THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
OF THE UNITED STATES 1934

FEDERAL REGISTER

VOLUME 6 NUMBER 22

Washington, Saturday, February 1, 1941

The President

EXECUTIVE ORDER

REVOKING THE DESIGNATION OF MOLSON, WASHINGTON, AS A CUSTOMS PORT OF ENTRY

By virtue of the authority vested in me by section 1 of the act of August 1, 1914, 38 Stat. 609, 623 (U.S.C., title 19, sec. 2), it is ordered that the designation of Molson, Washington, as a customs port of entry in Customs Collection District No. 30 (Washington), be, and it is hereby, revoked.

This order shall become effective at the close of business January 31, 1941.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
January 29, 1941.

[No. 8654]

[F. R. Doc. 41-728; Filed, January 30, 1941; 2:10 p. m.]

Rules, Regulations, Orders

TITLE 6—AGRICULTURAL CREDIT

CHAPTER I—FARM CREDIT ADMINISTRATION

[Regional Agricultural Credit Corporation Bulletin 454]

PART 95 LOANS—SPECIAL AREAS

RULES AND REGULATIONS GOVERNING EXTENSION OF CREDIT BY WENATCHEE, WASHINGTON, BRANCH OF REGIONAL AGRICULTURAL CREDIT CORPORATION OF SALT LAKE CITY, UTAH, TO FRUIT GROWERS IN OKANOGAN, CHELAN, DOUGLAS AND GRANT COUNTIES, WASHINGTON (KNOWN AS THE WENATCHEE-OKANOGAN DISTRICT) EFFECTIVE FEBRUARY 1, 1941

FEBRUARY 1, 1941.

Pursuant to the authority of section 201 (e) of the Emergency Relief and Construction Act of 1932, as amended (12 U.S.C. 1148) and Executive Order No. 6084 (effective May 27, 1933), the following rules and regulations are hereby promulgated:

§ 95.1 *Loans in the Wenatchee-Okanogan District, State of Washington, during 1941–1942 crop season.* The Wenatchee Branch of the Regional Agricultural Credit Corporation of Salt Lake City, Utah, (hereinafter referred to as "the Wenatchee Branch") is authorized to make loans during the 1941–1942 crop season to fruit growers in the Wenatchee-Okanogan District, in the State of Washington.

§ 95.2 *Eligible borrowers.* Farmers (including orchardists and fruit growers) are eligible to borrow from the corporation when they can qualify under the terms and conditions set forth herein and in the application and agreements required by the Wenatchee Branch to be executed in connection with such loans. Loans shall be made direct to borrowers and the Wenatchee Branch shall not discount notes for any other financing institution. Borrowers shall be required to cooperate in such program or programs as may be promulgated by or developed in cooperation with the United States Department of Agriculture, and to comply with Federal and state requirements now in effect or hereafter promulgated, with respect to sanitation, grading, packing and marketing of fruit.

§ 95.3 *Loan purposes.* Loans may be made to finance the production, harvesting, packing, storing, and marketing of fruit, including the care and preservation of orchards as well as reasonable living expenses of the operator, under terms and conditions prescribed by the Wenatchee Branch Committee. Loans may be made also for the purchase and repair of equipment, for rehabilitation of orchards and for such other purposes as may be approved by the Wenatchee Branch Committee.

§ 95.4 *Applications.* Each application (to be presented in triplicate) for a season's financing shall be accompanied by figures for an operating budget. Applicants will be required to agree to pursue approved agricultural and horticultural practices and to harvest, pack and market their fruit in a manner and upon terms approved by the Wenatchee Branch.

CONTENTS

(Continued on next page)

FEDERAL REGISTER

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

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

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.25 per month or $12.50 per year; single copies 10 cents each; payable in advance. Remit money order payable to the Superintendent of Documents directly to the Government Printing Office, Washington, D. C.

CONTENTS—Continued

§ 95.5 *Use of loan proceeds; right to withhold advances.* Each applicant for a loan will be required to agree to use the proceeds of his loan in accordance with the terms of his operating budget approved by the Wenatchee Branch. All commitments as to future advances shall be optional with the lender. By making advances the Wenatchee Branch shall not be deemed nor held to have obligated itself to the making of any other or further advances.

§ 95.6 *Adequacy of credit.* Each applicant will be required to furnish evidence satisfactory to the Wenatchee Branch that the amount of his loan, together with other available resources, will be sufficient to finance the production, harvesting, and packing of his fruit crop in accordance with approved standards.

§ 95.7 *Security.* All notes shall be secured by crop liens or mortgages conveying a first and paramount lien on crops grown or to be grown during the current season. Additional security in the form of liens upon machinery, equipment, real estate and other property may be required.

§ 95.8 *Loans to corporations.* Notes of each corporate borrower shall be endorsed or guaranteed by the holder or holders of at least a majority of the outstanding shares of voting stock of such corporate borrower; or, at the option of the Wenatchee Branch, by the principal stockholder or stockholders: *Provided,* That in lieu of endorsements upon the notes such stockholders may execute a continuing guaranty of all indebtedness of such borrower to the Wenatchee Branch and to its successors or assigns. At the option of the Wenatchee Branch, the shares of capital stock owned by the endorsing or guaranteeing stockholders shall be pledged as security for the loan.

§ 95.9 *Other creditors.* As a condition to the granting of a loan, the Wenatchee Branch may require the applicant to obtain from all creditors, whether secured or unsecured, such waivers and subordinations as in the opinion of the Wenatchee Branch are necessary to afford it a first and paramount lien upon the crops to be produced and any chattels or other property offered or required as security for its advances; and also may require standstill and nondisturbance agreements executed by the holders of chattel and real estate mortgages constituting liens upon the orchard or other property. All such waivers and agreements shall be so drawn as to remain in effect so long as the Wenatchee Branch, or its assignee, is a creditor of the borrower.

§ 95.10 *Packing and marketing of fruit.* Each applicant for a loan will be required to agree that he will pack and offer for sale only such grades and varieties of fruit as may be designated or approved by the Wenatchee Branch, and that he will conform to a program approved by the Wenatchee Branch for the disposition of less desirable grades and varieties.

§ 95.11 *Factors.* Borrowers will be required to arrange for the packing, storing, and marketing of their fruit by factors whose facilities, methods, and charges have been approved by the Wenatchee Branch.

§ 95.12 *Sales of fruit; remittance of proceeds.* Each borrower and each marketing agency will be required to agree to market all fruit in accordance with a marketing program satisfactory to the Wenatchee Branch. All net proceeds of sales of pledged fruit will be required to be remitted to the Wenatchee Branch by the marketing agency, which shall furnish accounts of sales showing the quantity, grade and variety of fruits sold, to whom sold, prices received, selling charges and other costs deducted, and the net proceeds remitted.

§ 95.13 *Interest and other charges.* Each borrower will be required to reimburse the Wenatchee Branch for the actual cost of title examination and the recordation of necessary legal instruments incidental to the loan. Interest will be charged on all loans and advances at the rate of 5½ per centum per annum. An additional charge of ½ of 1 per centum of the amount lent, to be deducted from the proceeds of the loan, will be made to reimburse the Wenatchee Branch for a portion of the cost of horticultural and supervisory services furnished by it.

§ 95.14 *Reserve fund.* Each applicant for a loan will be required to agree to participate in the creation of a reserve fund, to be established, held and administered in the following manner:

(a) There shall be deducted from the net sales proceeds of all pledged fruit the sum of 2 cents per packed box or its equivalent of packed fruit sold and 2 cents per field box or its equivalent for all fruit otherwise sold. Such deduction shall be made by the Wenatchee Branch from remittances received by it.

(b) The fund so created shall be deposited in a Federal Reserve Bank, in a separate account, subject to the order of the Wenatchee Branch and held by it for the following purposes:

(1) To indemnify the Wenatchee Branch for any credit losses on loans made to fruit growers in the Wenatchee-Okanogan area. The Wenatchee Branch shall be authorized to charge against such fund any and all credit losses as determined by it;

(2) After all loans made by the Wenatchee Branch have been liquidated and all losses chargeable to the reserve fund have been determined and deducted therefrom, the balance shall be held for a reasonable time by the Wenatchee Branch available for the development of a comprehensive long range program (including the establishment of a credit corporation to finance growers' production needs) when such program for the benefit of the fruit industry of the area is fixed and determined by a majority of the contributing interested growers in cooperation with the United States Department of Agriculture or otherwise. Upon the determination of such a program, the Wenatchee Branch shall be authorized to pay the balance of the reserve fund to the institution and/or institutions and/or agencies designated thereunder.

§ 95.15 *Additional regulations—amendments.* The right is reserved to amend these regulations, without notice, and to prescribe such additional rules and regulations as may be deemed necessary to protect the interests of the Wenatchee Branch and to make its lending program effective. If the Wenatchee Branch, with the approval of the Farm Credit Administration, continues to finance fruit production in the Wenatchee-Okanogan District after the close of the 1941-1942 season, these rules and regulations, as amended, shall extend to such future financing in the same manner and to the same extent as though specifically prescribed for that purpose.

[SEAL] C. C. JACOBSEN,
Director, Regional Agricultural Credit Division.

[F. R. Doc. 41-733; Filed, January 31, 1941; 11:36 a. m.]

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[File No. 21-336]

PART 151—LINEN INDUSTRY

PROMULGATION OF TRADE PRACTICE RULES

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 29th day of January, A. D. 1941.

Due proceedings having been held under the trade practice conference procedure in pursuance of the Act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission;

It is now ordered, That the trade practice rules of Group I and Group II, as hereinafter set forth, which have been approved and received, respectively, by the Commission in this proceeding, be promulgated as of February 1, 1941.

Statement by the Commission

Trade practice rules for the Linen Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The general purpose of the rules is to foster and promote fair competitive conditions and the protection of industry, trade, and the purchasing public. To this end the rules provide for proper identification and disclosure of the fiber content of articles or merchandise containing, or purporting to contain, linen in whole or in part. Provision is made for proper designations and descriptions of such articles or merchandise in order that the buying public may be correctly informed as to their composition and that misrepresentation and deceptive concealment may be avoided. Shrinkage rules respecting linen products, and provisions relating to other unfair practices, are also included.

Products composed of or containing linen are of large variety and wide use. They constitute a major group of the products of the textile industries. The combined retail sales value of so-called fancy linens, handkerchiefs, household linens, dress linens, and other linen and part linen products generally, is reported as aggregating around $110,000,000 annually.

The proceeding for the establishment of trade practice rules was instituted upon application from the industry. In the course thereof a general trade practice conference was held in New York City under the auspices of the Commision, at which conference proposed rules were considered and were thereupon submitted on behalf of the industry to the Commission for its consideration. Following preliminary study and necessary revision, a complete draft of the proposed rules in appropriate form was made available to all interested and affected parties upon public notice, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice[1] was held in Washington, D. C., and all matters there presented, or otherwise submitted, were duly received and considered.

Upon consideration of the entire matter final action has been taken by the Commission, whereby it has approved and received, respectively, the rules hereinafter appearing in Group I and Group II.

Such adjustment as may be necessary on the part of members of the industry to bring their labeling practices into harmony with these rules shall be made as promptly as possible and not later than May 1, 1941. This shall not, however, be construed as permitting of the use meanwhile of any existing or other labels, marks or practices which are false, misleading or deceptive, or which are otherwise contrary to law.

Group I

The unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation or other organization, of such unlawful practices in or directly affecting interstate commerce. Such provisions of the rules express requirements which are applicable to all sellers, whether importers, manufacturers, converters, distributors, dealers or other vendors. Each has the definite responsibility of seeing to it that the merchandise as it is advertised or introduced by him into the channels of trade or commerce is properly labeled and represented in keeping with the requirements of such Group I rules.

The labeling and other requirements respecting the fiber, yarn, thread, strands, fabric, or garment or other product covered by the rules, apply to such merchandise in whatever form it may be sold or distributed.

In the case of finished garments or articles manufactured or imported for distribution through the channels of trade to the ultimate consuming public without intermediate processing, it is deemed proper practice for manufacturers or importers thereof not only to label the garment or article with proper disclosure of material content and such other disclosure as is required by these rules, but also to cause the labeling (tagging or branding) to be done in such manner as to carry through the ordinary channels of trade to the ultimate consumer and be appropriate in the sale or resale of the garment or article to the consuming public, thereby rendering further or additional labeling as to material content unnecessary so long as the proper label, tag or brand affixed by the manufacturer or importer remains on the garment or article and the material content of the product has not been changed. This shall not, however, be construed as relieving dealers or other vendors of any of their responsibility under the rules of seeing to it that the garment or article bears a proper and appropriate label, brand or tag disclosing the information required by these rules to be disclosed and that it is not falsely or deceptively labeled, nor otherwise marked, advertised, represented or offered for sale in a manner contrary to the provisions of these rules.

§ 151.1 (a) *Linen (and flax) defined.* "Linen" is the generic term for textile fiber of the flax plant and for the thread, strands, yarn or fabric produced from such fiber. For the purpose of these rules, the term "linen" or "flax" as applied to textile fiber shall mean the fiber of the flax plant.

