FEDERAL REGISTER

VOLUME 5 NUMBER 63

Washington, Saturday, March 30, 1940

The President

EXECUTIVE ORDER

AUTHORIZING THE CIVIL SERVICE COMMISSION TO CONFER A CLASSIFIED CIVIL SERVICE STATUS UPON CERTAIN EMPLOYEES OF THE OFFICE OF INDIAN AFFAIRS IN ACCORDANCE WITH SECTION 3 OF EXECUTIVE ORDER NO. 7916 OF JUNE 24, 1938

By virtue of the authority vested in me by section 2 of the Civil Service Act (22 Stat. 403, 404), the Civil Service Commission is hereby authorized to confer a competitive classified civil-service status in accordance with the provisions of section 3 of Executive Order No. 7916[1] of June 24, 1938, upon those employees of the Office of Indian Affairs, Department of the Interior, in Washington, D. C., and in the field who, prior to February 1, 1939, were properly appointed under the then-existing provisions of paragraph 5 (a), Subdivision VIII of Schedule A, and paragraph 1, Subdivision I of Schedule B of the Civil Service Rules.

The issuance of this order is recommended by the Civil Service Commission.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
March 28, 1940.

[No. 8383]

[F. R. Doc. 40-1287; Filed, March 29, 1940; 10:17 a. m.]

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

CHAPTER IX—DIVISION OF MARKETING AND MARKETING AGREEMENTS

[Order No. 46]

PART 946—ORDER REGULATING THE HANDLING OF MILK IN THE LOUISVILLE, KENTUCKY, MARKETING AREA

Sec.

Whereas, under the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture of the United States is empowered, after due notice and opportunity for hearing,[1] to enter into marketing agreements with processors, producers, associations of producers, and others engaged in such handling of any agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, under the terms and provisions of said act, the Secretary of Agriculture is empowered to issue orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of section 8c, such orders to regulate only such handling of such agricultural commodity or product thereof as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or effects interstate or foreign commerce in such commodity or product thereof; and

Whereas, the Secretary, having reason to believe that the execution of a marketing agreement and the issuance of an order with respect to the handling of milk in the Louisville, Kentucky, marketing area would tend to effectuate the declared policy of the act, gave, on January 8, 1940, notice of a public hearing which was held at Louisville, Kentucky, on January 26 and 27, 1940, at which

[1] 3 F.R. 1526.

[1] 5 F.R. 139.

CONTENTS

THE PRESIDENT

RULES, REGULATIONS, ORDERS

NOTICES

(Continued on next page)

FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following legal holidays 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. 500), under regulations prescribed by the Administrative Committee, approved by 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 $1.25 per month or $12.50 per year; single copies 10 cents each; payable in advance. Remit money order payable to the Superintendent of Documents directly to the Government Printing Office, Washington, D. C.

CONTENTS—Continued

time and place all interested parties were afforded an opportunity to be heard on a proposed marketing agreement and proposed order; and

Whereas, after said hearing and after tentative approval by the Secretary, on March 5, 1940, of a marketing agreement, handlers of more than 50 percent of the volume of milk covered by this order, which was marketed within the Louisville, Kentucky, marketing area, refused or failed to sign such tentatively approved marketing agreement; and

Whereas, the Secretary determined, on the 26th day of March 1940, said determination being approved by the President of the United States on the 27th day of March 1940, that said refusal or failure to sign said tentatively approved marketing agreement tends to prevent the effectuation of the declared policy of the act, and that the issuance of this order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area, and is approved or favored by more than two-thirds of the producers who participated in a referendum conducted by the Secretary and who, during the month of December 1939 (said month having been determined by the Secretary to be a representative period), were engaged in the production of milk for sale in said marketing area; and

Whereas the Secretary has found and proclaimed the period August 1919–July 1929 to be the base period to be used in connection with the ascertainment of the purchasing power of milk handled in the Louisville, Kentucky, marketing area; and

Whereas the Secretary finds that the expenses which the market administrator will necessarily incur during any 12-month period of time for the maintenance and functioning of such agency for the administration of this order will be approximately $20,000.00, and that the payment by each handler of 2 cents per hundredweight on all milk received from producers and new producers, or produced by such handler, is a proper maximum pro-rata share of such expenses; and

§ 946.0 *Findings.* Whereas, the Secretary finds, upon the evidence introduced at said hearings:

1. That all milk which was produced for sale in the marketing area is handled in the current of interstate commerce or so as directly to burden, obstruct, or affect interstate commerce in milk or its products;

2. That the prices calculated to give milk handled in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to section 2 and section 8e of said act, are not reasonable in view of the price of feed, the available supplies of feed, and other economic conditions which affect the supply of and demand for such milk, and that the minimum prices set forth in this order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

3. That this order regulates the handling of milk in the same manner as, and is applicable only to handlers, defined in a tentatively approved marketing agreement upon which hearings have been held; and

4. That orderly marketing conditions for milk flowing into the Louisville, Kentucky, marketing area are threatened with disruption which will result in an impairment of the purchasing power of milk handled in said marketing area, and that the issuance of this order and all its terms and conditions will tend to effectuate the declared policy of said act:

Now, therefore, the Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby orders that such handling of milk in the Louisville, Kentucky, marketing area as is in the current of interstate commerce or as directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, be in compliance with the following terms and conditions:*

§ 946.1 *Definitions*—(a) *Terms.* As used herein the following terms shall have the following meanings:

(1) The term "Secretary" means the Secretary of Agriculture of the United States.

(2) The term "Louisville, Kentucky, marketing area," hereinafter called the "marketing area," means the territory within the city of Louisville, Fort Knox Military Reservation, and Jefferson County, Kentucky.

(3) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(4) The term "producer" means any person, irrespective of whether any such person is also a handler, who produces, in conformity with the applicable health regulations, milk which is received at a plant from which milk is disposed of in the marketing area. This definition shall be deemed to include any person who produces, in conformity with such health regulations, milk caused to be delivered by a cooperative association which is a handler to a plant from which no milk is disposed of in the marketing area.

(5) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, or other handlers, all, or a portion, of which milk is disposed of as milk in the marketing area, and who, on his own behalf or on behalf of others, engages in such handling of milk as is in the current interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products. This definition shall be deemed to include any cooperative association with respect to the milk of any producer which it causes to be delivered to a plant from which no milk is disposed of in the marketing area, for the account of such cooperative association and for which such cooperative association collects payment: *Provided,* That such milk is handled on a basis which will permit the market administrator to verify the utilization of such milk in the plant at which such milk is received. This definition shall not be deemed to include any person from whom emergency milk is received.

(6) The term "market administrator" means the person designated pursuant to § 946.2 as the agency for the administration hereof.

(7) The term "delivery period" means any calendar month.

*§§ 946.0 to 946.11, inclusive, issued under the authority contained in 48 Stat. 31 (1933); 7 U.S.C. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937); 7 U.S.C. 601 et seq. (Supp. IV 1938).

(8) The term "cooperative association" means any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members, and (b) to have and to be exercising full authority in the sale of milk of its members.

(9) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(10) The term "emergency milk" means milk received by a handler from sources other than producers under a permit to receive such milk issued to him by the proper health authorities.*

§ 946.2 *Market administrator*—(a) *Designation.* The agency for the administration hereof shall be a market administrator, who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) *Powers.* The market administrator shall have power:

(1) To administer the terms and provisions hereof; and

(2) To receive, investigate, and report to the Secretary complaints of violation of the terms and provisions hereof.

(c) *Duties.* The market administrator, in addition to the duties hereinafter described, shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein and surrender the same to his successor or to such other person as the Secretary may designate;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(5) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to § 946.5 or (b) made payments pursuant to § 946.8;

(6) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;

(7) Pay, out of the funds provided by § 946.10, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties; and

(8) Promptly verify the information contained in the reports submitted by handlers.*

§ 946.3 *Classification of milk*—(a) *Milk to be classified.* Milk of a producer caused to be delivered by a cooperative association which is a handler to a plant from which no milk is disposed of in the marketing area and all milk received by each handler, including milk produced by him, if any, at plants from which milk is disposed of in the marketing area, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section, subject to the provisions of paragraph (c) of this section.

(b) *Classes of utilization.* The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of as milk and all milk not specifically accounted for as Class II milk and Class III milk.

(2) Class II milk means all milk disposed of as cream (for consumption as cream), flavored milk, creamed cottage cheese, and creamed buttermilk.

(3) Class III milk shall be all milk accounted for (a) as actual plant shrinkage, but not to exceed 2 percent of the total receipts of milk from producers, and (b) as used to produce a milk product other than those specified as Class II milk.

(c) *Interhandler and nonhandler sales.* Milk disposed of by a handler to another handler, or to a person who is not a handler but who distributes milk or manufacturers milk products, shall be classified as Class I milk, and cream so disposed of shall be classified as Class II milk: *Provided,* That if the selling handler and the purchaser, on or before the 5th day after the end of the delivery period, each furnish to the market administrator similar signed statements that such milk or cream was disposed of in another class, such milk or cream shall be classified accordingly, subject to verification by the market administrator.

(d) *Computation of milk in each class.* For each delivery period, the market administrator shall compute for each handler the hundredweight of milk in each class to which the prices set forth in § 946.4 apply, as follows:

(1) Determine the total hundredweight of milk received as follows: add into one sum (a) the hundredweight of milk received from producers, (b) the hundredweight of milk (and milk equivalent of cream converted at the average test of milk received from producers by the receiving handler) received from other handlers, if any, (c) the hundredweight of milk produced by such handler, if any, (d) the hundredweight of milk (and milk equivalent of cream converted at the average test of milk received from producers by the receiving handler) received from any other source, if any, and (e) the hundredweight of emergency milk, if any.

(2) Determine the total hundredweight of Class I milk as follows: (a) convert to half pints the quantity of milk disposed of as milk and multiply by 0.005375, and (b) if the quantity of milk so computed when added to the quantities of Class II milk and Class III milk determined pursuant to subparagraphs (3) and (4) of this paragraph is less than the total quantity of milk received, determined in accordance with subparagraph (1) of this paragraph, an amount equal to the difference shall be added to the quantity of milk computed pursuant to (a) of this subparagraph.

(3) Determine the total hundredweight of Class II milk as follows: (a) multiply the actual weight of each of the several products of Class II milk by its average butterfat test and add together the resulting amounts, (b) divide the total pounds of butterfat thus found by the average test of all milk received from producers, and (c) divide by 100.

(4) Determine the hundredweight of Class III milk as follows: (a) subtract from the total hundredweight of all milk received, determined pursuant to subparagraph (1) of this paragraph, the sum of the amounts of milk determined pursuant to subparagraphs (2) (a) and (3) of this paragraph: *Provided,* That if the quantity of Class III milk so determined is not accounted for as being used to produce Class III milk products and as actual plant shrinkage (but not to exceed 2 percent of the total receipts of milk from producers) the remaining difference shall be added to the quantity of Class I milk, computed pursuant to (a) of subparagraph (2) of this paragraph.

(5) Determine the total hundredweight of milk of producers in each class as follows:

(i) Subtract from the total hundredweight of milk in each class the total hundredweight of milk (and milk equivalent of cream converted at the average test of milk received from producers by the receiving handler) received from other handlers and used in such class;

(ii) In the case of a handler who also distributes milk of his own production, subtract from the total hundredweight of milk in each class a further amount which shall be computed as follows: divide the total hundredweight of milk in each class by the total hundredweight of milk in all classes and multiply the percentage for such class by the total hundredweight of milk produced by him;

(iii) Subtract from the hundredweight of milk in each class the hundredweight of milk (and milk equivalent of cream converted at the average test of milk received from producers by the receiving handler), except emergency milk, received from sources other than producers or handlers and used in such class; and

(iv) In the case of a handler who has received emergency milk during the de-

livery period, subtract from the total hundredweight of milk in each class an amount which shall be computed as follows: divide the total hundredweight of milk in each class by the total hundredweight of milk in all classes and multiply the percentage for such class by the total hundredweight of emergency milk received.*

§ 946.4 *Minimum prices*—(a) *Class prices.* Each handler shall pay producers, at the time and in the manner set forth in § 946.8, not less than the following prices for the respective quantities of milk in each class computed pursuant to § 946.3 (d) (5):

(1) *Class I milk.* The prices as shown in the schedule below for the butter price range in which falls the average wholesale price of 92-score butter in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received: *Provided,* That for Class I milk delivered by a handler to the residence of a relief client and charged to a recognized relief agency, or disposed of by a handler under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, such handler shall pay not less than $2.00 per hundredweight.

