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Washington, Tuesday, February 6, 1940

*The President*

**ENLARGING THE HURON NATIONAL FOREST—MICHIGAN**

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

**A PROCLAMATION**

WHEREAS certain lands within or adjacent to the Huron National Forest in the State of Michigan have been acquired or are in process of acquisition by the United States under authority of the act of March 1, 1911, 36 Stat. 962 (U.S.C., title 16, sec. 516), as amended by the act of June 7, 1924, 43 Stat. 653 (U.S.C., title 16, sec. 515), the act of March 31, 1933, 48 Stat. 22 (U.S.C., title 16, sec. 585), the National Industrial Recovery Act, approved June 16, 1933, 48 Stat. 202 (U.S.C., title 40, sec. 403), and the Emergency Relief Appropriation Act of 1935, approved April 8, 1935, 49 Stat. 115; and

WHEREAS it appears that the said lands and certain intermingled public lands are suitable for national-forest purposes, and that it would be in the public interest to reserve them as part of the said Huron National Forest:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the power in me vested by section 24 of the act of March 3, 1891, 26 Stat. 1095, 1103 (U.S.C., title 16, sec. 471), the act of June 4, 1897, 30 Stat. 34 (U.S.C., title 16, sec. 473), and the acts above mentioned, do proclaim (1) that all lands of the United States within the following-described boundaries, as shown on the diagram attached hereto and made a part hereof,<sup>1</sup> are hereby included in and reserved as part of the Huron National Forest in the State of Michigan; and (2) that all lands within

such boundaries which are now in process of acquisition by the United States under authority of any of the above-mentioned acts shall upon the acquisition of title thereto become and be administered as part of the said Forest:

*Michigan Meridian*

- T. 22 N., R. 8 E., secs. 4 and 9; secs. 13 to 16 inclusive.
- T. 22 N., R. 9 E., sec. 18.
- T. 23 N., R. 7 E., S½ sec. 13; sec. 24; NE¼ sec. 25.
- T. 23 N., R. 8 E., S½ sec. 16; secs. 21 and 29; E½E½ sec. 29; sec. 33.
- T. 24 N., R. 3 E., secs. 7, 8, 17 and 18; N½NE¼ sec. 23; N½NW¼ sec. 24.
- T. 24 N., R. 4 E., secs. 19 to 30 inclusive.
- T. 24 N., R. 5 E., secs. 31 to 35 inclusive.
- T. 25 N., R. 2 W., all.
- T. 25 N., R. 8 E., secs. 2 to 11 inclusive; secs. 14 to 18 inclusive.
- T. 26 N., R. 2 W., all that part lying south of the Middle Branch Au Sable River.
- T. 26 N., R. 8 E., secs. 3 to 10 inclusive; secs. 14 to 23 inclusive; secs. 26 to 35 inclusive.
- Tps. 27 N., Rs. 4, 5, 6 and 7 E., all.
- T. 27 N., R. 8 E., secs. 1 to 22 inclusive; secs. 27 to 34 inclusive.
- T. 27 N., R. 9 E., secs. 1 to 12 inclusive.
- T. 28 N., R. 9 E., secs. 19 to 36 inclusive.

The reservation made by this proclamation shall, as to all lands to which legal rights have been acquired under any of the public-land laws, be subject to, and shall not interfere with or defeat such legal rights so long as such rights are legally maintained.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 31<sup>st</sup> day of January in the year of our Lord nineteen hundred and [SEAL] forty, and of the Independence of the United States of America the one hundred and sixty-fourth.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL  
Secretary of State.

[No. 2384]

[F. R. Doc. 40-519; Filed, February 3, 1940; 11:28 a. m.]

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**THE PRESIDENT**

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<sup>1</sup> See page 594.



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EXECUTIVE ORDER

REVOCATION OF EXECUTIVE ORDER NO. 3355 OF NOVEMBER 19, 1920, WITHDRAWING LAND FOR USE AS AN ADMINISTRATIVE SITE

ALASKA

By virtue of the authority vested in me by the act of June 25, 1910, c. 421, 36 Stat. 847, Executive Order No. 3355 of November 19, 1920, temporarily withdrawing certain lands in Alaska for use by the Forest Service as a dock site in connection with the administration of the Chugach National Forest, is hereby revoked.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,  
February 3, 1940.

[No. 8336]

[F. R. Doc. 40-533; Filed, February 5, 1940; 11:36 a. m.]

EXECUTIVE ORDER

PLACING CERTAIN LANDS UNDER THE CONTROL AND JURISDICTION OF THE NAVY DEPARTMENT, THE WAR DEPARTMENT, AND THE UNITED STATES PUBLIC HEALTH SERVICE

PUERTO RICO

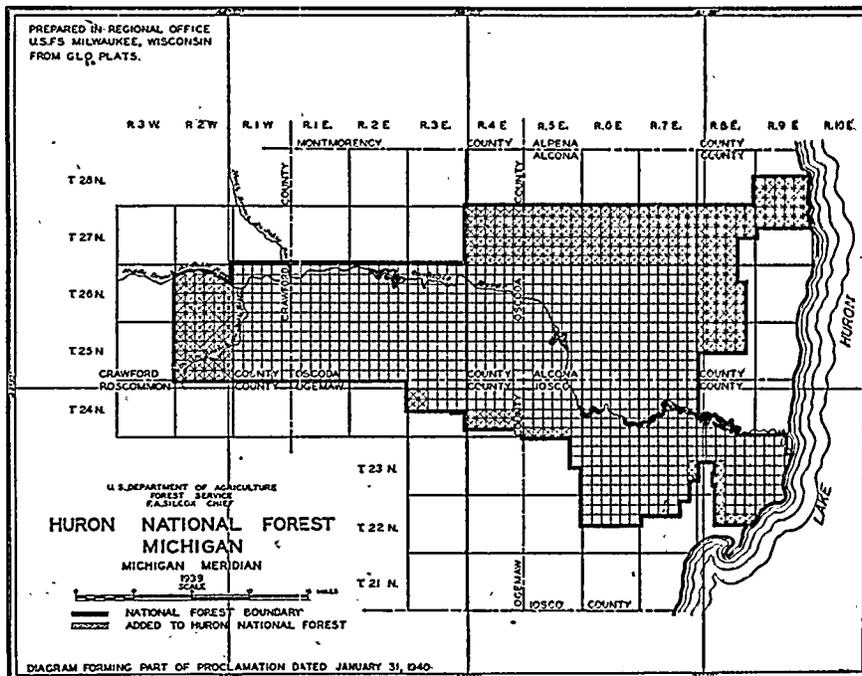
By virtue of the authority vested in me by the act of July 1, 1902, c. 1383, 32 Stat. 731, as amended by the act of May 17, 1932, c. 190, 47 Stat. 158, and in conformity with the provisions of Act No. 32 of the Legislature of Puerto Rico, approved April 19, 1939, authorizing, in

part, the Commissioner of the Interior of Puerto Rico to convey certain lands in Puerto Rico to the United States for use as a naval air base and other purposes, and with the provisions of the deed of conveyance of November 7, 1939, executed by the said Commissioner pursuant to such Act, it is ordered as follows:

1. The following-described land is hereby placed under the control and jurisdiction of the Navy Department for use in connection with the United States Naval Air Station, San Juan, Puerto Rico:

All that tract of land delineated on Navy Department Drawing entitled "Navy Department, Bureau of Yards and Docks, Naval Air Station, Isla Grande, Puerto Rico, Plot of Parcel No. 2, No. 133498," dated September 20, 1939, which tract is more particularly described as follows:

Beginning at point No. 7 (marked by a 4-inch square post, set deep into the mud, centered by a 1-inch iron pipe) of the former harbor line for the South shore of Miraflores Bay, San Juan, said point being South forty-two hundred five and ninety-nine hundredths (4205.99) feet and East thirty-seven hundred twenty-three and ninety-four hundredths (3723.94) feet of a point at the intersection of "D" and "L" Streets in the City of San Juan, which point of reference is the origin of the coordinate system of all harbor surveys made by the War Department in San Juan Harbor; thence along said former harbor line of the South shore of Miraflores Bay, San Juan, South eighty-seven degrees forty-seven minutes fifty-six and nine-tenths seconds East (S 87°47'56.9" E) to point A, a distance of two hundred forty-nine and eight hundredths (249.08) feet; thence North two degrees twelve



minutes three and one-tenth seconds East (N 2°12'3.1" E) to point B, a distance of three hundred twenty-eight and eight hundredths (328.08) feet; thence North eighty-seven degrees forty-seven minutes fifty-six and nine-tenths seconds West (N 87°47'56.9" W) to point C on a stone dike already constructed, a distance of seven hundred forty-one and twenty-one hundredths (741.21) feet; thence South forty-seven degrees fifty-nine minutes thirty-four and two-tenths seconds East (S 47°59'34.2" E) along the stone dike to point D, a distance of five hundred twelve and forty-seven hundredths (512.47) feet; thence South eighty-seven degrees forty-seven minutes fifty-six and nine-tenths seconds East (S 87°47'56.9" E) a distance of ninety-eight and forty-two hundredths (98.42) feet to the point of beginning; said parcel No. 2 containing four and ten hundredths (4.10) acres, more or less;

together with a right-of-way leading from the said Parcel to the highway system, as shown on Navy Department Drawing entitled "Navy Department, Bureau of Yards and Docks, Naval Air Station, Isla Grande, Puerto Rico, Plot of Parcel No. 1, No. 133497," dated September 20, 1939, which right-of-way is more particularly described as follows:

Beginning at point A, said point being South forty-two hundred fifteen and fifty-six hundredths (4215.56) feet and East thirty-nine hundred seventy-two and eighty-four hundredths (3972.84) feet of a point at the intersection of "D" and "L" Streets in the City of San Juan, which point of reference is the origin of the coordinate system of all harbor surveys made by the War Department in San Juan Harbor; thence following the course of the former harbor line 7-6 along the South shore of Miraflores Bay, San Juan, South eighty-seven degrees forty-seven minutes fifty-six and nine-tenths seconds East (S 87°47'56.9" E) for a width of thirty-two and eighty-one hundredths (32.81) feet lying to the North of and parallel to said harbor line 7-6 for a distance of thirty-three hundred forty-six and forty-five hundredths (3346.45) feet to the West side of a nameless street that runs parallel to and at a distance of about two hundred sixty-two and forty-seven (262.47) feet to the North-West of the road leading to Miraflores Island; said parcel No. 1 containing two and fifty-two hundredths (2.52) acres, more or less.

2. The following-described land is hereby placed under the control and jurisdiction of the War Department for use as a United States Engineer Depot:

All that tract of land delineated on Navy Department Drawing entitled "Navy Department, Bureau of Yards and Docks, Naval Air Station, Isla Grande, Puerto Rico, Plot of Parcel No. 4, No. 133500," dated September 20, 1939, which

tract is more particularly described as follows:

Beginning at point No. 2 of the U. S. Harbor Line system established by the Secretary of War for San Juan Harbor under date of August 21, 1916, and as shown on map entitled "Pierhead and Bulkhead Lines for the East and South Shores of San Juan Bay, Porto Rico, including San Antonio and Martin Pena Channels", said point being South fifteen hundred fifty-nine and forty-two hundredths (1559.42) feet and East twelve hundred forty-two and forty-three hundredths (1242.43) feet of a point at the intersection of "D" and "L" Streets in the City of San Juan, which point of reference is the origin of the coordinate system of all harbor surveys made by the War Department in San Juan Harbor; thence following the course of the harbor line South eighty-two degrees fifty minutes thirteen and nine-tenths seconds East (S 82°50'13.9" E) a distance of eight hundred (800.00) feet; thence due South a distance of one hundred fifty (150.00) feet; thence due West a distance of eighty (80.00) feet; thence due South three hundred thirty (330.00) feet; thence due West a distance of three hundred nineteen and thirty-four hundredths (319.34) feet to the San Juan Harbor Line; thence following the course of the harbor line North thirty-four degrees thirteen minutes forty-three seconds West (N 34°13'43" W) a distance of seven hundred one and twenty hundredths (701.20) feet to harbor line point No. 2, the point of beginning, subject to the lineal extension Westerly of the Southerly boundary and a Westerly extension of the Westerly boundary in conjunction with any modification of the San Juan Harbor lines, said described parcel containing an area of five and eighty-nine hundredths (5.89) acres, more or less.

3. The following-described land is hereby placed under the control and jurisdiction of the United States Public Health Service, Federal Security Agency, for use as a quarantine station or a site for a Marine hospital or for both of such purposes:

All that part of Miraflores Island delineated on Navy Department Drawing entitled "Navy Department, Bureau of Yards and Docks, Naval Air Station, Isla Grande, Puerto Rico, Plot of Parcel No. 3, No. 133499," dated September 20, 1939, which tract is more particularly described as follows:

Beginning at point No. 9 (concrete monument, 2 feet above mud, with iron pipe center) of the harbor line South of Miraflores Quarantine Station in San Juan Harbor, said point being South a distance of sixty-two hundred forty-three and twenty-nine hundredths (6243.29) feet and East a distance of fifty-seven hundred seven and five hundredths (5707.05) feet of a point at the intersection of "D" and "L" Streets in the City of San Juan, which point of reference is the

origin of the coordinate system of all harbor surveys made by the War Department in San Juan Harbor and from this point North seventy-five degrees twenty-five minutes East (N 75°25' E) for a distance of four hundred thirty-two and seventy-seven hundredths (432.77) feet; thence due North for a distance of eleven hundred eight and thirty-three hundredths (1108.33) feet; thence North forty-five degrees zero minutes West (N 45°00' W) for a distance of three hundred eighty-eight and forty-four hundredths (388.44) feet; thence North eighty-seven degrees forty-eight minutes West (N 87°48' W) for a distance of nine hundred twenty-nine and twenty-four hundredths (929.24) feet; thence South forty-one degrees twenty-one minutes West (S 41°21' W) for a distance of six hundred twenty-eight and fifty-nine hundredths (628.59) feet; thence South forty-eight degrees thirty-nine minutes East (S 48°39' E) for a distance of fifteen hundred ninety-eight (1598.00) feet to point No. 9 of the harbor line described above, the point of beginning; said parcel No. 3 containing thirty-seven and ninety-five hundredths (37.95) acres, more or less;

4. All that part of Miraflores Island which lies outside the area described in section 3 hereof is hereby placed under the control and jurisdiction of the Navy Department for use in connection with the United States Naval Air Station, San Juan, Puerto Rico.

5. A common right-of-way and easement shall be provided by the Navy Department for the use of all activities on the land herein placed under the control and jurisdiction of the War Department and the United States Public Health Service, Federal Security Agency, in connection with the activities of the Navy Department at the United States Naval Air Station, San Juan, Puerto Rico.

6. The Executive Order dated July 22, 1902, which reserved Miraflores Island for use as a quarantine station or for a site for a Marine hospital, or for both of such purposes, under the control of the Public Health and Marine Hospital Service, is hereby revoked.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,  
February 3, 1940

[No. 8337]

[F. R. Doc. 40-534; Filed, February 5, 1940;  
11:37 a. m.]

### Rules, Regulations, Orders

#### TITLE 14—CIVIL AVIATION CHAPTER I—CIVIL AERONAUTICS AUTHORITY

[Amendment 34, Civil Air Regulations]

#### SCHEDULING OF SIMULTANEOUS DEPARTURES

At a session of the Civil Aeronautics Authority held at its office in Washing-

ton, D. C., on the 2nd day of February 1940.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, particularly sections 205 (a), 601 (a), and 604 of said Act, and finding that its action is desirable in the public interest and is necessary to provide adequately for safety in air commerce, the Civil Aeronautics Authority hereby amends the Civil Air Regulations as follows:

Effective March 1, 1940, section 61.11 of the Civil Air Regulations is amended by inserting at the end thereof the following new subsection:

"§ 61.111 *Simultaneous departures.* No aircraft shall be operated by an air carrier on a flight between two points, or between two metropolitan areas or a point and a metropolitan area on its route if the published time of departure of such flight is identical with a previously published time of departure of a flight of another air carrier between such two points or metropolitan areas, in the same direction, and over the same route. As between two published times of departure, that which has been continuously in force for the longer period immediately prior to such operation of aircraft shall be deemed to be the 'previously published time of departure' within the meaning of this regulation."

By the Authority.