(b) *Deceptive passing off of linen or flax.* It is an unfair trade practice to cause any linen or flax fiber, or any yarn, thread, strands, fabric, garment or other article composed of linen or flax, to be sold, offered for sale, distributed, advertised, described, branded, labeled or otherwise represented: (1) as not being linen or flax; or (2) as being something other than linen or flax; or (3) without disclosure of the fact that such merchandise is linen or flax, made clearly and unequivocably in the invoices, and in labels, tags or marks attached to the merchandise, and in whatever advertising matter, sales promotional descriptions or representations thereof may be used however disseminated or published, where such nondisclosure has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(c) *Other misrepresentations.* It is an unfair trade practice to cause any fiber, yarn, thread, strands, fabric, garment or other article containing, or purporting to contain, linen or flax, in whole or in part, to be offered for sale, sold or distributed under any conditions of deceptive concealment of the fiber content or under any other deceptive or misleading conditions or representations whatever. (See § 151.8 respecting passing off of non-linen fiber or products as and for linen.) [Rule 1]

§ 151.2 *Pure linen.* (a) It is an unfair trade practice to use the term "linen" or "flax" (not appropriately qualified) or the term "pure linen", "pure flax", "all linen" or "all flax", or any other word, term, phrase, designation or representation of similar import, as descriptive of any fiber, yarn, thread, strands or fabric, or garment or other article containing the same, (1) the fiber content of which is not linen exclusively; or (2) which contains any other fiber; or (3) which contains any foreign or

[1] 5 F.R. 660.

added non-fibrous substance or material except the necessary dyeing and finishing materials required to produce the color and finish of the product not exceeding 5% by weight of the product in its finished state. Nothing in this rule shall be construed as permitting the use of dyeing or finishing materials, either within or in excess of such 5%, for the purpose or with the result of thereby deceptively loading the product with excess or unnecessary dyeing or finishing materials.

(b) *Terms applied to linen content of product.* Nothing in this rule shall be construed as prohibiting the use of the term or phrase "linen", "flax", "pure linen", "pure flax", "all linen" or "all flax" in a truthful and nondeceptive manner as descriptive of the pure linen content of a mixed yarn, thread, strand, fabric or product, provided it is made plain that such term or phrase applies only to the pure linen content of the article or product and the entire fiber content of the article or product is then and there clearly and non-deceptively disclosed in full conformity with the provisions of § 151.7 relating to the disclosure of content of mixed goods.

(c) *Tolerance as to selvage.* Nothing in these rules shall be construed as prohibiting the truthful and nondeceptive use of the terms "linen", "flax", "pure linen", "pure flax", "all linen" or "all flax" as descriptive of fabric which is composed wholly of linen with the exception of a small and inconsequential amount of necessary nonlinen fiber in the selvage, *provided* the total amount of such nonlinen fiber does not exceed ½ of 1% in the case of handkerchiefs or handkerchief fabrics, and in the case of other fabrics does not exceed 2%, and *provided further*, that no deception, direct or indirect, is practiced with respect to such selvage or the fiber content of the article. Where the selvage contains nonlinen fiber in excess of such stated limits of ½ of 1% and 2%, respectively, disclosure of the fiber content shall be made in accordance with the provisions of § 151.7 relating to mixed goods.

(d) *Decorations.* See paragraph (f) of § 151.7 for provisions as to the use of such terms as "linen", "pure linen," etc., in disclosure of fiber content where product is composed wholly of linen with the exception of decorative material containing fiber other than linen. [Rule 2]

§ 151.3 *"Lin", "lyn", etc.* It is an unfair trade practice to use, as descriptive of fiber, yarn, thread, strands or fabric, or garment or other article made therefrom, the word, term or syllable "lin", "linn", "lyn" or "lynn", or other word, term or syllable of similar import, alone or as part of a word or in combination with one or more words, terms, syllables or representations, in such manner as thereby to import or imply that said fiber, yarn, thread, strands, fabric, garment or other article is composed of linen, either in whole or in part, when such is not true in fact; or to use any such word, term, syllable or combination in any other manner which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public. [Rule 3]

§ 151.4 *Terms "linen", "flax", "silk", "wool", "cotton", etc.* It is an unfair trade practice to use, or cause to be used, as descriptive of any textile merchandise, the word "linen", or word, term, designation or representation of similar import, either alone or in connection with the word "wool", "cotton", "rayon" or other word, term or representation, such as, for example, "Cotton Linen", "Linen Cotton", "Rayon Linen", "Linen Rayon", "Grass Linen", "Canton Linen", "Rice Linen", "Pineapple Linen", etc., so as to import or imply that the merchandise or article is linen or contains linen or has the properties of linen when such is not the fact. Nothing in this rule, however, shall prohibit the use of the word "linen", "flax", "silk", "rayon", "wool" or "cotton" in any truthful and nondeceptive designation or representation made in conformity with the requirements of § 151.7 as to disclosure of mixed goods. [Rule 4]

§ 151.5 *Misuse of term "linen product", etc.* It is an unfair trade practice to cause any article or merchandise to be offered for sale, sold, advertised, described, branded, labeled or otherwise represented, directly or by implication, as being a linen or flax product when such article or merchandise is not composed of pure linen to the extent of at least 50% by weight and the entire fiber content of such article or merchandise is not then and there fully and nondeceptively disclosed in accordance with the applicable provisions of § 151.7 relating to the disclosure of fiber content of mixed goods, or when such representation is otherwise used in a false, misleading or deceptive manner. [Rule 5]

§ 151.6 *Misuse of term "part linen", etc.* It is an unfair trade practice to use the term "part linen", or word, term or representation of similar import, as descriptive of any article, product, or any part thereof, (1) when such article, product, or part thereof, does not contain linen in substantial proportion, and the fact that the amount or proportion of linen present is insubstantial or inappreciable is not therewith fully disclosed, together with the entire fiber content of the article or product; or (2) when, although containing linen in substantial part, the entire fiber content of such article or merchandise or product is not then and there fully and nondeceptively disclosed, in accordance with the provisions of § 151.7 relating to the disclosure of fiber content of mixed goods; or (3) when such term "part linen", or word, term or representation of similar import, is used under any other false, misleading or deceptive condition. [Rule 6]

§ 151.7 *Mixed goods.* In the case of any yarn, thread, strands, fabric, garment or other article containing linen (or flax) and other fiber or fibers, full and nondeceptive disclosure of the fiber content of such merchandise should be made in accordance with the provisions hereinafter set forth in this rule, to the end that the purchasing and consuming public may be correctly informed as to the contents of such merchandise and that thereby deceptive concealment and misrepresentation in respect thereto and other unfair methods of competition or unfair or deceptive acts or practices in the marketing of such merchandise in the channels of trade and to the public may be avoided and prevented. And it is an unfair trade practice to conceal the presence of any fiber constituent of such merchandise or to fail or refuse to make said disclosure of fiber constituents in accordance with the following subsections of this rule, such concealment or failure or refusal to so make such disclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(a) *Fibers to be named and set forth in order of predominance by weight.* Such disclosure of fiber content of said products, pursuant to this rule, shall be made by accurately designating and naming each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent, such as, for example, "Linen, Cotton and Rayon" for yarn, thread, strands, fabric, garment or other article composed of linen, cotton and rayon, each present in substantial proportion, with linen present in larger proportion than either cotton or rayon and with the cotton present in greater proportion than rayon; subject to the following:

(b) *Labels, tags, invoices, advertising matter.* Said disclosure shall be made in labels, brands or tags attached to the merchandise and in the invoices, and in such advertising and sales promotional descriptions or representations of the product as may be used however disseminated or published. Said disclosure shall also be made in such other documents, passing from seller to purchaser, as may be necessary to fully inform purchasers of the fiber content of the merchandise and to avoid and prevent the sale or resale of the merchandise under deceptive or misleading conditions. (See paragraph (o) of § 151.7 for special provision applicable to disclosure in invoices.)

(c) *Use of terms "other fibers" and "miscellaneous fibers" in making disclosure of fiber content.* Miscellaneous fibers present in the product not exceeding 5% in the aggregate may be designated and disclosed under this rule as "Other Fibers" or "Miscellaneous Fibers," provided disclosure is made, in accordance with the requirements of these rules, of the fibers composing the remaining 95% or more of the total fiber content of the product, together with the percentage of each such fiber comprising such proportion of 95% or more, and provided further that such fiber content designated and disclosed as "Other Fibers" or "Miscellaneous Fibers" is not otherwise misrepresented. Illustrative

examples of the disclosure provided under this paragraph are as follows:

50% Linen
45% Cotton
Miscellaneous Fibers

or

50% Cotton
45% Linen
Other Fibers

or

50% Linen
45% Rayon
5% Other Fibers

for products composed of the respective, stated percentages of linen, cotton and rayon, with the remainder composed of other fibers the proportion or percentage of each of which is not known or readily ascertainable, including such small additional amounts of rayon, cotton or other fiber as may be present due to unavoidable variations in manufacturing processes.

(d) *Disclosure of percentages of fiber.* (1) In making said disclosure of fiber content under this rule, the percentage of each specifically named fiber other than linen shall be given if such fiber is present in an amount which does not exceed 5% of the total fiber content of the article or product: *Provided, however,* If the total non-linen fiber is present as selvage or decorations such as decorative stripe, border, embroidery, lace or other decoration, then the provisions of paragraphs (f) and (g) of this ~~§ 151.7,~~ and of § 151.2 relating to disclosure of non-linen fiber in selvage and decorations, shall apply.

(2) In making disclosure of fiber content under this rule, the respective percentage of each specifically named fiber present shall also be given in all other instances where the omission of such statement of percentages is likely to mislead or deceive, or has the capacity and tendency or effect of misleading or deceiving, the purchasing or consuming public into the erroneous belief that said fiber is present in a greater or less proportion than is in fact true, or is misleading or deceiving in any other respect.

(NOTE: It is deemed proper and advisable, in the interest of promoting fair methods of competition and the protection of the purchasing and consuming public from confusion, deception and unfair practices, that the percentage of each specifically named fiber present be given in all cases; such as, for example:

65% Linen
20% Cotton
15% Rayon

or

45% Linen
30% Cotton
25% Rayon

or

65% Ramie
35% Rayon

for products composed of such respective fibers in the percentages named. *See also Rule B of Group II.*)

(3) For purposes of making disclosure and determining the relative percentages or proportions of linen, cotton, rayon, silk or other fiber in any article or product composed of two or more such fibers, a tolerance of not exceeding 2% shall be allowed, where such tolerance is necessary because of unavoidable variations in manufacturing processes or because of the impossibility of more accurately calculating the percentages of the different fibers present. However, no tolerance shall apply or be allowed in case of representations to the effect that the fiber content is composed wholly of linen or that linen or any other fiber is present in not less than, or not more than, a certain amount or percentage, as for example, "Cotton with not less than 25% Linen" or "Linen with not more than 25% Cotton" which may be used in a nondeceptive manner for articles or products having the respective fabric composition so designated.

(e) *Articles consisting of a union of two fibers.* In the case of so-called union handkerchief fabrics, or other fabrics or articles, composed wholly of cotton and linen in substantially equal proportions not exceeding 5% variation, the fiber content thereof may be disclosed as "Cotton and Linen" or as "Linen and Cotton." Where percentages of the cotton and/or linen are stated, or are required to be stated, such percentages shall conform to the other requirements of these rules applicable to percentages.

(f) *Decorations.* Where, in respect of an article containing linen, the total non-linen content of such article is present in the form of decorative stripe, border, embroidery, lace or other decoration, obviously apparent as such, the fiber content of such article may be designated, for the purpose of making disclosure under this rule, by adding to the term "Linen" or "Flax", or "All Linen", "Pure Linen", "All Flax" or "Pure Flax", a phrase or statement clearly and nondeceptively setting forth the fact that such decorative stripe, border, embroidery, lace or other decoration is cotton, rayon, silk or other designated fiber or combination of fibers, as the case may be, such as, for example:

Pure Linen,
Cotton Decorations

All Flax
except Rayon Border

Pure Linen,
Cotton Embroidery

Linen
with Cotton Lace

Pure Linen
decorated with Rayon

Linen
with Rayon and Silk Decorations

Pure Linen
with 10% Silk Decorations

All Linen
with Cotton Border

Exception as to 5% non-linen content. Where, however, the product is composed wholly of linen, with the exception of non-linen fibers not exceeding 5% by weight of the entire fiber content, no specific disclosure need be made of the fiber content of such non-linen portion if and when the linen content, together with the percentage thereof, is fully and nondeceptively disclosed, as for example, "95% Linen" or "95% Flax." Where the non-linen content in the article not exceeding 5% is confined to decorations (the remainder of the product being composed entirely of linen exclusive of respective selvage tolerances specified in § 151.2 (c)), such product may be designated by the unqualified terms "Linen" or "Flax" without giving the percentage thereof or stating the composition of such decorations; *Provided,* That in any case under this paragraph no deception is practiced in respect of the product or the non-linen portion thereof.

