.99	12.00
\$41.00 to \$41.99	12.10
\$42.00 to \$42.99	12.20
\$43.00 to \$43.99	12.30
\$44.00 to \$44.99	12.40
\$45.00 to \$45.99	12.50
\$46.00 to \$46.99	12.60
\$47.00 to \$47.99	12.70
\$48.00 to \$48.99	12.80
\$49.00 to \$49.99	12.90
\$50.00 to \$50.99	13.00
\$51.00 to \$51.99	13.10
\$52.00 to \$52.99	13.20
\$53.00 to \$53.99	13.30
\$54.00 to \$54.99	13.40
\$55.00 to \$55.99	13.50
\$56.00 to \$56.99	13.60
\$57.00 to \$57.99	13.70
\$58.00 to \$58.99	13.80
\$59.00 to \$59.99	13.90
\$60.00 to \$185.99	14.00
\$186.00 to \$199.99	(1)
\$200.00 and over	(2)

¹ Increase to \$200.00.

² No increase.*

SEC. 703.6 *Payments limited to \$10,000.* The total of all payments made in connection with programs for 1939 under section 8 of the Soil Conservation and Domestic Allotment Act to any in-

dividual, partnership, or estate with respect to farms, ranching units, and turpentine places located within a single State, territory, or possession, shall not exceed the sum of \$10,000. The total of all payments made in connection with programs for 1939 under section 8 of the Soil Conservation and Domestic Allotment Act to any person other than an individual, partnership, or estate with respect to farms, ranching units, and turpentine places in the United States (including Alaska, Hawaii, and Puerto Rico) shall not exceed the sum of \$10,000.

All or any part of any payment which has been or otherwise would be made to any person under the 1939 program may be withheld or required to be returned if he has adopted or participated in adopting any scheme or device, including the dissolution, reorganization, or formation of any corporation, partnership, estate, trust, or by any other means, which was designed to evade, or would have the effect of evading, the provisions of this section.*

SEC. 703.7 *Deductions incurred on other farms.* If the deduction computed under section 703.3 with respect to any farm exceeds the payments computed under sections 703.2 and 703.3 with respect to such farm, a landlord's or tenant's share of the amount by which such deduction exceeds such payment shall be deducted from such person's share of the payments which would otherwise be made to him with respect to any other farms in Hawaii.*

SEC. 703.8 *General provisions relating to payments—*(a) *Payment restricted to effectuation of purposes of the program.* All or any part of any payment which otherwise would be made to any person under the 1939 program may be withheld (1) if he has adopted any practices which the Secretary determines tend to defeat any of the purposes of the 1939 or previous agricultural conservation programs, (2) if, by means of any corporation, partnership, estate, trust, or any other device, or in any manner whatsoever, he has offset, or has participated in offsetting, in whole or in part, the performance for which such payment is otherwise authorized, or (3) if, with respect to forest land or woodland owned or controlled by him, he has adopted any practice which the regional director finds is contrary to sound conservation practices.

(b) *Payment computed and made without regard to claims.* Any payment or share of payment shall be computed and made without regard to questions of title under State law, without deduction of claims for advances (except as provided in subsection (d) of this section 703.8) and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

(c) *Changes in leasing and cropping agreements, reduction in number of tenants, and other devices.* If on any farm

in 1939 any change of the arrangements which existed on the farm in 1938 is made between the landlord and the tenants or sharecroppers and such change would cause a greater proportion of the payments to be made to the landlord under the 1939 program than would have been made to the landlord for performance on the farm under the 1938 program, payments to the landlord under the 1939 program with respect to the farm shall not be greater than the amount that would have been paid to the landlord if the arrangements which existed on the farm in 1938 had been continued in 1939, if the State office certifies that the change is not justified and disapproves such change.

If on any farm the number of sharecroppers or share tenants in 1939 is less than the average number on the farm during the years 1936 to 1938, inclusive, and such reduction would increase the payments that would otherwise be made to the landlord, such payments to the landlord shall not be greater than the amount that would otherwise be made if the State office certifies that the reduction is not justified and disapproves such reduction.

If the State office finds that any person who files an application for payment pursuant to the provisions of the 1939 program has employed any other scheme or device, the effect of which would be or has been to deprive any other person of any payment under any agricultural conservation program to which such other person would normally be entitled, the Secretary may withhold in whole or in part from the person participating in or employing such a scheme or device, or require such person to refund in whole or in part, the amount of any payment which has been or would otherwise be made to such person in connection with the 1939 program.

(d) *Assignments.* Any person who may be entitled to any payment in connection with the 1939 program may assign his interest in such payment as security for cash loaned or advances made for the purpose of financing the making of a crop in 1939. No such assignment will be recognized unless the assignment is made in writing on Form ACP-69 in accordance with instructions (ACP-70-Insular) issued by the Agricultural Adjustment Administration.

Nothing contained in this section 703.8 shall be construed to give an assignee a right to any payment other than that to which the farmer is entitled nor shall the Secretary or any disbursing agent be subject to any suit or liability if payment is made to the farmer without regard to the existence of any such assignment.*

SEC. 703.9 *Application for payment—*
(a) *Persons eligible to file applications.* An application for payment with respect to a farm may be made by any person for whom, under the provisions of section 703.4, a share in the payment with respect to the farm may be com-

puted and (1) who at the time of harvest is entitled to share in the crops grown or livestock produced on the farm under a lease or operating agreement, or (2) who is owner of such farm and participates thereon in 1939 in carrying out approved soil-building practices.

(b) *Time and manner of filing application and information required.* Payment will be made only upon application submitted through the State office on or before March 31, 1940. The Secretary reserves the right (1) to withhold payment from any person who fails to file any form or furnish any information required with respect to any farm which such person is operating or renting to another person for a share of the crops grown thereon, and (2) to refuse to accept any application for payment if any other form or information required is not submitted to the State office within the time fixed by the regional director. At least two weeks' notice to the public shall be given of the expiration of a time limit for filing prescribed forms. Such notice shall be given by mailing the same to the office of each county agricultural extension agent and making copies of the same available to the press.

(c) *Applications for other farms.* If a person has the right to receive all or a portion of the crops, or proceeds therefrom, produced on more than one farm in Hawaii and makes application for payment with respect to one of such farms, such person must make application for payment with respect to all such farms which he operates or rents to other persons and on which rice is planted in 1939.