[SEAL] PAUL J. FRIZZELL,  
Secretary.

[F. R. Doc. 40-532; Filed, February 5, 1940;  
11:18 a. m.]

## TITLE 16—COMMERCIAL PRACTICES

### CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 3697]

#### IN THE MATTER OF SOUTHERN ART STONE COMPANY

§ 3.6 (n) (2) *Advertising falsely or misleadingly—Nature—Product:* § 3.6 (b) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Representing, in connection with offer, etc., in commerce, of imitation marble and granite tombstones and memorials composed of crushed marble, granite or any similar material mixed with cement and other ingredients, that respondent's products are natural marble or granite, or that they will retain as high a polish as marble or granite, or that such products are superior to, or will last longer than, natural or ordinary marble or granite, and will not crack, crumble or disintegrate from natural causes, or that they are everlasting or will last forever, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Southern Art Stone Company, Docket 3697, January 26, 1940]

§ 3.6 (i) *Advertising falsely or misleadingly—Free goods or service:* § 3.72 (e) *Offering deceptive inducements to purchase—Free goods.* Using, in connection with offer, etc., in commerce, of imitation marble and granite tombstones and memorials composed of crushed marble, granite or any similar material mixed with cement and other ingredients, the term "free" or any other term of similar import or meaning to designate, describe or in any way refer to articles of merchandise regularly included in a combination offer with tombstones or other merchandise, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Southern Art Stone Company, Docket 3697, January 26, 1940]

§ 3.6 (b) (2) *Advertising falsely or misleadingly—Competitors and their products—Competitors' products:* § 3.6 (c) (1.1) *Advertising falsely or misleadingly—Prices—Comparative:* § 3.6 (gg) *Advertising falsely or misleadingly—Value:* § 3.48 (b) (5.5) *Disparaging competitors and their products—Goods—Prices.* Representing, in connection with offer, etc., in commerce, of imitation marble and granite tombstones and memorials composed of crushed marble, granite or any similar material mixed with cement and other ingredients, that respondent's products are from 33½ per cent to 50 per cent lower in price than similar products of comparable quality and weight sold by respondent's competitors, or that they are to any extent lower in price than such products unless and until they are in fact lower to such extent, quality and weight considered, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112, 15 U.S.C., Supp. IV, sec. 45b). [Cease and desist order, Southern Art Stone Company, Docket 3697, January 26, 1940]

#### United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 26th day of January, A. D. 1940.

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

#### IN THE MATTER OF ROY D. BURNS, TRADING AS SOUTHERN ART STONE COMPANY

##### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said

14 F. R. 1711 DI.

complaint and in opposition thereto, brief filed in support of the complaint herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

*It is ordered,* That the respondent, Roy D. Burns, an individual trading as Southern Art Stone Company, or trading under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of imitation/marble and granite tombstones and memorials composed of crushed marble, granite or any similar material mixed with cement and other ingredients, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing that respondent's products are natural marble or granite, or that they will retain as high a polish as marble or granite, or that such products are superior to, or will last longer than natural or ordinary marble or granite;

(2) Representing that respondent's products will not crack, crumble or disintegrate from natural causes, or that they are everlasting or will last forever;

(3) Using the term "free" or any other term of similar import or meaning to designate, describe or in any way refer to articles of merchandise regularly included in a combination offer with tombstones or other merchandise;

(4) Representing that respondent's products are from 33½% to 50% lower in price than similar products of comparable quality and weight sold by respondent's competitors or that they are to any extent lower in price than such products unless and until they are in fact lower to such extent, quality and weight considered.

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

By the Commission.

[SEAL] A. N. ROSS,  
Acting Secretary.

[F. R. Doc. 40-512; Filed, February 2, 1940;  
2:45 p. m.]

[Docket No. 3741]

#### IN THE MATTER OF FRYE COMPANY

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results.* Representing, in connection with offer, etc., in commerce, of respondent's "Pancreobismuth", "Pancreo Bismuth" or "Pancreobismuth and

Pepsin", or other similar product, that said preparation has therapeutic value in the treatment of upset stomach, or in the relief of indigestion due to acid stomach, or in the neutralization of excess acid and allaying of irritation, in excess of being a simple antacid and carminative tending to give temporary relief from distress caused by such symptoms, or that it is beneficial in aiding the digestion of starchy foods or in relieving distress caused by starchy foods, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b). [Cease and desist order, Frye Company, Docket 3741, January 25, 1940]

§ 3.6 (c) *Advertising falsely or misleadingly—Composition of goods:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.96 (a) (1) *Using misleading name—Goods—Composition.* Representing, in connection with offer, etc., in commerce, of respondent's "Pancreobismuth", "Pancreo Bismuth" or "Pancreobismuth and Pepsin", or other similar product, that said preparation possesses physiological or therapeutic value due to the presence of pancreatin or pepsin when such ingredients are not present in such amounts and in such form as to be active ingredients thereof, or using the trade names "Pancreobismuth", "Pancreo-Bismuth" or "Pancreobismuth and Pepsin", or any other trade names containing the words "pancreatin" or "pepsin" or any other adaptation of such words, to designate, describe or in any way refer to respondent's present product or any other similar product which does not possess pancreatin and pepsin in such amounts and in such form as to be active ingredients therein, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Frye Company, Docket 3741, January 25, 1940]

§ 3.6 (c) *Advertising falsely or misleadingly—Composition of goods.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Pancreobismuth" or other similar medicinal preparation, which advertisements represent, directly or through implication, by the use of the trade name "Pancreobismuth", or any other trade name containing the word "Pancreatin", or any adaptation thereof, or in any other manner, that said preparation contains pancreatin as an active ingredient thereof, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Frye Company, Docket 3741, January 25, 1940]

*United States of America—Before Federal Trade Commission*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of January, A. D. 1940.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Webster Ballinger, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein by the counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

*It is ordered,* That the respondent, Frye Company, a corporation, its officers, agents, representatives and employees, in connection with the offering for sale, sale and distribution of a medicinal preparation now designated as "Pancreobismuth", "Pancreo Bismuth", or "Pancreobismuth and Pepsin", or any other preparation containing substantially the same ingredients or possessing substantially similar therapeutic properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing that said preparation has therapeutic value in the treatment of upset stomach, or in the relief of indigestion, due to acid stomach, or in the neutralization of excess acid and allaying of irritation, in excess of being a simple antacid and carminative tending to give temporary relief from distress caused by such symptoms;

(2) Representing that said preparation is beneficial in aiding the digestion of starchy foods or in relieving distress caused by starchy foods;

(3) Representing that said preparation possesses physiological or therapeutic value due to the presence of pancreatin or pepsin when such ingredients are not present in such amounts and in such form as to be active ingredients thereof;

(4) Using the trade names "Pancreobismuth", "Pancreo-Bismuth", or "Pancreobismuth and Pepsin", or any other trade names containing the words "pancreatin" or "pepsin" or any other adaptation of such words, to designate, describe or in any way refer to respondent's present product or any other similar product which does not possess pancreatin and pepsin in such amounts and in such form as to be active ingredients therein.

*It is further ordered,* That the respondent, Frye Company, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means

of United States mails or in commerce, as "commerce" is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation now known or designated by the name of "Pancreobismuth" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, by the use of the trade name "Pancreobismuth", or any other trade name containing the word "Pancreatin", or any adaptation thereof, or in any other manner, that said preparation contains pancreatin as an active ingredient thereof.

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

By the Commission.

[SEAL]

A. N. Ross,  
*Acting Secretary.*

[F. R. Doc. 40-513; Filed, February 2, 1940; 2:45 p. m.]

TITLE 24—HOUSING CREDIT

CHAPTER II—FEDERAL SAVINGS AND LOAN SYSTEM

AMENDMENT RELATING TO APPRAISALS OF ASSETS

*Be it resolved,* That the Rules and Regulations for the Federal Savings and Loan System are amended, effective February 2, 1940, as follows:

1. Section 202.22 is repealed. (Sec. 5 (a) of H.O.L.A. of 1933, 48 Stat. 132, Sec. 5 (i) of H.O.L.A. of 1933, as amended by Sec. 6, 48 Stat. 646; 12 U.S.C. 1464 (a), (i))

2. The first sentence of paragraph (4) of subsection (c) of Section 203.12 is hereby amended to read as follows:

"(4) Within the 6 months' period following the date upon which a copy of the report of examination, made pursuant to each examination of a Federal association under section 203.2 of these rules and regulations, is delivered to a Federal association, one of its officers or directors shall inspect and appraise the real estate securing each loan listed in such report as subject to comment or criticism." (Secs. 5 (a), (c) of H.O.L.A. of 1933, 48 Stat. 132, Sec. 18, 49 Stat. 297; 12 U.S.C. 1464 (a), (c), and Sup.)

Be it further resolved, That this amendment is deemed to be of an emergency character within the provisions of subsection (c) of Section 201.2 of the Rules and Regulations for the Federal Savings and Loan System.

Adopted by the Federal Home Loan Bank Board on January 31, 1940.

[SEAL] J. FRANCIS MOORE,  
Acting Secretary.

[F. R. Doc. 40-510; Filed, February 2, 1940;  
2:13 p. m.]

## CHAPTER III—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

### AMENDMENT TO RULES AND REGULATIONS FOR INSURANCE OF ACCOUNTS

#### APPRAISALS OF ASSETS

Be it resolved, That the Rules and Regulations for Insurance of Accounts are amended, effective February 2, 1940, as follows:

1. Subsection (b) of Section 301.4 is repealed.

2. The first sentence of paragraph (5) of subsection (d) of Section 301.11 is amended to read as follows:

"(5) Within the 6 months' period following the date upon which a copy of the report of examination, made pursuant to each examination of an insured institution under section 301.14 of these rules and regulations, is delivered to an insured institution, one of its officers or directors shall inspect and appraise the real estate securing each loan listed in such report as subject to comment or criticism."

(Sec. 402 (a), 403 (c) of N.H.A., 48 Stat. 1256, 1258, Sec. 403 (b) of N.H.A., 48 Stat. 1257, as amended by Sec. 23, 49 Stat. 298; 12 U.S.C., 1725 (a), 1726 (b) and Sup., 1726 (c))

Be it further resolved, That this amendment is deemed to be of an emergency character within the provisions of subsection (c) of Section 301.22 of the Rules and Regulations for Insurance of Accounts.

Adopted by the Board of Trustees of the Federal Savings and Loan Insurance Corporation on January 31, 1940.

[SEAL] J. FRANCIS MOORE,  
Acting Secretary.

[F. R. Doc. 40-511; Filed February 2, 1940;  
2:13 p. m.]

## CHAPTER IV—HOME OWNERS' LOAN CORPORATION

### PART 407—TREASURY

#### TRANSMITTAL OF ABSTRACTS

Amending Part 407 of Chapter IV, Title 24 of the Code of Federal Regulations.

Section 407.52 is amended by changing the third paragraph thereof to read as follows:

"Where the Regional Counsel determines that it is necessary or desirable in connection with a contract of sale of the Corporation's property to deliver for examination or continuation any abstract, title policy or other evidence of title, survey, plat or other documents in the file to the contract purchaser or his attorney, title company or abstract company, he shall obtain such documents from the Regional Treasurer and may deliver the same, or forward the same by mail or express to the contract purchaser or his attorney, title company or abstract company. Said transmittal may be through the State or District Office of the Corporation, or through a fee attorney, title or abstract company representing the Corporation. Such documents may likewise be forwarded by Regional or State Counsel to a fee attorney, title or abstract company representing or acting for the Corporation for the purpose of examination, continuation or any other purpose in connection with a sale of property. The expenses of any such transmittal and return expenses may be paid by the Corporation as a Corporation expense. Receipts containing an agreement to return as and when required shall be taken."

(Effective date January 10, 1940)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132, as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647; 12 U.S.C. 1463 (a), (k))

Adopted by the Federal Home Loan Bank Board on January 10, 1940.

[SEAL] J. FRANCIS MOORE,  
Acting Secretary.

[F. R. Doc. 40-509; Filed, February 2, 1940;  
2:13 p. m.]

## CHAPTER VI—UNITED STATES HOUSING AUTHORITY

### PART 651—BUDGETING REPAIR, MAINTENANCE AND REPLACEMENT COSTS\*†

Sec.	
651.0	Scope and content.
651.1	Standards and derivation of factors.
651.2	Grounds.
651.3	Structures.
651.4	Painting and decorating.
651.5	Plumbing and gas system.
651.6	Electrical system.
651.7	Heating system.
651.8	Elevators.
651.9	Ranges.
651.10	Refrigerators.
651.11	Other equipment.

§ 651.0 *Scope and content.* This Part is designed to assist local housing authorities in budgeting costs of repairs, maintenance, and replacements. More particularly, this Part sets forth, in Section 651.1, an explanation of standards and USHA policy for budgeting costs of

\*Sections 651.0 to 651.11 issued under the authority contained in Sec. 8, 50 Stat. 891, 42 U.S.C., Sup. IV, 1408.

†The source of Sections 651.0 to 651.11 is Bulletin No. 29, dated December 15, 1939.

repairs, maintenance, and replacements, and, in Sections 651.2 through 651.11, a description of, and factors for estimating, RM&R costs for grounds; structures; painting and decorating; the plumbing and gas system; the electrical system; the heating system; elevators; ranges; refrigerators; and other equipment. The classification of RM&R costs, and their relationships to other costs, are set forth in part IV of the "Manual of Instructions of Accounting Procedure for Local Housing Authorities".\*† [Introduction]

§ 651.1 *Standards and derivation of factors—(a) General standards.* In order to estimate the cost of repairs, maintenance and replacements, it is necessary to understand the principles on which they are based and the attitude of the USHA towards management policy which is appropriate for rehousing families of low income who are living under seriously substandard housing conditions. These principles recognize that families requiring substantial federal and local subsidy to obtain decent, safe and sanitary dwellings cannot afford nor should expect any service which the members of the tenant family are well able to perform for themselves. The estimates given in this Part reflect the necessity for drastic curtailment of operating budgets in order to promote efficiency and economy and thus achieve the lowest feasible rent to the tenant compatible with low cost to the public. The principles suggested infer that anything short of the maximum amount of tenant help in project upkeep or the slightest tendency towards providing "apartment service" is paternalistic and repugnant to the objectives of the United States Housing Act. Addendum No. 1 to Part 641 further describes the underlying philosophy on which this Part is based. A section of the "Management Resolution" to be adopted by the local housing authority should specify the policies and standards to govern various phases of repairs, maintenance and replacements. In this Part appear short descriptions of the standards involved to explain the estimate factors given. Costs computed on the basis described in this part are only valid as a reflection of the standards specified and will be most useful during the initial stages of operation. Later local experience will demonstrate necessary adjustments for individual projects. The estimates assume that the local authority has cultivated a sympathetic understanding of the low rental housing program on the part of the labor organizations and municipal departments involved; that the management staff selected is thoroughly qualified and has a high morale and that the tenant relations program has achieved a clear-cut understanding of the maintenance policy by all tenants and has stimulated a high degree of tenant cooperation. In short, the policies suggested and numerical values given should be accepted as realistic objectives which challenge the ingenuity of the local authority, its tenants,

its staff, municipal departments and organized labor.

(b) *Repair, maintenance and replacement*—(1) *Repair* means fixing or replacing minor broken parts.

(2) *Maintenance* is a broader term often including repairs and means keeping an object up to a certain standard of usability or appearance.

(3) *Replacement* means replacing an object at the end of its useful life with a new object which is to serve the same purpose as the object replaced.

(4) *Useful life*. The useful life of any object installed or used in a project depends upon the policy followed in repairing and maintaining it. If repairs and maintenance are neglected, early replacement of the object neglected will be necessary. If the object is well maintained and kept in good repair its useful life will be extended. Thus, replacement expense is dependent upon the expense of maintenance and repairs.

(5) *One account classification for RM&R*. It is generally agreed that no two groups of engineers or accountants will classify the same items of expense uniformly as either repairs or replacements. No practicable definition which would be uniformly interpreted appears possible. Further, USHA-aided housing projects are not operated for profit and thus are not subject to taxation. In the sense that state or federal taxing bodies use the terms, no "net income or surplus" is likely. In consequence there is no need to follow the regulations of taxing bodies with respect to differentiating between repair expense and charges to separate depreciation reserves for replacements. These reasons account for the policy adopted for USHA-aided projects of combining into one account classification all costs for repairs, maintenance and replacements for any item or group of items.