(g) *Selvages which exceed the respective tolerance of 2% or ½ of 1% provided for in § 151.2.* Where the amount of cotton in the selvage of a linen article exceeds respectively the 2% and the ½ of 1% tolerance provided for in § 151.2, disclosure of the fiber content of such selvage should be made by including the same as part of the general fiber content of the article, or by adding a designation disclosing the fact that such selvage is cotton, as for example, "Cotton Selvage." Nothing in this paragraph, however, shall be construed as preventing the truthful and nondeceptive use of such designation as "95% Linen," provided for in paragraph (f) of this section, where the product consists entirely of linen with the exception of not to exceed 5% non-linen fiber.

(h) *Paddings, stiffening, sewing thread, etc.* In making such disclosure under this rule with respect to fiber content of ready-made or manufactured articles (such as garments or clothing), necessary structural padding, stiffening and sewing thread in such articles need not be included in the disclosure of fiber content thereof unless in labeling, advertising, selling, offering for sale or promoting the sale of the product representation is made, directly or by implication, as to the content, nature, character, quality or properties of such padding, stiffening or sewing thread, in which event the material content thereof shall be accurately and nondeceptively disclosed by appropriate phrases or designations, such as, for example, "Cotton Padding," "Silk Thread," and such other steps shall be taken as may be necessary in the circumstances to avoid deception. (The other provisions of these rules which require the disclosure of fiber content, however, apply to such padding, stiffening and sewing thread, containing or purporting to contain linen in whole or in part, when marketed as such and not as part of another manufactured article.)

(i) *Weighted silk.* In the event any constituent of the article or merchandise is weighted silk, full and nondeceptive disclosure of the fact that such silk is weighted, together with the proportion or

percentage of such weighting, shall be made as provided in the Silk Rules promulgated by the Federal Trade Commission November 4, 1938.[2]

(j) *Noil silk.* In the event any specifically named constituent present in the article or merchandise is noil silk, full and nondeceptive disclosure of the fact that such silk is noil silk shall be made as provided in the Silk Rules promulgated by the Federal Trade Commission November 4, 1938.[2]

(k) *Imitative or simulative products.* See § 151.8 for provisions as to disclosure respecting articles or merchandise which do not contain linen but which imitate or simulate linen in whole or in part.

(l) *Loading, adulterating or excess finishing materials.* In the event any constituent of the product contains excess finishing materials or loading or adulterating materials, disclosure thereof shall be made in conformity with the applicable provisions of § 151.9.

(m) *Sectional articles.* In instances where the article is composed of two or more distinct sections of different fiber composition, the fiber content of the article may be given under this rule by designating the several sections and giving the respective fiber content of each section as it exists within the section, stating the fibers within each such section in their order of predominance by weight. If any fiber so named is not present in a substantial amount within the respective section, the percentage thereof shall also be given and such other steps shall be taken as may be necessary to prevent misrepresentation or deception. The same limitations shall apply to disclosure by sections under this paragraph as are applicable in cases where disclosure of fiber content is made on the basis of the article as a whole. In making disclosure by sections of the article under this paragraph, the respective sections to which the several designations apply shall be plainly indicated in such manner as not to be misleading or deceptive; and types of designations which purport to be applicable to sections or parts of the article to which they do not truthfully apply shall be avoided. Examples of the types of designations provided for under this paragraph are as follows:

Pure Linen Center
Cotton and Rayon Lace

for articles, such as doilies, having the construction and fiber composition indicated, with the lace being predominantly cotton but mixed with a substantial proportion of rayon;

or

Linen and Rayon Center
Cotton Lace

for articles having a fabric center with cotton lace attached, the center fabric being predominantly linen and mixed with a substantial proportion of rayon;

or

Pure Linen
With Silk Lace

for an article such as a handerchief composed basically of linen fabric to which is attached lace composed wholly of silk;

or

Rayon and Cotton Waist
Linen Skirt

for an article such as a dress in which the waist is composed of rayon and cotton, each present in substantial proportion but with rayon predominating therein, the fiber content of the skirt being linen exclusively.

(n) *Deceptive set-up of disclosed information.* In setting forth any item, name, statement, percentage or other information required to be disclosed under this or any other rule hereof, the same shall be set forth clearly and unequivocally and not in type or manner so disproportionately enlarged, emphasized or conspicuously placed, or, on the other hand, so minimized, obscured or remotely or inconspicuously placed, as to be misleading or deceptive to the purchasing or consuming public.

(o) *Warranty statement in invoices.* In respect of disclosure of fiber content in invoices provided for in this section, and in § 151.1, if, because of a multiplicity of items of different fiber composition, it is not feasible to have the fiber content of the different numbers or items set out on the face or back of the invoice or otherwise specifically listed therein, a statement in lieu of such specific listing of fiber content in the invoice may be set forth in such invoice to the effect that the seller warrants that each and every item coming under these rules and covered by such invoice is properly marked and labeled as to content in full conformity with the provisions of these rules: *Provided,* Such products are so labeled and marked properly: *And provided further,* No false or misleading designations or representations are used, nor any other deception, direct or indirect, is practiced, in or by means of such invoice. The following is an example of the above-mentioned warranty statement to be set out on invoices under the provisions of this paragraph:

"The seller hereby warrants that the fiber content of the products covered by this invoice are clearly and truthfully disclosed and marked in tags, labels or brands attached to the respective products, in accordance with the provisions of the trade practice rules for the Linen Industry."

(p) *Application of Wool Products Labeling Act of 1939.* To the extent that any fiber, yarn, thread, strands, fabric, article or product under these rules is such as to come within the scope of the Wool Products Labeling Act of 1939, the marking, labeling and branding thereof shall be such as to meet the requirements of said Act from and after the effective date thereof. (Said Wool Products Labeling Act of 1939, Public No. 850, Seventy-sixth Congress, was approved by the President October 14, 1940, and provides that the Act shall take effect nine months after the date of its passage.) [Rule 7]

§ 151.8 *Passing off merchandise as and for linen.* (a) It is an unfair trade practice to offer for sale, sell, distribute, describe, brand, label, advertise or otherwise represent, directly or indirectly, any fiber, yarn, thread, strands or fabric, or garment or other article made therefrom, as being linen or flax, or as containing linen or flax, or as having any of the properties of linen or flax, when such is not in fact true.

(b) In the case of fiber, yarn, thread, strands, fabric, garment or other article not containing linen but which has been manufactured or processed in such manner as to simulate linen or which purports to contain linen in whole or in part, or which has or is represented as having a linen finish, full and nondeceptive disclosure of the fiber content of such product and of the fact that it does not contain any linen shall be made in labels, brands or marks attached to the product, in the invoices, and in whatever advertising or trade promotional descriptions or representations may be used in respect to the the product however disseminated or published. The failure or refusal to make said full and nondeceptive disclosure of the fiber content, and to take such other steps as may be necessary to avoid and prevent deceptive concealment, confusion, misunderstanding and misrepresentation, is an unfair trade practice. [Rule 8]

§ 151.9 *Special finishing materials, excess finishing materials, fillers, loading or adulterating materials, in articles containing or purporting to contain linen.* (a) This section applies to non-fibrous materials, other than necessary dyeing and finishing materials not exceeding 5% (and exclusive of metallic weighting in silk fiber which may be contained in the product, the disclosure of which is referred to in paragraph (i) of § 151.7.)

(b) The presence of such non-fibrous materials which have been added to any fiber, yarn, thread, strands or fabric shall be truthfully and nondeceptively disclosed in accordance with the following requirements of this rule, to the end that misunderstanding, confusion and deception of the purchasing or consuming public may be avoided and prevented.

(c) *Special finishing materials.* In the case where such non-fibrous material has been added to the product as special finishing materials, the product shall be designated and described in such manner as will clearly and nondeceptively disclose to the purchasing and consuming public that such added finishing materials are present in the product. The

[2] 3 F.R. 2623.

term "special finishing materials" as used in this rule means such finishing materials as are added to the product for the purpose and with the effect of thereby imparting certain useful properties to the product, such as water-repellent or crease-resistant qualities, etc.

(d) *Loading and adulterating materials, fillers and excess finishing materials.* In cases of fiber, yarn, thread, strands or fabric where non-fibrous materials have been added to or are present in the product as excess dyeing or finishing materials, fillers, loading or adulterating materials, full, clear and nondeceptive disclosure of the presence of such excess dyeing or finishing materials, fillers, or loading or adulterating materials, and of the maximum percentage or proportion in which such materials are present, shall be made in tags, labels or brands attached to the product, in the invoices, and in whatever advertising or trade promotional descriptions or representations may be used in respect to the product however disseminated or published.

(e) It is an unfair trade practice to fail or refuse to make such disclosure provided for in this rule, such failure or refusal having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public; and it is an unfair trade practice to omit or fail to take such other steps as may be necessary to avoid the sale or distribution of such products in the channels of trade or to the purchasing or consuming public under false, misleading or deceptive representations or conditions. [Rule 9]

§ 151.10 *Misrepresentation and false marking as to size or dimension.* (a) It is an unfair trade practice to offer for sale, sell, distribute, mark, brand, label, advertise, describe or otherwise represent, directly or indirectly, any linen, part linen or purported linen article or product as being of a specified size or dimension when the finished size or dimension of such article is less than such specified size or dimension: *Provided, however,* That if such mark, brand, label, advertisement or other representation as to size or dimension clearly and nondeceptively states that the size or dimension specified is only approximate, such as, for example, "Approximate Size ____ x ____ inches", then and in that event a tolerance of not to exceed 5% variation from the specified size or dimension in the case of fancy linen articles, or 2% variation from the size or dimension so specified in the case of other linen articles, including handkerchiefs, may be allowed to the extent that such variation is due to unavoidable variations in manufacturing or processing and not because of lack of reasonable effort to state the size or dimension accurately, and subject to the condition that no deception or confusion of purchasers is practiced in connection therewith.

(b) It is an unfair trade practice to import any linen, part linen or purported linen articles under invoices giving both the actual and/or a larger marked size, whereby the sale, distribution or resale of such articles under conditions which are false, misleading or deceptive is aided, promoted or effectuated; and it is an unfair trade practice in any other manner to use a larger marked size than the actual size, on or in connection with any linen, part linen or purported linen articles, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public or of causing confusion or misunderstanding in the purchase or resale of such articles in the trade or in their purchase by the consuming public. [Rule 10]

§ 151.11 *"Seconds" and deteriorated or damaged merchandise.* (a) In respect of merchandise consisting of so-called "seconds", and containing or purporting to contain linen in whole or in part, it is an unfair trade practice to offer for sale, sell or distribute, or promote the sale or distributon of, such merchandise as and for merchandise of higher grade or quality, or as not being "seconds"; or to conceal the fact that such products are "seconds" and not first-class merchandise, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public.

(b) The term "seconds" as herein used shall include products which are placed on the market by producers, processors or distributors thereof as imperfect merchandise or seconds"; also, products which contain imperfections in material or workmanship not characteristic of first quality merchandise.

(c) In respect of merchandise containing or purporting to contain linen, in whole or in part, which has become deteriorated, damaged or otherwise impaired, it is an unfair trade practice, in selling or distributing or promoting the sale or distribution of such merchandise, to conceal such impairment or to fail or refuse to disclose the same, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public in respect to the character, quality, value or condition of the merchandise, or in any other material respect. [Rule 11]

§ 151.12 *Encouraging or promoting misleading merchandising methods, and aiding or abetting unfair practices.* (a) It is an unfair trade practice for any person, partnership, corporation or organization to induce, aid or abet an importer, converter, manufacturer, distributor, dealer or other person or concern to cause any fiber, yarn, thread, strands, fabric, garment or other article, containing or purporting to contain linen, to be advertised, represented, offered for sale, sold or distributed through any means or devices or under any conditions which have the capacity and tendency or effect of causing, promoting or aiding the marketing of any such merchandise in the channels of trade or to the consuming public under false, misleading or deceptive circumstances or representations.

(b) It is an unfair trade practice for any person, partnership, corporation, organization or other party to aid or abet another in the use of, or coerce another to engage in, any of the unfair trade practices specified in the sections herein set forth. [Rule 12]

§ 151.13 *Deceptive use of word "linen" or "flax" as part of trade-mark.* It is an unfair trade practice (a) to use the word "linen" or "flax", or word, term or representation of similar import, in any trade-mark or other mark indicative of flax or linen, when the merchandise which bears such trade-mark or other mark, or which is advertised, offered for sale, sold or distributed thereunder, is not in fact composed of flax or linen; or (b) to use such marks or the word "linen" or "flax", or word, term or representation of similar import, in any other manner, or under any other condition, which is false, misleading or deceptive. [Rule 13]

§ 151.14 *Deception as to origin.* In offering for sale, selling, advertising, branding, marking, labeling or otherwise representing any fiber, yarn, thread, strands, fabric, garment or article containing or purporting to contain linen in whole or in part, it is an unfair trade practice to use, alone or in conjunction with any other word or representation, the name of a country or locality, or an adjective, symbol, device or depiction indicating a country or locality of origin, which in any manner is false, misleading or deceptive in respect of the country or locality of origin of the product or of any embellishment or part thereof, or which has the capacity and tendency or effect of causing purchasers or consumers to believe that such product originated or was manufactured in that country or locality when such is not the fact.

