



# FEDERAL REGISTER

VOLUME 8

NUMBER 80

Washington, Friday, April 23, 1943

## Regulations

### TITLE 7—AGRICULTURE

#### Chapter X—Food Production Administration

[Correction to Amendment 3 to FPO 5]

#### PART 1206—FERTILIZER

##### CHEMICAL FERTILIZER

In the document appearing on page 4817 of the issue for Wednesday, April 14, 1943, amending § 1206.1, the effective date April 14, 1942, should be April 14, 1943.

Done at Washington, D. C., this 22d day of April 1943. Witness my hand and the seal of the Department of Agriculture.

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

[F. R. Doc. 43-6243; Filed, April 22, 1943; 11:24 a. m.]

### TITLE 16—COMMERCIAL PRACTICES

#### Chapter I—Federal Trade Commission

[Docket No. 3303]

#### PART 3—DIGEST OF CEASE AND DESIST ORDERS

##### HYGIENIC CORPORATION OF AMERICA, ET AL.

§ 3.6 (n) Advertising falsely or misleadingly—Nature—Products: § 3.6 (t) Advertising falsely or misleadingly—Qualities or properties of product or service: § 3.6 (x) Advertising falsely or misleadingly—Results: § 3.6 (y) Advertising falsely or misleadingly—Safety: § 3.71 (e) Neglecting, unfairly or deceptively, to make material disclosure—Safety. In connection with offer, etc., in commerce, of respondents' so-called feminine hygiene preparations and appliances now designated as "Protex-U" and "Surete" and consisting principally of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, whether sold together or separately, or any other similar preparation or appliance, and among other things, as in order set forth, representing, directly or by implication, that any of said preparations or appliances,

whether used alone or in conjunction with any other of said preparations or appliances (1) will prevent conception; (2) possesses any therapeutic value in the treatment of delayed menstruation or any other ailment or disease peculiar to women; or (3) constitutes a competent or effective means or method for the destruction of germs in the female genital organs, or constitutes a competent or effective prophylactic; or representing (4) that respondents' appliances will fit all female anatomies; or representing (5) through failure to reveal that the use of the appliance designated by respondents as "Health Shield" (vaginal syringe) is not wholly safe, or representing through any other means or device, or in any other manner, that such appliance may be used with safety or without injurious effects; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Modified cease and desist order, Hygienic Corporation of America, et al., Docket 3303, April 15, 1943]

§ 3.6 (a) Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Government connection: § 3.6 (a) Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Individual or corporate business as association: § 3.6 (a) Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Non-profit character: § 3.6 (a) Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Personnel or staff: § 3.6 (j) Advertising falsely or misleadingly—Government approval, connection or standards—Government indorsement: § 3.6 (l) Advertising falsely or misleadingly—Indorsements, approval and testimonials: § 3.18 Claiming indorsements or testimonials falsely: § 3.96 (b) Using misleading name—Vendor—Individual or corporate business as association: § 3.96 (b) Using misleading name—Vendor—Non-profit character. In connection with offer, etc., in commerce, of respondents' so-called feminine hygiene preparations and appliances now designated as "Protex-U" and "Surete" and consisting principally of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, whether sold to-

(Continued on next page)

### IMPORTANT NOTICE

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Published daily, except Sundays, Mondays, and days following legal holidays by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500), under regulations prescribed by the Administrative Committee, approved by the President.

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

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gether or separately, or any other similar preparation or appliance, and among other things, as in order set forth, (1) representing, directly or by implication, that the respondents or their business activities are connected in any way with, or that any of respondents' products is approved by, the United States Public Health Service or any public health service; (2) using the name "American Health Association", or "American Health Association of Washington, D. C.", or any other name of similar import or meaning, to designate or describe the respondents or their business; or (3) using the term "Nurse", or "Visiting Nurse", or any other term of similar import or meaning, to designate or describe respondents' solicitors or sales women; or otherwise representing, directly or by implication, that respondents' solicitors or saleswomen are nurses; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., sec. 45b) [Modified cease and desist order, Hygienic Corporation of America, et al., Docket 3303, April 15, 1943]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 15th day of April, A. D. 1943.

*In the Matter of Hygienic Corporation of America, Hygienic Company of America, Merrill-Saunders Company, Ltd., Corporations, and Harold L. DeBar, Individually and Trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories*

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, original and supplemental reports of the trial examiners upon the evidence, and original and supplemental briefs in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission having made its modified findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act;

*It is ordered*, That the respondents, Hygienic Corporation of America, Hygienic Company of America, and Merrill-Saunders Company, Ltd., corporations, and their officers, and Harold L. DeBar, individually and trading as American Health Association of Washington, D. C.,

Women's Advisory Bureau, Women's Co-operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, or trading under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' so-called feminine hygiene preparations and appliances now designated as "Protex-U" and "Surete" and consisting principally of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, whether sold together or separately, or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, or any other appliance possessing substantially similar characteristics, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, will prevent conception.

2. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, possesses any therapeutic value in the treatment of delayed menstruation or any other ailment or disease peculiar to women.

3. Representing, directly or by implication, that any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, constitutes a competent or effective means or method for the destruction of germs in the female genital organs, or constitutes a competent or effective prophylactic.

4. Representing, directly or by implication, that respondents' appliances will fit all female anatomies.

5. Representing, through failure to reveal that the use of the appliance designated by respondents as "Health Shield" (vaginal syringe) is not wholly safe, or representing through any other means or device, or in any other manner, that such appliance may be used with safety or without injurious effects.

6. Representing, directly or by implication, that the respondents or their business activities are connected in any way with, or that any of respondents' products is approved by, the United States Public Health Service or any public health service.

7. Using the name "American Health Association" or "American Health Association of Washington, D. C.," or any other name of similar import or meaning, to designate or describe the respondents or their business.

8. Using the term "Nurse," or "Visiting Nurse," or any other term of similar import or meaning, to designate or describe respondents' solicitors or sales women; or otherwise representing, directly or by implication, that respondents' solicitors or saleswomen are nurses.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,  
Secretary.

[F. R. Doc. 43-6240; Filed, April 22, 1943;  
10:20 a. m.]

## TITLE 24—HOUSING CREDIT

### Chapter 5—Federal Housing Administration

#### PART 501—CLASS 1 AND CLASS 2 PROPERTY IMPROVEMENT LOANS

##### PROVISION FOR PAYMENT

Amendment of § 501.3 of the regulations effective May 26, 1942, issued by the Federal Housing Commissioner in connection with property improvement loans under Title I of the National Housing Act as amended.

Part 501, § 501.3 of the regulations effective May 26, 1942, is hereby amended by adding a new paragraph (h) to read as follows:

(h) Loans made on and after April 20, 1943 and prior to September 1, 1943, the proceeds of which are used exclusively for (1) the conversion of heating equipment to the use of any other fuel, (2) the installation of loose-fill, blanket, or batt-type insulation, or insulating board, within existing structures, (3) the installation of storm doors, storm windows, or weather stripping, may provide for a first payment not later than November 1, 1943, unless a later first payment is permitted by section 3 of this regulation.

The amendments contained herein are hereby declared to have the same force and effect as if included in and made a part of each Contract of Insurance, and are effective April 20, 1943.

Issued at Washington, D. C., April 16, 1943.

[SEAL] ABNER H. FERGUSON,  
Federal Housing Commissioner.

[F. R. Doc. 43-6219; Filed, April 21, 1943;  
3:15 p. m.]

## TITLE 26—INTERNAL REVENUE

### Chapter I—Bureau of Internal Revenue

#### Subchapter A—Income and Excess-Profits Taxes

[T. D. 5263]

#### PART 3—INCOME TAX UNDER THE REVENUE ACT OF 1936

##### ADDITIONAL CREDITS FOR UNDISTRIBUTED PROFITS

In order to conform Regulations 94 [Part 3, Title 26, Code of Federal Regulations] to section 501 of the Revenue Act of 1942 (Public Law 753, 77th Congress), approved October 21, 1942, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding Article 14-1 [§ 3.14-1, Title 26, Code of Federal Regulations] the following:

SEC. 501. ADDITIONAL CREDITS FOR UNDISTRIBUTED PROFITS TAX. (Revenue Act of 1942, Title V.)

(a) *Amendments to the Revenue Act of 1936.* (1) Section 14 (a) (2) of the Revenue Act of 1936 (relating to definition of undistributed net income) is amended to read as follows:

(2) The term "undistributed net income" means the adjusted net income minus the sum of (A) the dividend paid credit provided in section 27, (B) the credit provided in section 28 (c) relating to restrictions on payment of dividends, (C) except in cases where section 26 (c) (1) is applicable, the deficit credit provided in section 26 (f), and (D) the redemption credit provided in section 26 (g).

(b) *Effective date of amendments.* The amendments made by subsection (a) shall be effective as of the date of the enactment of the Revenue Act of 1936.

PAR. 2. Article 14-1 [§ 3.14-1, Title 26, Code of Federal Regulations] is amended by striking from the third paragraph thereof "and (b) the credit provided in section 26 (c), relating to contracts restricting the payment of dividends (see article 26-2)" and inserting in lieu thereof the following:

(b) The credit provided in section 26 (c), relating to restrictions on payment of dividends (see article 26-2), (c) except where section 26 (c) (1) is applicable, the deficit credit provided in section 26 (f) (see article 26-4), and (d) the redemption credit provided in section 26 (g) (see article 26-5).

PAR. 3. There is inserted immediately preceding Article 26-1 [§ 3.26-1, Title 26, Code of Federal Regulations] the following:

SEC. 501. ADDITIONAL CREDITS FOR UNDISTRIBUTED PROFITS TAX. (Revenue Act of 1942, Title V.)

(a) *Amendments to the Revenue Act of 1936.*

(2) Section 26 (c) of the Revenue Act of 1936 (relating to credits of corporations) is amended by amending the heading to read as follows: "(c) *Restrictions on payment of dividends.*—"; and by amending paragraph (3) to read as follows:

(3) *Deficit corporations.* In the case of a corporation having a deficit in accumulated earnings and profits as of the close of the preceding taxable year, the amount of such deficit, if the corporation is prohibited by a provision of a law or of an order of a public regulatory body from paying dividends during the existence of a deficit in accumulated earnings and profits, and if such provision was in effect prior to May 1, 1936.

(4) *Double credit not allowed.* If more than one of the credits provided in the foregoing paragraphs (1), (2), and (3) apply, then the paragraph which allows the greatest credit shall be applied; and, if the credit allowable under each paragraph is the same, only one of such paragraphs shall be applied.

(3) Section 26 of the Revenue Act of 1936 (relating to the credits of corporations) is amended by adding at the end thereof the following new subsections:

(f) *Deficit credit.* The amount by which the adjusted net income exceeds the sum of

(1) the earnings and profits accumulated after February 23, 1913, as of the beginning of the taxable year, and (2) the earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year). For the purposes of this subsection, earnings and profits of the taxable year shall be computed without diminution by the amount of the tax imposed under section 14, 162, 163, or 351 for such taxable year; and earnings and profits accumulated after February 23, 1913, as of the beginning of the taxable year, shall be diminished on account of the tax under section 14, 162, 163, or 351 for any previous taxable year only by the amount of such tax as computed under the amendments made by section 501 of the Revenue Act of 1942.

(g) *Stock redemption credit.* An amount equal to the portion of the recognized gain, realized within the taxable year and prior to March 3, 1936, from the sale or other disposition of a capital asset, which, pursuant to a contract, was distributed prior to such date to shareholders in redemption in whole or in part of preferred stock and which is not otherwise allowable as a credit under any other provision of this section or section 27.

(b) *Effective date of amendments.* The amendments made by subsection (a) shall be effective as of the date of the enactment of the Revenue Act of 1936.

(c) *Overpayments.* If the refund or credit of any overpayment for any taxable year, to the extent resulting from the application of this section, is prevented on the date of the enactment of this Act or within one year from such date, then, notwithstanding any other provision of law or rule of law (other than this subsection and other than section 3761 of the Internal Revenue Code or section 3223 of the Revised Statutes, or such section as amended by section 815 of the Revenue Act of 1933, relating to compromises), such overpayment shall be refunded or credited in the same manner as in the case of an income tax erroneously collected under the Revenue Act of 1936, if claim therefor is filed within one year from the date of the enactment of this Act.

PAR. 4. Article 26-2 [§ 3.26-2, Title 26, Code of Federal Regulations] is amended as follows:

(A) By changing the heading of the article to read as follows: "Credit in connection with restrictions on payment of dividends.—".

(B) By amending paragraph (a) to read as follows:

(a) The credit provided in section 26 (c) with respect to the restriction on the payment of dividends is not available under every contractual or statutory prohibition which might operate to restrict the payment of dividends, but only with respect to those provisions of a written contract, a law, or an order of a public regulatory body, as the case may be, which satisfies the conditions prescribed in the Act. The charter of a corporation does not constitute a written contract executed by the corporation within the meaning of section 26 (c). The restrictive provisions recognized by the Act are of three general types, as follows:

(1) Those which come within section 26 (c) (1), in that they prohibit or limit the payment of dividends during the taxable year;

(2) Those which come within section 26 (c) (2), in that they require the payment, or irrevocable setting aside, within the taxable year, of a specified portion of the earnings and profits of the taxable year for the discharge of a debt incurred on or before April 30, 1936; and

(3) Those which come within section 26 (c) (3), in that they prohibit the distribution of dividends during the existence of a pre-existing deficit in earnings and profits.

If a corporation is restricted with respect to the payment of dividends by two or more contract provisions coming within section 26 (c) (1), only the largest of the credits computed with respect to each of such provisions, and not their sum, shall be allowable under section 26 (c) (1) and, for such purpose, if two or more credits are equal in amount, only one shall be taken into account. However, section 26 (c) (4) provides that if more than one of the credits provided in section 26 (c) (1), section 26 (c) (2) and section 26 (c) (3) apply, then the paragraph which allows the greatest credit shall be applied; and, if the credit allowable under each paragraph is the same, only one of such paragraphs shall be applied.

(C) By inserting a new paragraph (d) immediately after paragraph (c) to read as follows:

(d) *Deficit corporations.* Under the provisions of section 26 (c) (3), a corporation having a deficit in accumulated earnings and profits as of the close of the preceding taxable year is allowed as a credit the amount of such deficit to the extent that the corporation is prohibited by a provision of a law or of an order of a public regulatory body from paying dividends during the existence of a deficit in accumulated earnings and profits, and if such provision was in effect prior to May 1, 1936.

Whether such a deficit exists as of the close of the preceding taxable year is a question to be determined from the facts and circumstances of each particular case. In any such case the taxpayer must show how the deficit arose, whether from operating losses, capital distributions in excess of earnings and profits, or other causes. In addition the taxpayer must show, under a law or an order of a public regulatory body, the extent to which it could not legally have paid dividends during the existence of such deficit. A State law, for example, might permit the payment of a dividend from unrealized appreciation in value of assets even though the corporation had a deficit in accumulated earnings and profits. A deficit in accumulated earnings and profits can arise only out of the operation of the business at a loss and cannot be caused by distributions to shareholders in excess of the amount of accumulated earnings and profits. If distributions are made to shareholders out of accumulated earnings and profits, however, such distributions may contribute to the creation of a deficit by so exhausting the accumulated earnings and profits that they are incapable of absorbing a loss thereafter resulting

from the business. Unrealized appreciation or depreciation in value of assets is not a factor in determining accumulated earnings and profits.

The application of the provisions of section 26 (c) (3) may be illustrated by the following examples:

*Example (1).* The M Corporation for the calendar year 1936 had an adjusted net income of \$200,000 but had an actual deficit in accumulated earnings and profits as of December 31, 1935 of \$20,000. By reason of a State law in effect prior to May 1, 1936, with respect to deficit corporations, the M Corporation was prohibited from paying dividends during the existence of such deficit. Under section 26 (c) (3), the M Corporation is allowed a credit of \$20,000.

*Example (2).* Assume in the above example that the deficit in accumulated earnings and profits is \$20,000 for income tax purposes, but the deficit on the corporation's books by reason of a prior capitalization of surplus in the course of a nontaxable reorganization amounts to \$250,000. In this case, even though the State law might prevent the distribution of any dividends, the credit under section 26 (c) (3) is limited to \$20,000, which is the deficit in accumulated earnings and profits for income tax purposes.

*Example (3).* If in the example (1) above there was, in addition to the deficit of \$20,000, a contract executed prior to May 1, 1936 prohibiting the distribution of dividends in excess of \$150,000, under section 26 (c) (1), the corporation would be entitled to a credit of \$50,000, that being the amount of adjusted net income in excess of the amount which can be distributed as dividends without violating the contract. Since the credit of \$50,000 allowable under section 26 (c) (1) is greater than the credit of \$20,000 allowable under section 26 (c) (3), the former credit is the one to be used as provided by section 26 (c) (4).

PAR. 5. There is inserted immediately after article 26-3 [§ 3.26-3, Title 26, Code of Federal Regulations] the following:

ART. 26-4 [§ 3.26-4, Title 3, Code of Federal Regulations, 1943 Sup.] *Deficit credit.* Section 26 (f) is designed to be used particularly in those cases where the surtax on undistributed profits cannot be avoided because the corporation has adjusted net income but has no accumulated earnings and profits at the beginning of the year and no earnings and profits of the taxable year on account of certain unallowable deductions, such as capital losses. In such a case a credit is allowed in the amount by which the adjusted net income exceeds the sum of the earnings and profits, if any, accumulated after February 28, 1913 (as of the beginning of the taxable year) and those of the taxable year, computed as of the close of such year, without regard to distributions made during the year, or to the amount of the surtax on undistributed profits imposed under section 14, the graduated income tax or surtax imposed under section 102, the tax on citizens and corporations of certain foreign countries imposed under section 103, or the surtax on personal holding companies imposed under section 351, for the taxable year. In computing earnings and profits as of the beginning of the taxable year accumulated after February 28, 1913, the taxes just mentioned for any previous taxable year are to be deducted only as computed under

the amendments provided by section 501 of the Revenue Act of 1942. If there is a deficit in the accumulated earnings and profits as of the beginning of the taxable year, or for the taxable year, such deficit shall not be taken into consideration in determining the credit allowable under section 26 (f), and in such a case the earnings and profits as of the beginning of the taxable year, or the earnings and profits of the taxable year, shall be considered as zero.

The application of the provisions of section 26 (f) may be illustrated by the following examples:

*Example (1).* The M Corporation on the accrual basis for the calendar year 1936 had a gross income of \$300,000, miscellaneous deductions of \$106,000, capital losses of \$92,000 of which only \$2,000 were deductible due to the provisions of section 117 (d), and a normal tax liability under section 13 of \$28,840. Its adjusted net income was therefore \$171,160 (\$300,000, less \$106,000 less \$2,000 less \$28,840) while its earnings and profits of the taxable year computed after deducting the normal tax imposed by section 13 for such year but without diminution by the amount of the tax imposed for such year by section 14, 102, 103 or 351, were \$73,160 (\$300,000 less \$106,000 less \$92,000 less \$28,840). Assuming that the corporation had no accumulated earnings and profits as of December 31, 1935, it is allowed, in computing its undistributed net income subject to tax under section 14, a credit under section 26 (f) of \$98,000, the amount by which the adjusted net income of \$171,160 exceeds the earnings and profits of the taxable year.

*Example (2).* If in the above example there was a contract in existence prior to May 1, 1936, under which the M Corporation could not distribute dividends in excess of \$150,000 during the calendar year 1936, section 26 (c) (1) is applicable and allows a credit of \$98,000, namely, an amount equal to the excess of the adjusted net income, \$171,160, over the aggregate of the amounts which can be distributed within the taxable year as dividends, \$73,160. Accordingly, the credit allowable under section 26 (f) is inapplicable.

*Example (3).* Assume in example (1) that the M Corporation had a deficit of \$20,000 in accumulated earnings and profits as of December 31, 1935, and that the State law prohibited dividend distributions during the existence of a deficit in accumulated earnings and profits. In addition to the deficit credit of \$98,000 provided in section 26 (f), the M Corporation, under paragraph (3) of section 26 (c) is allowed a credit of \$20,000, the amount of the deficit in accumulated earnings and profits as of December 31, 1935.