(d) *Applications for plantation farms.* No payment will be made under this program with respect to an application pertaining to any plantation farm except on the condition that practice 32 of section 703.2 (c) be performed in 1939 in the manner applicable to such farm.*

SEC. 703.10 *Appeals.* Any person may, within 15 days after notice thereof is forwarded to or available to him request the State office in writing to reconsider its recommendation or determination with respect to any of the following matters affecting any farm in which he has an interest: (a) eligibility to file an application for payment; (b) rice acreage allotment or normal yields; (c) the division of payment; or (d) any other matter affecting the right to or the amount of his payment with respect to the farm. The State office shall notify such person of its decision in writing within 15 days after receipt of such written request for reconsideration. If such person is dissatisfied with the decision of the State office, he may, within 15 days after such decision is forwarded to or made available to him, request the regional director to review the decision of the State office.*

SEC. 703.1 *Definitions.* For the purposes of the 1939 program, unless the context otherwise requires:

Secretary means the Secretary of Agriculture of the United States.

Administrator means the Administrator of the Agricultural Adjustment Administration.

Regional director means the director of the division of the Agricultural Adjustment Administration in charge of the agricultural conservation programs in the Insular Region.

Insular region means the area included in the Territory of Alaska, the Territory of Hawaii, and Puerto Rico.

State office means the office of the Agricultural Adjustment Administration in Honolulu, Territory of Hawaii.

Person means an individual, partnership, association, corporation, trust, or estate, and, wherever applicable, a State, Territory, or possession, or a political subdivision or agency thereof.

Landlord or owner means a person who owns land and rents such land to another person or operates such land.

Sharecropper means a person who works a farm in whole or in part under the general supervision of the operator and is entitled to receive for his labor a share of a crop produced thereon or the proceeds thereof.

Tenant means a person other than a sharecropper who rents land from another person (for cash, a fixed commodity payment or a share of the proceeds of the crops) and is entitled under a written or oral lease or agreement to receive all or a share of the proceeds of the crops produced thereon.

Farm means all tracts of cropland, range land, and other farm land in Hawaii, operated by one or more persons in 1939 as a single farming unit, with cropping practices, work stock, farm machinery, management, and labor substantially separate from that for any other such unit, and including any other land which serves as a watershed for the supply of water for such farm and on which any applicable soil-building practice is performed.

Plantation farm means any farm comprising more than 500 acres of cropland, not devoted to permanent pasture or to orchards or trees of any kind.

Cropland means farm land which is tilled annually or in a regular rotation or is devoted to bearing or nonbearing orchards other than abandoned orchards.

Orchards means the acreage in planted fruit trees, nut trees, coffee trees, banana plants, or vineyards.

Range land means any land which produces forage grazed by range livestock without cultivation or general irrigation.

Protective nondepleting cover crops means any of the following: (1) all grasses, (2) field peas, cow peas, pigeon peas, gandule, soy beans, velvet beans, sword beans, field beans and sweetpotatoes not grown for commercial purposes, and crotalaria, provided the vines are not removed from the land, (3) alfalfa, vetch, clover, lespedeza, lupines, and Koa Haole (*Lucaena Glauca*), and

(4) any other crops specified by the Administrator.*

Done at Washington, D. C., this 4th day of April 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1143; Filed, April 4, 1939; 12:21 p. m.]

TITLE 19—CUSTOMS DUTIES

BUREAU OF CUSTOMS

[T. D. 49828]

INSTRUCTIONS REGARDING CUSTOMS TREATMENT OF PRODUCTS EXPORTED FROM THE MEMEL TERRITORY OF LITHUANIA NOW UNDER GERMAN OCCUPATION

MARCH 31, 1939.

To Collectors of Customs and Others Concerned:

There is published below a copy of a telegram despatched to collectors of customs on March 24, 1939, which is self-explanatory.

[SEAL]

JAMES H. MOYLE,
Commissioner of Customs.

James H. Moyle, Commissioner of Customs, today sent the following telegram to all United States Collectors of Customs:

"Treasury Department today advised by State Department that it has been informed by the Lithuanian Minister that his Government has formally ceded the Memel Territory of Lithuania to Germany and State Department accepts such transfer as a fact. Products of the area mentioned exported from any country on or after March 25, 1939, shall be regarded as products of Germany for the purposes of the marking provisions of the Tariff Act of 1930 and for determining applicable rates of duty. Give importers all possible notice. Apply provisions article 822 (e) Customs Regulations 1937¹ in determining dates exportation.

JAMES H. MOYLE,
Commissioner of Customs."

[F. R. Doc. 39-1147; Filed, April 4, 1939; 4:03 p. m.]

[T. D. 49829]

COUNTERVALUING DUTIES

NETHERLANDS MILK PRODUCTS

To Collectors of Customs and Others Concerned:

In view of the receipt by the Treasury Department of official advice that no bounties or grants will be paid or bestowed, or, if allowed, will be withdrawn upon exportation, in respect of milk products produced in the Netherlands and exported directly from the Netherlands to the United States, T. D. 49729 dated

October 18, 1938,¹ announcing the payment or bestowal of bounties or grants on Netherlands milk products is hereby modified so as to exempt from its provisions milk products produced in the Netherlands when imported directly from that country.

New schedules of estimated countervailing duties to be deposited at the time of entry of Netherlands milk products imported from countries other than the Netherlands will be published from time to time.

T. D. 49749 dated November 25, 1938,² suspending T. D. 49729, is hereby revoked effective on the date of this decision.

[SEAL]

JAMES H. MOYLE,
Commissioner of Customs.

Approved, April 3, 1939.

JOHN W. HANES,

Acting Secretary of the Treasury.

[F. R. Doc. 39-1146; Filed, April 4, 1939; 4:03 p. m.]

[T. D. 49832]

CUSTOMS REGULATIONS AMENDED

CUSTOMS FORM 5101 (ENTRY RECORD—RECEIPT—MISSING DOCUMENTS) REVISED

To Collectors of Customs and Others Concerned:

Paragraph (b) of article 1212 of the Customs Regulations of 1937³ is hereby amended by deleting the period at the end thereof and adding the following:

on customs Form 5101.

Customs Form 5101 has been revised. The form will be 5" x 3" and will be entitled, "Entry Record—Receipt—Missing Documents." Upon the presentation of an entry and one or more accompanying customs Forms 5101, the entry clerk or person acting as such will indicate the purpose for which each form is required to be filed by a check mark against the pertinent term in the title on the form. The revision eliminates the printing of the form in four detachable parts with each part bearing a separate title. The printing of customs Form 5101 in perforated sets of four will be continued for the present. The form will be so arranged that the set may be completed by the carbon process at the one typing. This will facilitate the preparation of the forms when more than one is required in connection with an entry.