(NOTE: Imported articles or merchandise shall be properly marked as to foreign origin in accordance with the requirements of the customs laws or regulations and other applicable provisions of law or regulation relating to the marking of imported articles; and no misrepresentation or deception, directly or by implication, shall be practiced in the sale or distribution of such articles or merchandise in the channels of trade or to the consuming public.) [Rule 14]

§ 151.15 *Use of terms "Hand Spun", "Hand Woven", "Hand Loomed", "Hand Patterned", "Hand Drawn", "Hand Blocked", "Hand Screened", "Hand Printed", "Hand Embroidered", and Similar Representations.* It is an unfair trade practice (a) to brand, label, mark, advertise, offer for sale, sell or otherwise represent, any fiber, yarn, thread, strands, fabric, garment or other product, containing or purporting to contain linen in whole or in part, as being "Hand Spun", "Hand Woven", "Hand Loomed", "Hand Patterned", "Hand Drawn", "Hand Blocked", "Hand Screened", "Hand Printed" or "Hand Embroidered", when such is not true in fact; or (b) to describe the method of manufacture or application of any part or embellishment thereof by designation or representation which is not truly descriptive of the method of manufacture or application embodied in such article or product, part or embellishment thereof, or by designa-

tion or representation which is otherwise false, misleading or deceptive. [Rule 15]

§ 151.16 *Deceptive pricing.* (a) In the sale, offering for sale or distribution of articles or merchandise containing or purporting to contain linen in whole or in part, or in advertising, describing, branding, labeling or representing such articles or merchandise, it is an unfair trade practice

(1) to use advertisements or representations stating, purporting or implying that the prices for such articles or merchandise so advertised or represented have been reduced or are reduced prices when such represented or purported price reductions are fictitious or are otherwise false, misleading or deceptive; or

(2) to use advertisements or representations which present former prices or so-called list prices or comparative prices which are exaggerated, fictitious or otherwise false, misleading or deceptive.

(b) It is an unfair trade practice for any member of the industry, directly or indirectly, to use or to supply to dealers, or to aid or assist in the use of, price tags, labels or similar devices which are knowingly false, fictitious or exaggerated, or which such member has reason to believe are intended to be used or will be used by dealers or salesmen for the purpose of misleading or deceiving the purchasing or consuming public in respect to price, value, or in any other material respect. [Rule 16]

§ 151.17 *Deceptive advertising of group offerings, etc.* In offering for sale, selling or distributing merchandise containing or purporting to contain linen in whole or in part, whether at so-called special sales, clearance sales, bargain sales or otherwise, it is an unfair trade practice to use false, misleading or deceptive advertisements or representations to the effect that the articles so offered or advertised are composed wholly or in large or substantial proportion of well-known brands of linen articles, or of articles of reputed high quality, or of articles of a specific kind or of illustrated or featured patterns or designs, (a) when in fact none or only a small or insubstantial proportion of such respective types of articles is included in the merchandise so advertised or offered for sale; or (b) when in fact there have been added to such merchandise articles of inferior or cheaper grade or quality and the fact that such cheaper or inferior articles are included in the merchandise so advertised and offered is deceptively concealed from the advertisement and from purchasers; or (c) when for any other reason said advertisement or offering for sale is misleading or deceptive to the purchasing or consuming public. [Rule 17]

§ 151.18 *Misrepresentations in miscellaneous respects.* The use, concerning any product containing or purporting to contain linen in whole or in part, of advertisements, marks, brands, labels or representations of any kind, however disseminated or published, which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the embellishments or decorations of the product, the so-called crease-resistant or non-crushable character of the product, the weave, grade, quality or character of the fiber content, or of the finished article, or with respect to the production, origin, manufacture or distribution of the product, or any part thereof, or in any other material respect, is an unfair trade practice. [Rule 18]

Other Unfair or Monopolistic Practices

§ 151.19 (a) *Prohibited discriminatory prices, or rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.* It is an unfair trade practice for any member of the industry engaged in commerce,[1] in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, or credit, or freight or transportation cost or any percentage thereof, or other form of price differential, where such rebate, refund, discount, or credit, or freight or transportation cost or any percentage thereof, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,[1] and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,[1] or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of maufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce[1] from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited brokerage and commissions.* It is an unfair trade practice for any member of the industry engaged in commerce,[1] in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.* It is an unfair trade practice for any member of the industry engaged in commerce[1] to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale, of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited discriminatory services of facilities.* It is an unfair trade practice for any member of the industry engaged in commerce[1] to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale, of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry engaged in commerce,[1] in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this section.

[1] As here used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That this shall not apply to the Philippine Islands.

(f) *Purchases by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.* The foregoing provisions of this section relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this section are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

(52 Stat. 446; Supp. 4 U.S.C. Title 15, Sec. 13c) [Rule 19]

§ 151.20 *Discriminatory returns.* It is an unfair trade practice for any member of the industry, engaged in commerce,' to discriminate in favor of one customer-purchaser against another customer-purchaser of industry products, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning industry products so purchased and receiving therefor credit or refund of purchase price; *provided, however,* nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to fiber content, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract. (See also Rule A, Group II.) [Rule 20]

§ 151.21 *Consignment distribution.* It is an unfair trade practice for any member of the industry to employ the practice of shipping merchandise to dealers or distributors on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not affected. [Rule 21]

Shrinkage Provisions

§ 151.22 *Definitions pertaining to shrinkage rules.* (a) The within rules relating to shrinkage apply to linen, part linen and purported linen products, namely, fiber, yarn, thread, strands, fabric, garments or articles containing or purporting to contain linen in whole or in part.

(b) As used in these rules the terms "additional shrinkage", "remaining shrinkage" or "residual shrinkage" applied to said linen, part linen or purported linen products mean the shrinkage or shrinkage properties remaining in the product after the same has undergone a shrinking process. [Rule 22]

§ 151.23 *General misbranding or misrepresentation as to shrinkage.* The practice of selling, offering for sale, advertising, describing, branding, marking, or labeling linen, part linen or purported linen products in a manner which is calculated to mislead or deceive or has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the preshrunk character of such products, the residual shrinkage remaining therein, or with respect to the extent of the shrinkage to which such products have been subjected, or respecting any other shrinkage properties, quality or character of such products, is an unfair trade practice. [Rule 23]

§ 151.24 *Misuse of specific shrinkage Designations.* In the sale or distribution of linen, part linen or purported linen products, it is an unfair trade practice: (a) to use, or cause to be used, directly or indirectly, the terms "Full Shrunk," "Preshrunk," "Shrunk," "Shrinkproof," "Will not Shrink," "Mill Shrunk," "Double Shrunk," "Non-Shrinkable," or word, term, mark, label or representation of like effect or similar import, as descriptive of such products when the same are not in fact shrinkproof or non-shrinkable, or have not in fact been fully shrunk or preshrunk to the extent that no residual shrinkage is left remaining in such products; or (b) otherwise to use, or cause to be used, any such word, term, mark, label or representation so as to mislead or deceive the purchasing or consuming public into the belief that such products have been shrunk to a greater degree than is in fact true or that the residual shrinkage of such products is less than is in fact true. [Rule 24]

§ 151.25 *Designations permissible when all residual shrinkage has been removed.* Nothing in these rules shall prohibit the use of the term "Full Shrunk," "Preshrunk," "Shrunk," "Shrinkproof," "Non-Shrinkable," or word, term, mark, label or representation of like effect or similar import, as descriptive of linen, part linen or purported linen products which have undergone the application of a shrinking process and thereby have been shrunk or preshrunk to the extent that no residual shrinkage is left remaining in such products, and provided that subsequent to the application of such shrinking process the products have not been subjected to stretching or to any condition or process which has restored shrinking properties or residual shrinkage to such products. [Rule 25]

§ 151.26 *Use of terms "Preshrunk" or "Shrunk" with qualifications.* (a) In the case of linen, part linen or purported linen products which have undergone the application of a shrinking process and have been shrunk to a substantial extent but as to which there remains a certain amount of residual shrinkage, nothing in these rules shall prohibit the use of the term "Preshrunk," "Shrunk," or term or word of like effect or similar import, as an integral part of or in immediate conjunction with a truthful phrase, statement or assertion clearly and unequivocally stating the fact that such products have been preshrunk or shrunk to a substantial extent and also setting forth in percentage or percentages the amount of residual shrinkage remaining in both the warp and the filling, or in either the warp or the filling, whichever has the greater residual shrinkage. To avoid confusion, deception or misunderstanding, the standard shrinkage test provided for in paragraph (f) of this rule should be used in determining percentages to be specified in such designations. The following are typical examples of designations provided for in this section.

(1) "Preshrunk (or shrunk)—will not shrink more than ____%."

(2) "Preshrunk (or shrunk) — additional shrinkage will not exceed ____%."

(3) "Preshrunk (or shrunk) — additional shrinkage will not exceed warp ____%, filling ____%."

(4) "These products have been shrunk (or preshrunk) to the extent that additional shrinkage will not exceed ____% when tested in accordance with the recognized and approved standards or tests."

(5) "Preshrunk (or shrunk)—remaining shrinkage 2%."

(6) "Preshrunk (or shrunk) — additional shrinkage not more than ____%."

(7) "Will not shrink more than ____%."

(8) "Shrinkage will not exceed ____%."

(b) The residual, additional or remaining shrinkage percentage designations provided for in these sections for linen, part linen or purported linen products should be stamped on or otherwise firmly affixed to the material in conspicuous size and legibility of type or style, in immediate conjunction with the designation or representation regarding shrinkage, and should also appear similarly on all invoices, labels, marks or advertisements which carry reference to the shrinkage of the products.

(c) The use of residual, additional or remaining shrinkage percentage designations not in conformity with results obtainable under the test specified in

paragraph (f) of this section, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

(d) The use or specification of an unreliable or inadequate test in any such designations, or the refusal to specify a test which is proper and applicable, when done for the purpose or with the capacity and tendency or effect of directly or indirectly misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

(e) The following test is deemed to be an accepted and recognized test for determining shrinkage properties or residual shrinkage of linen, part linen or purported linen products in the application of these sections and is recommended for use as a standard shrinkage test for this purpose:

"Commercial Standard CS 59–39." [Rule 26]

Group II

Compliance with the trade practice provisions embraced in Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not, *per se*, constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition, or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of a violation of Group I rules.

A. *Return of merchandise.* The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business, operates both to the detriment of the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of § 151.20 of Group I, herein, and subject also to the general limitation that members of the industry shall not engage in any combination or conspiracy in restraint of trade or use any other illegal methods in the regulation, control or prevention of the return of merchandise. Where goods are properly labeled and no just cause for their return exists, the practice of returning such merchandise after it has been held by the purchaser in his stock or place of business for more than ten days is condemned by the industry.

B. *Disclosure of proportions of constituent fibers in mixed goods.* The practice of making full and accurate disclosure of the proportions or percentages of the constituent fibers in mixed goods is approved as a proper practice to the end that salespersons, dealers and other marketers of such products may have accurate information of the fiber content thereof and may in turn correctly inform the purchasing and consuming public, thereby avoiding confusion, misunderstanding or misrepresentation as to the nature or content of such products. Any action taken in following this rule should be consonant with the requirements of the foregoing Group I rules.

C. *Information as to treatment and care of products.* The practice, by producers, manufacturers and distributors, of furnishing and disseminating, through tags, labels, advertisements or other publicity, accurate information as to the proper treatment, care and cleaning of the products covered by these rules, is approved and recommended as a desirable practice to follow in the interest of enabling consumers to obtain and enjoy full benefit of the desirable qualities and services of such products.

Promulgated and issued by the Federal Trade Commission as of February 1, 1941.

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

[F. R. Doc. 41–729; Filed, January 31, 1941; 10:20 a. m.]

TITLE 26—INTERNAL REVENUE

CHAPTER 1—BUREAU OF INTERNAL REVENUE

[T. D. 5035]

PART 32—ESTABLISHMENT OF CONSTRUCTION RESERVE FUNDS

REGULATIONS UNDER SECTION 511 OF THE MERCHANT MARINE ACT, 1936, AS AMENDED

TABLE OF CONTENTS

§ 32.0 *Introductory.* The Act approved October 10, 1940 (Public, No. 840, Seventy-sixth Congress, third session), provides:

That title V of the Merchant Marine Act, 1936, as amended, is hereby amended by adding at the end thereof a new section to read as follows:

"SEC. 511. (a) When used in this section the term 'new vessel' means any vessel (1) documented or agreed with the Commission to be documented under the laws of the United States; (2) constructed in the United States after December 31, 1939, or the construction of which has been financed under titles V or VII of this Act, as amended, or the construction of which has been aided by a mortgage insured under title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Commission shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Commission shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

"(b) For the purposes of promoting the construction of vessels necessary to carrying out the policy set forth in title I of this Act, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned a vessel or vessels being so operated, may establish a construction reserve fund, for the construction or acquisition of new vessels, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Commission and the Secretary of the Treasury.

"(c) In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then, if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer except that in the case of amounts received on or before the date of enactment of this section or within sixty days after such date, the deposit may be made within one hundred and twenty days after the date of enactment of this section. As used in this subsection the term "net proceeds" and the term "net indemnity" mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

"(d) The basis for determining gain or loss and for depreciation, for the purpose of Federal income or excess-profits taxes, of any new vessel constructed or acquired by the taxpayer in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction or acquisition of the new vessel which represents gain not recognized under subsection (c).

