THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 5 NUMBER 108

Washington, Tuesday, June 4, 1940

The President

REORGANIZATION PLAN NO. III

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 2, 1940, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939.

DEPARTMENT OF THE TREASURY

SECTION 1. *Fiscal Service of the Treasury Department.*

(a) *Establishment of Fiscal Service.* (1) The office of the Commissioner of Accounts and Deposits, the Division of Bookkeeping and Warrants, the Division of Disbursement, the Division of Deposits, the Section of Surety Bonds, the office of the Commissioner of the Public Debt, the Division of Loans and Currency, the office of the Register of the Treasury, the Division of Public Debt Accounts and Audit, the Division of Savings Bonds, the Division of Paper Custody, and the Office of the Treasurer of the United States and their functions are consolidated into one agency of the Treasury Department to be known as the Fiscal Service, at the head of which there shall be an officer who shall be known as the Fiscal Assistant Secretary.

(2) The Fiscal Service shall consist of the Office of the Fiscal Assistant Secretary, the Office of the Treasurer of the United States, a Bureau of Accounts, and a Bureau of the Public Debt. Except as is otherwise specifically provided herein, the Secretary of the Treasury may establish such divisions and other constituent units within these agencies as he deems necessary.

(3) The Division of Bookkeeping and Warrants and its functions are transferred to the Bureau of Accounts, at the head of which shall be the Commissioner of Accounts and Deposits, who shall hereafter be known as the Commissioner of Accounts.

(4) The office of the Commissioner of the Public Debt, the Division of Loans and Currency, the office of the Register of the Treasury, the Division of Public Debt Accounts and Audit, the Division of Savings Bonds, and the Division of Paper Custody and their functions are consolidated into and shall be administered as the Bureau of the Public Debt, at the head of which shall be the Commissioner of the Public Debt.

(5) The functions of the Office of the Treasurer of the United States shall be administered by the Treasurer of the United States.

(6) Such functions as are consolidated into or transferred to the Fiscal Service and which are not allocated herein to particular agencies or offices of the Fiscal Service shall be administered through such units of the Service as may be designated by the Fiscal Assistant Secretary with the approval of the Secretary of the Treasury.

(7) The Fiscal Assistant Secretary shall be appointed by the Secretary of the Treasury in accordance with the civil service laws and shall receive a salary at the rate of $10,000 per annum. He shall, under the direction of the Secretary of the Treasury, supervise the administration of and coordinate the functions and activities consolidated into or transferred to the Fiscal Service and shall perform such other duties as the Secretary of the Treasury shall direct. In the absence or disability of the Fiscal Assistant Secretary or in the event of a vacancy in that office, the Secretary of the Treasury may designate any other officer of the Treasury Department to act as Fiscal Assistant Secretary.

(b) *Transfer of Certain Functions to Fiscal Service.* All functions vested in the Under Secretary of the Treasury and any Assistant Secretary of the Treasury pertaining to (1) the administration of financing operations; (2) the supervision of the administration of the functions and activities of the Office of Commissioner of Accounts and Deposits, the Office of the Commissioner of the Public Debt, and the Office of the Treasurer of the United States; and (3) supervision of the administration of the accounting functions and activities in the Treasury Department and all its bureaus, divisions, and offices, are hereby

CONTENTS

THE PRESIDENT

RULES, REGULATIONS, ORDERS

(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

NOTICES

CONTENTS—Continued

transferred to and consolidated in the Fiscal Service, to be exercised by the Fiscal Assistant Secretary under the direction of the Secretary of the Treasury: *Provided,* That the functions included in item (3) shall be exercised through the Commissioner of Accounts.

(c) *Transfer of Functions Relating to Accounting.* All functions vested in any other officer or employee of the Treasury Department, except those excluded by section 3 (b) of the Reorganization Act of 1939, of authorizing the installation, maintenance, revision, and elimination of accounting records, reports, and procedures are hereby transferred to and consolidated under the Fiscal Assistant Secretary, to be exercised by him through the Commissioner of Accounts.

(d) *Abolition of an Office of Assistant Secretary of the Treasury.* That office of Assistant Secretary of the Treasury which is now vacant is hereby abolished; and all the functions, rights, powers, and duties of such abolished office are hereby transferred to and vested in the Fiscal Assistant Secretary, to be exercised by him under the direction of the Secretary of the Treasury.

SEC. 2. *Federal Alcohol Administration.* The Federal Alcohol Administration, the offices of the members thereof, and the office of the Administrator are abolished, and their functions shall be administered under the direction and supervision of the Secretary of the Treasury through the Bureau of Internal Revenue in the Department of the Treasury.

DEPARTMENT OF THE INTERIOR

SEC. 3. *Fish and Wildlife Service.* The Bureau of Fisheries and the Bureau of Biological Survey in the Department of the Interior with their respective functions are consolidated into one agency in the Department of the Interior to be known as the Fish and Wildlife Service. The functions of the consolidated agency shall be administered under the direction and supervision of the Secretary of the Interior by a Director and not more than two Assistant Directors, who shall be appointed by the Secretary and perform such duties as he shall prescribe The offices of Commissioner and Deputy Commissioner of Fisheries and the offices of Chief and Associate Chief of the Bureau of Biological Survey are abolished and their functions transferred to the consolidated agency.

SEC. 4. *Recorder of General Land Office.* The office of Recorder of the General Land Office is abolished. The functions of the Recorder shall be exercised under the direction and supervision of the Secretary of the Interior through such officers or employees of the General Land Office as he may designate.

DEPARTMENT OF AGRICULTURE

SEC. 5. *Surplus Marketing Administration.* The Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration of the Department of Agriculture and its functions and the Federal Surplus Commodities Corporation as an agency of the Department of Agriculture and its functions are consolidated into an agency in the Department of Agriculture to be known as the Surplus Marketing Administration. The Surplus Marketing Administration shall be headed by an Administrator, who shall be appointed by and subject to the direction and supervision of the Secretary of Agriculture.

DEPARTMENT OF LABOR

SEC. 6. *Offices in the Immigration and Naturalization Service Abolished.* The offices of Commissioner of Immigration

of the several ports and the offices of District Commissioner of Immigration and Naturalization in the Department of Labor are abolished, and their functions shall be administered under the supervision of the Secretary of Labor by the Commissioner of Immigration and Naturalization through such District Directors of Immigration and Naturalization as the Commissioner shall designate.

CIVIL AERONAUTICS AUTHORITY

SEC. 7. *Functions of the Administrator Transferred.* The functions vested in the Civil Aeronautics Authority by the Civilian Pilot Training Act of 1939; the functions of aircraft registration and of safety regulation described in Titles V and VI of the Civil Aeronautics Act of 1938, except the functions of prescribing safety standards, rules, and regulations and of suspending and revoking certificates after hearing; the function provided for by Section 1101 of the Civil Aeronautics Act of 1938; and the functions of appointing such officers and employees and of authorizing such expenditures and travel as may be necessary for the performance of all functions vested in the Administrator; are transferred from the Civil Aeronautics Authority to and shall be exercised by the Administrator, who shall hereafter be known as the Administrator of Civil Aeronautics.

GENERAL PROVISIONS

SEC. 8. *Transfer of Records, Property, and Personnel.* All records and property (including office equipment) of the several agencies, and all records and property used primarily in the administration of any functions, transferred or consolidated by this Plan and all the personnel used in the administration of such agencies and functions (including officers whose chief duties relate to such administration and whose offices are not abolished) are transferred or consolidated, as the case may be, within the department or agency concerned, for use in the administration of the agencies and functions transferred or consolidated by this Plan: *Provided,* That any personnel transferred or consolidated within any department or agency by this section found by the head of such department or agency to be in excess of the personnel necessary for the administration of the functions transferred or consolidated shall be retransferred under existing law to other positions in the Government service, or separated from the service subject to the provisions of section 10 (a) of the Reorganization Act of 1939.

SEC. 9. *Transfer of funds.* So much of the unexpended balances of appropriations, allocations, or other funds available (including funds available for the fiscal year ending June 30, 1941) for the use of any agency in the exercise of any function transferred or consolidated by this Plan, or for the use of the head of any department or agency in the exercise of any function so transferred or consolidated, as the Director of the Bureau of the Budget with the approval of the President shall determine, shall be transferred within the department or agency concerned for use in connection with the exercise of the function so transferred or consolidated. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer: *Provided,* That the use of the unexpended balances of appropriations, allocations, or other funds transferred by this section shall be subject to the provisions of section 4 (d) (3) and section 9 of the Reorganization Act of 1939.

ADMINISTRATIVE ORDER

ESTABLISHING THE OFFICE FOR EMERGENCY MANAGEMENT IN THE EXECUTIVE OFFICE OF THE PRESIDENT AND PRESCRIBING REGULATIONS GOVERNING ITS ACTIVITIES

WHEREAS, I find there is a threatened national emergency;

NOW, THEREFORE, By virtue of the authority vested in me by the Constitution and the Statutes, and in pursuance of Part I of Executive Order No. 8248 of September 8, 1939, it is hereby ordered as follows:

SECTION 1. There is established in the Executive Office of the President an office to be known as the Office for Emergency Management which shall be under the direction of one of the Administrative Assistants to the President, to be designated by the President.

SECTION 2. The Office for Emergency Management shall:

(a) Assist the President in the clearance of information with respect to measures necessitated by the threatened emergency;

(b) Maintain liaison between the President and the Council of National Defense and its Advisory Commission, and with such other agencies, public or private, as the President may direct, for the purpose of securing maximum utilization and coordination of agencies and facilities in meeting the threatened emergency;

(c) Perform such additional duties as the President may direct.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
May 25, 1940.

[F. R. Doc. 40-2212; Filed, June 3, 1940; 11:41 a. m.]

Rules, Regulations, Orders

TITLE 6—AGRICULTURAL CREDIT

CHAPTER I—FARM CREDIT ADMINISTRATION

[FCA 174]

INTEREST RATE FOR LOANS MADE BY REGIONAL AGRICULTURAL CREDIT CORPORATIONS

§ 91.10 of Title 6, Code of Federal Regulations, is amended to read as follows:

"§ 91.10 *Interest rate.* The interest rate for agricultural loans is the same as that provided for livestock loans.

"Effective June 1, 1940, the rate of interest on all loans now outstanding bearing a rate of interest in excess of 5½ percent per annum, and the rate of interest on all loans hereafter made or renewed, shall be 5½ percent. (Sec. 201 (e), 47 Stat. 713; 12 U.S.C. 1148) [RACC Bull. 17, Nov. 26, 1932, RACC Bull. 439, May 31, 1940]"

[SEAL] A. G. BLACK,
Governor.

[F. R. Doc. 40-2214; Filed, June 3, 1940; 11:42 a. m.]

TITLE 7—AGRICULTURE

CHAPTER III—BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[B.E.P.Q. 499, Supplement No. 2]

ADMINISTRATIVE INSTRUCTIONS TO INSPECTORS ON THE TREATMENT OF NURSERY PRODUCTS, FRUITS, VEGETABLES, AND SOIL, FOR THE JAPANESE BEETLE

METHYL BROMIDE TREATMENT SCHEDULE FOR FRUITS AND VEGETABLES MODIFIED

Approved June 1, 1940; Effective June 4, 1940

Results of further experiments in methyl bromide fumigation of produce for compliance with certification requirements of Quarantine No. 48[1] indicate that the dosage may be reduced from 5 pounds to 4 per refrigerator car at a temperature of 80° F. and retain effectiveness of the treatment against adult Japanese beetles. The modified treatment will, it is believed, reduce the cost of fumigation as well as the possibility of injury to certain fruits and vegetables. Circular B.E.P.Q. 499,[2] issued June 9, 1939, is accordingly hereby modified by changing subsection (q) on page 19 of the mimeographed circular to provide for alternative treatments as follows:

(q) *Methyl bromide fumigation*—(1) *Refrigerator cars — Equipment.* Refrig-

[1] 3 F.R. 844.
[2] 4 F.R. 2358.

erator cars must have sound, well-fitting doors and hatches, and be in condition satisfactory to the inspector. Standard cloth screens for covering the hatches and a temporary cloth screen for covering one door during ventilation are essential. An electric blower of not less than 750 CFM capacity against ¼-inch water pressure, equipped with devices for lowering into the bunker and securing, so that the blower outlet butts against the bunker screen unimpeded either by studs or burglar bar.

Temperature and dosage. The temperature in the car during the treatment must be at least:

(i) 80° F. with a dosage of 1.6 pounds for each 1,000 cubic feet, or 4 pounds per refrigerator car; or

(ii) 70° F. with a dosage of 2 pounds for each 1,000 cubic feet, or 5 pounds per refrigerator car.

Period of treatment. Two hours from the end of the fumigant release period.

Application. The doors must be closed tightly and the ice drips properly plugged. The methyl bromide may be either weighed or measured and released through a copper or brass applicator tube of ¼-inch bore. This tube must be fitted with a disc-type spray nozzle and must be bent in a "U" shape at the end, so that the spray nozzle is directed upward toward the center of the bunker and not less than 1 foot below the ceiling during the release of the fumigant. The blower must be in continuous operation during the release of the fumigant, and for 5 minutes thereafter. At the end of this period the blower may be removed and transferred to the next car. The fumigant must be released in a split dosage. When a 5-pound dosage is applied, 3 pounds must be released in the bunker through the hatch across from the blower, and 2 pounds in the bunker at the opposite end of the car and in line with the blower. When a 4-pound dosage is applied, 2 pounds must be released in the blower end, and 2 pounds at the opposite end of the car as described above.

Modification of this method of application may be made upon authorization of an inspector.

Ventilation. At the end of the exposure period, all hatches must be immediately propped open and screened, and the drip plugs removed. One door must be opened and screened for a period of 20 minutes, following which it should be closed and sealed. If the car is to be moved within half an hour, the opening of the door may be omitted.

Commodities treated. The treatment is approved for the following fruits and vegetables: White potatoes, sweetpotatoes, onions, tomatoes, snap beans, lima beans, sweet corn, cabbage, carrots, beets, apples, and peaches.

(2) *Fumigation house, room, and box.* The commodities listed above may be fumigated in approved fumigation chambers. The same requirements as to dosage, circulation period, exposure, temperature, and screening of doors listed under refrigerator car fumigation apply. The chamber must be ventilated with the ventilating equipment in continuous operation for half and hour. All ventilator intakes must be protected with 8-mesh wire screen. The ventilating fan must run during both the placing and removal of the load. In addition, the requirements for screened loading facilities and the subsequent certification of loads must be met. (Issued under Sec. 301.48) [B.E.P.Q. 499, Supplement No. 2]

[SEAL] AVERY S. HOYT,
Acting Chief.

[F. R. Doc. 40-2191; Filed, June 1, 1940; 11:34 a. m.]

CHAPTER VI—SOIL CONSERVATION SERVICE

[Memorandum No. 863]

AMENDING MEMORANDUM NO. 756, AS AMENDED AND SUPPLEMENTED, AND SUPERSEDING MEMORANDUM NO. 854

Memorandum No. 756, dated May 19, 1938, as amended by Memorandum No. 794, dated October 31, 1938, and by Memorandum No. 832, dated July 11, 1939, and as supplemented by paragraph numbered 1 of Memorandum No. 785, dated October 6, 1938, is further amended as follows:

1. Add a new paragraph, numbered 9, to the itemized list of the functions delegated by the Secretary in connection with the administration of the Land Conservation and Land Utilization Program under Title III and related sections of the Bankhead-Jones Farm Tenant Act, as follows:

"9. Compromise claims and obligations which are not in excess of $500, and adjust and modify the terms of leases, contracts, and agreements executed in accordance with the foregoing authority, including contracts resulting from the exercise of options, as circumstances may require."

2. Amend paragraph numbered 7 of the itemized statement of the authority reserved by the Secretary, to read as follows:

"7. To compromise claims and obligations and adjust and modify the terms of leases, contracts, and agreements entered into as circumstances may require, except as otherwise specifically indicated in paragraph numbered 9 above."

This Memorandum supersedes Memorandum No. 854, dated March 15, 1940.

Done at Washington, D. C., this 1st day of June, 1940. Witness my hand and the seal of the Department of Agriculture.

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

[F. R. Doc. 40-2205; Filed, June 3, 1940; 11:20 a. m.]