The revised form should eliminate the waste incident to the use of customs Form 5101 as formerly arranged, when parts of the form which were unnecessary in a particular transaction were worthless for future use, since the form, as revised, may also be used singly.

Supplies of the revised form should be available for distribution within ninety days and may be obtained by submitting requisitions to the Bureau. The present

stock of customs Form 5101 should be used until a supply of the revised issue is received.

[SEAL]

JAMES H. MOYLE,
Commissioner of Customs.

Approved, April 1, 1939.

STEPHEN B. GIBBONS,

Acting Secretary of the Treasury.

[F. R. Doc. 39-1156; Filed, April 5, 1939; 12:13 p. m.]

[T. D. 49833]

CUSTOMS REGULATIONS AMENDED

ARTICLES 223, 852, 1139, AND 1169, CUSTOMS REGULATIONS OF 1937 AMENDED AND A NEW ARTICLE 1169½ INSERTED¹

To Collectors of Customs and Others Concerned:

The Customs Regulations of 1937² are hereby amended as follows:

Article 228 [Sec. 3.7] is amended by deleting paragraph (b) [Sec. 3.7] by redesignating paragraphs (c) and (d) as paragraphs (g) and (h), respectively, and by inserting new paragraphs (b), (c), (d), (e), and (f), reading as follows:

(b) [Sec. 3.7 (a)] At the first port of arrival in the United States supplies carried on dining, cafe, buffet, and other cars on international trains for consumption by persons traveling thereon must be,

- (1) entered for consumption, or,
- (2) placed in locked or sealed compartments as provided for in article 229 [Sec. 3.8], or,

(3) in the case of supplies not required to have internal-revenue stamps affixed thereto before release for consumption covered by an inventory furnished in triplicate to the proper customs officer at the time of arrival in the United States.

In the latter case, the correctness of the inventory should be sworn to by the person in charge of the railroad car. The inventory should consist of itemized lists showing in parallel columns the kind and quantity of each class of supplies on hand in the car upon its arrival in the United States, with a space provided for another parallel column entitled "Quantity used in United States" (or wording of similar purport).

(c) [Sec. 3.7 (b)] The customs officer will certify all copies of the inventory, retain the original, which should be forwarded to the port of exit if different from the port of arrival, and return the other copies to the person in charge of the car.

(d) [Sec. 3.7 (c)] Upon arrival of the railroad car at the port of exit on its return to the foreign country, the two copies of the inventory which were returned by the customs officer at the port of arrival to the person in charge

¹ 3 F. R. 2543 DI.

² 3 F. R. 2802 DI.

³ 2 F. R. 1444 (1729 DI).

¹ This document affects 19 CFR 3.7, 15.4, 21.18, 22.2, and 22.2a (inserted).

² 2 F. R. 1444 (1729 DI).

of the car should be submitted to the proper customs officer after being completed by filling in the column showing the quantity of each item used in the United States and resworn to by the person in charge of the car. One copy of the inventory filed at the port of exit should be forwarded immediately to the comptroller of customs.

(e) [Sec. 3.7 (d)] Entries should be required to be filed and duties paid at the port of exit on the quantities of supplies covered by inventories which are consumed in the United States.

(f) [Sec. 3.7 (e)] Customs officers at ports of first arrival will make such inspection and verification of supplies and inventories thereof on international trains as will serve to insure that only supplies in the quantities stated in the inventories are in stock on such railroad cars and that no contraband articles or other goods which are liable to be unlawfully introduced into the United States are contained therein. Customs officers at ports of exit will make such inspection and examination of the supplies remaining on hand, and of the inventories submitted showing the amounts on hand when entering the United States and the quantities consumed in the United States, as will serve to prevent any loss of revenue. (Secs. 465, 624, 46 Stat. 718, 759; 19 U. S. C. 1465, 1624. R. S. 251; 19 U. S. C. 66)

Article 852 [Sec. 15.4] is amended to read as follows:

ART. 852 [Sec. 15.4]. *Appraiser's special report on protest.* (a) If the collector shall believe that any claim in a protest requires further review of an advisory classification or return, or any supplemental report to complete the record necessary to the proper consideration of the claim, he shall specify on customs Form 4371 the specific consideration or information desired and forward the form, together with the invoice papers, to the appraiser.

(b) The appraiser will return all papers to the collector with his report on customs Form 4371, together with the samples, if any, of the merchandise under consideration. (Secs. 514, 624, 46 Stat. 734, 759; 19 U. S. C. 1514, 1624)

Article 1139 [Sec. 21.18] is amended to read as follows:

Collectors may remit or mitigate certain fines and penalties. (a) Fines or other pecuniary penalties not exceeding \$10 in respect of any one offense may be remitted or mitigated by the collector of customs concerned on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate.

(b) Any forfeiture not involving merchandise subject to duty in excess of \$50 (or valued at not more than \$200 if not subject to duty) may be remitted or mitigated by the collector of customs concerned on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate.

(c) Accurate records should be kept of all fines, penalties, or forfeitures remitted or mitigated under the authority conferred in paragraphs (a) and (b) hereof. (Sec. 3, 44 Stat. 1382; 5 U. S. C. 281b (a). Sec. 643, 46 Stat. 761; 19 U. S. C. 1643. Sec. 624, 46 Stat. 679; 19 U. S. C. 1624. R. S. 251; 19 U. S. C. 66)

Paragraph (e) [Sec. 22.2 (e)] of article 1169 of the Customs Regulations of 1937, added by T. D. 49707, is deleted, and a new article 1169½ is inserted, reading as follows:

ART. 1169½ [Sec. 22.2a]. *Entry record-Receipt.* The importer must prepare and present with each entry of the classes hereafter described one copy of customs Form 5101: consumption, warehouse, rewarehouse, combined rewarehouse and withdrawal for consumption, temporary free importation, appraisement, equipment and repairs to vessels, and permanent exhibition. This form will be retained by the collector as a memorandum of the entry, to be filed alphabetically by the name of the owner declared in the entry. When the importer desires a receipt for duties or taxes paid on formal or appraisement entries a separate copy of customs Form 5101 must be presented. A further copy of the form (missing document record) must be filed when required by article 1268 [Sec. 23.18]. In connection with a consumption entry covering shipments declared to be for more than one actual owner, a separate copy of customs Form 5101 for each owner named in the entry must be presented, each copy to be filed alphabetically by the name of the respective owner. (Sec. 624, 46 Stat. 769; 19 U. S. C. 1624. R. S. 251; 19 U. S. C. 66)

[SEAL] JAMES H. MOYLE,
Commissioner of Customs.