"(e) For the purposes of this section, (1) if the net proceeds of a sale or the net indemnity in respect of a loss are deposited in more than one deposit, the amount consisting of the gain shall be considered as first deposited; (2) amounts expended, obligated,

or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and (3) if any deposit consists in part of gain not recognized under subsection (c), any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit.

"(f) With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code.

"(g) The provisions of subsections (c) and (f) shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Commission and the Secretary of the Treasury, under a contract for the construction or acquisition of a new vessel or vessels entered into within two years from the date of such deposit, and only if under such rules and regulations—

"(1) within such period of two years not less than 12½ per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Commission to the extent by it deemed necessary; and

"(2) in case of a vessel or vessels not constructed under the provisions of this title or not purchased from the Commission, (A) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Commission and certified by it to the Secretary of the Treasury, and (B) all construction under such contract is completed with reasonable dispatch thereafter.

"(h) The Commissioner of Internal Revenue is authorized under rules and regulations to be prescribed jointly by the Secretary of the Treasury and the Commission to grant extensions of the period within which the deposits shall be expended or obligated or within which construction shall have progressed to the extent of 5 per centum of completion as provided herein, but such extension shall not be for an aggregate additional period in excess of two years with respect to the expenditure or obligation of such deposits or more than one year with respect to the progress of such construction.

"(i) Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which the Commission finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year, except for the purpose of the declared value excess-profits tax and the capital stock tax. If any such deposited gain or portion thereof is so included in gross income for such taxable year, there shall (in addition to any other deficiency) be assessed, collected, and paid in the same manner as if it were a deficiency, an amount equal to 1.1 per centum of the amount of gain so included, such amount being in lieu of any adjustment with respect to the declared value excess-profits tax for such taxable year.

"(j) Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i), and the amount to be treated as a deficiency under such subsection in lieu of any adjustment with respect to the declared value excess-profits tax, may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time: *Provided, however,* That interest on any such deficiency or amount to be treated as a deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) to be included in gross income.

"(k) This section shall be applicable to a taxpayer only in respect of sales or indemnifications for losses occurring within a taxable year beginning after December 31, 1939, and only in respect of earnings derived during a taxable year beginning after December 31, 1939.

"(l) For the purposes of this section a vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the total number of shares of each class of stock of the corporation.

"(m) The terms used in this section shall have the same meaning as in chapter 1 of the Internal Revenue Code."

Section 905 (a) of the Merchant Marine Act, 1936, as amended by section 39 (a) of the Act of June 23, 1938 (52 Stat. 964; 46 U.S.C., Sup., 1244 (a)), provides:

(a) The words "foreign commerce" or "foreign trade" mean commerce or trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country.

Section 905 (c) of the Merchant Marine Act, 1936, as amended by section 39 (b) of the Act of June 23, 1938 (49 Stat. 2016; 52 Stat. 964; 46 U.S.C., Sup., 1244 (c)), provides:

(c) The words "citizen of the United States" include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U.S.C., title 46, sec. 802), and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.

Section 2 of the Shipping Act, 1916, as amended (41 Stat. 1008; 46 U.S.C., 802, 803), provides:

SEC. 2. (a) That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(d) The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

Section 48 of the Internal Revenue Code, 53 Stat. 26, in part provides:

SEC. 48. DEFINITIONS.

When used in this chapter—

(a) *Taxable year.* "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Part. "Taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

(b) *Fiscal year.* "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

Section 3791 of the Internal Revenue Code, 53 Stat. 467, in part provides:

SEC. 3791. RULES AND REGULATIONS.

(a) *Authorization.*—

(1) *In general.* * * * the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

(2) *In case of change in law.* The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of Regulations or Rulings.* The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

Pursuant to the foregoing provisions of law, the following regulations are hereby

prescribed and Treasury Decision 5023,[1] General Order No. 35 of the United States Maritime Commission, promulgated November 29, 1940 (Part 32, Title 26, Code of Federal Regulations, 1940 Sup.), is hereby superseded.*

*§§ 32.0 to 32.27, inclusive, are issued under the authority contained in section 511 of the Merchant Marine Act, 1936, as added by the Act approved October 10, 1940, Public, No. 840, 76th Cong., 3d sess., and section 3791 of the Internal Revenue Code, 53 Stat. 467; 26 U.S.C., Sup. 3791.

§ 32.1 *Definitions.* As used in these regulations, except as otherwise indicated by the context:

(a) The term "Act" means the Merchant Marine Act, 1936, as amended;

(b) The term "statute" means section 511 of the Merchant Marine Act, 1936, as amended;

(c) The term "section" means one of the sections of these regulations;

(d) The terms "Commission" and "Maritime Commission" mean the United States Maritime Commission;

(e) The term "citizen" means a person who, if an individual, was born or naturalized as a citizen of the United States or, if other than an individual, meets the requirements of section 905 (c) of the Act and section 2 of the Shipping Act, 1916, as amended;

(f) The term "taxpayer" means a citizen who has established or seeks to establish a construction reserve fund under the provisions of the statute and these regulations, and may include a partnership;

(g) The term "corporation" includes associations and joint stock companies;

(h) The term "stock" includes the share in an association or joint-stock company.

Insofar as the computation and collection of taxes are concerned, other terms used in these regulations, except as otherwise indicated by the context, have the same meaning as in the Internal Revenue Code and the regulations thereunder.*

§ 32.2 *Scope of statute.* The statute provides, under conditions specified, for the nonrecognition for income and excess-profits tax purposes of the gain realized from the sale or indemnification for loss of certain vessels. It also permits the accumulation of the proceeds of such sale or indemnification and of certain earnings without liability under section 102 of the Internal Revenue Code. (For the normal application of section 102, see §§ 19.102–1 to 19.102–4, inclusive, Regulations 103.)

The benefits of the statute are available to any citizen as defined in § 32.1 (e), who during any taxable year beginning after December 31, 1939, owns and operates a vessel or vessels within the scope of § 32.3. Such benefits are also available to a citizen who owns a vessel or vessels, within the scope of § 32.3, operated by others. A citizen so operating such a vessel or vessels owned by any other person, although he can derive no benefit from the provisions relating to the nonrecognition of gain from the sale or loss of such vessel or vessels so owned, may establish a construction reserve fund in which he may deposit earnings from the operation of such vessel or vessels.

The statute applies only with respect to sales or losses of vessels within the scope of § 32.3 occurring within a taxable year beginning after December 31, 1939, or in respect of earnings derived from the operation of such vessels during a taxable year beginning after December 31, 1939. A loss to be within the statute must be an actual or constructive total loss. Whether there is a total loss, actual or constructive, will be determined by the Maritime Commission. As to what proceeds, earnings, or receipts may be deposited in the construction reserve fund, see §§ 32.13 and 32.14. The loss of a vessel which occurs during a taxable year beginning prior to December 31, 1939, is not within the scope of the statute, even though the taxpayer is indemnified during a later year.*

§ 32.3 *Requirements as to operation.* The statute applies with respect to vessels operated in the foreign or domestic commerce of the United States or in the fisheries. The foreign commerce of the United States includes commerce or trade between the United States (including the District of Columbia), the Territories and possessions which are embraced within the coastwise laws, and a foreign country or other Territories and possessions of the United States. The domestic commerce of the United States includes commerce or trade between ports of the United States and its Territories and possessions, embraced within the coastwise laws. The fisheries include the fisheries of continental United States and its Territories and possessions, except the Philippine Islands (see section 5, 39 Stat. 547; 48 U.S.C. 1003). The statute does not apply to vessels operated in the foreign commerce or fisheries of some country other than the United States.*

§ 32.4 *Application to establish fund.* Any person claiming to be entitled to the benefits of the statute may make application, in writing, to the Commission for permission to establish a construction reserve fund. The application shall be in such form and substance as the Commission may prescribe and shall designate, among other things, the depository or depositories with which the applicant proposes to establish the said fund. The original application shall be executed and verified by the taxpayer or, if the taxpayer is a corporation, by one of its principal officers, and shall be accompanied by eleven (11) copies when filed with the Commission.*

§ 32.5 *Tentative authorization to establish fund.* Where the time between the receipt by the Commission of the application for permission to establish a construction reserve fund and the date prior to which an amount received from the sale or loss of a vessel must be deposited to come within the scope of the statute is insufficient to permit a determination of the eligibility of the applicant, the Commission may tentatively authorize the establishment of a construction reserve fund and the deposit of such amount therein. Such tentative authorization shall be subject to rescission by the Commission, if subsequently it is determined that the applicant is not entitled to the benefit of the statute, and, upon such determination, the fund shall be closed and all amounts on deposit therein shall be withdrawn.*

§ 32.6 *Establishment of fund.* If the application is approved by the Commission, the Commission will adopt a resolution authorizing the establishment of a construction reserve fund with the depository or depositories designated by the taxpayer and approved by the Commission. The resolution will provide for joint control by the Commission and the taxpayer over such fund, will set forth the conditions governing the establishment and maintenance of the fund and the making of deposits therein and withdrawals therefrom, and will designate the representatives authorized to execute instruments of withdrawal on behalf of the Commission.

A certified copy of the resolution of the Commission will be furnished the taxpayer. If the taxpayer is a corporation, it shall promptly adopt, through its board of directors, a resolution satisfactory in form and substance to the Commission, authorizing the establishment and maintenance of the fund in conformity with the action of the Commission. If the taxpayer is not a corporation it shall promptly execute an agreement with the depository satisfactory in form and substance to the Commission to conform to the action of the Commission as set forth in the resolution. Certified copies of the resolutions of the Commission and of the taxpayer (if it is a corporation) will be furnished to the depository by the Commission and the taxpayer respectively for its guidance in maintaining the fund and honoring instruments of withdrawal. The taxpayer, if a corporation, shall also furnish the Commission with a certified copy of its resolution, or if not a corporation, a duplicate original of its agreement with the depository.*

§ 32.7 *Transactions prior to promulgation of these regulations.* Where the taxpayer has complied with the requirements of the "Preliminary regulations for establishment of construction reserve funds under section 511 of the Merchant Marine Act, 1936, as amended" (T.D. 5023—General Order No. 35 of the Commission), and, with the approval of the Commission, has made deposits authorized by the statute in such fund, the taxpayer shall submit to the Commission, promptly upon the promulgation of these regulations, the application required by § 32.4 hereof. If and when such application is approved by the Commission, deposits and withdrawals shall be made, and the construction reserve fund shall

[1] 5 F.R. 4751.

be maintained in accordance with these regulations. If the application is not approved the fund shall be closed and all amounts on deposit therein shall be withdrawn.

If, prior to the establishment of a construction reserve fund under these regulations, a taxpayer has made necessary payments under a contract, which satisfies the provisions of these regulations and the statute, for the construction or acquisition of a new vessel, such taxpayer may, if subsequently authorized to establish a construction reserve fund under these regulations, draw against such fund as reimbursement for the amount, if any, of other funds which, with the approval or ratification of the Commission, the taxpayer used prior to the establishment of the fund for the purpose of making such necessary payments.*

§ 32.8 *Investment of funds in securities.* Interest-bearing direct obligations of the United States, or obligations fully guaranteed as to principal and interest by the United States, may be deposited in the construction reserve fund in lieu of cash, and such obligations may also be purchased with cash on deposit in the fund. In instances where the taxpayer desires to deposit any other securities in the fund in lieu of cash, or to purchase such other securities with cash on deposit in the fund, the taxpayer shall make written application to the Commission and shall not consummate the transaction until the written consent of the Commission shall have been received. The application shall describe the securities fully. Every approval of such application by the Commission shall be conditioned upon agreement by the taxpayer forthwith to dispose of such securities upon subsequent request by the Commission. Immediately upon the purchase of any securities for deposit in the fund, the taxpayer shall advise the Commission, giving the date of purchase, a description of the securities, and the price paid therefor (net, brokerage and other charges, and gross). Ordinarily the Commission will not approve the deposit in the fund in lieu of cash or the purchase with cash, on deposit in the fund of securities not actively traded in on exchanges registered under the "Securities Exchange Act of 1934", or securities which are not legal for investment of trust funds.*

§ 32.9 *Valuation of securities in fund.* In cases where securities are deposited in the fund in lieu of cash, or are purchased with cash on deposit in the fund, the "market value" of such securities must not be less than the amount of cash in lieu of which they are so deposited or with which they are so purchased. For the purpose of determining the amount in the fund, the "market value" of securities shall be determined in the following manner:

(a) In instances where no actual purchase is involved, such as the initial deposit of securities in the fund in lieu of cash, the last sales price thereof on the principal exchange on the day the deposit was made shall be deemed to be the "market value" thereof, or, if no such sales were made, the "market value" thereof will be determined by the Commission on such basis as it may deem to be fair and reasonable in each case.

(b) With respect to transactions involving the purchase of securities with cash on deposit in the fund, "market value" shall be the gross price paid (adjusted for accrued interest), provided that if such securities are purchased otherwise than upon a registered exchange the price shall be within the range of transactions on the exchange on the date of such purchase, or, if there were no such transactions, then the "market value" thereof will be determined by the Commission on such basis as it may deem to be fair and reasonable in each case.