Butter Price Range and Class I Price

Cents per pound:	*Dollars per hundredweight*
17–17.999	2.10
18–18.999	2.14
19–19.999	2.18
20–20.999	2.22
21–21.999	2.26
22–22.999	2.31
23–23.999	2.36
24–24.999	2.41
25–25.999	2.46
26–26.999	2.51
27–27.999	2.56
28–28.999	2.61
29–29.999	2.66
30–30.999	2.71
31–31.999	2.75
32–32.999	2.79
33–33.999	2.83
34–34.999	2.87
35–35.999	2.91
36–36.999	2.95
37–37.999	2.99
38–38.999	3.03
39–39.999	3.07
40–40.999	3.11

(2) *Class II milk.* $2.00 per hundredweight.

(3) *Class III milk.* The price per hundredweight resulting from the following computation by the market administrator: subtract 2 cents from the average wholesale price per pound of 92-score butter in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, add 30 percent thereof, and multiply the resulting amount by 4.

(b) *Sales outside the marketing area.* The price to be paid producers by a handler for class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be the price which, as ascertained by the market administrator, is being paid by processors, in the market where such milk is disposed of, for milk of equivalent use.*

§ 946.5 *Reports of handlers.* (a) *Periodic reports.* Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 5th day after the end of each delivery period (a) the receipts of milk from producers, (b) the receipts of milk and cream from handlers, (c) the receipts of milk produced by him, if any, (d) the receipts of milk and cream from any other source, and (e) the utilization of all receipts of milk and cream for the delivery period.

(2) On or before the day emergency milk is received, his intention to receive such milk.

(3) On or before the 5th day after the end of each delivery period, the receipts of emergency milk, as follows: (a) the quantity of such milk, (b) the date or dates upon which such milk was received during the delivery period, (c) the plant from which such milk was shipped, (d) the price per hundredweight paid, or to be paid, for such milk, (e) the utilization of such milk, and (f) such other information with respect thereto as the market administrator may request.

(b) *Reports as to producers.* Each handler shall report to the market administrator as soon as possible after first receiving milk from any producer, (1) the name and address of such producer, (2) the date upon which such milk was first received, and (3) the plant at which such milk was received.

(c) *Reports of payments to producers.* Each handler shall submit to the market administrator on or before the 20th day after the end of each delivery period his producer pay roll for such delivery period which shall show for each producer (1) the net amount of such producer's payment with the prices, deductions, and charges involved, and (2) the total delivery of milk with the average butterfat test thereof.

(d) *Verification of reports.* Each handler shall permit the market administrator or his agent, during the usual hours of business, to (1) verify the information contained in reports submitted in accordance with this section, and (2) check-weigh milk received from each producer and sample and test milk for butterfat.

If, in the verification of the reports of any handler made pursuant to paragraph (a) of this section, it is necessary for the market administrator to examine the records of milk and cream handled in a plant of the handler from which no milk is disposed of in the marketing area, such handler shall make such records available to the market administrator. If, in the verification of the reports of any handler made pursuant to paragraph (a) of this section, the market administrator finds that, subsequent to the delivery period for which the verification is being made, any milk received during such delivery period was used in a class other than that in which it was first disposed of, such milk shall be reclassified accordingly and the adjustments necessary to reflect the reclassified value of such milk shall be made in the value of milk computed for such handler for the delivery period following such reclassification of milk.*

§ 946.6 *Handlers who are also producers.* (a) *Application of provisions.* No provision hereof shall apply to a handler who is also a producer and who purchases or receives no milk from producers or an association of producers other than that of his own production, except that such handler shall make reports to the market administrator at such time and in such manner as the market administrator may request and shall permit the market administrator to verify such reports.

(b) The market administrator, in computing the value of milk received by a handler operating a plant from which milk is disposed of in the marketing area, shall consider as Class III milk any milk or cream received in bulk from a handler who receives no milk from producers other than that of his own production. If such receiving handler disposes of such milk other than as Class III milk, the market administrator shall add to the total value of milk, computed pursuant to § 946.7 (a), the difference between (1) the value of such milk at the Class III price and (2) the value according to its actual usage.*

§ 946.7 *Determination of uniform prices to producers.* (a) *Computation of value of milk for each handler.* For each delivery period the market administrator shall compute, subject to the provisions of § 946.6, the value of milk of producers disposed of by each handler, by (1) multiplying the quantity of such milk in each class computed pursuant to § 946.3 (d) (5) by the price applicable pursuant to § 946.4, and (2) adding together the resulting values of each class: *Provided,* That if such handler has received milk (or cream), except emergency milk, from sources other than producers or handlers, as referred to in § 946.3 (d) (5) (iii), there shall be added to the value of milk determined for such handler pursuant to this paragraph an amount computed as follows: multiply the hundredweight of such milk (or milk equivalent of cream) by the difference between the Class III price and the price applicable to the class in which it was disposed.

(b) *Computation and announcement of uniform prices.* The market administrator shall compute and announce the uniform price per hundredweight of milk for each delivery period, as follows:

(1) Combine into one total the respective values of milk, computed pursuant

to paragraph (a) of this section, for each handler who made the report prescribed by § 946.5 (a) for such delivery period and who has made the payments prescribed by § 946.8 (c).

(2) Add the amount of cash balance in the producer-settlement fund, less the amount due handlers pursuant to § 946.8 (e).

(3) Divide the amount computed pursuant to subparagraph (2) of this paragraph by the total hundredweight of milk of producers.

(4) Subtract from the figure computed pursuant to subparagraph (3) of this paragraph not less than 4 cents nor more than 5 cents per hundredweight for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports and payments or delinquencies in payments by handlers. This result shall be known as the uniform price for such delivery period for milk of producers containing 4 percent butterfat.

(5) On or before the 10th day after the end of each delivery period, notify each handler and publicly announce the uniform price per hundredweight computed pursuant to subparagraph (4) of this paragraph, the Class III price, and the butterfat differential provided by § 946.8 (f).*

§ 946.8 *Payment for milk*—(a) *Time and method of payment.* On or before the 15th day after the end of each delivery period, each handler shall pay to each producer, for milk received during the delivery period, an amount of money representing not less than the total value of such producer's milk at the uniform price per hundredweight, computed pursuant to § 946.7 (b), subject to the butterfat differential set forth in paragraph (f) of this section. Any handler may make payments to producers in addition to the minimum payments required by this paragraph: *Provided,* That such additional payments are made to all producers supplying such handler with milk of the same quality and grade.

(b) *Producer - settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (c) and (e) of this section, and out of which he shall make all payments to handlers pursuant to paragraphs (d) and (e) of this section.

(c) *Payments to the producer-settlement fund.* On or before the 15th day after the end of each delivery period, each handler shall pay to the market administrator the amount by which the total value of the milk received by him from producers during the delivery period is greater than the amount of the minimum payments required to be made by such handler pursuant to paragraph (a) of this section.

(d) *Payments out of the producer-settlement fund.* On or before the 20th day after the end of each delivery period, the market administrator shall pay to each handler for payment to producers the amount, if any, by which the total value of the milk received from producers by such handler is less than the amount of the minimum payments required to be made by such handler pursuant to paragraph (a) of this section. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 20th day after the end of each delivery period, has not received the balance of payment due him from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(e) *Adjustments of errors in payments.* Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (c) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to paragraph (d) of this section, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by this section, the handler shall make up such payment not later than the time of making payment to producers next following such disclosure.

(f) *Butterfat differential.* In making payments to each producer, pursuant to paragraph (a) of this section, each handler shall add to the uniform price not less than, or subtract from the uniform price not more than, as the case may be, for each one-tenth of 1 percent of butterfat content, which is above or below 4 percent, in milk received from such producer, the amount as shown in the schedule below for the butter price range in which falls the average wholesale price of 92-score butter in the Chicago market, as reported by the United States Department of Agriculture, for the delivery period during which such milk was received.

Butter Price Range and Butterfat Differential

	Per one-tenth of 1 percent
17.50–22.499¢ per lb	2½¢
22.50–27.499¢ per lb	3¢
27.50–32.499¢ per lb	3½¢
32.50–37.499¢ per lb	4¢
37.50–42.499¢ per lb	4½¢

*

§ 946.9 *Marketing services*—(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler shall deduct 4 cents per hundredweight from the payments made directly to producers pursuant to § 946.8, with respect to all milk received by such handler from producers during each delivery period, and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received by handlers from producers during the delivery period and to provide such producers with market information, such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers' cooperative association.* In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 946.8, as are authorized by such producers, and, on or before the 15th day after the end of each delivery period, pay over such deductions to the association rendering such services.*

§ 946.10 *Expense of administration*—(a) *Payments by handlers.* As his pro-rata share of the expense of the administration hereof, each handler, on or before the 15th day after the end of each delivery period, shall pay to the market administrator, with respect to all milk received by him from producers or produced by him, during such delivery period, an amount not exceeding 2 cents per hundredweight, the exact amount to be determined by the market administrator, subject to review by the Secretary. Each cooperative association which is a handler shall pay such pro-rata share of expense on only that milk of producers caused to be delivered by it to plants from which no milk is disposed of in the marketing area.

(b) *Suits by market administrator.* The market administrator may maintain a suit in his own name against any handler for the collection of such

handler's pro-rata share of expense set forth in this section.*

§ 946.11 *Effective time, suspension, and termination*—(a) *Effective time.* The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to paragraph (b) of this section.

(b) *Suspension and termination.* Any or all provisions hereof, or any amendment hereto, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing power and duty.* If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder the final accrual or ascertainment of which requires further acts by any handlers, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The market administrator, or such other person as the Secretary may designate (1) shall continue in such capacity until discharged by the Secretary, (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant hereto.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions hereof, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.*

Now, therefore, H. A. Wallace, Secretary of Agriculture, 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 purpose and within the limitations therein contained and not otherwise, hereby executes and issues in duplicate this order, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 29th day of March 1940, and declares this order to be effective on and after the 1st day of April 1940.

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

[F. R. Doc. 40-1303; Filed, March 29, 1940; 11:44 a. m.]

