OCT 6 1939

FEDERAL REGISTER

VOLUME 4 NUMBER 192

Washington, Thursday, October 5, 1939

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

[Order No. 1, Amendment No. 4]

CHAPTER IX—MARKETING ORDERS

PART 901—ORDER AMENDING THE ORDER, AS AMENDED, REGULATING THE HANDLING OF WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON*

Sec.	
901.1	Findings.
901.4 (b)	Salable percentage and surplus percentage.
901.19	Pack specifications for merchantable walnuts.

Whereas the Secretary of Agriculture of the United States (hereinafter referred to as the "Secretary"), acting pursuant to the provisions of Public Act No. 10, 73d Congress (May 12, 1933), as amended, issued an order on October 11, 1935, effective on and after October 15, 1935, regulating the handling of walnuts grown in California, Oregon, and Washington; and

Whereas certain orders amending the aforesaid order regulating the handling of walnuts grown in California, Oregon, and Washington (hereinafter said order and the amendments thereto are referred to as the "order, as amended") have been issued by the Secretary;[1] and

Whereas the Secretary, acting pursuant to the request by the Control Board established pursuant to the provisions of the aforesaid order, as amended, conducted a public hearing in San Francisco, California, on September 6, 1939,[2] pursuant to notice duly given to all interested parties, on certain proposed amendments to the aforesaid order, as amended, at which hearing all interested persons in attendance were afforded due opportunity to be heard concerning the proposed amendments to the aforesaid order, as amended; and

Whereas, the Secretary finds (Sec. 901.1) upon the basis of the evidence introduced at the said hearing in San Francisco, California, on September 6, 1939, and the record thereof;

(1) that the supply of merchantable walnuts available during the crop year 1939–40 for handling in the channels of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity, will exceed the consumptive demand for such walnuts during said period;

(2) that the salable percentage for the crop year September 1, 1939, to August 31, 1940, should be sixty (60) percent and the surplus percentage, for said crop year, should be forty (40) percent;

(3) that the fixing of such percentages and the methods provided in the order, as amended, and as hereby further amended, for the disposition of such surplus will tend to effectuate the declared policy of Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (hereinafter referred to as the "act");

(4) that it is fair and equitable to establish and provide the pack specifications for merchantable walnuts stated and set forth in this amendment to said order, as amended;

(5) that the order, as amended, and as hereby further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act with respect to walnuts grown in California, Oregon, and Washington; and

Whereas, the foregoing findings are supplementary and in addition to (1) the findings made in connection with the issuance of the aforesaid order on October 11, 1935, effective on and after October 15, 1935, and (2) the findings made in connection with the issuance of each of the previously issued amendments to said order, and all of said pre-

*Amendment to section 901.1, section 901.4, and section 901.19 issued under the authority contained in 48 Stat. 31 (1933), 7 U.S.C.A. Sec. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U.S.C.A. Sec. 601 et seq. (Supp. IV, 1938).

[1] 3 F.R. 2377 DI.

[2] 4 F.R. 3805 DI.

CONTENTS

RULES, REGULATIONS, ORDERS

TITLE 7—AGRICULTURE: Page

Agricultural Marketing Service:
- United States Cotton Futures Act, regulations amended:
  - Amendment No. 1 4147
  - Amendment No. 2 4149

Division of Marketing and Marketing Agreements:
- Walnuts grown in California, Oregon, and Washington, regulatory order amended 4145

TITLE 16—COMMERCIAL PRACTICES:

Federal Trade Commission:
- Research Products Co., cease and desist order 4150

TITLE 22—FOREIGN RELATIONS:

Department of State:
- Solicitation and collection of contributions for use in France, Germany, Poland, United Kingdom, India, Australia, Canada, New Zealand, and Union of South Africa 4150

TITLE 30—MINERAL RESOURCES:

Bituminous Coal Division:
- Reports and contracts to be filed by code members, order amended 4156

Bureau of Mines:
- Procedure for applying for tests made on all explosives and blasting devices; use in coal mines; fees 4151

TITLE 36—PARKS AND FORESTS:

Forest Service:
- Occupation, use, etc., of national forests, regulation amended 4156

NOTICES

Department of Agriculture:
- Food and Drug Administration:
  - Canned apricots, reports, suggested findings, conclusions and order relative to 4156

(Continued on next page)

Published by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. L. 500), under regulations prescribed by the Administrative Committee, with the approval of the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1 per month or $10 per year; single copies 10 cents each; payable in advance. Remit by money order payable to Superintendent of Documents, Government Printing Office, Washington, D. C.

Correspondence concerning the publication of the FEDERAL REGISTER should be addressed to the Director, Division of the Federal Register, The National Archives, Washington, D. C.

CONTENTS—Continued

	Page
Federal Trade Commission:	
Sauer, C. F., Co., amended complaint and notice of hearing	4161
Securities and Exchange Commission:	
Minneapolis General Electric Co., and subsidiaries, applications granted, etc	4165
Peoples Light and Power Co., application approved	4165

vious findings, made in connection with the issuance of said original order and in connection with the issuance of each of the amendments thereto, are hereby ratified and affirmed except insofar as such findings may be in conflict with the findings herein set forth; and

Whereas, the Secretary further finds:

(1) that the amendment to the marketing agreement, as amended, regulating the handling of walnuts grown in California, Oregon, and Washington, executed by the Secretary on October 3, 1939, and upon which a hearing was held in San Francisco, California, on September 6, 1939, was signed by handlers (excluding cooperative associations of producers who were not engaged in processing, distributing, or shipping the aforesaid walnuts or products thereof) who, during the 1938–39 crop year, handled not less than fifty (50) percent of the volume of such walnuts covered by this order, produced within the production area defined in said order, as amended;

(2) that the order, as heretofore amended and as hereby amended, regulates the handling of such walnuts in the same manner as the marketing agreement, as amended, does, and that this order is made applicable only to persons in the respective classes of industrial and commercial activities specified in the aforesaid marketing agreement, as amended;

(3) that the issuance of this order, amending the aforesaid order, as amended, is favored by producers of walnuts who, during the 1938–39 crop year (which the Secretary hereby determines to be a representative period) produced for market, within the production area specified in said order, as amended, at least two-thirds of the volume of such commodity produced for market within such production area;

(4) that the issuance of this order, amending the aforesaid order, as amended, is favored and approved by at least two-thirds of the producers who, during the 1938–39 crop year (which the Secretary hereby determines to be a representative period), were engaged, in the production area specified in said order, as amended, in the production for market of walnuts:

Now, therefore, it is hereby ordered, pursuant to the provisions of the aforesaid act, that said order, as amended, is hereby further amended in the respects stated hereinafter, and it is further ordered that the handling of walnuts grown in California, Oregon, and Washington, in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect interstate or foreign commerce in such walnuts, from and after the date hereinafter specified, shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, as hereby further amended in the following respects:

1. By deleting the period at the end of the first sentence in section 2, article III (Sec. 901.4(b)) of the aforesaid order, as amended, and inserting, in lieu thereof, a semicolon and the following:

"and the salable percentage for the crop year September 1, 1939, to August 31, 1940, shall be sixty (60) percent."

2. By deleting the period at the end of the next to the last sentence in section 2, article III (Sec. 901.4 (b)) of the aforesaid order, as amended, and inserting, in lieu thereof, a semicolon and the following:

"and forty (40) percent, being the difference between the salable percentage for the crop year ending August 31, 1940, and one hundred (100) percent, shall be the 'surplus percentage' for said crop year."

3. By deleting all of the provisions contained in "Exhibit A" (Sec. 901.19) of the aforesaid order, as amended, and inserting, in lieu thereof, the following as "Exhibit A" to said order, as amended:

"PACK SPECIFICATIONS FOR MERCHANTABLE WALNUTS

"California Packs

"No. 1 Grade or No. 1 Soft Shell. Walnuts produced from seedling trees and/or walnuts not properly classified in any of the following varietal packs, and in which not over 12 percent by count pass through a round opening 74/64 inches in diameter.

"Large Budded. Walnuts produced from trees of the Placentia Perfection and/or closely similar varieties, and in which not over 12 percent by count pass through a round opening 79/64 inches in diameter.

"Medium Budded. Walnuts produced from trees of the Placentia Perfection and/or closely similar varieties, and all of which pass through a round opening 79/64 inches in diameter and in which not over 12 percent by count can pass through a round opening 74/64 inches in diameter.

"Large Concords. Walnuts of the Concord variety and of the same size specifications as given for Large Budded.

"Medium Concords. Walnuts of the Concord variety and of the same size specifications as given for Medium Budded.

"Large Eurekas. Walnuts of the Eureka variety and of the same size specifications as given for Large Budded.

"Medium Eurekas. Walnuts of the Eureka variety and of the same size specifications as given for Medium Budded.

"Large Franquettes. Walnuts of the Franquette variety and of the same size specifications as given for Large Budded.

"Medium Franquettes. Walnuts of the Franquette variety and of the same size specifications as given for Medium Budded.

"Large Mayettes. Walnuts of the Mayette variety and of the same size specifications as given for Large Budded.

"Medium Mayettes. Walnuts of the Mayette variety and of the same size specifications as given for Medium Budded.

"Large Paynes. Walnuts of the Payne variety and of the same size specifications as given for Large Budded.

"Medium Paynes. Walnuts of the Payne variety and of the same size specifications as given for Medium Budded.

"Baby Grade. Walnuts of any of the above-mentioned varieties may be packed under the designation of Baby Grade of that variety provided all such walnuts pass through a round opening 74/64 inches in diameter and not over 12 percent by count pass through a round opening 60/64 inches in diameter. Baby size walnuts of the Eureka, Franquette, or Payne varieties when packed as such shall be designated as 'Long Type Baby Walnuts': *Provided, however,* That it shall not be obligatory on any packer to pack separately the baby size of the different varieties.

"No pack of any of the above-mentioned varieties, except the No. 1 Grade and Baby Grades, shall contain in excess of 10 percent by count of walnuts of a dissimilar variety.

"All of the walnuts contained in the foregoing packs shall be graded for size and culled for removal of external defects.

"Oregon and Washington Packs

"Oregon and Washington walnuts may, with the exception of 'Medium' packs, be packed in any of the pack specifications above described for California walnuts, and in addition thereto, the following pack specifications which apply only to walnuts grown in Oregon or Washington.

"Large Soft Shells. Walnuts produced from seedling trees and/or walnuts not properly classified in any of the varietal packs, and in which not over 12 percent by count pass through a round opening 79/64 inches in diameter.

"Fancy Soft Shells. The same as Large Soft Shells except that all pass through a round opening 79/64 inches in diameter and not over 12 percent by count can pass through a round opening 74/64 inches in diameter.

"Standard or Medium Soft Shells. The same as Fancy Soft Shells except that all pass through a round opening 74/64 inches in diameter and not over 12 percent by count pass through a round opening 60/64 inches in diameter.

"Fancy Franquettes. Walnuts of the Franquette variety and of the same size specifications as given for Fancy Soft Shells.

"Standard or Medium Franquettes. Walnuts of the Franquette variety (subject to a 10% tolerance for dissimilar varieties) and of the same size specifications as given above for Standard or Medium Soft Shells.

"Fancy Mayettes. Walnuts of the Mayette variety and of the same size specifications as given for Fancy Soft Shells.

"All of the walnuts contained in the foregoing packs shall be graded for size and culled for removal of external defects."

Nothing contained in the foregoing amendments to the order, as amended, shall be deemed to affect, waive, or terminate any right, duty, obligation, or liability which has arisen or which may hereafter arise in connection with, by virtue of, or pursuant to any provision of the aforesaid order, as amended, or affect, release, or extinguish any violation of the provisions of said order, as amended, or of any regulation issued pursuant to said order, as amended, or affect or impair any right or remedy of the Secretary or any other person or persons with respect to any such violation.

In witness whereof, H. A. Wallace, Secretary of Agriculture of the United States, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations therein contained and not otherwise, does hereby execute and issue in duplicate this order under his hand and the official seal of the United States Department of Agriculture in the city of Washington, District of Columbia, on this 3d day of October 1939, and declares this order to be effective on and after 12:01 a. m., Pacific standard time, October 7, 1939.

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

[F. R. Doc. 39-3665; Filed, October 4, 1939; 12:41 p. m.]

AGRICULTURAL MARKETING SERVICE

PART 27—AMENDMENT NO. 1 TO THE REGULATIONS OF THE SECRETARY OF AGRICULTURE UNDER THE UNITED STATES COTTON FUTURES ACT

By virtue of the authority vested in the Secretary of Agriculture by the United States Cotton Futures Act of August 11, 1916, as amended March 4, 1919, May 31, 1920, and February 26, 1927 (39 Stat. 476, 40 Stat. 1351, 41 Stat. 725, 44 Stat. 1248; U.S.C. 1090–1106), I, H. A. Wallace, Secretary of Agriculture, do hereby prescribe, publish, and give public notice of the following amendments to the regulations of the Secretary of Agriculture under said Act as amended:

Strike out section 27.9 (Reg. 3, Sec. 2) and substitute therefor the following:

"§ 27.9 *Boards of cotton examiners; Appeal Board.* Boards of cotton examiners shall be maintained at points designated for the purpose by the Chief of the Service. The members of such boards and the chairman of each shall be designated by the Chief of the Service. The Appeal Board of Review Examiners established at Washington, D. C., and committees of the Appeal Board authorized to serve at other points will review the classification of any cotton in accordance with sections 27.61–27.72 (Reg. 10). A Board of Supervising Cotton Examiners shall perform duties as assigned."

Strike out sections 27.10 (Reg. 3, Sec. 3) and substitute therefor the following:

"§ 27.10 *Supervisor of cotton inspection.* The Chief of the Service or the chairman of a board of cotton examiners may when necessary designate an official or employee of the Department of Agriculture to supervise the inspection and sampling and the preparation of samples of cotton for classification by a board of cotton examiners, and to perform such other duties as may be required of him for the purposes of these regulations, with full authority to perform the duties of a supervisor of cotton inspection in accordance with sections 27.75 and 27.77 (Reg. 11, Secs. 3 and 5)."

Strike out section 27.28 (Reg. 5, Sec. 13) and substitute therefor the following:

"§ 27.28 *Removal of original samples; conditions.* The original sample may be removed by the holder of the cotton class certificate covering the same at any time within 2 weeks (a) after such certificate becomes invalid as provided in section 27.44 (Reg. 7, Sec. 6), or (b) after the certificate (covering tenderable cotton) has been surrendered for cancellation without the issuance of a new certificate in lieu thereof: *Provided,* That the chairman of the board may for good cause permit the removal of samples in accordance with this section without the surrender of the certificates for cancellation. If the cotton covered by a certificate is classified as untenderable the sample may be held by the board for a period of 30 days and the holder of such certificate shall be allowed 2 weeks from the expiration of such 30-day period within which to remove the sample."

Strike out section 27.36 (Reg. 6, Sec. 6) and substitute therefor the following:

"§ 27.36 *Cotton to be classified according to official standards.* All cotton whether tenderable or untenderable shall be classified on the basis of the official cotton standards of the United States in effect at the time of such classification."

Strike out section 27.39 (Reg. 7, Sec. 1) and substitute therefor the following:

"§ 27.39 *Issuance of certificates.* As soon as practicable after the classification of cotton has been completed by a board of cotton examiners it shall issue cotton class certificates showing the results of such classification. Each certificate shall bear the date of its issuance and the name of the chairman or acting chairman of the board that classified the cotton. The certificate shall show the identification of the cotton according to the information in the possession of the board, the classification of the cotton according to its grade and length of staple and such other facts as the Chief of the Service shall require. A board of cotton examiners may place its certificate of classification directly upon the storage or press receipt covering and properly identifying the cotton involved."

Strike out section 27.40 (Reg. 7, Sec. 2) and substitute therefor the following:

"§ 27.40 *New certificates; conditions of issuance.* For the business convenience of a holder of a cotton class certificate issued under these regulations a new certificate may be issued at the request of the holder, to take the place of the former certificate without the reclassification of the cotton. In any case where a new certificate is required in accordance with this section, the former certificate shall be surrendered for cancellation, and such new certificate shall bear a new number and the date of its issu-

ance and the date of original certification and shall otherwise comply with these regulations."