If securities on deposit in the fund are replaced by cash from the general funds of the taxpayer, the amount of cash to be deposited in the fund in lieu thereof shall be not less than the amount at which such securities were valued at the time of their deposit in the fund.

Purchase money obligations secured by vessels sold or irrevocable commitments to finance the construction or acquisition of new vessels which are deposited in the construction reserve fund as provided in § 32.13 ordinarily will be considered as equivalent to their face value.*

§ 32.10 *Withdrawals from fund.* Checks, drafts, or other instruments of withdrawal, after having been executed by the taxpayer, shall be forwarded to the Commission at Washington with appropriate explanation of the purpose of the proposed withdrawal, including properly certified invoices or other supporting papers. Such instruments of withdrawal, after counter-signature on behalf of the Commission, will ordinarily be forwarded to the payees.

Amounts obligated under a contract for the construction or acquisition of new vessels within the scope of the statute may not, so long as the contract continues in full force and effect, be withdrawn for a purpose other than the construction or acquisition of such new vessels.*

§ 32.11 *Time deposits.* Deposits in the construction reserve fund not invested in securities may be placed in time deposits when, in the judgment of the taxpayer, it is desirable and feasible so to do.*

§ 32.12 *Election.* As a prerequisite to nonrecognition of gain on the sale or loss of a vessel as provided by the statute, the taxpayer after establishing a construction reserve fund must make an election in his income tax return, or if a partnership in the partnership return of income, for the taxable year in which the gain is realized. The election shall be with respect to each vessel and shall be shown by a statement to that effect, submitted as a part of, and attached to, the return. The statement, which need not be on any prescribed form, shall set forth a computation of the amount of the realized gain, the identity of the vessel, whether it was sold or lost and the date of sale or loss, the sale price or full amount of indemnity, the amount and date of each payment of the sale price or indemnity, the basis for tax purposes, and any other data affecting the determination of the realized gain.

Deposit of an amount equal to the net proceeds of the sale or loss must be made within the period specified in § 32.15 of these regulations and may not be delayed beyond the specified period to await the execution or filing of a statement of election.*

§ 32.13 *Deposit of proceeds of sales or indemnities.* The deposit required by the statute must be made in a construction reserve fund, established with a depository or depositories approved by the Commission and subject to the joint control of the Commission and the taxpayer. It is not necessary to establish a separate fund with respect to each vessel sold or lost. With respect to any vessel sold or lost, however, the deposit must be in an amount equal to the "net proceeds" of the sale or the "net indemnity" for the loss. By "net proceeds" and "net indemnity" is meant (1) the adjusted basis of the vessel plus (2) the amount of gain which would be recognized for tax purposes in the absence of the statute. Where the proceeds from the sale of a vessel include purchase money obligations, such obligations together with the entire collateral therefor, shall be deposited, with the remainder of the proceeds, in the construction reserve fund as a part of the "net proceeds". The depository shall receive payment of all amounts due on such purchase money obligations and such amounts shall be placed in the fund in substitution for the portion of the obligations paid. If the taxpayer so desires, he may deposit in the construction reserve fund cash or approved securities in an amount equal to the face value of any purchase money obligations in lieu of depositing such obligations.

In the case of the sale or loss of a vessel, the taxpayer must deposit the full amount of each payment (including cash, notes, or other evidences of indebtedness) as a single deposit in the construction reserve fund. A payment divided between two or more depositories will be regarded as a single deposit. Amounts received by the taxpayer prior to the date of consummation of the sale of the vessel shall be considered as having been received by the taxpayer at the time the sale is consummated.

Where a vessel is subject to a mortgage or other encumbrance at the time of its sale or loss and the taxpayer actually receives only an amount representing his equity in such vessel, he shall deposit in the construction reserve fund the amount received and concurrently therewith other funds in an amount equal to the difference between the amount received and the "net proceeds" or "net indem-

nity". Such other funds may be in the form of cash, or, subject to the approval of the Commission, (1) interest-bearing securities, or (2) an irrevocable commitment to finance the construction or acquisition of the new vessel by an obligor approved by the Commission in an amount equal to the amount by which the "net proceeds" exceeds the cash or securities deposited in the fund.

In case of the sale or loss of several vessels, a deposit of the "net proceeds" or "net indemnity" with respect to one or more of the vessels is permissible. Where several vessels are sold for a lump sum the "net proceeds" allocated to each vessel shall be determined in accordance with any reasonable rule satisfactory to the Commissioner of Internal Revenue.

A deposit which is not provided for by the statute shall, without unreasonable delay, be eliminated from the fund and tax liability will be determined as though such deposit had not been made. (See § 32.22.)*

§ 32.14 *Deposit of earnings and receipts.* A citizen may deposit all or any part of earnings derived from operation, within the scope of § 32.3, of a vessel or vessels owned either by himself or any other person. Such earnings may include payments received by an owner, as compensation for use of his vessel, from other persons by whom it is so operated. Earnings from other sources may not be deposited. Only earnings intended for construction or acquisition of new vessels may be deposited. The earnings deposited must be of taxable years beginning after December 31, 1939.

The earnings from operation of vessels which are eligible for deposit are the net earnings determined without regard to any deduction for depreciation, obsolescence, or amortization with respect to such vessels. Receipts from deposited funds, in the form of interest or otherwise, may be deposited.*

§ 32.15 *Time for making deposits.* Deposits of amounts representing proceeds of the sale or indemnification for loss of a vessel must be made within sixty days after receipt by the taxpayer, except that amounts received on or before December 9, 1940, may be deposited not later than February 7, 1941. Earnings and receipts, within the scope of the statute, of taxable years beginning after December 31, 1939, may be deposited at any time. (See § 32.14.)*

§ 32.16 *Tax liability as to earnings deposited.* Deposit in the construction reserve fund of earnings from operation of a vessel or vessels, or receipts, in the form of interest or otherwise, with respect to amounts previously deposited does not exempt the taxpayer from tax liability with respect thereto. Earnings and receipts deposited in a construction reserve fund established in accordance with the provisions of the statute and these regulations do not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code as long as the requirements of the statute and these regulations relative to the use of the fund in the construction or acquisition of new vessels are satisfied. For application of the statute in case earnings or receipts so deposited are later withdrawn for purposes other than the construction or acquisition of new vessels, or there is failure otherwise to comply with the statute or these regulations, see § 32.21.*

§ 32.17 *Allocation of gain for tax purposes.* If the "net proceeds" of a sale or the "net indemnity" in respect of a loss are deposited in more than one deposit, the gain will be considered as first deposited. Amounts expended, obligated, or withdrawn will be applied against the amounts deposited in the order of deposit. If any deposit consists in part of gain not recognized under the statute, any expenditure, obligation, or withdrawal applied against such deposit will be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit. If amounts on deposit in a construction reserve fund are expended, obligated, or withdrawn for construction or acquisition of new vessels, the portion thereof which represents gain will be applied in reduction of the basis of such new vessels for determining gain or loss, and for depreciation, for the purpose of Federal income or excess-profits taxes. If any amounts are withdrawn for purposes other than the construction or acquisition of new vessels, the portion thereof which represents gain, if otherwise constituting taxable income under the law applicable to the taxable year in which such gain was realized, will be included in the gross income for such taxable year, except for the purpose of the declared value excess-profits tax and the capital stock tax. (See § 32.22.)

The date funds are obligated under a contract for the construction or acquisition of a new vessel, rather than the date of payment from the fund, will determine the order of application against the deposits in the fund. When a contract for the construction or acquisition of a new vessel is entered into, amounts on deposit in the construction reserve fund will be deemed to be obligated to the extent of the amount of the taxpayer's liability under the contract. Deposits will be deemed to be so obligated in the order of deposit, each new contract obligating the earliest deposit not previously expended, obligated or withdrawn. If the liability under the contract exceeds the amount in the construction reserve fund, the contract will be deemed to obligate, to the extent of that part of such excess not otherwise satisfied, the earliest deposit or deposits thereafter made.

Example. A taxpayer who makes his returns on the calendar year basis sells a vessel in 1941 for $1,000,000, realizing a gain of $400,000. $100,000 of the sale price is received in March 1941 when the contract is signed, and the balance of $900,000 is received in June 1941 on delivery of the vessel. The $1,000,000 is deposited in a construction reserve fund in July 1941. In December 1941 the taxpayer also deposits $150,000 representing earnings of that year. In 1942 he sells another vessel for $1,000,000, realizing a gain of $250,000. The sale price of $1,000,000 is received on delivery of the vessel in February 1942 and deposited in the construction reserve fund in March 1942. In September 1942 the taxpayer purchases for cash out of the construction reserve fund a new vessel for $1,750,000. To the cost of this vessel must be allocated the 1941 deposits of $1,150,000 and $600,000 of the March 1942 deposit. This leaves in the fund $400,000 of the March 1942 deposit. The amount of the unrecognized gain to be applied against the basis of the new vessel is as follows: $400,000 gain represented in the 1941 deposits, plus the same proportion of the $250,000 gain represented in the March 1942 deposit ($1,000,000) which the amount ($600,000) allocated to the vessel is of the amount of the deposit, *i. e.*, $400,000 plus $\frac{600,000}{1,000,000}$ of $250,000 or $150,000, a total of $550,000. This reduces the basis of the new vessel to $1,200,000 ($1,750,000 less $550,000).

In 1943 the taxpayer sells a third vessel for $3,000,000, realizing a gain of $900,000. The $3,000,000 is received and deposited in the construction reserve fund in June 1943, making the total in the fund $3,400,000. In December 1943 the taxpayer contracts for the construction of a second new vessel to cost a maximum of $3,200,000, thereby obligating that amount of the fund, and in June 1944 receives permission to withdraw the unobligated balance amounting to $200,000. To the cost of the second new vessel must be allocated the $400,000 balance of the March 1942 deposit and $2,800,000 of the June 1943 deposit. The unrecognized gain to be applied against the basis of such new vessel is that proportion of the gain represented in each deposit which the portion of the deposit allocated to the vessel bears to the amount of such deposit, *i. e.*, $\frac{400,000}{1,000,000}$ of $250,000, or $100,000 plus $\frac{2,800,000}{3,000,000}$ of $900,000 or $840,000, making a total of $940,000. The $200,000 withdrawn is applied against the June 1943 deposit and the portion thereof which represents gain will be recognized as income for 1943, the year in which realized. The computation of the recognized gain is as follows: $\frac{200,000}{3,000,000}$ of $900,000 or $60,000.*

§ 32.18 *Requirements as to new vessels.* For the purposes of the statute and these regulations, the new vessel must be—

(1) documented under the laws of the United States when it is acquired by the taxpayer, or the taxpayer must agree that when acquired it will be documented under the laws of the United States;

(2) (a) constructed in the United States after December 31, 1939, or (b) its construction must have been financed under Title V or Title VII of the Act, or (c) its construction must have been aided by a mortgage insured under Title XI of the Act; and

(3) either (a) of such type, size, and speed as the Maritime Commission determines to be suitable for use on the high seas or Great Lakes in carrying out the purposes of the Act, but of not less than 2,000 gross tons or of less speed than 12 knots, except that a particular vessel may be of lesser tonnage or speed if the Maritime Commission determines and certifies that the particular vessel is desirable for use by the United States in case of war or national emergency, or (b) constructed to replace a vessel or vessels requisitioned or purchased by the United States, in which event it must be of such type, size, and speed as to constitute a suitable replacement for the vessel requisitioned or purchased, but if a vessel already built is acquired to replace a vessel or vessels requisitioned or purchased by the United States, such vessel must meet the requirements set forth in subdivision (3) (a) of this paragraph.

A vessel will be deemed to be constructed after December 31, 1939, only if construction was commenced after that date. Subject to the provisions of this section, a new vessel may be newly built for the taxpayer, or may be acquired after it is built.

It is not necessary that vessels shall be replaced vessel for vessel. The new vessels may be more or less in number than the replaced vessels, provided the other requirements of this section are met.*

§ 32.19 *Contracts obligating deposits.* A contract for the construction or acquisition of a new vessel entered into prior to October 10, 1940, or a contract which supersedes, amends, or supplements such a contract, is not within the scope of the statute. Unless otherwise authorized by the Commission, contracts for the construction of new vessels must be for a fixed price, or provide for a base price that may be adjusted for changes in labor and material costs up to but not exceeding 15 percent of the base price. Plans and specifications for the new vessel or vessels must be approved by the Commission to the extent it deems necessary. Within two years from the date of any deposit in a construction reserve fund, unless extension is granted as hereinafter provided, such deposit must be obligated under a construction or purchase contract and at least 12½ percent of the construction or contract price must be actually paid or irrevocably committed on account thereof. Amounts on deposit in a construction reserve fund will be deemed to be obligated for expenditure when a binding construction or purchase contract has been entered into and will be deemed to be irrevocably committed when due and payable in accordance with the terms of the contract of construction or acquisition. The Commissioner of Internal Revenue may, upon application and a showing of proper circumstances, and with the approval of the Maritime Commission, allow an extension or extensions of time, not to exceed two years in the aggregate, within which the contract shall be entered into and the deposits expended or obligated, or the 12½ percent of the construction or contract price shall be paid or irrevocably committed.