(6) *Variation in RM&R costs*. It is generally recognized that the cost of repairs, maintenance and replacements:

(i) Will vary from year to year, tending to be more constant in the larger projects where the diversity is greater, and

(ii) Will become greater as a project grows older.

(c) *Policy for budgeting RM&R costs*—

(1) *Possible alternative policies*. Given the above facts, it would be possible to compute a level charge for RM&R over a 58-year period; such charge being an amount which would (with interest at 2% on reserves on hand) be sufficient to pay all the estimated RM&R costs over a 58-year period. Because of the low RM&R in the early years of a project's life, a very large cash reserve would be built up during such years for use many years thereafter. On the other hand, the average amount necessary for RM&R over the first 10 years of a project's life might be computed and this amount be included in the cost of operation for such period. There-

after, the estimated amount for successive periods could be computed and such amount be included in the cost of operation for such periods.

(2) *Requirements of the Act*. The second course seems the correct one to adopt in view of the specific requirement in the Act that "annual contributions shall be strictly limited to the amounts and periods necessary, in the determination of the Authority (USHA) to assure the low-rent character of the housing projects involved" and in view of the further provision that "the Authority shall reserve the right to reexamine the status of the low-rent-housing project involved at the end of ten years and every five years thereafter; and, at the time of any such reexamination, the Authority (USHA) may make such modification (subject to all the provisions of this section) in the fixed and uniform amounts of subsequent annual contributions payable under such contract as is warranted by changed conditions and as is consistent with maintaining the low-rent character of the housing project involved."

(3) *"Pay-as-you-go" basis*. The second course also seems preferable because of the fact that operations for the first 10 years will thus be on a "pay-as-you-go" basis and will avoid the building up of the very large cash reserves which would accumulate during this period if a level RM&R over 58 years were contemplated. In view of the fact that it is impossible at this time to accurately predict what conditions will be 10 years hence, it seems unwise to build up such large reserves out of the rents paid by low-income families during the first 10 years.

(4) *RM&R during first 10 years*. The policy of the USHA will therefore be to include in the cost of operation during the first 10 years the average annual cash cost estimated for RM&R over such 10-year period.

(5) *Compensating for additional RM&R costs after first 10 years*. Given the continuing changes in our economy, it is impossible to predict at this time the exact situation which will obtain at the end of such 10-year period. Other things being equal, it appears reasonably certain that the RM&R for periods subsequent to the initial 10-year period will be higher because of the aging of the projects. It is, however, quite possible that the rent-paying ability of low-income classes will increase during 10 years and that rents may be raised to compensate for such increased RM&R costs. It is also quite possible that additional economies in other operating costs may be effected which will compensate for the increased RM&R costs subsequent to the initial 10 years. If these last two factors do not suffice to compensate for the increased RM&R after the initial 10 years, it will be necessary at that time to increase the USHA annual contribution by an amount necessary to compensate for all or part of the increased

RM&R. In order that it may be possible 10 years hence to so increase the rate of USHA annual contributions, the rate of annual contributions for the first 10 years must be set at an amount below the legal maximum equal to at least the expected difference between the average annual cost of RM&R in the initial 10 years and the average annual cost of RM&R in the subsequent 48 years. In effecting this policy, a computation must therefore be made of the expected average annual amount of RM&R in the first 10 years and the additional average annual amount of RM&R required for the succeeding 48 years.

(6) *Definition of two factors used in estimating*. Two factors are, therefore, given for estimating the cost of repairs, maintenance and replacements for the various component parts of a project, with the exception of Painting and Decorating, and "other equipment", i. e. factors representing:

(i) The average annual cost for the first 10 years of operation, which is the average of the cash disbursements for RM&R over the first 10 years. This is designated hereinafter as the "10 Year Average Annual RM&R Cost."

(ii) The additional amount to be added to the 10 Year Average Annual Cost to determine the average annual RM&R cost for the remaining 48 years of operation that is contemplated by the amortization period of the bond issue. This is designated hereinafter as the "Additional Average Annual RM&R Cost".

(d) *10 Year average annual cost*. Factors (expressed in decimal ratios of development cost) for computing cost have been prepared by the USHA, in the following manner:

(1) *Maintenance and repair costs*. The maintenance and repair policy and resultant costs for several typical systems or installations were predicted for the first 10-year period of operation.

(2) *Replacement costs*. The useful life of the various components of each typical system or installation was forecast based upon the predicted policy and expense for maintenance and repairs. The amount of failures and costs of replacements during the 10-year period were forecast for all items regardless of the estimated useful life of the item, since it is recognized that for a given number of objects said to have an average useful life of 15 years, for example a certain number will fail and require replacement before the 15-year period which will be balanced by the number which last beyond 15 years.

(3) *Total RM&R costs averaged*. The total costs thus estimated for the various systems were divided by ten to arrive at the 10 Year Average Annual RM&R Cost. Such Cost was then divided by the average development cost for the typical systems or installations to arrive at an average factor which is a decimal ratio of the development cost for the system

or installation. It is expected that costs experienced for the first part of the 10-year period will be less, and during the last part will be more than the average annual rate. Thus reserves for RM&R should be established to provide for the higher costs later in the 10-year period. As the time interval is relatively short no interest earnings on the reserves were forecast in developing the factors. While it is expected that the actual RM&R costs experienced on certain systems or installations in a project will over-run the estimates which are computed from average factors, it is also expected that the actual costs on other systems or installations in the same project will under-run the estimates. The over- and under-runs in a project will tend to equalize each other so that the sum total of the 10 Year Average Annual RM&R Costs for one well managed project should be reasonably close to the sum total of such costs on a similar project equally well managed. It is, moreover, recognized that estimates now made for the 10-year period cannot be entirely accurate even over this limited term of years. It is, therefore, anticipated that as experience develops on each particular project, necessary revisions will be made from time to time in the average annual amounts set up for the first 10-year period.

(e) *Additional average annual costs.* Assuming that present economic conditions will continue, the average annual costs of RM&R for the 48 years following the first 10 years are expected to be substantially higher than the 10 Year Average Annual RM&R Costs. The actual annual costs immediately following the tenth year are expected to be less than the 48-year average. Moreover, they are expected to increase gradually thereafter. A cash reserve would thus be built up in the early part of the 48-year period. Because of the long period of time involved interest earnings at 2% have been anticipated in estimating the average annual cost of RM&R for typical systems during the 48-year period. With this exception the method used in estimating the average annual costs for the 48-year period is similar to that described for the 10 Year Average Annual RM&R Costs. To determine the Additional Average Annual RM&R Cost for a typical system the amount of the estimated 10 Year Average Annual Cost for such system was subtracted from the amount of the estimated average annual amount which, with interest earned at 2% on reserves on hand, should be set aside during the 48-year period to provide for the cash disbursements for RM&R during such period. The Additional Average Annual Cost for a typical system thus computed was divided by the development cost of such system to establish the decimal factor for the Additional Average Annual Cost.

(f) *Standards of appearance.* As stated before, the budgeted amount for

repairs, maintenance and replacements, depends upon the accepted standard of usability and appearance. The property should always be kept in usable shape and steps taken to preserve the structures and equipment from undue deterioration. It is contemplated that good management will be exercised and that the old adage, "A stitch in time saves nine", will be followed. Standards of appearance are hard to set. The tenants of low rental housing cannot afford, nor should subsidy be increased, to pay the costs required to keep the place as "spick and span" as in higher rental properties. On the other hand, inasmuch as the housing projects are made of the same materials,—brick, concrete, plaster, wood, glass, and paint—as the slums which were cleared away, it would be entirely possible for any project to obtain the appearance of a slum in a short time. Despite the fact that the standard of appearance appropriate for low rent housing is hard to set, especially on paper, it is a very important standard. The standard may be set by permitting the project management to curtail maintenance and allow the scale of appearance to become a little too low for a short time until an agreement can be reached, that the project is to be maintained at a higher standard. There seems to be no other way now known to assure the project management that economy in maintenance affecting appearance has reached the proper minima. The following estimate factors contemplate operating very close to the lower limit of acceptability.  
\*† [Par. I]

§ 651.2 *Grounds.* The care of all ground areas either planted or paved, classified as repair, maintenance and replacement, does not include the removal of snow or trash, which is included in Operating Services. The estimate of costs for repairs, maintenance and replacements of grounds therefore includes all labor, supplies, materials and equipment required for planted areas, for surfaced areas, and for yard appurtenances.

(a) *Planted areas.* The degree of maintenance of landscaped areas will depend upon the appearance standard which is adopted. This will vary with different types of areas. In keeping with the general standards for RM&R, the ultimate objective should be tenant maintenance of all planted areas. The planning of some projects militates against the complete achievement of this objective. For this reason planted areas are divided into two classes for budgeting purposes, i. e. project maintained and tenant maintained.

(1) *Project maintained planted areas—*  
(i) *Primary project areas.* These areas, which are similar to "front or side yard" areas, but not necessarily adjacent to dwellings, should be kept at a relatively high level of appearance.

(ii) *Secondary project areas.* These areas may be considered insofar as the

degree of maintenance is concerned as "back yard areas". They are not necessarily back of any building or adjacent to a dwelling. While their appearance should always be neat and orderly, the kind of planting and the care given them will be at a lower level than that for primary areas.

(iii) *Play field turf.* Play fields requiring turf maintained for active recreation would be cut by scythes or other field equipment.

(iv) *Recreation areas—Naturalistic.* These areas include wooded or field areas used as parks for passive recreation and require care only for the normal care of the trees and the removal of the undesirable growth.

(v) *Undeveloped areas.* Land purchased for future development should be maintained only to the degree necessary to prevent the areas from being unsightly and hazardous.

(2) *Tenant maintained planted areas—*(1) *Tenant front and side yards* are planted areas usually at the front and ends of buildings, the maintenance of which can be assigned to the tenant. These areas are comparable to Primary Project Areas, the only difference being that the ordinary maintenance functions are performed by the tenant.

(ii) *Tenant back yards* are areas of lesser importance adjacent to the dwelling, the maintenance of which can be assigned to the tenant.

(iii) *Allotment gardens* are additional areas set aside for gardening by tenants. These garden areas will require an occasional clearing by the project maintenance force and a certain amount of management supervision.

(b) *Surfaced areas.* Surfaced areas may be divided between hard surfaces and water-bound surfaces. These areas include walks, drives, spray pools, play and other recreation areas, laundry yards, trash platforms, and the like.

(1) *Hard surfaced areas* include those finished with masonry, concrete and bituminous materials.

(2) *Water-bound surfaces* include clay and gravel combinations and macadam.

(c) *Yard appurtenances.* Yard appurtenances include fences, clothes posts, benches, and guard rails.

(d) *Correction for labor rates.* The following tabulation gives the average unit costs for the above classifications of planted areas based on a 35¢ per hour labor rate. If the actual rate for unskilled laborers (after making allowances, if any, for paid time on vacations or on sickness) differs from 35¢ per hour, the labor costs indicated in this tabulation should be corrected in direct proportion. In such cases, it is suggested that the estimates for grounds be worked up to totals for labor and equipment based on the 35¢ rate. Then the total labor for grounds can be corrected for the local rate and added to the

material costs giving a corrected total grounds cost.

(e) *Estimated unit costs of items of ground maintenance.*

Item	10-year average annual cost per 1,000 square feet			Additional average annual cost <sup>1</sup>
	Labor	Materials	Total	
<i>Lawn and planted areas</i>				
Primary project:				
2 Stories or less.....	\$7.87	\$3.19	\$11.06	
3 Stories or more.....	9.89	5.00	14.89	
Secondary project.....	3.92	1.60	5.52	
Play field turf.....	1.40	.87	2.27	
Recreation areas: natu- ralistic.....	.70	.50	1.20	
Undeveloped areas.....	.28	.10	.38	
Tenant front and side yards.....	.70	3.44	4.14	
Tenant back yards.....	.70	.55	1.25	
Allotment gardens.....	.42	.20	.62	

<sup>1</sup> Since the costs of these items are not based on the development cost the "Additional Average Annual Cost" is obtained by multiplying the total cost for materials only by 0.21. The labor cost is not to be increased in such computation.

Item	10-year average annual cost	Additional average annual cost
Hard surfaced areas.....	0.0112	0.029
Water-bound surfaced areas.....	.0410	.029
Yard appurtenances.....	.0375	.039

\*† [Par. III]

§ 651.3 Structures—(a) *Description.*

Under the subject of Structures is included the repair, maintenance and replacement of roofing and sheet metal; masonry, caulking and waterproofing; tile setting, lathing and plastering; carpentry (including wood and asphalt tile floors, hardware, glazing and screens; and sundry items including incinerator structures, ironwork, and the like. It does not include painting or decorative coverings.

(b) *Standard of RM&R.* The standard for maintenance of structures should be based upon both utility and appearance. The roofing, exterior walls and caulking should be kept weathertight to prevent damage by water to structure and decoration. Painting and decorating costs can be materially increased by such water damage. The standard of maintenance and replacement of carpentry work including floors should be in keeping with the discussion on general standards. Screens should be kept in a good state of repair in order to be at all effective.

(c) *Estimate factors.* The 10 Year Average Annual RM&R Cost for structures may be estimated at .0021 times the total development cost of all of the structure, including floor coverings (linoleum, asphalt tile, and the like) and the building foundations. The Additional Average Annual RM&R Cost is estimated at .0027 times the total development cost of the structure.\*† [Par. III]

§ 651.4 *Painting and Decorating—*

(a) *Description.* Painting and decorating includes all exterior and interior painting, also the project labor and material for washing painted surfaces, plaster patching, floor refinishing, and for the repair and replacement of shades and curtain rods.

(b) *Standards.* Paint is applied to protect the surface and to affect the appearance. Color has little bearing on the protective qualities, but has a large bearing on appearance. The color scheme of a project should be simplified so that the number of colors to use will be reduced to a minimum. Keeping in mind that atmospheric dirt in some localities will darken painted surfaces, colors should be chosen for exterior work which will give pleasing results for the useful life of the paint. The replacement of exterior paint should only be done when it no longer protects the painted surface. The replacement of interior paint will normally be made to improve appearance before it will be necessary to protect the surface by painting.

(c) *No additional average annual RM&R cost.* Costs of painting and decorating are estimated to be the same for the first 10 years and for the following 48 years. Thus the figures given below reflect both the 10 Year Average Annual Cost and the average annual cost thereafter. There will be no Additional Average Annual Cost.

(d) *Exterior painting—(1) Estimate factors.* A good grade of paint should always be used. Even the best paints will give protection for varying lengths of time, depending upon the climatic conditions. The experience of the locality should be reflected in the painting cycle noted in the Management Resolution. The following figures give an average cost of repainting the various items noted, based on paint costing \$1.75 per gallon and a labor rate of 75¢ per hour:

Steel frames and sash, \$9.38 per hundred sq. ft. of masonry openings.

Wood frame sash (Av.—3'6" x 5'6"), \$0.60 per window, consisting of 2 sash.

Screens for wood sash, \$0.22 per window.

Exterior doors (paint one side), frame and all wood of screen door, \$1.10 per opening.

Outside blinds (plain), \$0.99 per window.

Metal hand rails attached to buildings, \$1.10 per 100 linear feet.

Outside trim (eaves, porches, gable ends, and the like), \$1.49 per 100 sq. ft.

(2) *Correction for different paint and labor costs.* If paint and labor unit costs are different than those on which the above were based, the following formula may be used to obtain a revised estimate for exterior painting:

$$T = (0.104P + 0.00545L + 0.41)t$$

T = the revised estimated total cost for exterior painting

P = the cost of paint in dollars per gallon

L = the actual cost of labor in cents per hour correcting if necessary for sick and annual leave with pay.

t = the total cost for exterior paint obtained from using the factors above noted.

(e) *Interior paint and decoration—*

(1) *Description.* This item includes minor repairs to walls, ceilings and trim to prepare the surface for repainting; painting of walls, ceiling and trim; waxing, oiling and refinishing of floor surfaces and the repair and replacement of shades and curtain rods. The estimates are divided between dwelling spaces and project and commercial space.