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 3766]

IN THE MATTER OF DARLING & COMPANY

§ 3.33 (b) *Cutting off competitors' supplies—Paying and quoting unwarranted prices.* Paying, in connection with purchase in commerce of raw materials such as unprocessed hides, calfskins, fat, bones and suet, and with intent or effect of eliminating competition in purchase of such products, in localities in which respondent meets competition in the purchase of raw materials, prices higher than justified by trade conditions, and quoting, without intending to pay, in such localities, prices higher than justified as aforesaid, 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, Darling & Company, Docket 3766, March 19, 1940]

§ 3.33 (b15) *Cutting off competitors' supplies—Securing key employees:* § 3.54 *Enticing away competitors' employees.* Enticing, in connection with purchase in commerce of raw materials such as unprocessed hides, calfskins, fat, bones and suet, and with intent or effect of eliminating competition in purchase of such products, by the payment of higher wages or by any other means, drivers covering routes of sources of supply of raw materials of respondent's competitors, to leave the employ of its competitors and to enter into the employ of the respondent, 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, Darling & Company, Docket 3766, March 19, 1940]

§ 3.75 *Operating secret subsidiary.* Holding out any of respondent's subsidiary corporations, in connection with purchase in commerce of raw materials such as unprocessed hides, calfskins, fat, bones and suet, and with intent or effect of eliminating competition in purchase of such products, as being independent of and from the respondent, 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, Darling & Company, Docket 3766, March 19, 1940]

§ 3.33 (a) *Cutting off competitors' supplies—Exclusive contracts with suppliers:* § 3.39 *Dealing on exclusive and tying basis.* Soliciting, in connection with purchase in commerce of raw materials such as unprocessed hides, calfskins, fat, bones and suet, and with intent or effect of eliminating competition in purchase of such products, the making of loans by respondent to butchers in any locality where respondent purchases raw materials upon an agreement of such butchers that they sell all of the fat, bones, suet and other offals from their shops exclusively to respondent, 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, Darling & Company, Docket 3766, March 19, 1940]

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 19th day of March, A. D. 1940.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the amended complaint of the Commission and the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said amended complaint, with the exceptions of the facts alleged in sub-paragraphs numbered (5) and (7) of Paragraph Three, and states that it waives [illegible] intervening procedure and further hearing as to said facts admitted in said substitute answer, 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 as alleged in said amended complaint, except as alleged in sub-paragraphs numbered (5) and (7) of Paragraph Three thereof;

It is ordered, That the respondent, Darling & Company, a corporation, its officers, representatives, agents and employees, directly or through any corporation or otherwise, in connection with the purchase of raw materials such as unprocessed hides, calf skins, fat, bones and suet in commerce, as commerce is defined in the Federal Trade Commission Act, with the purpose or effect of eliminating competition in the purchase of said products, do forthwith cease and desist from:

(1) Paying, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions;

[1] 5 F.R. 333.

(2) Quoting, without intending to pay, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions;

(3) Enticing, by the payment of higher wages or by any other means, drivers covering routes of sources of supply of raw materials of its competitors, to leave the employ of its competitors and to enter into the employ of the respondent;

(4) Holding out any of its subsidiary corporations as being independent of and from the respondent;

(5) Soliciting the making of loans by it to butchers in any locality where it purchases raw materials upon an agreement of such butchers that they sell all of the fat, bones, suet and other offals from their shops exclusively to respondent.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40–1289; Filed, March 29, 1940; 10:49 a. m.]

[Docket No. 3816]

IN THE MATTER OF ANESTHETIC LABORATORIES, INC.

§ 3.6 (a) (13.5) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Individual or corporate business as association:* § 3.6 (a) (18) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Non-profit character:* § 3.96 (a) (9) *Using misleading name—Goods—Source or origin—Maker:* § 3.96 (b) (2.3) *Using misleading name—Vendor—Individual or corporate business as association:* § 3.96 (b) (4) *Using misleading name—Vendor—Non-profit character.* Representing in any manner, in connection with offer, etc., in commerce of respondent's medicinal products, that respondent is a guild or an association of persons engaged in kindred pursuits for mutual protection, aid and cooperation, or that it is anything other than a commercial business existing or operating for profit, or representing that respondent is impartially engaged in research for the purpose of advancement of the science of anesthesia or that it operates for the benefit, education or enlightenment of the medical and dental professions, or using the word "Guild" or any other word or term of similar import or meaning to describe or in any way refer to its business or products, including the use of the word "Guild" as part of its trade or corporate name or as part of the brand name of its products, 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, Anesthetic Laboratories, Inc., Docket 3816, March 14, 1940]

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 14th day of March, A. D. 1940.

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

IN THE MATTER OF ANESTHETIC LABORATORIES, INC., A CORPORATION, FORMERLY GUILD ANESTHETIC LABORATORIES

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] 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 and states that it 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 Anesthetic Laboratories, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its medicinal products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing in any manner that respondent is a guild or an association of persons engaged in kindred pursuits for mutual protection, aid and cooperation, or that respondent is anything other than a commercial business existing or operating for profit;

(2) Representing that respondent is impartially engaged in research for the purpose of advancement of the science of anesthesia or that respondent operates for the benefit, education or enlightenment of the medical and dental professions;

(3) Using the word "Guild" or any other word or term of similar import or meaning to describe or in anyway refer to its business or products, including the use of the word "Guild" as part of its trade or corporate name or as part of the brand name of its products.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40–1292; Filed, March 29, 1940; 11:06 a. m.]

[1] 4 F.R. 4953.

[Docket No. 3918]

IN THE MATTER OF AMERICAN DISTRIBUTORS, INC., ET AL.

§ 3.6 (w) *Advertising falsely or misleadingly—Refunds:* § 3.72 (i) *Offering deceptive inducements to purchase—Money back guarantee.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce of "Vita-Perles", medicinal preparation containing Vitamins A, B–1, D, G and E, or other similar preparation, which advertisements represent, directly or through implication, that said preparation may be obtained and tested without risking the loss of any money, 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, American Distributors, Inc., et al., Docket 3918, March 15, 1940]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce of "Vita-Perles", medicinal preparation containing Vitamins A, B–1, D, G and E, or other similar preparation, which advertisements represent, directly or through implication, that backache, headache, leg pains, loss of appetite and energy, faulty vision, sluggishness, loss of weight, early tooth decay, reduced resistance to infection, premature evidence of advancing age, constipation, poor digestion, bad breath, or skin irritations, are caused by a vitamin deficiency or that such conditions will be relieved or corrected by the use of the said preparation, or that those who are thin, pale, and sickly will, by the use of said preparation, acquire additional weight, an improved complexion, an increased resistance to colds and infections, an improved appetite or will become less nervous, 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, American Distributors, Inc., et al., Docket 3918, March 15, 1940]

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce of "Vita-Perles", medicinal preparation containing Vitamins A, B–1, D, G and E, or other similar preparation, which advertisements represent, directly or through implication, that the impairment or premature loss of sexual desire, vigor, or potency in the male, is due to a vitamin deficiency, or will be restored or improved by the use of said preparation, or that its use will increase the general strength and energy, or that said preparation will affect women's ability to successfully conceive or bear children except in rare cases involving habitual involuntary abortion where inability to successfully bear children after conception may be due to a deficiency of Vitamin E of a degree susceptible of replacement by the Vitamin E content of said preparation, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, American Distributors, Inc., et al., Docket 3918, March 15, 1940]

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 15th day of March, A. D. 1940.

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

IN THE MATTER OF AMERICAN DISTRIBUTORS, INC., A CORPORATION, UNITED ADVERTISING COMPANIES, INC., A CORPORATION, AND JOHN H. MORGAN, AN INDIVIDUAL TRADING AND DOING BUSINESS UNDER THE NAME OF CHAMPION PRODUCTS COMPANY

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondents, American Distributors, Inc., a corporation, United Advertising Companies, Inc., a corporation, and John H. Morgan, an individual, trading and doing business under the name of Champion Products Company or under any other name or names, their respective agents, officers, employees and representatives, 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 a certain medicinal preparation containing Vitamins A, B–1, D, G and E, and now designated by the name of "Vita-Perles", or any other preparation composed of similar ingredients or possessing substantially similar therapeutic qualities, whether sold under that designation or any other designation, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that:

(1) Said preparation may be obtained and tested without risking the loss of any money;

(2) Backache, headache, leg pains, loss of appetite and energy, faulty vision, sluggishness, loss of weight, early tooth decay, reduced resistance to infection, premature evidence of advancing age, constipation, poor digestion, bad breath, or skin irritations, are caused by a vitamin deficiency or that such conditions will be relieved or corrected by the use of the said preparation;

(3) Those who are thin, pale and sickly will by the use of said preparation acquire additional weight, an improved complexion, an increased resistance to colds and infections, an improved appetite or will become less nervous;

(4) The impairment or premature loss of sexual desire, vigor, or potency in the male, is due to a vitamin deficiency, or will be restored or improved by the use of said preparation, or that its use will increase the general strength and energy;

(5) Said preparation will affect women's ability to successfully conceive or bear children except in rare cases involving habitual involuntary abortion where inability to successfully bear children after conception may be due to a deficiency of Vitamin E of a degree susceptible of replacement by the Vitamin E content of said preparation.

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

By the Commission.

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

[F. R. Doc. 40–1293; Filed, March 29, 1940; 11:06 a. m.]

[Docket No. 3556]

IN THE MATTER OF AMERICAN VENEER PACKAGE ASSOCIATION, INC., ET AL.

§ 3.7 *Aiding, assisting and abetting unfair or unlawful act or practice:* § 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices:* § 3.55 *Furnishing means and instrumentalities of unfair or unlawful act or practice.* Entering into, carrying out, or aiding or abetting the carrying out of any agreement, etc., in connection with offer, etc., in commerce of fruit and vegetable veneer containers, and with intent or effect of restricting, restraining or monopolizing or eliminating competition in purchase or sale in said commerce of any such products, and between and among any two or more of the various respondents set out, to wit, respondent American Veneer Package Association, Inc., and its officers, and respondents Eastern Package Association, Southern Package Association, Inc., Northeastern Veneer Package Association and Midwest Package Association, and the officers and members of said various associations, and respondent Stevenson Corporation and respondents Charles R. Stevenson et al., doing business as Stevenson, Jordan & Harrison [engaged in business management and business engineering]; and in pursuance of such agreement, etc., (1) fixing and maintaining (a) uniform prices, or (b) uniform discounts or other terms and conditions of sale, (2) compiling, publishing and distributing any uniform compilation of prices or other information to be used in connection with fixing of prices, discounts, terms and conditions of sale, (3) determining or establishing any system of zones throughout the United States in connection with the fixing of prices, etc., (4) adopting any joint or uniform price list or other price-fixing devices, (5) agreeing, in connection with fixing of prices, to curtail production of such containers and parts thereof, and (6) preparing, publishing and circulating lists of recognized jobbers and dealers with intent or effect of indicating that specified persons or concerns, (a) as jobbers, or (b) as dealers, as case may be, are respectively entitled to receive special jobber, or special dealer, discounts, and that others are not so entitled, or (7) adopting and taking any other concerted or cooperative action to carry out and make effective acts and things set forth in findings [i. e., through exchange of information

and device, harmonizing and stabilizing business activities of various respondent interests, etc., as therein set out in detail], in furtherance of such understandings, etc., 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, American Veneer Package Association, Inc., et al., Docket 3556, March 15, 1940]

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 15th day of March, A. D. 1940.