Sections 27.41 and 27.42 (Reg. 7, Secs. 3 and 4) are repealed.

Renumber section 27.43 (Reg. 7, Sec. 5) as section 27.41 (Reg. 7, Sec. 3).

Strike out section 27.44 (Reg. 7, Sec. 6) and substitute therefor the following:

"§ 27.42 *Surrender of certificate* (Reg. 7, Sec. 4) For good cause any certificate issued under these regulations shall be surrendered to a board of cotton examiners for correction or cancellation. If such certificate be not surrendered upon request it shall nevertheless be invalid under section 5 of the Act and these regulations."

Strike out section 27.50 (Reg. 7, Sec. 12) and renumber sections 27.45, 27.46, 27.47, 27.48, 27.49, and 27.51 (Reg. 7, Secs. 7, 8, 9, 10, 11, and 13) as sections 27.43, 27.44, 27.45, 27.46, 27.47, and 27.48 (Reg. 7, Secs. 5, 6, 7, 8, 9, and 10), respectively.

Strike out section 27.58 (Reg. 9, Sec. 2) and substitute therefor the following:

"§ 27.58 *Postponed classification; must be within 30 days.* If thereafter the classification of the cotton be desired, notice thereof shall be filed not later than the expiration of 30 days after the date upon which the samples were drawn from the cotton, and the original samples must have remained continuously in the possession of the board or under its control."

Strike out section 27.60 (Reg. 9, Sec. 4) and substitute therefor the following:

"§ 27.60 *When original request deemed withdrawn.* If the period of 30 days hereinbefore specified shall expire without the filing of the notice of desire for classification the applicant shall be deemed to have withdrawn the original request for the classification of such cotton."

Strike out section 27.62 (Reg. 10, Sec. 2) and substitute therefor the following:

"§ 27.62 *Conditions for review of classification.* The person for whom the classification of any cotton shall have been performed under these regulations may have a review of the classification of the cotton covered by any certificate by filing a written application therefor before the delivery of such cotton on a section 5 contract and not later than the expiration of the seventh business day following the date of the first certification of the cotton involved."

Strike out section 27.63 (Reg. 10, Sec. 3) and substitute therefor the following:

"§ 27.63 *Review of classification; application; form.* Any receiver of cotton upon a section 5 contract who has not redelivered such cotton on a section 5 contract may have a review of the classification of any such cotton of which the classification has not been previously reviewed by filing a written application within 7 business days following the date of the delivery of cotton class certificates to him in accordance with these regulations. When more than 5,000 bales of cotton shall have been delivered to the same receiver on the same date of delivery, he may, upon proper showing of the facts, be allowed 5 additional business days for filing his application for the review of the classification of any such cotton, provided written request for such extension is filed within 7 business days following the date of such delivery. In the event of the reissue of certificates to replace any certificates delivered to him, the receiver may have a review of the classification of the cotton covered by such reissued certificates, provided such review is requested within the time herein prescribed.

"Every application for review shall be submitted in triplicate on a form furnished or approved by the Service; shall contain the name and address of the party, if any, from whom the cotton is received on a section 5 contract; shall include the lot numbers, if any, and the marks; and a copy of such application shall be mailed by the chairman of the board to the other party at interest."

Strike out section 27.65 (Reg. 10, Sec. 5) and substitute therefor the following:

"§ 27.65 *Completion of review of classification.* In any case where an application for review has been filed with respect to cotton previously classified as tenderable such review may be completed notwithstanding the subsequent tender of such cotton on a section 5 contract."

Strike out section 27.70 (Reg. 10, Sec. 10) and substitute therefor the following:

"§ 27.70 *Classification changed; effect on certificate.* If the classification of the bale of cotton identified in a cotton class certificate shall be changed there shall be entered upon the certificate a statement that the classification has been reviewed, the date of review and the classification given upon such review and thereupon such certificate shall be delivered to the person from whom it was received or to a person designated by him."

Strike out section 27.71 (Reg. 10, Sec. 11), and substitute therefor the following:

"§ 27.71 *Replacement of untenderable cotton.* If the determination of a review granted to a receiver of cotton tendered upon a section 5 contract shows cotton previously classed as tenderable to be actually untenderable, the tenderer shall replace the cotton so found to be untenderable. Such replacement shall be made not later than the expiration of the tenth business day following the date of the issuance of the review certificate, by delivering to the receiver other cotton shown to be tenderable by cotton class certificates complying with these regulations, which certificates he shall deliver to the receiver."

Strike out the third sentence of section 27.73 (Reg. 11, Sec. 1) and substitute therefor the following:

"In such cases the exchange inspection agency shall report the facts to the board of cotton examiners in accordance with section 27.46 (Reg. 7, Sec. 8)."

Strike out section 27.74 (Reg. 11, Sec. 2) and substitute therefor the following:

"§ 27.74 *Form of request for supervision of transfer.* The person who made the request for classification or the holder of the cotton class certificate therefor shall file with the chairman of the board of cotton examiners with which the classification request was filed, or which issued the certificate, or, in case there be no board of cotton examiners at the point where the cotton is situated, with the supervisor of cotton inspection, a written request for the supervision of such transfer. If the cotton class certificate for such cotton has previously been issued by the board, the holder thereof shall surrender such certificate to the board or to the supervisor of cotton inspection, as the case may be, for cancellation before such transfer shall take place. No single transfer lot shall include more than 50 bales."

Strike out section 27.77 (Reg. 11, Sec. 5) and substitute therefor the following:

"§ 27.77 *New certificate without reclassification.* When the cotton shall have been delivered for storage at the place of its destination and the transfer certificate shall have been surrendered to an authorized representative of the Service, each bale covered by such transfer certificate shall be examined and if it be found that the identity of the bales represented by the transfer certificate has been properly preserved, a cotton class certificate shall be issued for each bale so identified, valid for use at such destination without the reclassification of the cotton."

Strike out section 27.81 (Reg. 12, Sec. 2) and substitute therefor the following:

"§ 27.81 *Fees; certificates.* For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for his business convenience or when made necessary by the transfer of the cotton from one place of storage to another under the supervision of an exchange inspection agency, as provided in section 27.44 (Reg. 7, Sec. 6), the person making the request shall pay a fee of 15 cents for each certificate issued, to cover the cost of such service and the handling of samples incident thereto."

Strike out section 27.93 (Reg. 13, Sec. 1) and substitute therefor the following:

"§ 27.93 *Bona fide spot markets.* The following markets have been determined,

after investigation, and are hereby designated to be bona fide spot markets within the meaning of the Act:

"Atlanta Ga.
"Augusta, Ga.
"Charleston, S. C.
"Dallas, Tex.
"Galveston, Tex.
"Houston, Tex.
"Little Rock, Ark.
"Memphis, Tenn.
"Mobile, Ala.
"Montgomery, Ala.
"New Orleans, La.
"Norfolk, Va.
"Savannah, Ga."

Strike out sections 27.103, 27.104, 27.105, and 27.106 (Reg. 15) and substitute therefor the following:

"Official Cotton Standards

"§ 27.103 *Official cotton standards; forms.* Practical forms of the official cotton standards of the United States will be furnished to any person requesting them, subject to the provisions of the regulations of the Secretary of Agriculture under the United States Cotton Standards Act."

Strike out the words "inspection bureau" wherever they appear in said regulations and insert in lieu therefor the words "inspection agency."

Done at Washington, D. C., this 3d day of October 1939. Witness my hand and the seal of the Department of Agriculture.

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

[F. R. Doc. 39-3666; Filed, October 4, 1939; 12:41 p.m.]

PART 28—AMENDMENT NO. 2 TO THE REGULATIONS OF THE SECRETARY OF AGRICULTURE UNDER THE UNITED STATES COTTON STANDARDS ACT

Pursuant to authority vested in the Secretary of Agriculture by the United States Cotton Standards Act of March 4, 1923, as amended March 4, 1933 (42 Stat. 1517, 47 Stat. 1621; 7 U.S.C. 51-65), I, H. A. Wallace, Secretary of Agriculture do hereby prescribe, publish, and give public notice of the following amendments to the regulations of the Secretary of Agriculture under said Act:

In section 28.4 (Reg. 2, Sec. 2) strike out the first sentence and substitute therefor the following:

"Boards of cotton examiners shall be maintained at points designated for the purpose by the Chief of the Service."

Strike out section 28.18 (Reg. 3, Sec. 7) and substitute therefor the following:

"§ 28.18 *One request only for classification.* Not more than one request for the informal classification of the same cotton shall be filed unless each subsequent request shall be accompanied by redrawn samples, and the chairman of the board may require that any Form A Memoranda previously issued with respect to samples purporting to represent the same cotton shall be returned before such redrawn samples are classed."

Strike out section 28.23 (Reg. 4, Sec. 4) and substitute therefor the following:

"§ 28.23 *Disposal of samples.* When so stipulated in the classification request samples submitted for informal classification or comparison shall be returned to the person making the request, at his expense, at the time the certificate is issued or when the request for classification is withdrawn or rejected: *Provided,* That samples submitted for Form A classification as a basis for purchase or sale may, in the discretion of the Board, be held for a period of sixty days, after which they may be returned to the person making the request, if desired by him. Samples not returned shall be disposed of in accordance with section 28.25 (Reg. 4, Sec. 6)."

Strike out section 28.25 (Reg. 4, Sec. 6) and substitute therefor the following:

"§ 28.25 *Samples not removed, property of Department of Agriculture.* Samples not removed in accordance with these regulations and loose cotton separated from samples in the handling and classification thereof shall become the property of the government and shall be disposed of in accordance with law and applicable regulations."

Strike out sections 28.77 and 28.78 (Reg. 11, Secs. 2 and 3) and substitute therefor the following:

"§ 28.77 *Examination of applicant.* Each applicant for a license as a classifier and each licensed classifier shall, when requested, submit to an examination or test to show his ability to classify cotton, and each applicant who already holds a license under the Act shall make available for inspection copies of the standards for classification used or to be used by him. An applicant who fails in an examination may be denied immediate reexamination."

"§ 28.78 *Examination; scope of 'limited license.'* Examinations of applicants for licenses shall cover the classification of cotton in accordance with any or all of the standards listed below:

"(a) The official cotton standards of the United States for grades and for all lengths of staple of American upland cotton.

"(b) The official cotton standards of the United States for the grades of American upland cotton and for staple lengths not exceeding 1⅛ inches.

"(c) The official cotton standards of the United States for grades and staple lengths of American-Egyptian cotton.

"(d) The official cotton standards of the United States for grades and staple lengths of Sea Island cotton.

"Each license under the Act and each identification card shall specify the standards with respect to which it is issued. Any license which merely authorizes the licensee to determine the grade of American upland cotton and staple lengths not exceeding 1⅛ inches shall be conspicuously marked 'Limited License'."

Strike out section 28.85 (Reg. 11, Sec. 10) and substitute therefor the following:

"§ 28.85 *Reports to be made on forms furnished or otherwise.* Each licensed classifier shall from time to time when requested by the Service make reports on forms furnished for the purpose by the Service, or otherwise, bearing upon his activities as such licensed classifier."

In section 28.87 (Reg. 11, Sec. 12) strike out the second sentence and substitute therefor the following:

"Whenever a licensed classifier shall voluntarily surrender his license for suspension or cancellation the same may be suspended or cancelled by the Secretary or the Chief of Agricultural Marketing Service without a hearing."

To section 28.115 (a) (Reg. 13, Sec. 1, Par. 1) add the following:

"Sea Island Cotton

"Standards for grades of Sea Island cotton, as follows:

"Grade No. 1.
"Grade No. 2.
"Grade No. 3.
"Grade No. 4.
"Grade No. 5.
"Grade No. 6.

"Standards for lengths of staple of Sea Island cotton, as follows:

"1½ inches.
"1$\frac{9}{16}$ inches.
"1⅝ inches.
"1¾ inches."

In section 28.119 (c) (Reg. 14, Sec. 2, Par. 3) strike out the first sentence and substitute therefor the following:

"The fees provided for in paragraph (a) (1) of this section may be waived in whole or in part as to the classification and certification of any cotton for a governmental agency; or as to the classification and certification for a charitable or philanthropic organization of cotton intended to be used under an Act of Congress or Congressional resolution for the relief of distress or to be exchanged for goods to be so used."

Strike out the words "inspection bureau" wherever they appear in said regulations and insert in lieu thereof the words "inspection agency."

Done at Washington, D. C. this 3d day of October 1939. Witness my hand and the seal of the Department of Agriculture.

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

[F. R. Doc. 39-3667; Filed, October 4, 1939; 12:41 p. m.]

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

[Docket No. 3863]

IN THE MATTER OF RESEARCH PRODUCTS CO.

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (y) *Advertising falsely or misleadingly—Safety.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Dupree Pills", "Dupree Double Strength Pills", "Dr. Gordon's Special Formula Double Strength Pills", "Van Dyke Dutch Brand Haarlen Oil Capsules", "Dr. Gordon's Vitam-Perles", and "Vitamin E Perles", or other similar medicinal preparations, which advertisements represent, directly or through implication, that use of said preparations known as "Dupree Pills", "Dupree Double Strength Pills", and "Dr. Gordon's Special Formula Double Strength Pills", is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, or which advertisements fail to reveal that the use of such preparations may result in serious and irreparable injury to the health of the user, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Research Products Co., Docket 3863, September 18, 1939]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of products:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Dupree Pills", "Dupree Double Strength Pills", "Dr. Gordon's Special Formula Double Strength Pills", "Van Dyke Dutch Brand Haarlen Oil Capsules", "Dr. Gordon's Vitam-Perles", and "Vitamin E Perles", or other similar medicinal preparations, which advertisements represent, directly or through implication, that the use of the preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules" is a cure or remedy for or has any therapeutic value in the treatment of rheumatism, sleeplessness, nervousness, or pains in the back, or that the use of said preparation will serve to flush poisons out of the kidneys or bladder, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Research Products Co., Docket 3863, September 18, 1939]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase of respondent's "Dupree Pills", "Dupree Double Strength Pills", "Dr. Gordon's Special Formula Double Strength Pills", "Van Dyke Dutch Brand Haarlen Oil Capsules", "Dr. Gordon's Vitam-Perles", and "Vitamin E Perles", or other similar medicinal preparations, which advertisements represent, directly or through implication, that the use of the preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E Perles" is a competent or effective remedy or cure for, or that it has any therapeutic value in the treatment of the conditions known as lack of ambition, loss of strength, loss of blood or anemia, or run-down condition, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Research Products Co., Docket 3863, September 18, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 18th day of September, A. D. 1939.

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

IN THE MATTER OF ROBERT C. OBERLIN, AN INDIVIDUAL TRADING AS RESEARCH PRODUCTS CO.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Robert C. Oberlin, an individual trading as Research Products Co., his agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations now designated by the name of "Dupree Pills", "Dupree Double Strength Pills", "Dr. Gordon's Special Formula Double Strength Pills", "Van Dyke Dutch Brand Haarlen Oil Capsules", "Dr. Gordon's Vitam-Perles", and "Vitamin E Perles", or any other medicinal preparation or preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission, of said medicinal preparations, which advertisements represent, directly or through implication:

1. That the use of said preparations known as "Dupree Pills", "Dupree Double Strength Pills", and "Dr. Gordon's Special Formula Double Strength Pills" is a competent, safe and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, or which advertisements fail to reveal that the use of such preparations may result in serious and irreparable injury to the health of the user;
2. That the use of the preparation known as "Van Dyke Dutch Brand Haarlem Oil Capsules" is a cure or remedy for or has any therapeutic value in the treatment of rheumatism, sleeplessness, nervousness, or pains in the back, or that the use of said preparation will serve to flush poisons out of the kidneys or bladder;
3. That the use of the preparation known as "Dr. Gordon's Vitam-Perles" or "Vitamin E Perles" is a competent or effective remedy or cure for, or that it has any therapeutic value in the treatment of the conditions known as lack of ambition, loss of strength, loss of blood or anemia, or run-down condition.

It is further ordered, That the respondent shall, within ten days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and if so, the manner and form in which he intends to comply; and that within sixty days after the service upon him of this order said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-3660; Filed, October 4, 1939; 10:37 a. m.]