TITLE 14—CIVIL AVIATION

CHAPTER I—CIVIL AERONAUTICS AUTHORITY

[Amendment 54, Civil Air Regulations]

REVISING THE REGULATIONS GOVERNING OPERATION OF UNITED STATES CIVIL AIRCRAFT IN FOREIGN COUNTRIES

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C., on the 28th day of May 1940.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205 (a) and 601 (a) of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of and to exercise and perform its powers and duties under said Act, the Civil Aeronautics Authority hereby amends the Civil Air Regulations as follows:

Effective June 12, 1940, Part 20, as amended, of the Civil Air Regulations is amended:

1. By striking § 20.68.

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 40-2200; Filed, June 3, 1940; 11:05 a. m.]

MILITARY COMPETENCE FOR PILOTING AIRCRAFT UNDER INSTRUMENT CONDITIONS

[Amendment 55, Civil Air Regulations]

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C., on the 28th day of May 1940.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205 (a) and 601 (a) of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under said Act, the Civil Aeronautics Authority hereby amends the Civil Air Regulations as follows:

Effective May 28, 1940, § 60.50 of the Civil Air Regulations is amended so as to read as follows:

§ 60.50 *Pilot.*[1] No flight shall be made in civil aircraft unless the pilot in charge—

(a) holds a valid instrument rating; or

(b) holds a valid airline transport pilot certificate; or

(c) is an active member of the regular Army, Navy, Marine Corps or Coast Guard, or a reserve member of any such service on extended active duty for at least 1 year, and who holds at least a private pilot certificate issued by the Authority and a military instrument flying rating, or equivalent, issued by his service.

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 40-2201; Filed, June 3, 1940; 11:08 a. m.]

---

[1] 5 F.R. 684.

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 3907]

IN THE MATTER OF McDONNELL & SONS, INC.

§ 3.6 (a) (7) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Direct dealing advantages:* § 3.6 (a) (22) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Producer status of dealer or seller—Manufacturer:* § 3.6 (c) *Advertising falsely or misleadingly—Composition of goods:* § 3.6 (cc) (3) *Advertising falsely or misleadingly—Source or origin—Maker.* Representing, in connection with offer, etc., in commerce, of granite grave markers, monuments, memorials and mausoleums, that products which are not made from granite obtained from a quarry owned by the respondent, are sold direct from the quarry to the ultimate purchaser; or that the granite from which such products are made is produced in a quarry owned and operated by the respondent; or that products which are not manufactured and finished in a plant owned, operated or controlled by the respondent, are made or manufactured by it; 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, McDonnell & Sons, Inc., Docket 3907, May 28, 1940]

ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 28th day of May, A. D. 1940.

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves, 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 oral arguments by William L. Pencke, counsel for the Commission, and by Thomas C. Burke, counsel for the respondent, 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, McDonnell & Sons, 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 of granite grave markers, monuments, memorials and mausoleums in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that products which are not made from granite obtained from a quarry owned by the respondent, are sold direct from the quarry to the ultimate purchaser; or that the granite from which such products are made is produced in a quarry owned and operated by the respondent; or that products which are not manufactured and finished in a plant owned, operated or controlled by the respondent, are made or manufactured by the 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. 40-2198; Filed, June 3, 1940; 10:24 a. m.]

[1] 4 F.R. 4471.

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER II—RAILROAD RETIREMENT BOARD

REGULATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Pursuant to the authority contained in Section 12 of the Act of June 25, 1938 (52 Stat. 1094, 1107; 45 U. S. C. Sup. IV, 362) as amended by the Act of June 20, 1939 (53 Stat. 845; Public No. 141, 76th Congress, First Session), the Railroad Retirement Board has prescribed the following regulations, by Board Order 40-260, dated May 23, 1940, effective July 1, 1939:

PART 310—COMPENSATION AND REMUNERATION

§ 310.61 *Definition of Subsidiary Remuneration.* The term "subsidiary remuneration" as used in this regulation means remuneration having all the following characteristics:

(a) The services for which the remuneration is payable must be substantially less than full-time services as determined by generally prevailing standards.

(b) The services must be susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(c) The services for which the remuneration is payable must be of such type and character as to indicate an understanding of the interested parties that the services would normally be performed while the person performing them is also engaged in regular full-time employment in another occupation.

(d) The remuneration must be attributed to periods of greater extent than the units of time required for the active performance of the services.

§ 310.62 *Officers of Local Lodges, etc.* Whenever the remuneration payable is $25.00 per month or less, service performed in positions of the following classes shall, in the absence of evidence to the contrary, be presumed to be performed for subsidiary remuneration: Regular officers of local lodges, divisions, or similar units of labor organizations; regular officers of lodges or similar units of fraternal or social organizations; officers and directors of building and loan associations; officers, directors, members or workers in religious, charitable, civic, political, athletic, or similar enterprises; officers, directors or committee members in professional or scientific societies.

§ 310.63 *Days for which Subsidiary Remuneration Payable.* Subsidiary remuneration shall be deemed to be payable with respect to any specific days designated by the terms governing the position or employment as days on which services for which the remuneration is paid are required to be performed; any subsidiary remuneration not attributable to services so required to be performed on specific days shall be deemed not to be paid with respect to any day.

PART 325—REGISTRATION AND CLAIMS FOR BENEFITS

§ 325.01 *Statutory Provisions.* Section 12 (i) of the Railroad Unemployment Insurance Act (as amended) provides that:

"* * * The Board shall prescribe a procedure for registration of unemployed employees at employment offices. Such procedure for registration shall be prescribed with a view to such registration affording substantial evidence of the days of unemployment of the employees who register. The Board may, when such registration is made personally by an employee, accept such registration as initial proof of unemployment sufficient to certify for payment a claim for benefits."

Section 1 (k) of the Railroad Unemployment Insurance Act (as amended) provides that:

"* * * a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable to him, and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office: *Provided, however,* That, with respect to any employee whose normal work shift includes a part of each of two consecutive calendar days, the term 'calendar day', as heretofore used in this subsection, shall mean such equivalent

period of twenty-four hours as the Board may by regulation prescribe."

§ 325.04 *Registration Period.* The term "registration period" means, with respect to any employee, the period of fifteen consecutive calendar days which begins with the first day for which an employee originally registers and, upon the termination of his last preceding registration period, the period of fifteen consecutive calendar days which begins with the first day for which he next registers.

§ 325.08 *Unemployment Day.* The term "unemployement day" means a day of unemployment or a day that would be a day of unemployment except for the operation of Section 4 (a) (iv) or Section 4 (a) (vi) of the Act.

§ 325.12 *Time of Registration.* An employee shall register, during his unemployment claims agent's normal working hours, (a) for the first day originally claimed as a day of unemployment in each registration period, on such day, or, if such day is a Sunday or legal holiday, on the next business day, and (b) for each subsequent day claimed as a day of unemployment in such registration period, (i) on such subsequent day or (ii) on the first business day thereafter but at the employee's risk that he may be prevented, by being employed, by sickness, or by any other cause not attributable to the Board or his unemployment claims agent, from establishing such subsequent day as a day of unemployment by registering on such first business day thereafter: *Provided, however,* That if such subsequent day is a Sunday or legal holiday and the employee is prevented from registering on the first business day thereafter by being employed, by sickness, or other cause not attributable to lack of diligence of the employee, he may register for such Sunday or legal holiday on the first business day on which the cause which prevented his registration as hereinbefore provided has been removed, or on the next business day, but not later than the last day of a week beginning on such Sunday or legal holiday. If an employee is prevented by causes attributable to his unemployment claims agent or a representative of the Board from registering as aforesaid with such unemployment claims agent for any day of unemployment, he may register, within the time limits above prescribed, with any other unemployment claims agent for such day of unemployment, or, if no such unemployment claims agent is conveniently located and willing to accept such registration, such employee may, within forty-eight hours after the end of the last day on which he would have been permitted to register as aforesaid, but not thereafter, report to any district manager of the Board, either personally or by writing delivered to such district manager within such forty-eight hours. If the Board finds that such employee has a right to register for such day of unemployment, reporting as aforesaid shall constitute registration for such day and for any of the five days immediately thereafter which the Board finds he is qualified to claim as days of unemployment. It shall be the duty of the district manager to arrange for the registration of such employee with an unemployment claims agent for days of unemployment after such five days.

§ 325.14 *Certifications Upon Registration.* Upon registering for a particular day or days of unemployment, an employee, in addition to making such certifications as may be required with respect to such day or days of unemployment, shall certify that he was unemployed during the whole of each day for which he previously registered during the same registration period, and that all statements and certifications made upon previous registrations during the same registration period are true and correct.

§ 325.18 *Registration in Alaska.* Nothing hereinabove provided in Sections 325.12 and 325.14 of these Regulations shall apply to employees registering in Alaska, but such employee shall register for each day of unemployment with the Alaska Territorial Employment Service, or persons designated by it as agents for this purpose, as required by such Service under arrangements with the Board.

§ 325.20 *Registration for June 16–30, 1939.* Notwithstanding instructions previously issued by the Board, any claimant may register on any day from June 26, 1939 to June 30, 1939 for any day on which he was unemployed from and including June 16 to and including the day on which he first registers.

§ 325.30 *Retroactive Registration Period June 16, 1939–March 31, 1940.* Each regional director shall accept and recognize any employee's registration for any day which the employee claims as a day of unemployment in the period June 16, 1939 to March 31, 1940, inclusive, if (a) the regional director finds (i) that the employee registered, pursuant to the requirements under a state unemployment compensation law, at a state employment office for the week which includes such day, or (ii) that the employee was denied a reasonable opportunity to register for such day in accordance with the Board's requirements under the Railroad Unemployment Insurance Act or can show other reasonable excuse for failure to register for such day in accordance with the Board's requirements, and (b) on or before April 1, 1940, the employee appeared before an unemployment claims agent, or contacted a field representative of the Board or a district manager's office or a regional office of the Board or the office of the Board in Washington, with respect to registration for any day.

PART 328—COMPUTATION AND PAYMENT OF BENEFITS

§ 328.11 *Half-Month*—(a) *Statutory Provision.* Section 1 (h) of the Railroad Unemployment Insurance Act (as amended) provides that:

"The term 'half-month' means such period of any fifteen consecutive days as the Board may by regulation prescribe."

(b) *Definition of Half-Month.* The term "half-month", with respect to any employee, means any registration period; except that in the case of an employee who has:

(1) a half-month which has been, or may be, credited to him as a waiting period, and

(2) two subsequent registration periods, the first of which contains fewer than eight unemployment days that have not previously been included in a half-month, and

(3) a period of fifteen consecutive calendar days, which begins in the first and ends in the second of such two registration periods, and contains eight or more unemployment days,

the half-month shall be the first period of fifteen consecutive calendar days that begins with an unemployment day in the first of the two registration periods or with the first day of the second of the two registration periods, ends in the second of the two registration periods, and includes as many unemployment days as any other fifteen-consecutive-day-period so beginning and ending. No day shall be included in more than one half-month.

(c) *Exception.* Notwithstanding the other provisions of this section, any employee who has eight or more unemployment days in the period June 16, 1939 to June 30, 1939, inclusive, shall be allowed such period as a half-month if the days of unemployment in such period would otherwise be disqualified by reason of disqualifications arising after June 30, 1939.

PART 325—REGISTRATION AND CLAIMS FOR BENEFITS

Pursuant to the authority above cited Section 325.12 of the regulations as heretofore adopted is amended by Board Order 40–260, dated May 23, 1940, effective as of March 27, 1940, to read as follows:

§ 325.12 *Time of Registration.* An employee shall appear before an unemployment claims agent and register, during the unemployment claims agent's normal working hours, (a) for the first day for which he claims credit as a day of unemployment with respect to any benefit year, on such day, or, if such day is a Sunday or legal holiday, on the next business day, and (b) for each subsequent day for which he claims credit as a day of unemployment, (i) on such subsequent day or (ii) on the first busi-

ness day thereafter: *Provided, however,* That if an employee is prevented from registering as aforesaid for any such subsequent day by being in transit to or from a job, or by being held over or lying over after completing a job in anticipation of a possible call for other work, or by being employed, or by sickness, or by any other cause not attributable to lack of diligence on the part of the employee, he may appear and register for such subsequent day on the first business day on which he is not prevented from registering by any such cause, but not later than the last day of the seven-day period beginning on such subsequent day for which he so registers. If an employee, within the time limits above prescribed, appears before an unemployment claims agent to register for any such subsequent day, but fails to register in the usual manner because the unemployment claims agent is not ready and willing to take his registration, or because of incorrect instructions or misinformation given him by the unemployment claims agent, such appearance shall, for all intents and purposes, be recognized and considered as registration for such subsequent day as though made in the usual manner.

Upon registering for a particular day or days of unemployment, an employee, in addition to making such certifications as may be required with respect to such day or days of unemployment, shall certify that he was unemployed during the whole of each day for which he previously registered during the same registration period, and that all statements and certifications made upon previous registrations during the same registration period are true and correct.

Nothing hereinabove provided in this section shall apply to employees registering in Alaska, but such employees shall register for each day of unemployment with the Alaska Territorial Employment Service, or persons designated by it as agents for this purpose, as required by such Service under arrangements with the Board.

By Authority of the Board.

[SEAL] JOHN C. DAVIDSON,
Secretary.

Dated, June 3, 1940.

[F. R. Doc. 40-2209; Filed, June 3, 1940; 11:24 a. m.]

CHAPTER III — SOCIAL SECURITY BOARD

PART 403—FEDERAL OLD-AGE AND SURVIVORS INSURANCE UNDER TITLE II OF THE SOCIAL SECURITY ACT, AS AMENDED, EFFECTIVE JANUARY 1, 1940

Subparagraph (2) of paragraph (b) of § 403.408 of Regulations No. 3 (§ 403.408 (b) (2),[1] Title 20, Code of Federal Regulations) is amended to read as follows:

[1] 5 F.R. 1857.

(2) *Persons equitably entitled.* If none of the persons described under (1) above is living on the date of the Board's determination of relationship, the lump sum will be payable to any person or persons equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the burial expenses of the deceased insured individual.

The term "person or persons equitably entitled" does not include any of the following:

(i) Municipalities or other governmental units.

(ii) A person or persons under contractual obligation to pay the burial expenses of the deceased, to the extent of such obligation.

(iii) A person or persons furnishing goods or services in connection with the burial of the deceased, to the extent that goods or services are furnished.

(iv) A person or persons who have been wholly or partially reimbursed, to the extent of such reimbursement.

Where an estate is a person equitably entitled, payment will be made only to the legal representative of such estate.

* * * * *

In pursuance of sections 205 (a) and 1102 of the Social Security Act as amended, the foregoing regulation is hereby prescribed.

Adopted by the Social Security Board, May 28, 1940.

[SEAL] A. J. ALTMEYER,
Chairman.

Approved, June 1, 1940.

WAYNE COY,
Acting Federal Security Administrator.

[F. R. Doc. 40-2193; Filed, June 1, 1940; 12:50 p. m.]

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION

PART 516—REGULATIONS ON RECORDS TO BE KEPT BY EMPLOYERS PURSUANT TO SECTION 11 (c) OF THE FAIR LABOR STANDARDS ACT

The following amendment to Regulations, Part 516 (Regulations on Records to be Kept by Employers Pursuant to Section 11 (c) of the Fair Labor Standards Act of 1938) is hereby issued. This amendment amends § 516.3 of said regulations (Place and Period for Keeping Records) and shall become effective upon my signing the original and publication thereof in the FEDERAL REGISTER and shall be in force and effect until repealed or modified by regulations thereafter made and published.

Signed at Washington, D. C., this 1st day of June 1940.

PHILIP B. FLEMING,
Administrator.

§ 516.3 *Place and period for keeping records.*[1] (a) Each employer shall keep the records required by § 516.1 at the place or places of employment, or at one or more established central record keeping offices where such records are customarily maintained.

(b) All records required by § 516.1 shall be kept safe and readily accessible for a period of at least four years after the entry of the record. All such records shall be open to inspection and transcription by the Administrator or his duly authorized and designated representative at any time. Where the records required by § 516.1 are maintained at a central record keeping office, other than at the place or places of employment, such records shall be made available at the place or places of employment within 72 hours following notice from the Administrator or his duly authorized and designated representative.*

[F. R. Doc. 40-2204; Filed, June 3, 1940; 11:16 a. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

CHAPTER I—MONETARY OFFICES

PART 143—GENERAL LICENSE NO. 13 UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO, RELATING TO TRANSACTIONS IN FOREIGN EXCHANGE, ETC.