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

IN THE MATTER OF AMERICAN VENEER PACKAGE ASSOCIATION, INC., A CORPORATION, AND ITS OFFICERS; EASTERN PACKAGE ASSOCIATION, ITS OFFICERS AND MEMBERS; SOUTHERN PACKAGE ASSOCIATION, INC., A CORPORATION, ITS OFFICERS AND MEMBERS; THE STEVENSON CORPORATION, CHARLES R. STEVENSON, T. M. HARRISON, C. H. FERRIS, N. M. PERRIS, E. G. ACKERMAN, A. H. DYER, R. E. CASE, F. L. SWEETSER, W. R. GUTHRIE, A. P. NONWEILER, S. M. HUDSON, R. R. BLISS, L. P. PLATT, HOWARD MARVIN, AND D. M. METZGER, A PARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME OF STEVENSON, JORDAN & HARRISON; NORTHEASTERN VENEER PACKAGE ASSOCIATION, ITS OFFICERS AND MEMBERS; AND MIDWEST PACKAGE ASSOCIATION, ITS OFFICERS AND MEMBERS

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission; the answers of respondents; a stipulation as to the facts entered into between counsel representing the respondent associations, their respondent officers (excepting 5 respondent secretaries) and their respondent members (excepting 14 respondent members) and W. T. Kelley, Chief Counsel for the Commission, which provides among other things that without further evidence or other intervening procedure, the Commission may issue and serve upon the aforementioned respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding (the Commission, on October 25, 1939, granted the motion of counsel for respondents Georgia Veneer & Package Company and the Southern Crate & Veneer Company to expunge their names from the said stipulation for the reason that the said names were included therein through misunderstanding); statement of admitted facts signed by counsel for the respondents designated under the firm name of Stevenson, Jordan & Harrison; the answers of respondents Evansville Container Company, Swisshelm Veneer Company and Newton Box & Basket Company, Inc., in which answers the said three respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to the said facts; other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and affidavits in opposition thereto with respect to respondents Pierpont Manufacturing Company, Adkins Manufacturing Company, Georgia Veneer & Package Company and Southern Crate & Veneer Company; and briefs filed herein in support of, and in answer to, said respondents Stevenson, Jordan & Harrison; other respondents not having filed briefs and oral arguments not having been requested by any of the respondents, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents: (1) American Veneer Package Association, Inc., and its officers as follows: President, Frank M. Harrison, Vice-President, George Talbot, Jr.; Vice-President, R. O. Fletcher; Treasurer, Willis W. Hargroves; Secretary-Manager, Robert W. Davis; (2) Eastern Package Association, its Chairman, Frederick W. Masie; and its members as follows: Berryville Basket Company, Inc., M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Company, William W. Dilks & Son, Inc., Farmco Package Corporation, Louis P. Finger, trading as Finger Bros., Goldman Package Manufacturing Company, a corporation, Jersey Package Company, a corporation, Marvil Package Company, a corporation, Planters Manufacturing Company, Inc., Ramsey Package Corporation, Riverside Manufacturing Company, a corporation, Virginia Cooperage Company, Inc.; (3) Southern Package Association, Inc., its officers as follows: Chairman, Herbert J. Linder; Vice-President, Walter E. Morgan; Secretary, Norman G. Asbury; Treasurer, D. E. Shuman; and its members as follows: W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Company; Leigh Banana Case Company, a corporation, B. E. Martin, Patten Package Company, Inc., Farmco Package Corporation, Planters Manufacturing Company, Inc., Marvil Package Company, a corporation, Evansville Container Company, a corporation, Hollywood-Beaufort Package Corporation; Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Company, Mount Olive Manufacturing Company, a corporation; Riverside Manufacturing Company, a corporation; Alabama Basket Company, Inc.; Dayton Veneer & Lumber Mills, a corporation; John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Company; Edgerton Manufacturing Company; (4) The Stevenson Corporation, Charles R. Stevenson; T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. P. Platt, Howard Marvin and D. M. Metzger, partners doing business under the firm name of Stevenson, Jordan & Harrison; (5) Northeastern Veneer Package Association, its officers as follows: President, B. H. Droman; Vice-President, T. W. Windnagle; Secretary-Treasurer, George A. Cooper; and its members as follows: Acme Veneer Package Company, Inc.; John Bacon, Inc.; Guile & Windnagle, Inc.; Webster Basket Company, Inc.; Ellicottville Basket Company, Inc.; Attica Package Company, Inc.; Barden & Robeson Corporation; Sodus Basket Company; Bellaire & Schroeder, Inc.; Madison County Basket Company, a corporation; (6) Midwest Package Association, its officers as follows: President, George H. Talbot, Sr.; Vice-President, S. C. Bulliet; Secretary-Treasurer, J. L. Giacomino; and its members as follows: Berrien County Package Company, a corporation; Burlington Basket Company; Edgerton Manufacturing Company, a corporation; B. C. Jarrell & Company, a corporation; Swisshelm Veneer Company, a corporation; Frank L. Deaner & Sons; New Albany Box & Basket Company, a corporation; Ottawa Basket Company, a corporation; Roberts-Liggett Company; Bloomington Basket Company, Inc.; H. A. DuBois & Sons Company, Inc.; Evansville Container Company; Newton Box & Basket Company, Inc.; H. A. Schwarz, an individual doing business under the firm name of Schwarz Basket & Box Company; Paducah Box & Basket Company, a corporation; Harrison Manufacturing Co., a corporation; Pierce-Williams Company; Strawberry Crate Company, Inc.; and their agents, representatives and employees, in connection with the offering for sale, sale and distribution of veneer containers, used in the packaging of fruit and vegetables, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, carrying out, or aiding or abetting the carrying out of, any agreement, understanding, combination or conspiracy between and among any two or more of said respondents, for the purpose or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the purchase or sale in said commerce of any of such products, and from doing any of the following acts and things pursuant thereto:

(1) Fixing and maintaining uniform prices.

[1] 4 F.R. 4056.

(2) Fixing and maintaining uniform discounts or other terms and conditions of sale.

(3) Compiling, publishing, and distributing any uniform compilation of prices or other information to be used in connection with the fixing of prices, discounts, terms, and conditions of sale.

(4) Determining or establishing any system of zones throughout the United States in connection with the fixing of prices, discounts, terms, and conditions of sale.

(5) Adopting any joint or uniform price list or other device which fixes prices.

(6) Agreeing to curtail the production of veneer fruit and vegetable containers, and the parts thereof, in connection with the fixing of prices.

(7) Preparing, publishing, and circulating lists of recognized jobbers and dealers for the purpose or with the effect of indicating that specified persons or concerns as jobbers are recognized as entitled to receive special jobber discounts, that specified persons or concerns as dealers are entitled to receive special dealer discounts, and that other persons or concerns are not so entitled.

(8) Adopting and taking any other concerted or cooperative action to carry out or make effective the acts and things as set forth in the said findings of fact herein, in furtherance of said understandings, agreements, combinations or conspiracies.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondents Ross R. Guthrie, Pierpont Manufacturing Company, Adkins Manufacturing Company, Georgia Veneer and Package Company and Southern Crate and Veneer Company.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40–1291; Filed, March 29, 1940; 11:05 a. m.]

[Docket No. 3637]

IN THE MATTER OF PROCESS ENGRAVING COMPANY

§ 3.6 (a) (17.5) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Manufacturing nature:* § 3.6 (m10) *Advertising falsely or misleadingly—Manufacture:* § 3.96 (a) (3.5) *Using misleading name—Goods—Manufacture:* § 3.96 (b) (3.5) *Using misleading name—Vendor—Manufacturing nature:* § 3.96 (b) (5.5) *Using misleading name—Vendor—Products.* Using, in connection with offer, etc., in commerce, of stationery products, the words "engraving," "process engraving," or any derivative of the word "engrave," alone or in conjunction or combination with any other word or words in respondent's trade name, advertising literature, circulars, catalogs, business signs, letterheads or correspondence, to designate or describe the stationery products sold and distributed by respondent, or the nature or character of respondent's business, unless and until the respondent produces the stationery products so designated or described by a process which consists essentially in the application of blank stationery to an inked intaglio plate under pressure sufficient to force the surface of the stationery into the letters or designs, which are cut or incised in the plate, so that the ink in such plate adheres to the stationery to form letters, words, characters or designs which are in relief and raised from the general plane of the surface of the stationery, 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, Process Engraving Company, Docket 3637, March 19, 1940]

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 19th day of March, A. D. 1940.

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

IN THE MATTER OF ANN W. CARTER, AN INDIVIDUAL, TRADING UNDER THE FIRM NAME AND STYLE OF PROCESS ENGRAVING COMPANY

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the briefs of counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts, and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Ann W. Carter, her salesmen, employees and agents, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, in commerce, as commerce is defined in the Federal Trade Commission Act, of stationery products, do forthwith cease and desist from:

1. Using the words "engraving," "process engraving," or any derivative of the word "engrave," alone or in conjunction or combination with any other word or words in her trade name, advertising literature, circulars, catalogs, business signs, letterheads or correspondence, to designate or describe the stationery products sold and distributed by respondent, or the nature or character of respondent's business, unless and until the respondent produces the stationery products so designated or described by a process which consists essentially in the application of blank stationery to an inked intaglio plate under pressure sufficient to force the surface of the stationery into the letters or designs, which are cut or incised in the plate, so that the ink in such plate adheres to the stationery to form letters, words, characters or designs which are in relief and raised from the general plane of the surface of the stationery.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40–1294; Filed, March 29, 1940; 11:06 a. m.]

[Docket No. 3668]

IN THE MATTER OF COMMONWEALTH PUBLISHING COMPANY

§ 3.6 (j) (3) *Advertising falsely or misleadingly — Government approval, connection or standards—Government indorsement:* § 3.6 (1) *Advertising falsely or misleadingly—Indorsements and testimonials:* § 3.6 (y10) *Advertising falsely or misleadingly—Scientific or other relevant facts:* § 3.18 *Claiming indorsements or testimonials falsely.* Representing, in connection with offer, etc., in commerce, of respondent's record books, that Federal and State laws require that books of account be kept on respondent's record books, and that respondent's said books have been approved by Federal or State officials or taxing authorities, 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, Commonwealth Publishing Company, Docket 3668, March 19, 1940]

§ 3.6 (a) (22) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Producer status of dealer—Publisher and printer.* Representing, in connection with offer, etc., in commerce, of respondent's record books, that respondent is a printer or binder of record books and bookkeeping systems, 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, Commonwealth Publishing Company, Docket 3668, March 19, 1940]

---

[1] 4 F.R. 2191.

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 19th day of March, A. D. 1940.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before A. F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Commonwealth Publishing Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its record books in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from representing that:

(1) Federal and state laws require that books of account be kept on respondent's record books;

(2) Respondent's record books have been approved by Federal or State officials or taxing authorities;

(3) Respondent is a printer or binder of record books and bookkeeping systems.

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

By the Commission.

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

[F. R. Doc. 40–1295; Filed, March 29, 1940; 11:07 a.m.]

[Docket No. 3603]

IN THE MATTER OF WILLIAM A. FREW

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of candy, garden seed, watches and various other articles, any merchandise so packed and assembled that sales of such merchandise to the general public are to be, or may be, made by means of a game of chance, gift enterprise or lottery scheme, 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, William A. Frew, Docket 3603, March 20, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in commerce, of candy, garden seed, watches and various other articles, others with assortments of any merchandise together with push or pull cards, punch boards or other lottery devices, which said push or pull cards, punch boards or other lottery devices are to be, or may be, used in selling or distributing said merchandise to the public, 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, William A. Frew, Docket 3603, March 20, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in commerce, of candy, garden seed, watches and various other articles, others with push or pull cards, punch boards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punch boards, or other lottery devices are to be, or may be, used in selling and distributing such merchandise to the public, 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, William A. Frew, Docket 3603, March 20, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of candy, garden seed, watches and various other articles, any merchandise by means of a game of chance, gift enterprise, or lottery scheme, 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, William A. Frew, Docket 3603, March 20, 1940]

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 20th day of March, A. D. 1940.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint 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 William A. Frew, individually and trading under the names of Paradise Products Company, Paradise Seed Company, Paradise Candy Company, Paradise Chocolate Company, Square Deal Company, Lancaster County Seed Company, Lancaster Seed Company, Garden Spot Seed Company, Garden Seed Company of America and Good Luck Gardens, or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy, garden seed, watches, blankets, towels, musical instruments, housekeeping sets, bedspreads, flashlights, cameras, tableware, toilet sets or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Selling and distributing any merchandise so packed and assembled that sales of such merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise or lottery scheme;

(2) Supplying to or placing in the hands of others assortments of any merchandise together with push or pull cards, punch boards or other lottery devices, which said push or pull cards, punch boards or other lottery devices are to be used, or may be used, in selling or distributing said merchandise to the public;

(3) Supplying to or placing in the hands of others push or pull cards, punch boards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punch boards, or other lottery devices are to be used, or may be used, in selling and distributing such merchandise to the public;

(4) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

By the Commission.

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

[F. R. Doc. 40–1290; Filed, March 29, 1940; 11:05 a. m.]

[Docket No. 3929]

IN THE MATTER OF WALTER KIDDE & COMPANY, INC., ET AL.

§ 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices.* (1) Fixing, or fixing and maintaining, in connection with offer, etc., in commerce, of parts, accessories and apparatus for

[1] 4 F.R. 221.