(2) *Dwelling spaces—(i) Walls, ceilings and trim.*

In general, interior painting will be replaced for the sake of appearance before it will be necessary to replace it to protect the surfaces. The time to replace it is therefore more difficult to define because it requires the striking of a balance between what the public should pay in subsidy, what the tenant can pay in his rents, and what should be done for the welfare of the tenant. A repainting schedule should be defined in the Management Resolution and used in making estimates for operating costs. There are several operations involved in the care of painted surfaces; the removal of dirt from the surface, the filling of cracks, minor patching of plaster, and the like, and the application of the paint material. In low rent housing, it is proper to expect the tenant to remove the dirt from the walls, ceilings and trim. The filling of cracks and other minor repairs should be done by the project maintenance crew. The application of paint materials to walls and ceilings may in many localities be done by the tenant. The saving which can be made in rents or subsidy by having the tenant assume responsibility for this labor is in the neighborhood of \$0.40 per month for a 4-room apartment. The application of paint, stain, wax, or similar materials to the trim of a room might be done by the tenant; but at this time, it is not thought advisable to have him do it. The skill required and the chance that the work will have to be done as a protective measure are such as to make it desirable in most cases to have the work done by the project maintenance crew. The project should furnish all materials and tools for interior painting and decorating, except those required for washing. The latter include soap, pails, sponges, and the like, which should generally be supplied by the tenant.

(ii) *Floors.* The tenants are expected to keep the floors clean. The project costs for floors indicated in the following tabulation include the refinishing

only. This consists of supplying waxes or paints and removing the accumulated material about every 5 years. The replacement of floors is included under the item of Structures.

(iii) *Shades and curtain rods.* The figures in the tabulation for shades contemplate washing the shades after about 3 years and replacing them in 5 years for steel sash and 8 years for wood sash. The figures for curtain rods include repairs and replacements.

(iv) *Estimate factors.* In the following tabulation, figures are given which can be used to estimate the cost of interior painting and decorating. The figures are given for different kinds of rooms, so it is necessary to know the total number of each kind of room in the project. For walls and ceilings the figures are for one job of painting involving one coat of paint. If, for instance, the walls and ceilings are repainted on a 4-year schedule, the totals obtained from the chart for walls and ceilings must be divided by 4 to obtain the annual cost of painting them. If painting is done to any appreciable extent as a result of tenant turnover, then the painting schedule may be greatly altered. The formula for this is very complex and includes certain compensating factors which affect the annual costs. The net result approximates the painting costs obtained from figuring a painting schedule without regard to turnover. The figures given in the table are for both project and tenant application of paints. In the latter case, the figures represent the costs to the project for materials and for a small amount of labor supplied by the project to instruct tenants. They do not include any payment to the tenant for work which he does. The other costs in the table are figured on an annual basis. They are figured for a 75¢ per hour labor rate and material costs corresponding to a good grade of material. If labor rates are other than 75¢ per hour, then the total cost for Interior Painting and Decorating should be corrected in accordance with the following formula:

$$T = \left( 0.67 + \frac{L}{225} \right) t$$

t = Total cost obtained from the tabulation

L = Total rate in cents per hour

(3) *Project and commercial space.* Interior painting and decorating costs for the project public spaces, heating plants service, and commercial spaces, exclusive of project stair halls, will average about 5% of the interior painting and decorating costs of the dwelling units. The painting cost per stair hall per story will average about \$1.60 for halls with glazed tile and \$3.30 for halls with painted walls per year. The unit "stair hall per story"

includes one landing and the stair from one story to the next.\*† [Par. IV]

§ 651.5 *Plumbing and Gas System—*  
(a) *Description.* The repair, maintenance and replacement of the plumbing and gas systems includes all labor, material and supplies for the hot and cold water systems, including lines, tanks, meters, generators, pumps, motors and controls; drainage and sewerage systems; and for plumbing fixtures, including medicine cabinets; gas piping, valves and meters.

(b) *Standards.* All of this equipment should be kept in usable condition. The question of appearance, except that which is included under the item of Painting and Decorating, rarely enters into the repair, maintenance and replacement of these items.

(c) *Estimate factors.* In estimating the repair, maintenance and replacement for the plumbing and gas systems, the total development cost is used as a basis. This appears feasible because the type of equipment and quality of workmanship which are acceptable for low rent housing constructed to last 60 years are of a fairly uniform grade. The annual repair, maintenance and replacement costs will vary for different sized projects and may be estimated by using the following factors of the total development cost for the plumbing and gas systems:

Number of dwelling units in project	10-year average annual cost	Additional average annual cost
50 to 299 dwelling units.....	0.0698	0.0214
300 to 499 dwelling units.....	.0689	.0200
500 or more dwelling units.....	.0078	.0171

\*† [Par. VI]

§ 651.6 *Electrical System—* (a) *Description.* The electrical system consists of the exterior distribution, including year lighting standards and underground telephone ducts; and the interior wiring including meters, fixtures, lamps and fuses. The costs for repairs, maintenance and replacements include all labor, materials and supplies for these items. The repair, maintenance and replacement costs for electric motors and their starting equipment are not included with the electrical system, but with the equipment which the motor drives.

(b) *Standards.* The standard of maintenance for the electrical system is determined by the service required rather than from the point of view of appearance. Where cooking and heating plant equipment is dependent upon the continuity of the electric supply, it is important that the maintenance of the electrical system be at a relatively high standard. Fortunately, electrical equipment, if it is not abused, will operate satisfactorily with a small amount of maintenance cost.

(c) *Estimate factors.* The repair, maintenance and replacement costs for the electrical system may be estimated from the development cost of the part of the system by the following factors:

Part of system	10-year average annual cost	Additional average annual cost
Exterior:		
Overhead.....	0.0067	0.0394
Underground.....	.0046	.0239
Interior.....	.0118	.0120

\*† [Par. VI]

§ 651.7 *Heating System—* (a) *Description.* The repair, maintenance and replacement costs of the Heating System includes costs of all labor, material and supplies used for the upkeep of the heating plant including boilers, firing equipment, heating stoves and furnaces, fans and pumps; the distribution system including distributing mains, pipes and ducts, steam meters and automatic controls; and radiation including radiators, radiator valves, traps and grills.

(b) *Standards.* The standard of maintenance will depend upon the service required from the equipment rather than upon its appearance. During cold weather, it is essential that heating service be maintained, particularly if damage from freezing of water lines is possible. In many installations tenants can be kept warm but not necessarily comfortable by the cooking equipment. This makes it possible to have interruptions to the heating plant, which fact will influence the necessity for certain types of maintenance work. Where the fuel cost is an important item of expense, the necessity for efficient operation exists. In general, the more expensive the fuel the more important is the item of efficiency. It costs money to maintain high efficiency. Some of this cost is reflected in the repair, maintenance and replacement expense and it is a matter of good heating plant management to determine the proper standard of maintenance from an efficiency point of view. Appearance should not be a controlling factor in this maintenance work. This statement, however, should not be interpreted to encourage slovenly and careless appearance around the plant. A good heating plant operator takes pride in his surroundings and some money spent to satisfy this pride is a good investment. A plant that is dark and dingy is rarely efficiently operated. A little cleaning material and paint given to the operator to be applied by him during spare moments will go a long way.

(c) *Estimate factors.* The annual cost for repair, maintenance and replacement may be estimated by multiplying the development cost of the heating system by the following factors:

Type of heating system	10-year average annual cost	Additional average annual cost
Central high pressure system	0.0258	0.0208
Central low pressure system	.0257	.0221
Group low pressure system or hot water	.0276	.0222
Heating with purchased steam	.0184	.0104
Hot air furnaces	.031	.023
Tenant operated hot water plants	.025	.012
Tenant operated steam plants	.030	.012
Tenant operated stoves and circulators	.039	.007
Tenant operated gas heaters	.001	.023

\*† [Par. VIII]

§ 651.8 *Elevators*—(a) *Description*. The use of elevators in low rent housing is rare except where land costs are extremely high. There is a wide variety of elevator equipment with varying degrees of automatic control. It is therefore not deemed necessary to cover this subject in a comprehensive way in this Part. Estimating the annual costs for the repair, maintenance and replacement of elevators should be treated as a special problem for each project where it arises.

(b) *Estimate factors*. As a very rough approximation the 10 Year Average Annual RM&R Cost will approximate .055 of the development cost of the elevators. The Additional Average Annual RM&R Cost will approximate .042 of the development cost.\*† [Par. VIII]

§ 651.9 *Ranges*—(a) *Description*. This item includes all costs of repair, maintenance and replacement of stoves or ranges used in whole or in part for cooking.

(b) *Standards*. The standard of maintenance should be very largely limited to that required to keep the equipment in usable condition. In view of the low rents and reduction in subsidy which must be obtained, all of the cleaning of ranges should be expected to be done by the tenant. If the outgoing tenant has not cleaned the range to the satisfaction of the incoming tenant, then the latter should complete the cleaning.

(c) *Estimate factors*. The annual repair, maintenance and replacement costs may be estimated at the following factors of the development costs:

Type of range	10-year average annual cost	Additional average annual cost
Electric	0.068	0.055
Gas	.091	.055
Oil	.066	.051
Coal	.062	.055

\*† [Par. IX]

§ 651.10 *Refrigerators*—(a) *Description and Standards*. The repair, maintenance and replacement costs for refrigerators include all labor and materials required to keep them in operative condition. If the refrigerators are project owned, the standard of maintenance should be the same as that outlined for ranges. If the refrigerators are tenant owned, there should be no added cost to the project for the maintenance of

them. It may prove less expensive for the tenant to have the project do certain maintenance work for him and bill him the actual cost of this service. If this is done, the cost of this work should be included in the estimate for refrigerator repair, maintenance and replacement, and a like amount included in the budget estimate for Other Income.

(b) *Estimate factors*.—The annual allowance for the repair, maintenance and replacement of refrigerators may be estimated by multiplying the development cost of the refrigerator by the following factors:

Type of refrigerator	10-year average annual cost	Additional average annual cost
Electric	0.064	0.053
Gas	.053	.052
Oil	.052	.052
Ice	.053	.053

\*† [Par. X]

§ 651.11 *Other equipment*—(a) *Description*. In this group is included electric laundry hot plates, electric hot water heaters; shop equipment, tools and supplies; operating service equipment; social, recreational and playground equipment; office equipment; and sundry including electric hot water heaters.

(b) *Standards*. The standard of maintenance of these items should primarily be to keep them in usable shape with the exception of the social and office equipment which, in addition, should be maintained to have a neat appearance.

(c) *Electric hot plates*. Laundry service, such as boiling clothes and fixing starch, is hard on electric hot plates. The average annual RM&R costs will approximate 0.24 of the development cost of the hot plates. There will be no Additional Average Annual RM&R Cost. Gas hot plates are usually furnished under the plumbing contract, so the repair, maintenance and replacement for gas plates is included in the Plumbing and Gas System estimate.

(d) *Shop equipment*. The average annual allowance for the repair, maintenance and replacement of shop equipment may be estimated from the following tabulation:

Dwelling unit:	Accr. Annual RM&R Costs
Less than 300 Dwelling Units	0.64
300 to 999 Dwelling Units	0.47
1,000 and over Dwelling Units	0.30

There will be no Additional Average Annual RM&R Cost.

(e) *Operating service equipment*. With the exception of garbage cans and trash cans and baskets, the operating service equipment can be classified with janitorial supplies, which item is estimated under Operating Services. The maintenance and replacement costs of project owned garbage cans will amount to 50¢ per year per family using them. This is based on cans of sufficient number and size for garbage collections twice a week. The maintenance and replace-

ment costs of project owned cans will amount to 31¢ per year per family using them. This is based on collections twice a week. If collections are made once a week, double the can cost should be provided. Public trash baskets. On the basis of \$6 baskets being cleaned, repaired and painted annually, and lasting 6 years, the cost per basket will be \$1.60 per year. There will be no Additional Average Annual RM&R Costs for Operating Service Equipment.

(f) *Social, recreational and playground equipment*. It is a policy of the USHA to urge local authorities to obtain from other agencies insofar as possible the recreational facilities necessary for the project tenants. The Management Program should indicate what facilities of this nature are maintained by the city. The annual project cost for the repair, maintenance and replacement of the facilities which the city does not provide may be estimated by allowing .075 of the development cost of the equipment purchased for the project. There will be no Additional Average Annual RM&R Costs for Social, Recreational and Playground Equipment.

(g) *Office equipment*. The annual cost of the repair, maintenance and replacement of office equipment may be estimated at 10% of the development cost of that equipment. There will be no Additional Average Annual RM&R Costs.

(h) *Electric hot water heaters*. The 10 Year Average Annual RM&R Cost for these heaters will be .033 of the development cost. The Additional Average Annual RM&R Cost will be .046 of the development cost.

NATHAN STRAUS,  
Administrator.

JANUARY 31, 1940.

[F. R. Doc. 40-524; Filed, February 5, 1940; 9:19 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR  
CHAPTER II—GENERAL LAND  
OFFICE

AIR NAVIGATION SITE WITHDRAWAL No. 134,  
ALASKA

JANUARY 22, 1940.

It is ordered, under and pursuant to the provisions of section 4 of the act of May 24, 1928, 45 Stat. 723, that the unsurveyed public lands in Alaska lying within the following-described boundaries be, and they are hereby, withdrawn from all forms of appropriation under the public-land laws, subject to valid existing rights, for the use of the Alaska Road Commission in the maintenance of air navigation facilities:

Beginning at Corner No. 1, which is identical with Corner No. 3 of U. S. Survey No. 2253, at Nation, approximate latitude 65°16' N., longitude 141°47' W.; thence along the east boundary of said

survey N. 0°28' E. 238.1 feet to Corner No. 2; thence S. 30°15' E. 1552 feet to Corner No. 3; thence S. 59°45' W. 250 feet to Corner No. 4; thence N. 30°15' W. 1423.6 feet to Corner No. 5, which is on the south boundary of the aforementioned survey; thence S. 89°32' E. 149.4 feet along this boundary to Corner No. 1, the place of beginning, containing 8.13 acres;

Beginning at Corner No. 1, a point which bears N. 56°43' E. 2035 feet from Corner No. 3 of U. S. Survey No. 1922, at Snag Point, approximate latitude 59°03' N., longitude 158°25½' W.; thence S. 71°41' E. 500 feet to Corner No. 2; thence N. 18°19' E. 4000 feet to Corner No. 3; thence N. 71°41' W. 500 feet to Corner No. 4; thence S. 18°19' W. 4000 feet to Corner No. 1, the place of beginning, containing 45.9 acres;

Beginning at Corner No. 1 which is identical with Corner No. 3 of U. S. Survey No. 2373 at Platinum, approximate latitude 59°01' N., longitude 161°47' W.; thence N. 16°41' W. 502.3 feet along the westerly boundary of said survey to Corner No. 2; thence S. 67°52' W. 243 feet to Corner No. 3; thence N. 17°45' W. 1500 feet to Corner No. 4; thence S. 72°15' W. 500 feet to Corner No. 5; thence S. 17°45' E. 1538.3 feet to Corner No. 6; thence S. 67°52' W. 700 feet to Corner No. 7; thence S. 22°08' E. 500 feet to Corner No. 8; thence N. 67°52' E. 661.7 feet to Corner No. 9; thence S. 17°45' E. 1960.2 feet to Corner No. 10; thence N. 72°15' E. 500 feet to Corner No. 11; thence N. 17°45' W. 1998.5 feet to Corner No. 12; thence N. 67°52' E. along the northerly boundary of U. S. Survey No. 2372 for a distance of 233.6 feet to the place of beginning, containing approximately 56.47 acres;

Beginning at Corner No. 1 whence U. S. L. M. No. 1487 (Willow Creek Mining District, Wasilla Recording Precinct) bears approximately N. 5° E. and is approximately 2668 feet distant, approximate latitude 61°44' N., longitude 149°25' W.; thence N. 17°30' W. 300 feet to Corner No. 2; thence S. 72°30' W. 3000 feet to Corner No. 3; thence S. 17°30' E. 300 feet to Corner No. 4; thence N. 72°30' E. 3000 feet to Corner No. 1, the place of beginning, containing 20.66 acres;

Beginning at Corner No. 1, from which point U. S. L. M., No. 2016 at Beaver bears N. 84°03' E. 1624.5 feet, approximate latitude 66°21' N., longitude 146°55' W.; thence N. 73°37' W. 500.9 feet to Corner No. 2; thence N. 53°23' E. 3689 feet to Corner No. 3; thence S. 36°37' E. 400 feet to Corner No. 4; thence S. 53°23' W. 3387.5 feet to Corner No. 1, the place of beginning, containing approximately 32.49 acres.

