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Washington, Tuesday, March 7, 1939

The President

EXECUTIVE ORDER

TRANSFERRING THE USE, POSSESSION, AND CONTROL OF CERTAIN LANDS TO THE TENNESSEE VALLEY AUTHORITY

ALABAMA

By virtue of and pursuant to the authority vested in me by section 7(b) of the Tennessee Valley Authority Act of 1933, approved May 18, 1933 (48 Stat. 58, 63), it is ordered that the use, possession, and control of (1) all public lands within the following-described areas (in part temporarily withdrawn and reserved by Executive Order No. 2246 of September 17, 1915, for use of the War Department, and in part temporarily withdrawn and reserved by Executive Order No. 6964 of February 5, 1935, as amended, for classification, etc.), and (2) all lands within such areas acquired by the United States through deeds of purchase or condemnation proceedings and placed under the control of the War Department, be, and they are hereby, transferred to the Tennessee Valley Authority for the purposes thereof as stated in the said Tennessee Valley Authority Act of 1933:

HUNTSVILLE MERIDIAN

The sections bordering upon, and islands and other lands in, the Tennessee River in T. 3 S., R. 8 W.; T. 4 S., R. 12 W.; Tps. 2 and 3 S., R. 13 W.; Tps. 2 S., Rs. 14 and 15 W.

T. 6 S., R. 3 E., sec. 34, a portion of the SE¼, more particularly described as follows: Beginning at a 24 inch pine stump in the west line of the E½ of sec. 34, 1435 feet north of the southwest corner of the SE¼ of sec. 34, a corner to the land of Mrs. Nancy A. Roden; thence with the west line of the E½ of sec. 34, N. 6°00′ E., 1175 feet to the northwest corner of the SE¼ of sec. 34; thence east with the north line of the SE¼ of sec. 34 to the northeast corner of the NW¼SE¼ of sec. 34; thence south with the east line of the NW¼SE¼ of sec. 34 to the southeast corner of the NW¼SE¼ of sec. 34, a corner to the land of Mrs. Nancy A. Roden; thence with Mrs. Roden's line in a westerly direction to the point of beginning, containing approximately 38.3 acres.

T. 7 S., R. 4 E., sec. 24, SW¼SE¼.

T. 6 S., R. 5 E., sec. 27, SW¼NE¼.

T. 3 S., R. 8 E., sec. 32, SW¼NE¼, NE¼SE¼, and NE¼NW¼.

T. 1 S., R. 5 W., islands and other lands belonging to the United States in the Elk River in sec. 22.

T. 2 S., R. 5 W., islands and other lands belonging to the United States in the Elk River in secs. 4 and 5.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
Mar. 3, 1939.

[No. 8059]

[F. R. Doc. 39-747; Filed, March 6, 1939; 10:01 a. m.]

Rules, Regulations, Orders

TITLE 25—INDIANS

OFFICE OF INDIAN AFFAIRS

PART 130—AMENDMENT OF ORDER FIXING OPERATION AND MAINTENANCE CHARGES ON COLORADO RIVER INDIAN IRRIGATION PROJECT, ARIZONA

FEBRUARY 21, 1939.

Sections 130.6 to 130.8, inclusive, of Title 25, Chapter I, Part 130, Fixing Operation and Maintenance Charges on Colorado River Indian Irrigation Project, Arizona, which read:

SEC. 130.6 *Charges.* In compliance with the provisions of an Act of August 1, 1914 (38 Stat., 583), the operation and maintenance charges against all lessees of trust lands and against Indians farming their lands who the Superintendent certifies are financially able to pay charges, are fixed for the calendar year 1937 and subsequent years until further notice as follows:

For delivery of not to exceed *two acre feet* per acre annually	$3.00
For delivery of a *third acre foot* or fraction thereof an additional charge of	1.50
For delivery of a *fourth acre foot* or fraction thereof an additional charge of	2.00
For delivery of a *fifth acre foot* or fraction thereof an additional charge of	2.50
For each additional acre foot or fraction thereof, over five acre feet, an additional charge of	3.00

SEC. 130.7 *Time of payment.* The rates herein fixed for the minimum

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FEDERAL REGISTER

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charge of $3 per acre shall become due on April 1 of each year and will be payable on or before that date. Payments for additional water as herein provided over and above the minimum two acre feet shall be due at the time request is made for same or prior to the delivery of water.

SEC. 130.8 *Delivery contingent on payment.* No water will be delivered to any lessee of Indian trust lands until the superintendent of the reservation shall have furnished the project engineer with a certificate stating the lessee has fully complied with the terms of the lease relative to the payment of annual operation and maintenance charges.

are amended to read:

SEC. 130.6 *Basic assessment.* Pursuant to the Act of August 1, 1914 (38 Stat., 583, 25 U. S. C., 385), the basic rate of assessment for operation and maintenance charges against land of the Colorado River Indian Irrigation Project, to which water can be delivered, is hereby fixed at $3 per acre annually for the delivery of not to exceed *two acre-feet of water per acre,* for the calendar year 1939 and until further order.

SEC. 130.7 *Excess water assessment.* For the delivery of water in excess of two acre-feet per acre, additional assessments are hereby fixed as follows:

For delivery of the third acre-foot of water or fraction thereof per acre, $1.50.

For delivery of a fourth acre-foot of water or fraction thereof at the rate of $2 per acre-foot.

For delivery of a fifth acre-foot of water or fraction thereof at the rate of $2.50 per acre-foot.

For delivery of each acre-foot of water or fraction thereof in excess of five acre-feet, 3.

SEC. 130.8 *Payment.* The minimum assessment of $3 per acre shall become due on April 1, of each year, and is payable on or before that date.

The assessment for any excess water delivered over the minimum two acre-feet per acre shall be due at the time the request is made for the water and must be paid prior to the delivery of water.

No water shall be delivered to Indian trust lands under lease until the Superintendent of the reservation certifies to the Project Engineer that the lessee has fully complied with the terms of the lease contract relative to the payment of the annual operation and maintenance assessment.

Indian water users farming their land, planted in crops other than cotton, may receive delivery of water without payment of assessment provided the Superintendent of the reservation certifies to the Project Engineer that such Indian is financially unable to make the payment. Under such condition the assessment for the water delivered shall be entered on the accounts and shall stand as a lien against the land, without penalty.

Indian water users farming their land, planted in cotton, may receive delivery of water upon payment of 50 percent of the assessments herein designated provided the Superintendent of the reservation certifies to the Project Engineer that such Indian is not financially able to make the full payment. The unpaid 50 percent of the assessment in all such cases shall be entered on the accounts and shall stand as a lien against the land, without penalty.

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 39–749; Filed, March 6, 1939; 10:58 a. m.]

PART 130—AMENDMENT OF ORDER FIXING OPERATION AND MAINTENANCE CHARGES ON KLAMATH INDIAN IRRIGATION PROJECT, OREGON

FEBRUARY 27, 1939.

Sections 130.47 and 130.48, of Title 25, Chapter I, Part 130, Fixing Operation and Maintenance Charges on Klamath Indian Irrigation Project, Oregon, which read:

SEC. 130.47 *Charges.* In compliance with the provisions of an Act of August 1, 1914 (38 Stat., 583), the operation and maintenance charges for the lands under the units of the Klamath Reservation Projects, Oregon, for the calendar year 1936 and each subsequent year thereafter until further notice, are hereby fixed as follows:

Modoc point project All lands to which water can be delivered, $1 per acre.

Sand Creek Project All lands to which water can be delivered, $1 per acre.

SEC. 130.48 *Payment.* The charges as herein fixed shall become due April 1st and are payable on or before that date. To all charges assessed against owners of patent in fee or white-owned lands not paid on July 1 following, there shall be added a penalty of ½ of 1 per cent per month, or fraction thereof, so long as the delinquency continues. No water shall be delivered to lands where assessments have been made until such charges have been paid in full.

are amended to read:

SEC. 130.47 *Assessment.* Pursuant to the Act of August 1, 1914 (38 Stat., 583, 25 U. S. C., 385), the rate of assessment of operation and maintenance charges on land of the Modoc Point and Sand Creek Units of the Klamath Indian Irrigation Project is hereby fixed at $1 per acre per annum for the calendar year of 1939 and until further order.

SEC. 130.48 *Payment.* The assessment herein fixed shall become due on April 1, of each year, and is payable on or before that date.

No delivery of water shall be made to land until the assessment has been paid in full. Assessments remaining unpaid on and after July 1, following the due date, shall be subject to a penalty of ½ of 1 percent per month, or fraction thereof, from the due date until paid.

Indian water users, who are financially unable to pay the assessment on the due date, may be furnished water upon the execution of an agreement promising to pay the water charges to the Superintendent of the Klamath Reservation from the crop proceeds on or before September 15, following the due date. The agreement shall authorize the Superintendent to deduct the amount of the unpaid assessment from any funds accruing at the Agency to the credit of the Indian water user.

Land in Indian ownership to which water can be delivered, where no water is furnished because the land is not farmed, is not relieved of the assessment, but no attempt will be made to collect the assessment when the Superintendent certifies to the Project Engineer that the Indian owner is financially unable to pay. Under such condition assessments shall be entered on the accounts against the land without penalty.

SEC. 130.48a *Areas Assessable.*—The assessment against the land of the Modoc Point Unit shall be based tentatively on the area listed in the schedule of February 12, 1935, pending the approval of a final land designation of the unit. The delivery of a pro rata share of the available supply of water shall not be refused, if requested, for land not listed in the schedule and to which delivery can be made. Any collections made for water furnished to land not listed in the schedule shall be taken into account in fixing the assessment rate for the following year.

The assessment against the land of the Sand Creek Unit shall be based on the area to which water can be delivered.

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 39-750; Filed, March 6, 1939; 10:58 a. m.]

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[Regulations 102]

CONSOLIDATED RETURNS OF AFFILIATED RAILROAD CORPORATIONS PRESCRIBED UNDER SECTION 141 (b) OF THE REVENUE ACT OF 1938 [1]

CONTENTS

[1] Applicable to taxable years beginning after December 31, 1937.

SUPPLEMENT D—RETURNS AND PAYMENT OF TAX

[Supplementary to Subtitle B, Part V]

SEC. 141. *Consolidated returns of railroad corporations*—(a) *Privilege to file consolidated returns.* An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936 insofar as not inconsistent with this Act), prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) *Regulations.* The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as

clearly to reflect the income and to prevent avoidance of tax liability.

(c) *Computation and payment of tax.* In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936 insofar as not inconsistent with this Act) prescribed prior to the date on which such return is made.

(d) *Definition of "affiliated group".* As used in this section an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 95 per centum of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 95 per centum of the stock of at least one of the other corporations; and

(3) Each of the corporations is either (A) a corporation whose principal business is that of a common carrier by railroad or (B) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this paragraph, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system.

As used in this subsection (except in paragraph (3)) the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(e) *Foreign corporations.* A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(f) *China Trade Act corporations.* A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(g) *Corporations deriving income from possessions of United States.* For the purposes of this section a corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its income from possessions of the United States, shall be treated as a foreign corporation.

(h) *Subsidiary formed to comply with foreign law.* In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this title as a domestic corporation.

(i) *Suspension of running of statute of limitations.* If a notice under section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

(j) *Receivership cases.* If the common parent corporation of an affiliated group making a consolidated return would, if filing a separate return, be entitled to the benefits of section 13 (e), the affiliated group shall be entitled to the benefits of such subsection. In all other cases the affiliated group making a consolidated return shall not be entitled to the benefits of such subsection, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership.

(k) *Allocation of income and deductions.* For allocation of income and deductions of related trades or businesses, see section 45.

Application of Regulations

These regulations, authorized by section 141 (b) of the Revenue Act of 1938, are prescribed as a supplement to the income tax regulations applicable generally under the Revenue Act of 1938. They are applicable to all taxable years beginning after December 31, 1937, except where the return for any such year has been made prior to the prescribing of these regulations, in which case Regulations 97,[1] prescribed under section 141 (b) of the Revenue Act of 1936, are applicable in so far as not inconsistent with the provisions of the Revenue Act of 1938.

Authority for Regulations

The following regulations are hereby prescribed pursuant to the authority of section 141 (b) of the Revenue Act of 1938:[2]

[1] 1 F. R. 2193.

[2] The report of the Committee on Ways and Means (Rept. No. 1860, 75th Cong., 3d sess., p. 44) accompanying the revenue bill of 1938 contains the following statement:

"Among the matters to be detailed in regulations which the Commissioner is expected to prescribe under the provisions of subsection (b) of this section are (*a*) the treatment of inter-company dividend distributions, (*b*) definitions of the 'net income,' the 'adjusted net income,' and the 'special class net income,' of the affiliated group, and (*c*) the computation of the 'net operating loss,' the 'basic surtax credit,' the 'dividend carry-over,' the 'dividends paid credit,' and the 'capital gains and losses,' insofar as these several factors may pertain to the case of an affiliated group."

With respect to the corresponding section of the Revenue Act of 1928, the report of the Committee on Finance (S. Rept. No. 960, 70th Cong., 1st sess., p. 15) accompanying the revenue bill of 1928 contains the following statement (a similar statement being contained also in the statement of the managers on the part of the House, accompanying the conference report upon the bill, see H. Rept. No. 1882, 70th Cong., 1st sess., pp. 16–17):

"Among the regulations which it is expected that the Commissioner will prescribe are: (1) The extent to which gain or loss shall be recognized upon the sale by a member of the affiliated group of stock issued by any other member of the affiliated group or upon the dissolution (whether partial or complete) of a member of the group; (2) the basis of property (including property included in an inventory) acquired, during the period of affiliation, by a member of the affiliated group, including the basis of such property after such period of affiliation; (3) the extent to which and the manner in which net losses sustained by a corporation before it became a member of the group shall be deducted in the consolidated return; and the extent to which and the manner in which net losses sustained during the period for which the consolidated return is filed shall be deducted in any taxable year after the affiliation is terminated in whole or in part; (4) the extent to which and the manner in which gain or loss is to be recognized, upon the withdrawal of one or more corporations from the group, by reason of transactions occurring during the period of affiliation; and (5) that the corporation filing the consolidated return must designate one of their members as the agent for the group, in order that all notices may be mailed to the agent, deficiencies collected, refunds made, interest computed, and proceedings before the Board of Tax Appeals conducted as though the agent were the taxpayer."

[3] 52 Stat. 447; 26 U. S. C. Sup. IV, 1 *et seq.*

Part I.—General Provisions

ARTICLE 1. *Privilege of making consolidated returns.* (*a*) Section 141 gives to the corporations of an affiliated group the privilege of making a consolidated return for the taxable year in lieu of separate returns. This privilege, however, is given upon the condition that *all* corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to these regulations, and any amendments thereof duly prescribed prior to the making of the return and applicable to such year; and the making of the consolidated return is considered as such consent.

(*b*) The tax liability of the members of the affiliated group for such year will be determined in accordance with such regulations and without regard to any amendment thereto prescribed subsequent to the making of such return.

ART. 2. *Definitions—(a) Act.* The term "Act" means the Revenue Act of 1938,[3] and the sections referred to in these regulations, unless otherwise stated, are sections of that Act.

(*b*) *Affiliated group.* The term "affiliated group" includes the common parent corporation and every other corporation for the period during which such corporation is a member of the affiliated group within the meaning of section 141; but does not include any corporation which under section 141 can not be included in a consolidated return (for example, a foreign corporation or a corporation treated as a foreign corporation, except as provided in section 141 (h); a corporation organized under the China Trade Act, 1922; or a corporation which is neither a corporation whose principal business is that of a common carrier by railroad nor a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad).

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per cent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of Canada or of Mexico and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for income tax purposes as a domestic corporation. The option to treat such foreign corporation as a domestic corporation so that it may be included in a consolidated return must be exercised at the time of making the consolidated return.

An affiliated group of corporations, within the meaning of section 141, is formed at the time that the common parent corporation becomes the owner directly of at least 95 per cent of the stock (as defined by section 141 (d)) of another corporation. A corporation becomes a member of an affiliated group at the time that one or more members of the group become the owners directly of at least 95 per cent of its stock. A corporation ceases to be a member of an affiliated group when the members of the group cease to own directly at least 95 per cent of its stock.

(c) *Consolidated return period.* The term "consolidated return period" means the taxable year 1929, or any subsequent taxable year, for which a consolidated return is made or is required, including the period during which a subsidiary corporation is engaged in distributing its assets in liquidation.

(d) *Subsidiary.* The term "subsidiary" means a corporation (other than the common parent corporation) which is a member of the affiliated group during any part of the consolidated return period.

(e) *Tax.* The term "tax" includes any interest, penalty, additional amount, or addition to the tax, payable in respect thereof.

(f) *Terms defined in Revenue Act of 1938.* Terms which are defined in the Act shall, when used in these regulations, have the meaning assigned to them by the Act, unless specifically otherwise defined. (See, for example, "adjusted net income," section 13; "special class net income," section 14; "net income," section 21; "gross income," section 22; "taxable year" and "fiscal year," section 48; "deficiency," section 271; and the terms defined in section 901, particularly the terms "person," "stock," and "corporation.")

ART. 3. *Applicability of other provisions of law.* Any matter in the determination of which the provisions of these regulations are not applicable shall be determined in accordance with the provisions of the Act or other law applicable thereto.

Part II.—Administrative Provisions

ART. 10. *Exercise of privilege—(a) When privilege must be exercised.* (1) The privilege of making a consolidated return under these regulations for any taxable year of an affiliated group must be exercised at the time of making the return of the common parent corporation for such year. Under no circumstances can such privilege be exercised at any time thereafter. The filing of separate returns for a taxable year does not constitute an election binding upon the corporations in subsequent years. If the privilege is exercised at the time of making the return, separate returns can not thereafter be made for such year. (See, however, article 18, relating to the improper inclusion in the consolidated return of the income of a corporation.)

(2) If, under Regulations 97, a consolidated return for a taxable year beginning after December 31, 1937, was made after the enactment of the Act (which became law on May 28, 1938), but prior to the prescribing of these regulations, the privilege of making a consolidated return for such year will be considered as having been exercised at the time of the making of such return, and the affiliated group will be considered as having consented to all of the provisions of Regulations 97 in so far as not inconsistent with the Act. Under no circumstances can separate returns be subsequently made for such taxable year.

(3) If, under Regulations 97, a consolidated return for a taxable year beginning after December 31, 1937, was made prior to the enactment of the Act, the privilege of making a consolidated return for such year will not be considered to have been exercised at that time but must be exercised at the time of making the return of the common parent corporation for such taxable year under the Act.

(b) *Effect of tentative returns.* In no case will the privilege under paragraph (a) be considered as exercised at the time of making a so-called "tentative return" (made, for example, in order to obtain an extension of time for making the return required by law). However, if any such tentative return is made upon the basis of a consolidated return or a separate return, the return required by law must be made upon the same basis, unless upon the making of the return required by law (either a separate return or a consolidated return, as the case may be) the payments theretofore made and to be made are adjusted in a manner satisfactory to the Commissioner.

ART. 11. *Consolidated returns for subsequent years—(a) Consolidated returns required for subsequent years.* If a consolidated return is made under these regulations for any taxable year, a consolidated return must be made for each subsequent taxable year during which the affiliated group remains in existence unless (1) a corporation (other than a corporation created or organized, directly or indirectly, by a member of the group) has become a member of the group during such subsequent taxable year, or (2) one or more provisions of these regulations, which have previously been consented to, have been amended, or (3) the Commissioner, prior to the time of making the return, upon application made by the common parent corporation and for good cause shown, grants permission to change.

(b) *Effect of separate returns when consolidated return required.* If the making of a consolidated return is required for any taxable year, the tax liability of the members of the affiliated group shall be computed in the same manner as if a consolidated return had been made, even though separate returns are made; amounts assessed upon the basis of separate returns shall be considered as having been assessed upon the basis of a consolidated return; and amounts paid upon the basis of separate returns shall be considered as having been paid by the common parent corporation. In such cases the making of separate returns shall not be considered as the making of a return for the purpose of computing any period of limitation or any deficiency. If a consolidated return for such taxable year is thereafter made, such return shall for the purpose of computing periods of limitation and any deficiency be considered as the return for such year.

(c) *When affiliated group remains in existence.* For the purposes of these regulations, an affiliated group shall be considered as remaining in existence if the common parent corporation remains as a common parent and at least one subsidiary remains affiliated with it, whether or not such subsidiary was a member of the group at the time the group was formed and whether or not one or more corporations have become subsidiaries or have ceased to be subsidiaries at any time after the group was formed.

(d) *When affiliated group terminates.* For the purposes of these regulations, an affiliated group shall be considered as terminated if the common parent corporation ceases to be the common parent or if there is no subsidiary affiliated with it.

ART. 12. *Making consolidated return and filing other forms—(a) Consolidated return made by common parent corporation.* A consolidated return shall be made on Form 1120 by the common parent corporation for the affiliated group. Such return shall be filed at the time and in the office of the collector of the district prescribed for the filing of a separate return by such corporation.

(b) *Authorizations and consents filed by subsidiaries.* Each subsidiary must prepare duplicate originals of Form 1122, consenting to these regulations and authorizing the common parent corporation to make a consolidated return on its behalf for the taxable year and authorizing the common parent (or, in the event of its failure, the Commissioner or the collector) to make a consolidated return on its behalf (as long as it remains a member of the affiliated group), for each year thereafter for which, under article 11 (a), the making of a consolidated return is required. One of such forms as prepared by each subsidiary shall be attached to the consolidated return, as a part thereof; and the other shall be filed, at or before the time the consolidated return is filed, in the office of the collector for the district prescribed for the filing of a separate return by such subsidiary. No such consent can be withdrawn or revoked at any time after the consolidated return is filed.

(c) *Affiliations schedule filed by common parent corporation.* The common

parent corporation shall prepare Form 851 (Affiliations Schedule), which shall be attached to the consolidated return, as a part thereof.

(*d*) *Persons qualified to swear to returns and forms.* Each return or form required to be made or prepared by a corporation must be sworn to by the persons authorized under section 52 to swear to returns of separate corporations. In cases where receivers or trustees in bankruptcy are operating the property or business of corporations, each return or form required to be made or prepared by such corporation must be executed by the receiver or trustee, as the case may be, pursuant to an order or instructions of the court, and be accompanied by a copy of such order or instructions.

(*e*) *Signatures in case subsidiary has left affiliated group.* Since Form 1122 is required even though, during the taxable year of the common parent corporation, the subsidiary (because of a dissolution or sale of stock, or otherwise) has ceased to be a member of the affiliated group, it may be advisable for the common parent to obtain the proper signatures to the form prior to the time the subsidiary ceases to be a member of the group.

ART. 13. *Change in affiliated group during taxable year.* (This article has no bearing upon the question whether a consolidated return may or must be made, but relates only to the effect of changes in the affiliated group during the taxable year.)

(*a*) *General rule.* Except as hereinafter provided, a consolidated return must include the income of the common parent corporation and of each subsidiary for the entire taxable year.

(*b*) *Formation of affiliated group after beginning of year.* If an affiliated group is formed after the beginning of the taxable year of the corporation which becomes the common parent corporation, the consolidated return must include the income of the common parent for its entire taxable year (excluding any portion of such year during which its income is included in the consolidated return of another affiliated group) and the income of each subsidiary from the time it became a member of the affiliated group.