Approved, April 1, 1939.

STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

[F. R. Doc. 39-1157; Filed, April 5, 1939;
12:13 p. m.]

[T. D. 49835]

MARKING—EXCEPTIONS

ARTICLES EXEMPT FROM MARKING TO INDICATE THE COUNTRY OF ORIGIN BY REASON OF HAVING BEEN IMPORTED IN SUBSTANTIAL QUANTITIES DURING THE FIVE-YEAR PERIOD PRIOR TO JANUARY 1, 1937, WITHOUT BEING REQUIRED TO BE MARKED

APRIL 1, 1939.

To Collectors of Customs and Others Concerned:

Section 304 (a) (3) (J) of the Tariff Act of 1930, as amended by section 3 of the Customs Administrative Act of 1938 (U. S. C., Sup. IV, title 19, sec. 1304), provides that the Secretary of the Treasury may by regulations authorize the exception of any imported article from the requirement of section 304 that it be marked to indicate the country of its origin if—

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: * * *

Article 532 (b) of the Customs Regulations of 1937,¹ as amended by (1938) T. D. 49658,² exempts articles within the purview of the said section 304 (a) (3) (J) from the requirement of marking.

Pursuant to the provisions of the said section 304 (a) (3) (J), notice is hereby given that the following articles were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate the country of their origin:

Bags, jute.
Buttons.
Leather, except finished.
Monuments.
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish, and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.
Paper stock.
Pickets (wood).
Posts (wood), fence.
Rags (including wiping rags).
Sponges.
Staves (wood), barrel.
Steel, hoop.
Ties (wood), railroad.

In the case of any article described in the above list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents.

This list supplements the list of articles contained in (1938) T. D. 49690.³

[SEAL] STEPHEN B. GIBBONS,
Acting Secretary of the Treasury.

[F. R. Doc. 39-1158; Filed, April 5, 1939;
12:14 p. m.]

TITLE 26—INTERNAL REVENUE BUREAU OF INTERNAL REVENUE

[T. D. 4892]

PART 3—INCOME TAX

IMMEDIATE ASSESSMENT IN BANKRUPTCY AND RECEIVERSHIP CASES

Articles 1293 and 1294 of Regulations 69, 1191 and 1192 of Regulations 74 and 77, and 274-1 and 274-2 of Regulations 86 and 94 amended

To Collectors of Internal Revenue and Others Concerned:

Article 1293 of Regulations 69 is amended to read as follows:

"ART. 1293. *Bankruptcy and receivership proceedings.* During a bankruptcy

¹ 2 F. R. 1444 (1729 DI).

² 3 F. R. 1808 DI.

³ 3 F. R. 2082 DI.

proceeding, or an equity receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending, and the collection of taxes can not be made by distraining upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to distraint.

"As used in these regulations the term 'bankruptcy proceeding' includes proceedings under Chapters I to VII of the Bankruptcy Act, as amended, or under section 74, 75, 77, or 77B, or Chapters X to XIII, of such Act, as amended; and the term 'adjudication of bankruptcy' includes, in addition to an adjudication in a proceeding under Chapters I to VII, the approval of a petition as properly filed under section 77 or 77B or Chapter X by a court of competent jurisdiction or the filing of a petition under section 74 or 75 or Chapters XI to XIII with a court of competent jurisdiction.

"A trustee in bankruptcy (including a trustee, receiver, debtor in possession, or other person designated as in control of the assets of a debtor in any bankruptcy proceeding by order of the court in which such proceeding is pending) or a receiver in any receivership proceeding is required to give notice in writing to the Commissioner of Internal Revenue in Washington, D. C., of the adjudication of bankruptcy or the appointment of a receiver. (See section 282 (a), as amended by section 505 of the Revenue Act of 1934.)

"Collectors should, promptly after notice of outstanding liability against a taxpayer in any bankruptcy or receivership proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, as amended, and the orders of the court in which such proceeding is pending, file claim covering such liability in the court in which such proceeding is pending. Such claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the departmental instructions direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. Such claim should cover the amount represented by the assessment, plus interest at the rate of 6 percent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy or receivership proceeding or to the date of payment if payment is made in full prior to such termination. At the same time claim is filed with the bankruptcy or receivership court, the collector will send notice and demand for payment to the taxpayer together with a copy of such claim.

"Under section 3466 of the Revised Statutes and section 3467 of the Revised Statutes, as amended, and section 64 of the Bankruptcy Act, as amended, taxes are entitled to the priority over other claims therein stated and the

trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which bankruptcy or receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Bankruptcy courts have jurisdiction under the Bankruptcy Act, as amended, to determine all disputes regarding the amount and validity of taxes of a bankrupt or of a debtor in a proceeding under the Bankruptcy Act, as amended. A bankruptcy or receivership proceeding does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under Chapter X of the Bankruptcy Act, as amended, and except to the extent which may be provided in a plan or arrangement duly effectuated in a bankruptcy proceeding; and any portion of a claim of the United States for taxes which has been allowed by the court in which the bankruptcy or receivership proceeding is pending and which remains unsatisfied after the termination of the bankruptcy or receivership proceeding shall be collected with interest as provided in sections 282 (b) and (c) of the Act and section 404 of the Revenue Act of 1935."

Article 1294 of Regulations 69 is amended to read as follows:

"ART. 1294. *Immediate assessments in bankruptcy and receivership cases.* If the Commissioner has determined that a deficiency is due in respect of income tax and the taxpayer has filed a petition with the Board of Tax Appeals prior to the adjudication of bankruptcy or the appointment of a receiver, the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the bankruptcy or receivership proceeding is pending, may prosecute the taxpayer's appeal before the Board as to that particular determination. No petition shall be filed with the Board for a redetermination of the deficiency after the adjudication of bankruptcy or the appointment of a receiver.

"Claim for the amount of a deficiency, even though pending before the Board for consideration, may be filed with the court in which the bankruptcy or receivership proceeding is pending without awaiting final decision of the Board. In case of final decision of the Board before the termination of the bankruptcy, debtor, or receivership proceeding, a copy of the Board's decision may be filed by the Commissioner with the court in which such proceeding is pending.