OSCAR L. CHAPMAN,  
Assistant Secretary of the Interior.

[F. R. Doc. 40-521; Filed, February 5, 1940; 9:18 a. m.]

STOCK DRIVEWAY WITHDRAWAL No. 254,  
NEW MEXICO No. 14, ENLARGED

JANUARY 22, 1940.

It appearing that the following-described public lands should be included in Stock Driveway Withdrawal No. 254, New Mexico No. 14, it is ordered, under and pursuant to the provisions of section 7 of the act of June 28, 1934, 48 Stat. 1269, as amended by the act of June 26, 1936, 49 Stat. 1976, and section 10 of the act of December 29, 1916, 39 Stat. 862, as amended by the act of January 29, 1929, 45 Stat. 1144, that such lands, excepting any mineral deposits therein, be, and they are hereby, withdrawn from all disposal under the public-land laws and reserved for the use of the general public as an addition to such driveway reservation, subject to valid existing rights and the water power and power site reservations affecting certain of the lands:

*New Mexico Principal Meridian*

T. 31 N., R. 11 E., lot 1, SE¼NE¼, W½SE¼ sec. 11, W½NE¼, SE¼ sec. 14, E½E½ sec. 23, W½NW¼, SW¼, S½SE¼ sec. 25, E½NE¼ sec. 26, NE¼NE¼ sec. 36;  
T. 28 N., R. 12 E., SW¼ sec. 5, lots 3 and 4, SW¼NE¼, SE¼NW¼, SE¼ sec. 6, W½ sec. 8, NW¼, W½SW¼ sec. 17, E½ sec. 18, NW¼NW¼ and that part of the SW¼NW¼ north and west of the Red River and west of the Rio Grande River, and that part of the W½SW¼ sec. 20 west of the Rio Grande River, that part of the W½NW¼ sec. 29 west of such river, E½NE¼, SE¼ sec. 30, E½ sec. 31 and that part west of the Rio Grande River in the SW¼SW¼ sec. 32;  
T. 29 N., R. 12 E., lot 3, SE¼NW¼, NE¼SW¼, NW¼SE¼, S½SE¼ sec. 5, NE¼NE¼ sec. 8, W½ sec. 9, N½NW¼, SW¼NW¼, NW¼SW¼ sec. 16, lots 3, 4, 6, 7, 9 and 10 sec. 17, E½W½, SW¼SW¼ sec. 20, W½W½ sec. 29, E½SE¼ sec. 30, NE¼, E½SW¼, NW¼SE¼, sec. 31;  
T. 30 N., R. 12 E., lots 3, 4, 5 and 6, SE¼NW¼, E½SW¼, sec. 6, E½NW¼, NE¼SW¼, W½SE¼ sec. 7, E½SE¼ sec. 18, lots 2, 3 and 4, SE¼NW¼, E½SW¼, SE¼ sec. 19, N½SW¼ sec. 29, NE¼, NE¼SE¼ sec. 30, S½NW¼, SW¼ sec. 32;  
T. 31 N., R. 12 E., lot 4 sec. 30, lots 1, 2, 3 and 4, E½W½ sec. 31; aggregating approximately 6,480 acres.

Any mineral deposits in the lands shall be subject to location and entry only in the manner prescribed by the Secretary of the Interior in accordance with the provisions of the aforesaid act of January 29, 1929, and existing regulations.

OSCAR L. CHAPMAN,  
Assistant Secretary of the Interior.

[F. R. Doc. 40-522; Filed, February 5, 1940; 9:18 a. m.]

STOCK DRIVEWAY WITHDRAWAL No. 25,  
SOUTH DAKOTA No. 2, MODIFIED

JANUARY 26, 1940.

It appearing that Stock Driveway Withdrawal No. 25, South Dakota No. 2, should be modified by adding certain lands thereto and by releasing certain lands therefrom, it is ordered, under and

pursuant to the provisions of section 7 of the act of June 28, 1934, 48 Stat. 1269, as amended by the act of June 26, 1936, 49 Stat. 1976, and section 10 of the act of December 29, 1916, 39 Stat. 862, as amended by the act of January 29, 1929, 45 Stat. 1144, that the following-described public lands, excepting any mineral deposits therein, be, and they are hereby, withdrawn from all disposal under the public-land laws and reserved for the use of the general public as an addition to such driveway reservation, subject to valid existing rights:

*Black Hills Meridian*

T. 13 N., R. 3 E., lots 3 and 4, S½NW¼ sec. 4, E½SE¼ sec. 5, E½E½ of secs. 8, 17, 20, 29, and 32;  
T. 14 N., R. 3 E., SW¼ sec. 33; aggregating 1,200.11 acres.

Any mineral deposits in the lands shall be subject to location and entry only in the manner prescribed by the Secretary of the Interior in accordance with the provisions of the aforesaid act of January 29, 1929, and existing regulations.

And departmental order of withdrawal of June 25, 1918, for stock driveway purposes is hereby revoked in so far as it affects the following-described lands:

T. 12 N., R. 1 E., N¼, SW¼, N¼SE¼, SW¼SE¼ sec. 13;  
T. 13 N., R. 1 E., S½ of secs. 21 and 35;  
T. 12 N., R. 2 E., SW¼NW¼, NW¼SW¼ sec. 18, E½NW¼ sec. 19;  
T. 11 N., R. 3 E., lots 2 and 3 sec. 4;  
T. 12 N., R. 3 E., NE¼, N¼SE¼ sec. 3, N¼NE¼ sec. 28, E½SW¼ sec. 33;  
T. 13 N., R. 3 E., W½ of secs. 3 and 10, N¼ of secs. 13 and 14, all of secs. 15 and 22, S½ sec. 23, SW¼ sec. 24, SE¼ sec. 34;  
T. 14 N., R. 3 E., W½ sec. 34;  
T. 13 N., R. 4 E., W½ sec. 6;  
T. 14 N., R. 4 E., SE¼ sec. 30, E½ sec. 31, S½ of secs. 32 and 33; aggregating 6,827.90 acres.

OSCAR L. CHAPMAN,  
Assistant Secretary of the Interior.

[F. R. Doc. 40-523; Filed, February 5, 1940; 9:19 a. m.]

*Notices*

DEPARTMENT OF THE INTERIOR,

Bituminous Coal Division.

[Docket No. 551-FD]

IN THE MATTER OF THE APPLICATION OF  
A. A. PROVINS FOR EXEMPTION UNDER  
SECTION 4-A OF THE BITUMINOUS COAL  
ACT OF 1937

ORDER OF DISMISSAL

An application for exemption dated January 7, 1938, having been filed by A. A. Provins pursuant to the provisions of the second paragraph of Section 4-A of the Bituminous Coal Act of 1937; and The Applicant and his counsel and counsel for the Bituminous Coal Division having entered into a stipulation, on January 11, 1940, which has been filed as part of the record herein, consenting

to the discontinuance and dismissal of said application;

*It is ordered,* That the above described application be and the same hereby is dismissed subject to the terms and conditions of said stipulation.

Dated, February 3, 1940.

[SEAL] H. A. GRAY,  
Director.

[F. R. Doc. 40-526; Filed, February 5, 1940; 11:12 a. m.]

[Docket No. 565-FD]

IN THE MATTER OF THE APPLICATION OF BRUCE GABBERT FOR EXEMPTION UNDER SECTION 4-A OF THE BITUMINOUS COAL ACT OF 1937

ORDER OF DISMISSAL

An application for exemption dated December 28, 1937, having been filed by Bruce Gabbert pursuant to the provisions of the second paragraph of Section 4-A of the Bituminous Coal Act of 1937; and

The Applicant and his counsel and counsel for the Bituminous Coal Division having entered into a stipulation, on January 11, 1940, which has been filed as part of the record herein, consenting to the discontinuance and dismissal of said application;

*It is ordered,* That the above described application be and the same hereby is dismissed subject to the terms and conditions of said stipulation.

Dated, February 3, 1940.

[SEAL] H. A. GRAY,  
Director.

[F. R. Doc. 40-527; Filed, February 5, 1940; 11:12 a. m.]

[Docket No. 961-FD]

IN THE MATTER OF THE APPLICATION OF W. L. LANHAM FOR EXEMPTION UNDER SECTION 4-A OF THE BITUMINOUS COAL ACT OF 1937

ORDER OF DISMISSAL

An application for exemption dated September 21, 1939, having been filed by W. L. Lanham pursuant to the provisions of the second paragraph of Section 4-A of the Bituminous Coal Act of 1937; and

The Applicant and his counsel and counsel for the Bituminous Coal Division having entered into a stipulation, on January 11, 1940, which has been filed as part of the record herein, consenting to the discontinuance and dismissal of said application;

*It is ordered,* That the above described application be and the same hereby is dismissed subject to the terms and conditions of said stipulation.

Dated February 3, 1940.

[SEAL] H. A. GRAY,  
Director.

[F. R. Doc. 40-528; Filed, February 5, 1940; 11:12 a. m.]

[Docket No. 1110-FD]

IN THE MATTER OF THE APPLICATION OF L. B. REEDER FOR EXEMPTION UNDER SECTION 4-A OF THE BITUMINOUS COAL ACT OF 1937

ORDER OF DISMISSAL

An application for exemption dated January 13, 1938, having been filed by L. B. Reeder pursuant to the provisions of the second paragraph of Section 4-A of the Bituminous Coal Act of 1937; and

The Applicant and his counsel and counsel for the Bituminous Coal Division having entered into a stipulation, on January 11, 1940, which has been filed as part of the record herein, consenting to the discontinuance and dismissal of said application;

*It is ordered,* That the above described application be and the same hereby is dismissed subject to the terms and conditions of said stipulation.

Dated, February 3, 1940.

[SEAL] H. A. GRAY,  
Director.

[F. R. Doc. 40-529; Filed, February 5, 1940; 11:13 a. m.]

[Docket No. 1111-FD]

IN THE MATTER OF THE APPLICATION OF RAY WILLIAMS FOR EXEMPTION UNDER SECTION 4-A OF THE BITUMINOUS COAL ACT OF 1937

ORDER OF DISMISSAL

An application for exemption dated January 13, 1939, having been filed by Ray Williams pursuant to the provisions of the second paragraph of Section 4-A of the Bituminous Coal Act of 1937; and

The Applicant and his counsel and counsel for the Bituminous Coal Division having entered into a stipulation, on January 11, 1940, which has been filed as part of the record herein, consenting to the discontinuance and dismissal of said application;

*It is ordered,* That the above described application be and the same hereby is dismissed subject to the terms and conditions of said application.

Dated, February 3, 1940.

[SEAL] H. A. GRAY,  
Director.

[F. R. Doc. 40-530; Filed, February 5, 1940; 11:13 a. m.]

DEPARTMENT OF AGRICULTURE.

Food and Drug Administration.

[Docket No. FDC-13]

IN THE MATTER OF PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED AMENDING "REGULATIONS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT FOR THE LIST-

ING OF COAL-TAR COLORS. CERTIFICATION OF BATCHES THEREOF, AND PAYMENT OF FEES FOR SUCH SERVICE", (A) BY CHANGING: (1) CERTAIN SPECIFICATIONS OF CERTAIN LISTED COLORS AND CERTAIN MIXTURES OF SUCH COLORS: (2) CERTAIN REQUIREMENTS AS TO THE SIZES OF SAMPLES: (3) THE LABELING FOR CERTAIN MIXTURES: (4) THE FEES TO BE PAID FOR THE SERVICE OF CERTIFICATION: AND (B) BY THE LISTING OF ADDITIONAL COAL-TAR COLORS

REPORT OF PRESIDING OFFICER, SUGGESTED FINDINGS OF FACT, CONCLUSIONS AND ORDER

Pursuant to, and under the authority of, a notice in the above-entitled matter issued by the Secretary of Agriculture dated October 17, 1939, filed with the Archivist of the United States October 19, 1939, and published in the FEDERAL REGISTER October 20, 1939 (Vol. 4, No. 203, pp. 4309-4311), wherein the undersigned was designated as Presiding Officer to conduct in the place of the Secretary the public hearing herein, such hearing to be in conformity with the Federal Food, Drug, and Cosmetic Act [52 Stat. 1040-1055; 21 U.S.C. (Supp. IV) 301-392], Section 701 (e) [52 Stat. 1055; 21 U.S.C. (Supp. IV) 371 (e)], and under the authority of the following sections of said Act, namely: 406 (b) [52 Stat. 1049; 21 U.S.C. 346 (b)]; 504 [52 Stat. 1052; 21 U.S.C. 354]; 604 [52 Stat. 1055; 21 U.S.C. 364], and 701 (a) [52 Stat. 1055; 21 U.S.C. (Supp. IV) 371 (a)]; the said hearing was convened by the undersigned Presiding Officer at the time and place specified in said notice.

There was read into the record that portion of the notice of the Secretary: setting the time and place for such hearing; stating the purpose thereof; making specific reference to the proposed amendments, thereafter set forth, and reciting that such amendments were subject to adoption, rejection, amendment or modification by the Secretary, in whole or in part, as the evidence adduced at the hearing warranted; making specific reference to the Rules of Procedure governing the hearing, published in the FEDERAL REGISTER January 13, 1939; and designating the Presiding Officer.

Five copies of the FEDERAL REGISTER dated October 20, 1939, containing the said Notice and proposals of the Secretary were offered and received in evidence, and each of said copies was marked "Government's Exhibit No. 1."

It was announced in open session by the Presiding Officer that those who entered appearances at the hearing would be notified of the date of the filing of the transcript of the evidence and the proceedings with the Hearing Clerk, Office of the Solicitor, Department of Agriculture, Washington, D. C., and that seven days would be allowed, from the date of the receipt of such notice, those

who had entered appearances, for the filing with such Hearing Clerk of proposed findings of fact, written arguments and briefs based solely upon the evidence adduced at the hearing.

Each of such interested persons was subsequently so notified by a letter transmitted by registered mail to the address given at the time appearance was entered.

No controversy developed at the hearing upon, and within the scope of, the proposals submitted by the Secretary.