TITLE 22—FOREIGN RELATIONS

DEPARTMENT OF STATE

RULES AND REGULATIONS GOVERNING THE SOLICITATION AND COLLECTION OF CONTRIBUTIONS FOR USE IN FRANCE; GERMANY; POLAND; AND THE UNITED KINGDOM, INDIA, AUSTRALIA, CANADA, NEW ZEALAND, AND THE UNION OF SOUTH AFRICA

OCTOBER 4, 1939.

The Secretary of State promulgates the rules and regulations set forth below as additions to the rules and regulations under the provisions of Section 3 (a) of the Joint Resolution of Congress approved May 1, 1937, in regard to the solicitation and collection of funds for use in France; Germany; Poland; and the United Kingdom, India, Australia,

Canada, New Zealand, and the Union of South Africa, which he promulgated on September 5, 9, and 11, 1939:[1]

(11) No registration will be accepted until satisfactory evidence is presented to the Secretary of State that the applicant for registration has organized an active and responsible governing body which will serve without compensation, and which will exercise a satisfactory administrative control, and that the funds collected by the registrant will be handled by a competent and trustworthy treasurer.

(12) No registration will be accepted if the means proposed to be used to solicit or collect contributions include the employment of solicitors on commission or any other commission method of raising money; the use of the "remit or return" method of raising money by the sale of merchandise or tickets; the giving of entertainments for money-raising purposes if the estimated costs of such entertainments, including compensation, exceed 30 percent of the gross proceeds, or any other wasteful or unethical method of soliciting contributions.

(13) No registration will be accepted until the Secretary of State has been informed in writing by a responsible officer of the applicant for registration that he has read these regulations.

(14) The Secretary will exercise the right reserved under regulation (7) to revoke any registration upon receipt of evidence which leads him to believe that the registrant has failed to maintain such a governing body as that described under regulation (11), has failed to employ such a treasurer as that described under regulation (11), has employed any of the methods for soliciting contributions set forth under regulation (12), has employed unethical methods of publicity, or has failed to attain a reasonable degree of efficiency in the conduct of operations.

(15) The sworn statement to be submitted by registrants in accordance with regulation (6) shall be supplemented by such further information as the Secretary of State may deem necessary.

[SEAL] CORDELL HULL,
Secretary of State.

[F. R. Doc. 39-3663; Filed, October 4, 1939; 11:56 a. m.]

TITLE 30—MINERAL RESOURCES

BUREAU OF MINES

[Schedule 1C]

PROCEDURE FOR APPLYING FOR TESTS MADE ON ALL EXPLOSIVES AND BLASTING DEVICES BY THE EXPLOSIVES DIVISION OF THE BUREAU OF MINES

PRESCRIBED CONDITIONS AND REQUIREMENTS FOR PERMISSIBILITY WHEN USED IN COAL MINES AND SCHEDULE OF FEES FOR THE TESTS

Authorization

This schedule furnishes information relating to tests made by the Explosives Division of the Bureau of Mines. The province and duty of this Bureau to conduct scientific and technological tests for investigations concerning explosives were established by the Act of Congress of May 16, 1910 creating the Bureau of Mines, and the amended Act (37 Stat. 681) approved February 25, 1913.

The provisions of the latter Act pertaining to the testing of explosives and fees therefore are included in the following sections of the Act:

SEC. 2. That it shall be the province and duty of the Bureau of Mines, subject to the approval of the Secretary of the Interior, to conduct inquiries and scientific and technologic investigations concerning mining, and the preparation, treatment, and utilization of mineral substances with a view to improving health conditions, and increasing safety, efficiency, economic development, and conserving resources through the prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; to inquire into the economic conditions affecting these industries; to investigate explosives and peat; and on behalf of the Government to investigate the mineral fuels and unfinished mineral products belonging to, or for the use of, the United States, with a view to their most efficient mining, preparation, treatment and use; and to disseminate information concerning these subjects in such manner as will best carry out the purposes of this Act.

SEC. 3. That the director of said bureau shall prepare and publish, subject to the direction of the Secretary of the Interior, under the appropriations made from time to time by Congress, reports of inquiries and investigations, with appropriate recommendations of the Bureau, concerning the nature, causes, and prevention of accidents, and the improvement of conditions, methods, and equipment, with special reference to health, safety, and prevention of waste in the mining, quarrying, metallurgical, and other mineral industries; the use of explosives and electricity, safety methods and appliances, and rescue and first-aid work in said industries; the causes and prevention of mine fires; and other subjects included under the provisions of this Act.

SEC. 4. * * *

SEC. 5. That for tests or investigations authorized by the Secretary of the Interior under the provisions of this Act, other than those performed for the Government of the United States or State governments within the United States, a reasonable fee covering the necessary expenses shall be charged, according to a schedule prepared by the Director of the Bureau of Mines and approved by the Secretary of the Interior, who shall prescribe rules and regulations under which such tests and investigations may be made. All moneys received from such sources shall be paid into the Treasury to the credit of miscellaneous receipts.

It should be noted that these moneys are not credited to the Bureau of Mines and that the cost of all tests are met by appropriations made to the Bureau of Mines not augmented by such fees.

Nature of Tests and Definitions

The Bureau of Mines is prepared to test:

I. Explosives for use in:

(a) *Coal mines.* To determine their permissibility. This portion of the present schedule supersedes Schedule 17C;[1]

(b) Metal mines, tunnels, quarries and other engineering operations to determine their characteristics. This portion of the present schedule supersedes Schedule 1B.[2]

II. Blasting devices for use in:

Coal mines. To determine their permissibility. This portion of the present schedule supersedes Schedule 20.[3]

III. Explosives or blasting devices under any one of the individual tests listed in this schedule.

All reports on the results of tests made by this Bureau must be considered confidential and retained as such within the applicant's organization.

Definitions

For the sake of brevity and clearness certain terms which will be used throughout this schedule are defined as follows:

Approval. An approval is an official certification in the form of a report on a special class of coal mining explosives and coal mining blasting devices, issued only by the Director of the Bureau of Mines, to a responsible organization stating that an investigation of its explosive or device has shown that this meets satisfactorily all the conditions and requirements for permissibility hereinafter set forth.

Reports of tests other than the complete series required for the determination of permissibility are not approvals and should not be construed as such.

Basic sample. The term "Basic sample" is used only in connection with permissible explosives. It is applied to the original sample which was tested to determine the permissibility of the explosive. Chemical and physical characteristics of future samples bearing the same brand name are checked against the basic sample.

Equivalent. An ingredient which will not materially alter the properties of the explosive and that will produce the same result as the original substance shall be considered an equivalent. In matters affecting its approval, the Bureau will deem itself sole judge of the question of equivalence.

Ingredients. Those substances reported as found by the Bureau of Mines in the original sample of explosive submitted as the basic sample shall be considered the ingredients of that permissible explosive.

Lot of permissible explosives. The term "lot of permissible explosives" as used in applying the tolerances is defined as all that explosive in the magazine from which a field sample or manufacturer's sample is procured, bearing identical case markings.

Permissible. An adjective used to designate complete assemblies having formal approval of the Bureau of Mines

---

[1] 4 F.R. 3839, 3882, 3891 DI.

[1] Procedure for testing explosives for permissibility for use in coal mines with test requirements and schedule of fees, 1935.

[2] Procedure for testing explosives used in metal mines, tunnels, quarries and other engineering operations with test requirements and schedule of fees, 1926 (amended in 1932).

[3] Permissible blasting devices; procedure in testing, fees and requirements for approval, 1928.

for use in mines having atmospheres which may become inflammable by reason of the presence of gas and coal dust, or gas or dust alone.

Permissible explosive. A permissible explosive must be similar in all respects to the "basic" sample which has passed certain tests prescribed by the Bureau to determine its safety for use in coal mines. It is permissible only when used in accordance with the conditions prescribed by the Bureau.

Permissible blasting device. The term "blasting device" applies to all devices designed for breaking down coal, excluding (a) hydraulic and mechanical devices; (b) explosives. As the only blasting devices for which a complete system for testing for permissibility has been established are devices in which the blasting agent is liquid carbon dioxide, only this class of blasting devices may be tested under this schedule.

A permissible blasting device must be similar in all respects to the model which has passed certain tests prescribed by the Bureau to determine its safety for use in coal mines. It is permissible only when used in accordance with the conditions prescribed by the Bureau.

Tolerances. The tolerances promulgated by the Bureau of Mines provide for reasonable limits of variation in the results of analyses and tests of field samples of permissible explosives or check tests of permissible blasting devices in comparing these samples with the basic samples or the devices originally approved.

Application

Before the Bureau of Mines will make any tests on an explosive or a blasting device, the manufacturer or user must file an application in the form of a letter (there are no application blanks to be filled out) requesting the tests desired with a statement as to the nature of the explosive or blasting device to be tested. This application must be addressed to the Director, Bureau of Mines, Washington, D. C., and accompanied by a certified check or bank draft payable to the Treasurer of the United States to cover all fees for the tests. A copy of the application shall be sent by the applicant to the Explosives Division, Bureau of Mines, 4800 Forbes St., Pittsburgh, Pa. If an applicant be a manufacturer of explosives, he must furnish with the application the formula of the explosive. The Bureau's engineers will review the application and make recommendations to the Director as to whether the tests should be undertaken or not.

Explosives containing incompatibles (that is, substances that will react when mixed) or those containing chlorates, chlorites, and perchlorates, will not be accepted for tests, because previous investigations made by the Bureau of Mines and general experience in handling explosives of this type have demonstrated their hazardous nature. In the public interest, the Bureau cannot approve such explosives for use in the mineral industries.

Tests will not be continued upon those explosives which fail to pass a test with the Bureau's pendulum friction device when the fiber-faced shoe is used or which fail to pass the large impact test. Furthermore, tests will be discontinued on any sample of explosive which (a) is found to be chemically unstable; or (b) shows leakage of liquid explosive ingredient; or (c) is in such condition that exudation of liquid explosive ingredient would occur in handling or transportation; or (d) fails to detonate or explode completely for two or more charges while any of the permissibility tests are being made in 1¼-inch diameter cartridges or larger under a confinement equal to or greater than 1 atmosphere with a No. 6 electric detonator; or (e) in the rate of detonation test if it does not detonate in any one trial through the entire meter length in cartridges 1¼ inches in diameter or larger (an explosive is not permissible in any diameter less than the minimum in which it propagates for the entire length); or (f) if in the explosion by influence test, which is to be made as soon as possible after the receipt of the explosive, the sensitivity is not satisfactory; or (g) if a 680-gram (1½ pound) charge of explosive and original wrapper evolves 158 liters (5.58 cu. ft.) or more of poisonous gases in Bichel gage tests; or (h) if the unit deflective charge exceeds 454 grams; or (i) if it fails to pass any trial shot at Gallery No. 1.

Fees

The following schedule of fees has been established and approved by the Secretary of the Interior, and these fees will be charged on and after the date of this schedule.

I. (a) *For the determination of the permissibility of explosives.* Complete official test of each explosive to determine its permissibility for use in coal mines, $250.00.

The determination of the permissibility of an explosive for use in coal mines involves the following tests: (1) Physical examination; (2) chemical analysis; (3) unit deflective charge; (4) gallery tests 1 and 4; (5) gaseous products of explosion; (6) rate of detonation; (7) pendulum friction; (8) explosion by influence. Other tests may be made if, in the opinion of the Bureau of Mines, they are required to establish the safety of the explosive. Such additional tests may be necessary when the cartridge is of exceptional construction or contains ingredients of an unusual or unique nature, or when any other questionable features are presented.

For any further tests other than 1 to 8 inclusive that may be carried out on an explosive, additional fees will be charged in accordance with this schedule under "I (b)" below, and for special tests not herein enumerated, that are authorized by the Director, fees will be charged to cover the cost of the work actually performed.

In case an explosive is withdrawn or fails to pass any of the official tests, fees (in accordance with this schedule under I (b)) will be charged for all the tests and analyses made up to the time of withdrawal or failure, plus a handling charge of $5.00. The balance of the fees submitted will be returned to the applicant.

I. (b) *For all individual tests*[4] *on explosives, particularly those used in metal mines, tunnels, quarries, and other engineering operations, and for all special tests on coal mine and other explosives.*

1. Chemical analysis of explosives, $25.00.

Chemical analyses, which are made on all samples tested under I (a) or I (b). The results of these analyses will be furnished only to the manufacturer and then only when covered by a fee. Users will not be furnished with the results of chemical analyses except in the case of a dispute involving the manufacturer where the Bureau consents to act as an umpire at the request of both parties.

2. Physical examination (for each size of cartridge), $3.00.
3. For three experimental small lead-block tests, $9.00.
4. For three rate-of-detonation tests, $9.00.
5. For each experimental shot in gallery: Test 1, $5.00; Test 4, $18.00.
6. For three experimental shots in ballistic pendulum, $20.00.
7. For three experimental shots in ballistic mortar, $10.00.
8. Explosion by influence (halved-cartridge method), $4.00.
9. For one gage test to determine the gaseous products of explosion (this test does not include the determination of the oxides of nitrogen), $15.00.

The chemical analysis of the gaseous products of a permissible explosive will be furnished only to the manufacturer. For explosives other than permissible this analysis may be furnished to either the user or manufacturer.

10. For pendulum friction test to determine sensitiveness to frictional impact, $7.00.
11. For three experimental shots in Trauzl lead blocks, $10.00.
12. For three experimental shots to determine the calories developed, $13.00.
13. For small impact test to determine sensitiveness to direct impact, $5.00.
14. For large impact to determine sensitiveness to direct impact, $22.00.
15. For maximum pressure by Bichel pressure gauge test, $25.00.
16. For other tests at estimated cost.
17. Changing of brand name or the listing of the same explosive under more than one brand name, per additional name, $5.00.

[4] The methods of making chemical analyses and physical tests are briefly described hereinafter.

II. *For the determination of the permissibility of blasting devices in which the blasting agent is liquid carbon dioxide.*

1. Official test of each device to determine its permissibility for use in coal mines but under one condition only as to weight of carbon dioxide, weight of heater ingredient and thickness of disc, $115.00.

A complete official test of a blasting device for use in coal mines may involve the following: (a) Physical examination, (b) analysis of any chemical material used as the blasting agent or for the initiation or advancement of the reaction taking place, (c) propulsive strength by ballistic pendulum, (d) gallery tests with gas-air mixture containing 8 percent of natural gas (Test 1) and also with 4 percent of gas and coal dust (20 pounds on side shelves) (Test 4), (e) gaseous products.

Other tests may be made if in the opinion of the Bureau of Mines they are required to establish the safety of the blasting device.

2. For each additional condition (this includes cost of making gallery tests Nos. 1 and 4), $60.00.

3. For chemical analysis of each additional heater, $25.00.

4. Physical examination, $15.00.

5. For each experimental shot in Gallery No. 1: Test 1, $4.00; Test 4, $5.00.

6. For three experimental shots in ballistic pendulum, $13.00.

7. For one gauge test to determine the gaseous products of explosion, $21.00.

Instructions for Submitting Explosives and Equipment for Blasting Devices

The manufacturer[5] or applicant desiring tests to be made on an explosive or blasting device should not ship any samples until advised to do so. After such advice has been received, the manufacturer or applicant may ship, prepaid, to the Explosives Division, Explosives Testing Station, Bureau of Mines, Bruceton, Pa., the samples to be tested. These shipments shall be properly labeled and otherwise shall comply with I. C. C. regulations. Postal regulations do not permit explosives to be forwarded through the mails and this should never be done.

I. (a) *Explosives submitted for complete official tests for permissibility.* The quantities and sizes required for complete official tests for permissibility are as follows:

(1) Seventy-five pounds of each explosive in 1¼ by 8-inch cartridges, but if the cartridge count per 50-pound case is less than 150 cartridges then 225 cartridges is the minimum quantity required.

(2) Fifty cartridges of each in the smallest diameter in which it is desired the explosive shall become permissible except when this smallest diameter is 1¼ by 8 inches.

(3) Ten cartridges of each in any diameter other than those covered by items (1) and (2) in which it is desired the explosive shall become permissible.