A general license is hereby granted authorizing banking institutions within the United States to make all payments, transfers and withdrawals from accounts in the name of any of the following: the head offices in Java of the Javasche Bank, Nederlandsche Handel Maatschappij. Nederlandsch Indische Handelsbank and Nederlandsch Indische Escompto Maatschappij, the branch offices in Kobe, Shanghai, Amoy, Hongkong, Manila, Singapore, Bombay and Calcutta of the Nederlandsch Indische Handelsbank and the branch offices in Kobe, Djeddah and Shanghai of the Nederlandsche Handel Maatschappij.

Banking institutions within the United States making such payments, transfers, or withdrawals shall file promptly with the appropriate Federal Reserve bank weekly reports showing the details of the transactions during such period.**

[SEAL] D. W. BELL,
Acting Secretary of the Treasury.

MAY 31, 1940.

[F. R. Doc. 40-2189; Filed, June 1, 1940; 11:21 a. m.]

[1] 5 F.R. 799.

*Section 516.3 as amended, issued under the authority contained in Section 11 (c), 52 Stat. 1060.

**Part 143; Sec. 5 (b), 40 Stat. 415 and 966; Sec. 2, 48 Stat. 1; Public Resolution No. 69, 76th Congress; 12 U.S.C. 95a; E.O. 6560, Jan. 15, 1934; E.O. 8389, April 10, 1940; E.O. 8405, May 10, 1940; Regulations, April 10, 1940, as amended, May 10, 1940.

TITLE 32—NATIONAL DEFENSE

CHAPTER VI—COUNCIL OF NATIONAL DEFENSE

RULES AND REGULATIONS

Under authority of Section 2 of the Act of August 29, 1916 (39 Stat. 649), the Council of National Defense adopts, subject to the approval of the President, the following rules and regulations for the conduct of its work:

SECTION 1. The Advisory Commission provided for in Section 2 of the Act of August 29, 1916 (39 Stat. 649), shall be composed of an Advisor on Industrial Production; an Advisor on Industrial Materials; an Advisor on Employment; an Advisor on Farm Products; an Advisor on Price Stabilization; an Advisor on Transportation; and an Advisor on Consumer Protection. Each of such advisors shall be in charge of and responsible to the Council for investigation, research, and coordination in his designated field.

SEC. 2. The Administrative Assistant to the President in charge of the office for Emergency Management in the Executive Office of the President is hereby designated as Secretary to the Council and to the Advisory Commission.

SEC. 3. The Secretary to the Council shall provide suitable and necessary personnel, supplies and facilities for the Advisory Commission and its several members and for such experts, special advisors, or other subordinate bodies as the Council may from time to time employ under the provisions of said Section 2 of the Act of August 29, 1916; and he shall perform such other duties as the Council may direct.

HARRY H. WOODRING,
Secretary of War.
CHARLES EDISON,
Secretary of the Navy.
HAROLD L. ICKES,
Secretary of the Interior.
HENRY A. WALLACE,
Secretary of Agriculture.
HARRY L. HOPKINS,
Secretary of Commerce.
FRANCES PERKINS,
Secretary of Labor.

Approved:

FRANKLIN D ROOSEVELT
The White House,
May 29, 1940.

[F. R. Doc. 40-2213; Filed, June 3, 1940; 11:41 a. m.]

TITLE 45—PUBLIC WELFARE

CHAPTER II—CIVILIAN CONSERVATION CORPS

PART 203—ENROLLMENT, DISCHARGE, HOSPITALIZATION, DEATH, AND BURIAL OF ENROLLEES [1]

§ 203.18 *Transportation and travel allowances*

* * * * *

(b) *Transportation in kind from places of discharge*—(1) *Juniors.*[2] Subject to (4), (5), and (6) below, and to § 203.21 (e) (3), to places of selection by the State selecting agency or to their homes if the distance thereto is equal to or shorter than that to the places of selection, irrespective of the factors which caused discharge, or to places nearer than to places of selection or their homes.

(2) *Veterans.* Subject to (4), (5), and (6) below, and to § 203.21 (e) (3), to their places of permanent address as given at the time of enrollment, or to places of equal distance, regardless of the distance to places of selection by the Veterans' Administration, or to their homes, and irrespective of the factors which caused discharge, or to places nearer than to such places of permanent address: *Provided, however,* That a veteran, who is accepted for enrollment in a corps area other than the corps area within which his permanent address as given at the time of enrollment is located, may not be furnished transportation to a point which is a greater distance from the place of discharge than the distance from place of discharge to place of acceptance for enrollment.

(3) *Former enrollees discharged to accept positions with the technical services or with the Army and subsequently reenrolled without selection.* Subject to (4), (5), and (6) below, and to § 203.21 (e) (3), to the places of selection for the last previous enrollment from which discharged to accept the positions or to their homes, whichever is nearer to the place of discharge, without regard to the place of reenrollment and irrespective of the factors which caused discharge.

* * * * *

(6) *Time limit of transportation.* In all cases of discharge, transportation will be furnished with a view to the arrival of the discharged enrollee at his destination as soon as practicable after discharge or upon completion of such treatment or hospitalization as may be authorized. If on date of discharge an enrollee is suffering from injury or disease for which treatment is authorized under these regulations at the expense of Civilian Conservation Corps funds, after discharge he will be furnished transportation and sent to a hospital when facilities for treatment at duty station are not available. If hospital facilities are available for such treatment at duty station, no transportation will be furnished at time of discharge. Upon completion of such treatment, either at duty station or at a hospital elsewhere, the remainder of the transportation authorized in (1), (2), (3), or (4) above, as the case may be, will be furnished, subject to (5) above, provided Civilian Conservation Corps funds remain available at the time of travel. Transportation will not be furnished under the provisions of this paragraph later than 60 days after discharge or completion of hospitaliaztion as the case may be. See also (d).

(7) (Rescinded.)

(c) *Transportation of enrollees discharged other than honorably.*[3] Enrollees who are discharged other than honorably will be furnished transportation only (no berths, parlor-car seats, or staterooms), regardless of the length of the journey, on the basis as presented in (b). Transportation requests will be addressed to rail carriers and endorsed in the transportation class space with the words "Good in coaches only." (50 Stat. 319) [C.C.C. Regs., W. D., Dec. 1, 1937, as amended by C 52, May 27, 1940]

* * * * *

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

[F. R. Doc. 40-2184; Filed, June 1, 1940; 10:34 a. m.]

[1] Section 203.18 is amended.
[2] 4 F.R. 3250.
[3] 2 F.R. 2961.
[3] 4 F.R. 3456.

TITLE 46—SHIPPING

CHAPTER II—UNITED STATES MARITIME COMMISSION

[General Order No. 20 [1]]

PART 271—INSPECTION OF OPERATING-DIFFERENTIAL SUBSIDIZED VESSELS

IMPROVEMENT REPAIRS ON OPERATING-DIFFERENTIAL SUBSIDY AGREEMENT VESSELS

Supplement No. 1

Sec.
271.12 Procedure.
271.13 Improvements not exceeding $10,000.
271.14 Improvements not exceeding $50,000.
271.15 Voyage spread of charges.
271.16 Improvements exceeding $50,000.
271.17 Applications for construction-differential payments.
271.18 Limitations on improvement contracts.
271.19 Determination by Commission of treatment of expenditures.
271.20 Review by Director, Division of Maintenance and Repairs.
271.21 Limitation of time.

§ 271.12 *Procedure.* The Commission, recognizing the need and desirability from a competitive standpoint for the installation from time to time of improvements to American Vessels, in order to maintain their position in comparison with foreign vessels operating in the same services, and recognizing also the additional costs involved in doing such work in the United States in comparison with foreign prices for such improvements, hereby prescribes the following procedure for the treatment of such subsidized-vessel repairs as involve modifications, alterations, additions, or betterments (repairs of such nature being herein called "improvements") which neither materially add to the value nor appreciably prolong the life of the vessel.*† [Par. 1]

*§§271.12 to 271.21, inclusive, issued under authority contained in sec. 204 (b), 49 Stat. 1987; 46 U.S.C. Sup. 1114 (b).

†The source of §§ 271.12 to 271.21, inclusive, is General Order No. 20, Supplement No. 1, United States Maritime Commission, May 31, 1940.

§ 271.13 *Improvements not exceeding $10,000.* Improvements effected during one or a series of repair periods (whether or not in conjunction with other repairs), which do not exceed in the aggregate $10,000.00, shall not be capitalized, but are to be treated as operating expenses entitled to subsidy participation at the rate in effect at the time that the contract for such improvements is awarded, provided the vessel is not permanently withdrawn from its subsidy contract within a period of six months.

Deferred repairs. Deferred repairs, that is, repairs attributable to operations prior to commencement of subsidized operations, or repairs required to alter, outfit, or otherwise equip a vessel for its intended subsidized service shall, as heretofore, not be subsidizable, except in accordance with section 501 (c) of the Merchant Marine Act, 1936, as amended (49 Stat. 1995, 52 Stat. 955; 46 U.S.C. Sup., 1151).*† [Par. 2]

§ 271.14 *Improvements not exceeding $50,000.* Improvements involving an aggregate cost in excess of $10,000.00 but not in excess of $50,000.00, effectuated during any one or series of repair periods, or over a series of repair periods within a single lay-up period, shall not be capitalized, except as provided in §§ 271.17 and 271.20 hereinafter. Expenditures of this nature, ranging from $10,000.00 to $50,000.00, shall be set up as deferred charges, and a proportionate amount charged as operating expenses of succeeding voyages. The differential rate in effect at the time the work is contracted for is to apply on the cost of the proportionate amounts as and when charged to operating expenses. The number of subsidized voyages over which such charges shall be spread shall be determined by the Commission.*† [Par. 3]

§ 271.15 *Voyage spread of charges.* In determining the appropriate number of voyages over which these charges are to be spread there shall be taken into consideration the age of the vessel, the probable length of time during which the vessel will be operated in subsidized services pending replacement, and the probable useful life of such improvements.*† [Par. 4]

§ 271.16 *Improvements exceeding $50,000.* Improvements effected during any one or series of repair periods, involving an aggregate cost in excess of $50,000, shall ordinarily be considered capital expenditures and not entitled to participation under the operating differentials. However, consideration will be given to applications in particular instances for the treatment of expenditures of this nature in excess of $50,000 as deferred charges entitled to subsidy participation in accordance with § 271.14, provided such applications are made prior to award of the work involved.*† [Par. 5]

§ 271.17 *Applications for construction-differential payments.* Consideration will also be given applications for payment of a construction differential on expenditures of this nature, subject to findings in each instance that such expenditures amount to reconditioning or reconstruction of a vessel and subject to compliance with all other requirements of Title V of the Merchant Marine Act, 1936, as amended (49 Stat. 1995, 52 Stat. 955; 46 U.S.C. Sup., 1151).*† [Par. 6]

§ 271.18 *Limitations on improvement contracts.* No contract for improvements is to be made which calls for more work than can be completed during one repair period, except with the prior written approval of the Commission. In determining the cost of improvements effected pursuant to such approval during a series of repair periods rather than in any one repair period for purposes of the aforesaid limitations based on cost, all work involving a particular type of improvement which for convenience of the operator or the vessel's schedule is spread over a series of voyages or over a series of repair periods within a single lay-up period, shall be considered a single improvement.*† [Par. 7]

§ 271.19 *Determination by Commission of treatment of expenditures.* Operators contemplating improvements involving the expenditure of more than $50,000.00, should confer beforehand with the Director, Division of Maintenance and Repairs, as to the treatment of such expenditures. The Director, Division of Maintenance and Repairs, shall refer all such cases to the Commission with full information and recommendations thereon, sufficiently in advance of commencement of the work to permit determination of the treatment thereof.*† [Par. 8]

§ 271.20 *Review by Director, Division of Maintenance and Repairs.* Repairs of the nature set forth in these sections, contracted for or completed prior to May 31, 1940, but subsequent to the entrance of the vessels into the subsidized services under the long-range subsidy agreement, whether or not previously disallowed, shall be reviewed by the Director, Division of Maintenance and Repairs; and if, as a result of such review, it is determined that such repair items fall within the provisions of these sections and were, in his opinion, necessarily and properly incurred, operating-differential subsidy shall be payable thereon in accordance with the provisions of these sections. Repair items not entitled to operating-differential subsidy payments as provided in these sections, but which, nevertheless, were necessarily and properly incurred, may be capitalized as of the date of the completion of such repairs. No application for construction-differential subsidy shall, however, be considered with respect to repairs commenced prior to May 31, 1940.*† [Par. 9]

§ 271.21 *Limitation of time.* The provisions of these sections shall not be applicable to improvements (as distinguished from ordinary voyage repairs to a newly constructed vessel) which are accomplished within one year after delivery of the vessel by the shipbuilder. The treatment of such cases will be determined by the Commission in accordance with the circumstances existing in each particular case.*† [Par. 10]

By Order of the United States Maritime Commission.

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

MAY 31, 1940.

[F. R. Doc. 40-2199; Filed, June 3, 1940. 10:41 a. m.]

TITLE 50—WILDLIFE

CHAPTER I—BUREAU OF BIOLOGICAL SURVEY

PART I—REGULATIONS AND ORDERS RELATING TO MIGRATORY BIRDS

PURPLE GALLINULES IN LOUISIANA

Information having been furnished the Secretary of the Interior that purple gallinules (*Ionornis martinica*) have become, under extraordinary conditions, seriously injurious to rice crops in Louisiana, and an investigation having been made by the Bureau of Biological Survey of the Department of the Interior to determine the nature and extent of the injury and whether the gallinules should be killed and, if so, during what times and by what means, and the Secretary of the Interior having determined that the gallinules have become, under extraordinary conditions, seriously injurious as aforesaid and that the injury cannot adequately be controlled except by killing the gallinules,

Now, therefore, by virtue of authority conferred upon the Secretary of the Interior by the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755), as amended, and regulation 10 of the regulations adopted and approved pursuant to said act, which said act and regulations were transferred to the Secretary of the Interior for administration pursuant to the Reorganization Act of 1939 (53 Stat. 561),

§ 1.54 *Order permitting and governing the shooting of purple gallinules in Louisiana when found seriously injuring rice crops.* It is ordered that landowners, share croppers, tenants, and their bona fide employees, actually engaged and employed in the production of rice in Louisiana, may shoot purple gallinules (*Ionornis martinica*) when found committing or about to commit serious depredations on growing crops of rice on the premises owned or occupied by them or on which they are employed, under the following conditions, restrictions, and requirements:

(1) No gallinules may be killed under this Order except from May 1 to August 15, both dates inclusive.

(2) No gallinules killed under this Order shall be shipped or transported

or sold or offered for sale except that they may be transported to such place within the vicinity as may be necessary to bury or otherwise destroy their carcasses: *Provided, however,* That State agricultural departments, colleges, or other public institutions and the United States Department of the Interior may requisition such number of the birds so killed as they may need for scientific investigations; and *Provided, further,* That purple gallinules killed under authority of this Order may be donated to charitable institutions for food purposes.

(3) Every person availing himself of the privileges of this Order shall at all reasonable times, and particularly during any operations thereunder, permit any Federal or State game or deputy game agent, warden, protector, or other game-law-enforement officer free and unrestricted access to the premises on which such operations have been or are being conducted and shall promptly furnish such officer all such information touching his operations as such officer shall require.

(4) This Order does not permit the killing of any of the aforesaid birds in violation of any State law or regulation, and if a State permit to kill the birds is required, such permit must be procured before the privileges conferred by this Order are exercised.

(5) On or before January 1 of each year during the continuance of this Order every person who kills any of the aforesaid birds under the authority hereby conferred shall submit to the Chief, Bureau of Biological Survey, United States Department of the Interior, Washington, D. C., a report of his operations.

(6) This Order is subject to revocation at any time in the discretion of the Secretary of the Interior.

HAROLD L. ICKES,
Secretary of the Interior.

MAY 21, 1940.

[F. R. Doc. 40-2197; Filed, June 3, 1940; 9:09 a. m.]

Notices

DEPARTMENT OF THE TREASURY.

Federal Alcohol Administration Division.

NOTICE OF HEARING WITH REFERENCE TO PROPOSED AMENDMENTS TO REGULATIONS NO. 5, RELATING TO LABELING AND ADVERTISING OF DISTILLED SPIRITS

TO CONSIDER PERMITTING ANY CLASS OR TYPE OF DISTILLED SPIRITS TO BE PACKAGED IN 4/5 PINT CONTAINERS, AND TO REQUIRE THE NET CONTENTS TO BE STATED IN OUNCES AS WELL AS IN GALLONS, QUARTS, OR PINTS

MAY 31, 1940.