"While the Commissioner is required by section 282, as amended by section 505 of the Revenue Act of 1934, to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 279, as amended by section 819 (b) and (e) of the Revenue Act of 1938,

and consequently the provisions of that section do not apply to any assessment made under section 282, as amended. Therefore, the notice of the deficiency provided for in section 279 (b) will not be mailed. Although such notice will not be issued, nevertheless a letter will be sent to the taxpayer, or to the trustee, receiver, debtor in possession, or other person designated by the court in which the bankruptcy or receivership proceeding is pending as in control of the assets of the debtor, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a hearing with respect to such deficiency. If after such evidence is submitted and hearing held any adjustment appears necessary in the deficiency, appropriate action will be taken. A copy of the notification letter will be attached to the assessment list as the collector's authority for filing claim in any bankruptcy or receivership proceeding.

"If any portion of the claim allowed by the court in a bankruptcy or receivership proceeding remains unpaid after the termination of such proceeding, the collector will send notice and demand for payment thereof to the taxpayer. Such unpaid portion with interest as provided in sections 282 (b) and (c) of the Act and section 404 of the Revenue Act of 1935, may be collected from the taxpayer by distraint or proceeding in court within six years after the termination of the bankruptcy, debtor, or receivership proceeding. Extensions of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in section 274 (k), as amended by section 502 of the Revenue Act of 1928 and by section 816 of the Revenue Act of 1938. (See article 1234.)

"This article deals only with immediate assessments provided for in section 282, as amended, and the procedure in connection with such assessments."

Articles 1191 of Regulations 74 and 77 are amended to read as follows:

"ART. 1191. *Bankruptcy and receivership proceedings.* During a bankruptcy proceeding, or an equity receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending, and the collection of taxes can not be made by distraining upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to distraint.

"As used in these regulations the term 'bankruptcy proceeding' includes proceedings under Chapters I to VII of the Bankruptcy Act, as amended, or under section 74, 75, 77, or 77B, or Chapters X to XIII, of such Act, as amended; and the term 'adjudication of bank-

ruptcy' includes, in addition to an adjudication in a proceeding under Chapters I to VII, the approval of a petition as properly filed under section 77 or 77B or Chapter X by a court of competent jurisdiction or the filing of a petition under section 74 or 75 or Chapters XI to XIII with a court of competent jurisdiction.

"A trustee in bankruptcy (including a trustee, receiver, debtor in possession, or other person designated as in control of the assets of a debtor in any bankruptcy proceeding by order of the court in which such proceeding is pending) or a receiver in any receivership proceeding is required to give notice, in writing to the Commissioner of Internal Revenue in Washington, D. C., of the adjudication of bankruptcy or the appointment of a receiver. (See section 274 (a), as amended by section 505 of the Revenue Act of 1934.)

"Collectors should, promptly after notice of outstanding liability against a taxpayer in any bankruptcy or receivership proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, as amended, and the orders of the court in which such proceeding is pending, file claim covering such liability in the court in which such proceeding is pending. Such claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the departmental instructions direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. Such claim should cover the amount represented by the assessment, plus interest at the rate of 6 percent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy or receivership proceeding or to the date of payment if payment is made in full prior to such termination. At the same time claim is filed with the bankruptcy or receivership court, the collector will send notice and demand for payment to the taxpayer together with a copy of such claim.

"Under section 3466 of the Revised Statutes and section 3467 of the Revised Statutes, as amended, and section 64 of the Bankruptcy Act, as amended, taxes are entitled to the priority over other claims therein stated and the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which bankruptcy or receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Bankruptcy courts have jurisdiction under the Bankruptcy Act, as amended, to determine all disputes regarding the amount and validity of taxes of a bankrupt or of a debtor in a proceeding under the Bankruptcy Act, as amended. A bankruptcy or receivership proceeding does not discharge any portion of a claim of the United States for taxes except in the

case of a proceeding under Chapter X of the Bankruptcy Act, as amended, and except to the extent which may be provided in a plan or arrangement duly effectuated in a bankruptcy proceeding; and any portion of a claim of the United States for taxes which has been allowed by the court in which the bankruptcy or receivership proceeding is pending and which remains unsatisfied after the termination of the bankruptcy or receivership proceeding shall be collected with interest as provided in section 298 of the Act and section 404 of the Revenue Act of 1935."

Articles 1192 of Regulations 74 and 77 are amended to read as follows:

"ART. 1192. *Immediate assessments in bankruptcy and receivership cases.* If the Commissioner has determined that a deficiency is due in respect of income tax and the taxpayer has filed a petition with the Board of Tax Appeals prior to the adjudication of bankruptcy or the appointment of a receiver, the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the bankruptcy or receivership proceeding is pending, may prosecute the taxpayer's appeal before the Board as to that particular determination. No petition shall be filed with the Board for a redetermination of the deficiency after the adjudication of bankruptcy or the appointment of a receiver.

"Claim for the amount of a deficiency, even though pending before the Board for consideration, may be filed with the court in which the bankruptcy or receivership proceeding is pending without awaiting final decision of the Board. In case of final decision of the Board before the termination of the bankruptcy, debtor, or receivership proceeding, a copy of the Board's decision may be filed by the Commissioner with the court in which such proceeding is pending.

"While the Commissioner is required by section 274, as amended by section 505 of the Revenue Act of 1934, to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 273, as amended by section 819 (a) and (e) of the Revenue Act of 1938, and consequently the provisions of that section do not apply to any assessment made under section 274, as amended. Therefore, the notice of the deficiency provided for in section 273 (b) will not be mailed. Although such notice will not be issued, nevertheless a letter will be sent to the taxpayer, or to the trustee, receiver, debtor in possession, or other person designated by the court in which the bankruptcy or receivership proceeding is pending as in control of the assets of the debtor, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a hearing with respect to such deficiency. If after such evidence is sub-

mitted and hearing held any adjustment appears necessary in the deficiency, appropriate action will be taken. A copy of the notification letter will be attached to the assessment list as the collector's authority for filing claim in any bankruptcy or receivership proceeding.

"If any portion of the claim allowed by the court in a bankruptcy or receivership proceeding remains unpaid after the termination of such proceeding, the collector will send notice and demand for payment thereof to the taxpayer. Such unpaid portion with interest as provided in section 298 of the Act and section 404 of the Revenue Act of 1935, may be collected from the taxpayer by distraint or proceeding in court within six years after the termination of the bankruptcy, debtor, or receivership proceeding. Extensions of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in sections 272 (j), as amended by section 816 of the Revenue Act of 1938, and 297. (See article 1173.)

"This article deals only with immediate assessments provided for in section 274, as amended, and the procedure in connection with such assessments."

Article 274-1 of Regulations 86 is amended to read as follows:

"ART. 274-1. *Bankruptcy and receivership proceedings.* During a bankruptcy proceeding, or an equity receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending, and the collection of taxes can not be made by distraining upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to distraint.