(4) Should the manufacturer later desire to market other diameters the Bureau will establish the basic data for grams of wrapper and apparent specific gravity for those diameters. Fee (item I (b) (2)) will be charged for each diameter. If the diameter is smaller than the smallest permissible diameter approved on the basic sample or any subsequently submitted sample, a propagation test will be required and charged for (item I (b) (4)). No retest for propagation can be made on a given diameter which fails in any one trial or for any diameter less than that on which failure occurred.

I. (b) *Explosives submitted for other tests.* The quantities and sizes of cartridges of explosive required for tests other than the permissibility tests outlined above will be determined by the Bureau's engineers.

II. *Blasting devices submitted for complete official tests for the permissibility.* (1) One complete device, with two sets of assembly and detail drawings that show the construction of the device and the materials of which it is made should be forwarded to the Explosives Division, Explosives Testing Station, Bruceton, Pa. All materials shall be shipped prepaid.

(2) When the device has been inspected by the Bureau's engineers, the applicant will be notified of the amount of fees to be deposited, the number of additional devices and other materials that will be required for the tests.

(3) The applicant shall at his own expense ship to and install at the Explosives Testing Station, Bruceton, Pa., such equipment and materials as may be necessary for carrying out the tests.

Conditions and Requirements Under Which Tests on Explosives and Blasting Devices Will Be Made

The conditions under which tests will be made on explosives and blasting devices are as follows:

Storage requirements—(a) *Explosives.* The cases in which the explosives are delivered by the manufacturer will be opened and the explosives will be placed in slide-lid boxes which will be stored in one of the Bureau's magazines for at least 30 days before tests are commenced, other than the tests under (c). This storage requirement will not be waived for explosives submitted for tests on permissibility, but may be waived for other explosives if in the judgment of the explosives engineers of the Bureau this is desirable.

(b) *Heater elements.* For blasting devices, the heater elements will be handled in the same manner as under (a).

Preliminary tests on explosives. As soon as possible after its receipt, an explosive will be analyzed chemically, an explosion by influence test will be made, and either a pendulum friction or large impact test, or both, will be made.

General conditions governing testing. (a) Tests on explosives and blasting devices will be made at the Explosives Testing Station of the Bureau of Mines at Bruceton, Pa., and will be made in the order of receipt of the explosives or blasting devices. When explosives or blasting devices from more than one applicant are received on the same day, preference will be given to the earliest application.

(b) The applicant will be notified of the date of starting the tests in ample time to have a representative present to witness them.

(c) No one is to be present at or participate in the tests except the Bureau of Mines' employees, representatives of the applicant desiring tests to be made, and such other persons as may be mutually agreed upon by the applicant and the Bureau. Witnesses shall be present in the capacity of observers only. The conduct of the tests shall be entirely in the hands of the Bureau.

(d) Tests for a manufacturer are limited to samples of explosives which are his own product.

Methods of Testing

(1) *Chemical testing.* The Bureau of Mines' methods for the analysis of explosives are described in its Bulletins Nos. 51, 96, and 219, its Technical Papers Nos. 78, 160, 162, and 282, and its Report of Investigations 3337.[6]

(2) *Physical testing.* The routine physical tests which are made by the Bureau of Mines on explosives, particularly for determination of permissibility for use in coal mines, are described in

[5] Tests for a manufacturer are limited to samples which are his own product.

[6] *Bulletin 51*—The Analysis of Black Powder and Dynamite, by W. O. Snelling and C. G. Storm, 1913, 80 pp. 5 pls., 5 figs.

Bulletin 96—The Analysis of Permissible Explosives, by C. G. Storm, 1916, 88 pp., 3 pls., 7 figs.

Bulletin 219—Explosives: Their Materials, Constitution and Analysis, by C. A. Taylor and W. H. Rinkenbach, 1923, 188 pp.

Technical Paper 78—Specific-Gravity Separation Applied to Analysis of Mining Explosives, by C. G. Storm and A. L. Hyde, 1914, 14 pp., 5 cents.

Technical Paper 160—The Determination of Nitrogen in Substances Used in Explosives, by W. C. Cope and G. B. Taylor, 1917, 46 pp., 1 pl., 4 figs.

Technical Paper 162—Initial Priming Substances for High Explosives, by G. B. Taylor and W. C. Cope, 1917, 32 pp.

Technical Paper 282—Analysis of Detonating and Priming Mixtures, by C. A. Taylor and W. H. Rinkenbach, 1922, 33 pp., 1 pl., 2 figs., 5 cents.

Report of Investigations 3337—Annual Report of the Explosives Division for the Fiscal Year 1936, by Wilbert J. Huff, 1937, 34 pp., 9 figs. A method for the determination of moisture in explosives containing explosive oils of high volatility is described on pages 15 and 16, and the apparatus used is illustrated in figure 7.

Bulletin 346[7] and may be briefly stated as follows:

(a) *Physical examination.* The physical examination of an explosive is made on four cartridges taken at random from the shipment of explosive or heater element (for blasting device). The apparent specific gravity is determined from the weight of each cartridge and of the sand displaced when the cartridge is embedded in this sand which is contained in a cylinder. The average of the four determinations made is taken as the apparent specific gravity; also the average weight of the cartridges is taken as the weight of cartridge.

From the weights for ingredients and wrapper for each cartridge the weight of wrapper per 100 grams of explosive is derived. The color and consistency of the explosive and the color of its wrapper are observed and recorded.

(b) *Unit deflective charge.* The "unit deflective charge" for an explosive is the weight of explosive that has been found to deflect the ballistic pendulum of the Bureau of Mines to the same extent as one-half pound of Pittsburgh Testing Station Standard 40 percent straight nitroglycerin dynamite.

(c) *Gallery tests.* Before an explosive is admitted to the Bureau of Mines permissible list, it must pass without a single ignition the following tests in Gallery No. 1:

Test 1. Ten trials, each with a charge of the explosive equal to the unit deflective charge, are made. Each charge is fired into a mixture of natural gas and air containing 8.0±0.3 percent of methane and ethane at a temperature of 25°±5° C.

Preliminary to charging the explosive into the borehole of the steel cannon a primer is made from one of the cartridges. This cartridge is punched centrally on one end for the detonator and then slit lengthwise with two or three cuts about 4 inches long near the opposite end. A No. 6 electric detonator is inserted in the hole and the primer thus made is pushed gently and firmly to the back of the borehole with the detonator facing outward. The primer thus fills entirely the back of the borehole with no air spaces. The remaining cartridges of the charge are then slit lengthwise two or three times, loaded into the borehole and tamped in front of the primer. One pound of milled plastic fireclay is then tamped firmly into the borehole and the charge fired into the gallery.

Test 4. Five trials each using a 1½ pound charge of explosive are fired without stemming into a mixture of natural gas and air containing 4.0±0.2 percent of methane and ethane and 20 pounds of bituminous coal dust, part of which is brought into suspension in the air. Preliminary to charging the explosive into the borehole, a 2-inch length is cut from one of the cartridges and a No. 6 electric blasting cap is inserted centrally in the cut portion to form a primer. The remaining cartridges of the charge are then slit and are tamped firmly into the borehole. The primer is then placed against the main charge with the charged end of cap pointing toward the charge of explosive and the charge is then fired without stemming.

(d) *Gaseous products of explosion.* To determine these products a charge consisting of 200 grams of explosive from 1¼-inch diameter cartridges weighed free of the wrapper, together with the proportionate quantity of original wrapper is fired in a 15-liter Bichel gage from which the air has been evacuated. The charge is fired by means of a No. 6 electric blasting cap. Five minutes after the shot is fired the pressure is observed and recorded. A sample of gases is drawn from the gage for a chemical analysis and the average percentage of each gas present is computed from two shots. The volume of the poisonous gases must not exceed 158 liters per 1½ pounds of explosives for a permissible explosive.

(e) *Rate of detonation.* The rate of detonation is determined with the Mettegang recorder. The explosive to be tested is placed in a thin sheet-iron tube 42 inches in length and ¼ inch larger in exterior diameter than the cartridge being tested. The tube is perforated transversely at two places by holes, ⅜ inch in diameter. The first hole is 2 inches from the cap end of the tube and the centers of the two holes are exactly 1 meter apart. These holes are covered with friction tape wrapped around the tube. The ends of the cartridges are cut off but the explosive is otherwise maintained in its original wrapper and the tube is charged as a continuous file. Through the explosive at the center of each hole there is passed a 4-inch piece of double cotton-covered copper wire (B. & S. gage No. 28).

The assembled tube is suspended in the bombproof and two pieces of wire are then attached to complete two separate electrical circuits from the Mettegang recorder. A No. 6 electric blasting cap is embedded centrally in one end of the file of explosive so that the charged end of the cap is ½ inch from the first wire through the explosive. The legs of the cap are then connected to the firing line. After the charge is fired the readings on the sooted drum of the Mettegang recorder are made. From these readings and the known speed of rotation of the drum the rate of detonation of the explosive is computed.

If the detonation of the entire file is not complete in any trial that diameter and all smaller diameters shall be deemed non-permissible.

(f) *Pendulum friction test.* This test is made with the pendulum friction device, which consists of a steel anvil (on which a 7-gram charge of explosive is placed) and a swinging shoe, which is attached to the lower end of a rigid, steel pendulum rod. In testing an explosive for permissibility, a steel shoe or a hard-fiber-faced shoe is used. This shoe, which can be dropped from different heights above the anvil, passes over the anvil a number of times. The device is adjusted so that it swings across the face of the anvil 18±1 times before coming to rest when there is no explosive on the anvil. Ten separate trials are made. In order to pass the test a permissible explosive must not show in any trial using the hard-fiber-faced shoe dropped from a height of 1.5 meters, a result more unfavorable than an almost indistinguishable local crackling. A field sample of a permissible explosive must pass the same test, except that in the retests the height of fall of the shoe shall be 1.35 meters.

(g) *Explosion by influence tests.* The halved-cartridge method is employed. In this method a hole for imbedding a No. 6 electric blasting cap is made in the center of one end of a 1¼ by 8-inch cartridge. Before inserting the cap the cartridge is cut in the middle at right angles to its axis; the two cut ends are placed facing each other with their axes in line. The two halves are spaced the required distance apart by rolling them in paper. The tube thus formed is held in place by carpet tacks. Just prior to firing, the detonator is inserted in the outer end of one of the half-cartridges.

The greatest distance between the halves of the cartridge at which both halves detonate in four shots without any failures is termed the "sensitiveness" of the explosive. The minimum distance at which no explosion occurs in four shots is also determined.

(h) *Large impact test.* This test is made on a 1-inch length of a 1¼ inch diameter cartridge, cut from the center of the cartridge. This 1-inch length of explosive in its original wrapper is placed on the anvil of the large impact device with the cylindrical axis of the cartridge vertical and the weight of 25 kilograms dropped 10 times from a height of 15 centimeters, fresh charges being used each time. Attached centrally to the lower end of the falling weight is a steel pin 2 inches long and 1⅜ inches in diameter. This steel pin falls directly on the sample under examination. This test is made at the option of the Bureau of Mines when as a result of a review of the chemical analysis of the explosive, or from other cause, any question concerning the sensitiveness to impact of the explosive arises. Failure of the explosive on any trial shall constitute a failure to pass the test, and such failure shall disqualify an explosive from further testing.

Provisions for the Permissibility of Explosives and Blasting Devices

The Bureau reserves the right to rescind for cause, at any time, any approval granted under this schedule. An explosive or blasting device which has passed all tests necessary to place it on any of

[7] *Bulletin 346*—Physical Testing of Explosives at the Bureau of Mines Experiment Station, Bruceton, Pa., by C. E. Munroe and J. E. Tiffany, 1932, 148 pp., 48 figs. 35 cents.

the Bureau's permissible lists may, therefore, be omitted from future lists.

An explosive or blasting device is permissible in use only when it satisfies the following requirements:

I. (a) *Permissible explosives.* 1. That the explosive is in all respects similar to the sample submitted by the manufacturer for test.

2. That electric detonators (not fuse and detonators) are used of not less efficiency than No. 6, the detonating charge of which shall consist of a one-gram mixture of 80 parts of mercury fulminate and 20 parts of potassium chlorate (or their equivalents)—and that the required electric firing must be done by means of a permissible-type blasting unit.

3. That the explosive, if frozen, shall be thawed thoroughly in a safe and suitable manner before use.

4. That the quantity used for a shot does not exceed 680 grams (1½ pounds), and that it is properly confined with clay or other incombustible stemming.

5. That the diameter of the cartridge used must be not less than that determined by tests.

6. That the shot is not fired in the presence of a dangerous percentage of firedamp.

7. That the shot is not a dependent shot, is not bored into the solid, and does not have a burden so heavy that the shot obviously is liable to blow out.

8. That the explosive be stored under proper conditions so that it does not undergo change in character.

II. *Blasting devices.* 1. That the device is in all respects similar to the sample submitted for tests.

2. That the permissible conditions of charging as to thickness of disk, weight of heater ingredient, and weight of carbon dioxide charge are met, and that the device is properly confined with clay or other incombustible stemming.

3. That the lead wires shall be connected to either type of shell top (end or side connection) only after the shell has been placed in the borehole and further, that the terminal plug when the end connection shell top is used, shall not be inserted into the shell until these connections are being made.

4. That the device shall not be fired in the presence of a dangerous percentage of firedamp.

5. That the device shall not be charged with the heater ingredient and carbon dioxide in the mine.

Wording, purpose, and use of approval plate for permissable blasting devices—Approval plate. Manufacturers shall attach, stamp, or mold an approval plate on each permissible blasting device. The plate shall bear the seal of the Department of the Interior, Bureau of Mines, and be inscribed as follows: "Permissible Blasting Device Approval No. ____, issued to the ___________ Company."

When deemed necessary, appropriate cautions shall be added. The size and position of the approval plate shall be satisfactory to the Bureau.

Where the nature of the device is such that it is not feasible to attach a permanent metal approval plate, a paper label may be used if permitted by the Bureau of Mines and in addition there shall be stamped, etched, or otherwise engraved on the device the following: "B. M. No. ____." This is an abbreviation to indicate "Bureau of Mines Approval No. ____."

Purpose. The approval plate or label is an identifying mark which enables any one to tell at a glance that the device is of the permissible type. By the plate or label the manufacturer shows that his device complies with the Bureau's requirements and that it has been approved for use in coal mines.

Use. Permission to place the Bureau's approval plate or label on his device obligates the manufacturer to maintain the quality of his product and to see that each device is constructed according to the drawings that have been accepted by the Bureau and are in the Bureau's files, and further to instruct the user that the device is only permissible when used as the Bureau prescribes. Blasting devices exhibiting changes in design that have not been approved are not permissible and must not bear the Bureau's approval plate or label.

Instructions on handling future changes in design of a blasting device. When the manufacturer desires to make any changes in the design of a blasting device he must first of all obtain the Bureau's approval of the change before making the change.

Active and Inactive Lists

The Bureau maintains active and inactive lists of permissible explosives and permissible blasting devices. The active lists are published annually and the inactive lists include those permissible explosives or blasting devices which have not been manufactured during any calendar year or those placed upon these lists at the request of manufacturers. The Bureau will transfer an explosive or blasting device from the inactive list to the active list upon the request of the manufacturer, provided the explosive or blasting device meets the regulations then in force.

Field Sampling

The Bureau of Mines will from time to time collect and reexamine permissible explosives and blasting devices found in commercial shipments and in the field in order to determine how closely they conform to the basic samples. To govern the interpretation of such tests the tolerances given hereafter are applied. If the explosive or blasting device (including heater element) does not pass the retests or exceeds the tolerances for chemical analysis or physical tests, such failure may be due to either (1) improper manufacture or (2) improper storage.

The manufacturer is responsible for the first but the consumer or owner is responsible for the second because the manufacturer has no control over the conditions of storage when the explosive or heater element has once passed from his ownership. The manufacturer should exercise due care that the quality of the raw materials, as well as the weighing and incorporation of them, shall be similar in all respects to those employed in the making of the original sample.

The user should employ only explosives or heater elements which are in first-class condition and freshly manufactured. Explosives or heater elements should be stored in well ventilated magazines and if possible the temperature therein should be kept below 90° F. Boxes of explosives should be placed in the magazine so that the cartridges lie horizontally. It is well to purchase explosives or heater elements only in such quantities that they can be used promptly. The explosives or heater elements purchased first should be used first, accordingly older explosives or heater elements should not be stored under or behind a fresh consignment.