Pursuant to the provisions of section 5 of the Federal Alcohol Administration Act, as amended,

Notice is hereby given of a public hearing to be held on June 12, 1940, at 10:00 a. m., at the offices of the Federal Alcohol Administration, Washington Loan and Trust Building, Washington, D. C., for the purpose of taking testimony with reference to the following proposed amendments to Regulations No. 5,[1] Relating to Labeling and Advertising of Distilled Spirits:

1. To amend Article VII, section 73, subsection (a), of such regulations by adding to the standards of fill listed in subparagraph (1) thereof the standard "4/5 pint"; and by striking out subparagraph (3) of such subsection.

2. To amend Article III, section 37, in such manner as to require that, in addition to the net contents statements now prescribed by such section, the net contents shall also be stated in ounces.

[SEAL] W. S. ALEXANDER,
Administrator.

[F. R. Doc. 40-2188; Filed, June 1, 1940; 11:21 a. m.]

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. 332-FD]

APPLICATION OF THE ROBINSON CLAY PRODUCT COMPANY

ORDER GRANTING RENEWAL OF EXEMPTION

The Robinson Clay Product Company of Akron, Ohio, applicant herein, having on April 14, 1938 filed with the National Bituminous Coal Commission a verified application for exemption with respect to certain bituminous coal produced by the applicant at its mine located in Franklin Township, Tuscarawas County, Ohio, and transported by the applicant to itself for consumption by it, in its clay products manufacturing plant located in Franklin Township, Tuscarawas County, Ohio;

The Commission having on May 10, 1939 entered an order pursuant to such application, in Docket No. 332-FD, ordering that the provisions of Section 4 II (1) of the Bituminous Coal Act of 1937 apply to the bituminous coal produced by the applicant at its mine located in Franklin Township, Tuscarawas County, Ohio, and consumed by it in its clay products plant located in Franklin Township, Tuscarawas County, and that such coal shall not be deemed subject to the provisions of Section 4 of the Bituminous Coal Act of 1937, and further ordering the applicant to apply annually thereafter, and at such other times as the Commission may require, for renewal of said order, and to file such accompanying reports as will enable the Commission to determine whether the facts as found in said order continue to exist;

Applicant, on May 2, 1940, having filed with the Bituminous Coal Division an application for renewal of said order, which application contains a statement of the quantities of coal produced by applicant for the period of one year preceding the date of the application for renewal, at its mine located in Franklin Township, Tuscarawas County, Ohio, and a statement that all of the facts set forth in the application for exemption filed April 14, 1938, remain true and correct; and

The Director having determined that the conditions supporting the exemption granted by the order dated May 10, 1939 continue to exist:

It is ordered, That the application filed by the applicant for renewal of said order dated May 10, 1939, be and the same is hereby granted;

Provided, however, That the said order dated May 10, 1939 shall automatically terminate and expire:

(1) Unless the applicant on or before Dec. 14, 1940, files with the Director a verified report for the six months period ending Nov. 29, 1940, containing the following information. which the Director hereby finds to be necessary and appropriate to enable him to determine whether the conditions supporting the exemption granted to the applicant continue to exist:

(a) The full name and business address of the applicant, and the name and location of the mine covered by this application;

(b) The total tonnage of bituminous coal produced by the applicant during the preceding six months at such mine;

(c) The total tonnage of such production which was consumed by applicant, and the nature and purpose of such consumption;

(d) A statement that all of the facts set forth in the original application for exemption filed April 14, 1938, remain true and correct.

(2) Unless the applicant shall immediately notify the Director upon:

(a) Any change in the ownership of the mine from which the coal in question was produced, or in the ownership of the plant or factory or other facility at which the coal is consumed;

(b) Any change in the agency or instrumentality through which the coal is being produced on the date of this order:

It is further ordered, That the Director at any time, upon his own motion or upon the petition of any interested person, may direct the applicant to show cause why the exemption granted by the order of May 10, 1939, should not be terminated. Any person filing such a petition shall serve a copy thereof upon the applicant herein.

Dated; May 29, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40-2179; Filed, May 31, 1940; 12:18 p. m.]

[1] 1 F.R. 92.

[Docket No. 621–FD]

APPLICATION OF ALLEGHENY LUDLUM STEEL CORPORATION

ORDER GRANTING RENEWAL OF EXEMPTION

The Allegheny Ludlum Steel Corporation of Pittsburgh, Pennsylvania, Applicant herein, having on September 16, 1937 filed with the National Bituminous Coal Commission a verified application for exemption with respect to certain bituminous coal produced by the Applicant at its mine located in Gilpin Township, Armstrong County, Pennsylvania, and transported by the Applicant to itself for consumption by it, in its iron and steel plant located at West Leechburg, in Armstrong County, Pennsylvania;

The Commission having on May 10, 1939, entered an order pursuant to such application in Docket No. 621–FD, ordering that the provisions of Section 4 II (1) of the Bituminous Coal Act of 1937 apply to the bituminous coal produced by the Applicant at its mine located in Gilpin Township, Armstrong County, Pennsylvania, and consumed by it in its iron and steel plant located at West Leechburg, Armstrong County, Pennsylvania, and that such coal shall not be deemed subject to the provisions of Section 4 of the Bituminous Coal Act of 1937, and further ordering the Applicant to apply annually thereafter, and at such other times as the Commission may require, for renewal of said order, and to file such accompanying reports as will enable the Commission to determine whether the facts as found in said order continue to exist;

Applicant, on May 16, 1940, having filed with the Bituminous Coal Division an application for renewal of said order, which application contains a statement of the quantities of coal produced by Applicant for the period of one year preceding the date of the application for renewal, at its mine located in Gilpin Township, Armstrong County, Pennsylvania, and a statement that the facts set forth in the application for exemption filed September 16, 1937, remain unchanged;

The Director having determined that the conditions supporting the exemption granted by the order dated May 10, 1939, continue to exist;

It is ordered, That the application filed by the Applicant for renewal of said order dated May 10, 1939, be and the same is hereby granted;

Provided, however, That the said order dated May 10, 1939 shall automatically terminate and expire:

1. Unless the Applicant, on or before Dec. 14, 1940, files with the Director a verified report for the six-month period ending Nov. 29, 1940, containing the following information, which the Director hereby finds to be necessary and appropriate to enable him to determine whether the conditions supporting the exemption granted to the Applicant continue to exist:

(a) The full name and business address of the Applicant, and the name and location of the mine covered by this application;

(b) The total tonnage of bituminous coal produced by the Applicant during the preceding six months at such mine;

(c) The total tonnage of such production which was consumed by the Applicant, and the nature and purpose of such consumption;

(d) A statement that all of the facts set forth in the original application for exemption filed September 16, 1937, remain true and correct.

2. Unless the Applicant shall immediately notify the Director upon:

(a) Any change in the ownership of the mine from which the coal in question was produced, or in the ownership of the plant or factory or other facility at which the coal is consumed;

(b) Any change in the agency or instrumentality through which the coal is being produced on the date of this order.

It is further ordered, That the Director at any time, upon his own motion or upon the petition of interested persons, may direct the Applicant to show cause why the exemption granted by the order of May 10, 1939 should not be terminated. Any persons filing such a petition shall serve a copy thereof upon the Applicant herein.

Dated, May 29, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40–2180; Filed, May 31, 1940; 12:18 p. m.]

Bureau of Reclamation.

GILA PROJECT, ARIZONA

FIRST FORM RECLAMATION WITHDRAWAL

MAY 16, 1940.

THE SECRETARY OF THE INTERIOR.

SIR: In accordance with the authority vested in you by the Act of June 26, 1936 (49 Stat. 1976), it is recommended that the following described lands be withdrawn from public entry under the first form withdrawal as provided in Section 3, Act of June 17, 1902 (32 Stat. 388).

GILA PROJECT, ARIZONA
Gila and Salt River Meridian

T. 8 S., R. 17 W.,
Sec. 21, NE¼SE¼;
Sec. 22, N½SW¼;

Respectfully.

JOHN C. PAGE,
Commissioner.

The foregoing recommendation is hereby approved, as recommended, and the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

W. C. MENDENHALL,
Acting Under Secretary of the Interior.

MAY 23, 1940.

[F. R. Doc. 40–2194; Filed, June 3, 1940; 9:08 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[N.E.R.–400–B–2]

THE AGRICULTURAL CONSERVATION PHASE OF THE 1940 UNIFIED PROGRAM FOR BELKNAP AND COOS COUNTIES, NEW HAMPSHIRE

SUPPLEMENT NO. 2

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended, the Agricultural Conservation Phase of the 1940 Unified Program for Belknap and Coos Counties,[1] New Hampshire, is hereby amended by changing the rate of payment for practice No. 5 B, "Applying Liming Material for Pasture Improvement," listed under "Schedule of Soil-Building Practices" in section II, to read as follows:

"*Rate of payment, $5 for each.* (1) 2,000 pounds of standard ground or standard pulverized limestone;

"(2) 1,000 pounds of calcium oxide neutralizing equivalent in hydrated lime or quicklime; or

"(3) 3,500 pounds of field-dug marl."

Done at Washington, D. C., this 1st day of June 1940. Witness my hand and the seal of the Department of Agriculture.

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

[F. R. Doc. 40–2190; Filed, June 1, 1940; 11:34 a. m.]

Food and Drug Administration.

[FDC–7 (C)]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH A REGULATION MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR EVAPORATED MILK

REPORT OF PRESIDING OFFICER

Pursuant to, and under the authority of, a notice in the above-entitled matter issued and filed by the Secretary of Agriculture on March 25, 1939, with the Archivist of the United States and pub-

[1] 5 F.R. 1151.

lished in the FEDERAL REGISTER (Vol. 4, No. 59, pp. 1355–1356), Tuesday, March 28, 1939, wherein the undersigned was designated as Presiding Officer to conduct in the place of the Secretary the public hearing herein, such hearing to be in conformity with Section 701, subsection (e), of the Federal Food, Drug, and Cosmetic Act [Sec. 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], and under and by virtue of the authority in said notice specifically recited (Sec. 401, 52 Stat. 1046; 21 U.S.C. 341), the said hearing was convened, as were all the hearings therein called, by the undersigned Presiding Officer at the time and place specified in said notice. Thereupon, there was read into the record that portion of said notice of the Secretary setting the time and place for the hearings; stating the purposes thereof; making specific reference to the proposed regulations, thereinafter set forth, and reciting that such proposed regulations were subject to adoption, rejection, amendment, or modification by the Secretary, in whole or in part, as the evidence adduced at the respective hearings warranted; making specific reference to the Rules of Procedure governing all the hearings published in the FEDERAL REGISTER January 1, 1939, and designating the Presiding Officer.

Five copies of the FEDERAL REGISTER dated March 28, 1939, containing the notice and proposals of the Secretary, were offered and received in evidence, and each was marked "Government's Exihibit No. 1."

Certain announcements applicable to this hearing, as well as to all the hearings covered by said notice, were made with respect to the order of the procedure within the discretion of the Presiding Officer under the Rules hereinbefore mentioned; and as to appearances; the filing of suggested Findings of Fact, Conclusions, and Order by the Presiding Officer; notice thereof; and the time that would be allowed for the filing of objections and exceptions thereto, proposed findings, written arguments, and briefs by interested persons. After making inquiry of, and conferring with, the attorneys for the Department of Agriculture and those for other interested persons, the Presiding Officer in open session announced the general order in which the several milk-products hearings would be held.

The hearing in the above-entitled matter was convened at 11:00 a. m., May 1, 1939, and continued each day thereafter until 9:20 p. m., Saturday, May 6, 1939, at which time it was announced that the hearing for the purpose of receiving evidence was closed, but that the record would be kept open for the purpose of making corrections in open session by those interested persons who had participated therein. Adjournment was thereupon taken to 9:30 o'clock a. m., Monday, May 8, 1939, at Room 3106, South Building, Department of Agriculture, at which time certain corrections of the record were made, as were done on the following Tuesday, when it was announced that the hearing would be continued until the conclusion of each of the other four hearings on milk products, at which time all of such hearings would be formally closed. On Friday, May 12, 1939, at 1:45 o'clock p. m., this hearing was formally closed, as were all other such hearings.

Upon the basis of substantial evidence received at the hearing and appearing in the transcript, to which specific references are made in each instance following each of the findings, the undersigned Presiding Officer makes and suggests the findings of fact hereinafter set forth; and he further suggests that the Secretary of Agriculture issue an order setting out herein and as part thereof such findings of fact, and that in and by such order the Regulation hereinafter set forth be promulgated:

SUGGESTED FINDINGS OF FACT

1. *Evaporated milk in general—Identity.* Evaporated milk is the liquid prepared by evaporating a considerable portion of the water from cows' milk which is sweet, with or without the removal therefrom of milk-fat prior to evaporation, or with or without the addition thereto, before or after evaporation, of cream, sweet milk, concentrated or unconcentrated sweet skim milk, or a combination of any or all of them, hermetically sealed in a container and processed by heat to prevent spoilage. It may also be homogenized. (R. 20, 72–3, 114, 123–4, 184–5, 188, 202, 293–4, 319, 432–3, 601–2, 728)

2. *Common or usual name.* The common or usual name of the product described in paragraph one hereof is evaporated milk. (R. 20, 72–3, 184–5, 188, 432–3)

3. *"Concentrated milk" not synonymous.* The term "Concentrated Milk" is not a synonymous term for the product whose common or usual name is "Evaporated Milk". (R. 72–3, 80–6, 134–7, 293–5, 298, 319–20, 429–33, 585)

4. *"Concentrated milk".* The term "Concentrated Milk" is used generally by industry to designate the unfinished product at that stage of the manufacture of evaporated milk before such unfinished product is placed in hermetically sealed cans and processed by heat or sterilized. (R. 47, 319–20, 430–33, 585, 728)

5. *Evaporated milk processed by heat to prevent spoilage.* Heat is so applied to the unfinished product from which evaporated milk is manufactured, after such unfinished product is sealed in containers, as to prevent spoilage of the finished product by micro-organisms. This is a necessary and universally-followed process in the industry in the manufacture of evaporated milk in the United States. (R. 34–39, 72–3, 123–4, 319, 582–86, 598–600, 606–615, 728)

6. *Other effects of heat processing.* The heat processing in the manufacture of evaporated milk affects the taste, appearance, and viscosity of the finished product. (R. 137, 319–20, 608–10, 729)

7. *Homogenization universally followed.* Homogenization, the process by which the fat globules are broken up and uniformly distributed throughout the product, is a universally-followed process in the United States in the manufacture of evaporated milk; and it tends to prevent fat separation. (R. 37, 123–4, 143, 576, 577 (5), 591–2, 601–2, 643)

8. *General manufacturing processes.* Evaporated milk as manufactured and generally known is sweet fluid milk that has been concentrated, homogenized, packed in hermetically-sealed cans, and then subjected to such temperature, for such time as may be necessary, to produce a viscous finished product free from visible lumps that will keep at ordinary temperatures. (R. 37–8, 319, 393, 432–3, 728)

9. *Prevailing practice of "adjustment".* In the manufacture of evaporated milk the desired ratio between the milk-fat and the non-fat milk solids, and the desired percentage of each, is obtained as circumstances require by the removal of milk-fat from the milk prior to its evaporation, or by adding to the milk, before or after evaporation, cream, sweet milk, concentrated or unconcentrated sweet skim milk, or a combination of two or more of them. This procedure, denominated "Adjustment" of milk is generally followed by manufacturers of evaporated milk. (R. 18, 32–3, 35–6, 189–191, 202, 464–5, 593, 605–6)

10. *Milk of proper stability required.* To insure keeping qualities, proper viscosity and smoothness of the finished product, within the narrow range of heat application necessary to obtain sterility and proper viscosity, it is necessary that the milk be of the proper stability. (R. 338, 585–6)

11. *Meaning of proper stability.* The meaning of proper stability is that the milk must be of such composition, mainly as regards mineral salts, as to take a degree of heat for a period of time that will not only destroy micro-organisms, produce the desired degree of viscosity, and that will prevent fat separation, but also will not cause visible coagulation or other damage of the finished product. (R. 585–6, 609–14)

12. *Unstable milk.* At certain times of the year, and in certain sections of the country, to a greater degree than in others, sweet milk is unstable, in the sense that it tends to coagulate into lumps when it is heat processed, by reason of deficiencies in the milk of certain mineral constituents normally present. (R. 39–40, 446, 583–7, 611–14, 629–30, 631–6, 639–45; Other Interested Parties' Exhibits Nos. 7, 8, 9, 10, 11, 12, 13, 15, 16, 17)