[1] 5 F.R. 622.

use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, and on the part of respondent manufacturers or assemblers of such systems and extinguishers, by understanding, agreement or combination between or among any two or more of such respondents, or with others, the sale or purchase price for said parts, accessories and apparatus for such use or in connection with such manufacture or assembly, and (2) compiling, publishing and distributing, as aforesaid, any list of prices for said parts, accessories and apparatus for such use or in connection with such manufacture or assembly, and (3) filing, as aforesaid, bids, where competitive bids are called for by governmental agencies or other buyers for parts, accessories and apparatus for such use or in connection with such manufacture or assembly, 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, Walter Kidde & Company, Inc., et al., Docket 3929, March 20, 1940]

§ 3.39 *Dealing on exclusive and tying basis.* Making any sale or contract for the sale of parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, and in connection with offer, etc., in commerce, of such parts, accessories and apparatus for such use, or in connection with such manufacture or assembly, for use or resale, or fixing price charged therefor, on the condition, agreement or understanding that the purchaser thereof shall not use or deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of respondent Walter Kidde & Company, Inc., prohibited. (Sec. 3, 38 Stat. 731; 15 U.S.C., sec. 14) [Cease and desist order, Walter Kidde & Company, Inc., et al., Docket 3929, March 20, 1940]

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 20th day of March, A. D. 1940.

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

IN THE MATTER OF WALTER KIDDE & COMPANY, INC., AMERICAN LA FRANCE & FOAMITE INDUSTRIES, INC., C–O–TWO FIRE EQUIPMENT COMPANY, NATIONAL FOAM SYSTEM, INC., AND FYROUT COMPANY, INC.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and a stipulation as to the facts entered into between counsel representing the respondents and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusions based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusions that said respondents have violated the provisions of the Federal Trade Commission Act and that the respondent Walter Kidde & Company, Inc., has violated the provisions of Section 3 of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes";

It is ordered, That the respondents, Walter Kidde & Company, Inc., American La France & Foamite Industries, Inc., C–O–Two Fire Equipment Company, National Foam System, Inc., and Fryout Company, Inc., their officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution, in commerce as defined in the Federal Trade Commission Act, of parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, do forthwith cease and desist from doing and performing by understanding, agreement, or combination, between or among any two or more of said respondents, or with others, the following acts and things:

(1) Fixing, or fixing and maintaining the sale or purchase price for parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers;

(2) Compiling, publishing and distributing any list of prices for the parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers;

(3) Filing bids where competitive bids are called for by Governmental agencies or other buyers for parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers.

It is further ordered, That the respondent Walter Kidde & Company, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce as defined in the Clayton Act of parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Making any sale or contract for the sale of parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, for use or resale, or fix a price charged therefor on the condition, agreement or understanding that the purchaser thereof shall not use or deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the said respondent.

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

By the Commission.

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

[F. R. Doc. 40–1296; Filed, March 29, 1940; 11:07 a. m.]

[Docket No. 4018]

IN THE MATTER OF M. LINKMAN & COMPANY

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of pipes or any other merchandise, pipes or other merchandise so packed and assembled that sales of such pipes or other merchandise to the general public are to be, or may be, made by means of a game of chance, gift enterprise or lottery scheme, 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, M. Linkman & Company, Docket 4018, March 20, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in commerce, of pipes or any other merchandise, others with assortments of pipes or other merchandise, together with punch boards, push or pull cards, or other lottery devices, which said punch boards, push or pull cards or other lottery devices are to be, or may be, used in selling and distributing such pipes or other merchandise to the public, 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, M. Linkman & Company, Docket 4018, March 20, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in commerce, of pipes or any other merchandise, others with punch boards, push or pull cards, or other lottery devices, either with assortments of pipes or other merchandise or separately, which

said punch boards, push or pull cards, or other lottery devices are to be, or may be, used in selling and distributing such pipes or other merchandise to the public, 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, M. Linkman & Company, Docket 4018, March 20, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of pipes or any other merchandise, pipes or other merchandise by means of a game of chance, gift enterprise or lottery scheme, 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, M. Linkman & Company, Docket 4018, March 20, 1940]

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 20th day of March, A. D. 1940.

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

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 and states that it 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, M. Linkman & Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pipes or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Selling and distributing pipes or other merchandise so packed and assembled that sales of such pipes or other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise or lottery scheme;

(2) Supplying to or placing in the hands of others assortments of pipes or other merchandise, together with punch boards, push or pull cards, or other lottery devices, which said punch boards, push or pull cards or other lottery devices are to be used or may be used in selling and distributing such pipes or other merchandise to the public;

(3) Supplying to or placing in the hands of others punch boards, push or pull cards, or other lottery devices, either with assortments of pipes or other merchandise or separately, which said punch boards, push or pull cards, or other lottery devices are to be used or may be used in selling and distributing such pipes or other merchandise to the public.

(4) Selling or otherwise disposing of pipes or other merchandise by means of a game of chance, gift enterprise or lottery scheme.

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

By the Commission.

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

[F. R. Doc. 40-1297; Filed, March 29, 1940; 11:07 a. m.]

TITLE 26—INTERNAL REVENUE

CHAPTER I—BUREAU OF INTERNAL REVENUE

[Regulations 13]

SUBCHAPTER C—MISCELLANEOUS EXCISE TAXES

PART 175—TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS

TABLE OF CONTENTS

REGULATIONS GOVERNING THE TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS

Article I—Scope of Regulations

§ 175.1 *Traffic in containers of distilled spirits.* These regulations are prescribed pursuant to the foregoing provision of law governing the traffic in containers of distilled spirits.*

Article II—Regulations Superseded

§ 175.2 *Effective date.* These regulations shall, on and after the sixtieth day following the date of approval, supersede Regulations 13, approved May 24, 1937, and all amendments and modifications thereof. But these regulations shall not affect or limit any act done or any liability incurred under any regulations superseded hereby, or any suit, action, or proceeding had or commenced in any civil, administrative, or criminal cause or proceeding prior to such date, nor shall these regulations release, acquit, affect, or limit any offense committed in violation of previously existing regulations, or any penalty, liability, or forfeiture incurred prior to such date.*

Article III—Definitions

§ 175.3 *Definitions.* In these regulations the following words and phrases shall, unless otherwise stated, be considered as having the meaning herein defined:

(a) "Act" shall mean section 2871, I. R. C., entitled "Regulation of Traffic in Containers of Distilled Spirits."

(b) "District supervisor" or "supervisor" shall mean the person having charge of a supervisory district of the Alcohol Tax Unit of the Bureau of Internal Revenue.

*Sections 175.1 to 175.44 issued under the authority contained in sections 2871 and 3170, Internal Revenue Code (Public No. 1, 76th Congress).

(c) "Distilled spirits" shall mean (1) ethyl alcohol, hydrated oxide of ethyl, and spirits of wine, from whatever source derived or by whatever process produced, and (2) any alcoholic distillate fit for beverage purposes, such as whisky, brandy, gin, rum, liqueurs, cordials, and bitters, and all compounds, by whatever name called, containing distilled spirits and fit for beverage purposes, but shall not include wine containing 24 per centum or less of alcohol by volume: *Provided,* That this definition shall not apply to or include anhydrous alcohol, and alcohol withdrawn for tax-free purposes as provided by law.

(d) "Commissioner" shall mean the Commissioner of Internal Revenue.

(e) "Liquor bottle" shall mean any glass container for packaging distilled spirits for sale at retail, of a capacity of one-half pint or greater, conforming to these regulations and to the regulations prescribed by the Federal Alcohol Administration (27 CFR, Part 5), the regulations in that regard heretofore promulgated by the Federal Alcohol Administration being hereby adopted as a part of these regulations.[1]

(f) "Application" shall mean a formal written request for a permit for one or more of the privileges authorized by these regulations, verified under oath or supported by a verified statement of facts.

(g) "Permit" shall mean a written authorization signed by the supervisor, describing the acts permitted to be performed.

(h) "Person" shall mean and include natural persons, associations, copartnerships, and corporations.

(i) "Bottler" shall mean a distiller, rectifier, proprietor of an internal revenue bonded warehouse, tax-paid bottling house, industrial alcohol plant or industrial alcohol bonded warehouse, a class 8 bonded warehouse qualified under the customs laws, or an agency of the United States or any State or political subdivision thereof.

(j) "Importer" shall mean any person authorized to import distilled spirits into the United States.

(k) "Vintage spirits" shall mean all imported distilled spirits which are not less than 10 years old and which were bottled prior to August 1, 1934.

(l) "United States" shall mean the continental United States and its outlying possessions to which the internal revenue laws apply; and all other possessions of the United States shall be deemed to be foreign countries for the purposes of these regulations.

(m) The term "age" shall have the meaning given to such term by definition (j) of Article I of Regulations 5 (27 CFR, Part 5), Relating to labeling and advertising of distilled spirits, promulgated by the Federal Alcohol Administration, in effect as of July 1, 1938, and shall be stated in the manner provided in section 39 of Article III of said regulations: *Provided, however,* That the actual age may be stated as to whisky withdrawn from cisterns at distilleries registered under the internal revenue laws prior to April 1, 1937, and as to such whisky which, when blended or rectified, does not contain spirits other than those withdrawn from distilleries registered under the internal revenue laws prior to April 1, 1937.

(n) The term "kind" shall have the respective meanings given to such term by the "Standards of identity for distilled spirits" set forth in Article II of Regulations 5 (27 CFR, Part 5), Relating to labeling and advertising of distilled spirits, promulgated by the Federal Alcohol Administration, in effect as of July 1, 1938, and theretofore, as to spirits produced in the respective periods covered by such regulations, and shall be stated as to spirits produced in each such period in the manner provided in section 34 of Article III of said regulations: *Provided, however,* That the actual kind may be stated as to distilled spirits withdrawn from cisterns at distilleries registered under the internal revenue laws prior to April 1, 1937, and as to all blends thereof, and as to all such spirits rectified without the addition of spirits other than those withdrawn from cisterns at distilleries registered under the internal revenue laws prior to April 1, 1937.*

Article IV—Manufacture and Sale of Bottles for Packaging Distilled Spirits

§ 175.4 *Permit to manufacture.* Any person intending to engage in the manufacture of liquor bottles shall apply on Form 93, "Application for Permit to Manufacture Liquor Bottles," including a description of the plant and equipment, to the supervisor of the district in which his plant is situated for an appropriate permit authorizing him to engage in such manufacture, and, except as may otherwise be provided herein, no person may hereafter manufacture, store, ship, consign, or deliver liquor bottles unless in accordance with the terms of such a permit.*

§ 175.5 *Changes in plant.* Any person who after the issuance of a permit authorizing him to engage in the manufacture of liquor bottles desires to make major changes in the construction or equipment of his plant, shall file an application on Form 93 with the supervisor of the district in which his plant is situated for an appropriate permit authorizing him to make such changes.*

§ 175.6 *Storage of liquor bottles by manufacturer.* Any person authorized to manufacture liquor bottles may store such bottles off his permit premises either in a separate room having solid partitions or partitions constructed of 9-gauge 2-inch mesh wire, or in a separate warehouse, under permit issued by the supervisor of the district in which such storage space is located, pursuant to application Form 98, "Application for Permit under Regulations 13," provided that such room or warehouse is of sound construction and the doors and windows are adequately protected, and that full time watchmen service is provided.*

§ 175.7 *Persons authorized to receive liquor bottles.* No person may ship, consign, or deliver liquor bottles except to authorized bottlers to whom the Commissioner has assigned an appropriate symbol and number for marking liquor bottles: *Provided, however,* That liquor bottles may be shipped pursuant to Form 98 by the glass manufacturer to another person for additional processing, such as coloring or cutting, where legal title and custody to such liquor bottles are retained by the glass manufacturer until they are delivered to the permittee-user.*

§ 175.8 *Indicia for domestic liquor bottles.* There shall be blown legibly either in the bottom or in the body of each liquor bottle the permit number of the manufacturer, the year of manufacture (which shall be indicated by the last two numerals), and a symbol and number assigned by the Commissioner to represent the name of the bottler procuring the same, and there shall be blown legibly on the shoulder of each such bottle the words "Federal Law Forbids Sale or Reuse of This Bottle": *Provided,* That liquor bottles which are ascertained by the Commissioner to be of distinctive shape or design for the packaging of liqueurs, cordials, bitters, cocktails, gin fizzes, and such other specialties as may be specified from time to time by the Commissioner, may be manufactured and shipped, consigned, or delivered without indicia representing the name of the bottler procuring the same.*

§ 175.9 *Labels.* Liquor bottles, and other containers, authorized by this article, in which distilled spirits are packaged for sale at retail, shall also bear labels with the following brands and marks thereon:

(a) Brand name, kind, and alcoholic content of the distilled spirits, by proof, except that the alcoholic content may be stated in percentage, by volume, in the case of liqueurs, cordials, bitters, cocktails, gin fizzes, or other such specialties.