Tolerances as applied to field or manufacturers' samples—I. For permissible explosives. Tolerances which provide for reasonable limits of variation in the results of analyses and tests of field samples and manufacturers' samples of permissible explosives were established July 1, 1915, subsequently amended November 15, 1920, February 26, 1921, and further modified in this schedule. The tolerances as enumerated below supersede all previous tolerances.

(1) *Chemical analysis of field samples.* (A) *Moisture.* The tolerances for moisture shall be in accordance with those shown in Table 1:

TABLE 1.—*Table showing the limit of variation (percentage of total explosive) for various quantities of moisture (percentage) arranged for "tolerances" promulgated July 1, 1915, by the Bureau of Mines*

Quantity of moisture (percent)		Limit of variation of total explosive (percent ±)
From—	To—	
0.0	0.1	1.5
0.2	0.5	1.6
0.6	0.9	1.7
1.0	1.3	1.8
1.4	1.7	1.9
1.8	2.1	2.0
2.2	2.5	2.1
2.6	2.9	2.2
3.0	3.3	2.3
3.4	3.7	2.4
3.8	4.1	2.5
4.2	4.5	2.6
4.6	4.9	2.7
5.0	5.3	2.8
5.4	5.7	2.9
5.8	6.1	3.0
6.2	6.5	3.1
6.6	6.9	3.2
7.0	7.3	3.3
7.4	7.7	3.4
7.8	8.1	3.5
8.2	8.5	3.6
8.6	8.9	3.7
9.0	9.3	3.8
9.4	9.7	3.9
9.8	10.0	4.0

(B) *Carbonaceous combustible material.* The tolerance for this item is ±3 percent of the total explosive.

(C) *Impurities in ammonium nitrate* may include ammonium chloride and ammonium sulphate. The tolerance for the sum of the last two items is 4 percent of the sum of all the items included as "commercial ammonium nitrate" (viz ammonium nitrate, chloride and sulphate).

(D) *Other ingredients or their equivalents.* For ingredients in quantities of 60 percent or more the tolerance shall be ±3 percent of the total explosive.

For ingredients in quantities not exceeding 60 percent the tolerances shall be in accordance with those shown in Table 2.

TABLE 2.—*Table showing the limit of variation (percentage of total explosive) for various quantities of constituents*

Quantity of constituent (percent)		Limit of variation of total explosive (percent ±)
From—	To—	
0.0	1.4	1.0
1.5	2.4	1.1
2.5	5.4	1.2
5.5	6.4	1.3
6.5	9.4	1.4
9.5	11.4	1.5
11.5	14.4	1.6
14.5	17.4	1.7
17.5	20.4	1.8
20.5	23.4	1.9
23.5	26.4	2.0
26.5	30.4	2.1
30.5	33.4	2.2
33.5	37.4	2.3
37.5	40.4	2.4
40.5	44.4	2.5
44.5	47.4	2.6
47.5	51.4	2.7
51.5	54.4	2.8
54.5	57.4	2.9
57.5	60.0	3.0

(2) *Physical tests of field samples.* (A) The volume of poisonous gases from 680 grams of the explosive including its wrapper, must be less than 158 liters by one trial or the average of two or three trials. The volume of poisonous gases emitted by a field sample must be within a tolerance of ±15 percent of the volume emitted by the basic sample. Where the volume is over 137.3 liters and less than 158 liters then the minus 15 percent tolerance will be the only one applied.

(B) *Rate of detonation* by Mettegang recorder in sheet steel tubes; ±15 percent of that shown by the basic sample.

(C) *Unit deflective charge.* Plus or minus 10 percent of that shown by the basic sample.

(D) *Grams of wrapper* (for any size). Plus or minus 2 grams of that shown by the basic sample.

(E) *Apparent specific gravity.* Plus or minus 7.5 percent of that shown by the basic sample.

(F) *Gallery tests.* (a) *Test 1* must pass five shots with a charge of 90 percent of that used for the basic sample. (b) *Test 4* must pass two shots with a charge of 612 grams. (c) Pendulum friction test must pass with hard fiber-faced shoe falling from a height of 1.35 meters.

Notification regarding field samples of explosives. (1) If the explosive fails to pass gallery tests, pendulum friction test, or if the poisonous gases exceed the tolerance, the Bureau will declare that particular lot of explosive not permissible, and a copy of the notification to the consumer or owner will be furnished the manufacturer. The notification will state that the explosive did not meet the requirements.

(2) If the explosive exceeds the tolerance for any items of the chemical analysis, for grams of wrapper per 100 grams of explosive, for apparent specific gravity, for rate of detonation, or for unit deflective charge, the manufacturer only will be advised of the results except that should these results, in the opinion of the explosives engineer, indicate that the explosive is unsafe for use, then the operator or owner will be warned immediately.

II. *For permissible blasting devices.* The construction of blasting devices will be checked against the basic device. The same tolerances will be applied to the ingredients of the heater as are applied to the ingredients of permissible explosives.

JOHN W. FINCH,
Director.

Approved, September 18, 1939.

H. L. I.
Secretary of the Interior.

[F. R. Doc. 39-3657; Filed, October 4, 1939; 10:00 a. m.]

BITUMINOUS COAL DIVISION

[Order No. 283]

AMENDING ORDER RELATING TO THE FILING OF REPORTS AND CONTRACTS BY CODE MEMBERS PURSUANT TO SECTIONS 10 AND 4, II, (A) OF THE BITUMINOUS COAL ACT OF 1937

It is ordered, That the third paragraph of Order No. 282, heretofore issued on the 28th day of September, 1939,[1] beginning with the words "*Now therefore, it is ordered*" be and the same is hereby amended so as to include the following parenthetical clause after the word "report" and before the word "setting" in said paragraph: "(Code Members having a daily capacity of 50 tons or less need not have such report notarized)."

Dated, October 3, 1939.

H. A. GRAY,
Director.

[F. R. Doc. 39-3658; Filed, October 4, 1939; 10:13 a. m.]

[1] 4 F.R. 4118 DI.

TITLE 36—PARKS AND FORESTS

FOREST SERVICE

OCCUPATION, USE, PROTECTION AND ADMINISTRATION OF NATIONAL FORESTS

MODIFICATION OF REGULATION U-3

By virtue of the authority vested in the Secretary of Agriculture by the act of Congress of February 1, 1905 (33 Stat. 628), amendatory of the act of June 4, 1897 (30 Stat. 11, 35), I, H. A. Wallace, Secretary of Agriculture, do hereby amend Regulation U-3 (Sec. 251.22) [1] of the rules and regulations governing the occupancy, use, protection and administration of the national forests approved September 19, 1939, by substituting the following for said section:

"§ 251.22 (Reg. U-3) *Recreation areas.* Suitable areas of national forest land other than wilderness or wild areas which should be managed principally for recreation use but on which certain other uses may or may not be permitted may be given special classification. Areas in excess of 100,000 acres will be approved by the Secretary of Agriculture; areas of less than 100,000 acres may be approved by the Chief, Forest Service, or by such officers as he may designate."

In testimony whereof, I have hereunto set my hand and official seal at the city of Washington this 3d day of October 1939.

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

[F. R. Doc. 39-3668; Filed, October 4, 1939; 12:42 p. m.]

Notices

DEPARTMENT OF AGRICULTURE.

Food and Drug Administration.

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER RELATIVE TO IDENTITY OF CANNED APRICOTS

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

General Statement

1. In conformity with subsection (e) of Section 701 of the Federal Food, Drug,

[1] 4 F.R. 3994 DI.

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

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

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

4. On April 14, 1939, at 1:45 p. m., the hearing on the definition and standard of identity proposal for canned apricots was convened and held on April 14, and at 6:10 p. m., was adjourned until May 1, 1939, and resumed on May 1, 1939, and concluded on May 2, 1939, at 11:50 a. m. It was ordered that all evidence with reference to the sucrose-dextrose issue introduced in evidence at the hearing on the definition and standard of identity proposal for canned peaches be incorporated in this record. Page references to the record of the hearings conducted on May 1, 1939, and May 2, 1939, are cited as "C. R. —". All interested persons were notified, pursuant to the rules of procedure, of their opportunity to file proposed findings of fact and written argument.

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

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

Suggested Findings

1. Canned apricots are prepared from mature apricots. (R. pp. 22, 23, 35)

2. Such apricots are in one of the following forms of units: whole peeled, whole unpeeled, halves peeled, halves unpeeled, peeled quarters, unpeeled quarters, peeled slices (peeled sliced), unpeeled slices (unpeeled sliced), peeled mixed pieces of irregular sizes and shapes, unpeeled mixed pieces of irregular sizes and shapes. (R. pp. 22, 23, 35, 46) Such forms of units are not mixed in canning. (R. pp. 22, 45) Each such form of units has its own designation. (R. pp. 22–23, 45) Canned apricots are not prepared in any other forms of units. (R. pp. 23, 45) Apricots of each such form of units are an optional apricot ingredient. (R. pp. 23, 34, 45, 46)

3. Except in the case of whole apricots, canned apricots are pitted. (R. p. 45)

4. Canned apricots contain a suitable liquid packing medium. (R. pp. 24, 34, 45–46) It may be the natural juice of the apricot obtained by precooking the apricots so that such juice exudes, or it may be an added liquid. (R. pp. 36, 48, 92)

5. Water is a suitable liquid packing medium. (R. pp. 25, 45)

6. The natural juice of the apricot is a suitable liquid packing medium. (R. pp. 65, 86–87, 88)

7. A water solution of sugar is a suitable liquid packing medium. (R. pp. 45, 78–82); (Identity of Peaches, R. pp. 37, 38, 48, 53, 92, 156, 183, 214)

8. Sugar is defined in Webster's International Dictionary on page 2521 thereof (C. R., Other Interested Parties' Exhibit No. 4) as:

"1. A sweet crystallizable substance, colorless or white when pure, occurring in many plant juices, and forming an important article of human food;—called specif. *cane sugar, sucrose,* and *saccharose.* The chief sources of sugar are the sugar cane and the sugar beet, the completely refined products of which are identical and form granulated sugar, loaf sugar, etc., of commerce. The cane juice, obtained by expression, is treated with lime to remove impurities, filtered, and evaporated to crystallization. The mother liquor, or molasses, is removed by draining or (now usually) by a centrifugal. The crude yellowish or brown sugar thus obtained is usually refined at central plants by redissolving, clarifying, decolorizing, and recrystallizing. In the case of beets the sugar is removed by extraction with water (diffusion) and carried to the refined state in one operation. Crude cane sugar is often sold as *brown sugar,* but crude beet sugar has an unpleasant flavor. Some sugar is also made from palm trees, maple trees, etc. Sugar forms fine monoclinic crystals melting at 186° C. (367° F.), which dissolve in about half their weight of water at ordinary temperature. Chemically, it is a disaccharide of the formula $C_{12}H_{22}O_{11}$, formed by union of one molecule of dextrose with one of levulose. It does not reduce Fehling solution and does not ferment directly, but is converted by diastase (or by heating with acids) into the fermentable mixture called *invert sugar.* It is dextrorotatory, a property which is used in estimating the strength of its solutions. Sugar is a food, and also serves as a condiment and preservative for other foods. See Food 1.

"2. By extension, any of a class of sweet, soluble compounds comprising the simpler carbohydrates. See Carbohydrate. The simple sugars, those not decomposable by hydrolysis, are called *monosaccharides.* Complex sugars are formed by the condensation of two, three, or four molecules of simple sugar and are called *disaccharides, trisaccharides,* and *tetrasaccharides.* For the structure and classification of simple sugar, see Monosaccharide. Among the important natural sugars are *sucrose* (See def. 1), or *cane sugar, dextrose* (d-*glucose*), or *grape sugar, levulose* (d-*fructose*), or *fruit sugar, lactose,* or *milk sugar,* and *maltose,* or *malt sugar.* Some of these, and also many others, have been made synthetically."

9. Prior to the hearing, a letter was addressed to the Secretary of Agriculture asking for a definition of the word "sugar" as used in the proposal, which letter was answered under the signature of the Secretary of Agriculture, which answer reads as follows and is Other Interested Parties' Exhibit No. 2, Identity of Peaches:

"We have your letter of March 30 referring to proposals for food standards to be considered at public hearings on April 10, 1939. You inquire as to our interpretation of the words 'Water solution of sugar, of 25° Brix or more' and 'Water solution of sugar, of less than 25° Brix' as used in these proposals.

"The word 'sugar' as used therein refers to sugar as defined in the current advisory definition and standard of identity for sugar under the present

Food and Drugs Act, which you will find on page 11 of the enclosed F. D. 2, definition 1, under 'A. Sugar and Sugar Products.' These are merely proposals. The final standards will be based on evidence adduced at the public hearing and any interested party is, of course, invited to submit proposals for other packing mediums."

10. In S.R.A., F.D. No. 2, Rev. 5 (Identity of Peaches, Other Interested Parties' Exhibit No. 2), under "Sugars and Related Substances", the following appears:

"A. Sugar and Sugar Products

"1. *Sugar*. Sucrose (saccharose) obtained chiefly from sugarcane and sugar beets. Granulated, loaf, cut, milled, and powdered sugars are different forms of sugar, containing at least 99.5 percent of sucrose."

Under "B. Dextrose and Related Products", the following appears:

"1. *Dextrose*. The product chiefly made by the hydrolysis of starch or a starch-containing substance, followed by processes of refining and crystallization [6]

"a. Anhydrous dextrose contains not less than 99.5 percent of dextrose and not more than 0.5 percent of moisture.

"b. Hydrated dextrose contains not less than 90 percent of dextrose and not more than 10 percent of moisture, including water of crystallization.

"[6] When derived from cornstarch, dextrose is known commercially as refined corn sugar."

11. Starch is a polysaccharide. Sucrose is a disaccharide. Dextrose and levulose are monosaccharides. (C.R. p. 32)

12. Polysaccharides such as starch have a higher caloric value per gram than the disaccharides such as sucrose, and the disaccharides have a higher caloric value per gram than the monosaccharides such as dextrose and levulose. (C. R. p. 32)

13. By the dictionary definition, the simple sugars, monosaccharides, are not decomposable by hydrolysis. (C. R., Other Interested Parties' Exhibit No. 4)

14. Sugar, as described in the Encyclopedia Britannica on page 523 (C. R., Other Interested Parties' Exhibit No. 5), applies to over 100 substances, having distinctive properties and scientific names; for example, sucrose, glucose, fructose, lactose, maltose, etc.

15. "As ordinarily understood, of course, by chemists, and physiologists, sugar is just one of the break-down products of two other large nutritive ingredients, namely, ordinary starch from plants, and starch from animals. Now as they are digested or hydrolized, you get ultimately a double sugar, nutritively it is like cane sugar, or beet sugar, and then when they are inverted, further changed into the form that they are absorbed and actually utilized in the body, we have dextrose and levulose, so that beginning with starch you have the double sugars, maltose and fructose, and then you have the simple sugars, which is the ultimate product.

"There are other forms of sugars that can be utilized by various bacteria, but not by man." (Identity of Peaches, Carlson p. 159)

16. Crystalline dextrose manufacture was made commercially possible in 1923 by the granting of the Newkirk patents (October 23, 1923; September 16, 1924; January 6, 1925) on corn starch hydrolysis and the economical separation of high purity dextrose from the converter liquors. (Identity of Peaches, Other Interested Parties' Exhibit No. 3)

17. Not until 1926 was chemically pure dextrose accepted by the United States Pharmocopoeia. (Identity of Peaches, Other Interested Parties' Exhibit No. 3)

18. Not until 1930, when the Secretary of Agriculture ruled that refined dextrose (corn sugar) could be used in the manufacture of food products without label declaration, was the utilization of dextrose by canners, preservers, beverage manufacturers and allied food industries seriously considered. (Identity of Peaches, Other Interested Parties' Exhibit No. 3)

19. In 1930, the Secretary of Agriculture ruled:

"Corn sugar (dextrose) when sold in packages must be labeled as such; when sold in bulk must be declared as such; but the use of pure refined corn sugar as an ingredient in the packing, preparation, or processing of any article of food in which sugar is a recognized element need not be declared upon the label of any such product.