13. *Stability restored.* Milk, unstable because of deficiencies in certain mineral constituents normally present, may be rendered stable by the addition of disodium phosphate or sodium citrate, or both, or calcium chloride, in minute quantities, varying from about 0.01 to 0.1 percent of the finished evaporated milk. (R. 38–40, 42, 74–5, 326, 654–5, 657, 724, 787, 805–6, 996; Other Interested Parties' Exhibits Nos. 7–13, 15–17)

14. *Salts in general use for stabilization.* The general and prevailing practice in the industry is to use for stabilization disodium phosphate or sodium citrate, or both, or calcium chloride in minute quantities. (R. 39–40, 74, 158–9, 655, 657, 659–60, 726, 805–6, 860, 862–3, 913–14, 970, 977, 981, 996; Other Interested Parties' Exhibits Nos. 7–13, 15–17)

15. *Vitamin D potency increased by irradiation.* A substantial portion of the output of evaporated milk is so exposed to ultra-violet light rays as to cause a molecular rearrangement in such milk by which energy in the form of such rays activates and changes the pro-vitamin D present in evaporated milk to vitamin D. (R. 33, 37, 76, 129, 131–2, 245–6, 248–9, 251–61, 744–5, 747–50, 755, 1048–50, 1054–5, 1057, 1066–71, 1076–9, 1096; Other Interested Parties' Exhibit No. 18)

16. *Vitamin D concentrate added or produced.* During the process of manufacture of evaporated milk vitamin D is increased, either by adding a vitamin D concentrate, which is obtained from natural sources or by activation of pro-vitamin D in the milk. (R. 33, 37, 76, 1092, 1102, 1109, 1122, 1130–3, 1142)

17. *Method of incorporating vitamin D concentrates.* Vitamin D concentrates are dissolved in milk-fat or in other bland, edible oil or fat to facilitate incorporation and uniform distribution in evaporated milk. (R. 1102–3, 1121–2, 1132–3)

18. *Quantity of oil or fat used.* When the concentrates are dissolved in bland, edible oil or fat, other than milk fat, for incorporation in evaporated milk, the quantity of such oil or fat used is not in excess of 1/100th of one percent in weight of the weight of the evaporated milk in which it is used. (R. 1102–3, 1121–2, 1132–3)

19. *Increase of vitamin D increases nutritional value.* The increase of vitamin D activity in evaporated milk, whether by exposure to ultra-violet light rays, or produced in concentrates by activation, or added in the form of concentrates, increases the nutritional value of such milk. (R. 245–6, 251, 1084–5, 1090–3)

20. *Minimum standard for vitamin D.* A substantial portion of the evaporated milk on the market whose vitamin D content has been increased contains the minimum number of United States Pharmacopoeia vitamin D units required under regulations of the several States and cities, namely: for evaporated milk 135 per quart of fluid milk, or 270 per quart of evaporated milk. [Since a quart of water weighs about 33.4 avoirdupois ounces and evaporated milk is about 1.07 times as heavy as water, this is equivalent to about 7.5 United States Pharmacopoeia units per avoirdupois ounce of evaporated milk.] (R. 755–8, 1065, 1072, 1085–6, 1106–7, 1134)

21. *Federal Advisory Standard.* The Federal Advisory Standard promulgated by the Secretary of Agriculture July 3, 1926, for evaporated milk established a minimum standard as follows: milk-fat content 7.8 percent; total milk solids 25.5 percent; *Provided, however,* That the sum of the percentages of milk-fat and total milk solids be not less than 33.7 percent and such standard has not since been changed. (R. 19–20, 93; Food Inspection Decision, United States Department of Agriculture, 200)

22. *Average non-fat milk solids content.* The non-fat milk solids content of average evaporated milk on the market is approximately 18 percent. (R. 69–71, 184–5, 277, 322–5, 342–3, 405–6, 434–7, 533–4; Government's Exhibit No. 2)

23. *Average milk-fat content.* The milk-fat content of average evaporated milk on the market is 7.82 percent. (R. 69–70, 405–6, 533–4, 575, 649; Government's Exhibit No. 2)

24. *Ratio of non-fat solids to fat in bottled milk.* The non-fat milk solids content of weighted average, bottled milk is 2.275 times the milk-fat content of such milk. (R. 277, 304–8, 311–12, 522–3; Government's Exhibit No. 3)

25. *Relation of non-fat solids to concentration.* The non-fat milk solids content of milk used in the manufacture of evaporated milk limits to a large extent the amount of concentration practicable without coagulation during the heat processing, or sterilization. (R. 73)

26. *Method of analysis.* The percentage of total milk solids and the percentage of milk-fat in evaporated milk may be determined with a reasonable degree of accuracy by the methods of analysis, well known and recognized among chemists generally, and particularly among dairy chemists, described in the book entitled "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fourth Edition, 1935, respectively, on page 279 under the caption "Total Solids—Official", and on page 280 under the caption "Fat—Official." (R. 46–7, 49–52, 160, 271–3, 389, 791, 896, 992)

SUGGESTED CONCLUSIONS AND ORDER

Upon the basis of the foregoing findings of fact, it is concluded that the following regulations should be promulgated:

Regulation Fixing and Establishing a Reasonable Definition and Standard of Identity for the Food Commonly Known as Evaporated Milk

§ 18.520 *Evaporated milk—Identity—Label statement of optional ingredient.* (a) Evaporated milk is the liquid food made by evaporating sweet milk to such a point that it contains not less than 7.82 percent of milk-fat and not less than 25.6 percent of total milk solids. It may contain one or both of the following optional ingredients:

(1) Disodium phosphate or sodium citrate, or both, or calcium chloride, added in a quantity not more than 0.1 percent by weight of the finished product;

(2) Vitamin D in such quantity as increases its total vitamin content to not less than 7.55 units per avoirdupois ounces of finished evaporated milk.

It may be homogenized. It is sealed in a container and so sterilized by heat as to prevent spoilage.

(b) When optional ingredient (2) is present, the label shall bear the statement, "With Increased Vitamin D Content" or "Vitamin D Content Increased". Such statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Evaporated Milk". Whenever such name appears on the label, it should appear so conspicuously as to be easily seen under customary conditions of purchase.

(c) For the purposes of this section—

(1) The word "milk" means cows' milk.

(2) Such milk may be adjusted, before or after evaporation, by the addition thereto of cream or of concentrated or unconcentrated sweet skim milk.

(3) The quantity of total milk solids is determined by the method prescribed on page 279 under "Total Solids—Official" and the quantity of milk-fat is determined by the method prescribed on page 280 under "Fat—Official", of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fourth Edition, 1935.

(4) Vitamin D content may be increased by the application of radiant energy or by the addition of a concentrate vitamin D (with any vitamin A which accompanies the vitamin D when such concentrate is derived from natural sources) dissolved in a food oil; but if such oil is not milk fat the quantity thereof added is not more than 0.01 percent of the weight of the finished evaporated milk.

(5) The quantity of vitamin D is determined by the method prescribed in the Second Supplement to the Pharmacopoeia of the United States, Eleventh Decennial Revision, pages 132–134, inclusive, and 136 to 138, inclusive, with such modification of the method as is necessary for feeding evaporated milk instead of oil.

TIME ALLOWED FOR FILING OBJECTIONS AND EXCEPTIONS

Within ten days after the receipt of a copy of the FEDERAL REGISTER containing this report, consisting of the suggested findings of fact, conclusions in the form of a regulation, and order, any interested person may transmit to and file with the Hearing Clerk, Office of the

Solicitor, United States Department of Agriculture, Washington, D. C., objections to any matter set out therein, and written argument and brief in support of any exception to any ruling of the Presiding Officer at said hearing, such objections or exceptions making specific reference to the pertinent pages of the transcript of the evidence and the proceedings, or to the pertinent findings or conclusions.

This the 17th day of April, 1940.

[SEAL] FRANK S. HASSELL,
Presiding Officer.

[F. R. Doc. 40-2206; Filed, June 3, 1940; 11:20 a. m.]

[FDC-7 (D)]

IN THE MATTER OF PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR SWEETENED CONDENSED MILK

REPORT OF PRESIDING OFFICER

Pursuant to, and under the authority of, a notice in the above-entitled matter issued and filed by the Secretary of Agriculture on March 25, 1939, with the Archivist of the United States and published in the FEDERAL REGISTER (Vol. 4, No. 59, pp. 1355–1356), March 28, 1939, wherein the undersigned was designated as Presiding Officer to conduct in the place of the Secretary the public hearing herein, such hearing being in conformity with Section 701, subsection (e), of the Federal Food, Drug, and Cosmetic Act [Sec. 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], and under and by virtue of the authority in said notice specifically recited (Sec. 401, 52 Stat. 1046; 21 U.S.C. 341), the said hearing was convened, as were all the hearings therein called, by the undersigned Presiding Officer at the time and place specified in said notice. Thereupon, there was read into the record that portion of said notice of the Secretary setting the time and place for the hearings; stating the purposes thereof; making specific reference to the proposed regulations, thereinafter set forth, and reciting that such proposed regulations were subject to adoption, rejection, amendment, or modification by the Secretary, in whole or in part, as the evidence adduced at the respective hearings warranted; making specific reference to the Rules of Procedure governing all the hearings published in the FEDERAL REGISTER January 13, 1939, and designating the Presiding Officer.

Five copies of the FEDERAL REGISTER dated March 28, 1939, containing the notice and proposals of the Secretary, were offered and received in evidence, and each was marked "Government's Exhibit No. 1."

Certain announcements applicable to this hearing, as well as to all the hearings covered by said notice, were made with respect to the order of the proceedings within the discretion of the Presiding Officer under the Rules hereinbefore mentioned; and as to appearances, the filing of suggested Findings of Fact, Conclusions and Order by the Presiding Officer, notice thereof, and the time that would be allowed for the filing of objections and exceptions thereto, proposed findings, written arguments and briefs by interested parties. Thereupon, the general order in which the several hearings would be held was announced; and subsequently this hearing was continued to May 5, 1939, at 4:20 o'clock, P. M., at Rooms A, B, and C, Departmental Auditorium, Constitution Avenue, between 12th and 14th Streets, Washington, D. C., where it proceeded until 5:15 o'clock, P. M., that day, when the hearing was adjourned to May 9, 1939, at 9: 30 o'clock, A. M., at which time it was further adjourned to May 11, 1939, at 9:30 o'clock A. M., at Room 3106, South Building, Department of Agriculture, at which time and place the hearing reconvened and proceeded until May 12, 1939, at 1:45 o'clock, P. M., when it was formally closed.

Upon the basis of substantial evidence received at the hearing and appearing in the transcript, to which specific references are made in each instance following each of the findings, the undersigned Presiding Officer makes and suggests the findings of fact hereinafter set forth; and he further suggests that the Secretary of Agriculture issue an order setting out therein and as part thereof such findings of fact, and that in and by such order the Regulation hereinafter set forth be promulgated:

SUGGESTED FINDINGS OF FACT

1. *Identity of the product in general—Its common or usual name.* The liquid or semi-liquid prepared by evaporating sweet, unsterilized and unhomogenized cows' milk, mixed with a preserving and sweetening agent, to such concentration as to prevent spoilage, with or without prior adjustment by the addition of cream, or concentrated or unconcentrated sweet skim milk is commonly known as Sweetened Condensed Milk. (R. 13–15, 17, 24–25, 27, 43–46, 53–54, 74–75, 162, 176, 181, 184, 185, 199, 209, 221)

2. *Federal Advisory Standard.* The Federal Advisory Standard for Sweetened Condensed Milk established by the Department of Agriculture August 29, 1931, which had not been changed up to the time of the enactment of the Federal Food, Drug, and Cosmetic Act of 1938, was as follows:

"Sweetened Condensed Milk is the product resulting from the evaporation of a considerable portion of the water from milk to which sugar and/or dextrose has been added. It contains not less than 28 percent of total milk solids, and not less than 8 percent of milk-fat." (R. 46; Service And Regulatory Announcements, F.D. No. 2, Rev. 2)

3. *Process of adjustment.* Prior to the commercial manufacture of sweetened condensed milk the ratio of milk-fat to milk solids not fat in the raw, fluid milk is ascertained, and such ratio is so changed or adjusted, prior to processing, by the addition of cream, or concentrated or unconcentrated skim milk, as to assure a finished product of such viscosity as tends to preclude fat separation. (R. 13, 17–19, 27–8, 53–4, 56–7, 73, 125, 216, 219, 225)

4. *Ratio of milk fat to milk solids not fat in retail fluid milk.* The ratio, in the retail fluid milk market of the United States, of the grand weighted average of milk solids not fat to the grand weighted average of milk-fat is as 2.275 is to 1; or, expressed differently, the milk solids not fat content is 2.275 times the milk-fat content. (R. 173–4; Govt. Ex. No. 3)

5. *Ratio of milk fat to milk solids not fat in fluid milk used important factor affecting the finished product.* The ratio of milk-fat to milk solids not fat obtaining before evaporation in the raw, fluid milk used in the manufacture of sweetened condensed milk is one of the chief factors affecting the viscosity of the finished product; and the degree of viscosity of the finished product is the principal factor in determining whether or not there will be subsequent separation of fat and settling out of sugar. (R. 17–19, 28, 219, 225)

6. *Average milk fat content of product.* The average milk-fat content of sweetened condensed milk on the retail market in the United States at this time is 9.32 percent. (R. 56–7, 67–8, 123, Gov't. Ex. No. 2)

7. *Practicable to manufacture within 2/10 of 1 percent of desired milk fat.* It is practicable in good manufacturing practice for the manufacturer of sweetened condensed milk to produce a finished product within 2/10 of 1 percent of the desired milk-fat content. (R. 215, 217)

8. *Preserving and sweetening agents.* The product derived from the sugar cane, or the sugar beet, which is commonly or usually known as sugar, and technically as "sucrose"; and also a combination of such product with the product derived from corn, which is commonly or usually known as refined corn sugar, and technically as "dextrose"; are used as preserving and sweetening agents in the manufacture of sweetened condensed milk. (R. 13, 20, 28, 29, 52, 55, 84, 87, 89, 97, 181, 184, 185, 199, 208–9)

9. *Packing dependent upon intended use.* Sweetened condensed milk is packed for general distribution at retail to consumers in small hermetically sealed cans; and as so packed it is used for the making of ices, puddings, foods with frostings, cakes, and for infant feeding. It is also packed in 55-gallon barrels and 10-gallon milk cans for distribution, usually upon orders and specifications, to, and for use by, manufacturers of other food products, such as candies, confectioneries, and ice cream. (R. 12–13, 57, 101, 217–18, 221)

10. *Use of sugar (sucrose), or combination of sugar (sucrose) and corn sugar (dextrose).* Refined sugar (sucrose) is used generally in the manufacture of sweetened condensed milk for retail distribution in small hermetically sealed cans, as well as for distribution in bulk in barrels and large milk cans to manufacturers of other food products; and a combination containing about equal portions by weight of refined sugar (sucrose) and refined corn sugar (dextrose) is used by some manufacturers in lieu of the exclusive use of refined sugar (sucrose) in the manufacture, usually upon specifications, of sweetened condensed milk for distribution in barrels or large milk cans to manufacturers of other food products, such as candies, confectioneries and ice cream. (R. 13, 20–21, 28–9, 52, 55, 80, 83, 84, 87, 89, 95, 97, 101, 181, 184–5, 199, 221)

11. *Method of analysis.* The method generally recognized as reasonable, practicable and accurate for determining the percent of milk-fat in sweetened condensed milk is that prescribed in the book entitled "Official And Tentative Methods Of Analysis Of The Association Of Official Agricultural Chemists," Fourth Edition, 1935, under the caption, "Fat-Official," at page 281.

SUGGESTED CONCLUSIONS AND ORDER

Regulation Under the Federal Food, Drug, and Cosmetic Act

Regulation Fixing and Establishing a Reasonable Definition and Standard of Identity for the Food Commonly Known as Sweetened Condensed Milk

§ 18.530 *Sweetened condensed milk—Identity.* (a) Sweetened Condensed milk is the liquid or semi-liquid food prepared by evaporating a mixture of sweet milk and refined sugar (sucrose), any combination of refined sugar (sucrose) and refined corn sugar (dextrose) to such point that the sweetened condensed milk contains not less than 8.32 percent of milk-fat, and not less than 27.25 percent of total milk solids. The quantity of refined sugar (sucrose), or combination of such sugar and refined corn sugar (dextrose), used is sufficient to prevent spoilage.