"As used in these regulations the term 'bankruptcy proceeding' includes proceedings under Chapters I to VII of the Bankruptcy Act, as amended, or under section 74, 75, 77 or 77B, or Chapters X to XIII, of such Act, as amended; and the term 'adjudication of bankruptcy' includes, in addition to an adjudication in a proceeding under Chapters I to VII, the approval of a petition as properly filed under section 77 or 77B or Chapter X by a court of competent jurisdiction or the filing of a petition under section 74 or 75 or Chapters XI to XIII with a court of competent jurisdiction.

"A trustee in bankruptcy (including a trustee, receiver, debtor in possession, or other person designated as in control of the assets of a debtor in any bankruptcy proceeding by order of the court in which such proceeding is pending) or a receiver in any receivership proceeding is required to give notice in writing to the Commissioner of Internal Revenue in Washington, D. C., of the adjudication of bankruptcy or the appointment of a receiver. (See section 274 (a) and article 275-1.)

"Collectors should, promptly after notice of outstanding liability against a taxpayer in any bankruptcy or receiver-

ship proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, as amended, and the orders of the court in which such proceeding is pending, file claim covering such liability in the court in which such proceeding is pending. Such claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the departmental instructions direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. Such claim should cover the amount represented by the assessment, plus interest at the rate of 6 percent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy or receivership proceeding or to the date of payment if payment is made in full prior to such termination. At the same time claim is filed with the bankruptcy or receivership court, the collector will send notice and demand for payment to the taxpayer together with a copy of such claim.

"Under section 3466 of the Revised Statutes and section 3467 of the Revised Statutes, as amended (paragraphs 40 and 41, respectively, of the Appendix to these regulations), and section 64 of the Bankruptcy Act, as amended, taxes are entitled to the priority over other claims therein stated and the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which bankruptcy or receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Bankruptcy courts have jurisdiction under the Bankruptcy Act, as amended, to determine all disputes regarding the amount and validity of taxes of a bankrupt or of a debtor in a proceeding under the Bankruptcy Act, as amended. A bankruptcy or receivership proceeding does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under Chapter X of the Bankruptcy Act, as amended, and except to the extent which may be provided in a plan or arrangement duly effectuated in a bankruptcy proceeding; and any portion of a claim of the United States for taxes which has been allowed by the court in which the bankruptcy or receivership proceeding is pending and which remains unsatisfied after the termination of the bankruptcy or receivership proceeding shall be collected with interest as provided in section 298."

Article 274-2 of Regulations 86 is amended to read as follows:

"ART. 274-2. *Immediate assessment in bankruptcy and receivership cases.* If the Commissioner has determined that a deficiency is due in respect of income tax and the taxpayer has filed a petition with the Board of Tax Appeals prior to the adjudication of bankruptcy or the appointment of a receiver, the trustee, re-

ceiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the bankruptcy or receivership proceeding is pending, may prosecute the taxpayer's appeal before the Board as to that particular determination. No petition shall be filed with the Board for a redetermination of the deficiency after the adjudication of bankruptcy or the appointment of a receiver.

"Claim for the amount of a deficiency, even though pending before the Board for consideration, may be filed with the court in which the bankruptcy or receivership proceeding is pending without awaiting final decision of the Board. In case of final decision of the Board before the termination of the bankruptcy, debtor, or receivership proceeding, a copy of the Board's decision may be filed by the Commissioner with the court in which such proceeding is pending.

"While the Commissioner is required by section 274 to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 273, as amended by section 819 (a) and (e) of the Revenue Act of 1938, and consequently the provisions of that section do not apply to any assessment made under section 274. Therefore, the notice of the deficiency provided for in section 273 (b) will not be mailed. Although such notice will not be issued, nevertheless a letter will be sent to the taxpayer, or to the trustee, receiver, debtor in possession, or other person designated by the court in which the bankruptcy or receivership proceeding is pending as in control of the assets of the debtor, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a hearing with respect to such deficiency. If after such evidence is submitted and hearing held any adjustment appears necessary in the deficiency, appropriate action will be taken. A copy of the notification letter will be attached to the assessment list as the collector's authority for filing claim in any bankruptcy or receivership proceeding.

"If any portion of the claim allowed by the court in a bankruptcy or receivership proceeding remains unpaid after the termination of such proceeding, the collector will send notice and demand for payment thereof to the taxpayer. Such unpaid portion with interest as provided in section 298 of the Act and section 404 of the Revenue Act of 1935, may be collected from the taxpayer by distraint or proceeding in court within six years after the termination of the bankruptcy, debtor, or receivership proceeding. Extensions of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in sections 272 (j), as amended by section 816 of the Revenue Act of 1938, and 297. (See article 272-3.)

"This article deals only with immediate assessments provided for in section 274 and the procedure in connection with such assessments."

Article 274-1 of Regulations 94¹ (section 3.274-1 of Title 26, Code of Federal Regulations) is amended to read as follows:

"ART. 274-1. *Bankruptcy and receivership proceedings.* During a bankruptcy proceeding, or an equity receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending, and the collection of taxes can not be made by distraining upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to distraint.

"As used in these regulations the term 'bankruptcy proceeding' includes proceedings under Chapters I to VII of the Bankruptcy Act, as amended, or under section 74, 75, 77, or 77B, or Chapters X to XIII, of such Act, as amended; and the term 'adjudication of bankruptcy' includes, in addition to an adjudication in a proceeding under Chapters I to VII, the approval of a petition as properly filed under section 77 or 77B or Chapter X by a court of competent jurisdiction or the filing of a petition under section 74 or 75 or Chapters XI to XIII with a court of competent jurisdiction.

"A trustee in bankruptcy (including a trustee, receiver, debtor in possession, or other person designated as in control of the assets of a debtor in any bankruptcy proceeding by order of the court in which such proceeding is pending) or a receiver in any receivership proceeding is required to give notice in writing to the Commissioner of Internal Revenue in Washington, D. C., of the adjudication of bankruptcy or the appointment of a receiver. (See section 274 (a) and article 275-1.)

"Collectors should, promptly after notice of outstanding liability against a taxpayer in any bankruptcy or receivership proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, as amended, and the orders of the court in which such proceeding is pending, file claim covering such liability in the court in which such proceeding is pending. Such claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the departmental instructions direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. Such claim should cover the amount represented by the assessment, plus interest at the rate of 6 percent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy or receivership proceeding or to the date of payment if pay-

¹ 1 F. R. 1938.

ment is made in full prior to such termination. At the same time claim is filed with the bankruptcy or receivership court, the collector will send notice and demand for payment to the taxpayer together with a copy of such claim.