(*c*) *Complete termination of affiliated group prior to close of taxable year.* If an affiliated group is terminated prior to the close of the taxable year of the group, the consolidated return must include the income of the common parent corporation for its entire taxable year (excludiny any portion of such year during which its income is included in the consolidated return of another affiliated group) and of each subsidiary for the period prior to the termination. (See paragraphs (*c*) and (*d*) of article 11, in determining whether the group has terminated.)

(*d*) *Addition to affiliated group of a subsidiary during year.* If a corporation becomes a member of the affiliated group during the taxable year of the group, the consolidated return must include its income from the time when it became a member of the group.

(*e*) *Elimination from affiliated group of a subsidiary during year.* If a subsidiary ceases to be a member of the affiliated group during the taxable year of the group, the consolidated return must include its income for the period during which it was a member of the group.

(*f*) *Period of 30 days or less may be disregarded.* A subsidiary may at its option be considered as having been a member of the affiliated group during the entire taxable year of the group (or during the entire period of the existence of the subsidiary, whichever is shorter) if the period during which it was not a member of such group does not exceed 30 days. If a corporation has been a member of the affiliated group for a period of less than 31 days during the taxable year of the group, it may at its option be considered as not having been a member of the group during the taxable year. An option under this paragraph must be exercised at or before the time when the consolidated return is made.

(*g*) *Separate returns for periods not included in consolidated return.* If a corporation, during its taxable year (determined without regard to the affiliation), becomes a member of an affiliated group, its income for the portion of such taxable year not included in the consolidated return of such group must be included in a separate return (or, if a member of another affiliated group which makes a consolidated return for such period, then in such consolidated return). If a corporation ceases to be a member of the affiliated group during the taxable year of the group, its income for the period after the time when it ceased to be a member of the group must be included in a separate return (or, if it becomes a member of another affiliated group which makes a consolidated return for such period, then in such consolidated return).

(*h*) *Time for making separate returns for periods not included in consolidated return.* If a corporation, during its taxable year (determined without regard to the affiliation), becomes a member of an affiliated group, the separate return required for the portion of such taxable year during which it was not a member of the group must be made on or before the 15th day of the third month following the close of its taxable year (determined without regard to affiliation). For example, Corporation P, reporting its income on a calendar year basis, acquires on January 1, 1938, all the stock of Corporation S, which reports its income on a fiscal year basis ending March 31. P and S elect to make a consolidated return for the calendar year 1938. The separate return of S for the taxable period April 1, 1937, to December 31, 1937, should be made on or before June 15, 1938.

ART. 14. *Accounting period of an affiliated group.* The taxable year of the common parent corporation shall be considered as the taxable year of an affiliated group which makes a consolidated return, and the consolidated net income must be computed on the basis of the taxable year of the common parent.

ART. 15. *Liability for tax*—(*a*) *Several liability of members of affiliated group.* Except as provided in paragraph (*b*), the common parent corporation and each subsidiary, a member of the affiliated group during any part of a consolidated return period, shall be severally liable for the tax (including any deficiency in respect thereof) computed upon the consolidated net income of the group.

(*b*) *Liability of subsidiary after withdrawal.* If a subsidiary has ceased to be a member of the affiliated group, its liability under paragraph (*a*) shall remain unchanged, except that if such cessation occurred prior to the date upon which any deficiency is assessed and resulted from a bona fide sale of stock for fair value, the Commissioner may, if he believes that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former subsidiary in an amount not exceeding the portion thereof allocable to it upon the bases of income used in the computations respectively of the normal tax and any surtaxes included in such deficiency.

(*c*) *Effect of intercompany agreements.* Any agreement entered into by one or more members of the affiliated group with any other members of such group or with any other person shall in no case have the effect of reducing the liability prescribed under this article.

(*d*) *Liability of transferee not affected.* This article shall not be considered as extinguishing or diminishing any liability, at law or in equity, of a transferee of property of a taxpayer, including any liability under any provision of law, State or Federal, relating to liabilities pursuant to corporate dissolution or transfer or distribution of assets, whether or not in connection with a merger or consolidation.

ART. 16. *Common parent corporation agent for subsidiaries*—(*a*) *Scope of agency of common parent corporation.* Except as provided in paragraphs (*b*) and (*c*) of this article—

The common parent corporation shall be for all purposes, in respect of the tax for the taxable year for which a consolidated return is made or is required, the sole agent, duly authorized to act in its own name in all matters relating to such tax, for each corporation which during any part of such year was a member of the affiliated group. The corporations, other than the common parent, shall not have authority to act for or to represent themselves in any such matter. For example, all correspondence will be carried on directly with the common parent; notices of deficiencies will

be mailed only to the common parent, and the mailing to the common parent shall be considered as a mailing to each such corporation; the common parent will file petitions and conduct proceedings before the Board of Tax Appeals, and any such petition shall be considered as having also been filed by each such corporation; the common parent will file claims for refund or credit; refunds will be made directly to and in the name of the common parent and will discharge any liability of the Government in respect thereof to any such corporation; and the common parent in its name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given or executed by each such corporation. Notwithstanding the provisions of this paragraph, however, any notice of deficiency, in respect of the tax for a consolidated return period, will name each corporation which was a member of the affiliated group during any part of such period, and any assessment (whether of the original tax or of a deficiency) will be made in the name of each such corporation (but a failure to include the name of any such corporation will not affect the validity of the notice of deficiency or the assessment as to the other corporations); and any notice or demand for payment, any distraint (or warrant in respect thereof), any levy (or notice in respect thereof), any notice of a lien, or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which such collection is to be made. The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time. Notwithstanding the provisions of this paragraph, the Commissioner may, if he deems it advisable, deal directly with any member of the group in respect of its liability, in which event such member shall have full authority to act for itself.

(*b*) *Effect of withdrawal of subsidiary.*—For the purpose of the assertion, assessment, and collection of any deficiency, and of a credit or refund of any amount paid by a former subsidiary as a deficiency determined under article 15 (*b*), but for no other purpose, the agency of the common parent corporation in respect of any subsidiary which has ceased to be a member of the affiliated group shall be terminated upon the expiration of 30 days (or prior thereto if the Commissioner consents) from the date upon which such subsidiary files written notice with the Commissioner that it has ceased to be a member of the affiliated group and that it is terminating such agency. For example, if a subsidiary has ceased to be a member of the group (and if the 30-day period has expired) prior to the mailing of a notice of deficiency to the common parent, a separate notice of deficiency will be mailed in due course to the subsidiary in respect of its deficiency if it becomes necessary to enforce its liability.

(*c*) *Effect of dissolution of common parent corporation.*—If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall forthwith notify the Commissioner of such fact and designate, subject to the approval of the Commissioner, another member of the affiliated group to act as agent in its place, to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If the notice thus required is not given by the common parent, the remaining members of the group may, subject to the approval of the Commissioner, designate another member of the group to act as such agent, and notice of such designation shall be given to the Commissioner. Until a notice in writing designating a new agent has been received by the Commissioner, any notice of deficiency or other communication mailed to the common parent shall be considered as having been properly mailed to the agent of the group; or, if the Commissioner has reason to believe that the existence of the common parent has terminated, he may, if he deems it advisable, deal directly with any member of the group in respect of its liability.

ART. 17. *Waivers*—(*a*) *Effect of waiver given by common parent corporation.* Any consent given by the common parent corporation (or by an agent in accordance with paragraph (*c*) of article 16) extending the time within which an assessment may be made or distraint or proceeding in court begun, in respect of the tax for a consolidated return period, shall be applicable (1) to each corporation which was a member of the affiliated group during any part of such period (whether or not any such corporation has ceased to be a member of the group), and (2) to each corporation the income of which was included in the consolidated return, or which filed Form 1122, for such period, even though it is subsequently determined that such corporation was not a member of the group.

(*b*) *Acceptance of waivers from common parent corporation and alleged subsidiary.* In no case will a separate waiver be accepted from a corporation the income of which was included in the consolidated return (for example, a corporation which the Commissioner determines was not a member of the affiliated group), or which filed Form 1122, unless a waiver is also obtained from the common parent corporation, or unless the Commissioner is dealing directly with such corporation to enforce its liability.

ART. 18. *Failure to comply with regulations*—(*a*) *Exclusion of a subsidiary from consolidated return.* If there has been a failure to include in the consolidated return the income of any subsidiary, or a failure to file any of the forms required by these regulations, notice thereof shall be given the common parent corporation by the Commissioner, and the tax liability of each member of the affiliated group shall be determined on the basis of separate returns unless such income is included or such forms are filed within the period prescribed in such notice, or any extension thereof, or unless under article 11 a consolidated return is required for such year.

(*b*) *Common parent corporation incorrectly designated in consolidated return.* If a consolidated return includes a corporation as the common parent and such corporation was not (under the provisions of section 141) the common parent, the tax liability of each corporation included in the return will be computed in the same manner as if separate returns had been made, unless, upon application, the Commissioner approves the making of a consolidated return, or unless under article 11 a consolidated return is required for such year.

(*c*) *Inclusion of one or more subsidiaries not members of affiliated group.* If a consolidated return includes a corporation as a subsidiary and such corporation was not a member of the affiliated group during the consolidated return period, the tax liability of such corporation will be determined upon the basis of a separate return (but see paragraph (*a*)), and the consolidated return shall be considered as including only the corporations which were members of the group during such period. If the consolidated return includes two or more corporations which are not members of the group but which constitute a separate affiliated group, the tax liability of the corporations constituting the separate group will be computed in the same manner as if separate returns had been made by such corporations, unless the Commissioner, upon application, approves the making of a consolidated return for the separate group, or unless under article 11 a consolidated return is required for the separate group.

(*d*) *Effect of authorization and consent filed pursuant to notice.* If Form 1122 is filed by any corporation, pursuant to a notice under paragraph (*a*) of this article, such corporation shall be considered for all purposes as having joined in the making of the consolidated return.

(*e*) *Allocation of payments in the event of change by one or more corporations to separate returns.* In any case in which amounts have been assessed and paid upon the basis of a consolidated return and the tax liability of one or more of the corporations included in the consolidated return is to be computed in the same manner as if separate returns had been made, the amounts so paid shall be allocated between the affiliated group

composed of the corporations properly included in the consolidated return and each of the corporations the tax liability of which is to be computed on a separate basis, in such manner as the corporations included in the consolidated return may, subject to the approval of the Commissioner, agree upon, or, in the absence of an agreement, upon the bases used in the respective computations of the normal tax and any surtaxes as shown upon the consolidated return.

Part III.—Computation of Tax, Recognition of Gain or Loss, and Basis

ART. 30. *Computation of tax.* In the case of an affiliated group which makes, or is required to make, a consolidated return for any taxable year, the tax liability of each corporation for the period during such year that it was a member of such group shall be computed, in accordance with the provisions of section 13, upon the basis of the consolidated adjusted net income if the consolidated net income is more than $25,000, or, in accordance with the provisions of section 14, upon the basis of the consolidated special class net income of the group if the consolidated net income is not more than $25,000, such bases to be determined in accordance with these regulations. (See, however, article 15, relating to the liability of the members of the group.)

ART. 31. *Bases of tax computation—*(a) *Definitions.* In the case of an affiliated group of corporations which makes or is required to make a consolidated return for any taxable year, and except as otherwise provided in these regulations—

(1) The consolidated net income shall be the combined net income of the several affiliated corporations;

(2) The consolidated adjusted net income shall be the combined adjusted net income of the several affiliated corporations;

(3) The consolidated special class net income shall be the combined special class net income of the several affiliated corporations;

(4) The consolidated credit for dividends received shall be an amount equal to the combined credit of the several affiliated corporations provided by section 26 (b) relating to dividends received, but not in excess of 85 percent of the consolidated adjusted net income;

(5) The consolidated dividends paid credit shall be the sum of:

(A) The consolidated basic surtax credit,

(B) The consolidated dividend carry-over,

(C) The consolidated deficit credit, and

(D) The consolidated credit relating to the payment or retirement of indebtedness;

(6) The consolidated basic surtax credit shall be the sum of:

(A) An amount equal to the sum of the dividends paid by the several affiliated corporations during the taxable year, increased by the consolidated consent dividends credit and reduced by the consolidated credit relating to interest on certain obligations of the United States and Government corporations, and

(B) In the case of a taxable year beginning after December 31, 1938, the consolidated net operating loss credit;

(7) The consolidated consent dividends credit shall be the combined consent dividends credits of the several affiliated corporations;

(8) The consolidated credit relating to interest on certain obligations of the United States and Government corporations shall be an amount equal to the sum of such credits computed separately with respect to each of the several affiliated corporations;

(9) The consolidated net operating loss credit shall be an amount equal to the excess of the combined net operating losses for the preceding taxable year of the several affiliated corporations having net operating losses for such year over the combined net income (adjusted with respect to the exceptions and limitations provided in section 26 (c) (2) in connection with the computation of net operating losses) for such preceding taxable year of the several affiliated corporations having net income, but not in excess of the consolidated adjusted net income for the taxable year; however, a net operating loss sustained by a corporation for the taxable year prior to the first taxable year in respect of which its income is included in the consolidated return of an affiliated group shall be included as a part of the consolidated net operating loss credit of such group only to the extent that such net operating loss is not in excess of the adjusted net income of such corporation for such first taxable year;

(10) The consolidated dividend carry-over, subject to the qualifications provided in section 27 (c) with respect to preceding taxable years beginning in 1936 and 1937, shall be the sum of:

(A) The amount of the consolidated basic surtax credit for the second preceding taxable year, reduced by the consolidated adjusted net income for such year, and further reduced by the amount, if any, by which the consolidated adjusted net income for the first preceding taxable year exceeds the sum of:

(*i*) The consolidated basic surtax credit for such year, and

(*ii*) The excess, if any, of the consolidated basic surtax credit for the third preceding taxable year (if not beginning before January 1, 1936) over the consolidated adjusted net income for such year,

(B) The amount, if any, by which the consolidated basic surtax credit for the first preceding taxable year exceeds the consolidated adjusted net income for such year,

(C) For the first taxable year for which the income of a corporation is included in a consolidated return, the amount of any dividend carry-over to which such corporation woud have been entitled if it had filed a separate return, and

(D) For the second taxable year for which the income of a corporation is included in a consolidated return, or is required to be so included, the amount of any dividend carry-over based upon dividend distributions made during its second preceding taxable year to which such corporation would have been entitled if it had continued to file separate returns, but only to the extent that such dividend distributions would have been a factor in the computation of the consolidated dividend carry-over of the affiliated group if such corporation had been a member of the group and its income had been included in a consolidated return of the group for the second preceding taxable year, and if the basic surtax credit and the adjusted net income of such corporation for the second preceding taxable year were the consolidated basic surtax credit and the consolidated adjusted net income of the group;

(11) The consolidated deficit credit shall be an amount equal to the sum of the credits of the several affiliated corporations provided by section 27 (a) (3) relating to deficits in accumulated earnings and profits;

(12) The consolidated credit relating to amounts used or irrevocably set aside to pay or to retire indebtedness shall be an amount equal to the sum of such credits computed separately with respect to each of the several affiliated corporations.

(b) *Computations.* The net income of the several corporations shall be computed in accordance with the provisions covering the determination of taxable income of separate corporations subject to the elimination of unrealized profits and losses in transactions between members of the affiliated group and dividend distributions from one member of the group to another member of the group (referred to in these regulations as intercompany transactions). Intercompany profits and losses which have been realized by the group through final transactions with persons other than members of the group, and intercompany transactions which do not affect the consolidated taxable net income, shall not be eliminated. As used in this paragraph, the term "net income" includes the case in which the allowable deductions of a member exceed its gross income.

The adjusted net income, the special class net income, the dividends received credit provided by section 26 (b), the amount of dividends paid, the credit allowable pursuant to the provisions of

section 28 relating to consent dividends, the credit provided by section 26 (a) relating to interest upon certain obligations of the United States and Government corporations, the net operating loss as defined in section 26 (c) (2), the credit provided by section 27 (a) (3) relating to deficits in accumulated earnings and profits, and the credit provided by section 27 (a) (4) relating to amounts used or irrevocably set aside to pay or to retire indebtedness, shall be computed and determined in the case of each affiliated corporation in the same manner and subject to the same conditions as if a separate return were filed, except—

(1) The net income used in any such computation shall be the net income of the corporation determined in accordance with the provisions of this article;

(2) In the computation of the net operating loss of the corporation, the provisions of this article pertaining to the determination of net income shall apply;

(3) In the computation of the dividends received credit, there shall be excluded all dividends received from other members of the affiliated group;

(4) In the computation of dividends paid, there shall be excluded all dividends paid by one member of the group to another;

(5) In the computation of the consent dividends credit, no amounts shall be included with respect to consents given by other members of the group;

(6) In the case of any subsidiary, the credit provided by section 27 (a) (3) relating to deficits in accumulated earnings and profits shall not be greater than the excess of the adjusted net income of such subsidiary over its net operating loss credit; and

(7) The credit provided by section 27 (a) (4) relating to amounts used or irrevocably set aside to pay or to retire indebtedness shall be computed in disregard of any such payment or setting aside to the extent that, on December 31, 1937, or at any time thereafter, such indebtedness was owned, directly or indirectly, by another member of the group.

(c) *Statements and schedules for subsidiaries.* The statement of gross income and deductions and the several schedules required by the instructions on the return must be prepared and filed by the common parent corporation in columnar form so that the details of the items of gross income, deductions, and credits, for each member of the affiliated group, may be readily audited. Such statements and schedules shall include in columnar form a reconciliation of surplus for each such corporation, together with a reconciliation of the consolidated surplus. Consolidated balance sheets as of the beginning and close of the taxable year of the group, taken from the books of the members of the group, shall accompany the consolidated return prepared in a form similar to that required for reconciliation of surplus.

(d) *Consolidated net operating loss credit and dividend carry-over after consolidated return period.* A consolidated net operating loss sustained by an affiliated group, or dividends paid by any member of such group, during any consolidated return period of the group shall be used in computing the dividends paid credit in the return of the common parent corporation (or in the consolidated return of another affiliated group of which such common parent becomes a member) for a taxable year subsequent to the last consolidated return period of the group in the same manner, to the same extent, and upon the same conditions as if the group had been a single corporation (the common parent corporation) when such loss was sustained or such dividends were paid; but no net operating loss sustained or dividends paid during a consolidated return period of an affiliated group shall be used in computing the dividends paid credit of a subsidiary (or the consolidated dividends paid credit of another affiliated group of which such subsidiary becomes a member) for any taxable year subsequent to the last consolidated return period of the group. No part of any dividends paid by a corporation prior to a consolidated return period of an affiliated group of which such corporation becomes a subsidiary shall be used in computing the dividends paid credit of such corporation for any taxable year subsequent to the consolidated return period, but any part of such dividend which, except for this restriction, might be so used, shall be treated as having been paid by the common parent corporation of the group in a year in which such common parent had no adjusted net income and had distributed no other dividends.

ART. 32. *Method of computation of income for period of less than 12 months.* If a corporation, during the taxable year of the group, becomes a member or ceases to be a member of an affiliated group which makes or is required to make a consolidated return for such year, the income of such corporation to be included in the consolidated return shall be computed on the basis of its income as shown by its books if the accounts are so kept that the income for the period during which it is a member of the group can be clearly and accurately determined. If the accounts are not so kept, the income to be included in the consolidated return shall be computed on the basis of that proportion of its income (subject to the elimination of items exempt from taxation and the addition of items not allowable as deductions in computing net income) for the full period covered by its books which the number of days for which its income is included in the consolidated return bears to the number of days in the full period covered by its books; but in the discretion of the Commissioner there may be eliminated before the proration is made items of income or deduction clearly and accurately determined to be attributable to particular periods, and, after the proration is made, such eliminated items will be added to (if items of income) or deducted from (if deductible items) the income determined by proration for the period to which such items are applicable. The credits allowable under sections 13 and 14 shall be given for the period to which they are properly applicable under the facts in the case.

ART. 33. *Gain or loss from sale of stock or bonds.* Gain or loss from the sale or other disposition (whether or not during a consolidated return period), by a corporation which during any period of time (included in a taxable year beginning after December 31, 1937) has been a member of an affiliated group which makes or is required to make a consolidated return, of any share of stock or any bond or obligation issued by another corporation which during any part of such period was a member of the same group, shall be determined, and the extent to which such gain or loss shall be recognized and shall be taken into account shall also be determined, in the same manner, to the same extent, and upon the same conditions as though such corporations had never been affiliated (see sections 111 to 115, inclusive, and section 117, and the regulations thereunder), except—

(1) In the case of a disposition (by sale, dissolution, or otherwise) during a consolidated return period to another member of the group (see articles 31 and 37); and

(2) That the basis for determining the gain or loss, in the case of shares of stock held during any part of a consolidated return period, shall be determined in accordance with article 34; and

(3) As provided in articles 35 and 36 (imposing certain limitations upon losses otherwise allowable upon sales of stock or bonds).

ART. 34. *Sale of stock—Basis for determining gain or loss—(a) Scope of article.* This article prescribes the basis for determining the gain or loss upon any sale or other disposition (hereinafter referred to as "sale") by a corporation which is (or has been) a member of an affiliated group which makes (or has made) a consolidated return for the taxable year 1929 or any subsequent taxable year, of any share of stock issued by another member of such group (whether issued before or during the period that it was a member of the group and whether issued before, during, or after the taxable year 1929), and held by the selling corporation during any part of a period for which a consolidated return is made or required under these regulations.

For the basis in the case of sales which do not break the affiliation, see paragraph (*b*).

For the basis in the case of sales which break the affiliation and which are made

within the period during which the selling corporation is a member of the affiliated group (whether or not during a consolidated return period), see paragraph (c).

For the basis in the case of sales made after the selling corporation has ceased to be a member of the affiliated group, see paragraph (d).

For the basis in the case of sales of bonds, see article 35.

(b) *Sales which do not break affiliation.* If, notwithstanding any such sale, the issuing corporation remains a member of the affiliated group, the basis shall be determined and adjusted in the same manner as if the selling corporation and the issuing corporation had never been members of an affiliated group. (See sections 111 to 115, inclusive, of the Act.)

(c) *Sales which break affiliation made while selling corporation is member of affiliated group.* If the sale is made within a period during which the selling corporation is a member of the affiliated group (whether or not during a consolidated return period), and if, as a result of such sale, the issuing corporation ceases to be a member of the group, the basis shall be determined as follows:

(1) The aggregate basis of all shares of stock of the issuing corporation held by each member of the affiliated group (exclusive of the issuing corporation) immediately prior to the sale, shall be determined separately for each member of the group, and adjusted in accordance with the Act (see sections 111 to 115, inclusive);

(2) From the sum of the aggregate bases as determined in paragraph (1), there shall be deducted the sum of the losses of such issuing corporation sustained during each of the consolidated return periods (including only the taxable year 1929 and subsequent taxable years) after such corporation became a member of the affiliated group and prior to the sale of the stock to the extent that such losses could not have been availed of by such corporation as a net loss in computing its net income for such periods if it had made a separate return for each of such periods. For any taxable year in which the group sustained a consolidated loss not availed of in subsequent years as a deduction under net loss provisions, the amount deducted under this paragraph shall be reduced by an amount equal to that proportion of such consolidated loss which the loss of the issuing corporation for the year in which such loss was sustained bears to the aggregate losses of the members of the group;

(3) The sum of the aggregate bases of all shares of stock, after making the deduction under paragraph (2), shall then be apportioned among the members of the affiliated group which hold stock of the issuing corporation, by allocating to each such member that proportion of the sum of the aggregate bases so reduced which the aggregate basis of the stock in the issuing corporation held by such member bears to the sum of the aggregate bases;

(4) The aggregate basis as determined under paragraph (3) for each member of the affiliated group shall then be equitably apportioned among the several classes of stock of the issuing corporation held by such member according to the circumstances of the case—ordinarily by allocating to each class of such stock that proportion of the aggregate basis which the basis of each class of such stock held by it at the time of the sale is to the sum of the bases of the several classes of such stock held by it;

(5) The basis of each share of stock of each class held by a member of the affiliated group shall then be determined by dividing the basis apportioned to such class under paragraph (4) by the total number of shares of such class held by it.