For the purpose of this section:

(1) The word "milk" means cows' milk.

(2) Such milk may be adjusted, before or after evaporation, by the addition thereto of cream or of concentrated or unconcentrated sweet skim milk.

(3) Milk-fat is determined by the method prescribed in "Official And Tentative Methods Of Analysis Of The Association Of Official Agricultural Chemists," Fourth Edition, 1935, page 281, under "Fat-Official."

TIME ALLOWED FOR FILING OBJECTIONS AND EXCEPTIONS

Within 10 days after the receipt of a copy of the FEDERAL REGISTER containing this report, consisting of the suggested findings of fact, conclusions in the form of a regulation and order, any interested party may transmit to and file with the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C., objections to any matter set out therein; and also written argument or brief in support of any exception taken to any ruling of the Presiding Officer at said hearing, such objections or exceptions making specific reference to the pertinent pages of the transcript of evidence and the proceedings, or to the pertinent findings or conclusions.

This the 29th day of November 1939.

[SEAL] FRANK S. HASSELL,
Presiding Officer.

[F. R. Doc. 40–2207; Filed, June 3, 1940; 11:20 a. m.]

[F.D.C.–7 (E)]

IN THE MATTER OF PUBLIC HEARING FOR PURPOSE OF RECEIVING EVIDENCE UPON BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR DRIED SKIM MILK

REPORT OF PRESIDING OFFICER

Pursuant to, and under the authority of, a notice in the above-entitled matter issued and filed by the Secretary of Agriculture on March 25, 1939, with the Archivist of the United States and published in the FEDERAL REGISTER (Vol. 4, No. 59, pp. 1355–1356), March 28, 1939, wherein the undersigned was designated as Presiding Officer to conduct in the place of the Secretary the public hearing herein, such hearing to be in conformity with Section 701, subsection (e), of the Federal Food, Drug, and Cosmetic Act [Sec. 701, 52 Stat. 1055; 21 U.S.C. 371 (e)], and under and by virtue of the authority in said notice specifically recited (Sec. 401, 52 Stat. 1046; 21 U.S.C. 341), the said hearing was convened, as were all the hearings therein called, by the undersigned Presiding Officer at the time and place specified in said notice. Thereupon, there was read into the record that portion of said notice of the Secretary setting the time and place for the hearings; stating the purposes thereof; making specific reference to the proposed regulations, hereinafter set forth, and reciting that such proposed regulations were subject to adoption, rejection, amendment, or modification by the Secretary, in whole or in part, as the evidence adduced at the respective hearings warranted; making specific reference to the Rules of Procedure governing all the hearings published in the FEDERAL REGISTER January 13, 1939, and designating the Presiding Officer.

Five copies of the FEDERAL REGISTER dated March 28, 1939, containing the notice and proposals of the Secretary, were offered and received in evidence, and each was marked "Government's Exhibit No. 1."

Certain announcements applicable to this hearing, as well as to all the hearings covered by said notice, were made with respect to the order of the proceedings within the discretion of the Presiding Officer under the rules hereinbefore mentioned; and as to appearances, the filing of suggested Findings of Fact, Conclusions and Order by the Presiding Officer, notice thereof, and the time that would be allowed for the filing of objections and exceptions thereto, proposed findings, written arguments and briefs by interested parties.

Thereupon, the general order in which the several hearings were to be held was announced; and subsequently this hearing was continued to 10:00 o'clock A. M., May 6, 1939, at Rooms A, B and C, Departmental Auditorium, between 12th and 14th Streets and Constitution Avenue, Washington, D. C., where it continued until 11:15 o'clock A. M. the same day, when adjournment was taken to 9:30 o'clock A. M., May 8, 1939, at the Forestry Service Conference Room No. 3106, South Building, Department of Agriculture, Washington, D. C., at which time and place the hearing was resumed, and it continued thereafter on the two succeeding days and on May 12, 1939, when at 1:45 o'clock P. M., it was formally closed.

Upon the basis of substantial evidence received at the hearing and appearing in the transcript, to which specific references are made in each instance following each of the findings, the undersigned Presiding Officer makes and suggests the findings of fact hereinafter set forth; and he further suggests that the Secretary of Agriculture issue an order setting out therein and as part thereof such findings of fact, and that in and by such order the regulation hereinafter set forth be promulgated.

SUGGESTED FINDINGS OF FACT

1. *The product in general.* The product in general is a product in dried or powdered form prepared from sweet cows' milk by abstracting therefrom, as far as practicable, milk-fat and by eliminating, as far as practicable, water from the remaining product. (R. 17–18, 72–5, 123–4, 129, 131, 142, 145, 460–62)

2. *Former method of removing fat from milk.* Prior to 1900, and before the product was manufactured and distributed commercially, the fluid milk was set aside for a period until the cream arose by gravity to the surface of the milk. The cream on the surface was then removed by a utensil or implement by a process of skimming. (R. 17–18, 37–38, 62, 237, 302, 373–4)

3. *Pre-processing procedure—Fat removal.* Subsequent to 1900, and since the introduction and general use of the machine known as the separator, the established pre-processing procedure in manufacturing the product in the United States has been to warm the fluid milk soon after it is received, and while it is still sweet, and run it through separators, which by mechanical, centrifugal force

abstract therefrom the milk-fat. (R. 17–19, 37–38, 237, 302, 373–4)

4. *General pre-drying procedure and drying processes.* That portion of the fluid milk remaining after the milk-fat, as far as practicable, has been abstracted is cooled and held in a sweet condition for the drying process in the event the exigencies of manufacture in the plant so require; otherwise, that portion of the fluid milk remaining after the milk-fat, as far as practicable, has been abstracted is, without preliminary cooling and while it is still sweet, subjected to a process of dehydration or drying by one of three methods well known and generally recognized and followed in the industry, namely: spray drying, vacuum drying, or roller drying. (R. 73–75, 140, 164, 282)

5. *Moisture content after dehydration.* After dehydration the average moisture content of the finished product, when packed under proper conditions, is about, or somewhat less than, 3 percent. (R. 33–5, 75, 77–8, 151, 165, 242)

6. *Affinity of finished product to moisture.* The finished product has great affinity to moisture, absorbing humidity from the atmosphere at the time of packing, and thereafter during storage, necessitating moisture-resistant containers. (R. 34–5, 77–8, 151, 242–3)

7. *Method for determining moisture content.* The percentage of moisture in the finished product may be determined with a reasonable degree of accuracy by the method described under the caption, *"Moisture—Tentative"*, on page 282 of the book entitled, *Official And Tentative Methods of Analysis Of The Association Of Official Agricultural Chemists*, Fourth Edition, 1935. Such method of analysis is generally known and recognized among chemists, and is generally accepted by dairy chemists, in the United States as a method whereby the moisture content of the finished product may be determined with a reasonable degree of accuracy. (R. 80–83, 90, 142–143, 166)

8. *Important article of commerce.* The product is an important article of commerce among the States. (R. 43–44, 62, 238, 356)

9. *General uses in cooking.* The product is used in kitchens in the making of soups and gravies, for baking and other cooking purposes; and it may be changed back to a fluid form and in such form be used. (R. 49, 230, 252, Gov't. Ex. No. 3—Directions for use)

10. *Used as ingredient of foods.* The product is also used in the commercial manufacture of other food products, such as bread, cakes, pies, pancake and other flours, ice cream, candies, confectioneries, meats and sausage. (R. 45–46, 62, 154, 283, 295)

11. *Practicable moisture content.* It is commercially practicable, under good manufacturing practices, to so manufacture and pack the product that it will maintain a moisture content of not more than 5 percent, but, it is commercially impracticable to so manufacture and pack the product that it will maintain a substantially lower moisture content. (R. 33–35, 44, 140, 143, 166, 171, 243–244)

12. *Higher moisture content—"Caking."* The product is liable "to go together," which in the trade is termed "caking," when the moisture content is in excess of 5 percent; and "caking" affects the product's usefulness as a food or ingredient of foods, as well as its flavor. (R. 35, 44, 171, 180, 243–244)

13. *Common or usual names.* The product in dried or powdered form prepared from sweet cows' milk by abstracting therefrom, as far as practicable, the milk-fat by means of a machine known as a separator, and by eliminating, as far as practicable, the water from the remaining product, while it is still sweet, by a process of dehydration is commonly or usually known as Dried Skim Milk, Powdered Skim Milk, or Skim Milk Powder. (R. 42–44, 45, 62–63, 142–145, 167–168, 170, 187, 214–221, 224–226, 265, 267–268, 274, 339, 448, 457–458, 460–462, Gov't. Ex. No. 3)

SUGGESTED CONCLUSIONS AND ORDER

Upon the basis of the foregoing findings of fact, it is concluded that the following regulation should be promulgated:

Regulation Under the Federal Food, Drug, and Cosmetic Act

Regulation Fixing and Establishing a Reasonable Definition and Standard of Identity for the Food Commonly Known as Dried Skim Milk, Powdered Skim Milk, Skim Milk Powder

§ 18.540 *Dried skim milk, powdered skim milk, skim milk powder—Identity.* Dried Skim Milk, Powdered Skim Milk, Skim Milk Powder is the food made by drying sweet skim milk. It contains not more than 5 percent of moisture, as determined by the method prescribed in *Official And Tentative Methods Of Analysis Of The Association Of Official Agricultural Chemists*, Fourth Edition, 1935, page 282, under the caption "Moisture—Tentative". The term "skim milk" as used herein means cows' milk from which the milk-fat has been separated.

TIME ALLOWED FOR FILING OBJECTIONS AND EXCEPTIONS

Within 10 days after the receipt of a copy of the FEDERAL REGISTER containing this report, together with the suggested findings of fact, conclusions in the form of a regulation, and order, any interested party may transmit to and file with the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C., objections to any matter set out therein, and written argument or brief in support of any exceptions to any rulings of the Presiding Officer at said hearing, such objections or exceptions making specific reference to the pertinent pages of the Transcript of the Evidence and the proceedings, or to the pertinent findings or conclusions.

This the 30th day of January, 1940.

[SEAL] FRANK S. HASSELL,
Presiding Officer.

[F. R. Doc. 40–2208; Filed, June 3, 1940; 11:21 a. m.]

Rural Electrification Administration.

[Administrative Order No. 464]

MAY 28, 1940.

AMENDMENTS OF ALLOCATIONS OF FUNDS FOR LOANS

I hereby amend:

(a) Administrative Order No. 360, dated June 19, 1939, as amended by Administrative Order No. 457, dated May 10, 1940, by rescinding the allocation of $200,000 therein made for "Michigan 9–0026C2 Ingham";

(b) Administrative Order No. 27, dated October 30, 1936, by changing the project designation "Nebraska 4 Polk" appearing therein to read "Nebraska 7004A1 Polk District Public";

(c) Administrative Order No. 134, dated September 8, 1937, by changing the project designation "Nebraska 8004W Polk" appearing therein to read "Nebraska 8004W1 Polk District Public";

(d) Administrative Order No. 181, dated January 10, 1938, by changing the project designation "Nebraska 8004W Polk" appearing therein to read "Nebraska 8004W2 Polk District Public";

(e) Administrative Order No. 250, dated May 20, 1938, by changing the project designation "Nebraska 8004W3 Polk" appearing therein to read "Nebraska 8004W3 Polk District Public";

(f) Administrative Order No. 335, dated April 12, 1939, by changing the project designation "Nebraska R9004W4 Polk" appearing therein to read "Nebraska R9004W4 Polk District Public";

(g) Administrative Order No. 4, dated July 28, 1936, by changing the project designation "Nebraska 5 Adams" appearing therein to read "Nebraska 7005A1 Southern Nebraska District Public";

(h) That portion of the third paragraph of Amended Administrative Order No. 323, dated March 22, 1939, which reduces the allocation of $428,000 by changing the project designation "Nebraska 5 Adams" appearing therein to read "Nebraska 7005A1 Southern Nebraska District Public";

(i) Administrative Order No. 78, dated March 31, 1937, by changing the project designation "Nebraska 5 Adams" appearing therein to read "Nebraska 7005A2 Southern Nebraska District Public";

(j) That portion of the third paragraph of Amended Administrative Order No. 323, dated March 22, 1939, which rescinds the allocation of $47,000 by changing the project designation "Nebraska 5 Adams" appearing therein to read "Nebraska 7005A2 Southern Nebraska District Public";

(k) Administrative Order No. 160, dated November 11, 1937, by changing the project designation "Nebraska 8005W Adams" appearing therein to read "Nebraska 8005W1 Southern Nebraska District Public"; and

(l) Administrative Order No. 321, dated February 20, 1939, by changing the project designation "Nebraska R9063A1 Stanton" appearing therein to read "Nebraska R9063A1 Stanton District Public".

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40-2181; Filed, June 1, 1940; 9:06 a. m.]

[Administrative Order No. 465]

AMENDMENTS OF ALLOCATIONS OF FUNDS FOR LOANS

MAY 28, 1940.

I hereby amend:

(a) Administrative Order No. 460, dated May 18, 1940, by voiding paragraph (n) thereof, which pertained to a reduction in the allocation made for "Texas R9070W1 Hamilton"; and

(b) Administrative Order No. 329, dated March 22, 1939, by reducing the allocation of $10,000 therein made for "Texas R9070W1 Hamilton" by $8,000 so that the reduced allocation shall be $2,000.

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40-2182; Filed, June 1, 1940; 9:06 a. m.]

[Administrative Order No. 466]

ALLOCATION OF FUNDS FOR LOANS

MAY 28, 1940.

By virtue of the authority vested in me by the provisions of Section 5 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project designation:	*Amount*
Alabama 0026W2 Barbour	$10,000
Arizona 0014U1 Cochise	10,000
Arkansas 0010W2 Pulaski	6,000
Illinois 0021W4 Menard	5,000
Minnesota 0057W5 Otter Tail	10,000
Minnesota 0074W2 Norman	5,000
Missouri 0018W1 Texas	5,000
Missouri 0037W2 Bates	5,000
Nebraska 0004W5 Polk District Public	10,000
Nebraska 0005U1 Southern Nebraska District Public	5,000
Nebraska 0063W2 Stanton District Public	5,000
Ohio 0085W1 Hardin	5,000
Oregon 0014W2 Umatilla	5,000
South Carolina 0023W2 Dorchester	2,500
Virginia 0022W2 Caroline	10,000
Virginia 0029W2 Nelson	5,000

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40-2183; Filed, June 1, 1940; 9:06 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

SUPPLEMENTARY DETERMINATION NO. 1, IN THE MATTER OF APPLICATION FOR THE EXEMPTION OF THE DREDGING AND EXCAVATING OF SAND AND GRAVEL FROM SURFACE OR OPEN CUTS FROM MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938, PURSUANT TO SECTION 7 (B) (3), PART 526, AS AMENDED, OF THE REGULATIONS ISSUED THEREUNDER AND PARAGRAPH (8) OF THE ORIGINAL DETERMINATION MADE IN THE MATTER OF THE SAND AND GRAVEL INDUSTRY PURSUANT TO HEARING HELD JUNE 19, 1939.

Whereas, the Administrator determined after a public hearing held before Harold Stein, Presiding Officer, on June 19, 1939, that:

1. There is a branch of the sand and gravel industry wherein the plants normally shut down for about six months each year, except for an insubstantial amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder and, in general, more northerly parts of the United States; and

3. The plants in the northern branch cease operation annually at a regularly recurring season of the year, except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling and processing in the form in which they must be excavated, handled, and processed, i. e., as unfrozen sand and gravel, because of climatic factors; and

4. The northern branch of the sand and gravel industry is an industry of a seasonal nature within the meaning of section 7 (b) (3) of the Act and Part 526 of Regulations issued thereunder; and

Whereas, Paragraph (8) of the above Determination provided that it should be without prejudice to a supplementary determination enlarging the scope of the Northern branch by the inclusion therein of such plants or group of plants, if any, as operate in the same manner and for the same reasons as the plants in the Northern branch described in paragraphs 1 and 3 above; and

Whereas, the National Sand and Gravel Association filed an application with the Wage and Hour Division, United States Department of Labor, on behalf of the Portland Sand and Gravel Company of Portland, Pennsylvania, pursuant to Paragraph (8) of the above cited original determination in the matter of the sand and gravel industry, for a supplementary determination enlarging the scope of the Northern branch of the sand and gravel industry to include the dredging and excavating of sand and gravel by the Portland Sand and Gravel Company of Portland, Northampton County, Pennsylvania; and

Whereas, it appeared from the application filed by the National Sand and Gravel Association on behalf of the Portland Sand and Gravel Company of Portland, Pennsylvania, that the sand and gravel plant of the aforesaid company in Northampton County, Pennsylvania, operates in the same manner and for the same reason as the plants in the Northern branch described in paragraphs 1 and 3 of the original determination; and

Whereas, the Administrator caused to be published in the FEDERAL REGISTER on April 26, 1940, (5 F.R. 1564), a notice setting forth the above matters which stated that, upon consideration of the facts stated in the said application for supplementary determination, the Administrator determined, pursuant to § 526.5 (b) (ii),[1] as amended, of the Regulations, that a *prima facie* case had been shown for enlarging the scope of the Northern branch of the sand and gravel industry, in accordance with Paragraph (8) of the original determination and pursuant to section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder to include the sand and gravel plant of the Portland Sand and Gravel Company in Northampton County, Pennsylvania, and which notice stated further that, if no objection and request for hearing was received within fifteen days, the Administrator would make a finding upon the *prima facie* case shown on the application; and

Whereas, no objection and request for hearing was received by the Administrator within the fifteen days following the publication of said notice;

Now, therefore, pursuant to § 526.5 (b) (ii), of the Regulations, as amended, the Administrator hereby finds, upon the *prima facie* case shown in the said application, that the sand and gravel plant of the Portland Sand and Gravel Company in Northampton County, Pennsylvania, should be and it is hereby included within the Northern branch of the sand and gravel industry, in accordance with Paragraph (8) of the original determination and pursuant to section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder.