ART. 26-5 [§ 3.26-5, Title 3, Code of Federal Regulations, 1943 Sup.] *Stock redemption credit.* Under the provisions of section 26 (g) a credit is allowed in an amount equal to the portion of the recognized gain, realized in the taxable year and prior to March 3, 1936, from the sale or other disposition of a capital asset and which, pursuant to a contract, was distributed prior to March 3, 1936 to shareholders, in partial or complete redemption of preferred stock and which is not otherwise allowable as a credit under any other provision of section 28 or section 27.

The application of the provisions of section 26 (g) may be illustrated by the following example:

*Example.* The M Corporation sold a capital asset in February, 1936, for \$1,000,000 realiz-

ing a gain of \$500,000 all of which is recognized in computing net income. The sale was made pursuant to a contract which required that the proceeds would be used to retire certain preferred stock. Prior to March 3, 1936, and within the taxable year, the proceeds of such sale in the amount of \$1,000,000 were used to retire such preferred stock. The M Corporation is allowed a stock redemption credit under section 26 (g) of \$500,000, the amount of the recognized gain used in the retirement of such stock.

ART. 26-6 [§ 3.26-6, Title 3, Code of Federal Regulations, 1943 Sup.] *Overpayments.* If, as a result of the application of section 501 of the Revenue Act of 1942, relating to additional credits for undistributed profits tax for taxable years beginning after December 31, 1935, and prior to January 1, 1938, any overpayment is established or determined with respect to such tax for any such taxable years and a claim is filed within one year after October 21, 1942, for the credit or refund of such overpayment, and if, on October 21, 1942, or within one year thereafter, such credit or refund would otherwise be prevented, then notwithstanding any other provision of law or rule of law (other than section 501 (c) of the Revenue Act of 1942, and other than the following sections relating to compromises: section 3761 of the Internal Revenue Code or section 3229 of the Revised Statutes, or such section as amended by section 815 of the Revenue Act of 1938), such overpayment shall be refunded or credited in the same manner as in the case of an income tax erroneously collected under the Revenue Act of 1936.

(Sec. 62 of the Revenue Act of 1936 (49 Stat. 1673; 26 U.S.C. 62) and sec. 501 of the Revenue Act of 1942 (Pub. Law 753, 77th Cong.))

[SEAL] NORMAN D. CANN,  
Acting Commissioner of  
Internal Revenue.

Approved: April 21, 1943.

JOHN L. SULLIVAN,  
Acting Secretary of the Treasury.

[F. E. Doc. 43-6255; Filed, April 22, 1943;  
11:48 a. m.]

[T.D. 5262]

PART 19—INCOME TAX UNDER THE INTERNAL  
REVENUE CODE

NET OPERATING LOSS DEDUCTION

In order to conform Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.] to section 105 (e) (3) and section 153 of the Revenue Act of 1942 (Public Law 753, 77th Congress), approved October 21, 1942, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding § 19.122-1 the following:

SEC. 105. TAX ON CORPORATIONS. (Revenue Act of 1942, Title I.)

(e) *Technical amendments made necessary by change in base for corporate tax—*

(3) *Computation of net operating loss deduction.* Section 123 (relating to net operating loss) is amended as follows:

(A) Subsection (a) is amended to read as follows:

(a) *Definition of net operating loss.* As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions, and limitations provided in subsection (d).

(B) Subsection (c) is amended by striking out the parentheses at the end thereof and inserting in lieu thereof the following: "and without the credit provided in section 26 (e)".

(C) Subsection (d) is amended by striking out "exceptions and limitations" and inserting in lieu thereof "exceptions, additions, and limitations" and by inserting at the end thereof the following new paragraph:

(6) There shall be allowed as a deduction the amount of tax imposed by Subchapter E of Chapter 2 paid or accrued within the taxable year, subject to the following rules—

(A) No reduction in such tax shall be made by reason of the credits for income, war-profits, or excess-profits taxes paid to any foreign country or possession of the United States;

(B) Such tax shall be computed without regard to the adjustments provided in section 734; and

(C) Such tax, in the case of a consolidated return for excess-profits tax purposes, shall be allocated to the members of the affiliated group under regulations prescribed by the Commissioner, with the approval of the Secretary.

SEC. 101. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (Revenue Act of 1942, Title I.)

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1941.

SEC. 153. TWO-YEAR CARRY-BACK OF NET OPERATING LOSSES. (Revenue Act of 1942, Title I.)

(a) *Determination of carry-back.* Section 122 (b) (relating to the amount of the net operating loss carry-over), is amended to read as follows:

(b) *Amount of carry-back and carry-over—*  
(1) *Net operating loss carry-back.* If for any taxable year beginning after December 31, 1941, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss.

(2) *Net operating loss carry-over.* If for any taxable year the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the intervening taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such intervening taxable year without regard to such net operating loss and without regard to any net operating loss carry-back. For the purposes of the preceding sentence, the net operating loss for any taxable year beginning after December 31,

1941 shall be reduced by the sum of the net income for each of the two preceding taxable years (computed for each such preceding taxable year with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and computed by determining the net operating loss deduction without regard to such net operating loss or to the net operating loss for the succeeding taxable year).

(b) *Amount of net operating loss deduction.* Section 122 (e), relating to the amount of the net operating loss deduction, is amended by inserting in lieu of "amount of the net operating loss carry-over" the following: "aggregate of the net operating loss carry-overs and of the net operating carry-backs to the taxable year".

(c) Section 122 (e) is amended to read as follows:

(c) *No carry-back to year prior to 1941.* As used in this section, the term "preceding taxable year" and the term "preceding taxable years" do not include any taxable year beginning prior to January 1, 1941.

(d) *Limitation on interest on overpayment caused by a carry-back of loss or credit.* Section 3771 (relating to interest on overpayments) is amended by inserting at the end thereof the following:

(e) *Claims based on carry-back of loss or credit.* If the Commissioner determines that any part of an overpayment is attributable to the inclusion in computing the net operating loss deduction for the taxable year of any part of the net operating loss for a succeeding taxable year or to the inclusion in computing the unused excess profits credit adjustment for the taxable year of any part of the unused excess profits credit for a succeeding taxable year, no interest shall be allowed or paid with respect to such part of the overpayment for any period before the filing of a claim for credit or refund of such part of the overpayment or the filing of a petition with the Board, whichever is earlier.

(e) *Effective date.* The amendments made by this section shall be applicable only to taxable years beginning after December 31, 1940.

PAR. 2. Section 19.122-1 is amended as follows:

(A) By striking out the first two paragraphs of paragraph (a), and by inserting in lieu thereof the following:

Section 122 provides the rules for the computation of the net operating loss deduction allowed by section 23 (s). The net operating loss deduction is, for taxable years beginning before January 1, 1941, the net operating loss carry-over, and, for taxable years beginning on or after January 1, 1941, the aggregate of the net operating loss carry-overs and carry-backs to the taxable year, reduced in each case by certain adjustments to prevent the deduction of losses absorbed by income not taxed.

For taxable years beginning before January 1, 1941, the net operating loss carry-over which is the basis for determining the net operating loss deduction for such a taxable year is, in general, the sum of the net operating losses, if any, for the two preceding taxable years. If there is net income (computed as provided in section 122) in the first preceding taxable year, the net operating loss for the second preceding taxable year is reduced to the extent such loss has been absorbed by such net income. The net operating loss deduction is first available for a taxable year beginning

after December 31, 1939, and the first taxable year from which a net operating loss may be carried over is one beginning after December 31, 1938. Ordinarily, the carry-over to a taxable year beginning after December 31, 1939, and before January 1, 1941, will be only a one-year carry-over. The only exception is in the case of the intervention of more than one complete taxable period between December 31, 1938, and the beginning of such taxable year.

For taxable years beginning on or after January 1, 1941, section 122, as amended by the Revenue Act of 1942, provides that the aggregate of the net operating loss carry-overs and carry-backs to such a taxable year shall be the basis of the net operating loss deduction. For the purpose of determining such carry-overs, the net operating loss for any taxable year may be carried over to the two succeeding taxable years. If the taxable year began on or after January 1, 1942, the net operating loss for such taxable year may also be carried back to the two preceding taxable years, not considering as a preceding taxable year any year which began before January 1, 1941. The amount of the net operating loss which may be carried back or carried over to any taxable year is the net operating loss to the extent it was not absorbed by the net income for the other taxable years, preceding such taxable year, to which it was carried back or carried over. If the net operating losses for several taxable years are carried back or carried over to one taxable year, they are considered to be applied in reduction of the net income for such taxable year in the order of the taxable years from which such losses are carried over or carried back, beginning with the loss for the earliest taxable year. Therefore, the net operating loss carry-overs to a taxable year beginning on or after January 1, 1941, are the net operating loss for the first preceding taxable year and so much of the net operating loss for the second preceding taxable year as has not been absorbed by the net income (computed under section 122), if any, for the first preceding taxable year, and the net operating loss carry-backs to such a taxable year are the net operating loss for the second succeeding taxable year and so much of the net operating loss for the first succeeding taxable year as has not been absorbed by the net income (computed under section 122), if any, for the first preceding taxable year. If either of the taxable years preceding the taxable year for which the deduction is allowed began on or after January 1, 1942, the net operating loss for such preceding taxable year is first reduced to the extent it has been absorbed by the net income (computed under section 122), if any, for the taxable years in which such loss has been carried back.

A fractional part of a year which is a taxable year under section 48 (a) is a preceding or succeeding taxable year for the purpose of determining under section 122 the first, second, or third preceding taxable year or the first or second succeeding taxable year.

(B) By striking out the first word of the second sentence of paragraph (b),

and by inserting in lieu thereof the following: "For taxable years beginning before January 1, 1941, the".

(C) By inserting at the end of paragraph (b) the following sentences:

For taxable years beginning on or after January 1, 1941, the first step is the computation of the net operating loss, if any, for the two preceding taxable years and for the two succeeding taxable years, not including as a succeeding taxable year a year which begins before January 1, 1942. The second is the computation of the net operating loss carry-overs to the taxable year from such preceding taxable years and the computation of the net operating loss carry-backs to the taxable year from such succeeding taxable years. The third is the conversion of the aggregate of such net operating loss carry-overs and carry-backs into the net operating loss deduction.

(D) By inserting at the end of such section the following new paragraph:

(c) *Ascertainment of deduction dependent upon net operating loss carry-back.* If, for any taxable year beginning on or after January 1, 1941, the taxpayer is entitled in computing his net operating loss deduction to a carry-back which he is not able to ascertain at the time his return is due, he shall compute the net operating loss deduction on the return without regard to such net operating loss carry-back. When the taxpayer ascertains the net operating loss carry-back, he may within the applicable period of limitations file a claim for credit or refund of the overpayment, if any, resulting from the failure to compute the net operating loss deduction for the taxable year with the inclusion of such carry-back. Under the provisions of section 3771 (e), as added by section 153 (d) of the Revenue Act of 1942, no interest is allowed with respect to any such overpayment for the period prior to the filing of the claim for credit or refund of such overpayment or prior to the filing of a petition with the Board of Tax Appeals asserting such overpayment, whichever is earlier. If the taxpayer files a claim based upon the overpayment caused by a carry-back from the first succeeding taxable year, and later ascertains that he is entitled to a carry-back from the second succeeding taxable year, he should file a second claim for credit or refund based on the overpayment, if any, caused by the failure to take into account the carry-back from such second succeeding taxable year.

PAR. 3. Section 19.122-2, as amended by Treasury Decision 5217, approved January 19, 1943, is further amended as follows:

(A) By inserting immediately following "exceptions" in the first sentence thereof the following: ", additions."

(B) By striking out "and" at the end of subparagraph (3) of the first paragraph, and by striking out the period at the end of subparagraph (4) and inserting in lieu thereof "; and" and the following new subparagraph:

(5) For taxable years beginning after December 31, 1941, there shall be allowed as a deduction the amount of excess profits tax imposed by subchapter

E of chapter 2 paid or accrued within the taxable year, subject, however, to the provisions of section 122 (d) (6) (A), (B), and (C).

PAR. 4. Section 19.122-4, as amended by Treasury Decision 5217, is further amended as follows:

(A) By inserting immediately before the period at the end of the heading thereof the following: "to taxable years beginning before January 1, 1941".

(B) By striking the first word of the first sentence, and by inserting in lieu thereof the following: "For taxable years beginning before January 1, 1941, the".

(C) By inserting immediately after (3) of (a) the following sentence:

If a first, second, or third preceding taxable year is a taxable year which begins before January 1, 1939, the net operating loss, if any, for such taxable year shall not be taken into account in the above computations.

(D) By inserting after "exceptions" in the first sentence of the second paragraph thereof the following: ", additions,".

(E) By striking out the third sentence of the second paragraph and inserting in lieu thereof the following:

A taxpayer, other than a corporation, however, shall apply only the first four exceptions and limitations specified in § 19.122-3 (a) and, in lieu of the last three exceptions and limitations there specified, is required only to restrict the amount of his deductions for long-term and short-term capital losses to the amount of his long-term and short-term capital gains, respectively.

(F) By striking out that part of paragraph (a) which follows the second paragraph thereof.

(G) By striking out that part of paragraph (b) which follows paragraph (4) thereof.

PAR. 5. Section 19.122-5, as amended by Treasury Decision 5057, approved July 2, 1941, is renumbered as § 19.122-6, and there is inserted immediately after § 19.122-4 the following new section:

§ 19.122-5 *Computation of net operating loss carry-overs and net operating loss carry-backs to taxable years beginning on or after January 1, 1941*—(a) *In general.* For a taxable year beginning on or after January 1, 1941, the aggregate of any net operating loss carry-overs and any net operating loss carry-backs to such taxable year shall be the basis of the net operating loss deduction. In order to compute such deduction, the taxpayer must first determine the part of any net operating losses for the two preceding taxable years which are carry-overs to the current taxable year, and the part of any net operating losses for the two succeeding taxable years which are carry-backs to the current taxable year.

Under section 122, as amended by the Revenue Act of 1942, the net operating loss for any taxable year beginning on or after January 1, 1942, may be carried back to the two preceding taxable years (except any such taxable year which began before January 1, 1941) and may be carried over to the two succeeding taxable years. The net operating loss for any taxable year beginning before Janu-

ary 1, 1941, may be carried over to the two succeeding taxable years, regardless of whether such year begins before, on, or after January 1, 1941. The amount which is so carried back or carried over to any taxable year is the net operating loss to the extent it was not absorbed in the computation of the net income for other taxable years, preceding such taxable year, to which it was carried back or carried over. For the purpose of determining the net income for a taxable year which so absorbs the net operating loss that is carried back or carried over, the various net operating loss carry-overs and carry-backs to such taxable year are considered to be applied in reduction of the net income for such taxable year in the order of the taxable years from which such losses are carried over or carried back, beginning with the loss for the earliest taxable year.

(b) *Portion of net operating loss which is a carry-over or a carry-back to the current taxable year.* The net operating loss sustained in any taxable year beginning before January 1, 1942 may be carried over to such of the two succeeding taxable years as begin on or after January 1, 1941. The entire net operating loss may be carried over to the first succeeding taxable year, and the carry-over to the second succeeding taxable year (whether or not the first succeeding taxable year began on or after January 1, 1941) is the excess of the net operating loss over the net income, if any, for the first succeeding taxable year (computed as provided in paragraph (c) of this section). For example, the taxpayer had a net operating loss of \$10,000 in 1939. It had a 1940 net income of \$6,000 (computed as provided in paragraph (c) of this section). The carry-over from 1939 to 1941 is \$4,000, the excess of the \$10,000 loss over the \$6,000 net income for 1940.

The net operating loss sustained in any taxable year beginning on or after January 1, 1942 may be carried back to the two preceding taxable years (not considering as a preceding taxable year a year beginning prior to January 1, 1941) and may be carried over to the two succeeding taxable years. The entire net operating loss may be carried back to the second preceding taxable year. However, if the second preceding taxable year began before January 1, 1941, no part of the net operating loss may be carried back to such taxable year, and the net income for such taxable year does not reduce the amount of the net operating loss which may be carried back or carried over to the other taxable years. The net operating loss, to the extent it exceeds the net income, if any, (computed as provided in paragraph (c) of this section) for the second preceding taxable year, may then be carried back to the first preceding taxable year. To the extent that the net operating loss exceeds the aggregate of the net income, if any, (computed as provided in paragraph (c) of this section) for the two preceding taxable years, it may be carried over to the first succeeding taxable year. To the extent that the net operating loss exceeds the aggregate of the net in-

come, if any, (computed as provided in paragraph (c) of this section) for the two preceding taxable years and for the first succeeding taxable year, it may be carried over to the second succeeding taxable year.

*Example.* The taxpayer has a net operating loss of \$100,000 in 1943. It has net income (computed as provided in paragraph (c) of this section) as follows: \$10,000 in 1941, \$15,000 in 1942, \$35,000 in 1944, and \$50,000 in 1945. The net operating loss carry-back from 1943 to 1941 is \$100,000, an amount equal to the full net operating loss. The carry-back to 1942 is \$90,000, the excess of the \$100,000 net operating loss over the \$10,000 net income for 1941 (computed as provided in paragraph (c) of this section). The carry-over to 1944 is \$75,000, the excess of the \$100,000 net operating loss over the aggregate of the \$10,000 net income for 1941 and the \$15,000 net income for 1942 (computed in each instance as provided in paragraph (c) of this section). The carry-over to 1945 is \$40,000, the excess of the \$100,000 net operating loss over the aggregate of the \$10,000 net income for 1941, the \$15,000 net income for 1942, and the \$35,000 net income for 1944 (computed in each instance as provided in paragraph (c) of this section).

(c) *Computation of net income which is subtracted from net operating loss to determine carry-back or carry-over.* The net income for any taxable year which is subtracted from the net operating loss for another taxable year to determine the portion of such net operating loss which is a carry-back or carry-over to a particular taxable year as provided in paragraph (b) of this section is computed with the following adjustments:

(1) The net operating loss deduction for such taxable year is computed by taking into account only such net operating losses otherwise allowable as carry-overs or carry-backs to such taxable year as were sustained in taxable years preceding the taxable year in which the taxpayer sustained the net operating loss from which the net income is to be deducted.

*Example.* In computing the net operating loss deduction for 1945, the taxpayer has a carry-over from 1943 of \$9,000, a carry-over from 1944 of \$8,000, a carry-back from 1946 of \$18,000, and a carry-back from 1947 of \$14,000, or an aggregate of \$47,000 in carry-overs and carry-backs which is the basis for the deduction. In computing the net income for 1945 which is deducted from the net operating loss for 1946 in order to determine the portion of such net operating loss which may be carried over to 1947 or 1948, the net operating loss deduction for 1945 is computed without taking into account the \$18,000 carry-back from 1946 or the \$14,000 carry-back from 1947.

The net operating loss deduction for 1945 is, for the purposes of such computation, the aggregate of the \$9,000 carry-over from 1943 and the \$8,000 carry-over from 1944, or \$15,000, adjusted as provided in § 19.122-6 (relating to the conversion of the aggregate of the net operating loss carry-overs and carry-backs to the taxable year into the net operating loss deduction).

In computing the net income for 1945 which is deducted from the net operating loss for 1947 in order to determine the portion of such loss which may be carried back to 1946 and carried over to 1948 and 1949, the net operating loss deduction for 1945 is computed without taking into account the \$14,000 carry-back from 1947, and as com-

puted is the aggregate of the \$9,000 carry-over from 1943, the \$8,000 carry-over from 1944, and the \$18,000 carry-back from 1946, or \$35,000, adjusted as provided in § 19.122-6.

(2) In the case of a corporation, the net income shall be computed in accordance with the exceptions, additions, and limitations applicable in the computation of a net operating loss (see § 19.122-2), except that the net operating loss deduction shall be allowed to the extent provided in paragraph (1) above.