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

#### *Suggested Findings of Fact*

##### A. Proposed Color D&C Red No. 38— Chemical Aspects

1. *Raw materials used in manufacture—Intermediates.* Organic raw materials used in the manufacture of coal-tar colors are known as intermediates. (R. 37)

2. *Intermediates chemically combined—Pure dye.* When the intermediates are in proper proportion and the chemical reaction proceeds properly and the intermediates are chemically combined, the finished product is pure dye. (R. 38)

3. *Intermediates not chemically combined—Impurities.* When the conditions set forth in paragraph 2 do not obtain, one of the intermediates may be present in the finished product in free or chemically uncombined form; and in such form the intermediates are organic impurities in the color. (R. 38)

4. *D&C red No. 38 a coal-tar color.* The color proposed as D&C Red No. 38 is a coal-tar color. (R. 30-1)

5. *Technical description of chemical identity.* The Technical description of the chemical identity of the pure dye in the color D&C Red No. 38 is 3-hydroxy-N-(m-nitrophenyl)-4-(o-nitro-p-tolylazo)-2-naphthamide. (R. 31-32)

6. *Intermediates used—Either may be uncombined.* The intermediates used in the manufacture of such color are 2-nitro-p-toluidine and 3-hydroxy-N-(m-nitrophenyl)-2-naphthamide; and either of such intermediates may occur in the color in uncombined form. (R. 37-39)

7. *Practicable limit for uncombined intermediates.* It is practicable in good manufacturing practice to restrict either of such uncombined intermediates to  $\frac{1}{10}$  of 1 percent. (R. 37-39)

8. *Impurities necessarily occurring.* Matter foreign to the pure dye, termed

impurities, necessarily occurs to some extent in the manufacture of this color under good manufacturing practice; and when so occurring such impurities are a part of the color. (R. 32-34)

9. *Determination of pure dye content.* The pure dye content of this color may be determined with the most accurate results in the shortest possible time by calculation from the organically combined nitrogen. (R. 33)

10. *Practicable pure dye content.* It is practicable in good manufacturing practice to so manufacture this color that the pure dye content is not less than 90 percent, as calculated from organically combined nitrogen. (R. 33-5)

11. *Volatile matter—Determination.* Volatile matter, which is usually moisture, is the remainder in the color of the volatile solvent from which the color is precipitated. Volatile matter is determined by heating a weighed portion of the color at a suitable temperature, that is, a temperature at which the material does not disintegrate, until such weighed portion no longer loses in weight. (R. 35)

12. *Suitable temperature for determining volatile matter.* A suitable temperature for determining volatile matter in the color D&C Red No. 38 is 135 degrees centigrade. (R. 35)

13. *Practicable limit for volatile matter.* It is practicable in good manufacturing practice to so manufacture the color that volatile matter does not exceed 5 percent. (R. 36)

14. *Sulfated ash indicative of inorganic impurities.* The presence of sulfated ash in the color is indicative of certain inorganic impurities. (R. 36)

15. *Practicable limit for sulfated ash.* It is practicable in good manufacturing practice to so manufacture the color that sulfated ash does not exceed  $1\frac{1}{2}$  percent. (R. 36)

16. *Nitrobenzene determinative of impurity.* The color is soluble in nitrobenzene; and any matter therein which is insoluble in nitrobenzene is an impurity. (R. 37)

17. *Practicable limit for matter insoluble in nitrobenzene.* It is practicable in good manufacturing practice to so manufacture the color that the amount of matter insoluble in nitrobenzene present in the color does not exceed  $\frac{1}{2}$  of 1 percent. (R. 37)

18. *Specifications necessary to assure chemical identity and purity of D&C Red No. 38.* The specifications necessary to assure the chemical identity of the color D&C Red No. 38 and its purity, taking into account the impurities which may enter the color in the course of good manufacturing practice, are as follows:

3-Hydroxy-N-(m-nitrophenyl)-4-(o-nitro-p-tolylazo)-2-naphthamide;  
Volatile matter (at 135° C.); not more than 5.0 percent;

Sulfated ash, not more than 1.5 percent;

Matter insoluble in nitrobenzene, not more than 0.5 percent;

2-Nitro-p-toluidine, not more than 0.2 percent;

3-Hydroxy-N-(m-nitrophenyl)-2-naphthamide; not more than 0.2 percent; and pure dye (as calculated from organically combined nitrogen), not less than 90.0 percent. (R. 30-40)

##### B. Proposed Color D&C Red No. 38— Pharmacological Aspects

19. The proposed color D&C Red No. 38, meeting the specifications set forth in paragraph 18 hereof and subject to the general specifications, the restrictions and the other provisions of the *Regulations Under the Federal Food, Drug, and Cosmetic Act for the Listing of Coal-Tar Colors, Certifications of Batches thereof, and payment of Fees for such Service* (hereinafter referred to herein as "the regulations") is harmless and suitable for use as a coloring agent in drugs and cosmetics (R. 39-40, 88-90, 90-91)

##### C. Lakes—Chemical Aspects—Manufacturing Practices

20. *Lakes upon substrata of alumina prepared from water soluble colors listed in section 135.03 by combining basic radicle aluminum or calcium with color—Uncombined intermediates.* Any lake made by extending on a substratum of alumina a salt prepared from one of the water soluble straight colors listed in section 135.03 of the regulations by combining such color with the basic radicle aluminum or calcium, may contain intermediates in uncombined form. (R. 42-43)

21. *Practicable limit for such uncombined intermediates.* It is practicable in good manufacturing practice to restrict the intermediates in uncombined form, referred to in paragraph 20 hereof, to  $\frac{1}{10}$  of 1 percent. (R. 42-43)

22. *Necessity for restricting ether extracts in lakes.* The presence of ether extracts, which are a measure of certain organic impurities that are liable to occur in the lakes described in paragraph 20 hereof, makes necessary the restriction of ether extracts. (R. 41)

23. *Practicable limit for ether extracts in lakes.* It is practicable in good manufacturing practice to restrict ether extracts, in the lakes described in paragraph 20 hereof and referred to in paragraph 22 hereof, to  $\frac{1}{10}$  of 1 percent. (R. 41)

24. *Necessity for restricting soluble chlorides and sulfates in lakes.* The presence of soluble chlorides and sulfates, which are inorganic salts and impurities, and which are liable to occur in the lakes described in paragraph 20 hereof, makes necessary the restriction of soluble chlorides and sulfates in such lakes. (R. 41-42)

25. *Practicable limit for soluble chlorides and sulfates in lakes.* It is practicable, in good manufacturing practice, to restrict soluble chlorides and sulfates

in the lakes described in paragraph 20 hereof, and expressed by chemical analysts as sodium salts, to 2 percent. (R. 41-42)

26. *Necessity for restricting inorganic matter insoluble in hydrochloric acid in lakes.* Inorganic matter insoluble in hydrochloric acid (HCl) is a measure of impurities which may occur in the substratum used in making the lakes described in paragraph 20 hereof. (R. 42)

27. *Practicable limit for inorganic matter insoluble in hydrochloric acid in lakes.* It is practicable in good manufacturing practice to restrict inorganic matter insoluble in hydrochloric acid in the lakes described in paragraph 20 hereof to 5/10 of 1 percent. (R. 42)

28. *Description of the lakes proposed for listing in section 135.03 of the regulations and specifications for limiting impurities therein.* The description of and specifications for the lakes proposed for listing in section 135.03 of the regulations, which description and specifications are necessary to describe such lakes and to specify and limit the impurities occurring therein in good manufacturing practice, are:

Any lake made by extending on a substratum of alumina, a salt prepared from one of the water soluble straight colors listed in section 135.03 of the regulations by combining such color with the basic radicle aluminum or calcium.

#### SPECIFICATIONS

Ether extracts, not more than 0.3 percent;

Soluble chlorides and sulfates (as sodium salts), not more than 2.0 percent; Inorganic matter, insoluble in HCl, not more than 0.5 percent; and

Intermediates, not more than 0.1 percent. (R. 40-43)

#### D. Lakes Applied to Shell Eggs—Pharmacological Aspects

29. *Such lakes harmless and suitable for use when applied to shell eggs.* Lakes made as described in paragraph 28 and meeting the specifications set forth therein, as well as the other specifications of the regulations applicable to colors listed in section 135.03 of the regulations, are harmless and suitable for use when applied to shell eggs. (R. 40-41, 88-89, 92-93)

#### E. Lakes—Names—Symbols—Mixtures Containing—Labels

30. *Nomenclature in regulations for colors not practicable for lakes.* That the applying to each lake of two names, each being the listed name of the color from which the lake is made and each lake bearing different symbols dependent upon whether the lake is listed under section 135.03 or section 135.04 is impracticable and liable to be confusing. [To illustrate, the names of lakes now listed in the regulations are composed of (1) the listed name of the color from which the lake is prepared (except that, if the lake is made under section 135.04

from a color listed under section 135.03, the symbol FD&C is changed to the symbol D&C), (2) the name of the basic radicle combined in such color, and (3) the word "Lake". The lakes made as described in paragraph 28 hereof are now listed under section 135.04 with names bearing the symbol D&C. Such lakes, if listed under the provisions of section 135.03 with names composed in the manner described in the first sentence within the brackets herein, would be listed under names bearing the symbol FD&C] (R. 44-46; Regulations)

31. *Lakes in mixtures containing harmless non-nutritive diluents proper for coloring shell eggs only.* The lakes described in paragraph 28, when used for coloring shell eggs, are sometimes used in mixtures containing a diluent to make the color stick on the shell of the egg, or to tone the color to a desired shade; and such mixtures when containing harmless but non-nutritive diluents are proper for coloring shell eggs. (R. 52)

32. *Labels of lakes or mixtures containing lakes certified only for limited use should show limitation.* The labels of lakes described in paragraph 28, or of mixtures containing such lakes, if such lakes or mixtures are certified under section 135.03 only for use in coloring egg shells, should bear the statement that the only use in foods for which the color is certified is that of coloring shell eggs. (R. 50)

F. Chemical Preservative—Sizes of Samples—Label Declaration of Percentage of Pure Dye—Lot Number—Batch Number—Exception for Mixtures for Household Use—Fees

33. *Sodium benzoate as chemical preservative of household colors harmless within certain limitations.* Sodium benzoate is a chemical preservative, and it is sometimes used as such in mixtures which are aqueous solutions or aqueous pastes, known as household colors; and when so used, in a quantity of not more than 0.1 percent, sodium benzoate is harmless. (R. 54, 93)

34. *Size of sample of straight color.* A one-half pound sample of a straight color is, in many cases, larger than is necessary for the analyses made in connection with its certification. A sample of one-quarter pound, in many cases, is sufficient. (R. 55-57)

35. *Size of sample mixture.* A one-quarter pound sample of the mixture is, in many cases, larger than is necessary for the analyses made in connection with its certification; and, except in the case of mixtures containing 2.0 percent, or less, of pure dye, where one-quarter of a pound is always necessary, a sample of one-eighth of a pound will, in many cases, be sufficient. (R. 55-57, 63-64)

36. *Label declaration of percentage of pure dye.* It is impracticable in good manufacturing practice to manufacture coal-tar colors containing uniform percentages of pure dye, different batches of the same color necessarily varying to

some degree. A proper label declaration of the percentage of pure dye may be made either by declaring the percentage stated in the certificate covering the color, or by declaring a minimum percentage below which the actual percentage does not fall and above which it does not vary to an unreasonable degree. (R. 57-3, 68-70, 82-84)

37. *Necessary to identify through lot number.* In order to determine that a package of color contains certified coal-tar color, it is necessary to identify the package by means of a lot number with the certified batch from which the color in the package was taken. (R. 55, 153-161)

38. *Not practicable to state lot number of batch on label in certain cases.* When the color to be labeled is a mixture and is in a package which contains, if the mixture is a liquid, not more than two fluid ounces, or, if the mixture is solid, semi-solid or viscous, and contains not more than two avoirdupois ounces, it is not commercially practicable for the manufacturer to state the lot number of the batch on the label. (R. 55, 102-4, 150-166)

39. *Household mixtures—Labels—Identification.* In the case of mixtures for household use which contain not more than 15 percent of pure dye and which are in packages of the sizes described in paragraph 38, sufficient identification of the lot numbers may be made from a statement of the lot number of the batch upon the label or labeling or upon the invoice which accompanies the shipment or delivery of the color, or from a statement upon the label of a code number which the manufacturer has identified with the lot number of the batch by informing the Food and Drug Administration of the assignment of such code number to the lot number. (R. 55, 102-4, 153-166)

40. *Lack of uniformity in costs of certification.* That under the schedule of fees provided in the regulations (section 135.15) there is a wide variance in the costs per pound of colors requested to be certified, such variance ranging from a fraction of a cent per pound for large batches to one dollar per pound for small packages, as shown by the experience of the certifying agency. (R. 59)

41. *A uniform and equitable schedule of fees.* That a more uniform and equitable schedule, providing fees for certification of coal-tar colors which will be sufficient to provide, maintain and equip an adequate system for that purpose, would be upon a basis of 5 cents per pound of the batch certified, with maximum fees of \$25 for straight colors and \$15 for mixtures, and with minimum fees of \$6 for straight colors and \$3 for mixtures. (R. 61)

Upon the basis of the foregoing findings of fact, it is concluded that the "Regulations Under The Federal Food, Drug, And Cosmetic Act For The Listing Of Coal-Tar Colors, Certification Of Batches Thereof, And Payment Of Fees

For Such Service," promulgated by the Secretary of Agriculture by order dated May 4, 1939, published in the FEDERAL REGISTER May 9, 1939 (Vol. 4, No. 89, pp. 1922-1947), as amended by Regulations promulgated by the Secretary of Agriculture by order dated September 14, 1939, published in the FEDERAL REGISTER September 16, 1939 (Vol. 4, No. 179, pp. 3931-3940), should be further amended, (A) by changing: (1) Certain specifications of Certain Listed Colors and certain mixtures of such colors; (2) Certain requirements as to the sizes of samples; (3) the labeling for certain mixtures; (4) the fees to be paid for the service of certification; and (B) by the listing of additional coal-tar colors, as specifically set out hereinafter in the suggested amendments to the Regulations heretofore promulgated, as aforesaid, and that such amendments to the said Regulations should be promulgated.

#### Suggested Conclusion and Order

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

#### REGULATION UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

*Regulations Amending Sections 135.03, 135.04, 135.06, 135.08, 135.10, 135.11 and 135.15 Of "Regulations Under The Federal Food, Drug, And Cosmetic Act For The Listing Of Coal-Tar Colors, Certification Of Batches Thereof, And Payment Of Fees For Such Service," (A) By Changing: (1) Certain Specifications Of Certain Listed Colors And Certain Mixtures Of Such Colors; (2) Certain Requirements As To The Sizes Of Samples; (3) The Labeling For Certain Mixtures; (4) The Fees To Be Paid For The Service Of Certification; And (B) By The Listing Of Additional Coal-Tar Colors.*

The "Regulations Under The Federal Food, Drug, And Cosmetic Act For The Listing Of Coal-Tar Colors, Certification Of Batches Thereof, And Payment Of Fees For Such Service" promulgated by order of the Secretary of Agriculture dated May 4, 1939, published in the FEDERAL REGISTER May 9, 1939 (Vol. 4, No. 89, pp. 1922-1947), as amended by the Regulations promulgated by order of the Secretary of Agriculture dated September 14, 1939, published in the FEDERAL REGISTER September 16, 1939 (Vol. 4, No. 179, pp. 3931-3940), are hereby further amended as follows:

1. Section 135.03 is amended by inserting after the caption of the section the letter "(a)" so as to constitute the whole of the present section subsection (a) thereof.

2. Section 135.03 is amended by striking out the first sentence of subsection (a) and inserting in lieu thereof the following:

"A batch of a straight color listed here-in may be certified, in accordance with the

provisions of these regulations, for use in food (subject to the restrictions prescribed by subsection (c) hereof), drugs, and cosmetics, if such batch conforms to the requirements of section 135.02 and to the specifications herein set forth for such color."

3. Section 135.03 is amended by adding at the end of subsection (a) the following:

#### "Lakes

"Any lake made by extending on a substratum of alumina, a salt prepared from one of the water soluble straight colors hereinbefore listed in this subsection by combining such color with the basic radicle aluminum or calcium.

#### "SPECIFICATIONS

"Ether extracts, not more than 0.3 percent.

"Soluble chlorides and sulfates (as sodium salts), not more than 2.0 percent.

"Inorganic matter, insoluble in HCl, not more than 0.5 percent.

"Intermediates, not more than 0.1 percent."

4. Section 135.03 is amended by adding two new subsections as follows:

"(b) Each lake made as prescribed under the caption 'Lakes' in subsection (a) shall be considered to be a straight color and to be listed therein under the name which is formed as follows:

"First, the listed name of the color from which the lake is prepared;

"Second, the name of the basic radicle combined in such color; and

"Third, the word 'Lake.'

"(For example, the name of a lake prepared by extending the aluminum salt prepared from FD&C Orange No. 1 upon the substratum would be FD&C Orange No. 1—Aluminum Lake.)

"(c) No lake listed in subsection (a) shall be certified for any use in food except external application to shell eggs."

5. Section 135.04 is amended by inserting after the name of and specifications for the color D&C Orange No. 17 the following:

"D&C Red No. 38

#### "SPECIFICATIONS

"3-Hydroxy-N-(m-nitrophenyl)-4-(o-nitro-p-tolylazo)-2-naphthamide.

"Volatile matter (at 135° C.) not more than 5.0 percent.

"Sulfated ash, not more than 1.5 percent.

"Matter, insoluble in nitrobenzene, not more than 0.5 percent.

"2-Nitro-p-toluidine, not more than 0.2 percent.

"3-Hydroxy-N-(m-nitrophenyl)-2-naphthamide, not more than 0.2 percent.

"Pure dye (as calculated from organically combined nitrogen), not less than 90.0 percent."

6. Section 135.04 is amended by striking out the sentence beginning with the

words "Any lake made by" following the caption "Lakes" in subsection (a) and inserting in lieu thereof the following:

"Any lake, other than those listed in section 135.03, made by extending on a substratum of alumina, blanc fixe, gloss white, clay, titanium dioxide, zinc oxide, talc, rosin, aluminum benzoate, or any combination of two or more of these, (1) one of the straight colors (except lakes) listed in section 135.03 or hereinbefore listed in this subsection, which color is a salt in which is combined the basic radicle sodium, potassium, aluminum, barium, calcium, strontium, or zirconium; or (2) a salt prepared from one of the straight colors (except lakes) listed in section 135.03, or hereinbefore listed in this subsection, by combining such color with the basic radicle sodium, potassium, aluminum, barium, calcium, strontium, or zirconium."