Signed at Washington, D. C. this 29th day of May 1940.

PHILIP B. FLEMING,
Administrator,

[F. R. Doc. 40-2192; Filed, June 1, 1940; 11:39 a. m.]

NOTICE OF CANCELATION OF A SPECIAL LEARNER CERTIFICATE FOR THE EMPLOYMENT OF LEARNERS IN THE APPAREL INDUSTRY

Notice is hereby given that a Special Learner Certificate for the employment

[1] 5 F.R. 711.

of learners issued to the Royal Manufacturing Company of Washington, Georgia, effective October 24, 1939, has been canceled as of December 19, 1939, pursuant to action taken under Section 14 of the Fair Labor Standards Act of 1938, paragraph 3 of the Opinion, Findings and Order of the Administrator (4 F.R. 4225), on the employment of learners in the Apparel Industry and Term 5 of the Special Certificate. Cancelation of said Special Learner Certificate has been ordered for violation of Term 5 of the Certificate.

This cancelation shall not become effective until after the expiration of the fifteen-day period after the date this Notice appears in the FEDERAL REGISTER during which time petitions for review may be filed under § 522.13 of said Regulations by any aggrieved person. If a petition for review is properly filed, the effective date of this cancelation shall be postponed unless and until final action sustaining such cancelation is taken on such petition.

Signed at Washington, D. C., this 27th day of May 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40-2203; Filed, June 3, 1940; 11:16 a. m.]

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS

Notice is hereby given that Special Certificates authorizing the employment of learners at hourly wages lower than the minimum wage rate applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued under Section 14 of the said Act and § 522.5 of Regulations Part 522, as amended, to the employers listed below effective June 4, 1940. These Certificates may be canceled in the manner provided for in the Regulations and as indicated in the Certificate. Any person aggrieved by the issuance of any of these Certificates may seek a review of the action taken in accordance with the provisions of §§ 522.13 or 522.5 (b), whichever is applicable of the aforementioned Regulations.

The employment of learners under these Certificates is limited to the occupations, learning periods, and minimum wage rates specified in the Determination or Order for the Industry designated below opposite the employer's name and published in the FEDERAL REGISTER as here stated:

Regulations, Part 522, May 23, 1939 (4 F.R. 2088), and as amended October 12, 1939 (4 F.R. 4226).

Hosiery Order, August 24, 1939 (4 F.R. 3711).

Apparel Order, October 12, 1939 (4 F.R. 4225).

Knitted Wear Order, October 24, 1939 (4 F.R. 4351).

Textile Order, November 8, 1939 (4 F.R. 4531), as amended, April 27, 1940 (5 F.R. 1586).

Glove Order, February 20, 1940 (5 F.R. 714).

NAME AND ADDRESS OF FIRM, INDUSTRY, PRODUCT, NUMBER OF LEARNERS, AND EXPIRATION DATE

Berryville Mills, Inc., Berryville, Virginia; Hosiery; Full Fashioned; 5 learners; September 18, 1940.

Hugh Grey Hosiery Company, Concord, North Carolina; Hosiery; Full Fashioned; 5 percent; September 18, 1940.

Paul Knitting Mills, Pulaski, Virginia; Hosiery; Seamless; 5 percent; September 18, 1940.

Boreal Manufacturing Company, Marinette, Wisconsin; Glove; Leather Dress, Knit Fabric, and Work Gloves; 5 percent; October 24, 1940.

Boreal Manufacturing Company, Marinette, Wisconsin; Glove; Leather Dress, Knit Fabric, and Work Gloves; 10 learners; October 24, 1940.

Tennessee Underwear Company, Tullahoma, Tennessee; Glove; Work Gloves; 5 learners; October 24, 1940.

Salant & Salant, Inc., Lawrenceburg, Tennessee; Apparel; Work Shirts; 108 learners; October 1, 1940.

Signed at Washington, D. C., this 3rd day of June 1940.

MERLE D. VINCENT,
Authorized Representative of the Administrator.

[F. R. Doc. 40-2220; Filed, June 3, 1940; 11:54 a. m.]

CIVIL AERONAUTICS AUTHORITY.

RESTRICTION OF AIR TRAFFIC OVER INDIANAPOLIS SPEEDWAY AND VICINITY

At a session of the Civil Aeronautics Authority held at its office in Washington, D. C., on the 28th day of May 1940.

It appearing that:

(a) The Indianapolis Speedway races will be held at the Indianapolis Speedway, Indianapolis, Indiana, on Memorial Day, May 30, 1940;

(b) The public interest in the Indianapolis Speedway races will attract a great number of visitors to the Speedway and cause numerous aircraft to engage in sightseeing flights in the vicinity of the Speedway;

The Authority finds that:

It is necessary, in the public interest and in order to promote safety in air commerce and to protect adequately persons and property on said Speedway and the area adjacent thereto, to prohibit the flight of aircraft over the Indianapolis Speedway and, further, to require aircraft operating within a three-mile radius of the Speedway to be flown at a minimum altitude of 2,000 feet and in a counter-clockwise circle around the Speedway.

Now, therefore, the Civil Aeronautics Authority, acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205 (a) and 601 (a) of said Act, makes and promulgates the following regulation:

Effective May 28, 1940:

Between the hours of official sunrise and sunset on May 30, 1940, all aircraft within a three-mile radius of the Indianapolis Speedway, Indianapolis, Indiana, shall conform to the following air traffic rules:

(1) Aircraft shall not be flown within 1,000 feet horizontally of the boundaries of the Indianapolis Speedway;

(2) Aircraft shall be flown at an altitude of not less than 2,000 feet and in a counter-clockwise circle;

(3) Aircraft towing banners shall remain not less than 1,000 feet from any other aircraft towing banners.

By the Authority.

[SEAL] PAUL J. FRIZZELL,
Secretary.

[F. R. Doc. 40-2202; Filed, June 3, 1940; 11:08 a. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Commission Order No. 70]

RATES FOR GOVERNMENT COMMUNICATIONS BY TELEGRAPH

At a session of the Federal Communications Commission, held at its office in Washington, D. C., on the 28th day of May, 1940;

The Commission having under consideration the matter of rates of pay for Government communications by telegraph;

It is ordered:

1. That, unless subsequently changed by order of the Commission, during the period July 1, 1940, to June 30, 1941, both inclusive, telegraph communications between the several departments of the Government and their officers and agents, in their transmission over the lines or circuits of any telegraph company subject to the Post Roads Act, approved July 24, 1866, 14 Stat. 221, as amended, U.S.C., title 47, shall have priority over all other business and shall be sent at charges not exceeding sixty (60) per centum of the charges applicable to commercial communications of the same class, of the same length, and between the same points in the United States which shall be deemed herein to include Alaska, except that the charges for serial messages and timed wire service shall not exceed eighty (80) per centum of the charges applicable to like commercial serial messages and timed wire service between the same points in

the United States: *Provided, however,* That the minimum charge for day messages shall be 25 cents, for day letters 45 cents, for night messages 20 cents, for night letters 30 cents, for serial messages 54 cents, and for timed wire service 45 cents, unless any of these amounts shall be greater than the minimum for a corresponding commercial message in which event the provision set forth in paragraph 5 below shall apply: *And provided, further,* That a day letter shall be charged for as a day letter or a day message, according to which of these classifications shall produce the lower charge for the particular message; and that an overnight message shall be charged for as a night message or as a night letter, according to which of these two classifications shall produce the lower charge for the particular message; and provided, further, that when the first section of a serial message is not followed by another on the same day, it shall be charged for as a day message; that when more than one section is filed on the same day, the sections shall be charged for at the serial rates or each section shall be charged for as a day message, according to which of these classifications shall produce the lower total charge; and that timed wire messages shall be charged for as timed wire service or as day messages, according to which of these classifications shall produce the lower charge: *And provided, further,* That the provisions of this paragraph shall apply only to Government messages filed as day messages, day letters, night messages, night letters, serial messages, or timed wire communications.

2. That during the period stated telegraph communications between the several departments of the Government and their officers and agents, between points in the United States and points in possessions of the United States, between points in different possessions, and between points in the United States, including such possessions, and points in foreign countries and ships at sea transmitted by any carrier or carriers subject to the Post Roads Act, or subject to the terms of a permit signed, or license granted, by the President of the United States giving the Postmaster General authority to fix rates of pay for Government communications by telegraph shall, between all points embraced within the scope of such Act, permit, or license, have priority over all other business, and shall be sent at charges not exceeding fifty (50) per centum of the full ordinary charges applicable to commercial communications of the same length and between the same points, except that charges for Government code messages shall not exceed sixty (60) per centum of the ordinary Government charges as herein prescribed: *Provided, however,* That in cases where Government messages are transmitted between any of such points in part over the facilities of any carrier or carriers subject to the Post Roads Act, or subject to the terms of any permit signed, or license granted, by the President giving authority to the Postmaster General to fix rates, (such carrier or carriers being hereinafter called domestic carrier or carriers), and in part over the facilities of a carrier, carriers, administration, or administrations not subject thereto, (hereinafter called foreign carriers or administrations), the charges for Government communications shall not exceed the following, to wit: for Government communications between points in the United States and Mexico or Canada, the charges shall not exceed the amounts derived by applying the percentages stated in the first ordering paragraph herein, to the prevailing commercial charges between the points of origin or destination in the United States and the border, plus the prevailing charges applicable to United States Government messages between points of origin or destination in Mexico and Canada and the border; and for Government communications between all other points, the charges shall not exceed the percentages specified in the second ordering paragraph herein, applied to the full portion of the charges accruing to the domestic carrier or carriers, plus the charges actually made for United States Government communications by such foreign carriers or administrations: *And provided further,* (a) That with respect to Government ordinary messages to and from the Philippine Islands and the Canal Zone, the percentages specified shall apply to such communications only in so far as the transmission takes place within the United States and its possessions, other than the Philippine Islands and the Canal Zone; (b) that the charges for Government ordinary messages during the period stated, between the following named points, shall be:

	Per word
Between New York, N. Y., and Canal Zone	$0.15
Between Fisherman's Point, Guantanamo Bay, Cuba and Canal Zone	.09
Between Limon, San Jose, and Puntarenas, C. R., and Canal Zone	.075
Between San Francisco and Philippine Islands:	
Luzon Island, Manila	.165
Luzon Island, Other Offices	.215
Islands of Batan, Catanduanes, Corregidor, Marinduque, Masbate, Mindoro, Romblon and Ticao	.215
Other Islands, All Offices	.345
Between Honolulu and Philippine Islands:	
Luzon Island, Manila	.14
Luzon Island, Other Offices	.19
Islands of Batan, Catanduanes, Corregidor, Marinduque, Masbate, Mindoro, Romblon and Ticao	.19
Other Islands, All Offices	.32
Between Midway Islands and Philippine Islands:	
Luzon Island, Manila	$0.13
Luzon Island, Other Offices	.18
Islands of Batan, Catanduanes, Corregidor, Marinduque, Masbate, Mindoro, Romblon and Ticao	.18
Other Islands, All Offices	.31
Between Guam and Philippine Islands:	
Luzon Island, Manila	.065
Luzon Island, Other Offices	.115
Islands of Batan, Catanduanes, Corregidor, Marinduque, Masbate, Mindoro, Romblon and Ticao	.115
Other Islands, All Offices	.245
Between Manila and China:	
Shanghai	.01
Hongkong	.0575
Kwangsi, Kwangtung Provinces	.11
Macao	.11
Manchuria (Other than Japanese Offices)	.15
All Other Places	.15
Between Manila and Japan:	
Formosa	.23
All Other Places, including Caroline Islands, Chosen-Corea, Jaluit (Marshall Islands), Japanese Saghalien, Kwangtung Peninsula (China), Palaos Islands, Pescadores Islands, Saipan (Marianne Islands), and Japanese Office in Manchuria	.235
Between Washington, D. C., and Philippine Islands:	
Luzon Island, Manila	.27
Luzon Island, other offices	.32
Islands of Batan, Catanduanes, Corregidor, Marinduque, Masbate, Mindoro, Romblon, and Ticao	.32
Other Islands, all offices	.45

and provided that the charges for Government code messages between the foregoing points shall be 60 percent of the charges above specified for Government ordinary messages; and (c) that with respect to Government messages to and from ships at sea the percentages specified shall not apply to the coastal station and ship station charges; and (d) that with respect to Government night messages to and from points in Canada and Mexico transmitted by carriers having both night message and night letter classifications in effect to and from such points but having only night letter classifications in effect between points in the United States, such Government night messages shall be regarded as night letters for the purpose of determining the prevailing commercial charges for such messages to and from points in the United States and the border.

3. That the provisions of the first and second ordering paragraphs shall be construed to include messages transmitted over facilities of Naval Communications Service in connection with facilities of a domestic carrier or carriers or with facilities of a domestic carrier or carriers and foreign carriers or administrations, the Naval Communications Service making no charge for its own service.

4. That if any new service shall be established during the period stated, a

supplementary order will be issued fixing the Government charge for such service.

5. That in no case shall the charge for a Government message exceed the charge for a corresponding commercial message; and that in cases where the charge for a Government message, as determined herein, shall include a fraction of a cent, such fraction, if less than one-half, shall be disregarded, if one-half or more, it shall be counted as one cent; except that the charge for Government code messages shall be rounded up to the next higher half cent, if the fraction be less than one-half, and to a full cent, if the fraction be more than one-half.

6. That all Government communications shall have priority over all other business, as above provided, and shall, unless otherwise provided herein, be subject to the classifications, practices and regulations applicable to the corresponding commercial communications.

7. That every domestic carrier which is subject to the Communications Act of 1934, shall, not later than 30 days after service of this order, file with this Commission all schedules of charges applicable to Government communications established pursuant to this order, said schedules to be filed in full compliance with the requirements of section 203 of the Communications Act of 1934, and with the rules contained in Part 61, Rules and Regulations (Title 47—Telecommunication), to be constructed in such manner and form that the full charges for all Government messages from origins to destinations can be exactly and readily ascertained therefrom, and to name effective dates as of July 1, next ensuing: *Provided, however*, That if schedules applicable to Government messages are already on file and in effect and are in accord with the provisions of this order, new and revised schedules need not be filed.

8. That every domestic carrier required under the terms of any permit signed, or license granted, by the President of the United States to transmit messages for the Government of the United States or any of its possessions, free of charge, shall file schedules in accordance with paragraph 7 above, and with the terms of such permit or license.

9. That in every case where during the period stated any schedule containing charges applicable to commercial messages shall be changed, or the charges made by the foreign carriers or administrations shall be changed, the schedule containing the charges applicable to Government messages shall be correspondingly changed, effective on the same date, provided, however, that this provision shall not apply where, under the terms of the permit or license, a domestic carrier is required to transmit Government messages free of charge, nor with respect to charges to and from the Philippine Islands and the Canal Zone the specific amounts of which are fixed and stated in the second ordering paragraph above.

10. That nothing herein contained shall apply to charges fixed by agreement between the Secretary of Agriculture and the companies performing the service under the Department of Agriculture Appropriation Act.