(3) In the case of a taxpayer other than a corporation, the net income shall be computed in accordance with the first four exceptions, additions, and limitations specified in § 19.122-3 (a), except that the net operating loss deduction shall be allowed to the extent provided in paragraph (1) above. In lieu of the last three exceptions specified in § 19.122-3 (a), the taxpayer is required only (i) for a taxable year beginning before January 1, 1942, to restrict the amount of his deductions for long-term and short-term capital losses to the amount of his long-term and short-term capital gains, respectively, and (ii) for a taxable year beginning on or after January 1, 1942, to restrict the amount of his deduction for capital losses to the amount of his capital gains. The ordinary non-business deductions are allowed in full if otherwise allowable by law. The exceptions and limitations dependent upon the distinction between business and non-business items of gross income and deductions are not applicable in the computation of the net income to be subtracted in computing carry-backs and carry-overs.

(4) Any deduction which is limited in amount to a percentage of the taxpayer's net income shall be recomputed upon the basis of the net income determined with the adjustments prescribed in the preceding paragraphs.

(5) The net income, as adjusted, shall in no case be considered less than zero.

(d) *Illustration of computation of net operating loss carry-backs and carry-overs.* The application of this section may be illustrated by the following example:

*Example.* The taxpayer is a corporation making its income tax returns on the calendar year basis. It had no net operating loss in 1939 or 1940, or in 1943 or 1949. Its net income, computed without any net operating loss deduction (it being assumed that none of the other adjustments provided in paragraph (c) of this section is applicable), was \$27,000 in 1941, \$35,000 in 1942, \$30,000 in 1946, and \$35,000 in 1947. It sustained net operating losses as follows: \$25,000 in 1943, \$37,000 in 1944, and \$40,000 in 1945. It is assumed for the purposes of this example that the application of § 19.122-6 does not cause any reduction of the amount of the aggregate of the net operating loss carry-overs and carry-backs to any taxable year, so that such aggregate is the net operating loss deduction for such taxable year.

(1) The portions of the \$25,000 net operating loss for 1943 which may be used as carry-backs to 1941 and 1942 and as carry-overs to 1944 and 1945 are computed as follows:

(i) For 1941, the carry-back is \$25,000, that is, the amount of the net operating loss.

(ii) For 1942, the carry-back is \$5,000, that is, the excess of the \$25,000 net operating loss over the \$20,000 net income for 1941 (such net income being determined without any net operating loss deduction since there is no carry-over to 1941 from 1939 or 1940 and no carry-back from 1942, and the carry-back from 1943 is not taken into account).

(iii) For 1944 and 1945, there is no carry-over of the net operating loss for 1943 since such loss does not exceed \$55,000, the sum of the net incomes for the two taxable years preceding 1943 computed as provided in paragraph (c) (the \$20,000 net income for 1941 and the \$35,000 net income for 1942, there being no net operating loss deduction for either taxable year since the carry-backs from 1943 and from 1944 are not taken into account).

(2) The portions of the \$50,000 net operating loss from 1944 which may be used as carry-backs to 1942 and 1943 and as carry-overs to 1945 and 1946 are computed as follows:

(i) For 1942, the carry-back is \$50,000, that is, the amount of the net operating loss.

(ii) For 1943, the carry-back is \$20,000, that is, the excess of the \$50,000 net operating loss over the \$30,000 net income for 1942 (the \$35,000 income for 1942 reduced by the \$5,000 carry-back from 1943, the carry-back from 1944 not being taken into account).

(iii) For 1945, the carry-over is \$20,000, that is, the excess of the \$50,000 net operating loss over \$30,000, the sum of the \$30,000 net income for 1942 (computed with the deduction of the \$5,000 carry-back from 1943 and without the deduction of the carry-back from 1944) and the \$0 net income for 1943 (a year in which a net operating loss was sustained).

(iv) For 1946, the carry-over is \$20,000, that is, the excess of the \$50,000 net operating loss over \$30,000, the sum of the \$30,000 net income for 1942 (computed with the deduction of the \$5,000 carry-back from 1943 and without the deduction of the carry-back from 1944) and the \$0 net income for 1943 and 1945 (years in which net operating losses were sustained).

(3) The portions of the \$40,000 net operating loss for 1945 which may be used as carry-backs to 1943 and 1944 and as carry-overs to 1946 and 1947 are computed as follows:

(i) For 1943, the carry-back is \$40,000, that is, the amount of the net operating loss.

(ii) For 1944, the carry-back is \$40,000, that is, the excess of the \$40,000 net operating loss for 1945 over \$0, the net income for 1943 (a year, in which a net operating loss was sustained).

(iii) For 1946, the carry-over is \$40,000, that is, the excess of the \$40,000 net operating loss for 1945 over \$0, the sum of the net incomes for 1943 and 1944 (years in which net operating losses were sustained).

(iv) For 1947, the carry-over is \$30,000, that is, the excess of the \$40,000 net operating loss for 1945 over \$10,000, the sum

of the \$0 net incomes for 1943 and 1944 and the \$10,000 net income for 1946 (such net income for 1946 being computed as the \$30,000 income reduced by the net operating loss carry-over of \$20,000 from 1944, the \$40,000 carry-over to 1946 from 1945 not being taken into account).

For 1941, the net operating loss deduction is determined to be \$25,000, that is, the carry-back from 1943.

For 1942, the net operating loss deduction is determined to be \$55,000, that is, the aggregate of the carry-back of \$5,000 from 1943 and of the carry-back of \$50,000 from 1944.

For 1946, the net operating loss deduction is determined to be \$60,000, that is, the aggregate of the \$20,000 carry-over from 1944 and the \$40,000 carry-over from 1945.

For 1947, the net operating loss deduction is determined to be \$30,000, that is, the carry-over from 1945.

(e) *Joint return by husband and wife.*

If a husband and wife making a joint return for any taxable year did not make a joint return for any of the taxable years involved in the computation of a net operating loss carry-over or a net operating loss carry-back to the taxable year for which the joint return is made, such separate net operating loss carry-over or separate net operating loss carry-back is a joint net operating loss carry-over or joint net operating loss carry-back to such taxable year.

If a husband and wife making a joint return for a taxable year made a joint return for each of the taxable years involved in the computation of a net operating loss carry-over or net operating loss carry-back to such taxable year, the joint net operating loss carry-over or joint net operating loss carry-back to such taxable year is computed in the same manner as the net operating loss carry-over or net operating loss carry-back of an individual under the preceding paragraphs of this section but upon the basis of the joint net operating losses and the combined net income of both spouses.

If a husband and wife making separate returns for a taxable year made a joint return for any or all of the taxable years involved in the computation of a net operating loss carry-over or net operating loss carry-back, the separate net operating loss carry-over or separate net operating loss carry-back of each spouse to the taxable year is computed in the manner set forth in the preceding paragraphs of this section, but with the following exceptions and limitations:

(1) The net operating loss of each spouse for a taxable year for which a joint return was made shall be deemed to be the portion of the joint net operating loss (computed in accordance with § 19.122-3 (e)) attributable to the gross income and deductions of such spouse, both gross income and deductions being taken into account to the same extent that they are taken into account in computing the joint net operating loss.

(2) The net income of a particular spouse for any taxable year which is subtracted from the net operating loss

of such spouse for another taxable year in order to determine the amount of such loss which may be carried back or carried over to still another taxable year is deemed to be, in a case in which such net income was reported in a joint return, the sum of the following:

(i) The portion of the combined net income of both spouses for such year for which the joint return was made which is attributable to the gross income and deductions of the particular spouse, both gross income and deductions being taken into account to the same extent that they are taken into account in computing such combined net income, and

(ii) The portion of such combined net income attributable to the other spouse, but if such other spouse has a taxable year beginning on the same date as the taxable year in which the particular spouse sustained the net operating loss from which the net income is subtracted, and if such other spouse sustained a net operating loss in such taxable year, then such portion shall first be reduced by such net operating loss of such other spouse. However, such net operating loss of such other spouse shall first be diminished by the excess if any, of the reduction provided in section 122 (c) for the year in which the net income was realized over the aggregate of the net operating loss carry-overs and net operating loss carry-backs which are taken into account in computing the net operating loss deduction for such taxable year (see subdivision (b) of the next sentence).

For the purposes of (i) and (ii) above, the combined net income shall be computed as though the combined income and deductions of both spouses were those of one individual, and in such computation—

(a) The exceptions, additions, and limitations provided in section 122 (d) (1), (2), and (4) shall apply, and

(b) The net operating loss deduction shall be determined without taking into account any net operating loss of either spouse or any joint net operating loss of both spouses which was sustained in a taxable year beginning on or after the date of the beginning of the taxable year in which the particular spouse sustained the net operating loss from which the net income is subtracted.

In the following examples, which illustrate subparagraphs (1) and (2) above, it is assumed that there are no items of adjustment under section 122 (d) (1), (2), and (4), and the net income or loss in each case is the net income or loss determined without any net operating loss deduction. The taxpayers in each example, H, a husband, and W, his wife, report their income on the calendar year basis.

*Example (1).* H and W filed joint returns for 1941 and 1942. They sustained a joint net operating loss of \$1,000 for 1941 and a joint net operating loss of \$2,000 for 1942. For 1941, the deductions of H exceeded his gross income by \$700, and the deductions of W exceeded her gross income by \$300, the total of such amounts being \$1,000. Therefore, \$700 of the \$1,000 joint net operating loss for 1941 is considered the net operating loss of H for 1941, and \$300 of such joint net op-

erating loss is considered the net operating loss of W for 1941. For 1942 the gross income of H exceeded his deductions, so that his separate net income would be \$1,500, and the deductions of W exceeded her gross income by \$3,500. Therefore, all of the \$2,000 joint

net operating loss for 1942 is considered the separate net operating loss of W for 1942. Example (2). H and W filed joint returns for 1939 and 1941, and separate returns for 1940 and 1942. For such years they had net incomes and net operating losses as follows:

	1939	1940	1941	1942
H	\$5,000 (loss)	\$2,500 (loss)	\$6,000 (income)	\$4,000 (loss)
W	\$3,000 (loss)	\$2,000 (income)	\$3,000 (income)	\$1,500 (loss)
	\$3,000 (joint loss)		\$9,000 (combined income)	

The net operating loss carry-over of H from 1942 to 1943 is \$4,000, that is, his \$4,000 net operating loss for 1942 which is not reduced by any part of the net income for 1941, since none of such net income is attributable to H and the portion attributable to W is entirely offset by her separate net operating loss deduction for her taxable year 1942, which taxable year begins on the same date as H's taxable year 1942. The determination of the amount (\$0) of net income for 1941 which reduces H's net operating loss for 1942 is made as follows:

The combined net income of \$9,500 for 1941 is reduced to \$1,000 by the net operating loss deduction for such year of \$8,500. This net operating loss deduction is computed without taking into account any net operating loss sustained in a taxable year beginning on or after January 1, 1942, the date of the beginning of the taxable year in which H sustained the net operating loss which is a carry-over to 1943. This \$8,500 amount is composed of H's carry-overs of \$5,000 from 1939 and \$2,500 from 1940, or a total of \$7,500, and of W's carry-over of \$1,000 from 1939 (the excess of W's \$3,000 loss for 1939 over her \$2,000 income for 1940). None of the \$1,000 combined net income for 1941 (computed with the net operating loss deduction described above) is attributable to H since it is caused by W's income (computed after deducting her separate carry-over) offsetting H's loss (computed by deducting from his income his separate carry-overs). No part of the \$1,000 net income for 1941 which is attributable to W is used to reduce H's net operating loss for 1942 since such net income attributable to W must first be reduced by W's \$1,500 net operating loss for 1942, her taxable year beginning on the same date as the taxable year of H in which he sustained the net operating loss from which the net income is subtracted.

The net operating loss carry-over of W from 1942 to 1943 is \$500, her \$1,500 loss reduced by the \$1,000 net income for 1941, computed in the manner prescribed in the preceding paragraph, since all of such net income is attributable to her.

Example (3). Assume the same facts as in example (2), except that for 1942 the net operating loss of W is \$200 instead of \$1,500.

The net operating loss carry-over of H from 1942 to 1943 is \$3,200, that is, his \$4,000 net operating loss reduced by \$800 of the net income for 1941, computed as follows:

The combined net income for 1941, computed with the net operating loss deduction in the manner described in example (2), remains \$1,000, no part of which is attributable to H. To the \$0 net income attributable to H there is added \$800, the excess of the \$1,000 net income attributable to W over her \$200 net operating loss sustained in 1942, a taxable year beginning on the same date (January 1, 1942) as the taxable year of H (1942) in which he sustained the \$4,000 net operating loss from which the net income is subtracted. See paragraph (2) (ii) above.

W has no net operating loss carry-over from 1942 to 1943 since her net operating

loss of \$200 for 1942 does not exceed the \$1,000 net income for 1941 attributable to her.

Example (4). Assume the same facts as in example (2) except that W changes her accounting period in 1942 to a fiscal year ending on January 31, and has neither income nor losses for the taxable year January 1, 1942 to January 31, 1942, but has a net operating loss of \$200 for the fiscal year February 1, 1942 to January 31, 1943.

The net operating loss carry-over of H from 1942 to 1943 is \$3,000, that is, his net operating loss of \$4,000 for 1942 reduced by the \$1,000 net income for 1941, computed as follows:

The combined net income for 1941, computed with the net operating loss deduction in the manner described in example (2), remains \$1,000, no part of which is attributable to H. To the \$0 net income attributable to H there is added the \$1,000 net income attributable to W. The net income attributable to W is not reduced by any amount since she does not have a net operating loss for her taxable year beginning on January 1, 1942, the date of the beginning of the taxable year of H in which he sustained the \$4,000 net operating loss from which the net income is deducted.

The net operating loss carry-over of W from the fiscal year beginning February 1, 1942 to her next fiscal year is \$200, her net operating loss for such year. This net operating loss is not reduced by any amount of net income for 1941, since there is no net income for 1941 when computed for the purpose of determining the carry-over of W's net operating loss for her fiscal year beginning February 1, 1942. For such purpose, the net income of \$9,500 for 1941 is reduced to \$0 by the net operating loss deduction for such year of \$12,500, computed without taking into account any net operating loss sustained in a taxable year beginning on or after February 1, 1942, the date of the beginning of the taxable year in which W sustained the net operating loss which is the basis for the carry-over. This \$12,500 amount is composed of H's carry-overs of \$5,000 from 1939 and \$2,500 from 1940, and his carry-back of \$4,000 from 1942 (the calendar year beginning January 1, 1942), and of W's carry-over of \$1,000 from 1939 (the excess of her \$3,000 loss for 1939 over her \$2,000 income for 1940).

If a husband and wife making a joint return for any taxable year made a joint return for one or more but not all of the taxable years involved in the computation of a net operating loss carry-over or net operating loss carry-back to such taxable year, such net operating loss carry-over or net operating loss carry-back to the taxable year is computed in the manner set forth in subparagraphs (1) and (2) above. Such net operating loss carry-over or net operating loss carry-back is considered a joint net operating loss carry-over or joint net operating loss carry-back to such taxable year. For example, if in examples (2)

and (3) of this paragraph a joint return was filed for 1943, the same amounts computed in those examples as carry-overs of H and W to that year would be the amounts considered joint net operating loss carry-overs to that year.

The joint net operating loss carry-overs and joint net operating loss carry-backs to any taxable year for which joint return is made are all the net operating loss carry-overs and net operating loss carry-backs of both spouses to such taxable year. For example, a husband and wife file a joint return for the calendar year 1943. The wife filed a separate return for the calendar years 1941 and 1942, in which years she sustained net operating losses. The husband filed separate returns for his fiscal year ending June 30, 1942 and, having received permission to change his accounting period to a calendar year basis, for the six-month period ending December 31, 1942. The husband sustained net operating losses in both such taxable periods. Since the husband and wife did not file a joint return for any taxable year involved in the computation of the net operating loss carry-overs to 1943 from 1941 and 1942 (see the preceding paragraphs of this section), the joint net operating loss carry-overs to 1943 are the separate net operating loss carry-overs of the wife from the calendar years 1941 and 1942 and the separate net operating loss carry-overs of the husband from the fiscal year ending June 30, 1942, and from the short taxable year ending December 31, 1942. If the husband and wife also filed joint returns for the calendar years 1944 and 1945, having joint net income in 1944 and a joint net operating loss in 1945, the joint net operating loss carry-back to 1943 from 1945 is computed upon the basis of the joint net operating loss for 1945, since separate returns were not made for any taxable year involved in the computation of such carry-back.

PAR. 6. Such § 19.122-6, as renumbered, is further amended as follows:

(A) By changing so much of the first sentence as precedes clause (1) to read as follows:

The net operating loss deduction for any taxable year is, if the taxable year begins before January 1, 1941, the net operating loss carry-over to such taxable year computed as prescribed in § 19.122-4, or, if the taxable year begins on or after January 1, 1941, the aggregate of the net operating loss carry-overs and carry-backs to such taxable year computed as prescribed in § 19.122-5, reduced in each case by the excess of the net income for such taxable year (computed, if the taxable year begins before January 1, 1941, in the same manner as the net income is to be computed for the purposes of § 19.122-4, or, if the taxable year begins on or after January 1, 1941, in the same manner as the net income is computed for the purposes of § 19.122-5 except that no net operating loss deduction shall be taken into account and, if the taxable year begins after December 31, 1941, no deduction for excess profits tax imposed by subchapter E of chapter 2 shall be taken into account) over—

(B) By changing clause (2) in the first sentence thereof to read as follows:

(2) in the case of a corporation, the normal-tax net income computed without regard to the exceptions, additions, and limitations specified in § 19.122-2, except that no net operating loss shall be taken into account and, for taxable years beginning after December 31, 1941, the credit provided in section 26 (e) for income subject to the excess profits tax shall not be allowed.

(C) By changing the first two sentences of the example in such section to read as follows:

The aggregate of the net operating loss carry-overs and carry-backs to 1942 for the X Corporation is \$55,000. Its net income for 1942, computed with the adjustments required by this section, is \$450,000 and its normal-tax net income, computed without any exceptions, additions, and limitations except that no net operating loss deduction is allowed and the credit provided in section 26 (e) for income subject to the excess profits tax is not allowed, is \$445,000.

(D) By changing the first two lines of the tabulation in the third sentence of the example to read as follows:

Aggregate of net operating loss carry-overs and carry-backs to 1942-----	\$55,000
Less: Excess of net income for 1942, with adjustments, over normal-tax net income for 1942, without adjustments except that no net operating loss deduction shall be allowed and the credit provided in section 26 (e) for income subject to the excess profits tax shall not be allowed (\$450,000 minus \$445,000)-----	5,000

(E) By changing "for any taxable year," in the last paragraph to read as follows: "for any taxable year beginning before January 1, 1941,".

(F) By inserting immediately after such last paragraph the following new paragraph:

In the case of a husband and wife making a joint return for any taxable year beginning on or after January 1, 1941, the computation of the net operating loss deduction (as set forth in the first paragraph of this section) is to be made upon the basis of the aggregate of the joint net operating loss carry-overs and joint net operating loss carry-backs of the spouses to such year (computed as prescribed in § 19.122-5 (e)) and the combined net income of the spouses.

(Secs. 23 (s), 62, and 122 of the Internal Revenue Code (53 Stat. 32, 867; 26 U.S.C., 23 (s), 62, 122) and secs. 105 (e) (3) and 153 of the Revenue Act of 1942 (Pub. Law 753, 77th Cong.))

[SEAL] NORMAN D. CANN,  
Acting Commissioner of  
Internal Revenue.

Approved: April 21, 1943.

JOHN L. SULLIVAN,  
Acting Secretary of the Treasury.

[F. R. Doc. 43-6254; Filed, April 22, 1943; 11:48 a. m.]

Subchapter C—Miscellaneous Excise Taxes  
[T.D. 5261]

PART 144—REGULATIONS RELATING TO THE REMOVAL OF MANUFACTURED TOBACCO, SNUFF, CIGARS, AND CIGARETTES, WITHOUT PAYMENT OF TAX, FOR SHIPMENT TO A TERRITORY OF THE UNITED STATES FOR THE USE OF MEMBERS OF THE MILITARY AND NAVAL FORCES OF THE UNITED STATES.