(b) Net contents of such bottles or containers, unless the statement of the net contents is legibly blown therein.

(c) Name and address of the distiller or rectifier, by or for whom the spirits are bottled, except that the name and address of a dealer may be substituted for the name and address of the distiller or rectifier, if such name and address are preceded by the words "Bottled for _____" or "Bottled expressly for _____."

(d) If whisky, not blended or rectified, the age thereof, but this statement shall not be required as to Scotch, Irish, or Canadian whisky, or whisky bottled in bond. As to whisky withdrawn from cisterns at distilleries registered under the internal revenue laws on or after April 1, 1937, and stored in reused cooperage, the period of such storage shall be

[1] Digest of pertinent portions of the regulations of the Federal Alcohol Administration will be found in the Appendix hereof.

stated in the form heretofore prescribed for such statements by Regulations 5 (27 CFR, Part 5), Relating to labeling and advertising of distilled spirits, promulgated by the Federal Alcohol Administration.

(e) If blended or rectified whisky, the age of the youngest whisky therein, but this statement shall not be required as to Scotch, Irish, or Canadian whisky; and the respective percentage by volume, of whisky, or whiskies, and neutral spirits. As to whisky withdrawn from cisterns at distilleries registered under the internal revenue laws on or after April 1, 1937, and stored in reused cooperage, and used in blending or rectification, the period of such storage shall be stated in the form heretofore prescribed for such statements by Regulations 5 (27 CFR, Part 5), Relating to labeling and advertising of distilled spirits, promulgated by the Federal Alcohol Administration.

(f) A statement of the percentage, by volume, of coloring matter, if such coloring matter is present in the distilled spirits in excess of 2½ per cent by volume, except that this requirement shall not apply to liqueurs, cordials, bitters, cocktails, gin fizzes, or other such specialties.*

Article V—Use of Bottles for Packaging Distilled Spirits

§ 175.10 *Containers for distilled spirits.* The use for packaging distilled spirits for sale at retail of containers of one-half pint capacity or greater, other than liquor bottles as herein defined and otherwise conforming to these regulations, is prohibited: *Provided*, That upon application (Form 98) by any bottler the supervisor of the district in which the plant of such bottler is situated may, in his discretion, by the issuance of an appropriate permit, authorize the procurement and use by such bottler of liquor bottles which are ascertained by the Commissioner to be of distinctive shape or design for the packaging of liqueurs, cordials, bitters, cocktails, gin fizzes, and such other specialties as may be specified from time to time by the Commissioner without the indicia representing the name of the bottler procuring the same: *Provided further*, That upon application by any bottler the supervisor of the district in which the plant of such bottler is situated may, in his discretion, by the issuance of an appropriate permit authorize the procurement and use, for packaging distilled spirits, of earthenware containers which are ascertained by the Commissioner to be of distinctive shape or design, marked legibly, by underglaze coloring, (1) either on the bottom or on the body with a symbol and number assigned by the Commissioner to represent the name of the bottler procuring the same, and (2) on the shoulder with the words, "Federal Law Forbids Sale or Reuse of This Bottle": *Provided, however*, That any bottler may package liqueurs, cordials, bitters, cocktails, gin fizzes, and such other specialties as may be specified from time to time by the Commissioner in earthenware containers not marked as required by these regulations.*

§ 175.11 *Use of liquor bottles bearing same indicia, by parent company and wholly-owned subsidiaries.* Any bottler authorized to bottle distilled spirits at more than one location may select any one permit symbol and number assigned to him, or to any of his wholly-owned subsidiaries, for use by him and at any or all of the premises of his wholly-owned subsidiaries at which distilled spirits are bottled. The bottler shall notify the Commissioner of such selection. Stocks of liquor bottles bearing such selected indicia may be shipped by the bottle manufacturer direct to the premises of the parent company or to any of its wholly-owned subsidiaries and may be transferred between such premises, without obtaining from the district supervisor a permit authorizing such shipment or transfer; however, bottles bearing any symbol and number assigned to the parent company or to any of its wholly-owned subsidiaries, other than those bearing the selected indicia, may not be shipped by the bottle manufacturer, or transferred, to any premises other than those of the bottler to whom the symbol and number were assigned, without first obtaining a permit, on Form 98, from the supervisor of the district in which the transferor-permittee is located.*

§ 175.12 *Authorized receipt of liquor bottles.* No bottler shall accept shipment or delivery of liquor bottles except from persons holding permits under the provisions of § 175.4 of these regulations.*

§ 175.13 *Use and resale of containers.* No bottler shall use any liquor bottle or other authorized marked container except for packaging distilled spirits or resell any liquor bottle or other authorized marked container except in connection with the sale of its contents, or divert any liquor bottle or other authorized marked container from his own use except upon application (Form 98) to and authorization by the Commissioner, as provided by § 175.39.*

§ 175.14 *Reuse of containers.* The reuse for packaging distilled spirits for sale at retail of liquor bottles or other authorized marked containers, as defined herein, is prohibited: *Provided*, That upon application (Form 98) by any bottler the supervisor of the district in which the permittee is located may, in his discretion, authorize the reuse by such permittee of liquor bottles or other authorized marked containers, as defined herein, which have not been offered for sale at retail to the consumer.*

§ 175.15 *Storage of liquor bottles by user.* Each person authorized to bottle distilled spirits, including any parent company that selects one symbol and number to be blown in liquor bottles for use by it and by one or more of its wholly owned subsidiaries as authorized by § 175.11, shall store the liquor bottles bearing the indicia assigned to him by the Commissioner in a safe and secure place on the qualified premises: *Provided, however*, That such person may store such liquor bottles off his qualified premises either in a separate room having solid partitions or partitions constructed of 9-gauge 2-inch mesh wire, or in a separate warehouse, under permit issued by the supervisor of the district in which such storage space is located, pursuant to an application filed by such person on Form 98, provided that such room or warehouse is of sound construction and the doors and windows are adequately protected and that full time watchman service is provided.*

Article VI—Reports and Inventories

§ 175.16 *Orders for containers.* Each order for the shipment or delivery of liquor bottles and other authorized marked containers shall show the name of the manufacturer-consignor, the date of the order, the shipping or delivery destination, the name and address of the consignee, the method of forwarding, and the shipment or delivery date requested by the consignee.*

§ 175.17 *Report of shipment of containers.* A report showing the name of the manufacturer-consignor, the date of the order, the shipping or delivery destination, the name and address of the consignee, the method of forwarding, the number of packages, and the size, quantity, and description of containers furnished, shall be forwarded by the manufacturer-consignor with each shipment or delivery.*

§ 175.18 *Notice of receipt of containers.* A notice of the receipt of shipment or delivery, showing the name of the manufacturer-consignor, the date of the order, the date of shipment or delivery, the date of receipt, the method of forwarding, the destination, the number of packages, and the size, quantity, and description of containers received, shall be forwarded by the consignee to the manufacturer-consignor upon receipt of any shipment or delivery of containers. A similar notice shall be forwarded by the consignee to the manufacturer-consignor upon the return of any unused containers.*

§ 175.19 *Records of orders for, and reports of shipment and receipt of containers.* The person placing the order shall keep in his place of business a copy of each order, the original report of shipment or delivery, and a copy of the notice of receipt of shipment or delivery. The manufacturer-consignor shall keep in his place of business the original order, a copy of the report of shipment or delivery, and the original notice of receipt of the shipment or delivery. Where stocks of liquor bottles bearing the same indicia authorized under § 175.11 are ordered by a parent company for shipment direct to a wholly owned subsidiary, the parent company shall furnish such subsidiary with

a copy of the order. Where such bottles are ordered and received by the parent company and subsequently transferred to a wholly owned subsidiary, the parent company shall furnish the subsidiary with a notice of such shipment and the subsidiary company shall furnish the parent company with a notice of the receipt of such bottles. Where such liquor bottles are transferred between the wholly owned subsidiaries, the transferor shall furnish the transferee with a notice of shipment and the transferee shall furnish the transferor with a notice of receipt. The records prescribed by this article shall be maintained for a period of three years, available for inspection by Government officers.*

§ 175.20 *Reports.* Each person authorized by any supervisor to engage in the manufacture of liquor bottles shall furnish the supervisor of the district in which the plant is situated a monthly report on Form 146, "Monthly Report of Manufacturer of Liquor Bottles for Packaging Distilled Spirits," relating to the manufacture and disposition of all bottles designed or intended for the packaging of distilled spirits. Each bottler shall furnish to the supervisor of the district in which the plant is situated a monthly report on Form 147, "Bottlers' Monthly Report of Containers for Packaging Distilled Spirits," relating to the receipt and disposition of all containers designed or intended for the packaging of distilled spirits. Each such person shall keep such other records and furnish such inventories and reports, relating to the manufacture, shipment, delivery, purchase, use, or sale of all containers designed or intended for the packaging of distilled spirits, as the Commissioner may from time to time require.*

§ 175.21 *Inspection of stocks and records of containers.* The records required to be kept under the provisions of this article, and all stocks of liquor bottles and other authorized containers in the hands of liquor-bottle manufacturers and bottlers, shall at all times be available for inspection by the Commissioner or his assistants, agents, and inspectors.*

Article VII—Imports and Exports

§ 175.22 *Importation of empty containers.* The importation into the United States of containers of one-half pint capacity or greater for use in packaging distilled spirits for sale at retail, except in connection with the importation of the liquor contained therein, is prohibited: *Provided,* That upon application (Form 98) by any importer the supervisor of the district in which the port of entry is situated may in his discretion, by the issuance of an appropriate permit, authorize the importation of empty liquor bottles, or other authorized containers, for packaging distilled spirits imported by him and to be bottled by an authorized bottler: *Provided, however,* That no importer may have in his possession at any time liquor bottles or other authorized containers for bottling imported or domestic distilled spirits; and there shall be blown legibly either in the bottom or in the body of all empty bottles imported under this provision, the name, and the name of the city of address, of the importer thereof, and there shall be blown legibly in the shoulder of each such bottle the words "Federal Law Forbids Sale or Reuse of This Bottle": *Provided further,* That upon application (Form 98) by any bottler, the supervisor of the district in which the applicant is situated may in his discretion, by the issuance of an appropriate permit, authorize the importation, for the packaging of domestic distilled spirits, of empty liquor bottles which are ascertained by the Commissioner to be of distinctive shape or design, and in regard to which satisfactory evidence is submitted that they cannot be obtained in the United States. The district supervisor issuing the permit will furnish a copy to the supervisor of the district in which the port of entry is situated. There shall be blown legibly in the shoulder of each such bottle imported under this provision, the words "Federal Law Forbids Sale or Reuse of This Bottle," and in the body thereof, the name, and the name of the city or country of address of the glass manufacturer. The permit symbol and number of the bottler shall be blown either in the body or in the bottom of each such bottle.