A taxpayer requiring such extension shall make application therefor to the Commissioner of Internal Revenue, and transmit it with an appropriate statement of the circumstances, and appropriate documents in substantiation of the statement, to the Maritime Commission. The Commission will forward the application and accompanying documents to the Commissioner of Internal Revenue with a statement of its approval or disapproval. In case an application for extension is denied, the taxpayer will be liable for delay as though no application had been made.*

§ 32.20 *Period for construction.* A new vessel constructed otherwise than under the provisions of Title V of the Act, and not purchased from the Maritime Commission must, within six months from the date of the construction contract, or within the period of any extension, be completed to the extent of not less than 5 percent as estimated by the Maritime Commission and certified by it to the Secretary of the Treasury. In case of a contract covering more than one vessel it will be sufficient if one of the vessels is 5 percent completed within the six months' period from the date of the contract or within the period of any extension, and so certified. All construction must be completed with reasonable dispatch as determined by the Maritime Commission. If, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, the Commission will so certify to the Secretary of the Treasury. For the effect of such certification, see § 32.21.

The Commissioner of Internal Revenue may, upon application and a showing of satisfactory reasons therefor, grant an extension or extensions of time within which the 5 percent of construction shall be completed, but such extensions shall not aggregate more than one year. In other words, no extension may be granted which shall allow a total period, for the required 5 percent completion, of more than 18 months from the date of the construction contract. Extension will be granted only upon approval of the Maritime Commission. Application therefor shall be made in accordance with the procedure indicated by section 32.19. In case an application for extension is denied, the taxpayer will be liable for delay as though no application had been made.*

§ 32.21 *Noncompliance with requirements.* Withdrawal from the construction reserve fund for purposes other than the construction or acquisition of new vessels, or failure to comply with the requirements of the statute or the regulations relative to the utilization of such funds in the construction or acquisition of new vessels, will result in the recognition, for the taxable year in which realized, of the amount of the gain represented in that portion of the fund involved. If securities on deposit in a construction reserve fund are sold and the amount placed in the fund in lieu thereof is less than the market value of the securities at the time of their deposit, the difference between such market value and the amount placed in the fund in lieu of the securities will be deemed to have been withdrawn.

In the event of noncompliance with the prescribed conditions relative to any contract for construction or acquisition of new vessels, recognition will extend to the entire amount of the gain represented in that portion of the construction reserve fund obligated under such contract. Thus, if the Maritime Commission determines and certifies to the Secretary of the Treasury that for causes within the control of the taxpayer construction under a contract is not completed with reasonable dispatch, the entire amount of the gain represented in the portion of the construction reserve fund obligated under the contract will be recognized even though all other conditions have been satisfied. In case of noncompliance with the requirements of the statute or these regulations, see § 32.17 as to the allocation of gain.

Noncompliance with the provisions of the statute or these regulations relative to the utilization of the deposited amounts may also, inasmuch as the statutory presumption of subsection (f) is then inapplicable, warrant an examination to ascertain whether such amounts constitute an unreasonable accumulation of earnings and profits within the meaning of section 102 of the Internal Revenue Code. Under that section and the regulations thereunder, if such amounts are deposited and the fund maintained in good faith for the purpose of the construction or acquisition of new vessels,

such amounts will not constitute an unreasonable accumulation.*

§ 32.22 *Extent of tax liability.* Inclusion of gain in gross income shall be for all income and excess-profits tax purposes, but not for the purposes of the declared value excess-profits tax and the capital stock tax. In lieu of any adjustment with respect to the declared value excess-profits tax, there is imposed for the taxable year in which the gain was realized (see § 32.17) an additional tax of 1.1 percent of the amount of the gain. No additional capital stock tax liability is incurred.

In the case of deposits in the construction reserve fund of amounts derived from sources other than those specified in the statute, or in the case of failure to deposit an amount equal to the "net proceeds" or "net indemnity" within the prescribed statutory period, the taxpayer obtains no suspension or postponement of any tax liability and the tax is collectible without regard to the provisions of the statute. (See § 32.13.)*

§ 32.23 *Assessment and collection of deficiencies.* Any additional tax, including the 1.1 percent of the amount of the gain imposed in lieu of declared value excess-profits tax, due on account of withdrawal from a construction reserve fund, or failure to comply with the provisions of the statute or the regulations, is collectible as a deficiency. Interest upon such deficiency will run from the date the withdrawal or noncompliance occurs. The amount of any deficiency, including interest and additions to the tax, determined as a result of such withdrawal or noncompliance, may be assessed, or a proceeding in court for the collection thereof may be begun without assessment, at any time and without regard to any period of limitations or any other provisions of law or rule of law, including the doctrine of res judicata.*

§ 32.24 *Reports by taxpayers.* With each income tax return filed for a taxable year during any part of which a construction reserve fund is in existence the taxpayer shall submit a statement setting forth a detailed analysis of such fund. The statement, which need not be on any prescribed form, shall include the following information with respect to the construction reserve fund:

(a) The actual balance in the fund at the beginning and end of the taxable year;

(b) The date, amount and source of each deposit during the taxable year;

(c) If item (b) consists of proceeds from the sale, or indemnification of loss, of a vessel, the amounts of the unrecognized gain;

(d) The date, amount and purpose of each expenditure or withdrawal from the fund; and

(e) The date and amount of each contract, under which deposited funds are deemed to be obligated during the taxable year, for construction or acquisition of a new vessel and the identification of such vessel.

Taxpayers shall keep such records and make such additional reports as the Commissioner of Internal Revenue or the Maritime Commission may require.*

§ 32.25 *Construction or acquisition by controlled corporation.* For the purposes of the statute and these regulations a new vessel is considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns not less than 95 percent of the total number of shares of each class of stock of the corporation.*

§ 32.26 *Basis of new vessel.* The basis for determining gain or loss and for depreciation for the purpose of Federal income or excess-profits taxes with repect to a new vessel constructed or acquired by the taxpayer with funds deposited in the construction reserve fund, is reduced by the amount of the unrecognized gain represented in the funds allocated under the provisions of these regulations to the cost of such vessel. (See section 32.17.)*

§ 32.27 *Administrative jurisdiction.* Sections 32.3 to 32.11, inclusive, and § 32.18 deal primarily with matters under the jurisdiction of the Maritime Commission. Sections 32.12, 32.16, and 32.17 and §§ 32.21 to 32.26, inclusive, deal primarily with matters under the jurisdiction of the Commissioner of Internal Revenue. Generally, matters relating to the establishment, maintenance, expenditure, and use of construction reserve funds and the construction or acquisition of new vessels are under the jurisdiction of the Maritime Commission; and matters relating to the determination, assessment and collection of taxes are under the jurisdiction of the Commissioner of Internal Revenue. Correspondence should be addressed to the particular authority having jurisdiction in the matter.*

GUY T. HELVERING,
Commissioner of Internal Revenue.

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

By order of the United States Maritime Commission.

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

JANUARY 31, 1941.

[F. R. Doc. 41-736; Filed, January 31, 1941; 11:49 a. m.]

TITLE 30—MINERAL RESOURCES

CHAPTER III—BITUMINOUS COAL DIVISION

[Dockets Nos. A-565, A-566, A-574]

PART 330—MINIMUM PRICE SCHEDULE, DISTRICT NO. 10

ORDER GRANTING TEMPORARY RELIEF AND CONDITIONALLY PROVIDING FOR FINAL RELIEF IN THE MATTER OF THE PETITIONS OF DISTRICT BOARD 10 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 10 NOT HERETOFORE CLASSIFIED AND PRICED

Petitions pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party, requesting the establishment of price classifications and minimum prices for the coals of certain mines in District No. 10 not heretofore classified and priced; and

The Director, having fully considered said petitions and the data in support thereof, and no petitions of intervention thereto having been filed,

Now, therefore, it is ordered, That a reasonable showing of the necessity therefor having been made, pending final disposition of the petitions in the above-entitled matter, temporary relief is granted as follows: Part 330, Subpart A, is amended by adding thereto Mine Index Nos. 19 and 73, which shall be accorded the same f. o. b. mine prices for shipment by rail to all market areas and for all uses as those shown in Part 330, Subpart A for Price Group 30 in Size Groups 17 to 25, inclusive; and § 330.25 is amended by adding thereto the supplements marked "Temporary and Conditionally Final Supplement to Schedule of Effective Minimum Prices for District No. 10, for Truck Shipments", which are hereinafter set forth.

It is further ordered, That applications to stay, terminate or modify this temporary order, or pleadings in opposition to the final relief requested in said petition, may be filed within forty-five (45) days hereof, pursuant to the rules and regulations governing practice and procedure before the Bituminous Coal Division and proceedings instituted pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

It is further ordered, That this Order and the relief herein granted shall become final sixty (60) days from the date hereof unless the Director shall otherwise order.

Dated January 24, 1941.

[SEAL] DAN H. WHEELER,
Acting Director.

SUPPLEMENT—TEMPORARY AND CONDITIONALLY FINAL EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 10

FOR TRUCK SHIPMENTS

NOTE: The material in this Supplement is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 330, for District No. 10 and Supplements thereto.

§ 330.25 *General prices in cents per net ton for shipment into all market areas*

Code member index	Mine index No.	Mine	Seam	Prices and size group Nos.																								
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
SECTION NO. 2																														
La Salle County																														
Peru Deep Vein Coal Co	73	Ill. Zinc #3	2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	205	200	200	200	200	190	190	180	150	---	---	---	---
Buffalo Rock Coal Co	19	Buffalo Rock	2	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	205	200	200	200	200	190	190	180	150	---	---	---	---
SECTION NO. 8																														
St. Clair County																														
A. B. & H. Coal Company	1055	A. B. & H	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
New Bell Heat Coal & Mining Company	1057	Bell Heat	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
Crown Coal Company	1060	Crown	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
Edgemont Coal Company	1063	Edgemont	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
Guest Coal Co	1066	Oak Hill	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
Midway Coal Company	1070	Midway	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
New National Coal & Mining Co	1074	New National	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
New Royal Coal Company (Chas. Polich)	1075	New Royal	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
New St. Clair Coal Co	1076	New St. Clair	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
Purity Coal Co	1078	Purity	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
Stiehl, C. G. (Bell Valley Coal Co.)	1082	Belle Valley	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---
White Rose Coal Co. of Belleville	1088	White Rose	6	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	185	180	180	180	180	170	170	160	125	---	---	---	---

The above f. o. b. mine prices apply loaded in transportation facilities f. o. b. Midwest mine washer, Mine Index No. 96, of the Midwest Radiant Corporation, located at Millstadt, Illinois.

[F. R. Doc. 41-723; Filed, January 30, 1941; 11:41 a. m.]

TITLE 46—SHIPPING

CHAPTER II—UNITED STATES MARITIME COMMISSION

[General Order No. 38]

PART 287—ESTABLISHMENT OF CONSTRUCTION RESERVE FUNDS

Regulations under section 511 of the Merchant Marine Act, 1936, as amended, prescribed jointly on January 31, 1941, by the United States Maritime Commission and the Treasury Department, appear in this issue under Title 26—Internal Revenue, Chapter I—Bureau of Internal Revenue, Part 32—Establishment of Construction Reserve Funds.

Notices

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

NOTICE OF HEARING AND DESIGNATION OF PRESIDING OFFICERS

Pursuant to the authority contained in section 205 (a) of the Sugar Act of 1937 (Public, No. 414, 75th Congress), as amended, and on the basis of information now before me, I, Claude R. Wickard, Secretary of Agriculture, do hereby find that the allotment of the 1941 sugar quota for the mainland cane sugar area is necessary to prevent the disorderly marketing of such sugar and to afford all interested persons an equitable opportunity to market such sugar in the continental United States, and hereby give notice that a public hearing will be held at Baton Rouge, Louisiana, in the Agricultural Extension Auditorium, Extension Building, University of Louisiana, on February 14, 1941, at 1:30 p. m.

The purpose of such hearing is to receive evidence to enable the Secretary of Agriculture to make a fair, efficient, and equitable distribution of the 1941 sugar quota for the mainland cane sugar area among persons who market such sugar in the continental United States.

Robert H. Shields, John C. Bagwell, Earl T. MacHardy, and Charles M. Nicholson are hereby designated as presiding officers to conduct, either jointly or severally, the foregoing hearing.

Done at Washington, D. C., this 31st day of January 1941. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CLAUDE R. WICKARD,
Secretary of Agriculture.

[F. R. Doc. 41-732; Filed, January 31, 1941; 11:29 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

[Administrative Order No. 82]

ACCEPTANCE OF RESIGNATION FROM AND APPOINTMENT TO SPECIAL INDUSTRY COMMITTEE FOR PUERTO RICO

By virtue of and pursuant to the authority vested in me by the Fair Labor Standards Act of 1938, I, Philip B. Fleming, Administrator of the Wage and Hour Division, Department of Labor,

Do hereby accept the resignation of Mr. Frank M. Mayfield from the Special Industry Committee for Puerto Rico and do appoint in his stead as representative for the employers on such Committee, Mr. Laurence J. Martin, of Washington, D. C.