Examples:

Application of Paragraph (c) (2)

Corporations P and S are affiliated and make consolidated returns showing the following gains and losses (losses indicated by parentheses):

Year	P	S	Consolidated
1929	($10,000)	($20,000)	($30,000)
1930	15,000	(18,000)	(3,000)
1931	13,000	(10,000)	3,000
1932	12,000	8,000	20,000
1933	8,000	(4,000)	4,000
1934	10,000	(20,000)	(10,000)
1935	20,000	30,000	50,000
1936	10,000	20,000	30,000
1937	10,000	(5,000)	5,000

On January 1, 1938, P sells the stock of S. The adjustment to be made to the basis of the stock for losses sustained by S during the consolidated return periods is $38,000, computed as follows:

Year of loss	Amount of loss	Extent separately available to S as net loss deduction	Reduction of adjustment by reason of consolidated loss	Adjustment under par. (c)(2)
1929	$20,000	$0	$18,000	$2,000
1930	18,000	0	3,000	15,000
1931	10,000	8,000	0	2,000
1933	4,000	0	0	4,000
1934	20,000	0	10,000	10,000
1937	5,000	0	0	5,000
	77,000	8,000	31,000	38,000

Application of Paragraph (c) (3)

Corporations P, S_1, and S_2, are affiliated and make consolidated calendar year returns for 1936, 1937, and 1938. The aggregate bases of the stocks of the affiliated corporations in the hands of the members of the affiliated group are as follows:

	Common	Percent
Aggregate basis of S_1 stock in the hands of P	$100,000	100
Aggregate basis of S_2 stock in the hands of P	50,000	50
Aggregate basis of S_2 stock in the hands of S_1	50,000	50

On January 1, 1939, P sells its stock in S_2. The sum of the aggregate bases of the stock of S_2 in the hands of P and S_1 is $100,000. Assuming that the adjustment under paragraph (c) (2) is $20,000, such sum is reduced to $80,000. This sum ($80,000) is apportioned between P and S_1 by allocating to each corporation $40,000, that is, that proportion of the $80,000 which the aggregate basis of S_2 stock in the hands of each corporation ($50,000) bears to the sum of the aggregate bases ($100,000). Accordingly, the basis for determining gain or loss from the sale of S_2 stock by P is $40,000.

(d) *Sales after selling corporation has ceased to be member of affiliated group.* If the sale is made after the selling corporation has ceased to be a member of the affiliated group, such basis shall be determined in accordance with paragraph (c) of this article, except that—

(1) The aggregate basis (under paragraph (c) (1)) shall be determined for all shares of the issuing corporation held by each member of the group immediately prior to the time the selling corporation ceased to be a member of the group (rather than immediately prior to the sale);

(2) The allocations (under paragraph (c) (3)) shall be made to each member of the group which held stock of the issuing corporation immediately prior to the time the selling corporation ceased to be a member of the group (rather than to the members holding such stock at the time of the sale); and

(3) The basis of each share of stock held by the selling corporation (determined, as above, as of the time the selling corporation ceased to be a member of the group) shall then be adjusted in accordance with the Act (see, particularly, sections 111 to 115, inclusive), in order to determine the basis at the time of the sale.

(e) *Definition of "loss," "consolidated loss," and "net loss."* As used in this article the term "loss" means the excess of the allowable deductions over the gross income and the term "consolidated loss" means the excess of the sum of the losses, separately computed, over the sum of the net incomes, separately computed, of the members of the affiliated group, determined in accordance with the provisions of the Revenue Act applicable to the period. See article 31. The term "net loss" means a net loss determined in accordance with the provisions of the Revenue Act applicable to the period.

ART. 35. *Sale of bonds—Basis for determining gain or loss.* In the case of a sale or other disposition by a corporation, which is (or has been) a member of an affiliated group which makes (or has made) a consolidated return for the taxable year 1929 or any subsequent taxable year, of bonds or obligations issued by another member of such group (whether or not issued while it was a member of

the group and whether issued before, during, or after the taxable year 1929), the basis of each bond or obligation, for determining the gain or loss upon such sale or other disposition, shall be determined in accordance with the Act (see, particularly, section 113), but the amount of any loss otherwise allowable shall be decreased by the excess (if any) of the aggregate of the deductions computed under paragraph (*c*) (2) of article 34 over the sum of the aggregate bases of the stock of the issuing corporation as computed under paragraph (*c*) (1) or (*d*), as the case may be, held by the members of the group. (See, also article 40, relating to disallowance of loss upon intercompany bad debts.)

ART. 36. *Limitation on allowable losses on sale of stock or bonds—(a) General rule.* No loss shall be allowed under article 33, 34, or 35 upon the sale or other disposition of stock or bonds or obligations to the extent that such loss is attributable to (1) transfers of assets within the affiliated group (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period in which the corporations were affiliated (whether or not a consolidated return was made and whether before, during, or after the first taxable year beginning after December 31, 1937), or (2) a distribution during a period in which the corporations were affiliated of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group.

(*b*) *Qualification of general rule.* Paragraph (*a*) of this article shall not be considered as in any way limiting the operation of the provisions of the Act relating to the basis for determining gain or loss upon the sale or other disposition of property (see sections 111 to 115, inclusive), but as being in amplification of and not in substitution for such provisions; subject, however, to this qualification: that to the extent that the transfers of assets referred to in paragraph (*a*) are taken into account under the terms of the Act in making adjustments in the basis, such transfers will not be taken into account in denying losses under paragraph (*a*).

ART. 37. *Liquidations—Recognition of gain or loss—(a) During consolidated return period.* Gain or loss shall not be recognized upon a distribution during a consolidated return period, by a member of an affiliated group to another member of such group, in cancellation or redemption of all or any portion of its stock, except—

(1) Where such distribution is in complete liquidation and redemption of all of the stock (whether in one distribution or a series), falls without the provisions of section 112 (b) (6), and is the result of a bona fide termination of the business and operations of such member of the group, in which case it shall be treated as a sale of the stock, the adjustments specified in articles 34 and 35 will be made, and article 36 will be applicable; and

(2) Where such a distribution without the provisions of section 112 (b) (6) is one made in cash in an amount in excess of the adjusted basis of the stock.

When the business and operations of the liquidated member of the affiliated group are continued by another member of the group, it shall not be considered a bona fide termination of the business and operations of the liquidated member. (With respect to the acquisition of its bonds by the issuing company, see article 41 (*b*).)

For the purpose of determining whether an affiliated corporation receiving property in a liquidating distribution qualifies under the provisions of section 112 (b) (6) (A), the aggregate amount of the stock of the liquidated corporation owned by the several members of the affiliated group on the date of the adoption of the plan of liquidation and at all times subsequent thereto and prior to the receipt of the property in liquidation shall be considered as owned by the distributee.

For the purpose of determining whether an affiliated corporation receiving property in a liquidating distribution constitutes an "excluded corporation" within the provisions of section 112 (b) (7) (B), the aggregate amount of the stock of the liquidated corporation owned by the several members of the affiliated group on April 9, 1938, or at any time subsequent thereto and prior to the day following that on which the plan of liquidation was adopted shall be considered as owned by the distributee.

(*b*) *After consolidated return period.* Any such distribution after a consolidated return period, whether in complete or partial liquidation, except a complete liquidation within the provisions of section 112 (b) (6), shall be treated as a sale of the stock, and the adjustments specified in articles 34 and 35 will be made, and article 36 will be applicable.

ART. 38. *Basis of property—(a) General rule.* Subject to the provisions of paragraphs (*b*) and (*c*) and except as otherwise provided in article 34, the basis during a consolidated return period for determining the gain or loss from the sale or other disposition of property, or upon which exhaustion, wear and tear, obsolescence, and depletion are to be allowed, shall be determined and adjusted in the same manner as if the corporations were not affiliated (see sections 111 to 115, inclusive), whether such property was acquired before or during a consolidated return period. Such basis immediately after a consolidated return period (whether the affiliation has been broken or whether the privilege of making a consolidated return is not exercised) shall be the same as immediately prior to the close of such period.

(*b*) *Intercompany transactions.* The basis prescribed in paragraph (*a*) shall not be affected by reason of a transfer during a consolidated return period, other than upon liquidation as provided in (*c*) (whether by sale, gift, dividend, or otherwise), from a member of the affiliated group to another member of such group.

(*c*) *Basis after liquidation.* (1) Where property is acquired during a taxable year beginning after December 31, 1937, upon a distribution described in article 37 (*a*) in which gain or loss is recognized to the distributee (but not in a complete liquidation within the provisions of section 112 (b) (7)), the basis of such property shall be its fair market value at date of acquisition.

(2) Where property is acquired during a taxable year beginning after December 31, 1937, upon a distribution in which gain or loss to the distributee is not recognized pursuant to the provisions of section 112 (b) (6), the basis of such property shall be the same as it would be in the hands of the transferor.

(3) Where property is acquired during a taxable year beginning after December 31, 1937, upon a distribution (not a complete liquidation within the provisions of section 112 (b) (6)) in which gain or loss to the distributee is not recognized as provided in article 37 (*a*), the basis of such property shall be the same as the basis (determined in accordance with sections 111 to 115, inclusive, and article 34) of the stock exchanged therefor, adjusted—

(A) For the transfer of assets within the affiliated group by the distributing corporation (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period for which the corporations were affiliated (whether or not a consolidated return was made and whether before, during, or after the first taxable year beginning after December 31, 1937);

(B) For distributions during a consolidated return period of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group; and

(C) For cash received in the distribution.

(4) Where property is acquired during the month of December, 1938, upon a distribution in which gain or loss to the distributee is recognized pursuant to the provisions of section 112 (b) (7), the basis of such property shall be the same as the basis (determined in accordance with sections 111 to 115, inclusive, and article 34) of the stock exchanged therefor, adjusted—

(A) For the transfer of assets within the affiliated group by the distributing corporation (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period for which the corporations were affiliated (whether or not a consolidated return was made and whether before, during, or after the first taxable year beginning after December 31, 1937);

(B) For distributions during a consolidated return period of earnings or profits accumulated prior to the date upon which the distributing corporation became a member of the group;

(C) For cash received in the distribution; and

(D) For the amount of gain recognized to the distributee in the liquidation.

(*d*) *Basis not affected by acquisition or sale of stock.* Neither the acquisition of stock of a corporation nor its sale or other disposition shall affect the basis of the property of such corporation for determining gain or loss or upon which exhaustion, wear and tear, obsolescence, and depletion are to be allowed.

ART. 39. *Inventories—(a) Consolidated return made after separate return.* Where a corporation has made a separate return and in the succeeding taxable year is a member of an affiliated group which makes a consolidated return, the value of its opening inventory to be used in computing the consolidated net income for such succeeding taxable year shall be the proper value of the closing inventory used in computing its net income for the preceding taxable year. For example, corporation S made a separate return for 1937. It becomes a member of an affiliated group for 1938. Its closing inventory for 1937 was $100,000. The opening inventory for 1938 will be $100,000, assuming that its closing inventory for 1937 was properly computed.

(*b*) *Separate return made after consolidated return.*—If a corporation has been a member of an affiliated group which has made a consolidated return and in the succeeding taxable year makes a separate return, the value of the opening inventory to be used in computing its net income for such succeeding taxable year shall be the proper value of the closing inventory used in computing consolidated net income for the preceding taxable year. For example, corporation S joins in making a consolidated return for 1937 and makes a separate return for 1938. The proper value of its closing inventory for 1937 after eliminating intercompany profits is $90,000. Accordingly its opening inventory for computing its net income for 1938 will be $90,000.

ART. 40. *Bad debts—(a) Deduction during consolidated return period.* No deduction shall be allowed during a consolidated return period to any member of the affiliated group on account of worthlessness in whole or in part of any obligation (including accounts receivable, bonds, notes, debts and claims of whatsoever nature) of any other member of the group.

(*b*) *Limitation on allowance after consolidated return period.* The rules applicable to the allowance of losses upon the sale of bonds shall be applicable to the allowance after the consolidated return period as bad debts of obligations (including accounts receivable) of a member of an affiliated group acquired in any way by another member of the group prior to or during the consolidated return period. (See article 35.)

ART. 41. *Sale and retirement by corporation of its bonds—(a) Issued at discount or premium.* If a corporation which during any taxable year (beginning after December 31, 1937) has been a member of an affiliated group which makes or is required to make a consolidated return, has issued its bonds at a discount or premium (whether before, during, or after the first taxable year beginning after December 31, 1937, and whether or not during a consolidated return period), deduction will be allowed for the amortization of the discount, and income included for the amortization of the premium, in the same manner, to the same extent, and upon the same conditions as if the corporation had never been affiliated, except that no deduction for amortization of discount shall be allowed, and no income shall be included for amortization of premium, during a period for which a consolidated return is made, on bonds of one member of the group owned by another member of the group.

(*b*) *Acquisition of bonds by issuing company.* If a corporation which during any taxable year (beginning after December 31, 1937) has been a member of an affiliated group which makes or is required to make a consolidated return, acquires its bonds (whether or not from another member of such group and whether or not during a consolidated return period), gain or loss shall be recognized in the same manner, to the same extent, and upon the same conditions as if the corporation had never been affiliated, except that, if such bonds are acquired from another member of the group during a consolidated return period, in determining the gain or loss to the issuing company from such acquisition, the basis thereof to such other member of the group shall be deemed the purchase price.

ART. 42. *Limitation on capital losses.* The limitations provided by sections 23 (g) and (k) and 117 (d) upon deductions for losses from sales or exchanges of capital assets shall be applied, in respect of such losses sustained during a consolidated return period, to each member of the affiliated group in the same manner, to the same extent and upon the same conditions as if a separate return were filed by such member, except that gain or loss will not be recognized upon sales or exchanges between members of the group. See, however, article 37.

ART. 43. *Credit for foreign taxes.* The credit allowed a domestic corporation for taxes paid or accrued during the consolidated return period to any foreign country or to any possession of the United States (under section 131) shall be computed in the same manner, and upon the same conditions as if a separate return were filed by such corporation, except—

(1) In computing the credit, the "entire net income" for the taxable year shall be its separate net income as defined in article 31 (*b*), and the "tax against which such credit is taken" shall be that proportion of the tax computed upon the consolidated net income of the affiliated group which is allocable to such corporation, and

(2) The aggregate of the credits for foreign taxes computed for each member of the group shall be credited against the tax computed upon the consolidated net income of the group.

For example, Corporations P, S_1, and S_2, liable in fact to the tax computed without reduction by reason of any dividends received credit or dividends paid credit, and having no income consisting of interest on obligations of the United States and Government corporations, are affiliated and make a consolidated return for 1938 showing the following results (losses indicated by parentheses):

Company	Domestic income	Foreign income		Total income	Foreign tax	
		British	Canadian		British	Canadian
P	$85,000	$10,000	$5,000	$100,000	$2,000	$500
S_1	(20,000)			(20,000)		
S_2	50,000	(5,000)	5,000	50,000		500
	115,000	5,000	10,000	130,000	2,000	1,000

Consolidated net income $130,000
Income tax 24,700

Allocation of tax:

$P = \frac{100,000}{150,000} \times \$24,700 = \$16,466.67$

S_1 = ... None

$S_2 = \frac{50,000}{150,000} \times \$24,700 = \$8,233.33$

$24,700.00

Corporation P.—Limitation under section 131 (b) (1):

$\frac{\text{British income } \$10,000}{\text{Total income } \$100,000} \times \$16,466.67 = \$1,646.67$

British tax 2,000.00

Credit limitation 1,646.67

$\frac{\text{Canadian income } \$5,000}{\text{Total income } 100,000} \times \$16,466.67 = \$823.33$

Canadian tax 500.00

Credit limitation (not in excess of tax paid) 500.00

Total limitation 2,146.67

Limitation under section 131 (b) (2):

$$\frac{\text{Total foreign income } \$15{,}000}{\text{Total income } 100{,}000} \times \$16{,}466.67 = \$2{,}470.00$$

Credit allowable 2,146.67

Corporation S_2.—Limitation under section 131 (b) (1):

$$\frac{\text{Canadian income } \$5{,}000}{\text{Total income } 50{,}000} \times \$8{,}233.33 = \$823.33$$

Canadian tax 500.00

Credit limitation (not in excess of tax paid) 500.00

Limitation under section 131 (b) (2):

$$\frac{\text{Total foreign income (none)}}{\text{Total income } \$50{,}000} \times \$8{,}233.33 = \text{.....} \quad 0$$

Credit limitation 0

Credit allowable ..... None

Aggregate credits for foreign tax:

Corporation P	$2,146.67
Corporation S_2	None
Total	2,146.67
Income tax payable:	
Income tax	24,700.00
Credit for foreign income taxes	2,146.67
Balance of income tax	22,553.33

ART. 44. *Methods of accounting*—(a) *In general.* For the purpose of determining consolidated net income, all members of the affiliated group shall adopt that method of accounting which clearly reflects the consolidated net income. A method of accounting which does not treat with reasonable consistency all items of gross income and deductions of the various members of the group shall not be regarded as clearly reflecting the consolidated net income. For example, one member of the group will not be permitted to report items of income or deductions on the cash method of accounting, while another member of the same group reports the same or similar items on the accrual method. The provisions of this paragraph are subject to the exceptions stated in paragraph (*b*).

(*b*) *Combination of methods.* For the purpose of determining consolidated net income, if the members of an affiliated group have established different methods of accounting, each member may retain such method with the consent of the Commissioner, provided that the consolidated net income is clearly reflected, and, provided further that intercompany transactions affecting consolidated net income, between members of the group shall be eliminated and adjustments on account of such transactions shall be made with reference to a uniform method of accounting, to be selected by the members of the group with the consent of the Commissioner.

(*c*) *Change to accrual method.* In the case of a corporation which previously has reported its income (whether in a separate or a consolidated return) in accordance with a method other than the accrual method and is required under this article to report its income for the taxable year under the accrual method, items of income which accrued prior to the taxable year but were properly omitted in the determination of net income under the method of accounting formerly followed shall be included in the income for the taxable year of the change in accounting method, and items of income which were properly included in the determination of net income under the method of accounting formerly followed shall not be included in the income for the taxable year of the change or any subsequent year. In such a case, deductions which accrued prior to the taxable year but which were properly omitted in the determination of net income under the method of accounting formerly followed shall be allowed for the taxable year of the change in accounting method, and deductions which were properly included in the determination of net income under the method of accounting formerly followed shall not be allowed in the determination of net income for the taxable year of change or any subsequent year.

[SEAL] MILTON E. CARTER,
Acting Commissioner of Internal Revenue.

Approved March 3, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39-746; Filed, March 4, 1939; 12:42 p. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

PUBLIC DEBT SERVICE

[1939—Department Circular No. 603]

OFFERING OF UNITED STATES OF AMERICA 2¾ PERCENT TREASURY BONDS OF 1960–65

ADDITIONAL ISSUE

MARCH 6, 1939.

I. Offering of Bonds

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, invites subscriptions at 102⅜ and accrued interest from December 15, 1938, from the people of the United States for 2¾ percent bonds of the United States, designated Treasury Bonds of 1960–65, in payment of the face amount of which only Treasury Notes of Series A–1939, maturing June 15, 1939, may be tendered. The amount of the offering under this circular will be limited to the amount of Treasury Notes of Series A–1939 tendered and accepted.

II. Description of Bonds

1. The bonds now offered will be an addition to and will form a part of the series of 2¾ percent Treasury Bonds of 1960–65 issued pursuant to Department Circular No. 598, dated December 5, 1938,[1] will be freely interchangeable therewith, are identical in all respects therewith, and are described in the following quotation from Department Circular No. 598:

"1. The bonds will be dated December 15, 1938, and will bear interest from that date at the rate of 2¾ percent per annum, payable semiannually on June 15 and December 15 in each year until the principal amount becomes payable. They will mature December 15, 1965, but may be redeemed at the option of the United States on and after December 15, 1960, in whole or in part, at par and accrued interest, on any interest day or days, on 4 months' notice of redemption given in such manner as the Secretary of the Treasury shall prescribe. In case of partial redemption the bonds to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease.

"2. The bonds shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, or gift taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of bonds authorized by the Second Liberty Bond Act, approved September 24, 1917, as amended, the principal of which does not exceed in the aggregate $5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in clause (b) above.

"3. The bonds will be acceptable to secure deposits of public moneys, but will not bear the circulation privilege and will not be entitled to any privilege of conversion.

"4. Bearer bonds with interest coupons attached, and bonds registered as to principal and interest, will be issued in

[1] 3 F. R. 2865 DI.

denominations of $50, $100, $500, $1,000, $5,000, $10,000 and $100,000. Provision will be made for the interchange of bonds of different denominations and of coupon and registered bonds, and for the transfer of registered bonds, under rules and regulations prescribed by the Secretary of the Treasury.

"5. The bonds will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States bonds."

III. Subscription and Allotment

1. Subscriptions will be received at the Federal Reserve banks and branches and at the Treasury Department, Washington. Banking institutions generally may submit subscriptions for account of customers, but only the Federal Reserve banks and the Treasury Department are authorized to act as official agencies. The Secretary of the Treasury reserves the right to close the books as to any or all subscriptions or classes of subscriptions at any time without notice.

2. The Secretary of the Treasury reserves the right to reject any subscription, in whole or in part, to allot less than the amount of bonds applied for, to make allotments in full upon applications for smaller amounts and to make reduced allotments upon, or to reject, applications for larger amounts, or to adopt any or all of said methods or such other methods of allotment and classification of allotments as shall be deemed by him to be in the public interest; and his action in any or all of these respects shall be final. Subject to these reservations, all subscriptions will be allotted in full. Allotment notices will be sent out promptly upon allotment.

IV. Payment

1. Payment at 102¾ and accrued interest for bonds allotted hereunder must be made or completed on or before March 15, 1939, or on later allotment. Payment of the face amount may be made only in Treasury Notes of Series A–1939, maturing June 15, 1939, which will be accepted at par. A premium $23.75 per $1,000, and accrued interest from December 15, 1938 to March 15, 1939 ($6.79945 per $1,000) on the bonds to be issued, will be charged, and accrued interest from December 15, 1938 to March 15, 1939 ($5.25412 per $1,000) on the notes surrendered will be credited, and the difference ($25.29533 per $1,000) will be due from subscribers. Treasury Notes of Series A–1939, with coupon dated June 15, 1939, attached, and the appropriate cash payment, should accompany subscriptions.

V. General Provisions

1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve banks of the respective districts, to issue allotment notices, to receive payment for bonds allotted, to make delivery of bonds on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive bonds.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve banks.