11. That nothing herein contained shall be construed to give Government messages priority over radio communications or signals which are given absolute priority under section 321 (b) of the Communications Act of 1934, as amended.

This Order shall become effective on the first day of July, 1940.

By the Commission.

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 40-2187; Filed, June 1, 1940; 11:11 a. m]

FEDERAL POWER COMMISSION.

[Docket No. IT-5544)

IN THE MATTER OF OTTER TAIL POWER COMPANY

ORDER GRANTING PETITION FOR REHEARING AND STAY

MAY 31, 1940.

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly, Clyde L. Seavey. John W. Scott, not participating.

It appearing to the Commission that:

(a) On May 23, 1940, the Otter Tail Power Company filed (1) an Application and Petition for Rehearing in the above matter, and (2) an Application for Stay of the Commission's order heretofore entered in this cause under date of May 1, 1940, pending determination and final disposition of the matters set forth in the petition for rehearing;

(b) Reasonable showing has been made by Petitioner, Otter Tail Power Company, which justifies the granting of the petition for rehearing and stay of the order of the Commission under date of May 1, 1940;

(c) Through error on the part of the Commission's staff, the report of the cooperating commissioner representing the Board of Railroad Commissioners of North Dakota was not brought to the attention of or considered by the Commission in issuing the order;

The Commission orders that:

(A) The petition for rehearing filed by Otter Tail Power Company, under date of May 23, 1940, be and the same is hereby granted;

(B) Pending further order of the Commission upon the matters involved in this cause, the order of May 1, 1940, be and the same is hereby suspended;

(C) A public hearing be held on June 26, 1940, at 10 o'clock A. M., in the Council Chamber, City Hall, in the City of Fergus Falls, Minnesota.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 40-2196; Filed, June 3, 1940; 9:08 a. m.]

[Docket No. IT-5619]

IN THE MATTER OF DUQUESNE LIGHT COMPANY

ORDER POSTPONING HEARING

MAY 31, 1940.

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly, Clyde L. Seavey. John W. Scott, not participating.

It appearing to the Commission that:

(a) Duquesne Light Company by its letter dated May 20, 1940, which letter is in the form both of a response to the Commission's show cause order of April 16, 1940, and of a petition, requested that the Commission continue the hearing [1] heretofore fixed to begin in Washington, D. C., at 10 o'clock a. m., June 3, 1940;

(b) In said letter of May 20, 1940, Duquesne Light Company presents as Exhibit II Estimates of Progress and of Completion Dates, which estimate reports the work completed to date and contains a time schedule of work to be completed in the future in respect to the preparation and filing with the Commission of information and data required by Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's order of May 11, 1937;

(c) Based upon the representations contained in the aforesaid letter of May 20, from Duquesne Light Company, and the Estimates of Progress and of Completion Dates attached thereto as Exhibit II, and upon the further conditions herein imposed, it will be appropriate in the public interest to grant a continuance of the hearing without date in this matter now set for June 3, 1940, subject to being re-set by Commission's order upon ten days' notice to Duquesne Light Company;

The Commission orders that:

(A) The hearing heretofore set by Commission's order of April 16, 1940, to commence at 10 o'clock a. m., June 3, 1940, be and the same is hereby postponed without date, subject, however, to being re-set by the Commission upon ten days' notice to Duquesne Light Company, in the event of noncompliance

[1] 5 F.R. 1546.

with the conditions herein imposed, or for other reasons deemed by the Commission to be appropriate;

(B) Duquesne Light Company shall submit monthly reports to the Commission within ten days after the close of each calendar month from the date hereof, during the period of this continuance, showing in detail the progress made during each said month in respect to its compliance with the requirements of Electric Plant Accounts Instruction 2-D of the Uniform System of Accounts and the Commission's order dated May 11, 1937; such monthly reports, in addition to the type of information previously submitted to the Commission, shall contain in detail report of progress in respect to each statement required by the Commission's order of May 11, 1937, and the additional time required to complete and file each of said statements.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 40-2195; Filed, June 3, 1940; 9:08 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 4106]

IN THE MATTER OF JULIAN S. COHN, AN INDIVIDUAL

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of May, A. D. 1940.

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

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

It is further ordered, That the taking of testimony in this proceeding begin on Wednesday, June 12, 1940, at nine o'clock in the forenoon of that day (eastern standard time) in Room 500, 45 Broadway, New York, New York.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-2210; Filed, June 3, 1940; 11:33 a. m.]

[Docket No. 4124]

JUNIOR LEAGUE LINGERIE, INC., A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of May, A. D. 1940.

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

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

It is further ordered, That the taking of testimony in this proceeding begin on Friday, June 7, 1940, at nine o'clock in the forenoon of that day (eastern standard time) in Room 500, 45 Broadway, New York, New York.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-2211; Filed, June 3, 1940; 11:33 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 70-68]

IN THE MATTER OF THE MIDDLE WEST CORPORATION

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 31st day of May, A. D. 1940.

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 June 18, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Willis E. Monty 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 June 13, 1940.

The matter concerned herewith is in regard to the proposed sale by applicant to Ralph J. Green, of Kansas City, Missouri, of 41,385½ shares of common stock without par value of Missouri Public Service Corporation, at $6.75 per share. Such shares are all of the stock of said company owned by applicant, a registered holding company, and constitute approximately 31% of the voting control of the issuer, a public utility company incorporated in Delaware and operating in the State of Missouri. The proceeds from the sale would become general funds in the treasury of applicant.

Among other things, the agreement of purchase provides that in the event the proposed purchaser is unable to obtain the written resignations of three of the five members of the board of directors of Missouri Public Service Corporation and of the president of such corporation effective on or prior to the date of transfer of the shares of stock, the purchaser's obligations under the contract shall be deemed cancelled.

Applicant has designated Rule U-12D-1 of the Act as applicable to the proposed transaction.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2177; Filed, May 31, 1940; 12:07 p. m.]

[File No. 70-44]

IN THE MATTER OF WEST COAST POWER COMPANY

ORDER APPROVING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 28th day of May, A. D. 1940.

West Coast Power Company having filed an application pursuant to section 10 of the Public Utility Holding Company Act of 1935 concerning the acquisition of

certain electric utility assets from McCall Light & Power Company; and

A public hearing[1] having been duly held after appropriate notice, and the Commission having considered the record in this matter and having filed its findings and opinion herein;

It is ordered That said application to acquire said utility assets be and is hereby approved, subject, however, to the following conditions:

(1) That the transaction be carried out for the purposes of and in the manner represented by the application;

(2) That West Coast file a certificate of notification within ten days after the consummation of this acquisition, stating that the acquisition has been carried out in accordance with the terms of this order, including a detailed statement of all expenses herein.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2185; Filed, June 1, 1940; 10:59 a. m.]

[File Nos. 70-50, 70-51]

IN THE MATTER OF SOUTH CAROLINA ELECTRIC & GAS COMPANY, SOUTHEASTERN ELECTRIC AND GAS COMPANY

ORDER APPROVING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 28th day of May, A. D. 1940.

South Carolina Electric & Gas Company, a subsidiary of a registered holding company, having filed an application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 seeking exemption from the provisions of section 6 (a) of the Act of the issue and sale at par, to the President and Directors of the Manhattan Company, of a promissory note in the total face amount of $500,000 dated on or before May 29, 1940 bearing interest at 3¼% per annum, due serially, in the amount of $25,000 per month, beginning October 1940 to and including May 1942, the date of maturity;

Southeastern Electric and Gas Company, a registered holding company, having filed a declaration pursuant to Rule U-12B-1 promulgated under said Act concerning the subordination of all indebtedness running from South Carolina Electric & Gas Company to Southeastern Electric and Gas Company to the indebtedness incurred by the note provided for by the above described application;

A public hearing[2] having been duly held after appropriate notice the Commission having examined the record in this matter and having filed its findings and opinion herein;

It is ordered, That the application of South Carolina Electric & Gas Company filed pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 seeking an exemption from the provisions of section 6 (a) of said Act of the issue and sale of the above described promissory note be, and the same is, hereby approved;

It is further ordered, That the declaration of Southeastern Electric and Gas Company concerning the subordination by declarant of all obligations running to it from South Carolina Electric & Gas Company to the indebtedness to be created by the note provided for by the above-mentioned application be, and become, effective forthwith;

And it is further ordered, That in connection with the issue and sale of the proposed note and the subordination of indebtedness herein provided for, the following terms and conditions are severally imposed upon South Carolina Electric & Gas Company and Southeastern Electric and Gas Company insofar as they may be applicable to either of them:

1. That such issue and sale of the note shall be in compliance with the terms and conditions of and for the purposes represented by said application, as amended.

2. That such exemption shall immediately terminate without further order of this Commission, if at any time, the authorization by the Public Service Commission of the State of South Carolina shall be revoked or shall otherwise terminate.

3. That within ten days after the issue and sale of such note the applicant shall file with this Commission its certificate of notification showing that the issue and sale of the note have been effected in accordance with the terms and conditions of and for the purposes represented by said application, as amended.

4. That when all expenses incurred in connection with the issue and sale of the note shall have been determined, the applicant shall file a detailed statement of such expenses showing the names of the person or persons, entity or entities, to whom paid, the amount paid, the account or accounts charged and a description of the services rendered.

5. That such subordination of indebtedness by Southeastern Electric and Gas Company shall be in compliance with the terms and conditions of and for the purposes represented by said declaration, as amended.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2186; Filed, June 1, 1940; 10:59 a. m.]

[File Number 59-4]

IN THE MATTER OF ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES, RESPONDENTS

ORDER CONTINUING HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 25th day of May, A. D. 1940.

The Securities and Exchange Commission having heretofore issued its notice of and order for hearing against Engineers Public Service Company and its Subsidiary Companies, as Respondents pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935; and

The hearing on said matter having been continued until May 27, 1940:

It is hereby ordered, That the hearing on said matter be further continued until June 10, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2215; Filed, June 3, 1940; 11:47 a. m.]

[File No. 59-4]

IN THE MATTER OF ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES, RESPONDENTS

ORDER OF POSTPONEMENT

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 1st day of June, A. D. 1940.

It appearing to the Commission that a hearing in the above-captioned matter pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 has been set for the tenth day of June 1940, at 10:00 o'clock a. m. at the office of the Securities and Exchange Commission, 1778 Pennsylvania Avenue NW., Washington, D. C.

It is ordered, That such hearing be, and the same hereby is, postponed subject to the further order of the Commission. All interested parties or persons will govern themselves accordingly.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2219; Filed, June 3, 1940; 11:47 a. m.]

[File Number 59-7]

IN THE MATTER OF CITIES SERVICE POWER & LIGHT COMPANY AND ITS SUBSIDIARY COMPANIES, RESPONDENTS

ORDER DESIGNATING TRIAL EXAMINER

At a regular session of the Securities and Exchange Commission, held at its

[1] 5 F.R. 1605.
[2] 5 F.R. 1724.

office in the City of Washington, D. C., on the 1st day of June A. D. 1940.

The Commission having on the 4th day of March 1940, issued a Notice of and Order for Hearing in the above matter, and having on the 6th day of April 1940, ordered that the date of hearing be postponed until the 20th day after the 13th day of May 1940, and no person having as yet been designated for the purpose of presiding at such hearing:

It is ordered, That Charles S. Moore or any other officer or officers of the Commission designated by it for that purpose shall preside at such hearings. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a Trial Examiner under the Commission Rules of Practice.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–2217; Filed, June 3, 1940; 11:47 a. m.]

[File No. 59–11]

IN THE MATTER OF THE UNITED LIGHT AND POWER COMPANY AND ITS SUBSIDIARY COMPANIES, RESPONDENTS

ORDER OF POSTPONEMENT

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 1st day of June, A. D. 1940.

The Commission having previously issued its Notice of and Order for Hearing in the above-entitled matter pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935, and a hearing having been set for the sixth day of June, 1940, at 10:00 o'clock A. M., at the Securities and Exchange Commission, 1778 Pennsylvania Avenue NW., Washington, D. C.; and

The United Light and Power Company and certain of its subsidiary companies, respondents herein, having moved that appropriate action be taken by the Commission to clarify the issues herein, and the Commission being of the opinion that pursuant to such motion it should issue an appropriate statement setting forth its tentative views as to the action which should be taken by said respondents;

It is ordered, That the aforesaid hearing be and the same hereby is postponed subject to the further order of the Commission. All interested parties or persons will govern themselves accordingly.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–2218; Filed, June 3, 1940; 11:47 a. m.]

[File No. 70–64]

IN THE MATTER OF AMERICAN UTILITIES SERVICE CORPORATION

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 1st day of June, A. D. 1940.

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 June 18, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That 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 June 13, 1940.

The matter concerned herewith is in regard to an application pursuant to Rule U-12D–1 promulgated under the Public Utility Holding Company Act of 1935, by American Utilities Service Corporation, a registered holding company, for approval of a proposed sale of all the outstanding stock of Petoskey Gas Company consisting of 15,000 shares of common stock, $10 par value, and of a 6% promissory income note of Petoskey Gas Company in the principal amount of $23,500, due November 1, 1965, for $50,000 in cash to C. Frederick Curtis, T. Chalmers Curtis, and V. W. Packard.

It is stated that Petoskey Gas Company, a Michigan corporation, is engaged in the distribution of butane gas in and about the cities of Petoskey and Harbor Springs, Michigan. Applicant further states that the purpose of the proposed sale is to carry out its tentative plan of integration under Section 11 of said Act; that the average net earnings of Petoskey Gas Company for the five-year period ended December 31, 1939 was $2,731 before deducting provisions for retirements; that the present earnings of Petoskey Gas Company are not sufficient to provide for its construction and maintenance requirements nor to yield any appreciable income to applicant.

It is stated that V. W. Packard is and for several years has been the local manager of Petoskey Gas Company and that the proposed purchasers are not an affiliate of any public utility or holding company.

By the Commission.

[SEAL] FRANCIS P. BRASSER,
Secretary.

[F. R. Doc. 40–2216; Filed, June 3, 1940; 11:47 a. m.]

[File No. 70–66]

IN THE MATTER OF THE MIDDLE WEST CORPORATION

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 3rd day of June, A. D. 1940.

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 June 19, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That 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 June 14, 1940.

The matter concerned herewith is in regard to the proposed purchases by applicant, on any national securities exchange, for cash at the market, of shares of the capital stocks of certain of its subsidiary companies, not exceeding the specified number of shares of the following issues:

(1) 7,000 shares of $7 Prior Lien Preferred Stock of Central and South West Utilities Company.

(2) 7,000 shares of $7 Preferred Stock of Central and South West Utilities Company.

(3) 5,000 shares of 7% Preferred Stock of American Public Service Company.

(4) 5,000 shares of 7% Prior Lien Preferred Stock of North West Utilities Company.

(5) 15,000 shares of $6 Preferred Stock of Central Illinois Public Service Company.

(6) 30,000 shares of capital stock of United Public Service Corporation.

The ownership by The Middle West Corporation, as of May 20, 1940, of shares of stock of said five subsidiaries is represented as follows:

	Shares outstanding	Shares owned	Percentage of class and voting control [1]
Central and South West Utilities Company			
Common stock	3,371,232	2,057,679	61.04
$7 preferred stock	133,150	75,011	56.34
$7 prior lien preferred stock	117,400	54,130	46.11
$6 prior lien preferred stock	11,500	11,500	100.00
Total	3,633,282	2,198,320	60.51
American Public Service Company			
7% preferred stock	79,746	37,171	46.61
Common stock	96,434	----------	----------
Total	176,180	37,171	[2]21.10
Central Illinois Public Service Company			
Common stock	260,343	193,321	74.26
6% preferred stock	5,922	----------	----------
$6 preferred stock	278,797	34,837	12.50
Total	545,062	228,158	41.86
United Public Service Corporation			
Capital stock	315,532	169,243	53.64
North West Utilities Company			
Common stock	260,531	260,531	100.00
$6 preferred stock	24,000	24,000	100.00
7% preferred stock	60,755	21,687	35.70
7% prior lien stock	44,000	26,133	59.37
Total	389,286	332,351	85.37

[1] Due to dividend arrears, the preferred stock in each instance votes equally with the common stock, the figures opposite "total" being the percentages of such voting controls held by The Middle West Corporation.

[2] As of November 30, 1939 Central and South West Utilities Company owned 96,166 shares of common stock of American Public Service Company, constituting 54.50 of voting control.

The applicant has designated sections 9 and 10 of the Act as applicable to the proposed transactions.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2221; Filed, June 3, 1940; 11:58 a. m.]