- Sec.  
144.0 Scope of regulations.  
144.1 Shipment and use restricted.  
144.2 Bond.  
144.3 Packing, and marking or branding.  
144.4 Shipping containers.  
144.5 Application for withdrawal.  
144.6 Inspection of shipment.  
144.7 Report of deputy.  
144.8 Delay in removal; cancellation of shipment.  
144.9 Change in consignee.  
144.10 Removal of shipment and disposition of application Form 550.  
144.11 Return of shipment to factory.  
144.12 Tax liability.  
144.13 Credit for shipment.  
144.14 Penalties.

AUTHORITY: §§ 144.0 to 144.14 are issued under sec. 2135 (a) (1) of the Internal Revenue Code, as amended by Pub. Law 14, 78th Cong., approved March 23, 1943, and sec. 3791 of the Internal Revenue Code (26 U.S.C. 3791, 53 Stat. 467).

§ 144.0 *Scope of regulations.* These regulations deal with the removal of manufactured tobacco, snuff, cigars, and cigarettes, under section 2135 (a) (1) of the Internal Revenue Code, as amended by Public Law 14, 78th Congress, approved March 23, 1943, without payment of tax for shipment to a territory of the United States for the use of members of the military and naval forces of the United States.

SEC. 2135. EXEMPTION FROM TAX. (As amended by Public Law 14, 78th Congress, approved March 23, 1943.)

(a) *Shipments to foreign countries and possessions of the United States*—(1) *Manufacturers.* Manufactured tobacco, snuff, cigars, or cigarettes may be removed for export to a foreign country or for shipment to a possession of the United States (or, until the date on which the President proclaims that hostilities in the present war have terminated, to a territory of the United States for the use of members of the military or naval forces of the United States) without payment of tax under such rules and regulations and the making of such entries, and the filing of such bonds and bills of lading as the Commissioner, with the approval of the Secretary, shall prescribe.

§ 144.1 *Shipment and use restricted.* The removal of manufactured tobacco, snuff, cigars, and cigarettes, under these regulations without payment of tax may be made only for shipment to the Territories of Alaska and Hawaii, and then only for the use of members of the military or naval forces of the United States. Such removals are authorized only on and after March 23, 1943, and until the President proclaims that hostilities in the present war have terminated.

§ 144.2 *Bond.* A manufacturer who has in force a bond, Form 549, to cover

the removal of tobacco, snuff, cigars, or cigarettes, without payment of tax for exportation to a foreign country or to a possession of the United States, will be permitted to remove the tobacco product covered by his bond without payment of tax under these regulations, provided he submits consent of the surety on his bond to the removal under these regulations. Consent of the surety shall be submitted on Form 542, executed in duplicate (which form should be appropriately modified as may be required), and shall be filed by the manufacturer with the collector for the district in which the factory is located. The collector shall forward to the Commissioner the duplicate consent of surety to be attached to the duplicate bond in force.

Before or at the time of filing his first application on Form 550 for removal of tobacco, snuff, cigars, or cigarettes, a manufacturer who does not already have a bond in force on Form 549, and who desires to remove any of such products from his factory without payment of tax under these regulations, shall furnish to the collector for the district in which the factory is located a bond in duplicate on Form 549, with surety satisfactory to that officer, accompanied by consent of surety, as specified in the preceding paragraph. A separate bond must be filed to cover the withdrawal of "large cigars", "small cigars", "small cigarettes", "large cigarettes", and "tobacco and snuff". The penal sum of the bond must be sufficient to cover the estimated amount of tax which shall at any time constitute a charge against the bond, and in no case less than \$500. When the bond, in duplicate, is submitted to the collector, he shall, if the bond meets with his approval, make indorsement to that effect on both the original and duplicate of the bond and forward immediately to the Commissioner the duplicate bond and consent of surety. The liability under such bond shall be a continuing one, and will be subject to increase or decrease as withdrawals are made and completed. When the limit of liability under such bond has been reached, further withdrawals may not be made thereunder. Instead, a new bond with consent of surety, both in duplicate, must be filed under which subsequent withdrawals shall be made.

§ 144.3 *Packing, and marking or branding.* Manufactured tobacco, snuff, cigars, or cigarettes when removed from the factory under these regulations without the payment of tax, shall be put up in packages of the same size and description as prescribed by law for like articles removed for domestic consumption. Each package shall have affixed in place of the internal-revenue stamp a label, which label shall be readily distinguishable from an internal-revenue stamp and shall bear the following legend:

*Free of tax.* For use only of U. S. military or naval forces in Alaska and Hawaii, or for use outside the jurisdiction of the internal revenue laws of the United States.

§ 144.4 *Shipping containers.* Each shipping container in which manufac-

tured tobacco, snuff, cigars, or cigarettes are to be removed under these regulations shall be stenciled or plainly marked by the manufacturer as prescribed in this section.

Each container shall bear the manufacturer's marks and number, such number to be a consecutive one of a series adopted by the manufacturer for removals under his bond, Form 549, and to begin with No. 1 and beginning again with No. 1 on July 1 of each subsequent year.

Each shipping container must bear the legend indicated below (with first three lines properly filled in) in letters and figures not less than three-fourths of an inch in length.

(Name of article)	
By _____	
Fac. No. _____	Dist. _____
Inspected _____	191____
_____, D. C.	
For consumption without payment of tax under sections 2135 and 2197 I.R.C.	

If desired, the name of the person or firm for whom the removal is made may be substituted for that of the manufacturer on the second line of the legend. The deputy detailed to inspect a shipment intended for removal under these regulations, shall fill in the fourth and fifth lines of the legend on each container. A reduction in the length of the letters and figures in the legend may be made on containers shipped by parcel post.

Shipping containers for all shipments required to be inspected by a deputy collector shall not be closed and fastened until after their contents have been inspected and verified by the deputy collector.

**§ 144.5 Application for withdrawal.** An application on Form 550 shall be filed for each shipment (other than by parcel post where the amount of tax involved is \$10 or less) intended for withdrawal under these regulations. Such application shall be executed and filed in duplicate by the manufacturer with the collector for the district in which the factory is located. Each application shall bear a serial number, such number to be a consecutive one of a series adopted by the manufacturer for removals under his bond, Form 549, and to begin with No. 1 and commencing again with No. 1 on July 1 of each year. Copies of each application, as required by these regulations, shall bear the same serial number as the original. Each application shall be completely and legibly filled in and show the information as required on the form. The product covered by the application shall not be withdrawn from the factory until after inspection and verification by a deputy collector as hereinafter required.

In the case of a shipment by parcel post where the amount of tax involved is \$10 or less, inspection and verification by a deputy collector will not be required. However, in such case the original of Form 550, properly numbered, shall be executed by the manufacturer and shall be disposed of as specified in § 144.10 (b).

Upon receipt of each application properly executed, the collector shall, if the tax liability thereon does not increase the outstanding tax liability in excess of the penal sum of the bond under which the withdrawal is to be made, immediately after signing each copy of the application, detail a deputy collector to visit the factory for the purpose of making proper inspection and verification of the articles described in the application.

**§ 144.6 Inspection of shipment.** It will be the duty of the deputy detailed to inspect a shipment to determine definitely that the shipment contains the exact kind and quantity of articles specified in the application and that the packages of such articles meet the requirements of these regulations. The deputy shall supervise the packing of the shipping containers and affix his signature and date of inspection in the legend on each shipping container.

Tobacco products may be removed under these regulations from the place of manufacture for shipment or delivery only after inspection by the deputy, where required. Such products found stored outside of the bonded factory premises without the approval of the Commissioner shall be subject to seizure for forfeiture.

**§ 144.7 Report of deputy.** After inspection and verification of the shipment have been completed, and the shipping containers have been made ready for removal, the deputy shall fill in and sign his report on each copy of the application, Form 550. The shipment shall then be released by the deputy for removal by the manufacturer. The deputy shall return to the collector the duplicate of Form 550 and deliver the original to the manufacturer for disposition as hereinafter provided.

**§ 144.8 Delay in removal; cancellation of shipment.** In case a shipment is not removed from the place of manufacture within ten days after inspection by the deputy, the manufacturer must advise the collector of internal revenue for the district in which the factory is located as to the probable date of removal. If the order for the shipment has been canceled, the manufacturer should so state and request permission to return the shipment to stock in the factory.

**§ 144.9 Change in consignee.** If, after inspection by the deputy, but before removal of the shipment, the manufacturer for good and sufficient reasons desires to change the name and address of the consignee, the manufacturer shall forward the original Form 550 left by the deputy to the collector for correction and endorsement, with a letter setting forth his reasons for the change. Any other change in respect to the shipment must be approved by the Commissioner.

**§ 144.10 Removal of shipment and disposition of application Form 550.** After the shipment has been released for removal, the manufacturer shall enter on the original Form 550 the date

of removal of the shipment from the factory, after which the shipment may go forward. The original Form 550 shall then be disposed of by the manufacturer as hereinafter prescribed.

(a) *Shipments by other than parcel post.* If the shipment is to be made from the factory direct to the consignee in the territory of the United States, the original Form 550 shall be forwarded by the manufacturer to the consignee. If the shipment is made to an Army port of embarkation or Navy supply depot for transshipment to a territory of the United States, the original Form 550 shall be forwarded by the manufacturer to the Army port transportation officer, or Navy supply officer, as the case may be.

The manufacturer shall insert on the original Form 550 immediately preceding the "Certificate of Mailing by Parcel Post" a "Certificate of Receipt" as follows:

CERTIFICATE OF RECEIPT

I certify that the tobacco manufactures herein described, except for the discrepancies as listed below, were delivered to me on \_\_\_\_\_, 19\_\_\_\_, and that said manufactures are intended for delivery to a territory of the United States for the use of military or naval forces of the United States therein.

Discrepancies \_\_\_\_\_  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Title)

Upon receipt and verification of the shipment, the consignee in the territory or the Army or Navy officer in the continental United States to whom the original Form 550 had been forwarded by the manufacturer, shall execute the "Certificate of Receipt" appearing on such Form 550, note thereon any discrepancies in the shipment, and return the executed form to the manufacturer. Such executed form shall then be forwarded promptly by the manufacturer to the appropriate collector.

(b) *Shipments by parcel post.* If the shipment is to be made by parcel post (including a shipment where the amount of tax involved is \$10 or less, as to which an inspection and verification by the deputy is not required) the manufacturer shall execute on each package a waiver of right to withdraw the package from the mails, and then at the time of mailing present the original Form 550 to the postmaster or his agent for execution of the certificate of mailing as provided for on the back of the form. The original Form 550 shall be forwarded promptly thereafter by the manufacturer to the appropriate collector.

**§ 144.11 Return of shipment to factory.** If, after removal a manufacturer desires to return a shipment to the factory, he must make application to the Commissioner for permission to do so. The manufacturer must identify the shipment, set forth where it has been since it left the factory, where held and in whose custody at the time of making application, and the reasons for return. After receipt of such application, the Commissioner will then issue appropriate instructions.



FOR TRUCK SHIPMENTS  
 § 323.23 General prices—Supplement T  
 [Prices in cents per net ton for shipment into all market areas]

Code number index	Mtno index No.	Mtno	County	Size groups						
				Lump over 24" top size	Lump 24" over 24" bottom size but over 1 1/4"	Lump 1 1/4" and under, egg 1 1/4" and under, bottom size	All nut and pot 2" and under	Run of mine resultant over 2"	1 1/4" and 1 1/2" slack	3/4" slack
Altogether Coke Company, Inc.	377	Iceland Run 1	Barbour	223	223	223	103	103	188	178
Clark Coal Co. (Clark, John A., Jr.)	101	Mary	H. V. Kitt	223	223	223	103	103	183	173
Clark Coal Co. (Clark, John A., Jr.)	106	Jackson	Sowley	223	223	223	103	103	183	173
Clark Coal Co. (Clark, John A., Jr.)	140	Blair	Sowley	223	223	223	103	103	183	173
Fox, Margaret Lillian (Fox Coal Co.)	710	Fox #31	Pittsburgh	223	223	223	213	213	103	163
Kessler, Clyde D. (Kessler Coal Co.)	104	Mtno Index No. 1112	Webster	203	203	203	243	243	233	213
Lodge, K. O.	765	Thatcher	Barbour	223	223	223	213	213	103	163
May Bros. (Delbert May)	1234	Mtno Index No. 763	Pittsburgh	243	243	243	213	213	103	163
Moore Brothers Coal Co. (Francis Moore)	1223	Gration	Barbour	243	243	243	213	213	103	163
Perkins, F. O.	659	Perkins	Monongalia	245	245	245	220	220	210	200
Pollet, Chas. E. (Winchester Coal Co.)	450	Winchester #1 (C)	Harrison	273	273	273	243	243	233	213
Simmons, Leallo D.	1403	Shannon	Perkins	273	273	273	243	243	233	213
Taylor, James S.	455	Taylor #1	Barbour	273	273	273	243	243	233	213
Wedell, James C. (Black Diamond Coal Co.)	452	Clelland #1 (C)	Harrison	273	273	273	243	243	233	213
Young, Clayton G. (Young Coal Co.)	791	Nutter	Harrison	273	273	273	243	243	233	213

1 Indicates change in name.  
 2 Indicates deletion of mtno index numbers, minimum prices and price classifications heretofore established for the coals produced by these mines.

[F. R. Dec. 43-010; Filed, April 21, 1943; 11:17 a. m.]

[Decree No. A-1650]

PART 328—MINIMUM PRICE SCHEDULE,  
 DISTRICT NO. 8

ORDER GRANTING RELIEF, ETC.

Order granting temporary relief and conditionally providing for final relief in the matter of the petition of District Board No. 8 for the establishment of price classifications and minimum prices for the coals of certain mines and for changes in shipping points for the coals of certain other mines in District No. 8.

An original petition, and an amendment thereto, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Divi-

sion by the above-named party, requesting the establishment, both temporary and permanent, of price classifications and minimum prices for the coals of certain mines, and for changes in shipping points for the coals of certain other mines in District No. 8; and  
 It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and  
 No petitions of intervention having been filed with the Division in the above-entitled matter; and  
 The following action being deemed necessary in order to effectuate the purposes of the Act;

temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this order, pursuant to the Rules and Regulations governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

It is further ordered, That the relief herein granted shall become final sixty (60) days from the date of this order, unless it shall otherwise be ordered.  
 Dated: April 8, 1943.

[SEAL] DAY H. WHEELER,  
 Director.



§ 328.11 Alphabetical list of code members—Supplement R—Continued

(Alphabetical list of code members having railway loading facilities, showing price classifications by size groups for all uses except as separately shown)

Mine Index No.	Code member	Mine name	High volatile seam	Sub-district No.	Shipping point	Railroad	Freight origin group	Price classifications by size group numbers															
								For destinations other than Great Lakes						For Great Lakes cargo only									
								1	2	3	4	5	6	1	2	3	4	5	6				
6098	Johnson, Earl (Wolfpit Elk-horn Coal Company),	Johnson No. 1.....	Elkhorn No. 1.....	1	Marrowbone, Ky.	C&O.....	01	1	2	3	4	5	6	18	19	20	21	22	23	24	25	26	27
1112	Josephine Elkhorn Coal Com-pany (Luther H. Shivel),	Roberts No. 2.....	Elkhorn No. 1.....	1	Maytown, Ky. 1...	C&O.....	01	1	2	3	4	5	6	18	19	20	21	22	23	24	25	26	27
012	Josephine Elkhorn Coal Com-pany (Luther H. Shivel),	Roberts No. 5.....	Elkhorn No. 1 & 2...	1	Maytown, Ky. 2...	C&O.....	01	1	2	3	4	5	6	18	19	20	21	22	23	24	25	26	27
011	Josephine Elkhorn Coal Com-pany (Luther H. Shivel),	Shivel No. 3.....	Elkhorn No. 1 & 2...	1	Maytown, Ky. 3...	C&O.....	01	1	2	3	4	5	6	18	19	20	21	22	23	24	25	26	27
031	Josephine Elkhorn Coal Com-pany (Luther H. Shivel),	Shivel No. 4.....	Elkhorn No. 1.....	1	Maytown, Ky. 4...	C&O.....	01	1	2	3	4	5	6	18	19	20	21	22	23	24	25	26	27
0147	K. & K. Coal Co.,	K. & K. Coal Co.....	Lilly.....	0	East Bernstadt, Ky.	L&N.....	111	M	M	M	M	M	M	K	K	K	K	K	K	K	K	K	K
0977	McIntyre, Pierce,	McIntyre.....	Harard No. 4.....	3	London, Ky.	L&N.....	100	M	M	M	M	M	M	H	H	H	H	H	H	H	H	H	H
0902	Meich, A. B.,	Meich.....	Harard No. 4.....	3	London, Ky.	L&N.....	113	M	M	M	M	M	M	H	H	H	H	H	H	H	H	H	H
1391	Mullins, Vernon S. J. B.,	Mullins.....	Coalburg.....	4	York Mine No. 1 (Clay), W. Va.	B&O.....	120	M	M	M	M	M	M	H	H	H	H	H	H	H	H	H	H
0376	Murray, O. S. (Murray Cash),	Murray.....	Ben Alf No. 2.....	0	Creswell, Tenn.	T. O.....	72	P	P	P	P	P	P	M	M	M	M	M	M	M	M	M	M
0374	Nancy Elkhorn Coal Com-pany (Wayne Shumbo),	Wayne.....	Elkhorn No. 2.....	1	Drift, Ky.	O&O.....	01	H	H	H	H	H	H	H	H	H	H	H	H	H	H	H	H
0357	Nancy Elkhorn Coal Com-pany (Wayne Shumbo),	Wayne.....	Elkhorn No. 2.....	1	Drift, Ky.	O&O.....	01	H	H	H	H	H	H	H	H	H	H	H	H	H	H	H	H
0500	Richardson, Tom,	Richardson No. 2.....	Elkhorn No. 2.....	3	Whitesburg, Ky.	L&N.....	109	K	K	K	K	K	K	H	H	H	H	H	H	H	H	H	H
2181	Singleton, Coal Company (Charles Singleton),	Singleton.....	No. 2 Gas.....	4	Cannelton, W. Va.	NYO.....	127	O	O	O	O	O	O	H	H	H	H	H	H	H	H	H	H
2441	Thompson Capt. Rob. The,	Thompson.....	Sevanno.....	0	Crab Orchard, Tenn.	T. O.....	72	P	P	P	P	P	P	M	M	M	M	M	M	M	M	M	M
0333	Tilson Mining Company,	Tilson No. 1, 2 & 3.....	Millers Creek.....	1	Riceville, Ky.	C&O.....	01	D	D	D	D	D	D	E	E	E	E	E	E	E	E	E	E

\* Indicates previously classified in other size groups.  
 † Indicates no classification effective for these size groups.  
 ‡ Denotes new shipping point. Shipping point at Drift, Ky. shall no longer be applicable.  
 § Denotes new shipping point. Shipping point at Drift, Ky. shall no longer be applicable.  
 ¶ Denotes new shipping point. Shipping point at Clay, W. Va. shall no longer be applicable.