[SEAL] HENRY MORGENTHAU, JR.,
Secretary of the Treasury.

[F. R. Doc. 39–754; Filed, March 6, 1939; 12:32 p. m.]

[1939—Department Circular No. 604]

OFFERING OF UNITED STATES OF AMERICA 2½ PERCENT TREASURY BONDS OF 1950–52

ADDITIONAL ISSUE

MARCH 6, 1939.

I. Offering of Bonds

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, invites subscriptions, at 102½, from the people of the United States for 2½ percent bonds of the United States, designated Treasury Bonds of 1950–52, in payment of the face amount of which only Treasury Notes of Series A–1939, maturing June 15, 1939, may be tendered. The amount of the offering under this circular will be limited to the amount of Treasury Notes of Series A–1939 tendered and accepted.

II. Description of Bonds

1. The bonds now offered will be an addition to and will form a part of the series of 2½ percent Treasury Bonds of 1950–52 issued pursuant to Department Circular No. 593, dated September 8, 1938,[1] will be freely interchangeable therewith, are identical in all respects therewith (except that interest on the bonds issued under this circular will accrue from March 15, 1939), and are described in the following quotation from Department Circular No. 593:

"1. The bonds will be dated September 15, 1938, and will bear interest from that date at the rate of 2½ percent per annum, payable semiannually on March 15 and September 15 in each year until the principal amount becomes payable. They will mature September 15, 1952, but may be redeemed at the option of the United States on and after September 15, 1950, in whole or in part, at par and accrued interest, on any interest day or days, on 4 months' notice of redemption given in such manner as the Secretary of the Treasury shall prescribe. In case of partial redemption the bonds to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease.

"2. The bonds shall be exempt, both as to principal and interest, from all taxation now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority, except (a) estate or inheritance taxes, or gift taxes, and (b) graduated additional income taxes, commonly known as surtaxes, and excess-profits and war-profits taxes, now or hereafter imposed by the United States, upon the income or profits of individuals, partnerships, associations, or corporations. The interest on an amount of bonds authorized by the Second Liberty Bond Act, approved September 24, 1917, as amended, the principal of which does not exceed in the aggregate $5,000, owned by any individual, partnership, association, or corporation, shall be exempt from the taxes provided for in clause (b) above.

"3. The bonds will be acceptable to secure deposits of public moneys, but will not bear the circulation privilege and will not be entitled to any privilege of conversion.

"4. Bearer bonds with interest coupons attached, and bonds registered as to principal and interest, will be issued in denominations of $50, $100, $500, $1,000, $5,000, $10,000 and $100,000. Provision will be made for the interchange of bonds of different denominations and of coupon and registered bonds, and for the transfer of registered bonds, under rules and regulations prescribed by the Secretary of the Treasury.

"5. The bonds will be subject to the general regulations of the Treasury Department, now or hereafter prescribed, governing United States bonds."

III. Subscription and Allotment

1. Subscriptions will be received at the Federal Reserve banks and branches and at the Treasury Department, Washington. Banking institutions generally may submit subscriptions for account of customers, but only the Federal Reserve banks and the Treasury Department are authorized to act as official agencies. The Secretary of the Treasury reserves the right to close the books as to any or all subscriptions or classes of subscriptions at any time without notice.

2. The Secretary of the Treasury reserves the right to reject any subscription, in whole or in part, to allot less than the amount of bonds applied for, to make allotments in full upon applications for smaller amounts and to make reduced allotments upon, or to reject, applications for larger amounts, or to adopt any or all of said methods or such other methods of allotment and classification of allotments as shall be deemed by him

[1] 3 F. R. 2204 DI.

to be in the public interest; and his action in any or all of these respects shall be final. Subject to these reservations, all subscriptions will be allotted in full. Allotment notices will be sent out promptly upon allotment.

IV. Payment

1. Payment at 102½ for bonds allotted hereunder must be made or completed on or before March 15, 1939, or on later allotment. Payment of the face amount may be made only in Treasury Notes of Series A–1939, maturing June 15, 1939, which will be accepted at par. A premium of $25.00 per $1,000 will be charged, and accrued interest from December 15, 1938 to March 15, 1939 ($5.25412 per $1,000) on the notes surrendered will be credited, and the difference ($19.74588 per $1,000) will be due from subscribers. Treasury Notes of Series A–1939, with coupon dated June 15, 1939, attached, and the appropriate cash payment, should accompany subscriptions.

V. General Provisions

1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve banks of the respective districts, to issue allotment notices, to receive payment for bonds allotted, to make delivery of bonds on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive bonds.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve banks.

[SEAL] HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

[F. R. Doc. 39–755; Filed, March 6, 1939; 12:32 p. m.]

[1939—Department Circular No. 605]

OFFERING OF UNITED STATES OF AMERICA 1⅛ PERCENT TREASURY NOTES OF SERIES B–1943

ADDITIONAL ISSUE

MARCH 6, 1939.

I. Offering of Notes

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, approved September 24, 1917, as amended, invites subscriptions, at 101 and accrued interest from December 15, 1938, from the people of the United States for 1⅛ percent notes of the United States, designated Treasury Notes of Series B–1943, in payment of the face amount of which only Treasury Notes of Series A–1939, maturing June 15, 1939, may be tendered. The amount of the offering under this circular will be limited to the amount of Treasury Notes of Series A–1939 tendered and accepted.

II. Description of Notes

1. The notes now offered will be an addition to and will form a part of the series of 1⅛ percent Treasury Notes of Series B–1943 issued pursuant to Department Circular No. 600, dated December 5, 1938,[1] will be freely interchangeable therewith, are identical in all respects therewith, and are described in the following quotation from Department Circular No. 600:

"1. The notes will be dated December 15, 1938, and will bear interest from that date at the rate of 1⅛ percent per annum, payable semiannually on June 15 and December 15 in each year until the principal amount becomes payable. They will mature December 15, 1943, and will not be subject to call for redemption prior to maturity.

"2. The notes shall be exempt, both as to principal and interest, from all taxation (except estate or inheritance taxes, or gift taxes) now or hereafter imposed by the United States, any State, or any of the possessions of the United States, or by any local taxing authority.

"3. The notes will be accepted at par during such time and under such rules and regulations as shall be prescribed or approved by the Secretary of the Treasury in payment of income and profits taxes payable at the maturity of the notes.

"4. The notes will be acceptable to secure deposits of public moneys, but will not bear the circulation privilege.

"5. Bearer notes with interest coupons attached will be issued in denominations of $100, $500, $1,000, $5,000, $10,000 and $100,000. The notes will not be issued in registered form."

III. Subscription and Allotment

1. Subscriptions will be received at the Federal Reserve banks and branches and at the Treasury Department, Washington. Banking institutions generally may submit subscriptions for account of customers, but only the Federal Reserve banks and the Treasury Department are authorized to act as official agencies. The Secretary of the Treasury reserves the right to close the books as to any or all subscriptions or classes of subscriptions at any time without notice.

2. The Secretary of the Treasury reserves the right to reject any subscription, in whole or in part, to allot less than the amount of notes applied for, to make allotments in full upon applications for smaller amounts and to make reduced allotments upon, or to reject, applications for larger amounts, or to adopt any or all of said methods or such other methods of allotment and classification of allotments as shall be deemed by him to be in the public interest; and his action in any or all of these respects shall be final. Subject to these reservations, all subscriptions will be allotted in full. Allotment notices will be sent out promptly upon allotment.

IV. Payment

1. Payment at 101 and accrued interest for notes allotted hereunder must be made or completed on or before March 15, 1939, or on later allotment. Payment of the face amount may be made only in Treasury Notes of Series A–1939, maturing June 15, 1939, which will be accepted at par. A premium of $10.00 per $1,000, and accrued interest from December 15, 1938 to March 15, 1939 ($2.78159 per $1,000) on the notes to be issued, will be charged, and accrued interest from December 15, 1938 to March 15, 1939 ($5.25412 per $1,000) on the notes surrendered will be credited, and the difference ($7.52747 per $1,000) will be due from subscribers. Treasury Notes of Series A–1939, with coupon dated June 15, 1939, attached, and the appropriate cash payment, should accompany subscriptions.

V. General Provisions

1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve banks of the respective districts, to issue allotment notices, to receive payment for notes allotted, to make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve banks.

[SEAL] HENRY MORGENTHAU, Jr.,
Secretary of the Treasury.

[F. R. Doc. 39–756; Filed, March 6, 1939; 12:32 p. m.]

[1] 3 F. R. 2867 DI.

TITLE 43—PUBLIC LANDS

OFFICE OF SECRETARY OF INTERIOR, DIVISION OF GRAZING

NEW MEXICO GRAZING DISTRICT NO. 3

MODIFICATION

MARCH 1, 1939.

Under and pursuant to the provisions of the act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976), the Departmental order of July 11, 1935, establishing New Mexico Grazing District No. 3, is hereby revoked as far as it affects the following-described land:

NEW MEXICO

New Mexico Principal Meridian

T. 10 S., R. 6 W., secs. 4 to 9 and 16 to 36 inclusive;

T. 10 S., R. 7 W., all:
T. 18 S., Rs. 11 and 12 W., all.

This order shall become effective May 1, 1939.

HARRY SLATTERY,
Acting Secretary of the Interior.

[F. R. Doc. 39–748; Filed, March 6, 1939; 10:58 a. m.]

Notices

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[NCR–301–L]

1939 AGRICULTURAL CONSERVATION PROGRAM, LICKING COUNTY, OHIO

CONTENTS

AUTHORITY, AVAILABILITY OF FUNDS, AND APPLICABILITY

Pursuant to the authority vested in the Secretary of Agriculture under Sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act (49 Stat. 1148, as amended, and in connection with the effectuation of the purposes of Section 7 (a) of said Act in 1939, payments and grants of aid will be made in Licking County, Ohio, for participation in the 1939 Licking County Agricultural Conservation Program (hereinafter referred to as the 1939 Licking County Program) in accordance with the provisions hereof and such modifications thereof or other provisions as may hereafter be made.

The provisions of the 1939 Licking County Program are necessarily subject to such legislation affecting said program as the Congress of the United States may hereafter enact; the making of the payments and grants of aid herein provided are contingent upon such appropriation as the Congress may hereafter provide for such purposes; and the amount of such payments and grants of aid will necessarily be within the limits finally determined by such appropriation. The rates of payments specified herein are subject to an increase or decrease of not more than 10 percent, depending upon the extent of participation in the program and the final estimate of payments which would be made in Licking County under the 1939 Agricultural Conservation Program.

The provisions of the 1939 Licking County Program contained in this bulletin are not applicable to (1) counties other than Licking County, Ohio, and (2) public domain of the United States, including land owned by the United States and administered by the Forest Service of the United States Department of Agriculture, or other lands in which the beneficial ownership is in the United States.

SECTION I. *Definitions.* For the purpose of the 1939 Licking County Program, unless the context otherwise requires:

1. *Secretary* means the Secretary of Agriculture of the United States.

2. *Director of the north central division* means the director of the division of the Agricultural Adjustment Administration in charge of the 1939 Agricultural Conservation Program in the North Central Region.

3. *North central region* means the area included in the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin.

4. *State committee* means the group of persons designated in Ohio to assist in the administration of the 1939 Agricultural Conservation Program in Ohio.

5. *County committee* means the group of persons elected in Licking County to assist in the administration of the 1939 Agricultural Conservation Program in that county.

6. *County* means the political or civil division of a State designated as a county.

7. *Person* means an individual, partnership, association, corporation, estate, or trust, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

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

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

10. *Farm* means all adjacent or nearby farm land under the same ownership whether operated by one person or field-rented in whole or in part to one or more persons and constituting a unit with respect to the rotation of crops.

If the operator and all the owners entitled to share in the crops request and agree, a farm may include any adjacent or nearby farm land operated by the same person as part of the same unit in the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other land if the county committee determines that:

a. There is one crop rotation system on the entire area of land;

b. The yields and productivity of the differently owned tracts do not vary substantially;

c. The combination is not being made for the purpose of increasing acreage allotments or primarily for the purpose of effecting performance; and

d. The differently owned tracts customarily are, and in 1939 will be, regarded in the community as a farm.

A farm is regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon, it is regarded as located in the county in which the major portion of the farm is located.

11. *Cropland* means:

a. For 1938, that acreage which was, or could have been, determined to be cropland under the provisions of the 1938 Agricultural Conservation Program for Licking County, Ohio.

b. For 1939, farm land which is tilled in 1939, was tilled in 1938, or was in regular rotation, excluding commercial orchards and any land growing a sod-producing crop in 1939, which, if tilled, will constitute an erosion hazard to that farm or to the community.

Land that was not devoted between January 1, 1933, and January 1, 1939, to the production of intertilled crops, small grain crops, or conserving crops seeded in regular rotation, should be considered noncropland unless such land is suitable for the production of soil-depleting crops without clearing, draining, or irrigating; is definitely equal to or superior to the land in the community used for the production of soil-depleting crops

with respect to productivity and adaptability to the production of such crops; if tilled, will not become a serious wind or water erosion hazard; and will in the normal course of the crop rotation on the farm be used for the production of soil-depleting crops.

Land that was devoted between January 1, 1933, and January 1, 1939, to the production of crops should be considered noncropland if it is no longer cropped or suitable to the production of soil-depleting crops, by reason of severe erosion, lack of clearing or draining, or discontinuance of irrigation, and is inferior to the land in the farm used for the production of soil-depleting crops, with respect to the productivity and adaptability to the production of such crops.

12. *Commercial orchards* means the acreage in planted or cultivated fruit trees, nut trees, vineyards, hops, or bush fruits on the farm on January 1, 1939 (excluding nonbearing orchards and vineyards), from which the principal part of the production is normally sold.

13. *Open noncropland pasture* means any farm land not cropland on which the predominant growth is forage characteristic of grazing lands, provided this land is essentially free of brush, briars, stumps, and trees. Any acreage of noncropland pasture occupied to such an extent by stumps, trees, or other objects as to materially interfere with the application of liming or fertilizing materials or with the taking of measurements shall not qualify as open noncropland pasture. The term "open noncropland pasture" shall include any noncropland used for the production of wild hay.

14. *Winter cover crop* means (a) any biennial or perennial legume or grass or stubble of any of these crops, or (b) any small grain which will live through or into the winter, provided there is good and sufficient cover to protect the soil from wind and water erosion and leaching.

15. *Productivity factor* is that rating given each crop, land use, or unit of land treatment denoting the relative degree to which that crop, land use, or unit of land treatment degrades or restores the soil. Restorative crops, land uses, or land treatments are denoted by positive factors, and the degrading is shown by negative factors.

16. *Productivity balance value* is that rating given each farm on the basis of the combined productivity factors for each crop, land use, or unit of land treatment on cropland, combined with the erosion factor on that cropland, denoting the degree to which the cropland on that farm is being degraded, maintained, or improved. A farm with a negative productivity balance value is assumed to be in a relative state of cropland deterioration, while a farm with a positive productivity balance value is assumed to be in a relative state of cropland improvement, and the size of the balance value denotes the relative rate of deterioration or improvement.

17. *Erosion factor* is that rating given each field and each farm on the basis of the average slope shown by the cropland on that farm, for the purpose of indicating the degree to which the cropland on such farm is subject to erosion.

SEC. II. *Classification of land use or treatment with associated productivity factors.* The acreage of cropland upon a farm in 1938 and in 1939 shall be classified according to its use or treatment in such year and shall receive appropriate productivity factor as follows:

1. *Cropland not planted.* a. Cropland idle and bare during season: —2.0.

b. Cropland idle but not bare nor fallowed during season: —0.5.

c. Cropland fallowed during season: —2.0.

2. *Cropland planted to field crops for harvesting within the crop year.* a. Field corn for silage or grain harvested or hogged off: —2.0.

b. Winter-grains (wheat, rye) harvested as grain, hay, or pasture, including hogged off: —1.0.

c. Spring or summer seeded small grains (oats, barley, flax, buckwheat) harvested as grain, hay or pasture: —0.9.

d. Soybeans or cowpeas harvested as seed or hay: —0.5.

e. Sudan grass harvested as hay or pasture: —1.5.

f. Millet harvested as hay or pasture: —1.5.

g. Sorghums for harvesting: —2.0.

h. Rape for pasture: —1.0.

i. Cropland planted to a crop for harvesting within the crop year, not fall plowed but bare of sod or of winter cover crop as of October 31, 1939. (This factor to be applied in addition to any other factor applicable to such cropland): —0.5.

3. *Cropland on which is growing a good stand of hay or pasture plants.* For a land use to be classified as producing one of the crops listed in this subsection 3, at least 75 percent of the stand must be of that particular crop.

a. Alfalfa, stand in year of seeding: +1.5.

b. Alfalfa, 2nd year stand: +1.0.

c. Alfalfa, 3rd year stand: +0.5.

d. Alfalfa, 4th year, and more, stand: 0.0.

e. Sweetclover (biennial) year of seeding: +1.5.

f. Sweetclover, 2nd year of growth, pastured or cut for hay: +1.0.

g. Sweet clover, 2nd year of growth, not pastured or cut for hay: +1.5.

h. Clovers (red, mammoth, alsike), year of seeding: +1.0.

i. Clovers (red, alsike, mammoth), 2nd year of growth, pastured or cut for hay: +1.0.

j. Clovers, (red, alsike, mammoth) 2nd year of growth, not pastured or cut for hay: +1.5.

k. Alfalfa-grass mixtures, year of seeding: +1.5.

l. Alfalfa-grass mixtures, 2nd year of growth: +0.5.

m. Alfalfa-grass mixtures, 3rd year of growth: +0.5.

n. Alfalfa-grass mixtures, 4th year of growth: 0.

o. Clover-grass mixtures, year of seeding: +0.5.

p. Clover-grass mixtures, 2nd year of growth: +0.5.

q. Timothy, orchard grass, or mixtures regardless of year of seeding: 0.

r. Bluegrass and other permanent pasture grasses: 0.

s. Lespedeza, cut for hay or pastured: +0.5.

t. Lespedeza, not cut for hay or pastured: +1.0.

Any of these crops grown from unadapted seed planted between November 1, 1938, and October 31, 1939, shall receive a productivity factor of: 0.

4. *Cropland into which is incorporated a green manure or a residue crop.* a. Sweet clover, 2nd year of growth, not pastured, plowed under green prior to June 1: +1.0.

b. Sweet clover, 2nd year of growth, not pastured nor cut for hay or seed, plowed under after June 1: +2.0.

c. Alfalfa, 2nd or more years of growth, not pastured and plowed under green prior to June 1: +1.0.

d. Alfalfa, 2nd or later years of growth, not pastured nor cut for hay or seed, plowed under green after June 1: +2.0.

e. Clovers (red alsike, mammoth), 2nd year of growth, not pastured and plowed under green prior to June 1: +0.75.

f. Clovers (red, alsike, mammoth), 2nd year of growth, not pastured nor cut for hay or seed, plowed under after June 1: +1.75.

g. Soybeans, cowpeas, or vetch, entire plant plowed under in bloom stage: +1.5.

h. Rye, wheat, or buckwheat not pastured, plowed under green with at least sixty days of growth: +0.5.

i. Sweet corn, entire stalk and leaves plowed under green after removal of ears (this factor in addition to that indicated under subsection 5, this Section II): +0.5.

j. Field corn, drilled solid and entire plant plowed under green in tassel stage: +1.5

5. *Cropland planted to vegetables and special crops for harvesting within the crop year.* a. Popcorn for harvesting: —1.5.

b. Sweet corn harvested for market or canning: —1.5.

c. Sweet corn for other uses: —2.0.

d. Tomatoes for harvesting: —2.0.

e. Irish potatoes for harvesting: —2.0.

f. Sweet potatoes for harvesting: —2.0.

g. Onions for harvesting: —2.0.

h. Melons for harvesting: —2.0.
i. Pumpkins for harvesting: —2.0.
j. Cucumbers for harvesting: —2.0.
k. Cabbage for harvesting: —1.5.
l. Canning peas for harvesting: —0.5.
m. Field peas for harvesting: —0.5.
n. Field beans for harvesting: —0.5.
o. Turnips for harvesting: —2.0.

6. *Cropland occupied by fruit or forest tree plantings.* a. Noncommercial Orchards (entire acreages) (Orchards interplanted, in addition to this factor shall receive the factor assigned to the interplanted crop for the acreage of such interplanted crop): —2.5.
b. Cane and Bush Fruits: —2.0.
c. Rhubarb: —1.0.
d. Asparagus: —1.0.
e. Forest Trees and Windbreaks: 0.

7. *Commercial fertilizers applied to cropland.*[1] a. For each 100 lbs. of single strength commercial fertilizer: +0.07.
b. For each 100 lbs. of 1½ strength commercial fertilizer: +0.11.
c. For each 100 lbs. of double strength commercial fertilizer: +0.15.
d. For each 100 lbs. of other commercial fertilizer credit in accordance with its proportional strength based on the officially registered, guaranteed analysis.

No credit will be given for the application of any fertilizer not guaranteed by the manufacturer and registered with the Ohio State Department of Agriculture in conformity with the Ohio State Fertilizer Control Law. For application upon cropland of fertilizing materials which are furnished to the farmer by any State or Federal agency credit will be given subject to the provisions of subsection 3, Section VI.

8. *Limestone applied to cropland.* a. For each 1,000 lbs. of "agricultural ground limestone" possessing a neutralizing power of 90 to 108: +0.25.
b. For each 1,000 lbs. of "agricultural meal" possessing a neutralizing power of 90 to 108: +0.20.
c. For each 1,000 lbs. of "pulverized limestone" possessing a neutralizing power of 90 to 108: +0.30.
d. For each 1,000 lbs. of "hydrated lime" possessing a neutralizing power of 120 to 154: +0.40.
e. For each 1,000 lbs. of "hydrated lime" possessing a neutralizing power of 155 to 175: +0.50.
f. For each 1,000 lbs. of other types of liming materials of certified neutralizing power, credit in proportion to that for 1,000 lbs. of "agricultural ground limestone."

Credit will not be given for the application upon cropland of liming materials unless officially registered and guaranteed in conformity with the provisions of the Ohio Fertilizer Control Law, or unless the neutralizing power has been determined and certified by the Ohio State Soil Testing Laboratory.

[1] 20 units of plant nutrients constitute a single strength fertilizer. Example: 2–12–6, 2–16–2, 0–14–6, 0–20–0.

For application upon cropland of liming materials which are furnished the farmer by any State or Federal agency credit will be given subject to the provisions of subsection 3, Section VI.

9. *Cropland contour tilled or strip cropped on the contour.* a. Cropland on which intertilled crops are tilled on the contour—a positive productivity factor equal to 30 percent of the erosion factor for such cropland.

b. Cropland strip cropped on the contour with alternate strips of intertilled crops and sown, close-drilled, or sod crops—a positive productivity factor equal to 60 percent of the erosion factor for such intertilled cropland and a positive productivity factor equal to 30 percent of the erosion factor for other negative value crops.

The factors under a and b of this subsection 9 shall apply only to cropland having a slope greater than 2 percent and not in excess of 24 percent, and the same cropland shall not be eligible to receive more than one of such factors.