"Nothing in this ruling shall be construed to permit the adulteration or imitation of any natural product such as honey by the addition of any sugar or other ingredient whatever.

"The term 'sugar', with or without the parenthetical expression 'sucrose', as used in the definitions to designate the sweetening agent in manufactured food products, is to be interpreted, wherever necessary to effect the purpose of the foregoing decision, as including dextrose (pure, refined corn sugar)." (Identity of Peaches, Other Interested Parties' Exhibit No. 1)

20. The great bulk of consumers regard "sugar" as the common or usual name of sucrose, i. e., cane or beet sugar. (Identity of Peaches, R. pp. 53, 132, 177, 350, 360, 397, 404, 416, 424, 442, 453, 461, 465, 472)

21. Within the past 3½ years, refined corn sugar (dextrose) has been used in the canning of apricots. (Identity of Peaches, R. p. 275)

22. Prior to that time, cane or beet sugar (sucrose) was the only sugar used in the canning of apricots. (Identity of Peaches, R. pp. 199–200, 275–276, 369, 400, 422, 442, 472); (Identity of Peaches, Other Interested Parties' Exhibit No. 3)

23. The simple sugar, dextrose, is now obtainable by hydrolysis from corn starch; is called "refined corn sugar"; and is now used in combination with cane or beet sugar (sucrose) in a water solution as a liquid packing medium for canned apricots. (Identity of Peaches, R. pp. 199–200, 258, 275); (Identity of Peaches, Other Interested Parties' Exhibits Nos. 3 and 4)

24. Refined corn sugar (dextrose) and cane or beet sugar (sucrose) differ in sweetness, in food value, in manner of absorption, in solubility, and their solutions differ in viscosity, in osmotic pressure, and in boiling temperature. (Identity of Peaches, R. pp. 66–67, 174–175, 177, 257, 260–261, 265, 333–345, 347, 370–371, 398, 427, 499–500, 513–517); (C. R. pp. 21, 22, 52, 53, 54, 55, 57); (Identity of Peaches, Other Interested Parties' Exhibit No. 3) A water solution of refined corn sugar (dextrose) as the liquid packing medium cannot be used alone in the canning of apricots. The maximum amount of refined corn sugar (dextrose) which has been so used for commercial purposes, in combination with cane or beet sugar (sucrose), is 33⅓% refined corn sugar (dextrose) and 66⅔% cane or beet sugar (sucrose) or cane and beet sugar (sucrose). (Identity of Peaches, R. pp. 199–200, 258, 275.) Refined corn sugar (dextrose) is not as sweet as cane or beet sugar (sucrose), being generally regarded as from 50% to 75% as sweet as cane or beet sugar (sucrose). (Identity of Peaches, R. pp. 66–67, 174–175, 217, 260–261, 499–500, 513–517.) Consumers are accustomed to gauge sweetness according to that of cane or beet sugar (sucrose). (Identity of Peaches, R. p. 218)

25. Refined corn sugar (dextrose) sells on the open market at a cheaper price than cane or beet sugar (sucrose). (Identity of Peaches, R. pp. 189, 239); (C. R. p. 58); (C. R., Affidavits of A. B. Saroni, H. P. Nachtrieb, and Phillip Kelley)

26. Another sugar, refined corn sugar (dextrose), is now used in the canning of apricots, as well as cane sugar and beet sugar (sucrose), and it will promote honesty and fair dealing in the interest of consumers to differentiate between the kinds of sugars used in preparing the liquid packing medium of canned apricots. (Identity of Peaches, R. pp. 66–67, 398, 406, 424, 427, 437, 471, 492)

27. A label statement of the origin of such sugars used in preparing such liquid packing medium will promote honesty and fair dealing in the interest of the consumer. (Identity of Peaches, R. pp, 424, 492)

28. The use of the qualifying words "cane sugar", "beet sugar", followed by their chemical name "sucrose", and "refined corn sugar", followed by its chemical name "dextrose", will promote honesty and fair dealing in the interest of the consumer. (Identity of Peaches, R. pp. 41, 42, 57, 58, 71, 100, 102, 120, 121, 132, 163, 229, 239, 404, 425, 450, 453); (C. R. pp. 67–69)

29. A water solution of sugar is used not only as a liquid packing medium but also as a sweetening agent. (Identity of Peaches, R. pp. 72, 163, 172, 174, 175, 231, 256)

30. Such sweetening agent is called sirup. (Identity of Peaches, R. pp. 71, 120)

31. There are four water solutions of cane or beet sugar (sucrose) or cane and beet sugar (sucrose) known as sirups to consumers and used in the industry, to wit: light, medium, heavy, and extra heavy. (R. pp. 69–70); (Identity of Peaches, R. pp. 120, 121, 126, 131, 229, 297, 425) It is a customary trade and consumer practice so to distinguish them. (Identity of Peaches, R. pp. 41, 61, 131, 229, 424) Such sirups are measured and distinguished by their specific gravity as determined by the Brix hydrometer. The Brix hydrometer is a reliable instrument for testing specific gravity of liquid solutions and is in general use. (R. pp. 26, 74); (Identity of Peaches, R. p. 40, 136) A water solution of cane or beet sugar (sucrose) or cane and beet sugar (sucrose) which does not show a reading of 10° on the Brix hydrometer does not sweeten the finished canned apricots sufficiently to be known as a sirup for this food. (R. pp. 49, 69, 74, 86)

32. When such sirups are prepared from cane or beet sugar (sucrose) or cane and beet sugar (sucrose), they have, respectively, the following readings on the Brix hydrometer: not less than 10° but less than 25°, not less than 25° but less than 40°, not less than 40° but less than 55°, and not less than 55°, but when such sirups of equivalent sweetness are prepared from a mixture of cane or beet sugar (sucrose) or cane and beet sugar (sucrose) and refined corn sugar (dextrose), they do not have the above readings on the Brix hydrometer because of the difference in sweetness between refined corn sugar (dextrose) and cane or beet sugar (sucrose). However, the Brix reading of a sucrose sirup equivalent in sweetness to that of any such mixture is obtained by adding the percent by weight of cane or beet sugar (sucrose), or both, in such mixture to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution. Such calculated Brix readings (sucrose equivalents) are identical with the limits above set forth. (R. pp. 27–28, 37, 48, 53, 56, 69, 70, 72)

33. Due to the fact that in canned apricots which have been prepared with a liquid packing medium consisting of a water solution of cane or beet sugar (sucrose) or cane and beet sugar (sucrose), there will be present in addition to sucrose, due to inversion, levulose and dextrose and that in canned apricots which have been prepared with a liquid packing medium consisting of a water solution of a mixture of cane or beet sugar (sucrose) or cane and beet sugar (sucrose) and refined corn sugar (dextrose), there will likewise be present sucrose, and due to inversion, levulose and dextrose, the consumer would have no way of telling, from an examination of the finished canned apricots, the optional sugar ingredient used. It will, therefore, promote honesty and fair dealing in the interest of the consumer to require a label statement of the optional sugar ingredient used in the preparation of the liquid packing medium. (Identity of Peaches, R. p. 492)

34. The common or usual names of such sirups are light sirup, medium sirup, heavy sirup, and extra heavy sirup, qualified by the name of the kind or kinds of sugar used to make such sirups. (R. pp. 27–28, 37, 48, 53, 56, 69, 70, 72)

35. The liquid of the finished canned apricots is not more than 40° as determined by the Brix hydrometer. (R. pp. 29, 34, 45, 66, 67)

36. Canned apricots may or may not be seasoned. (R. pp. 30, 34, 45, 46)

37. Spice is a suitable seasoning agent. (R. pp. 30, 45)

38. Flavoring is a suitable seasoning agent. (R. pp. 30, 45)

39. A vinegar is a suitable seasoning agent. (R. pp. 30, 45)

40. Apricot kernels are a suitable seasoning agent, except in the case of whole apricots. (R. pp. 31, 45)

41. Apricot pits, in limited amounts, are a suitable seasoning agent, except in the case of whole apricots. (R. pp. 30, 45, 65) The number of pits suitable for such purpose is limited to not more than one to each eight ounces of finished canned apricots. (R. pp. 30–31, 93, 94, 98, 100)

42. Such seasoning agents are used singly or in combination, except that apricot pits and apricot kernels are not used in combination. (R. pp. 31, 45)

43. It is essential that canned apricots be sealed in a container. (R. pp. 45, 46)

44. It is essential to so process canned apricots by heat as to prevent spoilage. (R. pp. 32, 45, 46)

45. Honesty and fair dealing in the interest of the consumer requires that the optional apricot ingredient, the optional liquid packing medium, and the optional seasoning ingredients be declared on the label. (R. pp. 32–33, 92); (Identity of Peaches, R. pp. 140, 191, 201, 210, 220, 238, 239, 259, 337, 338, 339, 349, 350, 351, 360, 367, 369, 370, 371, 398, 399, 401, 406, 415, 417, 419, 420, 421, 422, 424, 427, 433, 436, 438, 442, 471, 484, 485, 492); (C. R. p. 59); (C. R., Other Interested Parties' Exhibit No. 8a)

46. The common or usual name of unpeeled canned apricots is the name of the form of unit, qualified by the term "unpeeled." (R. pp. 23, 53, 67, 73–74, 83, 84, 85)

47. The common or usual name of peeled canned apricots is the name of the form of unit, qualified by the term "peeled." (R. pp. 23, 53, 67, 73–74, 83, 84, 85)

48. The common or usual name of water is water. (R. pp. 27–28, 69, 74)

49. The common or usual name of the natural juice of the apricot is apricot juice. (R. pp. 69, 74)

50. The common or usual name of sucrose is sugar; and the common or usual name of dextrose is refined corn sugar (dextrose). (Identity of Peaches, R. pp. 53, 61, 177, 215, 351, 367, 372, 373, 397, 398, 404, 416, 424, 461, 465, 510); (C. R. pp. 48, 49, 70)

51. The common or usual name of spice used as a seasoning is spice. (R. pp. 32, 53, 69, 72, 74–75)

52. The common or usual name of flavoring used as a seasoning is flavoring. (R. pp. 32, 53, 69, 72, 74–75)

53. The common or usual name of a vinegar used as a seasoning is vinegar. (R. pp. 32, 53, 69, 72, 74–75)

54. The common or usual name of apricot pit kernels used as a seasoning is apricot kernels. (R. pp. 32, 53, 69, 72, 74–75)

55. The common or usual name of apricot pits used as a seasoning is apricot pits. (R. pp. 32, 53, 69, 72, 74–75)

56. Honesty and fair dealing in the interest of the consumer requires that when spices, flavoring, vinegar, apricot pits, or apricot kernels are used that the label bear the words "Spiced", or "With Added Spice", or "Spice Added"; "With Added Flavoring", or "Flavoring Added"; "With Added Vinegar", or "Vinegar Added"; "Seasoned with Apricot Pits", or "Seasoned with Apricot Kernels", as the case may be; but if two or more of such optional ingredients are present, such words may be combined as, for example, "With Added Spice, Flavoring and Vinegar." In lieu of the words "Spice" or "Spiced" and "Flavoring", the common or usual name of the spice or flavoring may be used. (R. pp. 34, 74–75)

57. Honesty and fair dealing in the interest of the consumer requires that wherever the name "apricots" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the names of the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the specific varietal name of the apricots may so intervene. (R. pp. 33, 54, 75, 96)

Suggested Conclusion in the Form of a Regulation

Upon the basis of the foregoing findings of fact, the following reasonable definition and standard of identity for the food commonly known as canned apricots is hereby suggested to be promulgated as a regulation:

§ 27.010 *Canned apricots—Identity; label statement of optional ingredients.* (a) Canned apricots are the food prepared from mature apricots. Such apricots, except in the case of whole apricots, are pitted, and are in one of the following forms of units: whole peeled; whole unpeeled; halves peeled; halves unpeeled; peeled quarters; unpeeled quarters;

peeled slices (peeled sliced); unpeeled slices (unpeeled sliced); peeled mixed pieces of irregular sizes and shapes; unpeeled mixed pieces of iregular sizes and shapes. Apricots of each such form of units are an optional apricot ingredient. To one such ingredient is added one of the optional ingredients:

(11) A water solution of cane sugar (sucrose), of not less than 10° Brix but less than 25° Brix;

(12) A water solution of beet sugar (sucrose), of not less than 10° Brix but less than 25° Brix.

(13) A water solution of cane and beet sugar (sucrose), of not less than 10° Brix but less than 25° Brix;

(14) A water solution of cane sugar (sucrose), of not less than 25° Brix but less than 40° Brix;

(15) A water solution of beet sugar (sucrose), of not less than 25° Brix but less than 40° Brix;

(16) A water solution of cane and beet sugar (sucrose), of not less than 25° Brix but less than 40° Brix;

(17) A water solution of cane sugar (sucrose), of not less than 40° Brix but less than 55° Brix;

(18) A water solution of beet sugar (sucrose), of not less than 40° Brix but less than 55° Brix;

(19) A water solution of cane and beet sugar (sucrose), of not less than 40° Brix but less than 55° Brix;

(20) A water solution of cane sugar (sucrose), of not less than 55° Brix;

(21) A water solution of beet sugar (sucrose), of not less than 55° Brix;

(22) A water solution of cane and beet sugar (sucrose), of not less than 55° Brix;

(23) A water solution of cane sugar (sucrose) and refined corn sugar (dextrose) having a cane sugar (sucrose) equivalent of not less than 10° but less than 25° Brix. Such cane sugar (sucrose) equivalent is calculated by adding the percent by weight of cane sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(24) A water solution of beet sugar (sucrose) and refined corn sugar (dextrose) having a beet sugar (sucrose) equivalent of not less than 10° but less than 25° Brix. Such beet sugar (sucrose) equivalent is calculated by adding the percent by weight of beet sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(25) A water solution of cane and beet sugar (sucrose) and refined corn sugar (dextrose) having a cane and beet sugar (sucrose) equivalent of not less than 10° but less than 25° Brix. Such cane and beet sugar (sucrose) equivalent is calculated by adding the percent by weight of cane and beet sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(26) A water solution of cane sugar (sucrose) and refined corn sugar (dextrose) having a cane sugar (sucrose) equivalent of not less than 25° but less than 40° Brix. Such cane sugar (sucrose) equivalent is calculated by adding the percent by weight of cane sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(27) A water solution of beet sugar (sucrose) and refined corn sugar (dextrose) having a beet sugar (sucrose) equivalent of not less than 25° but less than 40° Brix. Such beet sugar (sucrose) equivalent is calculated by adding the percent by weight of beet sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(28) A water solution of cane and beet sugar (sucrose) and refined corn sugar (dextrose) having a cane and beet sugar (sucrose) equivalent of not less than 25° but less than 40° Brix. Such cane and beet sugar (sucrose) equivalent is calculated by adding the percent by weight of cane and beet sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(29) A water solution of cane sugar (sucrose) and refined corn sugar (dextrose) having a cane suger (sucrose) equivalent of not less than 40° but less than 55° Brix. Such cane sugar (sucrose) equivalent is calculated by adding the percent by weight of cane sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(30) A water solution of beet sugar (sucrose) and refined corn sugar (dextrose) having a beet sugar (sucrose) equivalent of not less than 40° but less than 55° Brix. Such beet sugar (sucrose) equivalent is calculated by adding the percent by weight of beet sugar (sucrose) in such solution to two-thrds of the percent by weight of refined corn sugar (dextrose) in such solution;

(31) A water solution of cane and beet sugar (sucrose) and refined corn sugar (dextrose) having a cane and beet sugar (sucrose) equivalent of not less than 40° but less than 55° Brix. Such cane and beet sugar (sucrose) equivalent is calculated by adding the percent by weight of cane and beet sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(32) A water solution of cane sugar (sucrose) and refined corn sugar (dextrose) having a cane sugar (sucrose) equivalent of not less than 55° Brix. Such cane sugar (sucrose) equivalent is calculated by adding the percent by weight of cane sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(33) A water solution of beet sugar (sucrose) and refined corn sugar (dextrose) having a beet sugar (sucrose) equivalent of not less than 55° Brix. Such beet sugar (sucrose) equivalent is calculated by adding the percent by weight of beet sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(34) A water solution of cane and beet sugar (sucrose) and refined corn sugar (dextrose) having a cane and beet sugar (sucrose) equivalent of not less than 55° Brix. Such cane and beet sugar (sucrose) equivalent is calculated by adding the percent by weight of cane and beet sugar (sucrose) in such solution to two-thirds of the percent by weight of refined corn sugar (dextrose) in such solution;

(35) Apricot juice;

(36) Water.