§ 328.34 General prices for high volatile coals in cents per net ton for shipment into all market areas—Supplement T—Continued

Code member index	Mine	Mine Index No.	Seam	Baco dies						
				Lump 4" x 6" CB	Lump 3" x 4" CB	Lump 2" x 3" CB	Stove 2" and under	Stove 2" and under	Stove 2" and under	
Supersist No. 1—Big SANDY-ELKHORN	FLOYD COUNTY, KY.	5393	Turner No. 6.....	305	246	240	236	230	100	185
Combs, Herbert (Top Hill Mining Company),	FLOYD COUNTY, KY.	6974	Pages.....	305	246	240	236	230	100	185
Nancy Elkhorn Coal Com-pany (Wayne Shumbo),	FLOYD COUNTY, KY.	6987	Wayne.....	305	246	240	236	230	100	185

§ 328.34 General prices for high volatile coals in cents per net ton for shipment into all market areas—Supplement T

Code member index	Mine	Mine Index No.	Seam	Baco dies						
				Lump 4" x 6" CB	Lump 3" x 4" CB	Lump 2" x 3" CB	Stove 2" and under	Stove 2" and under	Stove 2" and under	
Supersist No. 1—Big SANDY-ELKHORN	FLOYD COUNTY, KY.	5393	Turner No. 6.....	305	246	240	236	230	100	185
Combs, Herbert (Top Hill Mining Company),	FLOYD COUNTY, KY.	6974	Pages.....	305	246	240	236	230	100	185
Nancy Elkhorn Coal Com-pany (Wayne Shumbo),	FLOYD COUNTY, KY.	6987	Wayne.....	305	246	240	236	230	100	185



November 19, 1942 (7 F.R. 10095), and extended in certain particulars by an order dated December 15, 1942 (7 F.R. 10602), be extended further until June 3, 1943, in so far as it pertains to the Poplar Lick Mine, Mine Index No. 5643, of Garmeada Coal Company and the No. 6 Mine, Mine Index No. 5790, of Raleigh-Wyoming Mining Company, and good cause having been shown therefor;

Now, therefore, it is ordered, That the temporary relief heretofore granted by the Order Granting Temporary Relief and Conditionally Providing for Final Relief issued in this matter on November 19, 1942, and extended by the order dated December 15, 1942, be, and the same hereby is, continued to June 3, 1943, in so far as it pertains to the Poplar Lick Mine, Mine Index No. 5643, of Garmeada Coal Company and the No. 6 Mine, Mine Index No. 5790, of Raleigh-Wyoming Mining Company, at which time such relief shall become final unless otherwise ordered.

It is further ordered, That pleadings in opposition to the amended petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within thirty (30) days from the date of this order, pursuant to the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

Dated: April 21, 1943.

[SEAL] DAN H. WHEELER,  
Director.

[F. R. Doc. 43-6236; Filed, April 22, 1943; 10:09 a. m.]

**TITLE 32—NATIONAL DEFENSE**

**Chapter XI—Office of Price Administration**

**PART 1305—ADMINISTRATION**

[Gen. RO 5, Amendment 14]

**FOOD RATIONING FOR INSTITUTIONAL USERS**

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.\*

General Ration Order 5 is amended in the following respect:

1. Section 11.6 (a) is amended by striking out the last sentence and inserting the following sentence in lieu thereof:

It must contain a statement by the superintendent or other executive officer, or by the physician in charge of the establishment, showing the reason why a supplemental allotment is required and the additional amount of the rationed food needed for that purpose.

\*Copies may be obtained from the Office of Price Administration.

\* 8 F.R. 2195, 2348, 2598, 2666, 2667, 3178, 3216, 3255, 3616, 3851, 4325, 4131, 4784, 4785, 4839.

This amendment shall become effective this 27th day of April 1943.

NOTE: The reporting provisions of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Pub. Law 671, 76th Cong.; as amended by Pub. Laws 89, 421 and 507, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9260, 7 F.R. 10179; W.P.B. Dir. 1, Supp. Dir. 1-E, 1-M, and 1-R, 7 F.R. 562, 2965, 7234, 9684, respectively; Food Dir. 3, 5, 6, and 7, 8 F.R. 2005, 2251, 3471, 3471, respectively)

Issued this 21st day of April 1943.

PRENTISS M. BROWN,  
Administrator.

[F. R. Doc. 43-6223; Filed, April 21, 1943; 4:45 p. m.]

**PART 1364—FRESH, CURED AND CANNED MEAT AND FISH**

[MPR 367, Amendment 1]

**HORSEMEAT**

A statement of the considerations involved in the issuance of this Amendment No. 1 to Maximum Price Regulation No. 367, Horsemeat, has been issued simultaneously herewith and filed with the Division of the Federal Register.\*

Maximum Price Regulation No. 367 is amended in the following respects:

1. Section 13 is amended to extend the effective date of the Regulation from April 20, 1943 to May 1, 1943. Wherever

the date April 20, 1943 appears in the regulation the date May 1, 1943 shall be substituted therefor; wherever the date April 19, 1943 appears in the regulation the date, April 30, 1943 shall be substituted therefor.

2. The effective date provision of the regulation is amended to read as follows:

This regulation shall become effective May 1, 1943, except that it shall become effective on April 14, 1943 with respect to sales to war procurement agencies.

This amendment shall be effective as of April 20, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 8250, 7 F.R. 7871)

Issued this 21st day of April, 1943.

PRENTISS M. BROWN,  
Administrator.

[F. R. Doc. 43-6225; Filed, April 21, 1943; 4:45 p. m.]

**PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS**

[RO 13, Amendment 3 to Rev. Supp. 1]

**PROCESSED FOODS**

The point values of frozen fruits and fruit juices; frozen vegetables and vegetable juices; canned and bottled soups; and dried and dehydrated soups in the Official Table of Point Values (No. 2) referred to in paragraph (a) of § 1407.1102 are amended to read as follows:

**POINT VALUES**

[Fluids: 1 pint = 1 pound; 1 quart = 2 pounds.]

	Weight over including—					
	Over 0 including 8 oz.	Over 6 oz. including 12 oz.	Over 12 oz. including 15 oz.	Over 16 oz. including 23 oz.	Over 23 oz. including 31 oz.	Over 31 oz. including 10 lbs. per pound
<b>Frozen fruits and fruit juices:</b>						
Strawberries.....	3	4	6	8	10	4
All other frozen fruits.....	3	4	6	8	10	4
All frozen fruit juices.....	2	3	4	5	7	4
<b>Frozen vegetables and vegetable juices:</b>						
Asparagus.....	3	4	6	8	10	4
Beans, baked.....	3	4	6	8	10	4
Beans, green and wax.....	3	4	6	8	10	4
Beans, lima.....	3	4	6	8	10	4
Corn.....	3	4	6	8	10	4
Peas.....	3	4	6	8	10	4
Spinach.....	3	4	6	8	10	4
All other frozen vegetables, vegetable juices, and frozen soups.....	3	4	6	8	10	4

	Weight over including—							
	Over 0 including 4 oz.	Over 4 oz. including 7 oz.	Over 7 oz. including 10 oz.	Over 10 oz. including 14 oz.	Over 14 oz. including 1 lb. 2 oz.	Over 1 lb. 2 oz. including 1 lb. 6 oz.	Over 1 lb. 6 oz. including 1 lb. 11 oz.	Over 1 lb. 11 oz. including 2 lb.
<b>Other processed foods:</b>								
Tomato soup (canned and bottled).....	2	2	3	4	6	8	10	8
All other canned and bottled soups.....	2	2	3	4	6	8	10	11

\* 8 F.R. 4918.

\* 8 F.R. 1840, 2288, 2677, 2681, 2684, 2943, 3179, 3949, 4342, 4525, 4784.

	Weight over including—								Per lb.
	Over 2 lb. including 2lb.4oz.	Over 2lb.4oz. including 2lb.8oz.	Over 2lb.8oz. including 2lb.12oz.	Over 2lb.12oz. including 3lb.	Over 3lb. including 3lb.4oz.	Over 3lb.4oz. including 3lb.8oz.	Over 3lb.8oz. including 3lb.12oz.	Over 3lb.12oz. including 4lb.	
Other processed foods: Tomatosoup (canned and bottled). All other canned and bottled soups.	9 12	10 14	11 16	12 18	13 19	14 20	15 22	16 24	4 6

	Weight over including—				Per lb.
	Over 0 including 4 oz.	Over 4 oz. including 8 oz.	Over 8 oz. including 12 oz.	Over 12 oz. including 16 oz.	
Dried and dehydrated soups: All types of containers.	1	2	3	4	4

This amendment shall become effective at 12:01 a. m. April 22, 1943.

(Pub. Law 671, 76th Cong., as amended by Pub. Laws 89, 421, 507 and 729, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; W.P.B. Directive 1, 7 F.R. 562; Food Directive 3, 8 F.R. 2005, and Food Directive 5, 8 F.R. 2251)

Issued this 21st day of April 1943.

PRENTISS M. BROWN,  
Administrator.

[F. R. Doc. 43-6221; Filed, April 21, 1943; 4:45 p. m.]

**PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS**

[RO 13, Amendment 16]

**PROCESSED FOODS**

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.\*

Ration Order 13 is amended in the following respect:

1. Section 1.1 (a) (3) is amended to read as follows:

(3) All dried and dehydrated soups.

2. Section 3.1 (a) (1) (iii) is revoked.

3. Section 16.7 (a) is amended to read as follows:

(a) Every person who, for sale or transfer (1) packs frozen fruits or vegetables in containers over ten pounds, or (2) produces jams, jellies, preserves, fruit butters, pickles or relishes, or (3) cans or bottles fruit or vegetable juices in hermetically sealed containers over one gallon and sterilizes them by the use of heat, or (4) cans condensed or evaporated milk, or meat, or fish or shellfish in hermetically-sealed containers sterilized by the use of heat, or (5) packages dried or dehydrated fruits (unless he packages them only for sale or transfer directly to consumers), must file monthly reports on OPA Form R-1305. He must give all information as to those items called for by the form.

4. Section 21.1 (a) (10) (iii) is amended to read as follows:

(iii) All dried and dehydrated soups.

\*Copies may be obtained from Office of Price Administration.

<sup>1</sup> 8 F.R. 1840, 2288, 2677, 2681, 2684, 2943, 3179, 3949, 4342, 4525, 4726, 4784.

5. Section 21.1 (a) (12) (iii) is revoked.

This amendment shall become effective April 27, 1943.

NOTE: All reporting and record-keeping requirements of this amendment have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Pub. Law. 671, 76th Cong., as amended by Pub. Laws 89, 421, 507, and 729, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; W.P.B. Directive 1, 7 F.R. 562; Food Directive 3, 8 F.R. 2005, and Food Directive 5, 8 F.R. 2251)

Issued this 21st day of April 1943.

PRENTISS M. BROWN,  
Administrator.

[F. R. Doc. 43-6222; Filed, April 21, 1943; 4:45 p. m.]

**PART 1407—RATIONING OF FOOD AND FOOD PRODUCTS**

[Ration Order 13, Amendment 18]

**PROCESSED FOODS**

A rationale for this amendment has been issued simultaneously herewith and has been filed with the Division of the Federal Register.\*

Ration Order 13 is amended in the following respects:

1. Article XXIII is given a title to read as follows: "Article XXIII—Exempt Agencies; Ships' Stores; Governmental Investigatory Agencies."

2. The following items are added to the list in Appendix A:

Dry blackeye peas (otherwise known as dry blackeye beans).

Dry cow peas.

<sup>1</sup> 8 F.R. 1840, 2288, 2677, 2681, 2684, 2943, 3179, 3949, 4342, 4525, 4726, 4784, 4921.

This amendment shall become effective at 12:01 a. m., April 22, 1943.

(Pub. Law 671, 76th Cong., as amended by Pub. Laws 89, 421, 507 and 729, 77th Cong.; E.O. 9125, 7 F.R. 2719; E.O. 9280, 7 F.R. 10179; WPB Directive 1, 7 F.R. 562; Food Directive 3, 8 F.R. 2005, and Food Directive 5, 8 F.R. 2251)

Issued this 21st day of April 1943.

PRENTISS M. BROWN,  
Administrator.

[F. R. Doc. 43-6226; Filed, April 21, 1943; 4:46 p. m.]

**PART 1429—POULTRY AND EGGS**

[MPR 333, Amendment 4]

**EGGS AND EGG PRODUCTS**

A statement of the considerations involved in the issuance of this amendment, issued simultaneously herewith, has been filed with the Division of the Federal Register.\*

Maximum Price Regulation 333 is amended in the following respects:

1. Table C of § 1429.69 (d) is amended insofar as it relates to maximum prices in basing point cities for the months of April and May 1943 to read as follows:

Grade	April				May				
	5	12	19	26	3	10	17	24	31
I.....	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0	43.0
II.....	42.5	42.5	42.5	42.5	42.5	42.5	42.5	42.5	42.5
III.....	42.0	42.0	42.0	42.0	42.0	42.0	42.0	42.0	42.0
IV.....	41.5	41.5	41.5	41.5	41.5	41.5	41.5	41.5	41.5

2. Table D of § 1429.69 (e) is amended insofar as it relates to maximum prices in Chicago for the months of April and May 1943 to read as follows:

Grade	April				May				
	5	12	19	26	3	10	17	24	31
I.....	41.4	41.4	41.4	41.4	41.4	41.4	41.4	41.4	41.4
II.....	40.9	40.9	40.9	40.9	40.9	40.9	40.9	40.9	40.9
III.....	40.4	40.4	40.4	40.4	40.4	40.4	40.4	40.4	40.4
IV.....	39.9	39.9	39.9	39.9	39.9	39.9	39.9	39.9	39.9

3. Section 1429.69 (f) is amended to read as follows:

(f) Maximum prices of retail grades sold and delivered to the United States or any agency thereof. The maximum prices of shell eggs of retail grades, sold and delivered to the United States or any agency thereof, shall be the same as the maximum prices of such retail grades when sold and delivered to retailers or commercial, industrial, institutional, or non-federal governmental users.

4. Section 1429.78 is amended to read as follows:

§ 1429.78 Period provisions of this amendment shall continue in effect. The provisions of this amendment, namely, Table C of § 1429.69 (d) and

<sup>1</sup> 8 F.R. 2488, 3002, 3070, 3735.

Table D of § 1429.69 (e) as amended herein and § 1429.69 (f) shall continue in effect until 12 o'clock midnight on May 17, 1943, at which time the original maximum prices set forth in Table C of § 1429.69 (d) and Table D of § 1429.69 (e) and the original provisions of § 1429.69 (f) of Maximum Price Regulation 333, as issued on February 25, 1943, shall be reinstated automatically and without further order of the Administrator and the indicated provisions of this amendment shall cease and terminate.

This amendment shall be effective as of April 17, 1943.

(Pub. Laws 421 and 729, 77th Cong.; E.O. 9250, 7 F.R. 7871)

Issued this 21st day of April 1943.

PRENTISS M. BROWN,  
Administrator.

Approved:

CHESTER C. DAVIS,  
Administrator, Food Production  
and Distribution.

[F. R. Doc. 43-6224; Filed, April 21, 1943;  
4:45 p. m.]

Chapter XIII—Petroleum Administration  
for War

[Suspension Order PSO-1]

PART 1595—PETROLEUM SUSPENSION  
ORDERS

CASH FUEL AND FEED CO.

Ford L. Wright, doing business under the trade name of Cash Fuel and Feed Company, 5360 North Broadway, Wichita, Kansas, is engaged in the business of marketing of motor fuel. Since the effective date of Petroleum Administrative Order No. 4, January 23, 1943, to the present time, Ford L. Wright has delivered motor fuel from his service station located at 5360 North Broadway, Wichita, Kansas, more than 12 hours per day and more than 72 hours per week, and further, has not posted his service station hours of operation in accordance with the provisions of Petroleum Administrative Order No. 4.

While the above mentioned violations were occurring, Ford L. Wright was fully aware of the provisions of Petroleum Administrative Order No. 4, but publicly stated that he did not intend to comply with said order and continuously operated his service station in violation of the order. This constituted a wilful disregard of the provisions of Petroleum Administrative Order No. 4, and said wilful violations have hampered and impeded the war effort of the United States. In view of the foregoing facts, *It is hereby ordered:*

§ 1595.1 *Petroleum Suspension Order PSO-1.* (a) Ford L. Wright, doing business under the trade name of Cash Fuel and Feed Company or under any other name, his successors or assigns, shall not accept from any source the delivery of any motor fuel, as defined in Petroleum Administrative Order No. 4, at the service station, as defined in Petroleum Administrative Order No. 4, located at 5360

North Broadway, Wichita, Kansas, or at any storage facility or other service station now or hereafter owned, operated or leased by him.

(b) No person, as defined in Petroleum Administrative Order No. 4, shall deliver any motor fuel to the service station located at 5360 North Broadway, Wichita, Kansas, or to any storage facility or any other service station now or hereafter owned, operated or leased by Ford L. Wright, doing business under the trade name of Cash Fuel and Feed Company or any other name.

(c) Nothing contained herein shall be deemed to relieve Ford L. Wright, doing business under the trade name of Cash Fuel and Feed Company, his successors or assigns, from any restrictions, prohibitions, or provisions contained in any other order, regulation, or directive of the Petroleum Administration for War, except in so far as the same may be inconsistent with the provisions hereof.

(d) This order shall take effect on April 24, 1943, and shall expire on August 23, 1943.

Issued this 21st day of April 1943.

(E.O. 9276, 7 F.R. 10091; E.O. 9125, 7 F.R. 2719; sec. 2 (a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

R. K. DAVIES,  
Deputy Petroleum  
Administrator for War.

[F. R. Doc. 43-6242; Filed, April 22, 1943;  
10:57 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. B-271]

RICHARDS AND SANFORD

MEMORANDUM OPINION AND ORDER TO CEASE  
AND DESIST

In the matter of Belmont Richards and George Sanford, individually and as copartners doing business under the name and style of Richards & Sanford, Code Members.

On September 30, 1942, after notice and hearing, Charles O. Fowler, a duly designated Examiner of the Division submitted a report in which he found that code members, Belmont Richards and George Sanford, individually and as copartners doing business as Richards & Sanford, operating the Stallings Mine, Mine Index No. 128, located in San Juan County, New Mexico, in District 18, wilfully violated:

The Order in General Docket No. 19 dated on October 9, 1940, by selling to various purchasers during the period from May 29, 1941 to June 25, 1941, 234.08 net tons of 2½" lump coal, Size Group 1, produced at the Stallings Mine, at a price of \$3.00 per net ton f. o. b. the mine, whereas, at the time of such transactions, no prices, temporary or final, had been established for Size Group 1 coal produced at said mine.

The Examiner recommended that an order be entered requiring code members to cease and desist from selling coal for which no minimum price, either temporary or final, has been established by the Division.

Opportunity was afforded to all parties to file exceptions to the Examiner's Report. No exceptions have been filed.

I have considered the report of the Examiner and I find that it adequately and accurately reflects the evidence disclosed in the record. Upon the basis of the proposed findings of fact, proposed conclusions of law, and recommendations set forth in the Report, and upon the entire record in this proceeding,

*It is hereby ordered,* That the proposed findings of fact and the proposed conclusions of law of the Examiner are approved and adopted as the findings of fact and conclusions of law of the Director.

*It is further ordered,* That Belmont Richards and George Sanford, individually and as copartners doing business under the name and style of Richards & Sanford, operating the Stallings Mine, Mine Index No. 128, in San Juan County, New Mexico, their agents, employees, representatives, successors, and assigns, and all persons acting or claiming to act on their behalf or interest, cease and desist from violating the Order in General Docket No. 19, dated October 9, 1940, or from otherwise violating the provisions of the Bituminous Coal Act of 1937, the Bituminous Coal Code, and the orders, rules and regulations issued thereunder.

Notice is hereby given that upon failure or refusal to comply with this order, the Division may apply to a Circuit Court of Appeals for the enforcement thereof, or may otherwise proceed as authorized by the Act.

Dated: April 21, 1943.

[SEAL] DAN H. WHEELER,  
Director.

[F. R. Doc. 43-6238; Filed, April 22, 1943;  
10:09 a. m.]

Bureau of Reclamation.

OCHOCO PROJECT, OREGON

FIRST FORM RECLAMATION WITHDRAWAL

MARCH 15, 1943.

The SECRETARY OF THE INTERIOR.

Sir: In accordance with the authority vested in you by the Act of June 28, 1934 (48 Stat. 1269), as amended, it is recommended that the following described lands be withdrawn from public entry under the first form of withdrawal, as provided in section 3 of the Act of June 17, 1902 (32 Stat. 388), and that departmental order of October 21, 1935, establishing Oregon Grazing District No. 5, be modified and made subject to the withdrawal effected by this order.