SEC. III. *Productivity balance values and erosion factors.* The county committee, in accordance with provisions contained herein and instructions issued by the Agricultural Adjustment Administration, shall establish for each 1939 farm:

1. A 1938 productivity balance value and a 1939 productivity balance value on the basis of percent of slope, uses and treatments of cropland, and types of crops produced in the respective years.
2. An erosion factor for total cropland in the farm on the basis of the slope of the various cropland fields.

SEC. IV. *Cropland conserving payments*—1. *Maintenance payment.* For each farm in Licking County a cropland maintenance payment scale will be established. A maintenance payment will be made on each farm for which the 1939 productivity balance value is in excess of the lower extreme of this scale. The upper extreme of the payment scale on all farms shall be +0.20. The lower extreme of the payment scale shall be —0.90 plus 50 percent of the weighted average erosion factor for all the cropland on that farm. The maintenance payment for each acre of cropland shall be equal to 1.25 cents for each point (0.01) by which the 1939 productivity balance value for that farm is above the lower extreme of the payment scale for that farm up to a limit of the number of such points between the lower and upper extremes of the payment scale for that farm.

2. *Building payment.* The cropland building payment for each acre of cropland shall be equal to 1.50 cents for each point (0.01) by which the 1939 productivity balance value exceeds the 1938 productivity balance value up to a limit of 40 such points.

To be eligible for cropland conserving payments a farm must be in an active state of cultivation in 1939.

SEC. V. *Pasture land conserving payments.* A pasture conserving allowance shall be established for each farm. This allowance shall be the maximum amount which may be earned in 1939 by the carrying out on a farm of any of the pasture conserving practices listed below. The pasture conserving allowance for a farm shall be 50 cents for each acre of open noncropland pasture. Those farms for which this method of calculation results in a pasture conserving allowance of less than $3.00 shall have an allowance of $3.00 established for them. The practices and the conditions under which these practices must be performed in order to earn payment are:

1. *Fertilizing materials.* The application on open noncropland pasture in 1939 of commercial fertilizing materials which are officially registered and guaranteed in conformity with the provisions of the Ohio State Fertilizer Control Law shall earn payments as follows:

a. For each 100 lbs. single strength commercial fertilizer: ($0.50).
(A single strength fertilizer is one for which the summation of the units of plant nutrients equals 20. For example, 2–12–6, 2–16–2, 0–14–6, 0–20–0, etc.)
b. For each 100 lbs. of 1½ strength commercial fertilizer: ($0.75).
c. For each 100 lbs. of double strength commercial fertilizer: ($1.00).
d. For each 100 lbs. of other strength commercial fertilizer, payment in proportion to its strength in relation to single strength.

2. *Liming materials.* The application on open noncropland pasture between November 1, 1938, and October 31, 1939, of liming materials which are officially registered and guaranteed in conformity with the provisions of the Ohio State Fertilizer Control Law, or such other liming materials for which the neutralizing power has been determined and certified by the State soil testing laboratory shall earn payments as follows:

a. For each ton of "agricultural ground limestone" possessing a neutralizing power of 90 to 108: ($1.50).
b. For each ton of "agricultural meal" possessing a neutralizing power of 90 to 108: ($1.00).
c. For each ton of "pulverized limestone" possessing a neutralizing power of 90 to 108: ($1.80).
d. For each ton of "hydrated lime" possessing a neutralizing power of 120 to 154: ($2.70).
e. For each ton of "hydrated lime" possessing a neutralizing power of 155 to 175: ($3.00).
f. For each ton of other liming materials of certified neutralizing power, payment in proportion to that for one ton of "agricultural ground limestone."

To be eligible for pasture land conserving payments, practices listed herein must be carried out by such methods as conform to good farm practice. Proof of

performance for any practice shall consist of satisfactory evidence that the practice was completed in accordance with conditions specified. Pasture land conserving payments for any practice herein set forth will be subject to the qualifications indicated in subsection 3, Section VI.

SEC. VI. *Soil-conserving payments for tree planting.* Each farm in Licking County shall be eligible for payment in 1939 for the planting between November 1, 1938, and October 31, 1939, of forest trees or windbreaks on farm land at the rate of $10.00 per acre, up to an acreage limit equivalent to 5 percent of the total farm acreage, provided these plantings are made with acceptable species, classes of stock, rates of planting, and are properly protected. Payments for tree planting shall be subject to the following qualifications:

1. That in the case of forest tree plantings there is, on the date as of which final inspection is made for the purpose of determining performance on the farm, a stand of at least 650 living trees per acre; or if due to uncontrollable natural causes a stand of 650 living trees per acre is not obtained on the date as of which final inspection is made for the purpose of determining performance on the farm, there is satisfactory evidence that such trees were planted in accordance with good tree culture and that such trees have been properly protected.

2. That in the case of windbreak, or shelterbelt, plantings, there is on the date as of which final inspection is made for the purpose of determining performance on the farm, a stand of at least 300 living trees per acre, or if due to uncontrollable natural causes a stand of 300 living trees is not obtained on the date as of which final inspection is made for the purpose of determining performance on the farm, there is satisfactory evidence that such trees were planted in accordance with good tree culture practice and that such trees have been properly protected.

3. Practices carried out with labor, seed, trees, and materials furnished entirely by any Federal or State agency, other than the Agricultural Adjustment Administration, shall not be counted as a practice eligible for payment under this section. If a portion of the labor, seed, trees, or other materials used in carrying out any practice is furnished by a State or Federal agency, and such portion represents one-half or more of the total cost of carrying out such practice, such practice shall not be counted as a practice eligible for payment under this section; if such portion represents less than half of the total cost of carrying out such practice, one-half of such practice shall be counted as a practice eligible for payment under this section; Provided, that labor, seed, trees, and materials furnished to a State, a political subdivision of a State, or any agency thereof by any agency of the same State shall not be deemed to be furnished by "any State * * * agency" within the meaning of this paragraph. If trees are purchased from a Clark-McNary Cooperative State Nursery, such purchases shall not be deemed to be paid for in whole or in part by a State or Federal agency.

SEC. VII. *Division of payments.* The share of any person in any payments computed with respect to any farm in Licking County, subject to the provisions of Sections IX, X, and XI, shall be determined in accordance with the methods specified in this Section VII.

1. *Cropland conserving payments.* The payment computed for any farm with respect to cropland conserving payments shall be divided among the landlords and tenants in the same proportion (as indicated by their acreage shares expressed in terms of either proportionate acreages or percentages) that such persons are entitled, at the time the crops are harvested, to share in the proceeds (other than a fixed commodity payment) of the crops grown on the farm in 1939.

2. *Conserving payments for pasture land and for tree planting.* The amount of payment earned under Section V and Section VI shall be paid to the landlord or tenant who carried out the practices to earn these payments. If the county committee determines that more than one such person contributed to the carrying out of one or more of such practices on the farm in 1939, such payment shall be divided in the proportion that the quantity of practices contributed by each such person bears to the total quantity of practices carried out on the farm in 1939. Each person contributing to the practices carried out on a particular acreage shall be deemed to have contributed equally to such practices, unless such persons establish to the satisfaction of the county committee that their respective contributions thereto were not in equal proportion, in which event credit for such practices shall be divided in the proportion which the county committee determines each such person contributed thereto.

SEC. VIII. *Increase in small payments.* The total payment, computed under Sections IV to VII, inclusive, for any person with respect to any farm shall be increased as follows:

1. Any payment amounting to 71 cents or less shall be increased to $1.00;

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

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

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

[1] Increase to $200.00.
[2] No increase.

SEC. IX. *Deductions incurred on other farms—1. Other farms in Licking County.* If a person who has made application for payment with respect to any farm in Licking County has an interest as landlord or tenant in any other farm in Licking County which qualifies for neither a maintenance payment nor a building payment as calculated under Section IV, the payment which otherwise would be made to such person shall be decreased by an amount equal to such person's share of the deduction with respect to such other farm.

The deduction for each acre of cropland in such other farm shall be equal to 1.25 cents for each point (0.01) by which the 1939 productivity balance value is below the lower extreme of the payment scale.

Any deduction computed for a farm in accordance with the above provision shall be divided among the landlords and tenants in the same proportion (as indicated by their acreage shares expressed in terms of either proportionate acreages or percentages) that such persons are entitled, at the time the crops

are harvested, to share in the proceeds (other than a fixed commodity payment) of the crops grown on the farm in 1939.

2. *Other farms in the State.* If the deductions computed for a landlord or tenant with respect to one or more farms in a county exceed the payments computed for such landlord or tenant on other farms in such county, the amount of such excess deductions shall be deducted from the payments computed for such landlord or tenant with respect to any other farms in the State, if the State committee finds that the crops grown and practices adopted on the farms with respect to which such deductions are computed substantially offset the contribution to the program made on such other farms.

SEC. X. *Deductions for association expenses.* There shall be deducted pro rata from the payments with respect to any farm in Licking County all or such part as the Secretary may prescribe of the estimated administrative expenses incurred or to be incurred by the Licking County Agricultural Conservation Association.

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

2. *Payment computed and made without regard to claims.* Any payment or share of payment shall be computed and made without regard to questions of title under State law, without deduction of claims for advances (except as provided in subsection 4 of this Section XI) and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

3. *Changes in leasing and cropping agreements, reductions in number of tenants, and other devices.* If on any farm in 1939 any change of the arrangements which existed on the farm in 1938 is made between the landlord and the tenants and such change would cause a greater proportion of the payments to be made to the landlord under the 1939 Agricultural Conservation Program than would have been made to the landlord for performance on the farm under the 1938 Agricultural Conservation Program, payments to the landlord under the 1939 Agricultural Conservation Program with respect to the farm shall not be greater than the amount that would have been paid to the landlord if the arrangements which existed on the farm in 1938 had been continued in 1939, if the county committee certifies that the change is not justified and disapproves such change.

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

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

4. *Assignments.* Any person who may be entitled to any payment in connection with the 1939 Agricultural Conservation Program may assign his interest in such payment as security for cash loaned or advances made for the purpose of financing the making of a crop in 1939. No such assignment will be recognized unless (1) the assignment is made in writing on Form ACP–69 in accordance with instructions issued by the Agricultural Adjustment Administration and is filed in the office of the county agricultural conservation association; (2) the farmer files with the assignment a statement that the assignment is made to pay or secure an indebtedness incurred in connection with financing the making of a crop in 1939 and not to pay or secure any preexisting indebtedness; and (3) the person to whom such assignment is made certifies that the payment is being assigned without discount for such purpose. Nothing contained in this Section XI shall be construed to give an assignee a right to any payment other than that to which the farmer is entitled nor shall the Secretary or any disbursing agent be subject to any suit or liability if payment is made to the farmer without regard to the existence of any such assignment.

5. *Cotton acreage in excess of allotment.* Any person who knowingly plants cotton on his farm in 1939 on acreage in excess of the cotton acreage allotment established for the farm for 1939 shall not be eligible for any payment under the provisions of the 1939 Agricultural Conservation Program. Any person having an interest in the cotton crop on a farm on which cotton is planted in 1939 on acreage in excess of the cotton acreage allotment for the farm for 1939 shall be presumed to have knowingly planted cotton on his farm on acreage in excess of such farm cotton acreage allotment if notice of the farm allotment is mailed to him prior to the completion of the planting of cotton on the farm, unless the farmer establishes the fact that the excess acreage was planted to cotton due to his lack of knowledge of the number of acres in the tract(s) planted to cotton. Such notice, if mailed to the operator of the farm, shall be deemed to be notice to all persons sharing in the production of cotton on the farm in 1939.

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

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

SEC. XIII. *Application for payment.*—1. *Persons eligible to file applications.* An application for payment with respect to a farm may be made by any person for whom, under the provisions of Section VII, a share in the payment with respect to the farm may be computed and (1) who at the time of harvest is entitled to share in the crops grown on the farm under a lease or operating agreement, or (2) who is owner of such farm and participates thereon in 1939 in carrying out approved soil-building practices.

2. *Time and manner of filing application and information required.* Payment will be made only upon applica-

tion submitted through the county office. The Secretary reserves the right (1) to withhold payment from any person who fails to file any form or furnish any information required with respect to any farm which such person is operating or renting to another person for a share of the crops grown thereon, and (2) to refuse to accept any application for payment if such application or any other form or information required is not submitted to the county office within the time fixed by the director of the North Central Division. At least two weeks' notice to the public shall be given of the expiration of a time limit for filing prescribed forms. Such notice shall be given by mailing the same to the office of each county committee and making copies of the same available to the press.

3. *Application for other farms.* If a person has the right to receive all or a portion of the crops or proceeds therefrom produced on more than one farm in Licking County and makes application for payment with respect to one of such farms, such person must make application for payment with respect to all such farms which he operates or rents to other persons. Upon request by the State committee such person shall also file with the committee such information as it may request regarding any other farm in the State with respect to which he has the right to receive all or a portion of the crops or proceeds thereof.

SEC. XIV. *Appeals.* Any person may, within 15 days after notice thereof is forwarded to or available to him, request the county committee in writing to reconsider its recommendation or determination with respect to any of the following matters affecting any farm in which he has an interest; (1) eligibility to file an application for payment; (2) the productivity balance value; (3) the division of payment; (4) any other matter affecting the right to or the amount of his payment with respect to the farm. The county committee shall notify such person of its decision in writing within 15 days after receipt of such written request for reconsideration. If such person is dissatisfied with the decision of the county committee, he may, within 15 days after such decision is forwarded to or made available to him, appeal in writing to the State committee. The State committee shall notify such person of its decision in writing within 30 days after the receipt of the appeal. If such person is dissatisfied with the decision of the State committee, he may, within 15 days after such decision is forwarded to or made available to him, request the regional director to review the decision of the State committee.

SEC. XV. *Bulletins, instructions, and forms.* The Agricultural Adjustment Administration shall prepare and issue such bulletins, instructions, and forms as may be required in administering the 1939 Agricultural Conservation Program for Licking County, Ohio.

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

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

[F. R. Doc. 39-743; Filed, March 4, 1939; 12:40 p. m.]

1938 COUNTY AVERAGE YIELDS OF FLUE-CURED, BURLEY, FIRE-CURED AND DARK AIR-CURED, CIGAR FILLER AND BINDER, AND GEORGIA-FLORIDA TYPE 62 TOBACCO

Established by the Secretary in accordance with the provisions of the Soil Conservation and Domestic Allotment Act, as amended, for the purposes of the 1938 Agricultural Conservation Program.

FLUE-CURED

Alabama

County:	*Average yield of flue-cured tobacco (pounds per acre)*
Calhoun	800
Conecuh	800
Covington	800
Dale	800
Etowah	800
Geneva	800
Henry	800
Houston	800

Florida

Alachua	880
Baker	680
Bradford	776
Calhoun	720
Columbia	752
Dixie	696
Gadsden	752
Gilchrist	820
Hamilton	840
Hernando	760
Hillsborough	720
Holmes	760
Jackson	752
Jefferson	752
Lafayette	696
Leon	768
Levy	760
Madison	784
Marion	760
Nassau	718
Okaloosa	680
Osceola	680
Pasco	760
Polk	760
Putnam	720
St. Johns	840
Santa Rosa	768
Sumter	760
Suwannee	800
Taylor	720
Union	816
Washington	800

Georgia

Appling	855
Atkinson	905
Bacon	868
Baker	825
Barrow	760
Ben Hill	807
Berrien	922
Brantley	856
Brooks	851
Bryan	731
Bulloch	826
Burke	690
Camden	834
Candler	713
Charlton	845
Chatham	700
Clayton	760
Clinch	865
Coffee	925

Georgia—Continued

County:	*Average yield of flue-cured tobacco (pounds per acre)*
Colquitt	900
Cook	896
Crisp	873
Decatur	763
De Kalb	760
Dodge	786
Dooly	850
Dougherty	850
Early	769
Echols	711
Effingham	840
Emanuel	707
Evans	710
Grady	795
Hall	760
Henry	760
Houston	868
Irwin	900
Jackson	760
Jeff Davis	878
Jefferson	837
Jenkins	772
Johnson	694
Lanier	891
Laurens	740
Lee	830
Liberty	700
Long	748
Lowndes	887
Madison	760
Marion	760
Miller	754
Mitchell	800
Montgomery	751
Pierce	874
Pulaski	760
Richmond	1,025
Schley	760
Screven	771
Stewart	728
Taliaferro	760
Tattnall	756
Telfair	770
Taylor	760
Terrell	775
Thomas	862
Tift	898
Toombs	710
Treutlen	715
Turner	797
Ware	879
Washington	760
Wayne	859
Wheeler	740
Wilcox	802
Wilkes	760
Wilkinson	760
Worth	901

North Carolina

Alamance	740
Alexander	814
Anson	800
Beaufort	841
Bertie	844
Bladen	831
Brunswick	846
Burke	790
Cabarrus	800
Caldwell	790
Camden	800
Carteret	806
Caswell	740
Catawba	730
Chatham	739
Chowan	856
Columbus	881
Craven	831
Cumberland	806
Currituck	800
Davidson	748
Davie	738
Duplin	831
Durham	740
Edgecombe	872
Forsyth	781
Franklin	796
Gaston	800
Gates	800
Granville	738
Greene	871
Guilford	816

North Carolina—Continued

County:	Average yield of flue-cured tobacco (pounds per acre)
Halifax	847
Harnett	841
Hertford	847
Hoke	810
Hyde	800
Iredell	814
Johnston	872
Jones	831
Lee	814
Lenoir	847
Lincoln	800
Martin	856
Montgomery	740
Moore	740
Nash	864
New Hanover	831
Northampton	812
Onslow	847
Orange	740
Pamlico	794
Pender	831
Perquimans	831
Person	740
Pitt	856
Randolph	790
Richmond	755
Robeson	864
Rockingham	831
Rowan	790
Sampson	856
Scotland	806
Stanly	800
Stokes	790
Surry	773
Tyrrell	800
Union	800
Vance	740
Wake	796
Warren	773
Washington	826
Wayne	856
Wilkes	765
Wilson	870
Yadkin	781

South Carolina

Aiken	558
Allendale	678
Anderson	741
Bamberg	699
Barnwell	746
Berkeley	662
Calhoun	617
Chester	650
Chesterfield	740
Clarendon	775
Colleton	774
Darlington	793
Dillon	838
Dorchester	783
Fairfield	608
Florence	822
Georgetown	832
Greenville	718
Hampton	681
Horry	967
Jasper	746
Kershaw	667
Lancaster	704
Lee	749
Lexington	746
McCormick	812
Marion	832
Marlboro	795
Newberry	903
Orangeburg	746
Richland	648
Saluda	748
Sumter	800
Williamsburg	832
York	576

Virginia

Amelia	810
Amherst	740
Appomattox	770
Bedford	790
Brunswick	760
Buckingham	680
Campbell	760
Carroll	680

Virginia—Continued

County:	Average yield of flue-cured tobacco (pounds per acre)
Charles City	700
Charlotte	750
Chesterfield	770
Cumberland	850
Dinwiddie	750
Floyd	750
Franklin	800
Goochland	700
Greensville	790
Halifax	720
Henrico	700
Henry	710
Isle of Wight	700
Lunenburg	740
Mecklenburg	760
Montgomery	660
Nansemond	870
New Kent	700
Nottoway	820
Patrick	760
Pittsylvania	750
Prince Edward	790
Prince George	630
Powhatan	850
Southampton	790
Surry	700
Sussex	790

BURLEY

Alabama

County:	Average Yield of Burley Tobacco (pounds per acre)
Calhoun	850
Cullman	850
Etowah	850
Jackson	850
Lauderdale	850
Limestone	850
Madison	850

Arkansas

Baxter	800
Benton	850
Carroll	850
Fulton	850
White	587

Georgia

Catoosa	850
Cherokee	850
Fannin	850
Gilmer	850
Gordon	850
Habersham	850
Hall	850
Hancock	850
Lumpkin	850
Murray	850
Rabun	850
Towns	850
Union	850
Walker	850
White	850
Whitfield	850

Illinois

Crawford	750
Hamilton	750
Lawrence	750
Moultrie	750
Vermilion	750

Indiana

Bartholomew	914
Brown	828
Clark	777
Crawford	772
Daviess	620
Dearborn	731
Decatur	645
Fayette	974
Floyd	853
Fountain	1,066
Franklin	741
Grant	1,058
Greene	761
Harrison	768
Hendricks	783
Jackson	541

Indiana—Continued

County:	Average Yield of Burley Tobacco (pounds per acre)
Jefferson	791
Jennings	825
Johnson	779
Lawrence	748
Martin	603
Monroe	923
Morgan	890
Ohio	782
Orange	542
Owen	643
Perry	741
Putnam	781
Ripley	774
Rush	881
Scott	707
Shelby	1,000
Spencer	719
Switzerland	810
Union	725
Washington	778

Kansas

Atchison	701
Brown	800
Doniphan	876
Jackson	800
Jefferson	807
Johnson	828
Leavenworth	851
Linn	835

Kentucky

Adair	792
Allen	832
Anderson	814
Ballard	688
Barren	815
Bath	823
Bell	511
Boone	1,003
Bourbon	1,005
Boyd	599
Boyle	901
Bracken	854
Breathitt	785
Breckenridge	717
Bullitt	781
Butler	725
Caldwell	763
Calloway	767
Campbell	855
Carlisle	779
Carroll	968
Carter	703
Casey	825
Christian	838
Clark	869
Clay	884
Clinton	878
Crittenden	768
Cumberland	681
Daviess	769
Edmonson	743
Elliott	749
Estill	663
Fayette	1,029
Fleming	804
Floyd	824
Franklin	817
Fulton	551
Gallatin	996
Garrard	857
Grant	1,010
Graves	863
Grayson	705
Green	772
Greenup	729
Hancock	730
Hardin	794
Harlan	593
Harrison	904
Hart	747
Henderson	745
Henry	850
Hickman	857
Hopkins	712
Jackson	844
Jefferson	802
Jessamine	876
Johnson	810
Kenton	882

Kentucky—Continued

County:	Average Yield of Burley Tobacco (pounds per acre)
Knott	600
Knox	702
Larue	801
Laurel	766
Lawrence	772
Lee	617
Leslie	589
Letcher	628
Lewis	808
Lincoln	840
Livingston	481
Logan	954
Lyon	755
McCracken	664
McCreary	832
McLean	755
Madison	844
Magoffin	719
Marion	841
Marshall	702
Mason	999
Meade	760
Menifee	689
Mercer	856
Metcalfe	729
Monroe	743
Montgomery	921
Morgan	820
Muhlenberg	657
Nelson	920
Nicholas	690
Ohio	690
Oldham	820
Owen	899
Owsley	718
Pendleton	850
Perry	533
Pike	813
Powell	568
Pulaski	840
Robertson	704
Rockcastle	792
Rowan	738
Russell	755
Scott	992
Shelby	925
Simpson	927
Spencer	795
Taylor	854
Todd	739
Trigg	775
Trimble	1,010
Union	870
Warren	946
Washington	917
Wayne	848
Webster	978
Whitley	656
Wolfe	709
Woodford	1,017

Missouri

Adair	800
Andrew	903
Atchison	800
Bates	670
Bollinger	600
Boone	767
Buchanan	838
Butler	786
Caldwell	873
Callaway	857
Cape Girardeau	700
Carroll	801
Carter	300
Cass	819
Chariton	852
Clay	903
Clinton	903
Cole	750
Cooper	846
Daviess	876
De Kalb	876
Gentry	800
Grundy	844
Holt	800
Howard	805
Howell	803
Jackson	900
Knox	763
Lafayette	902