§ 175.23 *Records of orders for, and notices of receipt of, empty containers.* After the issuance of the permit authorizing the importation of containers for packaging imported or domestic distilled spirits, the importer or bottler placing the order shall forward a certified copy of the order to the supervisor of the district who issued the permit and a copy to the supervisor of the district in which the consignee is located. The certified copy of the order shall show the name, and the name of the city and country of address, of the glass manufacturer abroad, the date of the order, the place from which shipped, the name and address of the consignee, the method of forwarding, the size, quantity, and description of the bottles ordered, and the shipment or delivery date requested by the consignee. Upon receipt by the consignee of any shipment or delivery of such containers, the importer or bottler placing the order shall forward to each such supervisor a notice of the receipt of shipment or delivery, showing the name, and the name of the city and country of address, of the glass manufacturer abroad, the date of the order, the place from which shipped, the date of receipt, the name and address of the consignee, the method of forwarding, and the size, quantity, and description of the bottles furnished.*

§ 175.24 *Importation of distilled spirits in containers other than liquor bottles.* No distilled spirits for sale at retail may be imported into the United States in containers of one-half pint capacity or greater, other than liquor bottles as defined herein, unless in accordance with the terms of a permit (Form 98) issued, upon proper application, by the supervisor of the district in which the port of entry is situated, expressly authorizing importation in containers other than liquor bottles. The provisions of this section shall not apply to the importation of distilled spirits in bulk containers of a capacity of 5 wine gallons or greater.*

§ 175.25 *Indicia for imported, filled containers.* There shall be blown legibly either in the bottom or in the body of all liquor bottles containing distilled spirits imported from foreign countries the name, and the name of the city or country of address, of the manufacturer of the spirits, or of the exporter abroad, or the name, and the name of the city of address, of the importer in the United States, and there shall be blown legibly in the shoulder of each such bottle the words "Federal Law Forbids Sale or Reuse of This Bottle": *Provided,* That upon application (Form 98) the supervisor of the district in which the port of entry is situated may, in his discretion, issue a permit authorizing (1) the importation, in bottles not so marked, of vintage spirits, if accompanied by authenticated certificates of origin establishing such spirits to be as defined in these regulations; (2) the importation of liqueurs, cordials, bitters, cocktails, gin fizzes, and such other specialties as may be specified from time to time by the Commissioner in bottles which are ascertained by the Commissioner to be of distinctive shape or design, not marked as herein required; (3) the importation of liqueurs, cordials, bitters, cocktails, gin fizzes, and such other specialties as may be specified from time to time by the Commissioner in earthenware containers not marked as herein required; and (4) the importation of distilled spirits in earthenware containers which are ascertained by the Commissioner to be of distinctive shape or design, marked legibly in underglaze coloring (a) either on the bottom or on the body with the name, and the name of the city or country of address, of the manufacturer of the spirits, or of the exporter abroad, or the name, and the name of the city of address, of the importer in the United States, and (b) on the shoulder with the words "Federal Law Forbids Sale or Reuse of This Bottle."*

§ 175.26 *Containers denied entry.* Containers, whether filled or empty, imported in violation of the provisions of this article shall be denied entry into the United States.*

§ 175.27 *Containers exported.* Containers of distilled spirits exported in bond shall not be subject to these regulations, and the manufacture, and the shipment or delivery, of containers for packaging such spirits, as well as the manufacture for exportation, and the

exportation to foreign countries, of empty containers for packaging distilled spirits for sale at retail may, upon application (Form 98), in the discretion of the supervisor of the district in which such manufacture is carried on, be authorized under permit.*

§ 175.28 *Language of indicia.* Wherever in these regulations the name of any city or country is required to be blown in any bottle, the name may be either in the language of such country or in English.*

Article VIII—Permits, Revocation Proceedings

§ 175.29 *Application.* Permits shall be issued only upon application therefor, filed with the supervisor in such form and in accordance with such rules as may be prescribed by the Commissioner.*

§ 175.30 *Investigation.* The supervisor shall make a thorough investigation of each application and all material facts ascertained shall be taken into account by him in acting thereon.*

§ 175.31 *Approval.* If, after considering an application, together with all material facts ascertained by investigation, the supervisor is of the opinion that the applicant is entitled to a permit under the law and regulations, the supervisor shall issue the permit as applied for.*

§ 175.32 *Disapproval.* If the applicant is not entitled under § 175.31 to a permit, the supervisor shall disapprove the application and shall forthwith advise the applicant of such disapproval and of the grounds therefor.*

§ 175.33 *Hearing.* Within 15 days after notice of disapproval, the applicant may file with the supervisor a request, in writing, for a hearing upon the application. If no request for hearing is received within such period, the disapproval shall be final. If request for hearing is received within such period, the supervisor shall designate a place and date of hearing and shall notify the applicant thereof. Notice of place and date of hearing shall be given not less than 15 days in advance of the date of hearing. Following the hearing, which may be held by the supervisor or his duly authorized agent, the supervisor shall make findings on the basis of the record, and shall thereupon, in accordance with the findings, affirm or reverse the disapproval of the application. If the original disapproval is reversed, the supervisor shall promptly issue the permit applied for. If the original disapproval is affirmed, the supervisor shall forthwith notify the applicant, who may, within 15 days of such notification, file with the supervisor a request for review of the record by the Commissioner. The supervisor shall forward such request to the Commissioner, together with a copy of the record.*

§ 175.34 *Review by Commissioner.* If the Commissioner shall grant such review and shall, upon the record of the hearing before the supervisor, reverse the findings of the supervisor, he shall remand the record for further proceedings in accordance with his findings. If he affirms the findings of the supervisor, he shall so notify the applicant and his action thereon shall be final.*

§ 175.35 *Rehearing.* Should the supervisor or Commissioner deem a rehearing necessary he may, upon application by the permittee, or on his own motion, order the same, and such rehearing shall be held before the supervisor, or his duly authorized agent, and shall otherwise conform to the requirements of this article, including findings and decision by the supervisor and review by the Commissioner. The testimony of the previous hearing may be made a part of the rehearing record.*

§ 175.36 *Terms and conditions of permit.* (a) All applicable provisions of these regulations, and all statements, conditions, and stipulations contained in an application for a permit, and all statements, evidence, affidavits, and other documents filed in support thereof, shall be considered as part of the terms and conditions of the permit.

(b) Each permit will specifically designate and limit the acts authorized by it and the time and place where such acts may be performed. Such permit may be issued for any specified period of time, not exceeding one year.*

§ 175.37 *Violation of permit.* If the supervisor has reason to believe that the permittee has violated, or is violating, any of the provisions of the Act, the regulations thereunder, or any of the terms or conditions of the permit, he shall serve a citation upon such permittee, ordering him to appear at a time and place designated in the citation, and show cause why his permit should not be suspended or revoked. The hearing date shall not be earlier than 15 days after the date of service of the citation. The permittee may appear at such hearing in person, or by attorney, and he and the attorney for the Government may offer such evidence, including affidavits, and submit such arguments and briefs with respect to the permit as may be deemed appropriate. The supervisor shall cause the testimony to be duly recorded, and, upon completion of the hearing, shall make a finding and order suspending or revoking the permit, or dismissing the proceedings, as in his judgment the evidence may warrant. He shall then promptly notify the permittee of his action. Should the permittee desire a review of the finding and order by the Commissioner, the procedure in such case shall conform to that prescribed in §§ 175.33, 175.34, and 175.35 for applicants for permits, except that the order of the Commissioner shall be for a rehearing or for the reversal and remanding of the proceeding or for the final revocation of the permit.*

§ 175.38 *Citation.* The citation in revocation and suspension proceedings shall contain a statement of the acts charged as having been committed by the permittee and constituting grounds upon which suspension or revocation of his permit is sought. Service of such citation shall be made by mailing an original copy thereof to the permittee, by registered mail (with request for registry return receipt card), at the address stated in the permit, or by delivery of such original copy to such permittee personally by an officer or agent of the Commissioner. A certificate of mailing and the registry return card, or certificate of the officer or agent making personal service shall be filed as part of the record in the case and shall be prima facie evidence of valid service of the citation.*

§ 175.39 *Disposition of stocks of containers.* When any permit is suspended, revoked, or surrendered, stocks of liquor bottles and other authorized marked containers on hand or in process may be disposed of under permit to a person authorized to received liquor bottles in accordance with directions of the Commissioner. Application shall be made on Form 98 by such person for permission to acquire the entire stock, regardless of place of storage or persons or concerns holding title thereto, and submitted to the supervisor of the district in which the applicant is located. A sample of each size and type of container represented in the stock which the applicant desires to purchase shall be submitted to the Commissioner for examination. If such stocks are not disposed of in accordance with the directions of the Commissioner, they shall be seized and forfeited as provided in the Act.*

Article IX—Purchase, Sale, and Possession of Used Containers

§ 175.40 *Purchase or sale of used containers.* The purchase or sale of used liquor bottles, and other authorized marked containers, except as provided in these regulations, is prohibited.*

§ 175.41 *Reuse of containers.* No liquor bottle or other authorized container shall be reused for the packaging of distilled spirits except as provided in § 175.14, nor shall the original contents, or any portion of such original contents, remaining in a liquor bottle or other authorized container be increased by the addition of any substance.*

§ 175.42 *Possession of used containers.* The possession of used liquor bottles or other authorized marked containers by any person other than the person who empties the contents thereof is prohibited. This shall not prevent the owner

or occupant of any premises upon which such bottles or containers may lawfully by emptied from assembling the same in reasonable quantities upon such premises for the purposes of destruction.*

Article X—General Provisions

§ 175.43 *Administration and enforcement of the Act and these regulations.* The Deputy Commissioner in charge of the Alcohol Tax Unit, Bureau of Internal Revenue, and his assistants, agents, and inspectors, are, under the direction of the Commissioner, charged with the administration and enforcement of the Act and these regulations.*

§ 175.44 *Instruments and papers.* The terms, conditions, and instructions contained in instruments and papers required to be furnished by law or regulations are hereby made a part of these regulations as fully and to the same extent as if incorporated herein.*

Approved: March 28, 1940.

[SEAL] JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

APPENDIX

Digest of Certain Portions of Regulations of the Federal Alcohol Administration Relating to Standard Bottles for Distilled Spirits

1. The standard bottles prescribed by regulations of the Federal Alcohol Administration are bottles of such size that they hold distilled spirits in an amount equal to one of the standards of fill set forth in paragraph 2 with a head space not in excess of 8 per centum of the total capacity of the bottle after closure.

2. The standards of fill for distilled spirits in liquor bottles are as follows, subject to the tolerances set forth in paragraph 3 (fills in amounts less than ½ pints omitted):

For all distilled spirits, whether domestically manufactured, domestically bottled, or imported:

1 gallon.
½ gallon.
1 quart.
⅘ quart.
1 pint.
½ pint.

In addition, for Scotch and Irish whisky and Scotch and Irish type whisky; and for brandy and rum:

⅘ pint.

3. The following tolerances shall be allowed:

(a) Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(b) Discrepancies due exclusively to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles so as to be of uniform capacity: *Provided,* That no greater tolerance shall be allowed in case of bottles which because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(c) Discrepancies in measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

4. Distilled spirits domestically bottled prior to January 1, 1935, and imported distilled spirits entered in customs bond in bottles prior to March 1, 1935, shall be regarded as being in conformity with the prescribed standards of fill (1) if the bottle, or the label on the bottle, contains a conspicuous statement of the net contents thereof, and (2) if the actual capacity of the bottle is not substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

5. As used with reference to standard bottles, the term "gallon" means United States gallon of 231 cubic inches of alcoholic beverages at 68° F. (20° C.), and all other units of liquid measure are subdivisions of the gallon as so defined.