The food may be seasoned with one or more of the optional ingredients:

(37) Spice;

(38) Flavoring;

(39) A vinegar;

(40) Apricot pits [except in the case of whole apricots], not more than 1 to each 8 ounces of finished canned apricots;

(41) Apricot kernels [except in the case of whole apricots and except when optional ingredient (40) is present].

The food is sealed in a container and so processed by heat as to prevent spoilage. The liquid of the finished canned apricots is not more than 40° Brix.

(b) The label shall bear the words "Whole Peeled", or "Whole Unpeeled"; "Halves Peeled", or "Halves Unpeeled"; "Peeled Quarters", or "Unpeeled Quarters"; "Peeled Slices", or "Peeled Sliced"; "Unpeeled Slices", or "Unpeeled Sliced"; "Peeled Mixed Pieces of Irregular Sizes and Shapes", or "Unpeeled Mixed Pieces of Irregular Sizes and Shapes"; naming the optional apricot ingredient present. The label shall also bear the words "In Light Cane Sugar (Sucrose) Sirup", "In Light Beet Sugar (Sucrose) Sirup", "In Light Cane and Beet Sugar (Sucrose) Sirup", "In Light Cane Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Light Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Light Cane and Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Medium Cane Sugar (Sucrose) Sirup", "In Medium Beet Sugar (Sucrose) Sirup", "In Medium Cane and Beet Sugar (Sucrose) Sirup", "In Medium Cane Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Medium Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Medium Cane and Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Heavy Cane Sugar (Sucrose) Sirup", "In Heavy Beet Sugar (Sucrose) Sirup", "In Heavy Cane and Beet Sugar (Sucrose)

Sirup", "In Heavy Cane Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Heavy Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Heavy Cane and Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Extra Heavy Cane Sugar (Sucrose) Sirup", "In Extra Heavy Beet Sugar (Sucrose) Sirup", "In Extra Heavy Cane and Beet Sugar (Sucrose) Sirup", "In Extra Heavy Cane Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Extra Heavy Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Extra Heavy Cane and Beet Sugar (Sucrose) and Refined Corn Sugar (Dextrose) Sirup", "In Apricot Juice", or "In Water", showing respectively the presence of optional ingredients (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), or (36), as the case may be. If optional ingredient (37), (38), (39), (40), or (41) is present, the label shall bear the words "Spiced", or "With Added Spice", or "Spice Added"; "With Added Flavoring", or "Flavoring Added"; "With Added Vinegar", or "Vinegar Added"; "Seasoned with Apricot Pits"; or "Seasoned with Apricot Kernels"; as the case may be; but if two or more of such optional ingredients are present, such words may be combined as, for example, "With Added Spice, Flavoring and Vinegar". In lieu of the words "Spice" or "Spiced" and "Flavoring", the common or usual name of the spice or flavoring may be used. Wherever the name "Apricots" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified, showing the optional ingredients present, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter, except that the specific varietal name of the apricots may so intervene.

Time Within Which to File Objections

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

Respectfully submitted.

[SEAL] JOHN McDILL FOX,
Presiding Officer.

SEPTEMBER 18, 1939.

[F. R. Doc. 39-3664; Filed, October 4, 1939; 12:41 p. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

[Docket No. 3646]

IN THE MATTER OF THE C. F. SAUER COMPANY, A CORPORATION

Amended Complaint

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13), hereby issues its amended complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. The respondent, C. F. Sauer Company, is a corporation, organized and existing under the laws of the State of Virginia, with its principal office and place of business located at 2000 West Broad Street, in the City of Richmond, State of Virginia. The respondent is engaged in manufacturing, selling and distributing numerous grocery products, and owns and operates two manufacturing plants, one located in Greenville, South Carolina, and one located in Richmond, Virginia. Mayonnaise and salad dressing are manufactured at respondent's plant located in Greenville, and are sold and distributed from said plant, and from respondent's plant at Richmond. Extracts, spices, tea, pepper, drugs, insecticides and other commodities are manufactured, processed and packaged at, and are sold and distributed from respondent's plant located at Richmond.

The respondent has sold, and sells, its commodities, in general, to three groups of customers: wholesale grocers, retail chain grocers and retail grocers.

Respondent facilitates its sales by the use of a large staff of traveling salesmen, numbering approximately seventy, who travel in the various states of the United States securing orders, which are forwarded to the home office in Richmond, Va., for execution. Many additional orders are secured from customers through the mails after solicitation by salesmen and others.

PAR. 2. Since June 19, 1936, in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities, in the aforesaid plants, and has sold, shipped, and does now sell and ship, such commodities in commerce between and among the various states of the United States from the states in which its factories are located, across state lines to purchasers thereof located in states other than the states in which respondent's said plants are located.

PAR. 3. Since June 19, 1936, while engaged, as aforesaid, in commerce among the several states of the United States and the District of Columbia, the respondent has been, and is now, in the course of such commerce, directly and indirectly discriminating in price between different purchasers of commodities of like grade and quality, which commodities are sold for use, consumption, and resale within the several states of the United States and the District of Columbia, in that the respondent has been, and is now, selling such commodities to some purchasers at a higher price than the price at which such commodities are sold to other purchasers generally competitively engaged with the favored purchasers.

Respondent effects said discriminations by granting and allowing larger discounts and rebates from list prices and lower net prices to some of such purchasers than to others. The extent of said discriminations in price varies from differentials of approximately five per cent to differentials of approximately thirty-three per cent, depending upon the commodity sold and the customer, or either.

PAR. 4. Dixie Home Stores is a corporation organized and existing, since approximately May 1937, under the laws of the State of South Carolina. It is engaged in business as a retail grocery chain, and has its principal place of business, purchasing agent, and warehouse in Greenville, South Carolina. It has purchased and received delivery of approximately six thousand dollars worth of commodities from respondent each month from approximately May 1937 to date, which commodities are destined to be and are distributed by Dixie Home Stores through its own facilities to approximately one hundred and seventy retail grocery stores which it owns and operates. A large number of said stores are located in all sections of South Carolina and in the western section of North Carolina, and a few are located in the northeastern section of Georgia. Each of said stores is in competition in those areas with other persons, firms, partnerships, and corporations, who are similarly engaged in the grocery business and purchase commodities of like grade and quality from respondent.

Dixie Home Stores was organized and brought into existence about May 1937 by merging and consolidating two retail grocery chains, namely, Dixie Stores and Home Stores, each of which, prior to consolidation and merger, was an independent corporation organized and existing under the laws of the State of South Carolina. Home Stores had its principal place of business at Columbia, South Carolina, and Dixie Stores had its principal place of business at Greenville, South Carolina, in which latter city Dixie Home Stores now has its similar facilities and respondent has one of its plants.

Each of said corporations maintained its purchasing agent and warehouse at their respective principal places of busi-

ness, where each purchased and received delivery of approximately three thousand dollars worth of commodities from respondent each month from June 19, 1936, to approximately May 1937, which commodities were destined to be and were distributed by each, respectively, to approximately eighty-five retail grocery stores which each owned and operated. The approximate eighty-five retail grocery stores of the Home Stores were located in the central and southern sections of South Carolina and in the northeastern section of Georgia, while the approximate eighty-five retail grocery stores of Dixie Stores were located in the northern and western sections of South Carolina, and the western section of North Carolina. These stores, although now owned and operated by Dixie Home Stores, retain their respective names as Home Stores and as Dixie Stores in the communities where located.

Approximately the same net prices, discounts and other allowances granted by respondent to Dixie Home Stores, as hereinafter alleged in Paragraph Eight, and in Exhibit A, were granted and allowed by respondent to Dixie Stores and to Home Stores, respectively, prior to consolidation, although respondent sold to Dixie Stores and to Home Stores, respectively, only approximately one-half the dollar quantity of commodities now sold to Dixie Home Stores. The Home Stores and the Dixie Stores through their respective retail stores were, and the Dixie Home Stores through its retail stores were and are, in competition, in the area where each of such stores is located, with other purchasers of respondents commodities who pay higher net prices and receive smaller discounts and other allowances than said Home Stores, Dixie Stores and Dixie Home Stores.

PAR. 5. Approximately the same net prices, discounts and other allowances alleged in Paragraph Eight and in Exhibit A to have been granted and allowed by respondent to Thomas & Howard Companies have been, and are being, granted and allowed by respondent to approximately twelve firms and their branches, each of which is engaged in the wholesale grocery business and the names and locations of which are as follows:

1. Thomas and Howard Company of Columbia, S. C., with branches at Camden, Newberry and Darlington, South Carolina;

2. Thomas and Howard Company of Greenville, S. C., with a branch at Seneca, South Carolina;

3. Thomas and Howard Company of Charleston, S. C., with a branch at Allendale, South Carolina;

4. Thomas and Howard Company of Chester, S. C.;

5. Thomas and Howard Company of Spartanburg, S. C.;

6. Thomas and Howard Company of Sumter, S. C.;

each of which is a corporation organized and existing under the laws of the State of South Carolina;

7. Thomas and Howard Company, Inc., of Charlotte, N. C., with branches at Salisbury and Rocky Mount, N. C.;

8. Thomas and Howard Company of Hickory, N. C.;

each of which is a corporation organized and existing under the laws of the State of North Carolina;

9. Thomas and Howard Company of Durham, N. C.;

10. Thomas and Howard Company of Greensboro, N. C.;

each of which is organized and does business as a partnership;

11. Timberlake Grocery Company of Thomasville, Georgia;

12. Christiansburg Canning Company of Pulaski, Virginia.

The Timberlake Grocery Company was organized and is doing business as a corporation under the laws of the State of Georgia, and The Christiansburg Canning Company was organized and is doing business under the laws of the State of Virginia; and each of which is referred to, and known by the trade as Thomas and Howard Companies, although they do not use the words "Thomas and Howard Company" in the respective names under which they do business.

Each of said firms purchase from approximately three thousand dollars worth to approximately thirty-five thousand dollars worth of commodities from respondent each year, and the aggregate of the purchases of all of said firms is approximately three hundred thousand dollars worth per year. Respondent solicits orders from each of said firms and its branches individually, at their respective and geographically separated place of business, from purchasing officers who purchase exclusively for their respective firms; and respondent delivers commodities when purchased to their respective individual warehouses located at their respective places of business.

Each of said firms is a separate, distinct and independent legal and business entity, doing business with respondent as aforesaid, yet the basis upon which respondent grants the same net prices, discounts, and other allowances to each of said firms and its branches is that respondent considers and treats the purchases of all of them collectively as constituting the purchases of a single purchaser, and grants to each of said firms and its branches the net prices, discounts and other allowances which respondent has determined are applicable to a single purchaser who purchases approximately three hundred thousand dollars worth of said commodities a year upon solicitation at and delivery to a single point. Although respondent has no such purchaser buying such a volume under such circumstances, respondent uses a hypothetical purchaser purchasing under such circumstances as a standard in granting said preferences to Thomas and Howard Companies and in refusing to grant similar preferences to other and competing purchasers, who, as individual firms, do not and cannot purchase such a volume, under such circumstances, but who do purchase as great a volume of commodities in a year as many of said firms.

When said firms are considered as a single purchaser, they do a volume of business which constitutes a substantial portion of the entire wholesale grocery business in the states where located, and they are so strategically located geographically in those states as to blanket those areas. Each of said Thomas and Howard Companies and branches are in competition, in the area where located, with other purchasers from respondent who are similarly engaged in the distribution of grocery commodities and who are charged and who pay higher net prices and receive smaller net discounts and other allowances than said Thomas and Howard Companies and branches; and some of the customers of each of said Thomas and Howard Companies and branches are in competition, in the areas where such customers are located, with customers of such other distributors. When all of said Thomas and Howard Companies and branches are treated as a single purchaser and each is accorded the terms of sale which respondent has determined are applicable to such a hypothetical purchaser, each of said firms and its branches exerts in its competitive area the same power that could be exerted by such hypothetical firm if located in each of such areas.

PAR. 6. Rose-Phillips Company is a corporation, organized and existing under the laws of the State of South Carolina, having its principal place of business at Greenwood, South Carolina, and engages in the wholesale grocery business, buying groceries, vegetables, fruits, and other varieties of food and household commodities and selling such commodities to retail grocery stores, some of which are in competition with some of the retail grocery stores of Dixie Home Stores. It serves a large part of the trade area served by Thomas and Howard Company, of Newberry, South Carolina, and to a limited extent it serves the trade area served by Thomas and Howard Company of Spartanburg, South Carolina, and Thomas and Howard Company of Greenville, South Carolina. Rose-Phillips Company was a purchaser of respondent's products on June 19, 1936, and continued to be a purchaser of respondent's products for some time thereafter. Rose-Phillips Company ceased to purchase commodities from respondent some months after June

19, 1936, when respondent refused to grant and allow to said company the same net prices, discounts and other allowances which respondent granted and allowed to competitors of said company, namely, the Thomas and Howard Companies, and to competitors of said company's customers, namely, Home Stores, Dixie Stores and Dixie Home Stores. The foregoing allegations with respect to Rose-Phillips Company are equally applicable to many other of respondent's customers and former customers.

PAR. 7. Some of said discriminations in prices are effected through the use by respondent of three price lists. Each of said price lists states the prices at which the respondent instructs its salesmen and representatives to quote certain commodities, some of which are on each list. As to some commodities which appear on each list, a different price is stated in each list, one list stating the lowest price, another list stating a higher price, and another list stating the highest price at which such commodities are sold. Such lists are effective concurrently, but each list is used in quoting prices to only certain customers, the customers quoted from each list being mutually exclusive. Respondent furnishes one or more of such lists to some of its salesmen and representatives together with the names of the customers to be quoted therefrom. The majority of respondent's customers are quoted prices from the list containing the highest prices; a smaller number of customers are quoted from the list containing prices lower than those contained in the first; and the smallest number of customers are quoted from the list containing the lowest prices. Respondent secures the enforcement of such policy by threatening to discharge and discharging any salesman who deviates therefrom by quoting a customer from any list other than the one specified by the respondent or who informs a customer of the existence of a list price lower than the list price specified by respondent to be quoted to that customer.

PAR. 8. Specific illustrations of said discriminations are as follows, to wit: Respondent sold miscellaneous spices of like grade and quality to the following purchasers at the following prices; to Dixie Home Stores at a net price of forty cents per dozen packages; to Milner Stores, which is a retail grocery chain located in various sections of North Carolina, at a net price of fifty cents per dozen packages; to McGee & Bleckley, Anderson, South Carolina, Rose-Phillips Company of Greenwood, South Carolina, and many other wholesale grocers, at a net price of sixty cents per dozen packages. Respondent, therefore, sold such spices to Dixie Home Stores at a price which is twenty per cent less than the price to Milner Stores, and more than thirty-three per cent less than the price to McGee & Bleckley, Rose-Phillips Company and many others; and to Milner Stores at a price approximately seventeen per cent less than the price at which it sold such spices to McGee & Bleckley and many other purchasers.

Respondent sold Sauer's Salad Dressing of like grade and quality, in pint sizes to the following purchasers at the following prices: to Dixie Home Stores at a net price of one dollar and sixty-five cents per dozen; to Rose-Phillips Company, and many others, at a net price of two dollars and one cent per dozen. Respondent, therefore, sold such salad dressing to Dixie Home Stores at a price which is approximately eighteen per cent less than the price to Rose-Phillips Company and many other purchasers.

Respondent sold Number Five Vanilla of like grade and quality to the following purchasers at the following prices: to the Thomas and Howard Companies at a net price of one dollar and forty-five cents per dozen; to Augusta Grocery Co., of Augusta, Georgia, Seneca Grocery Company, Rose-Phillips Company, Talmage Bros. & Co., Inc., of Athens, Georgia, and many others, all of whom are wholesale grocers, at a net price of one dollar and sixty-seven cents. Respondent, therefore, sold such extracts to said Thomas and Howard Companies at more than thirteen per cent less than to Augusta Grocery Co., Seneca Grocery Company, Rose-Phillips Company, Talmadge Bros. & Co., Inc., and many other purchasers. Further illustration of said discriminations are shown in a comparative table, marked Exhibit A, attached to and hereby made a part of this complaint. Each of the firms listed in Exhibit A are or have been purchasers of respondent. In each specific illustration of respondent's discriminations in prices alleged above, and in Exhibit A, the sales to the favored and the unfavored purchasers accruing during an interval of time during which there was no upward or downward movement in the prices of said commodities.