OCHOCO PROJECT

PRINNEVILLE RESERVOIR SITE

Williamette Meridian, Oregon

T. 16 S., R. 17 E.,  
Sec. 23, SW¼;  
Sec. 25, SE¼NE¼, E½SW¼;

Sec. 27, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 28, NE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 31, lot 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 32, S $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
 Sec. 34, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ SW $\frac{1}{4}$ .  
 T. 17 S., R. 17 E.,  
 Sec. 3, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 4, lot 2;  
 Sec. 5, lots 3, 4, S $\frac{1}{2}$ SW $\frac{1}{4}$ ;  
 Sec. 6, lot 7, NW $\frac{1}{4}$ SE $\frac{1}{4}$ , E $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 Sec. 7, lots 1, 2, 3, 4, NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 8, W $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
 Sec. 9, N $\frac{1}{2}$ ;  
 Sec. 18, lots 1, 2, E $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
 Sec. 19, lots 1, 2, E $\frac{1}{2}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

Respectfully,

H. W. BASHORE,  
*Assistant Commissioner.*

I concur: March 16, 1943.

ARCHIE D. RYAN,  
*Acting Director of the Grazing Service.*

I concur: March 31, 1943.

FRED W. JOHNSON,  
*Commissioner of the General Land Office.*

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

MICHAEL W. STRAUS,  
*First Assistant Secretary.*

APRIL 14, 1943.

[F. R. Doc. 43-6250; Filed, April 22, 1943; 11:37 a. m.]

#### OCHOCO PROJECT, OREGON

##### FIRST FORM RECLAMATION WITHDRAWAL

MARCH 15, 1943.

The SECRETARY OF THE INTERIOR.

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

#### OCHOCO PROJECT

##### PRINEVILLE RESERVOIR SITE

##### Willamette Meridian, Oregon

T. 17 S., R. 16 E.,  
 Sec. 1, lots 1, 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 11, E $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , W $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
 Sec. 12, N $\frac{1}{2}$ SW $\frac{1}{4}$ ; SE $\frac{1}{4}$ ;  
 Sec. 13, E $\frac{1}{2}$ , NW $\frac{1}{4}$ ;  
 Sec. 14, N $\frac{1}{2}$ ;  
 Sec. 24, E $\frac{1}{2}$ .

Respectfully,

H. W. BASHORE,  
*Assistant Commissioner.*

I concur: March 31, 1943.

FRED W. JOHNSON,  
*Commissioner of the General Land Office.*

The foregoing recommendation is hereby approved, as recommended, and

the Commissioner of the General Land Office will cause the records of his office and the local land office to be noted accordingly.

MICHAEL W. STRAUS,  
*First Assistant Secretary.*

APRIL 14, 1943.

[F. R. Doc. 43-6251; Filed, April 22, 1943; 11:37 a. m.]

#### COLUMBIA BASIN PROJECT, WASHINGTON

##### FIRST FORM RECLAMATION WITHDRAWAL

MARCH 22, 1943.

The SECRETARY OF THE INTERIOR.

Sir: In accordance with the authority vested in you by the Act of June 28, 1936 (49 Stat. 1976) it is recommended that the following described lands be withdrawn from public entry under the first form of withdrawal as provided in section 3 of the Act of June 17, 1902 (32 Stat. 388).

#### COLUMBIA BASIN PROJECT

##### WILLAMETTE MERIDIAN, WASHINGTON

T. 28 N., R. 34 E.,  
 Sec. 28, lots 8, 9;  
 Sec. 29, lots 3, 4;  
 Sec. 32, lots 6 to 12, inclusive;  
 Sec. 33, lots 8 to 18, inclusive.

Respectfully,

JOHN C. PAGE,  
*Commissioner.*

I concur: April 13, 1943.

FRED W. JOHNSON,  
*Commissioner of the General Land Office.*

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

MICHAEL W. STRAUS,  
*First Assistant Secretary.*

APRIL 15, 1943.

[F. R. Doc. 43-6252; Filed, April 22, 1943; 11:37 a. m.]

#### General Land Office.

[Stock Driveway Withdrawal 9, N. Mex. 3, reduced]

#### NEW MEXICO

##### STOCK DRIVEWAY WITHDRAWAL

The department order of February 28, 1918, withdrawing certain lands in New Mexico for stock driveway purposes under section 10 of the Act of December 29, 1916, 39 Stat. 865, 43 U.S.C. 300, is hereby revoked so far as it affects the following-described public lands which are within New Mexico Grazing District No. 2:

#### NEW MEXICO PRINCIPAL MERIDIAN

T. 4 S., R. 12 W.,  
 Sec. 24, S $\frac{1}{2}$ NW $\frac{1}{4}$  and N $\frac{1}{2}$ SW $\frac{1}{4}$ .  
 The areas described aggregate 160 acres.

OSCAR L. CHAPMAN,  
*Assistant Secretary of the Interior.*  
 APRIL 6, 1943.

[F. R. Doc. 43-6244; Filed, April 22, 1943; 11:36 a. m.]

[Stock Driveway Withdrawal 262, Colo. 20, Enlarged]

#### COLORADO

##### STOCK DRIVEWAY WITHDRAWAL

By virtue of the authority contained in section 7 of the act of June 28, 1934, 48 Stat. 1272, as amended by the act of June 26, 1936, 49 Stat. 1976 (U.S.C. title 43, sec. 315f), and in section 10 of the act of December 29, 1916, 39 Stat. 865, as amended by the act of January 29, 1929, 45 Stat. 1144 (U.S.C. title 43, sec. 300), *It is ordered*, as follows:

The following-described public lands in Colorado are hereby classified as necessary and suitable for the purpose and, excepting any mineral deposits therein, are withdrawn from all disposal under the public-land laws and reserved, subject to valid existing rights, for the use of the general public as an addition to Stock Driveway Withdrawal No. 262, Colorado No. 26:

#### SIXTH PRINCIPAL MERIDIAN

T. 5 N., R. 90 W.,  
 Sec. 21, lot 1;  
 Sec. 22, lot 4.

The areas described aggregate 82.28 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.*

APRIL 8, 1943.

[F. R. Doc. 43-6248; Filed, April 22, 1943; 11:36 a. m.]

[Public Land Order 109]

#### IDAHO

##### WITHDRAWING PUBLIC LANDS FOR USE OF THE WAR DEPARTMENT AS AN AIRPORT

By virtue of the authority vested in the President and pursuant to Executive Order No. 9146 of April 24, 1942, and to section 1 of the act of June 28, 1934, as amended, 48 Stat. 1269 (U.S.C., title 43, sec. 315), *It is ordered*, As follows:

Subject to valid existing rights, the public lands in the following-described areas are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws and reserved for the use of the War Department as an airport:

#### BOISE MERIDIAN

T. 4 S., R. 5 E.,  
 Secs. 20 to 22, inclu. ve,  
 Secs. 27 to 29, inclusive, and  
 Secs. 32 to 34, inclusive.

The areas described, including both public and non-public lands, aggregate 5,760 acres.

This order shall be subject to (1) the withdrawal for electrical transmission line purposes made by the Executive order of October 29, 1913, as modified by the Executive order of February 11, 1915

(Power Site Reserve No. 406), and (2) the withdrawal for transmission line purposes made April 16, 1923, under Federal Power Commission Project No. 406, so far as such withdrawals affect any of the above-described lands.

The order of April 8, 1935, of the Secretary of the Interior, establishing Idaho Grazing District No. 1, is hereby modified to the extent necessary to permit the use of the lands as herein provided.

It is intended that the public lands described herein shall be returned to the administration of the Department of the Interior, when they are no longer needed for the purpose for which they are reserved.

ABE FORTAS,  
Acting Secretary of the Interior.

APRIL 12, 1943.

[F. R. Doc. 43-6245; Filed, April 22, 1943; 11:36 a. m.]

[Public Land Order 110]

CALIFORNIA

WITHDRAWING PUBLIC LANDS FOR USE OF THE WAR DEPARTMENT FOR AVIATION PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9146 of April 24, 1942, *It is ordered*, As follows:

Subject to valid existing rights, the public lands in the following-described areas are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for the use of the War Department for aviation purposes:

SAN BERNARDINO MERIDIAN

- T. 6 N., R. 7 W.,  
Sec. 2, lots 1 and 2 of NE¼, and lots 1 and 2 of NW¼;
- Sec. 3, lots 1 and 2 of NE¼, and lots 1 and 2 of NW¼;
- Sec. 4, lots 1 and 2 of NE¼, and lots 1 and 2 of NW¼.
- T. 7 N., R. 7 W.,  
Sec. 33, S½;
- Sec. 34, S½;
- Sec. 35, S½.

The areas described, including both public and non-public lands, aggregate 1,941.91 acres.

This order shall take precedence over, but shall not rescind or revoke, the withdrawal for classification and other purposes made by Executive Order No. 6910 of November 26, 1934, as amended, so far as such order affects any of the above-described lands.

It is intended that the public lands described herein shall be returned to the administration of the Department of the Interior, when they are no longer needed for the purpose for which they are reserved.

HAROLD L. ICKES,  
Secretary of the Interior.

APRIL 14, 1943.

[F. R. Doc. 43-6246; Filed, April 22, 1943; 11:36 a. m.]

[Public Land Order 111]

NEW MEXICO

REVOCATION OF PUBLIC LAND ORDER NO. 52 WITHDRAWING PUBLIC LAND FOR USE OF THE WAR DEPARTMENT AS A BOMBING RANGE

By virtue of the authority vested in the President and pursuant to Executive Order No. 9146 of April 24, 1942, *It is ordered*, as follows:

Public Land Order No. 52 of November 3, 1942, withdrawing certain public land in New Mexico for the use of the War Department as a bombing range, is hereby revoked.

HAROLD L. ICKES,  
Secretary of the Interior.

APRIL 14, 1943.

[F. R. Doc. 43-6247; Filed, April 22, 1943; 11:37 a. m.]

DEPARTMENT OF AGRICULTURE.

Rural Electrification Administration.

[Administrative Order 754]

ALLOCATION OF FUNDS FOR LOANS

APRIL 8, 1943.

Inasmuch as Boone-Nance Rural Public Power District and Loup River Public Power District have transferred all their assets and liabilities to Cornhusker Rural Public Power District, and Cornhusker Rural Public Power District has assumed the entire indebtedness to United States of America, of Boone-Nance Rural Public Power District and Loup River Public Power District, arising out of loans made by United States of America pursuant to the Rural Electrification Act of 1936, as amended, I hereby amend the Administrative Orders designated below to change the allocation designations specified therein as follows:

Project designation	Administrative order		Amount of allocation	Amount of allocation		New project designation
	No.	Date		Advanced	Not advanced	
Nebraska R029W1 Loup River District Public (Allotted as Nebraska R029W1 Platte, changed by Administrative Order No. 511, dated August 23, 1940).	102	February 10, 1933	\$5,000	\$4,000.11	\$3.89	Nebraska 81 Cornhusker District Public (Nebraska R029W1 Loup River District Public).
Nebraska R002B1 Loup River District Public (Allotted as Nebraska R002B1 Platte, changed by Administrative Order No. 511, dated August 23, 1940).	261 453	October 19, 1933... Reduction March 11, 1942.	214,000 90,000	84,000.01		Nebraska 81 Cornhusker District Public (Nebraska R002B1 Loup River District Public).
Nebraska R003A1 Boone-Nance District Public (Allotted as Nebraska R003A1 Boone, changed by Memorandum to Staff, dated September 16, 1939).	285	November 3, 1933.	220,000	129,044.01	99,955.99	Nebraska R003A1 Cornhusker District Public.
Nebraska R002W2 Loup River District Public (Allotted as Nebraska R002W2 Platte, changed by Administrative Order No. 511, dated August 23, 1940).	318	January 31, 1933	10,000	0,002.10		Nebraska 81 Cornhusker District Public (Nebraska R002W2 Loup River District Public).
Nebraska R003W1 Boone-Nance District Public (Allotted as Nebraska R003W1 Boone, changed by Memorandum to Staff, dated September 16, 1939).	303	April 19, 1933	5,000	3,143.00		Nebraska 81 Cornhusker District Public (Nebraska R003W1 Boone-Nance District Public).
Nebraska R003W3 Loup River District Public.	470	July 1, 1933	10,000	4,002.22	1,877.00	Nebraska 81 Cornhusker District Public (Nebraska R003W3 Loup River District Public).
Nebraska R003S4 Loup River District Public.	600	September 23, 1941.	0,000		0,000.00	Nebraska 1031S4 Cornhusker District Public.
Nebraska R003S2 Boone-Nance District Public.	600	September 23, 1941.	7,000		7,000.00	Nebraska 2031S2 Cornhusker District Public.

[SEAL]

HARRY SLATTERY,  
Administrator.

[F. R. Doc. 43-6197; Filed, April 21, 1943; 11:27 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

[Administrative Order 191]

COTTONSEED AND PEANUT CRUSHING INDUSTRY

ACCEPTANCE OF RESIGNATION FROM AND APPOINTMENT TO INDUSTRY COMMITTEE NO. 57

By virtue of and pursuant to the authority vested in me by the Fair Labor

Standards Act of 1938, I, L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor,

Do hereby accept the resignation of Mr. Boris Shishkin from Industry Committee No. 57 for the Cottonseed and Peanut Crushing Industry, and do appoint in his stead Mr. W. W. Rowland of Memphis, Tennessee as representative for the employees on such committee.

Signed at New York, New York this 17th day of April, 1943.

L. METCALFE WALLING,  
Administrator.

[F. R. Doc. 43-6235; Filed, April 22, 1943;  
9:33 a. m.]

### CIVIL AERONAUTICS BOARD.

[Docket Nos. 300 and 499]

PAN AMERICAN AIRWAYS, INC.

#### NOTICE OF FURTHER HEARING

In the matter of the petition of Pan American Airways, Inc., for rehearing, reargument and reconsideration of the Board's order dated August 31, 1942, fixing 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 in the petitioner's transpacific services.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended particularly sections 406 and 1001 of said Act, in the above-entitled proceeding, that hearing is assigned to be held on April 28, 1943, 10 a. m. (eastern war time) in Room 3237, Post Office Department, 12th Street and Pennsylvania Avenue, NW., Washington, D. C. Dated Washington, D. C., April 21, 1943.

[SEAL] HERBERT K. BRYAN,  
ROSS I. NEWMANN,  
Examiners.

[F. R. Doc. 43-6241; Filed, April 22, 1943;  
10:51 a. m.]

### FEDERAL TRADE COMMISSION.

[Docket No. 4840]

HECHT COMPANY

#### ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

In the matter of Hecht Company, a corporation, also trading as Hecht Bros. At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 21st day of April, A. D. 1943.

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

It is ordered, That Randolph Preston, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Wednesday, May 5, 1943, at ten-thirty o'clock in the forenoon of that day (eastern standard time) in Room 507, Post Office Building, Baltimore, Maryland.

Upon completion of testimony for the Federal Trade Commission, the trial

examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the case and make his report upon the evidence. By the Commission.

[SEAL] OTIS B. JOHNSON,  
Secretary.

[F. R. Doc. 43-6239; Filed, April 22, 1943;  
10:20 a. m.]

### SECURITIES AND EXCHANGE COMMISSION.

[File No. 54-43]

GREAT LAKES UTILITIES COMPANY

#### NOTICE OF FILING AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 20th day of April 1943-

The Commission having by order dated March 31, 1942, under section 11 of the Public Utility Holding Company Act of 1935, approved a Plan dated March 1, 1942, providing for the liquidation of Great Lakes Utilities Company, a registered holding company; and said order having provided that Great Lakes Utilities Company should make application to the Commission for the entry of such further orders as were necessary or appropriate for that purpose, and the Commission having reserved jurisdiction to enter such further orders as might be necessary or appropriate;

Notice is hereby given that Great Lakes Utilities Company has filed an application requesting approval by the Commission of the extension of the maturity date on the remaining outstanding First Lien Collateral Trust Gold Bonds, 5½% Series, due 1942, from May 1, 1943, to May 1, 1944; the said Plan having provided, inter alia, for the extension of the maturity date of said bonds from May 1, 1942, to May 1, 1943, with the further provision that, subject to the approval of this Commission and the Court and upon the proof that the applicant has been or will be unable in the exercise of due diligence to sell at a fair price sufficient assets or securities for an amount in cash to be received prior to May 1, 1943, to pay in full the principal and accrued interest on the outstanding bonds of said issue, the applicant should have the right further to extend the maturity of said bonds to May 1, 1944; and

The District Court of the United States for the Eastern District of Pennsylvania in the proceeding entitled "In the Matter of Great Lakes Utilities Company, No. M-989", having by order entered on April 21, 1942, approved said plan pursuant to an application filed by this Commission at the request of Great Lakes Utilities Company; and

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a hearing be held for the purpose of considering said application;

It is ordered, That a hearing be held at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania, at 10:00 o'clock a. m., e. w. t., on the 28th day of April 1943, in such room as may be designated at that time by the Hearing Room Clerk in Room 318. All persons desiring to be heard, or otherwise wishing to participate in the proceeding, should notify the Commission in the manner provided by our Rules of Practice, Rule XVII, on or before April 23, 1943.

All interested persons are referred to said application, which is on file in the office of the Commission, for full details concerning the application;

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

It is further ordered, That without limiting the scope of issues presented by said application, particular attention will be directed at said hearing to the following matters and questions:

(1) Whether Great Lakes Utilities Company has exercised due diligence in its efforts to sell its assets or securities, as provided in the plan;

(2) Whether an extension of the maturity date of the outstanding bonds from May 1, 1943 to May 1, 1944 is appropriate in the light of the provisions of the plan and consistent with the public interest and the interests of investors and consumers.

It is further ordered, That the Secretary of this Commission serve notice of the entry of this order by mailing a copy thereof by registered mail to the applicant, and that notice shall be given to all other persons by publication thereof in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 43-6228; Filed, April 22, 1943;  
9:35 a. m.]

[File No. 37-30]

PUBLIC UTILITIES MANAGEMENT CORP.

#### NOTICE OF FILING AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pennsylvania, on the 19th day of April, A. D. 1943.

Notice is hereby given that Post Amendment No. 1 to the Application of Public Utilities Management Corporation for approval as a mutual service company (File No. 37-30) has been filed with this Commission by American Gas and Power Company and Public Utilities Management Corporation, pursuant to the provisions of the Public Utility Holding Company Act of 1935. All in-

terested persons are referred to said Post Amendment No. 1, which is on file in the office of this Commission, for a statement of the transactions therein proposed, which are summarized as follows:

Public Utilities Management Corporation was approved as a mutual service company for the associate companies comprising the holding-company system of Community Gas and Power Company and American Gas and Power Company, pursuant to paragraphs (b) and (d) of section 13 of the Act, by order of this Commission dated November 19, 1938, subject to the conditions set forth in said order.

By order dated September 24, 1942, this Commission instituted a proceeding (File No. 59-55) against Community Gas and Power Company, American Gas and Power Company and the subsidiary companies thereof, in which the following issues (among others) were raised:

Whether it is necessary or appropriate pursuant to section 13 of the Act to require elimination of interlocking directorates and personnel among Public Utilities Management Corporation, the holding companies, and the utility companies in the holding-company system, and to require prospective or retroactive adjustments, or both, of cost allocations in order to prevent direct or indirect payment by the utility companies of compensation to officers, directors and employees of the holding companies, to prevent direct or indirect payment by the utility companies of other charges for services rendered, directly or indirectly, by the holding companies and to effect a fair and equitable allocation of costs among the holding companies and utility companies; and whether it is necessary or appropriate to require other changes in the organization and conduct of business of Public Utilities Management Corporation in the light of action which may be taken or required under sections 11 (b) (1) and 11 (b) (2) of the Act.

Hearings were held on the issues raised in our order of September 24, 1942. By notice and order dated March 2, 1943 in said proceeding (File No. 59-55) this Commission directed that evidence be adduced and consideration given at the reconvening of the hearing in said proceeding to the following issues, among others:

Whether the Commission should enter forthwith an order pursuant to section 13 of said Act, rescinding as of a date sixty days after the entry of said rescinding order, the order of the Commission dated November 19, 1938, which granted approval of Public Utilities Management Corporation as a mutual service company, and requiring that after sixty days from the entry of said rescinding order, unless pursuant to further order of the Commission, Public Utilities Management Corporation shall make no charges to and receive no payments from Minneapolis Gas Light Company, Birmingham Gas Company, Savannah Gas Company, Jacksonville Gas Company, St. Augustine Gas Company, Lowell Gas Light Company, and Bangor Gas Company, or any of them, except for services rendered prior to said date.