6. The standards of fill herein set forth do not apply to the following:

(a) Distilled spirits imported as vintage spirits under permit issued by a district supervisor of the Alcohol Tax Unit of the Bureau of Internal Revenue pursuant to Regulations 13 (Liquor Bottle Regulations) issued by the Secretary of the Treasury.

(b) Cordials and liqueurs, and cocktails, highballs, gin fizzes, bitters, and such other specialties as are specified from time to time by the Administrator.

7. Copies of the regulations of the Federal Alcohol Administration relating to standards of fill for bottled distilled spirits (Labeling and Advertising of Distilled Spirits, Regulations No. 5) may be obtained from the Federal Alcohol Administration, Washington, D. C.

[F. R. Doc. 40–1300; Filed, March 29, 1940; 11:43 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. 958–FD]

IN THE MATTER OF THE APPLICATION OF OHIO EDISON COMPANY FOR EXEMPTION

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION

Upon the request of the applicant, the Director consents to the withdrawal of the above-entitled application for exemption, subject to the provisions of Rule VII (g) of the Rules of Practice and Procedure before the Bituminous Coal Division, and to that effect

It is so ordered.

Dated: March 28, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40–1299; Filed, March 29, 1940; 11:26 a. m.]

DEPARTMENT OF AGRICULTURE.

Division of Marketing and Marketing Agreements.

DETERMINATION OF THE SECRETARY OF AGRICULTURE, APPROVED BY THE PRESIDENT OF THE UNITED STATES, WITH RESPECT TO AN ORDER REGULATING THE HANDLING OF MILK IN THE LOUISVILLE, KENTUCKY, MARKETING AREA

Whereas, the Secretary of Agriculture, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, having reason to believe that the execution of a marketing agreement and the issuance of an order, both of which regulate the handling of milk in the Louisville, Kentucky, marketing area, would tend to effectuate the declared policy of the act, gave, on the 8th day of January 1940, notice of a public hearing[1] which was held in Louisville, Kentucky, on January 26 and 27, 1940, and at said time and place all interested parties were afforded an opportunity to be heard on said proposed marketing agreement and proposed order; and

Whereas, after said hearing and after the tentative approval by the Secretary, on March 5, 1940, of a marketing agreement, handlers of more than fifty percent of the volume of milk covered by such proposed order, which is marketed within the Louisville, Kentucky, marketing area, refused or failed to sign such tentatively approved marketing agreement relating to milk:

Now, therefore, the Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby determines:

1. That the refusal or failure of said handlers to sign said tentatively approved marketing agreement tends to prevent the effectuation of the declared policy of the act;

2. That the issuance of the proposed order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk which is produced for sale in said area; and

3. That the issuance of the proposed order is approved or favored by over two-thirds of the producers who participated in a referendum conducted by the Sec-

[1] 5 F.R. 139.

retary and who, during the month of December 1939, said month having been determined by the Secretary to be a representative period, were engaged in the production of milk for sale in said area.

In witness whereof, H. A. Wallace, Secretary of Agriculture of the United States, has executed this determination in duplicate and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, this 26th day of March 1940.

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

Approved:

FRANKLIN D. ROOSEVELT
The President of the United States.

Dated, March 27, 1940.

[F. R. Doc. 40–1301; Filed, March 29, 1940; 11:44 a. m.]

PROCLAMATION MADE BY THE SECRETARY OF AGRICULTURE CONCERNING THE BASE PERIOD TO BE USED IN CONNECTION WITH THE EXECUTION OF A MARKETING AGREEMENT AND THE ISSUANCE OF AN ORDER REGULATING THE HANDLING OF MILK IN THE LOUISVILLE, KENTUCKY, MARKETING AREA

Pursuant to the powers conferred upon the Secretary of Agriculture by the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture hereby finds and proclaims that, in connection with the execution of a marketing agreement and the issuance of an order regulating the handling of milk in the Louisville, Kentucky, marketing area, the purchasing power of such milk during the base period August 1909–July 1914 cannot be satisfactorily determined from available statistics of the Department of Agriculture, but that the purchasing power of such milk can be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1919–July 1929; and the period August 1919–July 1929 is hereby found and proclaimed to be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Louisville, Kentucky, marketing area, for the purpose of the execution of a marketing agreement and the issuance of an order regulating the handling of milk in that area.

In witness whereof, the Secretary of Agriculture has executed this proclamation in duplicate and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 29th day of March 1940.

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

[F. R. Doc. 40–1302; Filed, March 29, 1940; 11:44 a. m.]

Food and Drug Administration.

[F.D.C. Docket No. 16]

NOTICE OF PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH TO DETERMINE WHETHER THE REGULATION ESTABLISHING A REASONABLE DEFINITION AND STANDARD OF IDENTITY FOR THE FOOD KNOWN UNDER ITS COMMON OR USUAL NAME AS CANNED TOMATOES SHALL BE AMENDED

In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act (Section 701, 52 Stat. 1055; 21 U.S.C. 371 (e)), and upon the application of a substantial portion of the interested industry, stating reasonable grounds therefor, notice upon the proposals of the National Canners Association, on behalf of its members, herein set forth, is hereby given to all interested persons that a public hearing will be held beginning at 10:00 a. m., May 2, 1940, in Room 3106, South Building, United States Department of Agriculture, Independence Avenue, between 12th and 14th Streets SW., Washington, D. C., for the purpose of receiving evidence upon the basis of which to determine whether the regulation establishing a reasonable definition and standard of identity for the food known under its common or usual name as canned tomatoes (Sec. 53.040, Title 21, C.F.R.), heretofore promulgated by the Secretary of Agriculture on July 14, 1939, and published in the FEDERAL REGISTER on July 18, 1939 (4 F.R. 3322), shall be amended in the following particulars:

(1) By inserting in subsection (a), immediately after "(6) Flavoring.", the following:

"There may be added, for the purpose of preventing breakdown of tomato flesh or tissue, as the result of processing and shipment, the following optional ingredient:

(7) Calcium chloride or other harmless calcium salts not in excess of 0.15 percent by weight of the total contents, based upon calcium."

(2) By striking out, in subsection (b), the sentence, "When optional ingredient (5) or (6) is present, the label shall bear the statement or statements 'Spice Added' or 'With Added Spices', 'Flavoring Added', or 'With Added Flavoring', as the case may be.", and by inserting, in lieu thereof, the following sentence:

"When optional ingredient (5), (6), or (7) is present, the label shall bear the statement or statements, 'Spice Added' or 'With Added Spices', 'Flavoring Added' or 'With Added Flavoring', 'Calcium Chloride Added' or 'With Added Calcium Chloride', as the case may be."

All interested persons are invited to attend this hearing and to offer relevant evidence. In lieu of personal testimony, affidavits may be offered either in person at the time of the hearing or by sending the same to John McDill Fox, 2311 South Building, United States Department of Agriculture, so as to be in his office by the time set for the hearing. Such affidavits, if relevant and material, may be received but the Secretary will consider the lack of opportunity for cross-examination in determining the weight that shall be given to such affidavits.

The proposed amendments are subject to adoption, rejection, amendment, or modification by the Secretary, in whole or in part, as the evidence adduced at the hearing may require.

John McDill Fox and Walter G. Green are hereby designated as presiding officers to conduct, jointly or severally, this hearing, in the place of the Secretary, with authority to administer oaths and to do all things necessary and appropriate to the proper conduct of such hearing, as provided in the general procedural regulations relating to such hearings.

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

MARCH 29, 1940.

[F. R. Doc. 40–1305; Filed, March 29, 1940; 12:56 p. m.]

Federal Surplus Commodities Corporation.

DESIGNATION OF AREAS UNDER SURPLUS FOOD STAMP PROGRAM

Pursuant to the applicable regulations and conditions prescribed by Henry A. Wallace, Secretary of Agriculture of the United States of America, the following areas are hereby designated as areas in which food order stamps may be used and in which the agricultural commodities and products listed in Surplus Commodities Bulletin No. 4,[1] effective 12: 01 A. M., E. S. T., December 15, 1939, shall be considered surplus foods on the effective dates of such areas.

The area within the county limits of Missoula County, Montana.

The area within the township limits of Wayne Township, Indiana.

The area within the county limits of Kent County, Michigan.

The area within the county limits of Harris County, Texas.

The area within the county limits of Maricopa County, Arizona.

The area within the county limits of Pinal County, Arizona.

The area within the county limits of Gila County, Arizona.

The area within the township limits of City of Peoria, Peoria, Limestone and Richwoods, Illinois, and the immediate environs thereof as defined by the local representative of the Federal Surplus Commodities Corporation. The posting of the definition of "the immediate environs" in the office of the local repre-

[1] 4 F.R. 4725.

sentative of the Federal Surplus Commodities Corporation shall constitute due notice thereof.

The effective dates for the above areas shall be announced by the local representative of the Federal Surplus Commodities Corporation for the respective areas in local newspapers of general circulation.

[SEAL] MILO PERKINS,
President.

Date, March 27, 1940.

[F. R. Doc. 40–1288; Filed, March 29, 1940; 10:42 a. m.]

FEDERAL LOAN AGENCY.

Federal Housing Administration.

NOTICE OF CALL FOR PARTIAL REDEMPTION, BEFORE MATURITY OF 2¾ PERCENT MUTUAL MORTGAGE INSURANCE FUND DEBENTURES, SERIES B

To holders of 2¾ percent Mutual Mortgage Insurance Fund debentures, Series B:

Pursuant to the authority conferred by the National Housing Act (48 Stat. 1246; U.S.C. title 12, Sec. 1701 et seq.) as amended, public notice is hereby given that 2¾ percent Mutual Mortgage Insurance Fund debentures, Series B, of the denominations and serial numbers designated below, are hereby called for redemption, at par and accrued interest, on July 1, 1940, on which date interest on such debentures shall cease:

Denomination:	*Serial numbers (all numbers inclusive)*
$50	248 to 426.
$100	774 to 1,460.
$500	477 to 751.
$1,000	1,043 to 1,914.
$5,000	65 to 115.
$10,000	9 to 13.

The debentures first issued, as determined by the serial numbers, were selected for redemption by the Federal Housing Administrator, with the approval of the Secretary of the Treasury.

No transfers or denominational exchanges in debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after April 1, 1940. This does not affect the right of the holder of a debenture to sell and assign the debenture on or after April 1, 1940, and provision will be made for the payment of final interest due July 1, 1940, with the principal thereof to the actual owner, as shown by the assignments thereon.

The Federal Housing Administrator hereby offers to purchase any debentures included in this call at any time from April 1 to June 30, 1940, inclusive, at par and accrued interest, to date of purchase.

Instructions for the presentation and surrender of debentures for redemption on or after July 1, 1940, or for purchase prior to that date will be given by the Secretary of the Treasury.

ABNER H. FERGUSON,
Acting Administrator.

Approved, March 23, 1940.

D. W. BELL,
Acting Secretary of the Treasury.

[F. R. Doc. 40–1286; Filed, March 29, 1940; 9:41 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 29th day of March, A. D. 1940.

[File No. 70–19]

IN THE MATTER OF THE TOLEDO EDISON COMPANY

NOTICE OF AND ORDER FOR HEARING

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

It is ordered, That a hearing on such matter under the applicable provisions of said Act and the rules of the Commission thereunder be held on April 15, 1940, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

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

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before April 10, 1940.

The matter concerned herewith is in regard to the issue and sale of $3,000,000 principal amount of First Mortgage Bonds, 3¼% Series due 1970 and $7,250,000 principal amount of 3½% Sinking Fund Debentures due 1960 by The Toledo Edison Company. The sale of such Bonds and Debentures is to be made through underwriters, the price to the company and underwriters' commission to be furnished later. The proceeds of the sale are to be used to finance the installation of a 50,000 kw. turbo-generating unit and to refund $6,013,000 of 4% Debentures due 1948. Applicant states that Section 6 (b) of the Act is applicable to such issue and sale.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–1298; Filed, March 29, 1940; 11:09 a. m.]