"Under section 3466 of the Revised Statutes and section 3467 of the Revised Statutes, as amended (paragraphs 41 and 42, respectively, of the Appendix to these regulations), and section 64 of the Bankruptcy Act, as amended, taxes are entitled to the priority over other claims therein stated and the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which bankruptcy or receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Bankruptcy courts have jurisdiction under the Bankruptcy Act, as amended, to determine all disputes regarding the amount and validity of taxes of a bankrupt or of a debtor in a proceeding under the Bankruptcy Act, as amended. A bankruptcy or receivership proceeding does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under Chapter X of the Bankruptcy Act, as amended, and except to the extent which may be provided in a plan or arrangement duly effectuated in a bankruptcy proceeding; and any portion of a claim of the United States for taxes which has been allowed by the court in which the bankruptcy or receivership proceeding is pending and which remains unsatisfied after the termination of the bankruptcy or receivership proceeding shall be collected with interest as provided in section 298."

Article 274-2 of Regulations 94¹ (section 3.274-2 of Title 26, Code of Federal Regulations) is amended to read as follows:

"ART. 274-2. *Immediate assessments in bankruptcy and receivership cases.* If the Commissioner has determined that a deficiency is due in respect of income tax and the taxpayer has filed a petition with the Board of Tax Appeals prior to the adjudication of bankruptcy or the appointment of a receiver, the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the bankruptcy or receivership proceeding is pending, may prosecute the taxpayer's appeal before the Board as to that particular determination. No petition shall be filed with the Board for a redetermination of the deficiency after the adjudication of bankruptcy or the appointment of a receiver.

"Claim for the amount of a deficiency, even though pending before the Board for consideration, may be filed with the

court in which the bankruptcy or receivership proceeding is pending without awaiting final decision of the Board. In case of final decision of the Board before the termination of the bankruptcy, debtor, or receivership proceeding, a copy of the Board's decision may be filed by the Commissioner with the court in which such proceeding is pending.

"While the Commissioner is required by section 274 to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 273, as amended by section 819 (a) and (e) of the Revenue Act of 1938, and consequently the provisions of that section do not apply to any assessment made under section 274. Therefore, the notice of the deficiency provided for in section 273 (b) will not be mailed. Although such notice will not be issued, nevertheless a letter will be sent to the taxpayer, or to the trustee, receiver, debtor in possession, or other person designated by the court in which the bankruptcy or receivership proceeding is pending as in control of the assets of the debtor, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a hearing with respect to such deficiency. If after such evidence is submitted and hearing held any adjustment appears necessary in the deficiency, appropriate action will be taken. A copy of the notification letter will be attached to the assessment list as the collector's authority for filing claim in any bankruptcy or receivership proceeding.

"If any portion of the claim allowed by the court in a bankruptcy or receivership proceeding remains unpaid after the termination of such proceeding, the collector will send notice and demand for payment thereof to the taxpayer. Such unpaid portion with interest as provided in section 298 may be collected from the taxpayer by distraint or proceeding in court within six years after the termination of the bankruptcy, debtor, or receivership proceeding. Extensions of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in sections 272 (j), as amended by section 816 of the Revenue Act of 1938, and 297. (See article 272-3.)

"This article deals only with immediate assessments provided for in section 274 and the procedure in connection with such assessments."

(This Treasury Decision is prescribed pursuant to the following sections of law: Sections 274 and 62 of the Revenue Act of 1936 (49 Stat. 1725, 1673; 26 U. S. C. Sup. IV, 274, 62); sections 274 and 62 of the Revenue Act of 1934 (48 Stat. 744, 700; 26 U. S. C. 274, 62); sections 274 and 62 of the Revenue Act of 1932 (47 Stat. 237, 191); sections 274 and 62 of the Revenue Act of 1928 (45 Stat.

856, 810); and sections 282 and 1101 of the Revenue Act of 1926 (44 Stat. 62, 111))

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, April 3, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39-1159; Filed, April 5, 1939;
12:14 p. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

VETERANS' ADMINISTRATION

REVISION OF REGULATIONS

GUARDIANS

Chief Attorney Authorized to File Exceptions and to Institute Other Legal Proceedings

SEC. 5.5328 Chief attorneys are vested with authority to institute necessary legal proceedings to cite guardians to account, to file exceptions to their accounts, to cite guardians to file bonds, to require investments, to petition the court to vacate or modify orders, or to institute other action necessary to secure proper administration of the estate by the fiduciary, and to incur the necessary court costs, including witness fees, and other expenses in connection therewith.

(A) If required by State law or rule of court, such costs may be advanced; but, if the final action is favorable to the Veterans Administration, such costs should be assessed against the guardian and refund secured. The chief attorney should, as soon as refund is secured, turn over to the collection clerk or agent cashier the amount refunded in order that it may be covered into the Treasury of the United States in accord with regulations. (April 5, 1939.) (46 Stat. 991, 1016; 49 Stat. 607; 38 U. S. C. 11, 11a, 426, 450)

Action Where Account Cannot be Approved or Proper Administration of Estate may not be Secured

SEC. 5.5330 In cases in which the account cannot be passed because objectionable under Sec. 5.5327, the exceptions filed should be sufficient, if sustained, to show the incompetency of the guardian, and unless the court by its own motion will automatically remove the guardian, or proper administration of the estate may not be secured otherwise, the chief attorney will report all facts to the solicitor for authority to institute action to remove the guardian, to secure the appointment of a qualified successor, and to pay the costs in connection therewith. In case the account or other evidence shows that there has been misappropriation or embezzlement of funds, or other violation of section 2, Public No. 262, 74th Congress, the chief attorney will report the facts to the solicitor with a recommendation as to

¹ 1 F. R. 1938.

what action should be taken by the Veterans Administration, and will keep him informed of all action taken in the courts. It will be incumbent upon the chief attorney in all cases to have the substitute guardian proceed against the guardian and surety, but see Sec. 5.5364 (A). (April 5, 1939.) (46 Stat. 991, 1016; 49 Stat. 607; 38 U. S. C. 11, 11a, 426, 450)

[SEAL] FRANK T. HINES,
Administrator.

[F. R. Doc. 39-1148; Filed, April 5, 1939; 11:24 a. m.]

Notices

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 31st day of March 1939.