A hearing on the issues specified in said notice and order of March 2, 1943 has been held, and said issues are to be submitted to this Commission for determination after briefs have been filed and oral argument heard.

Public Utilities Management Corporation has issued and outstanding 3,000 shares of its \$1 par value common capital stock as follows:

Name of stockholder	Number of shares	Consideration received from stockholders
Bangor Gas Company.....	51	\$710
Birmingham Gas Company.....	577	6,770
Jacksonville Gas Corporation.....	109	1,090
Lowell Gas Light Company.....	244	2,440
Minneapolis Gas Light Company.....	1,643	16,430
Savannah Gas Company.....	103	1,030
St. Augustine Gas Company.....	27	270
	3,000	30,000

American Gas and Power Company and Public Utilities Management Corporation propose, in said Post Amendment, that the following transactions and changes in methods of operation shall be effectuated as of August 1, 1943:

(a) Public Utilities Management Corporation shall terminate all its said service contracts.

(b) Public Utilities Management Corporation shall acquire for cash all the shares of its common stock held by Jacksonville Gas Corporation, and one-half of the shares of its common stock held respectively by the other companies listed above, at a price equal to the book value of such stock at July 31, 1943. Such shares upon their acquisition shall be cancelled and retired by Public Utilities Management Corporation.

(c) American Gas and Power Company shall acquire for cash from each of the companies listed above, other than Jacksonville Gas Corporation, the remaining one-half of such stock holdings, also at a price equal to the book value of such stock at July 31, 1943. The aggregate amount to be so paid by American Gas and Power Company will be approximately \$14,577.

(d) American Gas and Power Company shall enter into an agreement with Public Utilities Management Corporation whereby American Gas and Power Company will pay the entire cost of operations of Public Utilities Management Corporation.

It appearing to the Commission that it is appropriate in the public interest and in the interests of investors and consumers that a hearing be held with respect to said matters: *It is ordered*, That a hearing on said matters under the applicable provisions of said Act and the Rules of the Commission thereunder be held on May 4, 1943 at 10 a. m., e. v. t., at the offices of this Commission, 18th and Locust Streets, Philadelphia, Pennsylvania. On that date the hearing room clerk in Room 318 will advise as to the room where such hearing will be held. At such hearing cause will be shown why said Post Amendment No. 1 shall be granted.

*It is further ordered*, That Edward C. Johnson or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings on said matters. The officer so designated to preside at such hearings 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.

*It is further ordered*, That without limiting the scope of the issues otherwise to be considered in this proceeding, particular attention will be directed at the hearings to the following matters and questions:

1. Whether upon consummation of the transactions and changes in methods of operation proposed in said Post Amendment No. 1 any operating company in the holding-company system of American Gas and Power Company will be charged or have allocated to it, directly or indirectly, any portion of the salaries or expenses of any person or persons who are holding-company officers or employees, or whose functions relate primarily to the functions of supervision of the holding-company system and review of the activities of operating companies, their officials and staffs.

2. Whether upon consummation of the transactions and changes in methods of operation proposed in said Post Amendment No. 1 any holding-company officer or officers, or person or persons whose functions relate primarily to holding-company functions, shall receive any compensation or reimbursement of expenses directly or indirectly from any operating company.

3. Whether Public Utilities Management Corporation should be permitted to conduct its operations and business in the manner proposed in said Post Amendment No. 1, and, if so, whether any terms or conditions should be imposed.

4. Whether an order of the Commission pursuant to sections 9 (a), 10, 12 (c) or 12 (f) of the Act prohibiting or conditioning the proposed acquisitions by Public Utilities Management Corporation of shares of its common stock, and by American Gas and Power Company of shares of the common stock of Public Utilities Management Corporation, is necessary or appropriate to protect the financial integrity of the companies in the holding-company system, to safeguard their working capital, to prevent the circumvention of the provision of the Act or of the rules, regulations or orders thereunder, or otherwise in the public interest or for the protection of investors or consumers; whether such proposed acquisitions are unlawful under the provisions of section 8 of the Act, or detrimental to the carrying out of section 11 of the Act, and whether such proposed acquisitions will serve the public interest by tending towards the economic and efficient development of an integrated public-utility system.

*It is further ordered*, That notice of said hearing is hereby given to American Gas and Power Company and Public Utilities Management Corporation, respondents herein, and to Community Gas and Power Company, Minneapolis Gas Light Company, Birmingham Gas Company, Savannah Gas Company, Jacksonville Gas Company, Jacksonville Gas Corporation, St. Augustine Gas Company, Bangor Gas Company, Lowell Gas Light

Company, and American Utilities Associates, to their respective security holders and consumers, to all States, municipalities, and public subdivisions of States within which are located any of the physical assets of said companies or under the laws of which any of said companies are incorporated, all State Commissions, State Securities Commissions, and all agencies, authorities, or instrumentalities of one or more States, municipalities or other political subdivisions having jurisdiction over any of such companies or over any of the business, affairs, or operations of any of them; that the Secretary of the Commission shall serve notice of said hearing by mailing a copy of this order by registered mail to American Gas and Power Company and Public Utilities Management Corporation, respondents herein, and to Community Gas and Power Company, Minneapolis Gas Light Company, Birmingham Gas Company, Savannah Gas Company, Jacksonville Gas Company, Jacksonville Gas Corporation, St. Augustine Gas Company, Bangor Gas Company, Lowell Gas Light Company, and American Utilities Associates, and to the Alabama Public Service Commission, the Georgia Public Service Commission, the Department of Public Utilities of Massachusetts, and the Public Utilities Commission of the State of Maine, and the Cities of Minneapolis, Minnesota, Jacksonville, Florida and St. Augustine, Florida, such mailing to be made on or before April 23, 1943; that such notice shall be given further by a general release of the Commission, distributed to the press and mailed to the mailing list for releases, issued under the Act; and that further notice be given to all persons by publication of this notice and order in the FEDERAL REGISTER on or before April 23, 1943.

*It is further ordered,* That any person proposing to intervene or to be heard in these proceedings shall file with the Secretary of the Commission on or before May 3, 1943 his request or application therefor as provided by Rule XVII of the Rules of Practice of the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 43-6229; Filed, April 22, 1943;  
9:35 a. m.]

[File No. 70-399]

#### UTILITY SERVICE COMPANY

##### ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pa., on the 19th day of April 1943.

Utility Service Company, a registered holding company and wholly-owned subsidiary of Manufacturers Trust Company, an exempt holding company, having filed an application and declaration and amendments thereto pursuant to the Public Utility Holding Company Act of

1935, particularly section 10 and Rules U-42, U-43 and U-44 promulgated thereunder, regarding its proposal (a) to accept from its parent, for cancellation and retirement, its demand notes in the principal amount of \$1,218,000 which notes will be surrendered as a capital contribution; (b) to convey to its parent all of its assets remaining after the payment of or provision for the payment of all of its liabilities; and (c) to acquire and retire all of its outstanding shares of capital stock; and

A public hearing having been held on said application and declaration after appropriate notice; and the Commission having made and filed its findings and opinion herein; and

The Commission having found that the proposed transactions are necessary and appropriate to effectuate the provisions of section 11 (b) of the Act and fair and equitable to the persons affected and are not in contravention of any of the applicable provisions of the Act, or of any rules or regulations promulgated thereunder; and

Utility Service Company having requested that the order of the Commission herein conform to the requirements of Section 1808 of the Internal Revenue Code as amended by section 506 (e) and (h) of the Revenue Act of 1942 and contain findings therein specified;

*It is hereby ordered,* That said application, as amended, be granted and that said declaration, as amended, be permitted to become effective forthwith, subject to the terms and conditions prescribed by Rule U-24.

*It is further ordered,* That the liquidation and dissolution of Utility Service Company and the conveyance and delivery by it to Manufacturers Trust Company of (a) 35,000 shares of the Common Stock and 6,621 shares of the Cumulative \$6 Preferred Stock of Eastern Minnesota Power Corporation, (b) 330,000 shares of the Common Stock of The Marion-Reserve Power Company, and (c) 48,483 shares of the Common Stock of New England Public Service Company, or any or all of said transactions are necessary and appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 43-6230; Filed, April 22, 1943;  
9:35 a. m.]

[File No. 70-672]

#### CONSOLIDATED ELECTRIC AND GAS COMPANY AND HOUGHTON COUNTY ELECTRIC LIGHT COMPANY

##### ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pennsylvania, on the 19th day of April, A. D. 1943.

Consolidated Electric and Gas Company, a registered holding company, and its subsidiary company, Houghton

County Electric Light Company, having filed an application and declaration pursuant to the Public Utility Holding Company Act of 1935, particularly sections 6, 7, 9, 10, and 12 thereof, and Rules U-42, U-43, and U-44 promulgated thereunder, regarding the reclassification by Houghton County Electric Light Company of its outstanding preferred stock (12,000 shares of \$25 par value), all of which is owned by Consolidated Electric and Gas Company, into 12,000 shares of common stock of \$25 par value and regarding a capital contribution by Consolidated Electric and Gas Company of 800 shares of Houghton County Electric Light Company common stock to the latter company and regarding the pledge by Consolidated Electric and Gas Company of the new common shares of Houghton County Electric Light Company under the indenture securing its Collateral Trust Bonds in substitution for the old shares of preferred and common stock of Houghton County Electric Light Company. The application and declaration states that Houghton County Electric Light Company will write off through a charge to earned surplus any amount presently in the Utility Plant Acquisition Adjustment Account, which the Michigan Public Service Commission may find upon completion of its pending study, to be of a nature which should properly be included in Account 107 of the Uniform System of Accounts as prescribed by the Federal Power Commission, and treat the balance of such item which is of a nature to be included in Account 100.5 under said System of Accounts, in such manner as may be directed by the Michigan Public Service Commission; and

Said application and declaration having been filed on February 2, 1943 and amendments having been filed thereto, the last on April 2, 1943, and notice of said filing having been duly given in the manner and form prescribed by Rule U-23 promulgated pursuant to said Act and the Commission not having received a request for a hearing with respect to said application and declaration within the period prescribed in such notice, or otherwise, and not having ordered a hearing thereon; and

The Commission finding that all applicable statutory requirements are met and deeming it appropriate in the public interest and in the interest of investors and consumers to grant said application, as amended, and to permit said declaration, as amended, to become effective;

*It is hereby ordered,* Pursuant to Rule U-23 and the applicable provisions of said Act and subject to the terms and conditions prescribed in Rule U-24, that the aforesaid application, as amended, be and the same is hereby granted and said declaration, as amended, be and the same is hereby permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 43-6231; Filed, April 22, 1943;  
9:35 a. m.]

[File No. 70-694]

**THE BUCKEYE LIGHT & POWER COMPANY  
AND UNITED PUBLIC UTILITIES CORPORATION**

**NOTICE OF FILING AND ORDER FOR HEARING**

At a regular session of the Securities and Exchange Commission held at its office in the City of Philadelphia, Pa., on the 19th day of April 1943.

Notice is hereby given that a joint application and declaration has been filed by The Buckeye Light & Power Company and United Public Utilities Corporation pursuant to the Public Utility Holding Company Act of 1935. All interested persons are referred to said application and declaration which is on file in the office of this Commission for a statement of the transactions therein proposed which are summarized as follows:

(1) The Buckeye Light & Power Company, a wholly-owned subsidiary of United Public Utilities Corporation, a registered holding company, proposes to issue and sell its negotiable promissory note in the principal amount of \$76,500 to be dated May 15, 1943, bearing interest at the rate of 6% per annum to mature January 1, 1945 in consideration of \$76,500 in cash to be paid by United Public Utilities Corporation;

(2) The proceeds of the sale will be used by The Buckeye Light & Power Company to retire its Twenty-year 7% First Mortgage Bonds in the principal amount of \$76,500 which mature on May 15, 1943; said First Mortgage Bonds are now owned by United Public Utilities Corporation, but are pledged with the Provident Trust Company of Philadelphia, as Trustee, under the Collateral Trust Indenture securing the outstanding Collateral Trust Bonds of United Public Utilities Corporation;

(3) United Public Utilities Corporation will then pledge Buckeye's new note with said Trustee in compliance with the provisions of the Collateral Trust Indenture, but will not receive any cash upon the pledge of the new note.

It appearing to the Commission that it is appropriate in the public interest and the interest of investors and consumers that a hearing be held with respect to such matters, and that said application shall not be granted nor said declaration permitted to become effective except pursuant to further order of the Commission;

It is ordered, That a hearing on such matters under the applicable provisions of said Act and Rules of the Commission thereunder be held on April 29, 1943, at 10:00 a. m., e. w. t., at the offices of the Securities and Exchange Commission located at 18th and Locust Streets, Philadelphia, Pennsylvania. On such day the hearing room clerk in Room 318 will advise as to the room where such hearing will be held. At such hearing cause shall be shown why such application or declaration (or both) shall become effective or shall be granted. Notice is hereby given of said hearing to the above-named applicant and declarant and to all interested persons, said notice to be given to said applicant and declarant by registered mail and to all

other persons by publication in the FEDERAL REGISTER.

It is further ordered, That Robert P. Reeder, 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 the powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

It is further ordered, That without limiting the scope of issues presented by said declaration and application otherwise to be considered in this proceeding, particular attention will be directed at the hearing to the following matters and questions:

(1) Whether the issue and sale of said 6% negotiable promissory note is solely for the purpose of financing the business of The Buckeye Light & Power Company;

(2) Whether the issue and sale of said note has been expressly authorized by the state commission of the state in which said company is organized and doing business;

(3) What terms and conditions, if any, would it be appropriate in the public interest or for the protection of investors or consumers to impose in connection with the exemption, if granted, of the issue and sale of said note from provisions of section 6 (a) of said Act;

(4) Whether the acquisition and pledge by United Public Utilities Corporation of said note will comply with the applicable standards of sections 10 (b), 10 (c), 12 (b), 12 (d) and 12 (f) of said Act and the applicable Rules thereunder.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 43-6232; Filed, April 23, 1943;  
9:36 a. m.]

[File No. 59-10]

**THE NORTH AMERICAN COMPANY, ET AL.**

**NOTICE OF FILING AND ORDER FOR HEARING**

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pa., on the 19th day of April 1943.

In the matter of the North American Company and its subsidiary companies, respondents.

Notice of filing by Washington Railway and Electric Company and the Washington and Rockville Railway Company of Montgomery County of application for extension of time and order for hearing.

The Commission having entered its order in the above styled and numbered proceeding on April 14, 1942, pursuant to section 11 (b) (1) of the Public Utility Holding Company Act of 1935 directing The North American Company and certain of its subsidiary companies to take various steps in order to comply with the provisions of section 11 (b) (1) of said Act;

Notice is hereby given that on April 14, 1942, Washington Railway and Electric Company and The Washington and

Rockville Railway Company of Montgomery County, two of the respondents in said proceeding, filed a petition requesting the entry of an order by this Commission under section 11 (c) of the Act extending for one year the time within which to comply with the said order of April 14, 1942.

All interested persons are referred to said petition which is on file in the office of the Commission for full details concerning the petition.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a hearing be held for the purpose of considering said petition and for other purposes;

It is ordered, That a hearing in this proceeding be held at the office of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania, at 11:30 a. m., e. w. t., on the 3rd day of May, 1943, in such room as may be designated on such day by the hearing room clerk.

All persons desiring to be heard or otherwise wishing to participate should notify the Commission in the manner provided by the Commission's Rules of Practice, Rule XVII, on or before April 26, 1943.

At said hearing there will be considered (1) whether Washington Railway and Electric Company and The Washington and Rockville Railway Company of Montgomery County have exercised due diligence in their efforts to comply with the Commission's order of April 14, 1942, and (2) whether an extension of time for compliance with said order is necessary or appropriate in the public interest or for the protection of investors or consumers.

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 hearing above ordered. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the Act and to a Trial Examiner under the Commission's Rules of Practice.

It is further ordered, That the Secretary of this Commission shall serve notice of this order by mailing a copy thereof by registered mail to The North American Company, Washington Railway and Electric Company, and The Washington and Rockville Railway Company of Montgomery County and that notice shall be given to all other persons by publication thereof in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS,  
Secretary.

[F. R. Doc. 43-6233; Filed, April 22, 1943;  
9:36 a. m.]

[File Nos. 70-178, 70-635]

**PUBLIC SERVICE COMPANY OF OKLAHOMA,  
ET AL.**

**NOTICE OF FILING, ETC.**

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

office in the City of Philadelphia, Pennsylvania, on the 20th day of April, A. D. 1943.

In the matters of Public Service Company of Oklahoma, Southwestern Light and Power Company and the Middle West Corporation; File No. 70-178 and West Texas Utilities Company and American Public Service Company; File No. 70-686.

Notice of filing of amendments, notice of filing of application and declaration, order of consolidation and order for hearing.

Notice is hereby given that amendments to declarations or applications have been filed with this Commission under the Public Utility Holding Company Act of 1935 by The Middle West Corporation ("Middle West") and its indirect subsidiaries, Public Service Company of Oklahoma ("Oklahoma") and Southwestern Light & Power Company ("Southwestern"); a subsidiary of Oklahoma. Central and South West Utilities Company ("Central"), a subsidiary of Middle West, has joined in the amendment to the extent and for the purpose of its participation in the proposals therein.

Notice is further given that an application or declaration has been filed with this Commission under the Public Utility Holding Company Act of 1935 by West Texas Utilities Company ("West Texas") and its parent, American Public Service Company ("American"), a registered holding company and a subsidiary of Middle West.

All interested persons are referred to said documents which are on file in the office of this Commission, for a statement of the transactions therein proposed, which are summarized as follows:

Southwestern proposes to dissolve. For the purpose of effecting this principal transaction, and in connection therewith, the various companies propose as follows:

1. Southwestern proposes to transfer and convey to Oklahoma in liquidation of all outstanding shares of Southwestern's capital stock owned by Oklahoma at date of liquidation, all assets of Southwestern, and Oklahoma proposes to acquire all such assets.

2. Oklahoma proposes to issue 11,167 shares of its \$100 par value common stock to Middle West in exchange for 11,167 shares of Southwestern's \$6 preferred stock now owned by Middle West, and Middle West proposes to acquire said stock of Oklahoma in pursuance of such exchange.

3. Oklahoma proposes to offer 15,000 shares of its 5% preferred stock in exchange, on a share for share basis, for 15,000 shares of the 24,411 shares of Southwestern's \$6 preferred stock owned by the public and to issue such of its stock subscribed for pursuant to such offer and to acquire such of Southwestern's stock delivered to it pursuant to such offer.

4. Oklahoma proposes to issue and sell to Middle West and Middle West proposes to purchase 2,500 shares of Oklahoma's \$100 par 5% preferred stock, at par plus accrued dividends, less the number of shares of said stock in excess of

2,500 shares as may be subscribed for by the public pursuant to the offer referred to in paragraph 3 hereof.

5. Oklahoma proposes to issue and sell to American and American proposes to acquire 10,000 shares of Oklahoma's \$100 par 5% preferred stock, at par, plus accrued dividends, less the number of shares of said stock in excess of 5,000 shares as may be subscribed for by the public pursuant to the offer referred to in paragraph 3 hereof.

6. Oklahoma proposes to advance to Southwestern on open account, without interests, a sum sufficient to pay \$100 per share of the liquidation price payable in respect of such number of the 24,411 shares of Southwestern's \$6 preferred stock as are not acquired by Oklahoma pursuant to the public offering referred to in paragraph 3 hereof and Southwestern proposes to pay to a depository or liquidation agent the moneys necessary to pay the following amounts to certain of its stockholders:

(a) \$100 per share plus accrued dividends to the holders of such number of shares of its \$6 preferred stock as are not acquired by Oklahoma pursuant to the public offering;

(b) \$100 per share plus accrued dividends to the holders of 393 shares of its Class "A" common stock not now owned by Oklahoma; and

(c) \$21 per share to the holders of 148 shares of its common stock not now owned by Oklahoma.