7. Section 135.04 is amended by changing the last paragraph of subsection (b) to read as follows:

"(For example, the name of a lake prepared by extending the color D&C Red No. 9 upon a substratum is 'D&C Red No. 9—Barium Lake', and a lake prepared by extending the aluminum salt prepared from FD&C Green No. 1 upon a substratum other than alumina is 'D&C Green No. 1—Aluminum Lake'.)"

8. Section 135.06 is amended by changing the language in subsection (a) which precedes clause (1) thereof to read as follows:

"A batch of a mixture which contains no straight color listed in section 135.04 or 135.05 may be certified, in accordance with the provisions of these regulations, for use in food (subject to the restrictions prescribed in subsection (d) hereof), drugs, and cosmetics, if—"

9. Section 135.06 is amended by changing clause (3) of subsection (a) to read as follows:

"(3) no diluent (except resins, natural gum, pectin and, in the case of mixtures which are aqueous solutions or aqueous pastes, sodium benzoate in a quantity of not more than 1/10 of 1 percent) in such mixture is a non-nutritive substance, unless such mixture is for external application to shell eggs, or for use in coloring a food specified in the requests for certification of such batch submitted in accordance with section 135.08 (c), and such diluent, in the usual process of manufacturing such food, is removed and does not become a component of such food."

10. Section 135.06 is amended by adding a new subsection as follows:

"(d) No mixture which contains a lake listed in section 135.03 shall be certified for any use in food except external application to shell eggs."

11. Subsection (b) of section 135.08 is amended by striking out the word "and" at the end of clause (1); by

changing the period at the end of clause (2) to a semicolon and inserting the word "and"; and by changing the first word of clause (3) to read "in".

12. Subsection (b) of section 135.08 is amended by striking out the words "one-half pound sample" and inserting in lieu thereof the words "one-fourth pound sample".

13. Subsection (c) of section 135.08 is amended by striking out the words "one-fourth pound sample" and inserting in lieu thereof the words "one-eighth pound sample (or, if the mixture contains 2 percent or less of pure dye, a one-fourth pound sample)".

14. Subsection (c) of section 135.08 is amended by changing clause (5) to read as follows:

"(5) in case such mixture contains a diluent permitted by clause (3) of section 135.06 (a) only because such mixture is for use in coloring shell eggs or such diluent does not become a component of a food colored by such mixture, specifying the name of the food for which such mixture is used; and".

15. Subsection (d) of section 135.08 is amended by striking out the words "one-fourth pound sample" and inserting in lieu thereof the words "one-eighth pound sample".

16. Section 135.10 is amended by adding a new subsection as follows:

"(i) If a coal-tar color from a batch containing any lake listed in section 135.03 is used in coloring any food except shell eggs, such color so used shall be considered to be from a batch that has not been certified in accordance with these regulations."

17. Subsection (a) of section 135.11 is amended by changing clause (2) to read as follows:

"(2) the lot number of such batch unless, in the case of any mixture for household use which contains not more than 15 percent of pure dye and which, if it is liquid, is in packages containing not more than 2 fluid ounces, or, if it is solid, semisolid or viscous, is in packages containing not more than 2 avoirdupois ounces, such lot number appears on the labeling or on each invoice accompanying shipments or deliveries of such mixture, or unless in the case of such mixture there appears on the label, a code number which the manufacturer has identified with the lot number by giving to the Food and Drug Administration written notice that such code number will be used in lieu of the lot number."

18. Subsection (a) of section 135.11 is amended by changing clause (3) to read as follows:

"(3) the percentage of pure dye in such color as provided in subsection (b); and".

19. Subsection (a) of section 135.11 is amended by changing the period at the

end of clause (4) to a semicolon and inserting the following:

"or in case such batch contains any lake listed in section 135.03 or any diluent permitted by clause (3) of section 135.06 (a) only because such batch is for use in coloring shell eggs, the statement 'Not for use in coloring any food except shell eggs'."

20. Section 135.11 is amended by changing subsection (b) to read as follows:

"(b) The statement of the percentage of pure dye in a coal-tar color shall express—

"(1) the percentage of pure dye shown in the certificate covering such color; or

"(2) the minimum percentage by weight of pure dye in such color.

"Where the statement expresses the minimum percentage, no variation below the stated minimum shall be permitted, and variations above shall not be unreasonably large."

21. Section 135.15 is amended by changing subsection (a) to read as follows:

"(a) (1) The fee for the service provided by these regulations, in the case of each request for certification submitted in accordance with section 135.08 (b), shall be 5 cents per pound of the batch covered by such request; but no such fee shall be less than \$6 nor more than \$25.

"(2) The fee for the service provided by these regulations, in the case of each request for certification submitted in accordance with section 135.08 (c) or (d), shall be 5 cents per pound of the batch covered by such request; but no such fee shall be less than \$3 nor more than \$15."

#### *Time Allowed for Filing Objections and Exceptions*

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

This the 29th day of January 1940.

[SEAL]

FRANK S. HASSELL,  
Presiding Officer.

[F. R. Doc. 40-518; Filed, February 3, 1940; 9:42 a. m.]

[Docket No. FDC-14]

NOTICE OF PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED AMENDING "REGULATIONS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT FOR THE LISTING OF COAL-TAR COLORS, CERTIFICATION OF BATCHES THEREOF AND PAYMENT OF FEES FOR SUCH SERVICE", BY THE LISTING OF ADDITIONAL COAL-TAR COLORS

Pursuant to and in conformity with the Federal Food, Drug, and Cosmetic Act [52 Stat. 1040-1055; 21 U.S.C. (Supp. IV) 301-392], Section 701 (e). [52 Stat. 1055; 21 U.S.C. (Supp. IV) 371 (e)], notice, upon proposals herein set forth, is hereby given to all interested persons that a public hearing will be held beginning at 10 o'clock, A. M., Monday, March 11, 1940, in Room 1039, South Building, Department of Agriculture, Independence Avenue, between 12th and 14th Streets, S. W., Washington, D. C., for the purpose of receiving evidence upon the basis of which, in virtue of the authority by said act vested in the Secretary of Agriculture by sections 406 (b) [52 Stat. 1049; 21 U.S.C. 346 (b) 1, 504 [52 Stat. 1052; 21 U.S.C. 354], 604 [52 Stat. 1055; 21 U.S.C. 364], and 701 (a) [52 Stat. 1055; 21 U.S.C. (Supp. IV) 371 (a)], regulations may be promulgated amending "Regulations Under The Federal Food, Drug, And Cosmetic Act For The Listing Of Coal-Tar Colors, Certification Of Batches Thereof And Payment Of Fees For Such Service", heretofore promulgated May 9, 1939<sup>1</sup> [FEDERAL REGISTER, Vol. 4, No. 83], as amended by Regulations promulgated September 16, 1939<sup>2</sup> [FEDERAL REGISTER, Vol. 4, No. 179], by the listing of additional coal-tar colors, as specifically set forth in the proposed amendments attached hereto and made a part hereof.

All interested persons are invited to attend this hearing and to offer relevant evidence in person or by representative. In lieu of personal attendance, affidavits may be offered by delivering them on the first day of the hearing to the Presiding Officer, or by mailing them to Frank S. Hassell, Room 2313 (a), South Building, Department of Agriculture, Independence Avenue, between 12th and 14th Streets, S.W., Washington, D. C., so as to be in his office not later than March 11, 1940. Such affidavits if relevant and material, may be received in evidence, but the lack of opportunity for cross-examination will be considered in determining their weight.

The proposed amendments 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 hearing may warrant.

<sup>1</sup> 4 F.R. 1822 DL.

<sup>2</sup> 4 F.R. 3931 DL.

The hearing will be conducted in accordance with the "Rules of Procedure For Hearings Required Under The Federal Food, Drug, and Cosmetic Act", published in the FEDERAL REGISTER, January 13, 1939 [vol. 4, No. 8, pp. 223-225].

Mr. Frank S. Hassell is hereby designated as Presiding Officer to conduct in place of the Secretary the said hearing with power to administer oaths, and to do all things necessary and appropriate for the proper conduct of such hearing. This 2nd day of February 1940.

[SEAL] GROVER B. HILL,  
Acting Secretary of Agriculture.

PROPOSED AMENDMENTS TO THE REGULATIONS FOR THE LISTING OF COAL-TAR COLORS, CERTIFICATION OF BATCHES THEREOF, AND PAYMENT OF FEES FOR SUCH SERVICE

The regulations under the Federal Food, Drug, and Cosmetic Act, dated May 4, 1939, promulgated May 9, 1939, as amended by regulation dated September 14, 1939, promulgated September 16, 1939, for the listing of coal-tar colors, certification of batches thereof, and payment of fees for such service, are hereby further amended:

(1) By inserting after the title of such regulations the following new section: "Section 135.00. The title of these regulations is amended to read as follows: 'Coal-Tar Color Regulations'".

(2) By adding to the colors listed in section 135.04 the following:

"D&C Green No. 8  
SPECIFICATIONS

"Trisodium salt of 10-hydroxy-3,5,8-pyrenetrisulfonic acid.

"Volatile matter (at 135° C.), not more than 15.0 percent.

"Water insoluble matter, not more than 0.5 percent.

"Chloroform extract, not more than 0.5 percent.

"Pyrene, not more than 0.2 percent.

"Chlorides and sulfates of sodium, not more than 20.0 percent.

"Mixed oxides, not more than 1.0 percent.

"Pure dye (as calculated from organically combined sulfur), not less than 65.0 percent.

"D&C Red No. 39  
SPECIFICATIONS

"o-[p-(b, b'-dihydroxy-diethylamino)-phenylazo]-benzoic acid.

"Volatile matter (at 100° C.), not more than 2.0 percent.

"Matter insoluble in acetone, not more than 1.5 percent.

"Ether extract (petroleum ether), not more than 0.5 percent.

"N, N (b, b'-dihydroxy-diethyl) aniline, not more than 0.2 percent.

"Sulfated ash, not more than 1.5 percent.

"Pure dye (as determined by titration with titanium trichloride), not less than 96.0 Percent."

[F. R. Doc. 40-517; Filed, February 3, 1940; 9:42 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE APPAREL INDUSTRY

Notice is hereby given that Special Certificates for the employment of learners in the Apparel Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued ex parte under Section 14 of the said Act, Section 522.5 (d) of Regulations Part 522, as amended, to the employers listed below effective February 6, 1940, until October 24, 1940, subject to the following terms:

OCCUPATIONS, WAGE RATES, AND CONDITIONS

The employment of learners in the Apparel Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

(1) A learner is a person who has had less than eight weeks' experience in the past three years upon a stitching operation in the Apparel Industry.

(2) The employment of learners under these Certificates is limited to the operation of stitching machines and for eight (8) weeks for any one learner. During this period, learners shall be paid at least 22½¢ per hour. If experienced workers are paid on a piece rate basis, the same piece rates shall be paid to the learners employed on similar work and they shall receive earnings on such piece rates if in excess of 22½¢ per hour, but in no case less than 22½¢ per hour.

(3) These Special Certificates are issued on representations by the employers that experienced stitching machine operators are not available.

(4) Any one of these Special Certificates may be canceled as of the date of its issue if found that experienced workers were available when the Certificate was issued and may be canceled prospectively or as of the date of violation if found that any of its terms have been violated or that skilled workers have become available.

(5) Under these Special Certificates, no learner shall be employed at a subminimum wage until and unless the Certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

NUMBER OF LEARNERS

Not in excess of 5% of the total number of stitching machine operators employed in the plant may be employed

under any of these Certificates, unless otherwise indicated hereinbelow opposite the employer's name:

NAME AND ADDRESS OF FIRM AND PRODUCT

Kleiver Klad Frocks, Chestnut Street, Coatesville, Pennsylvania, dresses.

Royal Undergarment Co., Inc., 750 Second Avenue, Troy, New York, ladies' slips.

Stephens Garment Co., Inc., 127-130 South Railroad Street, Toccoa, Georgia (5 learners), work pants.

Signed at Washington, D. C., this 5th day of February 1940.

MERLE D. VINCENT,  
Authorized Representative  
of the Administrator.

[F. R. Doc. 40-539; Filed, February 5, 1940; 12:31 p. m.]

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

Notice is hereby given that Special Certificates for the employment of learners in the Apparel Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued to the employers listed below effective February 6, 1940, until June 4, 1940, unless otherwise indicated, subject to the following terms and limited to the number of learners indicated opposite the employer's name:

OCCUPATIONS, WAGE RATES, AND CONDITIONS

The employment of learners in the Apparel Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

(1) A learner is a person who has had less than eight weeks experience in the past three years upon a stitching operation in the Apparel Industry.

(2) The employment of learners under these Certificates is limited to the operation of stitching machines and for eight (8) weeks for any one learner. During this period, learners shall be paid at least 22½¢ per hour. If experienced workers are paid on a piece rate basis, the same piece rates shall be paid to the learners employed on similar work and they shall receive earnings on such piece rates if in excess of 22½¢ per hour but in no case less than 22½¢ per hour.

(3) These Special Certificates are issued on representations by the employer that (a) experienced stitching machine operators are not available and (b) that he is actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment.

(4) Under these Special Certificates, no learner shall be employed at a subminimum wage until and unless the Certificate is posted and kept posted in a conspicuous place in the plant in which learners are employed.

(5) These Special Certificates are issued ex parte under Section 14 of the said Act and Section 522.5 (b) of the Regulations, Part 522, as amended. For fifteen days following the publication of this notice, the Administrator will receive detailed written objections as provided for in said Section 522.5 (b). Such Special Certificates may be canceled as of the date of issuance and if so canceled, reimbursement of all persons employed under such Certificate must be made in an amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

Name and address of firm	Product	Number of learners
Stephens Garment Company, Inc., 127-130 South Railroad Street, Toccoa, Georgia.	Work pants.	20

Signed at Washington, D. C., this 5th day of February 1940.

MERLE D. VINCENT,  
Authorized Representative  
of the Administrator.

[F. R. Doc. 40-540; Filed, February 5, 1940; 12:31 p. m.]

**NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE HOSIERY INDUSTRY**

Notice is hereby given that Special Certificates for the employment of learners in the Hosiery Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 (Hosiery Wage Order) are issued to the employers listed below effective February 6, 1940, until September 18, 1940, subject to the following terms:

**OCCUPATIONS AND WAGE RATES**

The employment of learners in the Hosiery Industry under these Certificates is limited to the following occupations, learning periods, and minimum wage rates:

[Here follows, in the original document, a table identical with that appearing on Page 3827 of the "Federal Register" for Thursday, September 7, 1939.]

**NUMBER OF LEARNERS**

Not in excess of 5% of the total number of factory workers employed in the plant may be employed under any of these certificates, unless otherwise indicated hereinbelow.

These Special Certificates are issued ex parte under Section 14 of the said Act, Section 522.5 (b) of Regulations Part 522, as amended. For fifteen days following the publication of this notice the Administrator will receive detailed written objections to any of these Special Certificates and requests for hearing

from interested persons. Upon due consideration of such objections as provided for in said Section 522.5 (b), such Special Certificates, or any of them, may be canceled as of the date of their issuance and if so canceled, reimbursement of all persons employed under such certificates must be made in any amount equal to the difference between the applicable statutory minimum wage and any lesser wage paid such persons.

**NAME AND ADDRESS OF FIRM**

Petite Hosiery Mills, Inc., Williamstown, New Jersey (2 learners).

Signed at Washington, D. C., this 5th day of February 1940.

MERLE D. VINCENT,  
Authorized Representative  
of the Administrator.

[F. R. Doc. 40-541; Filed, February 5, 1940; 12:31 p. m.]

**NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS IN THE LAMP SHADE INDUSTRY**

Notice is hereby given that Special Certificates for the employment of learners in the Lamp Shade Industry at hourly wages lower than the minimum wage applicable under Section 6 of the Fair Labor Standards Act of 1938 are issued to the employers listed below effective February 6, 1940, until October 24, 1940, unless otherwise indicated, subject to the following terms and limited to the number of learners indicated opposite the employer's name.