[File No. 1-2309]

IN THE MATTER OF TONOPAH NORTH STAR TUNNEL AND DEVELOPMENT COMPANY COMMON ASSESSABLE STOCK, \$1 PAR VALUE

ORDER SETTING HEARING ON APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The San Francisco Mining Exchange, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the Common Assessable Stock, \$1 Par Value, of Tonopah North Star Tunnel and Development Company; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Monday, May 1, 1939, at the office of the Securities & Exchange Commission, 625 Market Street, San Francisco, California, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That John G. Clarkson an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.
[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1152; Filed, April 5, 1939; 11:29 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 1st day of April 1939.

[File No. 1-2283]

IN THE MATTER OF HALIFAX TONOPAH MINING CO. COMMON ASSESSABLE STOCK, PAR VALUE 10¢

ORDER SETTING HEARING ON APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The San Francisco Mining Exchange pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the Common Assessable Stock, Par Value 10¢, of Halifax Tonopah Mining Co.; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Monday, April 24, 1939, at the office of the Securities & Exchange Commission, 625 Market Street, San Francisco, California, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That John G. Clarkson, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.
[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1153; Filed, April 5, 1939; 11:29 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 1st day of April 1939.

[File No. 1-2462]

IN THE MATTER OF PONY MEADOWS MINING COMPANY COMMON STOCK PAR VALUE 1¢

ORDER SETTING HEARING ON APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The San Francisco Mining Exchange, pursuant to Section 12 (d) of the Securities

Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the Common Stock, Par Value 1¢, of Pony Meadows Mining Company; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Thursday, April 27, 1939, at the office of the Securities & Exchange Commission, 625 Market St., San Francisco, California, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That John G. Clarkson an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.
[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1154; Filed, April 5, 1939; 11:29 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 3rd day of April A. D., 1939

[File No. 31-105]

IN THE MATTER OF PACIFIC PUBLIC SERVICE COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION PURSUANT TO REQUEST OF APPLICANT

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

It is so ordered.
By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1150; Filed, April 5, 1939; 11:28 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 3rd day of April, A. D. 1939.

[File No. 31-201]

IN THE MATTER OF CENTRAL POWER AND LIGHT COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION PURSUANT TO REQUEST OF APPLICANT

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

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1151; Filed, April 5, 1939; 11:28 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 5th day of April, A. D. 1939.

[File No. 43-195]

IN THE MATTER OF PUBLIC SERVICE COMPANY OF COLORADO

NOTICE OF AND ORDER FOR HEARING

A declaration pursuant to section 7 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on April 25, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall

file a notice to that effect with the Commission on or before April 22, 1939.

The matter concerned herewith is in regard to the issue and sale of the following securities:

\$40,000,000 First Mortgage Bonds, 3½% Series, due 1964.

12,500,000 4% Sinking Fund Debentures, due 1949.

21,900 shares of First Preferred Stock, Five Per Cent. Cumulative (\$100 par value).

The declaration states that the net proceeds from the sale of the aforementioned Bonds, Debentures and Preferred Stock are to be used for the purpose of redeeming or discharging outstanding securities and obligations of the Declarant and its predecessor companies hereafter listed and for working capital.

To the redemption, at 105% of the principal amount, on November 1, 1939, of \$5,298,900 principal amount of The Denver Gas and Electric Company's General Mortgage 5% Gold Bonds, due May 1, 1949 (exclusive of accrued interest)----- \$5,563,845.00

To the redemption, at 105% of the principal amount, on November 1, 1939, of \$6,138,100 principal amount (exclusive of \$3,185,900 principal amount in sinking fund) of The Denver Gas and Electric Light Company's First and Refunding Mortgage 5% Sinking Fund Gold Bonds, due May 1, 1951 (exclusive of accrued interest)----- 6,445,005.00

To the redemption, at 105% of the principal amount, on November 1, 1939, of \$3,544,500 principal amount of The Colorado Power Company's First Mortgage 5% Gold Bonds, due May 1, 1953 (exclusive of accrued interest)----- 3,721,725.00

To the redemption, at 103.50% of the principal amount, on or about *-----, 1939, of \$3,541,900 principal amount of the Company's First Mortgage and Refunding Gold Bonds, Series A, 6%, due September 1, 1953 (exclusive of accrued interest)----- 3,665,866.50

To the redemption, at 103% of the principal amount, on or about *-----, 1939, of \$11,987,100 principal amount of the Company's First Mortgage and Refunding Gold Bonds, Series B, 5½%, due September 1, 1954 (exclusive of accrued interest)----- 12,346,713.00

To the redemption, at 104.50% of the principal amount, on or about *-----, 1939, of \$10,345,500 principal amount of the Company's First Mortgage and Refunding Gold Bonds, Series C, 6%, due November 1, 1961 (exclusive of accrued interest)----- 10,811,047.50

To the redemption, at 101% of the principal amount, on or about *-----, 1939, of \$3,162,700 principal amount of the Company's Twenty Year 6% Gold Debentures, due May 1, 1946 (exclusive of accrued interest)----- 3,194,327.00

To the payment of the Company's 4% Secured Notes payable to The Chase National Bank of the City of New York aggregating \$4,500,000 principal amount, plus a prepayment premium of \$11,250 (exclusive of accrued interest)----- 4,511,250.00

To the payment or reimbursement for the payment of equipment obligations outstanding at February 28, 1939----- 374,127.82

To the payment of the Company's \$2,190,000 6% Notes payable to Cities Service Power & Light Company, without premium, less \$156,603.19 credit allowed by such parent company, representing difference between redemption prices and book costs of \$962,400 principal amount of funded debt owned by such parent company included in above items to be redeemed (exclusive of accrued interest)----- 2,033,396.81

52,667,303.63

*Redemption dates have not been furnished but are to be supplied by amendment.

The Declarant states that the above obligations to be discharged constituted, as of February 28, 1938, all of its outstanding mortgage indebtedness, secured notes and debentures and certain of its obligations owing to manufacturers for equipment installed as part of its fixed property, and all of its notes payable to Cities Service Power & Light Company, and that the proceeds (\$2,190,000) derived from the sale of the Preferred Stock, will be used to retire and discharge its indebtedness (\$2,190,000) to Cities Service Power & Light Company evidenced by its 6% notes.

The declaration states that no contracts have been entered into for the issue, sale or distribution of securities covered thereby and that Declarant has not determined whether the issues will be sold privately or publicly, except that the Preferred Stock issue of 21,900 shares will be issued and sold to Cities Service Power & Light Company, parent of the Declarant. These facts, including the price to the public and the underwriting spread or commissions, will be supplied by amendment.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1149; Filed, April 5, 1939; 11:28 a. m.]