Missouri—Continued

County:	Average Yield of Burley Tobacco (pounds per acre)
Lawrence	700
Lincoln	809
Linn	857
Livingston	750
McDonald	800
Macon	862
Marion	800
Miller	500
Moniteau	852
Monroe	876
Pettis	800
Pike	762
Platte	904
Randolph	750
Ray	879
Reynolds	300
Ripley	692
St. Clair	791
Saline	850
Schuyler	756
Scotland	756
Shelby	844
Stone	631
Taney	655
Texas	667
Warren	562
Webster	700

North Carolina

Alleghany	1,035
Ashe	1,142
Avery	993
Buncombe	994
Burke	1,034
Cabarrus	800
Caldwell	943
Chatham	739
Cherokee	1,140
Clay	996
Cleveland	645
Davidson	1,110
Davie	1,030
Forsyth	1,110
Gaston	1,030
Graham	1,025
Haywood	1,136
Henderson	869
Jackson	1,262
Lincoln	800
McDowell	950
Macon	983
Madison	976
Mecklenburg	856
Mitchell	942
Polk	1,033
Rutherford	1,030
Swain	930
Transylvania	955
Watauga	1,073
Wilkes	1,110
Yancey	923

Ohio

Adams	778
Belmont	817
Brown	834
Butler	768
Clark	725
Clermont	783
Clinton	795
Fayette	796
Gallia	763
Greene	832
Guernsey	725
Hamilton	781
Highland	796
Jackson	743
Lawrence	789
Meigs	864
Miami	750
Monroe	808
Montgomery	774
Morgan	716
Muskingum	700
Noble	905
Pickaway	775
Pike	824
Preble	784
Ross	854
Scioto	755
Vinton	702

Ohio—Continued

County:	Average Yield of Burley Tobacco (pounds per acre)
Warren	692
Washington	712

Oklahoma

Delaware	850

South Carolina

Abbeville	875
Anderson	875
Cherokee	875
Chester	875
Greenville	875
Laurens	875
McCormick	875
Oconee	875
Pickens	875
Saluda	875
Spartanburg	875
Union	875
York	875

Tennessee

Anderson	787
Bedford	832
Bledsoe	740
Blount	1,004
Bradley	890
Campbell	851
Cannon	700
Carter	993
Cheatham	998
Claiborne	939
Clay	735
Cocke	870
Coffee	755
Cumberland	722
Davidson	886
DeKalb	870
Dickson	900
Fentress	862
Franklin	799
Giles	760
Grainger	1,015
Greene	900
Grundy	680
Hamblen	1,005
Hamilton	742
Hancock	1,022
Hawkins	920
Hickman	774
Houston	1,033
Humphreys	721
Jackson	804
Jefferson	1,040
Johnson	1,152
Knox	992
Lawrence	784
Lewis	592
Lincoln	841
Loudon	934
McMinn	858
Macon	818
Marion	666
Marshall	842
Maury	846
Meigs	828
Monroe	880
Montgomery	818
Moore	846
Morgan	672
Obion	900
Overton	775
Perry	648
Pickett	802
Polk	812
Putnam	822
Rhea	937
Roane	875
Robertson	955
Rutherford	802
Scott	743
Sequatchie	760
Sevier	1,034
Smith	826
Stewart	791
Sullivan	967
Sumner	845
Trousdale	824
Unicoi	890
Union	933
Van Buren	582
Warren	703

Tennessee—Continued

County:	Average Yield of Burley Tobacco (pounds per acre)
Washington	963
Wayne	770
White	857
Williamson	827
Wilson	868
Virginia	
Albemarle	714
Amelia	800
Amherst	800
Appomattox	800
Bedford	852
Bland	1,140
Brunswick	976
Buckingham	960
Campbell	800
Carroll	850
Charlotte	600
Cumberland	794
Dickenson	962
Dinwiddie	800
Floyd	1,000
Fluvanna	825
Giles	700
Goochland	600
Grayson	1,045
Halifax	750
Henrico	850
Lee	945
Madison	700
Mathews	800
Mecklenburg	800
Montgomery	1,008
Nottoway	900
Patrick	800
Pittsylvania	800
Prince Edward	728
Pulaski	885
Rockbridge	600
Russell	1,185
Scott	1,010
Smyth	1,120
Spotsylvania	885
Tazewell	1,220
Washington	1,110
Wise	940
Wythe	965
West Virginia	
Boone	740
Cabell	749
Clay	690
Jackson	779
Kanawha	679
Lincoln	691
Logan	656
Mason	825
Mercer	1,290
Mingo	795
Monroe	1,317
Putnam	734
Roane	703
Summers	625
Wayne	794
Wirt	667
Wood	647

FIRE-CURED AND DARK AIR-CURED

Indiana

	Average Yield of Fire-cured and Dark Air-cured Tobacco (pounds per acre)
Dubois	863
Perry	1,088
Pike	728
Spencer	876
Warrick	821
Kentucky	
Allen	992
Ballard	968
Breckenridge	795
Butler	808
Caldwell	870
Calloway	865
Carlisle	944
Christian	845
Crittenden	851
Daviess	922
Fulton	851

Kentucky—Continued

County:	Average Yield of Fire-cured and Dark Air-cured Tobacco (pounds per acre)
Graves	871
Grayson	738
Hancock	1,030
Henderson	956
Hickman	857
Hopkins	796
Livingston	842
Logan	890
Lyon	857
McCracken	829
McLean	889
Marshall	808
Muhlenberg	737
Ohio	880
Simpson	996
Todd	765
Trigg	877
Union	880
Warren	1,122
Webster	868
Tennessee	
Benton	1,000
Cheatham	890
Coffee	726
Davidson	959
Decatur	1,000
Dickson	812
Franklin	740
Henry	816
Hickman	580
Houston	825
Humphreys	776
Lawrence	841
Macon	961
Montgomery	860
Moore	650
Obion	859
Robertson	906
Stewart	836
Sumner	847
Wayne	770
Weakley	855
Williamson	830
Virginia	
Albemarle	593
Amelia	825
Amherst	772
Appomattox	855
Bedford	885
Boutetourt	903
Brunswick	998
Buckingham	758
Campbell	860
Caroline	1,005
Charlotte	860
Chesterfield	850
Cumberland	837
Dinwiddie	880
Essex	948
Floyd	750
Fluvanna	780
Franklin	825
Goochland	720
Hanover	843
King and Queen	922
King William	915
Louisa	802
Lunenburg	900
Mecklenburg	770
Nelson	765
Nottoway	885
Pittsylvania	840
Powhatan	833
Prince Edward	869
Rockbridge	1,035
Spotsylvania	837

CIGAR FILLER AND BINDER

Connecticut

	Average Yield of Cigar Filler and Binder Tobacco (pounds per acre)
Fairfield	1,500
Hartford	1,586
Litchfield	1,500
Middlesex	1,500
Tolland	1,585

Florida

County:	Average Yield of Cigar Filler and Binder Tobacco (pounds per acre)
Gadsden	1,150
Georgia	
Decatur	1,050
Grady	1,050
Illinois	
Boone	1,000
Winnebago	1,000
Randolph	896
Wayne	896
Massachusetts	
Franklin	1,568
Hampden	1,568
Hampshire	1,568
Minnesota	
Benton	910
Fillmore	953
Freeborn	1,018
Houston	997
Meeker	1,062
Mille Lacs	1,007
Scott	675
Sherburne	890
Stearns	1,233
Winona	686
New Hampshire	
Cheshire	1,489
New York	
Cayuga	1,187
Chemung	1,298
Onondaga	1,262
Oswego	1,157
Steuben	1,231
Ohio	
Butler	1,133
Darke	933
Greene	1,026
Miami	948
Montgomery	988
Preble	972
Shelby	895
Warren	1,079
Pennsylvania	
Berks	1,218
Bradford	1,130
Chester	1,381
Clinton	1,297
Dauphin	1,148
Juniata	1,402
Lancaster	1,278
Lebanon	1,200
Lycoming	1,375
Tioga	1,099
York	1,293
Vermont	
Windham	1,489
Wisconsin	
Barron	1,055
Buffalo	1,190
Calumet	1,150
Chippewa	1,236
Columbia	1,300
Crawford	1,368
Dane	1,387
Dunn	1,042
Eau Claire	1,075
Grant	1,240
Greene	1,305
Jackson	1,100
Jefferson	1,181
Juneau	1,028
La Crosse	1,352
Monroe	1,313
Outagamie	1,150
Pepin	1,354
Pierce	1,223
Portage	1,000
Richland	1,366
Rock	1,339
Rusk	1,354
St. Croix	1,354
Trempealeau	1,152
Vernon	1,326

Wisconsin—Continued

County:	*Average Yield of Cigar Filler and Binder Tobacco (pounds per acre)*
Washington	1,175
Waushara	1,000

GEORGIA-FLORIDA TYPE 62

Florida

	Average Yield of Georgia-Florida Type 62 Tobacco (pounds per acre)
Gadsden	1,020
Leon	900
Madison	970

Georgia

Decatur	1,050
Grady	1,050

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

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

[F. R. Doc. 39–744; Filed, March 4, 1939; 12:41 p. m.]

1938 COUNTY AVERAGE YIELDS OF PEANUTS FOR MARKET IN COMMERCIAL PEANUT AREAS IN THE EAST CENTRAL REGION

Established by the Secretary in accordance with the provisions of the Soil Conservation and Domestic Allotment Act, as amended, for the purposes of the 1938 Agricultural Conservation Program.

North Carolina

County:	*Average Yield of Peanuts (pounds per acre)*
Beaufort	1,080
Bertie	1,110
Bladen	1,010
Brunswick	880
Chowan	1,210
Columbus	1,025
Edgecombe	1,100
Gates	1,110
Halifax	1,085
Hertford	1,110
Martin	1,080
Nash	1,125
New Hanover	880
Northampton	1,110
Onslow	880
Pasquotank	1,120
Pender	880
Perquimans	1,125
Pitt	1,035
Robeson	1,045
Tyrrell	1,120
Warren	935
Washington	1,120
Wilson	1,055

Virginia

Brunswick	740
Chesterfield	780
Dinwiddie	865
Greensville	1,110
Isle of Wight	1,080
Mecklenburg	740
Nansemond	1,100
Norfolk	1,035
Prince George	930
Southampton	1,100
Surry	1,135
Sussex	1,035

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

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

[F. R. Doc. 39–745; Filed, March 4, 1939; 12:41 p. m.]

[ACP–1938–3—Thomas County, Kans.]

1938 AGRICULTURAL CONSERVATION PROGRAM FOR THOMAS COUNTY, KANSAS

SUPPLEMENT NO. 3

Pursuant to the authority vested in the Secretary of Agriculture under Sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, the 1938 Agricultural Conservation Program for Thomas County, Kansas, as amended,[1] is hereby further amended as follows:

(1) The third sentence of item 1 of subsection B of Section II is amended to read as follows:

"Notwithstanding any other provision contained herein, on farms which are all noncrop pasture land the soil-building goal expressed in units shall equal the number of dollars in the total payment computed for the farm under Section III, subsection A, item 3, and the total payment computed for any such farm under Section III, subsection A, item 3, shall be considered as a payment in connection with soil-building practices."

(2) Item 4 of subsection A of Section III is amended to read as follows:

"4. *Designated wind erosion acres.* 65 cents per acre of designated wind erosion acreage."

Done at Washington, D. C., this 6th day of March 1939. Witness my hand and the seal of the Department of Agriculture.

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

[F. R. Doc. 39–753; Filed, March 6, 1939; 12:25 p. m.]

Food and Drug Administration.

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

In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetics Act [Section 701, 52 Stat. 1055; 21 U. S. C. 371 (e)], notice upon the proposals hereto attached and made a part hereof is hereby given to all interested persons that public hearings will be held beginning at 10 a. m., April 10, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, 12th Street and Pennsylvania Avenue NW., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U. S. C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing and establishing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for each of the foods commonly known as canned peaches, canned apricots, canned pears, and canned cherries.

All interested persons are invited to attend these hearings and offer relevant evidence either in person or by representative. In lieu of personal attendance, affidavits may be offered either in person at the time of these hearings or by sending the same to John McDill Fox, Room 2311, South Building, Department of Agriculture, Independence Avenue, between 12th and 14th Streets SW., Washington, D. C., so as to be in his office by the date above stated. Such affidavits, if relevant and material, may be received, but the Secretary will consider the lack of opportunity for cross-examination in determining the weight that shall be given to such affidavits.

Such proposed definition and standard of identity, label declaration of certain optional ingredients, standard of quality, form and manner of label statements of substandard quality, standard of fill of container, and label statement of substandard fill of container, for each of such foods, as attached hereto and made a part hereof, are subject to adoption, rejection, amendment, or modification by the Secretary, in whole or in part, as the evidence adduced at the hearings may require.

Mr. John McDill Fox is hereby designated as presiding officer to conduct, in the place of the Secretary, the fore-

[1] 3 F. R. 2773 DI.

going hearings, with authority to administer oaths, and to do all things necessary and appropriate to the proper conduct of such hearings as may be provided in the general procedural regulations which will be available at the hearings.

[SEAL] H. A. WALLACE,
Secretary.

MARCH 4, 1939.

SEC. 27.000 *Canned peaches—Identity; label statement of optional ingredients.* (a) Canned peaches are the food prepared from mature peaches of one of the following varietal groups: yellow clingstone; yellow freestone; white clingstone; white freestone. Such peaches, except in the case of whole peaches, are pitted, and are in one of the following forms of units: whole; halves; quarters; slices; dice; mixed pieces of irregular sizes and shapes. Peaches of each such varietal group in each such form of units are an optional peach ingredient. To one such ingredient is added one of the optional ingredients:

(25) Water.
(26) Water solution of sugar, of 25° Brix or more.
(27) Water solution of sugar, of less than 25° Brix.

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

(28) Spice.
(29) Flavoring.
(30) A vinegar.
(31) Peach pits (except in the case of whole peaches), not more than 1 to each 8 ounces of finished canned peaches.

The food is sealed in a container and so processed by heat as to prevent spoilage. The liquid of the finished canned peaches is not more than ____° Brix (to be fixed within the range of 30° Brix to 40° Brix).

(b) The label shall bear the words "Yellow clingstone," "Yellow freestone," "White clingstone," or "White freestone," and the word or words "Whole," "Halves," "Quarters," "Slices" or "Sliced," "Diced," or "Mixed pieces of irregular sizes and shapes," naming the optional peach ingredient present. The label shall also bear the statement "In water," "In sugar sirup," or "In water, slightly sweetened," showing respectively the presence of optional ingredient (25), (26), or (27), as the case may be; but the statement "In sugar sirup" or "In water, slightly sweetened" may be qualified to show the minimum percent by weight of sugar, as determined by the Brix hydrometer, in the liquid of the finished canned peaches. If optional ingredient (28), (29), or (30) is present, the label shall bear the statement or statements "Spice added" or "With added spice," "Flavoring added" or "With added flavoring," "Vinegar added" or "With added vinegar," as the case may be; or if two or all of optional ingredients (28), (29), and (30) are present, such statements may be combined, as for example, "Spice, flavoring, and vinegar added." In lieu of the word "Spice" or "Flavoring" in such statement or statements the common or usual name of the spice or flavoring may be used. If optional ingredient (31) is present, the label shall bear the statement "Seasoned with peach pits." Wherever the name "Peaches" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the specific varietal name of the peaches may so intervene.

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

(1) All units tested in accordance with the method prescribed in subsection (b) are pierced by a weight of not more than 300 grams;
(2) in the cases of halves and quarters, the weight of each unit is not less than $\frac{3}{5}$ ounce and $\frac{3}{10}$ ounce, respectively;
(3) in the cases of whole peaches, halves, and quarters, the weight of the largest unit in the container is not more than twice the weight of the smallest unit therein;
(4) no peel is present;
(5) not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormality;
(6) in the cases of whole peaches, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal contour; and
(7) except in the case of mixed pieces of irregular sizes and shapes, not more than 5 percent of the units in a container of 20 or more units, and not more than 1 unit in a container of less than 20 units, is crushed or broken (a unit which has lost its normal contour because of ripeness, and which bears no mark of crushing, shall not be considered to be crushed or broken); but if more than 20 percent of such units are crushed or broken, such canned peaches shall be considered to be mixed pieces of irregular sizes and shapes, subject to the labeling requirements specified therefor in Section 27.000 (b).

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

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

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

(d) In lieu of the statement or statements specified in subsection (c), the label may bear the statement "Substandard quality good food—not high grade," printed in two lines of Cheltenham bold condensed caps. The words "Substandard quality" shall constitute the first line, and the second shall immediately follow. If the quantity of the contents of the container is less than 1 pound, the type of the first line shall be 12-point, and of the second, 8-point. If such quantity is 1 pound or more, the type of the first line shall be 14-point, and of the second,

10-point. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle. Such statement, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Peaches" or any pictorial representation of a peach is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

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

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

SEC. 27.010. *Canned apricots—Identity; label statement of optional ingredients.* (a) Canned apricots are the food prepared from mature apricots. Such apricots, except in the case of whole apricots, are pitted, and are in one of the following forms of units: peeled whole; unpeeled whole; peeled halves; unpeeled halves; peeled quarters; unpeeled quarters; peeled slices; unpeeled slices; peeled mixed pieces of irregular sizes and shapes; unpeeled mixed pieces of irregular sizes and shapes. Apricots in each such form of unit are an optional apricot ingredient. To one such ingredient is added one of the optional ingredients.

(11) Water.
(12) Water solution of sugar, of 25° Brix or more.
(13) Water solution of sugar, of less than 25° Brix.

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

(14) Spice.
(15) Flavoring.
(16) A vinegar.
(17) Apricot pits (except in the case of whole apricots), not more than 1 to each 8 ounces of finished canned apricots.

The food is sealed in a container and so processed by heat as to prevent spoilage. The liquid of the finished canned apricots is not more than ____° Brix (to be fixed within the range of 35° Brix and 45° Brix).

(b) The label shall bear the words "Peeled whole," "Unpeeled whole," "Peeled halves," "Unpeeled halves," "Peeled quarters," "Unpeeled quarters," "Peeled slices," "Unpeeled slices," "Peeled mixed pieces of irregular sizes and shapes," "Unpeeled mixed pieces of irregular sizes and shapes," naming the optional apricot ingredient present. The label shall also bear the statement "In water," "In sugar sirup," or "In water, slightly sweetened," showing respectively the presence of optional ingredient (11), (12), or (13), as the case may be; but the statement "In sugar sirup" or "In water, slightly sweetened" may be qualified to show the minimum percent by weight of sugar, as determined by the Brix hydrometer, in the liquid of the finished canned apricots. If optional ingredient (14), (15), or (16) is present, the label shall bear the statement or statements "Spice added" or "With added spice," "Flavoring added" or "With added flavoring," "Vinegar added" or "With added vinegar," as the case may be; or if two or all of optional ingredients (14), (15), and (16) are present, such statements may be combined, as for example, "Spice, flavoring, and vinegar added." In lieu of the word "Spice" or "Flavoring" in such statement or statements the common or usual name of the spice or flavoring may be used. If optional ingredient (17) is present, the label shall bear the statement "Seasoned with apricot pits." Wherever the name "Apricots" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the varietal name of the apricots may so intervene.

SEC. 27.011 *Canned apricots—Quality; label statement of substandard quality.* (a) The standard of quality for canned apricots is as follows:

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

(2) in the cases of halves and quarters, the weight of each unit is not less than ⅖ ounce and ⅕ ounce respectively;

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

(4) not more than 20 percent of the units in the container are blemished with scab, hail injury, discoloration, or other abnormality;

(5) in the cases of whole apricots, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal contour; and

(6) except in the case of mixed pieces of irregular sizes and shapes, not more than 5 percent of the units in a container of 20 or more units, and not more than 1 unit in a container of less than 20 units, is crushed or broken (a unit which has lost its normal contour because of ripeness, and which bears no mark of crushing, shall not be considered to be crushed or broken); but if more than 20 percent of such units are crushed or are broken, such canned apricots shall be considered to be mixed pieces or irregular sizes and shapes, subject to the labeling requirements specified therefor in section 27.010 (b).

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

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of 1⅛ inches inside diameter, with vertical sides; or rectangular in shape, ¾ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of ¾ inch. Use the circular receptacle for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least ½ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod 3/16 inch in diameter. To the upper end of the rod is affixed a device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned apricots falls below the standard prescribed by subsection (a), the label (unless it bears the statement specified in subsection (d)) shall bear the statement "Below standard in quality ------," the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned apricots fail to meet, as follows: (1) "Not tender"; (2) "Small halves" or "Small quarters," as the case may be; (3) "Mixed sizes"; (4) "Blemished"; (5) "Unevenly trimmed"; (6) "Partly crushed or broken." Such statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Apricots" and the words and statements required or authorized to appear with such name by section 27.010 (b).

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

SEC. 27.012 *Canned apricots—Fill of container; label statement of substandard fill.*—(a) The standard of fill of container for canned apricots is the maximum quantity of the optional apricot ingredient which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned apricots fall below the standard of fill of container prescribed in subsection (a), the label shall bear the statement "Below standard in fill," printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle; but if the statement specified in section 27.011 (d) is also used, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Apricots" or any pictorial representation of an apricot is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

SEC. 27.020 *Canned pears—Identity; label statement of optional ingredients.* (a) Canned pears are the food prepared from mature pears. Such pears, except in the case of whole pears, are cored, and are in one of the following forms of units: whole; halves; quarters; slices; dice; mixed pieces of irregular sizes and shapes. Pears in each such form of units are an optional pear ingredient. To one such ingredient is added one of the optional ingredients:

(7) Water.
(8) Water solution of sugar, of 20° Brix or more.
(9) Water solution of sugar, of less than 20° Brix.

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

(10) Spice.
(11) Flavoring.
(12) A vinegar.

The food is sealed in a container and so processed by heat as to prevent spoilage. The liquid of the finished canned pears is not more than ----° Brix (to be fixed within the range of 30° Brix to 40° Brix).

(b) The label shall bear the words "Whole," "Halves," "Quarters," "Slices" or "Sliced," "Diced," or "Mixed pieces of irregular sizes and shapes," naming the optional pear ingredient present. The label shall also bear the statement "In water," "In sugar sirup," or "In water, slightly sweetened," showing respectively the presence of optional ingredient (7), (8), or (9), as the case may be; but the statement "In sugar sirup" or "In water, slightly sweetened" may be qualified to show the minimum percent by weight of sugar, as determined by the Brix hydrometer, in the liquid of the finished canned pears. If optional ingredient (10), (11), or (12) is present, the label shall bear the statement or statements "Spice added" or "With added spice," "Flavoring added" or "With added flavoring," "Vinegar added" or "With added vinegar," as the case may be; or if two or all of optional ingredients (10), (11), and (12) are present, such statements may be combined, as for example, "Spice, flavoring, and vinegar added." In lieu of the word "Spice" or "Flavoring" in such statement or statements the common or usual name of the spice or flavoring may be used. Wherever the name "Pears" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the specific varietal name of the pears may so intervene.