**OCCUPATIONS, WAGE RATES, AND CONDITIONS**

The employment of learners in the Lamp Shade Industry under this Certificate is limited to the following occupations, learning period, and minimum wage rate:

(1) A learner is a person who has not been previously employed for more than eight (8) weeks in the aggregate during the preceding three (3) years as a sewer, trimmer or pleater.

(2) The employment of learners under this certificate is limited to the occupations of sewing, trimming, and pleating and for eight (8) weeks for any one learner. During this period, no learner may be paid at a rate less than 25¢ an hour provided, however, that if experienced workers are paid on a piecework rate, learners shall be paid at least the same piecework rate and shall receive earnings on such rate if in excess of 25¢ per hour but in no event less than 25¢ per hour.

(3) These Special Certificates are issued on representations by the employers that: (a) experienced operators are not available, and (b) that they are actually in need of learners at subminimum rates in order to prevent curtailment of opportunities for employment.

(4) Under these Special Certificates, no learners shall be employed at a sub-

minimum wage until and unless the Certificates are posted and kept posted in a conspicuous place in the plants in which learners are to be employed.

(5) These Special Certificates are issued ex parte under Section 14 of the said Act and Section 522.5 (b) of Regulations Part 522, as amended, and are subject to cancellation sooner by the Administrator or his authorized representative for cause. The Certificates may be canceled as of the date of issuance if it is found, upon objection duly filed within fifteen days following the publication of notice of issuance, that the issuance of these Certificates were not necessary to prevent curtailment of opportunities for employment. The Certificates may be canceled prospectively or as of the date of violation if it is found that any of their terms have been violated or that experienced workers have become available. Altering or attempting to alter these Certificates will render them invalid.

Name and address of firm	Product	Number of learners
Metropolitan Lamp Shade Co., 625 Arch Street, Philadelphia, Pennsylvania.	Silk lamp shades.	Up to 5 but not more than 5% of total number of factory workers.
Greenman & Company, 247-49 South Third Street, Philadelphia, Pennsylvania.	Silk lamp shades.	Up to 5 but not more than 5% of total number of factory workers.
Clarette, Inc., 614 Wyoming Avenue, Scranton, Pa.	Silk lamp shades.	Up to 5 but not more than 5% of total number of factory workers.
DeHoon & Company, Ninth & Spruce St., Philadelphia, Pa.	Silk lamp shades.	Up to 5 but not more than 5% of total number of factory workers.

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

MERLE D. VINCENT,  
Authorized Representative  
of the Administrator.

[F. R. Doc. 40-542; Filed, February 5, 1940; 12:31 p. m.]

**CIVIL AERONAUTICS AUTHORITY.**

[Docket No. 1-406 (A)-1]

IN THE MATTER OF THE PETITION OF BRANIFF AIRWAYS, INCORPORATED, FOR AN ORDER FIXING AND DETERMINING THE FAIR AND REASONABLE RATES OF COMPENSATION FOR THE TRANSPORTATION OF MAIL BY AIRCRAFT, THE FACILITIES USED AND USEFUL THEREFOR, AND THE SERVICES CONNECTED THEREWITH, OVER ROUTE NOS. 9 AND 15, PURSUANT TO SECTION 406 OF THE CIVIL AERONAUTICS ACT OF 1938

**NOTICE OF POSTPONEMENT OF HEARING**

Hearing in the above-entitled proceeding, now assigned for 10 o'clock a. m. on Monday, February 5, 1940, is postponed to 9:20 a. m. (Eastern Standard Time) February 7, 1940, at Confer-

ence Room A, Departmental Auditorium, Washington, D. C.

Dated Washington, D. C., February 3, 1940.

[SEAL] ROBERT J. BARTOO,  
Examiner.

[F. R. Doc. 40-531; Filed, February 5, 1940; 11:18 a. m.]

### FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5705]

IN RE APPLICATION OF CITY OF NEW YORK, MUNICIPAL BROADCASTING SYSTEM (WNYC)

*Dated, January 31, 1939; for modification of license; class of service, broadcast; class of station, broadcast; location, trans: Brooklyn, N. Y.; studio: New York, N. Y.; operating assignment specified: frequency, 810 kc.; power, 1 kw. night; 1 kw. day; hours of operation, specified hours (6 a. m. to 11 p. m.), directional antenna*

[File No. B1-ML-629]

#### NOTICE OF HEARING

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine whether or not the Commission's rules governing standard broadcast stations, particularly Sections 3.22 and 3.25 (Part 111), properly applied, preclude the granting of the application.
2. To determine the nature, extent, and effect of any interference which would result should the applicant's proposed station operate simultaneously with Stations WCCO and WGY.
3. To determine the nature, extent and effect of any interference which would result should the applicant's proposed station operate simultaneously either with Station WGY, operating as proposed in its pending application (File No. B1-P-1417), or with Station WHAS, operating as proposed in its pending application (File No. B2-P-1245).
4. To determine whether the directional antenna system will comply in all respects with Section 3.45 of the rules governing standard broadcast stations and with the requirements of good engineering practice.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of Section 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons

other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

City of New York; Municipal Broadcasting System, % M. S. Novik, Director  
Radio Station WNYC,  
Centre & Duane Sts.  
New York, N. Y.

Dated at Washington, D. C., February 1, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 40-514; Filed, February 2, 1940; 3:40 p. m.]

[Docket No. 5793]

IN RE APPLICATION OF E. E. KREBSBACH (NEW)

*Dated, August 24, 1939; for construction permit; class of service, broadcast; class of station, broadcast; location, Miles City, Montana; operating assignment specified: Frequency, 1310 kc.; power, 100 w. night; 250 w. day; hours of operation, unlimited*

[File No. B5-P-2515]

#### NOTICE OF HEARING

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the financial, technical and other qualifications of the applicant to construct and operate the proposed station.
2. To determine the nature and character of the service proposed to be rendered.
3. To determine the nature, extent and effect of electrical interference which would result should the proposed station operate simultaneously with the station proposed by the pending application of Star Printing Company (B5-P-2533).
4. To determine whether public interest, convenience and necessity would be served by the granting of the application of E. E. Krebsbach (B5-P-2515) or the application of Star Printing Company (B5-P-2533).

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of Section 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be

heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

E. E. Krebsbach,  
Main and Fourth Sts.,  
Wolf Point, Montana

Dated at Washington, D. C., February 1, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,  
Secretary.

[F. R. Doc. 40-515; Filed, February 2, 1940; 3:40 p. m.]

[Docket No. 5794]

IN RE APPLICATION OF STAR PRINTING COMPANY (NEW)

*Dated, September 15, 1939, for construction permit; class of service, broadcast; class of station, broadcast; location, Miles City, Montana; operating assignment specified: Frequency, 1310 kc.; power, 250 w. night; 250 w. day; hours of operation, unlimited*

(File No. B5-P-2533)

#### NOTICE OF HEARING

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine whether Sarah M. Scanlon is a citizen of the United States.
2. To determine the financial, technical and other qualifications of the applicant to construct and operate the proposed station.
3. To determine the nature and character of the service proposed to be rendered.
4. To determine the nature, extent and effect of electrical interference which would result should the proposed station operate simultaneously with the station proposed by the pending application of E. E. Krebsbach (B5-P-2515).
5. To determine whether public interest, convenience and necessity would be served by the granting of the application of Star Printing Company (B5-P-2533) or the application of E. E. Krebsbach (B5-P-2515).

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of Section 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions

of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

Star Printing Company,  
% W. F. Flinn, General Manager  
15 N. 6th St.,  
Miles City, Montana.

Dated at Washington, D. C., February 1, 1940.

By the Commission.

[SEAL] J. T. SLOWIE,  
Secretary.

[F. R. Doc. 40-516; Filed, February 2, 1940; 3:41 p. m.]

FEDERAL POWER COMMISSION.

[Docket No. IT-5596]

IN THE MATTER OF OTTER TAIL POWER COMPANY

NOTICE OF APPLICATION

FEBRUARY 2, 1940.

Notice is hereby given that on January 22, 1940, an application was filed with the Federal Power Commission, pursuant to Section 204 of the Federal Power Act, by Otter Tail Power Company, a corporation organized under the laws of the State of Minnesota and doing business in the States of Minnesota, North Dakota and South Dakota, with its principal business office at Fergus Falls, Minnesota, seeking an order authorizing the issuance of not to exceed 13,241 of its \$4.50 Dividend Preferred Shares, of no par value, in exchange for the outstanding \$6.00 Dividend Preferred Shares which will be called for redemption on April 1, 1940, and to borrow from banks not to exceed \$900,000.00; 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 19th day of February, 1940, 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. 40-520; Filed, February 5, 1940; 9:18 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

[File No. 32-89]

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

office in the City of Washington, D. C., on the 2nd day of February, A. D. 1940.

IN THE MATTER OF VIRGINIA PUBLIC SERVICE COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATION

Virginia Public Service Company having filed with the Commission a request for the withdrawal of the above-named application;

It appearing to the Commission that on October 28, 1933 it issued an order in the above entitled matter pursuant to Section 6 (b) of the Public Utility Holding Company Act of 1935 granting an exemption from Section 6 (a) of the Act of the issuance and sale of \$677,000 principal amount of Newport News and Hampton Railway Gas and Electric Company First and Refunding Mortgage 5% Gold Bonds, due January 1, 1944; the order granting said exemption providing inter alia:

"(4) That such exemption shall immediately terminate without further order of this Commission if at any time the authorization of the issue and sale of the bonds by the State Corporation Commission of the Commonwealth of Virginia shall be revoked or shall otherwise terminate.

"(5) That within ten days after the initial issue and sale of the said bonds and monthly thereafter, until all of the said bonds have been sold, the applicant shall file with this Commission its Certificate of Notification showing that the issue and sale of the said bonds have been effected in accordance with the terms and conditions of, and for the purposes represented by, said application, as amended, and stating the aggregate amount of the bonds issued and sold to date."

It also appearing to the Commission that the State Corporation Commission of Virginia by an order dated June 27, 1939, suspended its previous order approving the issue and sale of the above-entitled bonds, none of which have to date been issued and sold;

The Commission consents to the withdrawal of the above-captioned application, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 40-535; Filed, February 5, 1940; 12:23 p. 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 2nd day of February 1940.

[File No. 1-2193]

IN THE MATTER OF LOCKHEED AIRCRAFT CORPORATION \$1 PAR VALUE CAPITAL STOCK

ORDER GRANTING APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

The Lockheed Aircraft Corporation, pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to withdraw its \$1 Par Value Capital Stock from listing and registration on the Board of Trade of the City of Chicago; and

After appropriate notice, a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on February 12, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 40-536; Filed, February 5, 1940; 12:23 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 5th day of February, A. D. 1940.

[File No. 31-218]

IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY

NOTICE OF AND ORDER FOR HEARING

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

It is ordered, That a hearing on such matter under the applicable provisions of said Act and the rules of the Commission thereunder be held on February 16, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hear-

ings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceedings shall file a notice to that effect with the Commission on or before February 14, 1940.

The matter concerned herewith is in regard to an application by the above named applicant pursuant to Section 3 (a) (2) of said Act for exemption from the provisions of said Act on the ground that said applicant is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.

By the Commission,

[SEAL] FRANCIS P. BRASSOR,  
Secretary

[F. R. Doc. 40-538; Filed, February 5, 1940;  
12:23 p. m.]

*United States of America—Before the  
Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 5th day of February, A. D. 1940.

[File No. 43-287]

IN THE MATTER OF PUBLIC SERVICE  
COMPANY OF OKLAHOMA

NOTICE OF AND ORDER FOR HEARING

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

It is ordered, That a hearing on such matter under the applicable provisions of said Act and the rules of the Commission thereunder be held on February 21, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Charles S. Lobingier or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section

18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 16, 1940.

The matter concerned herewith is in regard to the proposed issue and sale by declarant of \$1,000,000 principal amount of Serial Notes, Unsecured, 1 3/4%-2 3/4%, due in semiannual amounts of \$100,000 each August 1, 1941, to February 1, 1946. The notes are to be issued to evidence loans equal to their face amounts from three banks.

The proceeds from such sale, together with other funds of the declarant to the extent necessary, are to be applied to the redemption and retirement of \$1,000,000 principal amount of declarant's 4% Serial Debentures, maturing \$200,000 on February 1, of each of the years 1942 to 1946 inclusive, requiring \$1,021,000 for payment of principal and premium. The declaration states that the company also proposes to deposit in trust sufficient monies to pay at maturity the \$400,000 principal amount of 4% Serial Debentures maturing in equal amounts on February 1, 1940 and February 1, 1941.

Declarant is a public-utility company subsidiary in the holding company system of The Middle West Corporation.

Declarant has designated section 7 of the Act as applicable to the above transaction.

By the Commission,

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 40-537; Filed, February 5, 1940;  
12:23 p. m.]

UNITED STATES CIVIL SERVICE  
COMMISSION.

CONDITION OF THE APPORTIONMENT AT  
CLOSE OF BUSINESS WEDNESDAY, JANU-  
ARY 31, 1940

IMPORTANT: Although the apportioned classified civil service is by law located only in Washington, D. C., it nevertheless includes only about half of the Federal Civilian positions in the District of Columbia. Positions in local post offices, customs districts and other field services outside of the District of Columbia which are subject to the Civil Service Act are filled almost wholly by persons who are local residents of the general community in which the vacancies exist. It should be noted and understood that so long as a person occupies, by original appointment a position in the apportioned service, the charge for his appointment continues to run against his State of original residence. Certifications of eligibles are first made from States which are in arrears.

State	Number of positions to which entitled	Number of positions occupied
IN ARREARS		
1. Virgin Islands.....	9	0
2. Puerto Rico.....	624	40
3. Hawaii.....	149	10
4. California.....	2,294	807
5. Alaska.....	24	0
6. Texas.....	2,354	949
7. Louisiana.....	849	460
8. Michigan.....	1,657	927
9. Arizona.....	179	83
10. New Jersey.....	1,633	916
11. South Carolina.....	703	403
12. Mississippi.....	812	480
13. Ohio.....	2,656	1,631
14. Alabama.....	1,069	660
15. Oklahoma.....	968	690
16. Arkansas.....	749	471
17. Georgia.....	1,176	774
18. New Mexico.....	171	113
19. Kentucky.....	1,057	701
20. North Carolina.....	1,281	898
21. Tennessee.....	1,057	816
22. Illinois.....	3,084	2,387
23. Wisconsin.....	1,188	953
24. Connecticut.....	649	651
25. Indiana.....	1,309	1,140
26. Nevada.....	37	33
27. Delaware.....	96	80
28. Oregon.....	335	352
29. Idaho.....	180	168
30. Florida.....	693	654
31. New Hampshire.....	188	178
32. Wyoming.....	91	87
33. Washington.....	632	611
34. Missouri.....	1,467	1,433
35. Pennsylvania.....	3,823	3,812
36. New York.....	6,087	6,034
37. Colorado.....	410	416
38. Massachusetts.....	1,717	1,710
39. Maine.....	322	321

State	Number of positions to which entitled	Number of positions occupied	Net gain or loss since July 1, 1939
QUOTA FILLED			
40. West Virginia.....	699	699	+1
IN EXCESS			
41. Montana.....	217	219	-14
42. Vermont.....	145	147	0
43. Kansas.....	760	794	-28
44. Rhode Island.....	278	297	-10
45. North Dakota.....	276	296	-18
46. Utah.....	205	222	-18
47. South Dakota.....	230	309	-4
48. Minnesota.....	1,036	1,146	-35
49. Iowa.....	999	1,119	-23
50. Nebraska.....	557	637	0
51. Virginia.....	979	2,031	-9
52. Maryland.....	659	2,065	+15
53. District of Columbia.....	107	8,837	-49

GAINS	
By appointment.....	229
By transfer.....	31
By reinstatement.....	4
By correction.....	0
Total.....	272

LOSSES	
By separation.....	83
By transfer.....	41
Total.....	124

Total Appointments..... 60,423

NOTE.—Number of employees occupying apportioned positions who are excluded from the apportionment figures under Section 3, Rule VII, and the Attorney General's Opinion of August 25, 1934, 16,078.

By direction of the Commission,

[SEAL] L. A. MOYER,  
Executive Director and  
Chief Examiner.

[F. R. Doc. 40-525; Filed, February 5, 1940;  
9:59 a. m.]