PAR. 9. The effect of the discriminations in prices as hereinbefore set forth may be substantially to lessen competition in the sale and distribution of the said commodities in the respective lines of commerce in which respondent and its customers are engaged, and has been, and may be, to injure, destroy, or prevent competition in the sale and distribution of said commodities with the respondent and with its customers who receive the benefits of such discriminatory prices.

PAR. 10. Such discriminations in prices by respondent between different purchasers of goods of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of Section 2 (a) of the Act described in the preamble hereof.

Count II

PAR. 1. Paragraphs One, Two, Four, Five and Six of Count I are hereby referred to, and by that reference incorporated herein as fully and completely as they would be if set forth here in verbatim.

PAR. 2. While engaged in commerce in the conduct of its business, and in the course of such commerce, as above alleged and described, respondent is now and has been, subsequent to June 19, 1936, engaged in manufacturing, processing, and packaging such commodities for sale, and selling such commodities to customers competitively engaged with each other in the handling, offering for sale, and sale of such commodities to consumers, and to others for resale to consumers; and the respondent contracts to pay and pays to some, but not all, of such customers, and to representatives of some, but not all, of such customers for the benefit of the customers represented, valuable consideration, in the form of credit memoranda, checks, and otherwise, in consideration of and as compensation for transportation and advertising services and facilities, contracted to be furnished and furnished by and through such customers directly, and by such customers acting through such representatives in connection with the handling, offering for sale, and sale of said commodities as have been theretofore sold by respondent to them.

PAR. 3. Respondent makes such payments as compensation for advertising services and facilities in connection with the offering for sale, and sale of such commodities on at least two bases, namely:

(1) On a basis of a percentage of the net cost of the commodities purchased;

(2) On a basis of a definite fixed sum, the amount of which is not calculable by any determinable method.

Such payments are not available on proportionally equal terms to all customers competing in the distribution of such commodities, in that:

(1) The same was not available, for example, to the following customers of respondent: J. Drake Edens, Columbia, S. C.; Standard Grocery Company, Greenwood Jitney Jungle, Inc., Miller Stores, all of Greenwood, S. C.; and P. P. Pearson and Williams Piggly Wiggly Store of Gastonia, N. C.

(2) With reference to payments calculated on the basis of a percentage of the net cost of the commodities purchased, respondents grant to some of such customers receiving such payments a greater percentage than to others, and to some of such customers such percentage is not available at all. For example, respondent sells Dukes Mayonnaise in pint sizes to Thomas and Howard Companies and grants them payment of five percent and five percent; and also to Dixie Home Stores; Lipscomb & Russell Company of Greenville, S. C.; McGee & Bleckley and Anderson Hardware Company of Anderson, S. C.; Augusta Grocery Company, of Augusta, Georgia; Talmage Bros. & Co., Inc., of Athens, Georgia; The Great Atlantic & Pacific Tea Com-

pany, of Charlotte, N. C., and many others, and grants them payments of only five percent.

Respondent sells Sauer's Salad Dressing and miscellaneous spices to Dixie Home Stores, and grants it payments of five percent; and also to Lipscomb Russell Company, McGee & Bleckley, Anderson Hardware Company, Augusta Grocery Company, Copeland Grocery Company, of Elberton, Ga., Seneca Grocery Company, of Seneca, S. C., and many others, and grants them no payments on such purchases.

(3) With reference to the payments made on a basis of a definite fixed sum, the amount of which is not calculable on any determinable basis; the respondent grants to some of such customers receiving such payments a greater sum than to others, and to some of such customers, such payments are not available at all.

For example, the respondent pays to the following customers directly and through the representatives of such customers for the benefit of the customers represented:

Charlotte, N. C.: Retail Grocers Ass'n, $40.00 per month. Independent Food Dealers Ass'n, $25.00 per month.

Washington, D. C.: Nation-Wide Stores, 5% on net purchases. District Grocery Stores, $40.00 per month.

Richmond, Va.: Monogram Food Stores, 5% on net purchases. Richmond Food Stores, 5% on net purchases. Sunny South Stores, $380.00 per year.

The payments made to customers directly or to the representatives of such customers for their benefit on a percentage basis as illustrated above are set out for the purpose of comparison.

Further illustrations as to the amounts of such payment made to competing customers of respondent as compensation for advertising services and facilities are set out in Exhibit A.

PAR. 4. Respondent pays compensation to some of such customers for transportation services and facilities in connection with the handling of such commodities by making deductions from invoice prices on the face of the invoice, and such deductions are made under the following circumstances.

As a general practice and policy, the prices which respondent quotes and which appear on its invoices include the cost of transportation by common carrier to customers, and a common carrier is usually employed which receives its lawful charges from respondent or from the customer. When a customer pays the transportation charges to the common carrier, such charges are deducted from the invoice prices at the time the customer makes remittance to respondent.

Some of respondent's customers use trucks to deliver merchandise from their respective places of business to purchasers who are located in the neighborhood of Greenville, South Carolina, and Richmond, Virginia, in which cities respondent's plants are situated. Sometimes respondent's customers have trucks in those cities for the purpose of receiving goods from suppliers and transporting them to their respective places of business, and such goods do not require the total capacity of such trucks.

In order to aid some of such customers to utilize or to more fully utilize such trucks on their return trip, respondent has delivered to such customers at the door of its plants, since June 19, 1936, commodities purchased by them for transportation by such customers to their respective places of business; and in consideration of and compensation for such handling of such commodities, respondent, as above alleged, deducts from the invoice prices a sum equal to the common carrier charges for such transportation.

Under such circumstances, the cost of such handling to such purchasers, who transport their own purchases, was and is substantially less than the tariff charges by common carrier for the same services and facilities; and the savings thus effected result in a lower per unit cost for such commodities to such customer than the cost to customers to whom purchases are transported by common carrier. Other such customers similarly situated have requested respondent to so handle such commodities as they have purchased from respondent, and to receive such payments as compensation therefor, but respondent has denied such request, and their purchases are transported to them by common carrier.

In that such payments for transportation services and facilities have been and are granted to some such customers and denied to others, such payments are not available on proportionately equal terms to all customers competing in the distribution of such commodities.

PAR. 5. Such acts of respondent since June 19, 1936, in interstate commerce, in the manner and form aforesaid, in paying and contracting to pay valuable consideration to and for the benefit of some customers for services and facilities furnished by and through such customers, in connection with the handling, sale and offering for sale of commodities theretofore sold to them by respondent without such payments being available on proportionately equal terms to all other competing customers is in violation of the provisions of Section 2 (d) of the Robinson-Patman Act, further described in the preamble hereof.

Wherefore, the premises considered, the Federal Trade Commission on the 29th day of September, A. D. 1939, now issues this its amended complaint against said respondent.

EXHIBIT A

Approximate Net Delivered Prices to Preferred and Non-preferred Customers After Deduction of (I) Trade Discounts and (II) Advertising Allowances

[Column I below is the net price after deducting the trade discounts; column II below is the net price after deduction of trade discounts and advertising allowances]

Product	Customer classification									
	Retailers						Wholesalers			
	Dixie-Home Stores		Milner Stores		Others [1]		Thomas & Howard		Others [2]	
Column No.	I	II	I	II	I	II	I	II	I	II
Sauer's Salad Dressing:										
Quarts	2.70	2.57	------	------	3.25	3.25	3.25	3.25	3.25	3.25
Pints	1.65	1.57	------	------	2.01	2.01	2.01	2.01	2.01	2.01
Dukes Mayonnaise:										
3 oz	.73	.69	------	------	.73	.73	.73	.67	.73	.73
4 oz	.77	.73	0.77	0.77	.77	.77	.77	.71	.77	.77
8 oz	1.33	1.26	1.33	1.33	1.33	1.33	1.33	1.23	1.33	1.26
Pints	2.61	2.48	2.61	2.61	2.61	2.61	2.57	2.32	2.61	2.48
Quarts	4.40	4.18	4.40	4.40	4.40	4.40	4.40	4.08	4.40	4.18
Pure Extracts:										
No. 2 Vanilla	.77	.73	------	------	.77	.77	.77	.77	.77	.77
No. 2 Lemon	.77	.73	------	------	.77	.77	.77	.77	.77	.77
No. 5 Vanilla	1.67	1.59	------	------	1.67	1.67	1.45	1.38	1.67	1.67
No. 5 Lemon	1.67	1.59	------	------	1.67	1.67	1.67	1.59	1.67	1.67
Miscellaneous Spices:										
Grd. Ginger	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Grd. Mustard	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Grd. Red Pepper	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Grd. Tumeric	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Curry Powder	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Cream of Tartar	.40	.38	.50	.50	.60	.60	.60	.57	.60	.60
Celery Seed	.60	.57	.63	.63	.68	.68	.68	.65	.68	.68
Celery Salt	.60	.57	.63	.63	.68	.68	.68	.65	.68	.68
Miscellaneous Products:										
No. 2 Castor Oil	4.15 gr. 0		------	------	------	------	4.75	0	------	------
No. 2 Turpentine	3.50 gr. 0		------	------	------	------	4.25	0	------	------

[1] Other retailers are J. Drake Edens, P. P. Pearson, Miller Stores, Williams Piggly Wiggly, Greenwood Jitney Jungle, and many others.

[2] Other wholesalers are Rose Phillips Co., McGee & Bleckley, Talmage Bros. & Co., Inc., Seneca Grocery Company, Carter Grocery Company, Augusta Grocery Co., Copeland Grocery Co., and many others.

NOTICE

Notice is hereby given you, the C. E. Sauer Company, respondent herein, that the 3rd day of November, A. D. 1939, at 2 o'clock in the afternoon is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the amended complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commisison such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such anwer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 29th day of September, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-3659; Filed, October 4, 1939; 10:37 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 28th day of September, A. D. 1939.

[File No. 44-42]

IN THE MATTER OF PEOPLES LIGHT AND POWER COMPANY

ORDER APPROVING APPLICATION

Peoples Light and Power Company, a registered holding company, having filed an application pursuant to paragraph (b) of Rule U-12C-1, promulgated under Section 12 (c) of the Public Utility Holding Company Act of 1935, in which it asks approval of the acquisition and retirement by the trustee under the indenture securing its Collateral Lien Bonds, Series A, due 1961, of such of said bonds as may be purchased with moneys in the amount of $410,000 now held by said trustee.

A public hearing having been held on said application after appropriate notice; the Commission having considered the record in this matter and having made and filed its findings herein;

It is ordered, That said application be, and the same is hereby approved, subject to the following terms and conditions:

(1) That the proposed transaction be executed for the purposes and in the manner represented by the application and this order.

(2) That prior to any purchase, notice of the proposed call for tenders and of the proposed open market purchases be given by notice published once in each of two successive calendar weeks in one daily newspaper published and of general circulation in each of the following cities: Chicago, New York and Philadelphia; and that such notice indicate the amount of funds which the trustee has available for the purchase of bonds, the principal amount of bonds which the Company proposes to tender and the method by which the Company will determine the price of its tender.

(3) That the final date for acceptance of tenders be not earlier than eight days after the second published notice.

(4) That the applicant file with this Commission a certificate of notification within ten days after the tenders are accepted, giving the amount of the bonds accepted, together with the prices and the name and address of the holder from whom acquired.

(5) That to the extent that bonds are acquired in the open market the applicant shall file with this Commission weekly reports with respect to such purchases. Each such report shall set out the date of each purchase, the number of bonds purchased, prices paid therefor, the name and address of the broker in each transaction, and the name and address of the holder.

(6) That this order in respect to open market purchases shall be summarily revocable if at any time this Commission shall deem the circumstances are such as to make further purchases no longer compatible with the public interest or the interest of investors and consumers. In any event such order shall expire at the close of business on the fifteenth day following the day set for acceptance of tenders.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-3661; Filed, October 4, 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 29th day of September, A. D. 1939.

[File No. 46-170]

IN THE MATTER OF THE MINNEAPOLIS GENERAL ELECTRIC COMPANY AND SUBSIDIARIES

ORDER GRANTING APPLICATIONS, ETC.

The Minneapolis General Electric Company, a registered holding company, and four of its direct wholly-owned subsidiaries, St. Croix Falls Wisconsin Improvement Company, St. Croix Falls Minnesota Improvement Company, St. Croix Lumbermen's Dam & Boom Company and The St. Croix River Navigation and Improvement Company (hereinafter referred to as "Minneapolis", "Wisconsin Company", "Minnesota Company", "Boom Company" and "Navigation Company", respectively) having filed pursuant to Sections 6 (b), 7 and 10 of the Public Utility Holding Company Act of 1935 and Rules U-12D-1 and U-12F-1, the applications and declarations hereinafter more particularly described:

(1) An application by Minneapolis pursuant to Section 10 (a) (1) for approval of the acquisitions of 13,816 shares of the Wisconsin Company's common capital stock, par value $100 per share, from the Wisconsin Company; 3,120 shares of the Minnesota Company's com-

mon capital stock, par value $100 per share and 2,710 shares of the Wisconsin Company's common capital stock, par value $100 per share, from the Minnesota Company; and another application pursuant to Rule U-12D-1 for the sale to the Wisconsin Company of $100,000 principal amount of the Navigation Company's and the Boom Company's matured joint First Mortgage 5% Gold Bonds, dated December 1, 1904; 1,000 shares of the Navigation Company's common capital stock, par value of $100 per share; 1,203 shares of the Boom Company's common capital stock, par value of $100 per share;

(2) An application by the Minnesota Company pursuant to Rule U-12F-1 for approval of the sale of that portion of the dam and flowage lands owned by it in the St. Croix Falls Hydro Project to the Wisconsin Company; another application pursuant to Section 10 (a) (1) for approval of the acquisition of 2,710 shares of the Wisconsin Company's common capital stock, par value $100 per share, from the Wisconsin Company; another application pursuant to Rule U-12F-1 for approval of the sale to Minneapolis of 2,710 shares of the Wisconsin Company's common capital stock, par value $100 per share; and a declaration pursuant to Section 7 regarding the issuance and sale of 3,120 shares of its common capital stock, par value $100 per share, to Minneapolis;

(3) An application by the Wisconsin Company pursuant to Sections 10 (a) (2) and 10 (a) (3) for approval of the acquisition of the above-mentioned utility assets to be sold by the Minnesota Company; an application pursuant to Section 10 (a) (1) for approval of the acquisition of the above-mentioned securities of the Boom Company and the Navigation Company to be sold by Minneapolis; and in the alternative an application or declaration pursuant to Section 6 (b) or 7 regarding the issuance and sale of 16,526 shares of its common capital stock, par value $100 per share, as mentioned above; 2,710 shares to be sold to the Minnesota Company and 13,816 shares to be sold to Minneapolis;

(4) Applications by the Boom Company and the Navigation Company pursuant to Rule U-12F-1 for the sale by each to the Wisconsin Company of all the property and net current assets of each of said companies in exchange for the securities of each said company and the liquidation of their net obligations represented by note and open accounts;

A consolidated hearing on such matters having been held after appropriate notice; the record in this matter having been examined and the Commission having made and filed its findings;

It is ordered, That the applications hereinabove described, be, and they hereby are granted, and that the declarations hereinabove described, be, and they hereby are permitted to become effective; and

It is further ordered, That this order is subject to the following conditions:

(1) That the various steps involved in the applications and declarations shall be carried out within thirty days and effected in accordance with the terms and conditions of and for the purposes represented by said applications and declarations;

(2) That within ten days after the consummation of all of the transactions involving the issue, sale and disposition of the securities and the transfer of the physical assets the applicants and declarants shall file with this Commission a certificate of notification showing that the issue, sale and disposition of said securities and the transfer of said physical assets have been effected in accordance with the terms and conditions of and for the purposes represented by said applications and declarations.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39—3662; Filed, October 4, 1939; 11:29 a. m.]