SEC. 27.021 *Canned pears—Quality; label statement of substandard quality.* (a) The standard of quality for canned pears is as follows:

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

(2) in the cases of halves and quarters, the weight of each unit is not less than $\frac{4}{5}$ ounce and $\frac{2}{3}$ ounce, respectively;

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

(4) no peel is present;

(5) not more than 20 per cent of the units in the container are blemished with scab, discoloration, or other abnormality;

(6) in the cases of whole pears, halves, and quarters, all units are untrimmed, or are so trimmed as to preserve normal contour; and

(7) except in the case of mixed pieces of irregular sizes and shapes, not more than 10 percent of the units in a container of 10 or more units, and not more than 1 unit in a container of less than 10 units, is crushed or broken (a unit which has lost its normal contour because of ripeness, and which bears no mark of crushing, shall not be considered to be crushed or broken); but if more than 20 percent of such units are crushed or broken, such canned pears shall be considered to be mixed pieces of irregular sizes and shapes, subject to the labeling requirements specified therefor in Section 27.020 (b).

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

So trim a test piece from the unit as to fit, with peel surface up, into a supporting receptacle. If the unit is of different firmness in different parts of its peel surface, trim the piece from the firmest part. If the piece is unpeeled, remove the peel. The top of the receptacle is circular in shape, of $1\frac{1}{8}$ inches inside diameter, with vertical sides; or rectangular in shape, $\frac{3}{4}$ inch by 1 inch inside measurements, with ends vertical and sides sloping downward and joining at the center at a vertical depth of $\frac{3}{4}$ inch. Use the circular receptable for testing units of such size that a test piece can be trimmed therefrom to fit it. Use the rectangular receptacle for testing other units. Test no unit from which a test piece with rectangular peel surface at least $\frac{1}{2}$ inch by 1 inch cannot be trimmed. Test the piece by means of a round metal rod $\frac{5}{32}$ inch in diameter. To the upper end of the rod is affixed a

device to which weight can be added. The rod is held vertically by a support through which it can freely move upward or downward. The lower end of the rod is a plane surface to which the vertical axis of the rod is perpendicular. Adjust the combined weight of the rod and device to 100 grams. Set the receptacle so that the surface of the test piece is held horizontally. Lower the end of the rod to the approximate center of such surface, and add weight to the device at a uniform, continuous rate of 12 grams per second until the rod pierces the test piece. Weigh the rod and weighted device. Test all units in containers of 50 units or less, except those units too small for testing or too soft for trimming. Test at least 50 units, taken at random, in containers of more than 50 units; but if less than 50 units are of sufficient size and firmness for testing, test those which are of sufficient size and firmness.

(c) If the quality of canned pears falls below the standard prescribed by subsection (a), the label (unless it bears the statement specified by subsection (d)) shall bear the statement "Below standard in quality ------," the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned pears fail to meet, as follows: (1) "Not tender"; (2) "Small halves" or "Small quarters," as the case may be; (3) "Mixed sizes"; (4) "Not well peeled" or "Unpeeled," as the case may be; (5) "Blemished"; (6) "Unevenly trimmed"; (7) "Partly crushed or broken." Such statement shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Pears" and the words and statements required or authorized to appear with such name by section 27.020 (b).

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

SEC. 27.022 *Canned pears—Fill of container; label statement of substandard fill.* (a) The standard of fill of container for canned pears is the maximum quantity of the optional pear ingredient which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient.

(b) If canned pears fall below the standard of fill of container prescribed in subsection (a), the label shall bear the statement "Below standard in fill," printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle; but if the statement specified by section 27.021 (d). is also used, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Pears" or any pictorial representation of a pear is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

SEC. 27.030 *Canned cherries—Identity; label statement of optional ingredients.* (a) Canned cherries are the food prepared from mature cherries of one of the following varietal groups; red sour; light colored sweet; dark colored sweet. They may be pitted or unpitted. Pitted cherries of each such varietal group, and unpitted cherries of each such varietal group, are an optional cherry ingredient. To one such ingredient is added one of the optional ingredients:

(7) Water.
(8) Water solution of sugar, of 20° Brix or more.
(9) Water solution of sugar, of less than 20° Brix.
(10) Cherry juice.
(11) Cherry juice solution of sugar, of 20° Brix or more.
(12) Cherry juice solution of sugar, of less than 20° Brix.

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

(13) Spice.
(14) Flavoring.

The food is sealed in a container and so processed by heat as to prevent spoilage. The liquid of the finished canned cherries is not more than 45° Brix in the case of sour varieties, and not more than 30° Brix in the case of sweet varieties.

(b) The label shall bear the words "Red sour pitted," "Red sour unpitted," "Light colored sweet pitted," "Light colored sweet unpitted," "Dark colored sweet pitted," or "Dark colored sweet unpitted," naming the optional cherry ingredient present. The label shall also bear the statement "In water," "In sugar sirup," "In water, slightly sweetened," "In cherry juice," "In sweetened cherry juice," or "In slightly sweetened cherry juice," showing respectively the presence of optional ingredient (7), (8), (9), (10), (11), or (12), as the case may be; but the statement "In sugar sirup," "In water, slightly sweetened," "In sweetened cherry juice," or "In slightly sweetened cherry juice" may be qualified to show the minimum percent by weight of sugar, as determined by the Brix hydrometer, in the liquid of the finished canned cherries. If optional ingredient (13) or (14) is present, the label shall bear the statement or statements "Spice added" or "With added spice," "Flavoring added" or "With added flavoring," as the case may be; or if both such ingredients are present such statements may be combined, as for example "Spice and flavoring added." In lieu of the word "Spice" or "Flavoring" in such statement or statements, the common or usual name of the spice or flavoring may be used. Wherever the name "Cherries" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the specific varietal name of the cherries may so intervene.

SEC. 27.031 *Canned cherries—Quality; label statement of substandard quality.* (a) The standard of quality for canned cherries is as follows:

(1) In the case of pitted cherries, not more than 1 pit is present in each 20 ounces of canned cherries, as determined by the method prescribed in subsection (b) (1);

(2) in the case of unpitted cherries, the weight of each cherry in the container is not less than $\frac{1}{10}$ ounce;

(3) in the case of unpitted cherries, the weight of the largest cherry in the container is not more than twice the weight of the smallest cherry therein;

(4) in the case of unpitted cherries, the total weight of pits is not more than 12 percent of the weight of drained cherries, as determined by the method prescribed in subsection (b) (2); and

(5) not more than 15 percent by count of the cherries in the container are blemished with scab, hail injury, discoloration, scar tissue, or other abnormality.

(b) Canned cherries shall be tested by the following method to determine whether or not they comply with the requirements of clauses (1) and (4) of subsection (a):

(1) Take at random such number of containers as to have a total quantity of contents of at least 24 pounds. Open

the containers and weigh the contents. Count the pits and pieces of pits in such total quantity. Count a piece of pit larger than a half as 1 pit; count a half pit or smaller piece as ½ pit. From the combined weight of the contents of all the containers, calculate the average number of pits in each 20 ounces of canned cherries.

(2) Tilt the opened container so as to distribute the contents over the meshes of a circular sieve which has previously been weighed. The diameter of the sieve is 8 inches if the quantity of the contents of the container is less than 3 pounds, or 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is No. 8 woven wire cloth which complies with the specifications for such cloth set forth on page 3 of "Standard Specifications for Sieves," published October 25, 1938, by U. S. Department of Commerce, National Bureau of Standards. Without shifting the cherries, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and drained cherries. The weight so found, less the weight of the sieve, shall be considered to be the weight of drained cherries. Pit the cherries and wash the pits free from adhering flesh. Drain and weight the pits by the method prescribed above. Divide the weight of pits so found by the weight of drained cherries, and multiply by 100.

(c) If the quality of canned cherries falls below the standard prescribed by subsection (a), the label (unless it bears the statement specified in subsection (d)) shall bear the statement "Below standard in quality ——," the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned cherries fail to meet, as follows: (1) "Partially pitted"; (2) "Small"; (3) "Mixed sizes"; (4) "Thin fleshed"; (5) "Blemished." Such statement shall immediately and conspicuously precede or follow, without intervening, written, printed, or graphic matter, the name "Cherries" and the words and statements required or authorized to appear with such name by section 27.030 (b).

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

SEC. 27.032 *Canned cherries—Fill of container; label statement of substandard fill.* (a) The standard of fill of container for canned cherries is the maximum quantity of the optional cherry ingredient which can be sealed in the container and processed by heat to prevent spoilage, without crushing such ingredient.

(b) If canned cherries fall below the standard of fill of container prescribed in subsection (a) the label shall bear the statement "Below standard in fill," printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines not less than 6 points in width, forming a rectangle; but if the statement specified in section 27.031 (d) is also used, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Cherries" or any pictorial representation of a cherry is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

[F. R. Doc. 39-741; Filed, March 4, 1939; 12:40 p. m.]

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

In conformity with subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetics Act [Section 701, 52 Stat. 1055; 21 U. S. C. 371 (e)], notice upon the proposals hereto attached and made a part hereof is hereby given to all interested persons that public hearings will be held beginning at 10 a. m., April 17, 1939, in the South Ballroom, Tenth Floor, Raleigh Hotel, 12th Street and Pennsylvania Avenue NW., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in pursuance of the authority vested in the Secretary of Agriculture by the provisions of Sections 401, 403 (g), (2), and 403 (h), (1) and (2) [Secs. 401, 403 (g), (2), and 403 (h), (1) and (2), 52 Stat. 1046 and 1047; 21 U. S. C. 341, 343 (g), (2), and 343 (h), (1) and (2)], regulations may be promulgated (a) (1) fixing a reasonable definition and standard of identity, and (2) requiring the label declaration of certain optional ingredients; (b) (1) fixing and establishing a reasonable standard of quality, and (2) specifying the form and manner of label statements of substandard quality; and (c) (1) fixing and establishing a reasonable standard of fill of container, and (2) specifying the form and manner of label statements of substandard fill of container; for the food commonly known as canned peas.

All interested persons are invited to attend these hearings and offer relevant evidence either in person or by representative. In lieu of personal attendance, affidavits may be offered either in person at the time of the hearings or by sending the same to John McDill Fox, Room 2311, South Building, Department of Agriculture, Independence Avenue, between 12th and 14th Streets SW., Washington, D. C., so as to be in his office by the date above stated. Such affidavits, if relevant and material, may be received, but the Secretary will consider the lack of opportunity for cross-examination in determining the weight that shall be given to such affidavits.

Such proposed definition and standard of identity, label declaration of certain optional ingredients, standard of quality, form and manner of label statements of substandard quality, standard of fill of container, and label statement of substandard fill of container, for such food, as attached hereto and made a part hereof, are subject to adoption, rejection, amendment, or modification by the Secretary, in whole or in part, as the evidence adduced at the hearings may require.

Mr. John McDill Fox is hereby designated as presiding officer to conduct, in the place of the Secretary, the foregoing hearings, with authority to administer oaths and to do all things necessary and appropriate to the proper conduct of such hearings as may be provided in the general procedural regulations which will be available at the hearings.

[SEAL] H. A. WALLACE,
Secretary.

MARCH 4, 1939.

SEC. 51.000 *Canned peas—Identity; label statement of optional ingredients.* (a) Canned peas are the food prepared from one of the following optional ingredients:

(1) Shelled, succulent peas (*Pisum sativum*) of Alaska or other smooth skin varieties.

(2) Shelled, succulent peas (*Pisum sativum*) of sweet, wrinkled varieties.
(3) Shelled, dried peas (*Pisum sativum*) of Alaska or other smooth skin varieties.
(4) Shelled, dried peas (*Pisum sativum*) of sweet wrinkled varieties.

To such ingredient water is added. The food may be seasoned with one or more of the optional ingredients:

(5) Salt.
(6) Sugar.
(7) Flavoring.
(8) Green peppers.

The food is sealed in a container and so processed by heat as to prevent spoilage.

(b) The label shall bear the word or words "Early June," "Sweet," "Dried early June," or "Dried sweet," showing respectively the presence of optional ingredient (1), (2), (3), or (4), as the case may be. If optional ingredient (7) is present the label shall bear the statement "Flavoring added" or "With added flavoring," or in lieu of the word "Flavoring" the common or usual name of the flavoring may be used in such statement. If optional ingredient (8) is present the label shall bear the statement "Seasoned with green peppers." Wherever the name "Peas" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the specific varietal name of the peas may so intervene.

SEC. 51.001 *Canned peas—Quality; label statement of quality.* (a) The standard of quality for canned peas is as follows:

(1) The combined weight of spotted peas and discolored peas is not more than ____ percent (to be fixed within the range of 1 percent to 4 percent) of the drained weight of the peas from the container;

(2) the combined weight of pea pods and other harmless extraneous vegetable material is not more than ____ percent (to be fixed within the range of 0.1 percent to 0.5 percent) of the drained weight of peas from the container;

(3) the weight of pieces of peas is not more than ____ percent (to be fixed within the range of 5 percent to 10 percent) of the drained weight of peas from the container;

(4) the skins of not more than 25 percent by count in the case of Alaska or other smooth skin varieties, and of not more than 5 percent by count in the case of sweet, wrinkled varieties, of the peas are ruptured to a width of $\frac{1}{16}$ inch or more;

(5) not less than 90 percent by count of the peas are crushed by a weight of not more than 907.2 grams (2 pounds); and

(6) the alcohol-insoluble solids of Alaska or other smooth skin varieties are not more than ____ percent (to be fixed within the range of 22.5 percent to 23.5 percent), and of sweet, wrinkled varieties not more than ____ percent (to be fixed within the range of 20 percent to 21 percent).

(b) Canned peas shall be tested by the following methods to determine whether or not they meet the requirements of subsection (a):

(1) After determining the fill of the container as prescribed in Section 51.002 (a), distribute the contents of the container over the meshes of a circular sieve made with No. 8 woven wire cloth which complies with the specifications for such cloth set forth on page 3 of "Standard Specifications for Sieves," published October 25, 1938, by U. S. Department of Commerce, National Bureau of Standards. The diameter of the sieve used is 8 inches if the quantity of the contents of the container is less than 3 pounds, or 12 inches if such quantity is 3 pounds or more. Without shifting the peas, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, remove the peas from the sieve and weigh them. Such weight shall be considered to be the drained weight of the peas.

(2) From the drained peas obtained in (1), promptly segregate and weigh the spotted and discolored peas, the pea pods and other harmless extraneous vegetable material, and the pieces of peas.

(3) From the drained peas obtained in (1), take at random a subdivision of 100 to 150 peas, and count them. Immediately cover these peas with a portion of the liquid obtained in (1), and add the remaining liquid to the drained peas from which the subdivision was taken. Count those peas in the subdivision, the skins of which are ruptured to a width of $\frac{1}{16}$ inch or more.

(4) Immediately after each pea is examined by the method prescribed in (3), test it by removing its skin, placing one of its cotyledons, with flat surface down, on the approximate center of the level, smooth surface of a rigid plate, lowering a horizontal disc to the highest point of the cotyledon, and measuring the height of the cotyledon. The disc is of rigid material and is affixed to a rod held vertically by a support through which the rod can freely move upward or downward. The lower face of the disc is a smooth, plane surface horizontal to the vertical axis of the rod. A device to which weight may be added is affixed to the upper end of the rod. Before lowering the disc to the cotyledon, adjust the combined weight of disc, rod, and device to 100 grams. After measuring the height of the cotyledon, and shifting the plate, if necessary, so that the cotyledon is under the approximate center of the disc, add weight to the device at a uniform, continuous rate of 12 grams per second until the cotyledon is pressed to one-fourth its previously measured height, or until the combined weight of disc, rod, and device is 907.2 grams (2 pounds). A pea so tested shall be considered to be crushed when its cotyledon is pressed to one-fourth its original height.

(5) Drain the liquid from the peas which remained after taking the subdivision as prescribed in (3). Transfer the peas to a pan, and rinse them with a volume of water equal to twice the capacity of the container from which such peas were drained in (1). Immediately drain the peas again by the method prescribed in (1). After the two minutes' draining, wipe the moisture from the bottom of the sieve. Comminute the peas thus drained, stir them to a uniform mixture, and weigh 20 grams of such mixture into a 600 cc. beaker. Add 300 cc. of 80 percent alcohol (by volume), stir, cover beaker, and bring to a boil. Simmer slowly for 30 minutes. Fit a Büchner funnel with a previously prepared filter paper of such size that its edges extend ½ inch or more up the vertical sides of the funnel. The previous preparation of the filter paper consists of drying it in a flat-bottomed dish for 2 hours at 100° Centigrade, covering the dish with a tight-fitting cover, cooling it in a desiccator, and promptly weighing. After the filter paper is fitted to the funnel, apply suction and transfer the contents of the beaker to the funnel. Do not allow any of the material to run over the edge of the paper. Wash the material on the filter with 80 percent alcohol (by volume) until the washings are clear and colorless. Transfer the filter paper with the material retained thereon to the dish used in preparing the filter paper. Dry the material in a ventilated oven, without covering the dish, for 2 hours at 100° Centigrade. Place the cover on the dish, cool it in a desiccator, and promptly weigh. From this weight subtract the weight of the dish, cover, and paper, as previously found. The weight in grams thus obtained, multiplied by 5, shall be considered to be the percent of alcohol-insoluble solids.

(c) If the quality of canned peas falls below the standard prescribed by subsection (a), the label (unless it bears the statement prescribed by subsection (d)) shall bear the statement "Below standard in quality ______," the blank to be filled in with the word or words specified after the corresponding number of each clause of subsection (a) which such canned peas fail to meet, as follows: (1) "Excessive spotted or discolored peas"; (2) Excessive foreign material"; (3) "Excessive broken peas"; (4) "Excessive cracked peas"; (5) "Not tender"; (6) "Excessively mealy." If such canned peas fail to meet two or all of clauses (1), (3), and (4), the words specified after the corresponding numbers of such clauses may be combined, as for example, "Excessive spotted or discolored, broken and cracked peas." Such statement shall

immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the name "Peas" and the words and statements required or authorized to appear with such name by section 51.000 (b).

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

SEC. 51.002 *Canned peas—Fill of container; label statement of substandard fill.* (a) The standard of fill of container for canned peas is a fill such that, when the peas and liquid are removed from the container and returned thereto, the leveled peas (irrespective of the quantity of the liquid), 15 seconds after they are so returned, completely fill the container. A container with lid attached by double seam shall be considered to be completely filled when it is filled to the level $\frac{3}{16}$ inch vertical distance below the top of the double seam.

(b) If canned peas fall below the standard of fill of container prescribed in subsection (a), the label shall bear the statement "Below standard in fill" printed in Cheltenham bold condensed caps. If the quantity of the contents of the container is less than 1 pound, the statement shall be in 12-point type; if such quantity is 1 pound or more, the statement shall be in 14-point type. Such statement shall be enclosed within lines, not less than 6 points in width, forming a rectangle; but if the statement specified in section 51.001 (d) is also used, both statements (one following the other) may be enclosed within the same rectangle. Such statement or statements, with enclosing lines, shall be on a strongly contrasting, uniform background, and shall be so placed as to be easily seen when the name "Peas" or any pictorial representation of peas is viewed, wherever such name or representation appears so conspicuously as to be easily seen under customary conditions of purchase.

[F. R. Doc. 39–742; Filed, March 4, 1939; 12:40 p. m.]

FEDERAL POWER COMMISSION.

[Docket No. IT–5542]

IN THE MATTER OF ROCKLAND LIGHT AND POWER COMPANY

NOTICE OF APPLICATION

FEBRUARY 23, 1939.

Notice is hereby given that on February 21, 1939, an application was filed with the Federal Power Commission, pursuant to Section 203 of the Federal Power Act, by Rockland Light and Power Company, a corporation organized under the laws of the State of New York and doing business in the States of New York, New Jersey, and Pennsylvania with its principal office at Nyack, New York, seeking an order authorizing the acquisition of 3,000 shares of the total par value of $300,000.00 of the capital stock of Rockland Electric Company, a corporation organized under the laws of the State of New Jersey and doing business in said State with its principal office at Nyack, New York. The consideration for the proposed acquisition, the application states, is to be $300,000.00 in cash, said stock to be purchased at par, at private sale, all as more fully appears in the application on file with the Commission.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before the 20th day of March, 1939, file with the Federal Power Commission a petition or protest in accordance with the Commission's Rules of Practice and Regulations.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39–738; Filed, March 4, 1939; 10:30 a. m.]

[Docket No. G–106]

IN THE MATTER OF KANSAS PIPE LINE & GAS COMPANY

ORDER ASSUMING JURISDICTION AND FIXING DATE OF HEARING

MARCH 2, 1939.