7. Oklahoma proposes to acquire, and Southwestern proposes to transfer and convey to Oklahoma, in final liquidation of Southwestern and in satisfaction of the advance on open account referred to in paragraph 6 above, and in cancellation and extinguishment of all shares of capital stock of Southwestern then owned by Oklahoma, all utility assets and other assets of Southwestern (except only the moneys paid to the depository or liquidation agent as set forth in paragraph 6 hereof), and to assume payment of all liabilities of Southwestern including the \$6,648,000 principal amount of Southwestern's first mortgage bonds, series A, 3¾%, due December 1, 1969.

8. Oklahoma proposes to issue, under an indenture dated February 1, 1941 heretofore executed by it to City National Bank and Trust Company of Chicago and Arthur T. Leonard, as trustees, and to sell to underwriters \$6,600,000 principal amount of its first mortgage bonds, series A, 3¾%, due February 1, 1971 and to apply the proceeds thereof, together with requisite treasury funds, to the redemption at 105¼ and accrued interest of the \$6,648,000 principal amount of Southwestern's outstanding first mortgage bonds above described.

9. West Texas proposes to acquire from American and American proposes to sell to West Texas a maximum of 14,251 shares of no par \$6 cumulative preferred stock of West Texas at a cash price of \$70.17 per share. The number of said such shares to be actually acquired and sold will be such number, (not to exceed 14,251) as will, at the sale

price of \$70.17 per share, provide American with the approximate amount of funds required by it to be paid for such number of shares of Oklahoma's 5% preferred stock as American will undertake to purchase under the proposal set forth in paragraph 5 hereof.

10. Middle West proposes to sell to American, forthwith upon acquisition, and American proposes to purchase 1,488 shares of Oklahoma's \$100 par common stock for an aggregate price of \$148,800 payable in cash, and Middle West further proposes to sell to Central and Central proposes to acquire 9,679 shares of Oklahoma's \$100 par common stock for an aggregate price of \$967,900, payable \$97,900 in cash and the balance of \$870,000 in annual installments of \$87,000 each, with interest at the rate of 4% per annum payable semi-annually, the obligation to pay the installments of principal to be evidenced by Central's promissory note to be secured by a pledge of the shares acquired and to provide for prepayment at the maker's option of any principal installment without premium at any time.

It appearing to the Commission that it is appropriate in the public interest and the interest of investors and consumers that a hearing be held with respect to said matters and that said application or declaration, as amended, of Oklahoma and Southwestern, the application or declaration as amended of Middle West, or the application or declaration of West Texas and American shall not be granted or permitted to become effective except pursuant to further order of this Commission; and

It further appearing to the Commission that said matters are related and involve common questions of law and fact; that evidence offered in respect of each of said matters may have a bearing on the others; and that substantial savings in time, effort and expense will result if the hearings on said matters are consolidated so that they may be heard as one matter, and so that evidence heretofore or hereafter adduced with respect to the proceedings in cases Nos. 70-178 and 70-686 may stand as evidence in both of said matters for all purposes;

It is ordered, That the hearings on said matters be and they hereby are consolidated. The Commission reserves the right, if at any time it may appear conducive to an orderly and economic disposition of any of said matters, to order a separate hearing concerning such matter, to close the record with respect to any of the matters, or to take action on any of the matters prior to the closing of the record on any other matter.

It is further ordered, That a hearing on such matters under the applicable provisions of said Act and rules of the Commission thereunder be held on May 11, 1943 at 10:00 a. m., e. w. t., at the offices of the Securities and Exchange Commission, 18th and Locust Streets, Philadelphia, Pennsylvania. On such day the hearing room clerk in Room 318 will advise as to the room where such hearing will be held.

It is further ordered, That the Secretary of the Commission shall serve notice of the aforesaid hearing by mail-

ing a copy of this notice by registered mail to Public Service Company of Oklahoma, Southwestern Light & Power Company, The Middle West Corporation, American Public Service Company, West Texas Utilities Company and Central and Southwest Utilities Company; and that notice of said hearing is hereby given to each of said companies, the security holders and consumers of said companies, all states, municipalities, and political divisions of states within which are located any of the utility assets of any of said companies, or under the laws of which any of said companies are incorporated, all state commissions, state securities commissions and all agencies, authorities or instrumentalities of any one or more states, municipalities, or other political subdivisions having jurisdiction over any of said companies or over any of the businesses, affairs, or operations of any of said companies; that such notice shall also be given by a general release of the Commission, distributed to the press and mailed to the mailing list for releases issued under the Public Utility Holding Company Act of 1935; and that further notice be given to all persons by publication in the FEDERAL REGISTER, not later than 15 days prior to the date of said hearing.

*It is further ordered,* That any person desiring to be heard or otherwise wishing to participate herein shall notify the Commission to that effect in the manner provided in Rule XVII of the Commission's Rules of Practice on or before April 29, 1943.

*It is further ordered,* That Richard Townsend, or any 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 the Act and to a Trial Examiner under the Commission's Rules of Practice.

*It is further ordered,* That without limiting the scope of issues presented by said amendments and by said application or declaration otherwise to be considered in this proceeding, particular attention will be directed at the hearing to the following matters in question:

A. Whether the acquisition by Oklahoma of the assets of Southwestern is unlawful under the provisions of section 8 or is detrimental to the carrying out of the provisions of section 11 of the Act.

B. Whether the acquisition by Oklahoma of the assets of Southwestern will tend towards the economical and efficient development of an integrated public-utility system.

C. Whether compliance has been effected with such state laws as may be applicable in respect of the acquisition by Oklahoma of the assets of Southwestern.

D. Whether the issue and sale by Oklahoma of its securities pursuant to the proposed transactions meet the requirements of section 7 and whether any facts exist which would require adverse findings under section 7 (d) of the Act.

E. Whether the proposed offer and exchange by Oklahoma of its 5% preferred stock, on a share for share basis, for shares of Southwestern's preferred stock owned by the public is fair and equitable to all persons interested.

F. Whether the acquisition by Middle West and American of shares of Oklahoma's preferred stock, as proposed, meet the requirements of section 10 of the Act.

G. Whether the proposed advance of moneys by Oklahoma to Southwestern and the acquisition by Southwestern of its own securities meet the requirements of sections 12 (b) and 12 (c) of the Act and the applicable rules and regulations thereunder, and is fair and equitable to all persons interested.

H. Whether the assumption by Oklahoma of the liabilities of Southwestern meets the requirements of section 7 and whether any facts exist which would warrant adverse findings under section 7 (d) of the Act.

I. Whether the acquisition by West Texas from American of its preferred stock now owned by American, and the sale of such stock by American, meet the requirements of sections 10, 12 (c) and 12 (d) of the Act and whether such proposed transactions are fair and equitable to all persons interested.

J. Whether the acquisitions by American and Central of common stock of Oklahoma meet the requirements of section 10 and whether the sale of such stock by Middle West to American and Central meets the requirements of section 12 (d) of the Act.

K. Whether the issuance by Central of its note to Middle West and the deposit of the shares of common stock of Oklahoma to secure such note meet the requirements of section 7 and whether any facts exist which would warrant adverse findings under section 7 (d) of the Act.

L. Whether the acquisition by Middle West of Central's note and of the securities to be pledged thereunder meet the requirements of section 10 of the Act.

M. Whether all of the transactions, as proposed, comply with all applicable provisions of the Public Utility Holding Company Act of 1935 and the rules and regulations promulgated thereunder.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F. R. Doc. 43-6234; Filed, April 22, 1943;  
9:36 a. m.]

[File No. 1-2235]

OPERATOR CONSOLIDATED MINES CO.  
ORDER RESCINDING ORDER WITHDRAWING  
SECURITIES FROM REGISTRATION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pennsylvania, on the 21st day of April, A. D. 1943.

The Commission having on January 23, 1943 instituted proceedings pursuant to section 19 (a) (2) of the Securities Exchange Act of 1934 to determine whether the registration of the common stock, 10¢ par value, of the Operator

Consolidated Mines Company on the San Francisco Mining Exchange should be suspended or withdrawn for failure to file its annual report for the fiscal year ended December 31, 1941 as required by section 13 of said Act and the rules and regulations thereunder; and

The Commission having on April 16, 1943 made its findings in this matter and ordered that the registration of the common stock, 10¢ par value of said Operator Consolidated Mines Company on the San Francisco Mining Exchange be withdrawn, effective ten days after such date; and

It appearing that subsequent to the hearing in this matter the said Operator Consolidated Mines Company filed with the Commission an annual report on Form 10-K for the fiscal year ended December 31, 1941;

*It is ordered,* That the findings and order of April 16, 1943 withdrawing such securities from registration on said exchange be and the same are hereby rescinded; and

*It is further ordered,* That the proceeding herein be and it hereby is dismissed, without prejudice to the institution of such future proceedings as the Commission may deem appropriate with respect to said registration.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F. R. Doc. 43-6249; Filed, April 22, 1943;  
11:37 a. m.]

VETERANS' ADMINISTRATION.

[Instruction 1]

VOCATIONAL HANDICAPS AND AWARDS OF  
PENSIONS DURING PERIODS OF Voca-  
TIONAL REHABILITATION

PRINCIPLES AND PROCEDURE GOVERNING  
DETERMINATIONS

Principles and procedure governing determinations as to vocational handicap and the awarding of pension during the period of vocational rehabilitation under Pub. Law 16, 78th Congress.

1. The adjudication division in each regional office or facility under the direction of an adjudication officer, and the claims division, veterans claims service, central office, under the direction of a chief, are vested with authority to determine whether a vocational handicap exists and award pension payable during the period of vocational rehabilitation.

2. Requirements for entitlement to vocational rehabilitation follow:

(a) Active military or naval service any time after December 6, 1941, and during the present war.

(b) Honorable discharge.

(c) Service-connected pensionable disability due to World War II service.

(d) Vocational handicap due to such disability.

(e) Need for vocational rehabilitation to overcome such handicap.

3. Rating boards in the adjudication division, field office, and the central disability board, claims division, veterans

claims service, central office, will have original jurisdiction to determine whether a vocational handicap exists. Need for vocational rehabilitation to overcome the handicap will be determined by the vocational rehabilitation division.

4. A vocational handicap will be determined to exist when, upon the basis of the evidence of record as to the disabled person's education, occupational training and experience, it is found the disability will materially interfere with securing and pursuing employment comparable with that for which qualified by education, training and experience.

(a) It is to be distinctly borne in mind, in applying the above definition, that there is a clear distinction between average impairment in earning capacity for pension purposes and a vocational handicap requiring vocational rehabilitation to overcome the handicap. A person who is totally disabled on the basis of average impairment in earning capacity may nevertheless be fully able to secure and pursue employment in some occupation for which he is well qualified. Conversely, a person who has a very slight pensionable disability may, on account of peculiar relationships existing between specified skills and his occupational experience, have a vocational handicap which would require vocational rehabilitation to overcome. It should also be borne in mind that unemployment is not necessarily an indication that a vocational handicap exists, nor is employment alone sufficient to support a determination that no vocational handicap exists. Mere temporary employment, the tenure of which may be dubious or which is not suitable for the individual, or comparable with his education, occupational training and skill, is not incompatible with the existence of a vocational handicap. A disabled person may be able to follow occupations not comparable with the occupation pursued prior to service and still have a vocational handicap. By comparable is meant, substantially similar or on a parity with regard to remuneration, permanence of employment, opportunities for advancement, and environment. When, however, the disabled person's best interests will be served by seeking and pursuing employment for which he is qualified, that is, when this offers a suitable career, it may not be held that a vocational handicap exists.

(b) Determinations as to existence of a vocational handicap will be recorded by proper notation on the rating sheet as follows:

Vocational handicap exists, Pub. Law 16, 78th Congress,

or

Vocational handicap does not exist, Pub. Law 16, 78th Congress.

(c) Determination as to existence of vocational handicap will not be made by the rating agencies unless it is determined the veteran has a service-connected pensionable disability due to World War II service.

5. When the rating board or central disability board determines the World

War II service-connected pensionable disability produces a vocational handicap, written notice of the decision will include a statement substantially as follows:

Pub. Law 16, 78th Congress, amended Veterans Regulation No. 1 (a), as amended, to provide among other things "that any person who served in the active military or naval service at any time after December 6, 1941, and prior to the termination of the present war, who is honorably discharged therefrom and who has a disability incurred in or aggravated by such service for which a pension is payable under laws administered by the Veterans Administration or would be but for the receipt of retirement pay, and is in need of vocational rehabilitation to overcome the handicap of such disability, shall be entitled to such vocational rehabilitation as may be prescribed by the Administrator of Veterans Affairs to fit him for employment consistent with the degree of disablement . . ." In the event you are interested and consider vocational rehabilitation is necessary to overcome the handicap of your service-connected disability, the enclosed Form 1900 should be prepared and returned to this office for consideration and determination as to whether you are in need of vocational rehabilitation.

(a) Should the determination be in the negative, written notice of the decision will contain no reference to vocational handicap.

(b) When Form 1900 is received from the veteran, it will be attached to the claims folder and forwarded to the vocational rehabilitation division.

6. The authorization unit, adjudication division, field office, and the authorization subdivision, claims division, veterans claims service, central office, will have jurisdiction over determinations as to basic entitlement to monetary benefits payable on account of vocational rehabilitation.

(a) Immediately upon entrance of the disabled veteran into vocational training the vocational rehabilitation division will notify the adjudication division, field office, or claims division, central office, depending upon the jurisdiction of the claim, by appropriate form showing veteran's name, claim number, and date of entrance into, and type of, training, that is, whether on the job. The vocational rehabilitation division will also notify the adjudication division or claims division by form, of any change in status which would affect the rate of pension.

(b) The monthly rate of pension payable while the disabled veteran is pursuing a course of vocational rehabilitation will, except as hereinafter provided, be as follows:

(1) If the disabled person has neither wife nor child, \$80.00.

(2) If he has a wife, but no child, \$90.00.

(3) If he has a wife and one child, \$95.00, and \$5.00 for each additional child.

(4) If he has no wife and one child, \$90.00, and \$5.00 for each additional child.

(5) If he has a mother or father, either or both dependent on him for support, then, in addition to the above amounts, \$10.00 for each parent so dependent.

(6) The monthly rates of pension authorized in (1) to (5) above will be re-

duced to the extent of any forfeiture invoked as a penalty for breach of rules or regulations during training, upon notification from the vocational rehabilitation division.

(7) In no event will the monthly rate of pension payable while pursuing a course of vocational rehabilitation be less than the monthly rate of pension or retirement pay to which the disabled person would be entitled for service-connected disability.

(8) When the disabled person pursuing a course in vocational rehabilitation is furnished hospitalization by the United States Government or a political subdivision thereof, other than during approved leave, he will be entitled only to the monthly amount of pension or retirement pay authorized for the service-connected disability, and this disability pension or retirement pay will be subject to reduction or discontinuance as provided in § 35.06.

7. Pension payable on account of vocational rehabilitation will be apportioned as provided in §§ 3.1310-3.1317.

8. Awards adjusting the monthly rate of pension on account of vocational rehabilitation to the disabled person will be prepared upon Form 553 (c); apportioned awards to dependents, on Form 553 (a), citing "Pub. Law 16, 78th Congress" as authority for the award in the proper space.

(a) The effective date of an award of pension on account of vocational rehabilitation shall be the date of entrance into vocational rehabilitation, or reentrance, if interrupted.

(b) The effective date of an increased award of pension on account of vocational rehabilitation based on the marriage of the claimant, the birth or adoption of a child, or dependency of a parent, shall be the date of receipt of claim by the Veterans' Administration or the date the evidence of relationship or dependency shows entitlement, whichever is the later. In the event claimant's application is not complete, he will be advised of the evidence necessary to complete the application, and if such evidence is not received within one year from the date of request therefor, increased pension will not be paid by virtue of that application.

(c) Reduction of an award of pension payable on account of vocational rehabilitation shall be effective:

(1) In the event of death of a dependent, as of the date of death;

(2) In the event of divorce, the date preceding date of divorce;

(3) In case of a child, the date preceding the eighteenth anniversary of date of birth; or if attending school after age 18, the date of cessation of school attendance or the date preceding the twenty-first anniversary of the date of birth, whichever is the earlier; the date preceding date of marriage; in case of cessation of incapacity to support self by reason of mental or physical defect, last day of month in which reduction is approved.

(4) By reason of wages, compensation or other income received while training on the job, last day of month in which award effecting reduction is approved.

(d) Discontinuance of an award of pension payable on account of vocational rehabilitation because of interruption of course or employability determined, shall be effective:

(1) Interruption of course, date following date of interruption of course.

(2) Employability determined, first day of the third calendar month next succeeding that in which employability was determined.

9. Pub. Law 16, 78th Congress, provides, among other things, that:

Where any person while following a course of vocational rehabilitation as provided for in this part suffers an injury or aggravation of an injury, as a result of the pursuit of such course of vocational rehabilitation, and not the result of his or her own willful misconduct, and such injury or aggravation results in additional disability to or death of such person, the benefits under laws applicable to veterans of the present war shall be awarded in the same manner and extent as if such disability, aggravation, or death were service-connected within the meaning of such laws; except that no benefits under this paragraph shall be awarded unless application be made therefor within two years after such injury or aggravation was suffered, or such death occurred.

(a) The benefits granted under that portion of Pub. Law 16, 78th Congress, quoted above, will not be awarded unless application is made therefor within two years after such injury or aggravation was suffered or such death occurred.

(b) Pending revision of Veterans' Administration Form 526-A, it, or any communication from or action by a claim-

ant or his duly authorized representative, which clearly indicates an intent to apply for benefits by reason of injury or aggravation of injury resulting in additional disability or death, will be considered an informal claim and handled as provided in § 2.1027.

(c) Jurisdiction, determinations and adjudication action under this paragraph will be in accordance with the provisions of §§ 2.1122, 2.1123 and 2.1124, in so far as applicable.

10. All cases heretofore rated and determined to be entitled to pension for disability due to World War II service will be reviewed at the earliest possible date and a determination made by the rating agency as to whether a vocational handicap exists. The budget officer and chief of statistics, central office, or the manager in field offices, will prepare and certify from the abstract cards a list of claims to be reviewed under this paragraph. The list will be forwarded to the chief, claims division, veterans claims service, central office, and to the adjudication officer in the field offices. The veteran will be notified of this determination as outlined in paragraph 5 hereof.

11. Pub. Law 16, 78th Congress, amends Title I, Pub. Law 2, 73d Congress, and § 35.01, as amended, accordingly, except as otherwise provided herein, the provisions of regulations and procedure, Veterans Administration, pertaining to definitions of relationship, dependency, jurisdiction, appeals, etc., under Pub. Law 2, 73d Congress, in so far as applicable, will control under this instruction.

12. An initial supply of Rehabilitation Form 1900 will be furnished each regional office and facility with regional office activities. Additional forms will be requisitioned from central office in the usual manner. (April 21, 1943) [Pub. Law 16, 78th Congress]

FRANK T. HINES,  
Administrator of Veterans Affairs.

[F. R. Doc. 43-6220; Filed, April 21, 1943;  
4:04 p. m.]

#### WAR PRODUCTION BOARD.

[Preference Rating Order P-55, Serial  
7071-00050-230]

#### RESTORATION AND AMENDMENT OF PREFERENCE RATING

L. S. Corporation, 176th Pl. & Wentworth Avenue, Lansing, Illinois.

The partial revocation issued February 1, 1943, of the above serially numbered preference rating order is hereby cancelled; the ratings assigned by said preference rating order are hereby restored; and said preference rating orders shall have full force and effect, as hereinafter amended.

The above serially numbered preference rating order is hereby amended to expire on May 15, 1943.

Issued this 21st day of April 1943.

J. JOSEPH WHELAN,  
Recording Secretary.

[F. R. Doc. 43-6227; Filed, April 21, 1943;  
4:57 p. m.]