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

Upon petition and application filed with the Commission on September 10, 1938, by Kansas Pipe Line and Gas Company, for an order of the Commission disclaiming jurisdiction in this proceeding, or, in the alternative, for a certificate of public convenience and necessity to authorize the construction or extension of facilities from the Hugoton gas field in the State of Kansas, through and into the States of Kansas, Nebraska, South Dakota, North Dakota, and Minnesota;

It appearing to the Commission that:

(a) On July 7, 1938, Northern Natural Gas Company, in a communication to the Commission, invoked the jurisdiction of the Commission in the matter of the proposed construction or extension of facilities by the Kansas Pipe Line & Gas Company, to the end that the Commission might "delineate and delimit the respective natural gas marketing territory and areas of the Kansas Pipe Line & Gas Company, and of the Northern Natural Gas Company";

(b) On September 10, 1938, Kansas Pipe Line & Gas Company, pursuant to Section 7 (c) of the Natural Gas Act, filed with the Commission a petition and application, setting forth that it proposes to undertake the construction or extension of its facilities for the transportation of natural gas in interstate commerce and the sale of natural gas in interstate commerce for resale, such facilities to extend from the Hugoton gas field in the State of Kansas, through and into the States of Kansas, Nebraska, South Dakota, North Dakota, and Minnesota; said petition and application avers that public convenience and necessity requires the construction of these facilities, and further avers that the market to be served by the proposed construction or extension of facilities is not a market in which natural gas is already being served by another natural gas company, for which reason it is not incumbent upon the Kansas Pipe Line & Gas Company to procure a certificate of public convenience and necessity and the Commission should issue an order disclaiming jurisdiction in this proceeding;

(c) On October 29, 1938, the Commission adopted an order directing the Northern Natural Gas Company to show cause: (1) Why the Commission should, as theretofore requested by the Northern Natural Gas Company, assume jurisdiction over the application of the Kansas Pipe Line & Gas Company, on the ground that said company seeks to enter the market of the Northern Natural Gas Company, and (2) why the Northern Natural Gas Company should not become or be made a formal party to the proceedings on the said application of the Kansas Pipe Line & Gas Company, and (3) why the Commission should not, after notice and opportunity for hearing, by order direct the Northern Natural Gas Company to extend or improve its transportation facilities; to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities or territories proposed to be served by Kansas Pipe Line & Gas Company;

(d) On November 28, 1938, Northern Natural Gas Company filed a response to said order to show cause, in which the Northern Natural Gas Company takes the position that it does not oppose the construction of the natural gas pipe line as proposed by the Kansas Pipe Line & Gas Company, and that Northern Natural Gas Company should not be required to extend its facilities to the

territory proposed to be served by the Kansas Pipe Line & Gas Company;

(e) On December 12, 1938, Northern Natural Gas Company filed with the Commission a supplemental response to said order to show cause, setting forth a description of its natural gas pipe line system;

(f) On December 9, 1938, Montana-Dakota Utilities Company filed with the Commission a petition to intervene in this proceeding and to file a protest against the granting of a certificate of public convenience and necessity to the Kansas Pipe Line & Gas Company to serve the cities of Fargo and Grand Forks, North Dakota, and Moorhead, East Grand Forks and Crookston, Minnesota;

(g) On December 13, 1938, Kansas Pipe Line & Gas Company filed with the Commission an objection to and a motion to deny the petition to intervene of the Montana-Dakota Utilities Company;

(h) On December 13, 1938, Kansas Pipe Line & Gas Company filed with the Commission a motion for an order disclaiming jurisdiction in this proceeding upon the showing made by it in its petition and application, upon the showing made by Northern Natural Gas Company in its returns to the Commission's Order to Show Cause of October 29, 1938, upon the face of the petition to intervene in this proceeding filed on December 9, 1938, by the Montana-Dakota Utilities Company, and upon all the files and proceedings herein; said motion being made upon the ground that the extension and operation of Kansas Pipe Line & Gas Company's proposed natural gas pipe line does not enter a natural gas market already being served within the meaning of the Natural Gas Act;

(i) In an order adopted on December 30, 1938, the Commission found that it was necessary and desirable that a public hearing be held in this proceeding for the purpose of receiving evidence relevant to the question whether the construction or extension of the facilities proposed by Kansas Pipe Line & Gas Company is subject to the jurisdiction of the Commission under the Natural Gas Act, and ordered that a public hearing be held on January 16, 1939; at said public hearing Kansas Pipe Line & Gas Company, Northern Natural Gas Company, and Montana-Dakota Utilities Company were directed to adduce evidence pertinent to the question whether the construction or extension of facilities proposed by the Kansas Pipe Line & Gas Company will be to a market in which natural gas is already being served by another natural-gas company, and Northern Natural Gas Company and Montana-Dakota Utilities Company were directed to delineate and delimit the respective natural gas marketing territory or area claimed by each of them;

(j) At said public hearing, held on January 16 and 17, 1939,[1] evidence was adduced on behalf of Kansas Pipe Line & Gas Company, Northern Natural Gas Company, Montana-Dakota Utilities Company, and the Commission;

The Commission, having considered the record in this proceeding, including the transcript of the testimony adduced and the exhibits introduced at the hearing on the question of jurisdiction held on January 16–17, 1939, finds that:

(1) The applicant, Kansas Pipe Line & Gas Company, is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale, and is a natural-gas company within the meaning of the Natural Gas Act;

(2) The said Kansas Pipe Line & Gas Company proposes to undertake the construction or extension of facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, and the Commission accordingly has jurisdiction over the proposed construction or extension of facilities under Section 7 (c) of the Natural Gas Act;

(3) A hearing should be held in this proceeding for the purpose of enabling the Commission to determine whether present or future public convenience and necessity require or will require the construction or extension of facilities proposed to be undertaken by Kansas Pipe Line & Gas Company;

The Commission orders that:

(A) The petition and motion of the Kansas Pipe Line & Gas Company for an order of the Commission disclaiming jurisdiction in this proceeding be and they are hereby denied;

(B) A public hearing in this proceeding be held on March 27, 1939, at 10 o'clock a. m. in the Hearing Room of the Federal Power Commission, 1757 K Street NW., Washington, D. C.;

(C) Interested state commissions may participate in said hearing as provided in Part 67 of the Provisional Rules of Practice and Regulations under the Natural Gas Act.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39–737; Filed, March 4, 1939; 10:30 a. m.]

[Docket No. G–108]

IN THE MATTER OF PUBLIC SERVICE GAS COMPANY

ORDER FIXING DATE OF HEARING

MARCH 2, 1939.

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

Upon application filed on September 21, 1938, by the Public Service Gas Company, a Montana corporation, for a certificate of public convenience and necessity to authorize the construction of a natural gas pipe line from Montana and Wyoming through North Dakota and into South Dakota, Minnesota and Wisconsin;

The Commission orders that:

(A) A public hearing on said application be held on March 27, 1939, at 10 o'clock a. m., in the hearing room of the Federal Power Commission, 1757 K Street NW., Washington, D. C.;

(B) Interested state commissions may participate in said hearing as provided in Part 67 of the Provisional Rules of Practice and Regulations under the Natural Gas Act.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39–734; Filed, March 4, 1939; 10:29 a. m.]

[Docket No. G–119]

IN THE MATTER OF NORTH DAKOTA CONSUMERS GAS COMPANY

ORDER FIXING DATE OF HEARING

MARCH 2, 1939.

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

Upon application filed on December 30, 1938, by the North Dakota Consumers Gas Company, a North Dakota corporation, for a certificate of public convenience to authorize the construction of natural gas pipe lines from Mandan to Fargo, North Dakota, from Fargo to Grand Forks, North Dakota, and from a point near Grand Forks, North Dakota, to Crookston, Minnesota, or, in the alternative, for an order of the Commission disclaiming jurisdiction over the construction of such natural gas pipe lines;

The Commission orders that:

(A) A public hearing on said application be held on March 27, 1939, at 10 o'clock a. m., in the hearing room of the Federal Power Commission, 1757 K Street NW., Washington, D. C.;

(B) Interested state commissions may participate in said hearing as provided in Part 67 of the Provisional Rules of Practice and Regulations under the Natural Gas Act.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 39–735; Filed, March 4, 1939; 10:29 a. m.]

[1] 4 F. R. 25 DI.

[Docket No. G–123]

IN THE MATTER OF GENERAL GAS PIPE LINE CORPORATION

ORDER POSTPONING DATE OF HEARING

MARCH 2, 1939.

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

It appearing to the Commissioner that:

On February 23, 1939, the Commission adopted an order [1] fixing the date of the hearing herein as March 27, 1939, at 10:00 a. m. in the Hearing Room of the Federal Power Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue NW., Washington, D. C.;

The Commission, on its own motion, orders that:

The public hearing in the above cause, now set for March 27, 1939, be and the same is hereby postponed to April 17, 1939, at the same time and place.

By the Commission.

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

[F. R. Doc. 39–736; Filed, March 4, 1939; 10:29 a. m.]

[Project No. 1531]

IN THE MATTER OF CITY OF HIGH POINT, NORTH CAROLINA

ORDER FIXING DATE OF HEARING

MARCH 3, 1939.

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

Upon application filed December 15, 1938, by City of High Point, North Carolina for license for a proposed hydroelectric power project to be located on the Yadkin River in Guilford, Davidson, Forsyth, Davie, and Yadkin Counties, North Carolina, designated as Project No. 1531;

The Commission on its own motion orders that:

A public hearing be held upon said application beginning at 10:00 a. m., March 10, 1939, in the Hearing Room of the Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue NW., Washington, D. C.

By the Commission.

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

[F. R. Doc. 39–733; Filed, March 4, 1939; 10:29 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 27th day of February, A. D. 1939.

[File No. 31–59]

IN THE MATTER OF STANDARD OIL COMPANY OF CALIFORNIA

ORDER GRANTING EXEMPTION

Standard Oil Company of California having made application for exemption pursuant to the provisions of Section 3 (a) (3) (A) of the Public Utility Holding Company Act of 1935; a hearing on said application having been duly held after appropriate public notice; [1] the record in this matter having been duly considered; and the Commission having made appropriate findings of fact;

It is ordered, That the said Standard Oil Company of California be, and it hereby is, exempted from all those provisions of the Public Utility Holding Company Act of 1935 which would require it to register under said Act because of its directly or indirectly owning, controlling or holding with power to vote 10 per cent or more of the outstanding voting securities of Pacific Public Service Company, and its subsidiaries.

By the Commission.

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

[F. R. Doc. 39–740; Filed, March 4, 1939; 10:58 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 3d day of March, A. D. 1939.

[File No. 31–84]

IN THE MATTER OF INTERNATIONAL UTILITIES CORPORATION AND DOMINION GAS AND ELECTRIC COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to sections 3 (a) (5) and 3 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named parties;

It is ordered, That a hearing on such matter be held on March 20, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That 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 to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before March 15, 1939.

The matter concerned herewith is in regard to an application by International Utilities Corporation and Dominion Gas and Electric Company for an order exempting Dominion Gas and Electric Company as a holding company pursuant to Section 3 (a) (5) of the Public Utility Holding Company Act of 1935, and exempting Dominion Gas and Electric Company and its subsidiaries as subsidiaries of International Utilities Corporation pursuant to section 3 (b) of said Act.

By the Commission.

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

[F. R. Doc. 39–739; Filed, March 4, 1939; 10:58 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its offices in the City of Washington, D. C., on the 4th day of March, A. D. 1939.

IN THE MATTER OF W. E. HUTTON & CO., A PARTNERSHIP CONSISTING OF JAMES M. HUTTON, JAMES M. HUTTON, JR., JOHN CHRISTIE DUNCAN, CHARLES N. FOSTER, JOSEPH A. HALL, CARROLL V. GERAN, GEORGE C. RILEY, WILLIAM E. HUTTON II, C. KENNETH SMITH, AND JOSEPH A. W. IGLEHART, AS PARTNERS; JOHN CHRISTIE DUNCAN; CARROLL V. GERAN; WILLIAM E. HUTTON II; AND H. H. MICHELS, RELATIVE TO MEMBERSHIP ON CERTAIN NATIONAL SECURITIES EXCHANGES

ORDER OF SUSPENSION AND DISCONTINUANCE

This proceeding, having heretofore been instituted by order of the Commission entered November 13, 1936, pursuant to Section 19 (a) (3) of the Securities Exchange Act of 1934, to determine whether the respondents herein should be suspended or expelled from certain national securities exchanges of which they are members within the meaning of the Securities Exchange Act of 1934, because of alleged violations of Section 9 (a) (1), (2), (3), (4) of the said Act in connection with the stock of the Atlas Tack Corporation; and

It now appearing to the Commission that the respondent William E. Hut-

[1] 4 F. R. 1019 DI.

[1] 3 F. R. 3001 DI.

ton II, resident partner of the Detroit office of W. E. Hutton & Co., and the respondent H. H. Michels, both denying all the charges made against them in the above mentioned Order, have consented to the entry of an order providing: (1) for the suspension of William E. Hutton II, from membership on the national securities exchanges of which he is a member, within the meaning of the Securities Exchange Act of 1934, as amended, for a period of three months, beginning on the 15th day of March, 1939, and ending on the 15th day of June, 1939; and (2) for the suspension of H. H. Michels, from membership on the national securities exchanges of which he is a member, within the meaning of the Securities Exchange Act of 1934, as amended, for a period of one month, beginning on the 15th day of March, 1939, and ending on the 15th day of April, 1939; and

It now appearing to the Commission that Jerry McCarthy, formerly a customers' man in the Detroit office of W. E. Hutton & Co., has been suspended from employment because of the charges herein and has not been reemployed and will not be reemployed by W. E. Hutton & Co.;

It is ordered, That the respondent William E. Hutton II, a member, as that term is defined in the Securities Exchange Act of 1934, as amended, of the New York Stock Exchange, the New York Curb Exchange, the Philadelphia Stock Exchange, the Detroit Stock Exchange, the Chicago Stock Exchange, the Baltimore Stock Exchange, the Cincinnati Stock Exchange, and the Board of Trade of the City of Chicago, all national securities exchanges registered pursuant to the Securities Exchange Act of 1934, as amended, be, and hereby is, suspended from membership in said exchanges for a period of three months, beginning on the 15th day of March, 1939, and ending on the 15th day of June, 1939; and

It is further ordered, That the respondent H. H. Michels, a member, as that term is defined in the Securities Exchange Act of 1934, as amended, of the New York Stock Exchange, the New York Curb Exchange, the San Francisco Stock Exchange, the Los Angeles Stock Exchange, and the Board of Trade of the City of Chicago, all national securities exchanges registered pursuant to the Securities Exchange Act of 1934, as amended, be, and hereby is, suspended from membership in said exchanges for a period of one month, commencing on the 15th day of March, 1939, and ending on the 15th day of April, 1939; and

It is further ordered, That this proceeding be, and the same hereby is, discontinued as to the respondents W. E. Hutton & Co., John Christie Duncan, and Carroll V. Geran; and

It is further ordered, That a copy of this Order be served upon the respondents herein or their counsel and upon the Secretary of each of the exchanges of which the respondents are members.

By the Commission, Douglas and Frank not participating.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–752; Filed, March 6, 1939; 11:58 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 6th day of March, A. D. 1939.

[File No. 43–187]

IN THE MATTER OF AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED

NOTICE OF AND ORDER FOR HEARING

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

It is ordered, That a hearing on such matter be held on March 23, 1939, at ten 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 James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before March 18, 1939.

The matter concerned herewith is in regard to a declaration by American Water Works and Electric Company, Incorporated, a registered holding company, regarding the issue by it of promissory notes in the aggregate principal amount of $8,000,000 to the following financial institutions:

Chemical Bank & Trust Company	$2,200,000
The Chase National Bank of the City of New York	1,700,000
The National City Bank of New York	1,700,000
The New York Trust Company	1,200,000
Central Hanover Bank & Trust Company	1,200,000
	$8,000,000

The loan agreement provides that the notes shall be dated as of the date of the issuance thereof, shall bear interest at the rate of 3% per annum, shall be payable $160,000 semi-annually from date of issue and the balance five years from the date of issue. It is stated that all the proceeds of this loan will be used to discharge existing bank loans of declarant.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–751; Filed, March 6, 1939; 11:58 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its offices in the City of Washington, D. C., on the 2nd day of March, A. D. 1939.

IN THE MATTER OF JUNIUS A. RICHARDS RELATIVE TO SUSPENSION FROM MEMBERSHIP ON CERTAIN NATIONAL SECURITIES EXCHANGES

ORDER FOR HEARING DESIGNATING OFFICER, TIME AND PLACE FOR TAKING TESTIMONY

I

It appearing to the Commission that:

(1) Junius A. Richards of New York, New York, is now and at all times hereinafter mentioned has been a member of a co-partnership doing business under the firm name and style of Smith, Barney and Company; and

(2) Smith, Barney and Company is now and has been at all times hereinafter mentioned a member of the New York Curb Exchange, the New York Stock Exchange, the Baltimore Stock Exchange, the Chicago Stock Exchange, the Board of Trade of the City of Chicago, the Boston Stock Exchange and the Philadelphia Stock Exchange, all national securities exchanges registered as such pursuant to the Securities Exchange Act of 1934; and

(3) Junius A. Richards is now and has been at all times hereinafter mentioned a member of the exchanges whereon said Smith, Barney and Company is a member within the meaning of Section 3 (a) (3) of the Securities Exchange Act of 1934; and

II

The Commission having reason to believe that during the period beginning on or about August 1, 1938, and continuously thereafter until on or about November 30, 1938, the said Junius A. Richards, within the meaning of Sec-

tion 19 (a) (3) of the Securities Exchange Act of 1934, effected transactions for persons who he had reason to believe were then violating the provisions of Sections 9 (a) (1) (B), 9 (a) (1) (C), 9 (a) (2), and 20 (b) of the Securities Exchange Act of 1934, in connection with trading in the common stock of Simplicity Pattern Company, Inc., a security registered on the New York Curb Exchange pursuant to Section 12 of the Securities Exchange Act of 1934 (said transactions being effected by said Junius A. Richards without the knowledge, consent or concurrence of the other members of said firm of Smith, Barney and Company); and

III

It appearing to the Commission that at all times hereinafter mentioned there were authorized and outstanding 500,000 shares of the common stock of Simplicity Pattern Company, Inc., of which number Joseph M. Shapiro, president and director of Simplicity Pattern Company, Inc., was the owner of 327,610 shares; and

IV

The Commission having reason to believe with reference to the particulars of the violations hereinabove described (but without limiting the generality of the foregoing) that:

(1) On or about August 2, 1938, Junius A. Richards conferred with one Rex Benson of London, England, a partner in the firm of Robert Benson and Company, Ltd., at which conference Richards learned that Benson, on behalf of his firm, had obtained an option from Joseph M. Shapiro to purchase 40,000 shares of the common stock of Simplicity Pattern Company as follows: 10,000 shares at 3½ on or before October 1, 1938; 10,000 shares at 4 on or before November 1, 1938; 10,000 shares at 4½ on or before December 1, 1938; and 10,000 shares at 5 on or before January 1, 1939; and that the said Shapiro had indicated to the said Rex Benson that after the exercise of such options he might make available to Rex Benson an additional block of 100,000 shares at 10 a share;

(2) Thereafter, because of the threat of war in Europe, Robert Benson and Company, Ltd., desired to arrange for an extension of time within which to exercise the aforementioned option and for that purpose sent to the United States one Philip MacPherson, a partner in the said firm, who arrived in this country in September 1938. On or about September 27, 1938, Junius A. Richards participated in a conference at which were also present Philip MacPherson, Joseph M. Shapiro, and his financial advisor, Charles G. Cushing, and one Mackenzie, an employee of Robert Benson and Company, Ltd., who had accompanied Philip MacPherson to this country. At that meeting the option previously given to Rober Benson and Company, Ltd., was discussed and the following proposed modifications thereof were considered: that Robert Benson and Company, Ltd., might take down 10,000 shares of the common stock of Simplicity Pattern Company in each of four successive months, beginning with October 1938, at successively higher prices ranging from 3½ in October to 5 in January; that it should be a condition to the option that prior to the exercise of each part of the option, transactions should be effected on the New York Curb Exchange in the common stock of Simplicity Pattern Company, Inc., as follows: 2,500 shares before November 1, 1938; 7,500 additional shares before December 1, 1938; 10,000 additional shares before January 1, 1939; and 10,000 additional shares before February 1, 1939, and that of these amounts Robert Benson and Company, Ltd., should be repsonsible for at least 50%; and that the failure of Robert Benson and Company, Ltd., to exercise its option on the first of any one of the months named herein should not affect its right to exercise the remaining parts of the option which related to the later months. After these discussions Philip MacPherson on October 6, 1938, sailed for London, England;

(3) From January 1, 1938, to August 1, 1938, there had been traded on the New York Curb Exchange 13,200 shares of common stock of Simplicity Pattern Company, Inc., at prices ranging from a high of 5⅜ during the week ending January 15, 1938, to a low of 2¾ during the week ending June 25, 1938. On August 2, 1938, the closing price of the common stock of the subject company on the New York Curb Exchange was 4⅛. During the month of August 1938, 2,800 shares were traded on the New York Curb Exchange at prices ranging from 4 to 4⅜, of which number Robert Benson and Company, Ltd., purchased 800 shares. During the month of September 300 shares were traded at 3½. During the last 18 days of September and the first four days of October, no transactions in the common stock of Simplicity Pattern Company, Inc., took place on the New York Curb Exchange and the bid ranged from a low of 2½ to a high of 3. Between October 5 and 13, 1938, the total volume of transactions on the New York Curb Exchange in the said stock amounted to 800 shares. The prices ranged between a low of 3½ on October 5, 1938, and a high of 4¼ on October 7, 1938. The market closed on October 13, 1938, at 4.

(4) During the period beginning October 14, 1938, and continuing to November 28, 1938, the price of the common stock of Simplicity Pattern Company, Inc., on the New York Curb Exchange advanced from a low of 3⅜ on October 29 to a high of 4½ on November 16 on a total volume of 11,700 shares. Of this number the firm of Robert Benson and Company, Ltd., acting either for its own account or for the account of others, purchased 9,000 shares or 76.9% of the total volume, and said firm, acting either for its own account or for the accounts of others, together with its subsidiary, British Financial Union, Ltd., sold 7,600 shares or 64.9% of the total volume. During said period, Robert Benson and Company, Ltd., acting either for its own account or for the account of others, was both the purchaser and seller on 19 different occasions, and on 26 other occasions Robert Benson and Company, Ltd., acting either for its own account or for the account of others, was the purchaser of shares sold by its subsidiary, British Financial Union, Ltd. Of the 7,600 shares sold by Robert Benson and Company, Ltd., or by its subsidiary, British Financial Union, Ltd., the firm of Smith, Barney and Company, members of the New York Curb Exchange, acted as brokers in the sale of 4,800 shares or 41% of the total volume. These orders were received by Junius A. Richards, a partner of Smith, Barney and Company, from Richard Benson and Company, Ltd., and the transactions called for therein were effected by the said Junius A. Richards on the New York Curb Exchange; and

V

The Commission having reason to believe that at the time the transactions referred to in Paragraph IV hereof were effected, Junius A. Richards had reason to believe that Robert Benson and Company, Ltd., by the use of means and instrumentalities of interstate and foreign commerce and of the facilities of the New York Curb Exchange, a national securities exchange, for the purpose of creating a false and misleading appearance of active trading in the common stock of Simplicity Pattern Company, Inc., and a false and misleading appearance with respect to the market for such security, was entering orders for the purchase of such security with the knowledge that orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of such security had been or would be entered by or for the same or different parties; and

VI

The Commission having reason to believe that at the time the transactions referred to in Paragraph IV hereof were effected, Junius A. Richards had reason to believe that Robert Benson and Company, Ltd., and the British Financial Union, Ltd., its subsidiary, by the use of means and instrumentalities of interstate and foreign commerce and of the facilities of the New York Curb Exchange, a national securities exchange, for the purpose of creating a false and misleading appearance of active trading in the common stock of Simplicity Pattern Company, Inc., and a false and misleading appearance with respect to the

market for such security, were entering orders for the sale of such security with the knowledge that orders of substantially the same size, at substantially the same time, and at substantially the same price for the purchase of such security had been or would be entered by or for the same or different parties; and

VII

The Commission having reason to believe that at the time the transactions referred to in Paragraph IV hereof were effected, Junius A. Richards had reason to believe that Robert Benson and Company, Ltd., and the British Financial Union, Ltd., its subsidiary, were, by the use of means and instrumentalities of interstate and foreign commerce and of the facilities of the New York Curb Exchange, a national securities exchange, effecting, alone and with one or more other persons, a series of transactions in the common stock of Simplicity Pattern Company, Inc., creating actual or apparent active trading in such security and raising the price of such security, for the purpose of inducing the purchase of such security by others; and

VIII

The Commission being of the opinion that, pursuant to Section 19 (a) (3) of the Securities Exchange Act of 1934, a hearing should be held to determine whether the respondent, Junius A. Richards, had effected transactions for any person who he had reason to believe was violating in respect of such transactions the provisions of Sections 9 (a) (1) (B), 9 (a) (1) (C), 9 (a) (2), and 20 (b) of the Securities Exchange Act of 1934, and to determine whether to suspend for a period not exceeding 12 months the said Junius A. Richards from membership on the New York Curb Exchange, the New York Stock Exchange, the Baltimore Stock Exchange, the Chicago Stock Exchange, the Board of Trade of the City of Chicago, the Boston Stock Exchange, and the Philadelphia Stock Exchange;

It is hereby ordered, That the said Junius A. Richards appear before an officer of the Commission and show cause why he should not be suspended for a period not exceeding 12 months from membership on the New York Curb Exchange, the New York Stock Exchange, the Baltimore Stock Exchange, the Chicago Stock Exchange, the Board of Trade of the City of Chicago, the Boston Stock Exchange, and the Philadelphia Stock Exchange; and

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

It is further ordered, That a public hearing for the taking of testimony begin on the 27th day of March, 1939, at the office of the Securities and Exchange Commission, 1778 Pennsylvania Avenue, NW., Washington, D. C., and continue thereafter at such times and places as said officer may determine.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–757; Filed, March 6, 1939; 12:55 p. m.]