Signed at Washington, D. C., this 29th day of January 1941.

PHILIP B. FLEMING,
Administrator,
Wage and Hour Division,
U. S. Department of Labor.

[F. R. Doc. 41-741; Filed, January 31, 1941; 11:56 a. m.]

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

Notice is hereby given that a special certificate for the employment of learners issued to the Lackawanna Pants Mfg. Co., Scranton, Pennsylvania, effective November 10, 1939, has been ordered cancelled as of the first date of violation pursuant to its terms which provide among other things that it shall be cancelled prospectively or as of the date of violation if found that any of its terms have been violated.

The order of cancellation shall not become effective and enforceable until after the expiration of a fifteen-day period following the date on which this Notice appears in the FEDERAL REGISTER. During this time petitions for reconsideration or review may be filed by any aggrieved person under § 522.13 of the Regulations. If a petition is properly filed, the effective date of the order of cancellation shall be postponed until final action is taken on the petition.

Signed at Washington, D. C., this 30th day of January 1941.

ALEX G. NORDHOLM,
Authorized Representative of the Administrator.

[F. R. Doc. 41-740; Filed, January 31, 1941; 11:56 a. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5980]

APPLICATION OF WORCESTER TELEGRAM PUBLISHING CO., INC. (NEW)

NOTICE OF HEARING

Application dated August 19, 1940; for construction permit; class of service, high frequency broadcast; class of station, high frequency broadcast; location, Worcester, Massachusetts; operating assignment specified: Frequency, 43,100 kcs.; coverage, 20,437 square miles.

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

1. To determine the legal, technical, financial and other qualifications of the applicant to construct and operate the proposed station.

2. To determine the area and population which would be included within the service area of the proposed station, operating as proposed in the application.

3. To determine whether the characteristics (social, cultural, or economic) of the proposed service area are substantially different from service areas as defined in subsection (a), (b), or (c) of § 3.223 of the Commission's Rules and Regulations, and whether by reason of special conditions there is a need for the proposed service both program and technical which cannot be supplied by a station or stations with service areas such as contemplated under subsections (a), (b), or (c) of Rule 3.223.

4. To determine what effect operation of the proposed station with a service area as applied for would have with respect to competition between radio stations, and to determine whether the proposed station would have competitive advantages over other stations.

5. To determine the nature and effect of any interference which operation of the proposed station would cause to the service of Station W65H operating as authorized by the Commission in its action of December 4, 1940.

6. To determine whether the technical equipment proposed to be used, location of transmitter and other technical phases of the proposed construction, comply with Commission regulations with respect to the same and the requirements of Good Engineering Practice.

7. To determine whether the granting of the application with an operating assignment and service area as applied for would tend toward a fair, efficient and equitable distribution of radio service among the several states and communities as contemplated by section 307 (b) of the Communications Act of 1934, as amended.

8. To determine the nature and character of the service which applicant may be expected to provide if granted a permit.

9. To determine whether the granting of the application with service area as proposed therein would be consistent with Commission's Rules and Regulations, particularly § 3.223.

10. To determine whether under the facts disclosed by the determination of the foregoing issues public convenience, interest or necessity will be served by granting the application.

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

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

Worcester Telegram Publishing Co., Inc.
% Mr. E. E. Hill, Station Director
18 Franklin Street,
Worcester, Massachusetts

Dated at Washington, D. C., January 29, 1941.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 41-731; Filed, January 31, 1941; 10:50 a. m.]

[Docket No. 5979]

APPLICATION OF THE YANKEE NETWORK, INC. (NEW)

NOTICE OF HEARING

Application dated October 22, 1940; for construction permit; class of service, high frequency broadcast; class of station, high frequency broadcast; location, Boston, Mass.; operating assignment specified: Frequency, 44,300 kcs.; coverage, 19,230 square miles.

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

1. To determine the legal, technical, financial and other qualifications of the applicant to construct and operate the proposed station.

2. To determine the area and population which would be included within the service area of the proposed station, operating as proposed in the application.

3. To determine whether the characteristics (social, cultural, or economic) of the proposed service area are substantially different from service areas as defined in subsection (a), (b), or (c) of § 3.223 of the Commission's Rules and Regulations, and whether by reason of special conditions there is a need for the proposed service both program and technical which cannot be supplied by a station or stations with service areas such as contemplated under subsection (a), (b), or (c) of § 3.223.

4. To determine what effect operation of the proposed station with a service area as applied for would have with respect to competition between radio stations, and to determine whether the proposed station would have competitive advantages over other stations.

5. To determine whether the technical equipment proposed to be used, location of transmitter and other technical phases of the proposed construction, comply with Commission regulations with respect to the same and the requirements of Good Engineering Practice.

6. To determine whether the granting of the application with an operating assignment and service area as applied for would tend toward a fair, efficient and equitable distribution of radio service among the several states and communities as contemplated by section 307 (b) of the Communications Act of 1934, as amended.

7. To determine the nature and character of the service which applicant may be expected to provide if granted a permit.

8. To determine whether the granting of the application with service area as proposed therein would be consistent with Commission's Rules and Regulations, particularly § 3.223.

9. To determine whether under the facts disclosed by the determination of the foregoing issues public convenience, interest or necessity will be served by granting the application.

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

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

The Yankee Network, Inc.,
% John Shepard, 3rd, President,
21 Brookline Avenue,
Boston, Massachusetts.

Dated at Washington, D. C. January 29, 1941.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 41-730; Filed, January 31, 1941; 10:50 a. m.]

FEDERAL POWER COMMISSION.

[Docket No. IT-5669]

IN THE MATTER OF ST. CROIX FALLS MINNESOTA IMPROVEMENT COMPANY

ORDER TO SHOW CAUSE AND FIXING DATE FOR HEARING

JANUARY 28, 1941.

It appearing to the Commission that:

(a) On or about November 20, 1939, St. Croix Falls Minnesota Improvement Company filed and submitted proposed reclassification and original cost studies required by Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, effective January 1, 1937, and the Commission's order of May 11, 1937;

(b) On June 10, 1940, there was submitted to the Commission a combined report entitled "St. Croix Falls Minnesota Improvement Company and St. Croix Falls Wisconsin Improvement Company, Minneapolis, Minnesota, Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937," which report covered the results of a field study, made jointly by the Commission's staff and the staff of the Public Service Commission of Wisconsin, of the proposed reclassification and original cost studies submitted by the Company and its affiliate, St. Croix Falls Wisconsin Improvement Company;

(c) The Commission's staff report, concurred in by the staff of the Public Service Commission of Wisconsin, was transmitted to the Company on June 14, 1940, with a request that the accounting adjustments indicated in the report be made, copies of the adjusting journal entries be submitted and a plan be submitted for disposing of the amounts shown in such report as established in Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments;

(d) By subsequent correspondence, the Company submitted journal entries covering a majority of the accounting adjustments indicated in the Commission's staff report and has given additional related information;

The Commission finds that:

(1) St. Croix Falls Minnesota Improvement Company's proposed reclassification and original cost studies and the information submitted subsequently do not justify or explain the Company's failure to (a) adjust its accounts in complete accordance with the adjustments recommended in the "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937," made by the Commission's staff and concurred in by the staff of the Public Service Commission of Wisconsin; (b) submit a plan for the disposition of the amounts as established by such Report in Account 107, Electric Plant Adjustments, representing fees paid to Columbia Improvement Company, an affiliate, and interest thereon, in accordance with the recommendations contained in such Report; and (c) submit a plan for the disposition of amounts as established by such Report in Account 100.5, Electric Plant Acquisition Adjustments;

(2) It is advisable, necessary and proper in the public interest that a public hearing be held for the purpose of requiring St. Croix Falls Minnesota Improvement Company to show cause, under oath, why this Commission should not order (a) adjustment of the Company's accounts in conformity with the recommendations made in the above mentioned "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937"; and (b) disposition of the amounts established in Account 107, Electric Plant Adjustments, and Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at such public hearing;

The Commission *orders* that:

(A) A public hearing be held on March 31, 1941, at 9:30 a. m., in Room 741, State Office Building, Madison, Wisconsin, and at such hearing St. Croix Falls Minnesota Improvement Company show cause, under oath, why the Commission should not determine by order that:

(1) Adjusting entries be made to bring the Company's accounts in conformity with the recommendations made by the Commission's staff in its "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937," referred to in paragraph (b) above, as concurred in by the staff of the Public Service Commission of Wisconsin;

(2) Disposition be made of the amounts established in Account 107, Electric Plant Adjustments, and Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at such public hearing;

(B) The Public Service Commission of Wisconsin may participate in the hearing as provided in § 39.4 of this Commission's Rules of Practice and Regulations prescribed pursuant to the provisions of the Federal Power Act.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 41-737; Filed, January 31, 1941; 11:54 a. m.]

[Docket No. II–5670]

IN THE MATTER OF ST. CROIX FALLS WISCONSIN IMPROVEMENT COMPANY

ORDER TO SHOW CAUSE AND FIXING DATE FOR HEARING

JANUARY 28, 1941.

It appearing to the Commission that:

(a) On or about November 20, 1939, St. Croix Falls Wisconsin Improvement Company filed and submitted proposed reclassification and original cost studies required by Electric Plant Accounts Instruction 2–D of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, effective January 1, 1937, and the Commission's order of May 11, 1937;

(b) On June 10, 1940, there was submitted to the Commission a combined report entitled "St. Croix Falls Minnesota Improvement Company and St. Croix Falls Wisconsin Improvement Company, Minneapolis, Minnesota, Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937," which report covered the results of a field study, made jointly by the Commission's staff and the staff of the Public Service Commission of Wisconsin, of the proposed reclassification and original cost studies submitted by the Company and its affiliate, St. Croix Falls Minnesota Improvement Company;

(c) The Commission's staff report, concurred in by the staff of the Public Service Commission of Wisconsin, was transmitted to the Company on June 14, 1940, with a request that the accounting adjustments indicated in the report be made, copies of the adjusting journal entries be submitted and a plan be submitted for disposing of the amounts shown in such report as established in Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments;

(d) By subsequent correspondence the Company submitted journal entries covering a majority of the accounting adjustments indicated in the Commission's staff report and has given additional related information;

The Commission finds that:

(1) St. Croix Falls Wisconsin Improvement Company's proposed reclassification and original cost studies and the information submitted subsequently do not justify or explain the Company's failure to (a) adjust its accounts in complete accordance with the adjustments recommended in the "Report on the Reclassification and Original Cost Studies of Electrict Plant as of January 1, 1937," made by the Commission's staff and concurred in by the staff of the Public Service Commission of Wisconsin; (b) submit a plan for the disposition of the amounts as established by such Report in Account 107, Electric Plant Adjustments, representing fees paid to Columbia Improvement Company, and affiliate, and interest thereon, in accordance with the recommendations contained in such Report; and (c) submit a plan for the disposition of amounts as established by such Report in Account 100.5, Electric Plant Acquisition Adjustments;

(2) It is advisable, necessary and proper in the public interest that a public hearing be held for the purpose of requiring St. Croix Falls Wisconsin Improvement Company to show cause, under oath, why this Commission should not order (a) adjustment of the Company's accounts in conformity with the recommendations made in the above mentioned "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937"; and (b) disposition of the amounts established in Account 107, Electric Plant Adjustments, and Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at such public hearing;

The Commission *orders* that:

(A) A public hearing be held on March 31, 1941, at 9:30 a. m., in Room 741, State Office Building, Madison, Wisconsin, and at such hearing St. Croix Falls Wisconsin Improvement Company show cause, under oath, why the Commission should not determine by order that:

(1) Adjusting entries be made to bring the Company's accounts in conformity with the recommendations made by the Commission's staff in its "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937," referred to in paragraph (b) above, as concurred in by the staff of the Public Service Commission of Wisconsin;

(2) Disposition be made of the amounts established in Account 107, Electric Plant Adjustments, and Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at such public hearing;

(B) The Public Service Commission of Wisconsin may participate in the hearing as provided in § 39.4 of this Commission's Rules of Practice and Regulations prescribed pursuant to the provisions of the Federal Power Act.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 41–738; Filed, January 31, 1941; 11:45 a. m.]

[Docket No. IT–5671]

IN THE MATTER OF PEOPLES LIGHT COMPANY

ORDER TO SHOW CAUSE AND FIXING DATE FOR HEARING

JANUARY 28, 1941.

It appearing to the Commission that:

(a) On January 16, 1939, Peoples Light Company filed and submitted proposed reclassification and original cost studies required by Electric Plant Accounts Instruction 2–D of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, effective January 1, 1937, and the Commission's order of May 11, 1937;

(b) The Commission's staff has made a field study of the Company's proposed reclassification and original cost studies and on March 26, 1940, submitted a report entitled "Peoples Light Company, Davenport, Iowa, Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937";

(c) The Commission's staff report was transmitted to the Company on April 3, 1940, with a request that the accounting adjustments indicated in the report be made, copies of the adjusting journal entries be submitted and a plan be submitted for disposing of the amounts shown in such report as established as Common Utility Plant Adjustments within Account 108, Other Utility Plant;

(d) After correspondence and conference, agreement has not been reached between the Company and the Commission's staff with respect to the accounting adjustments indicated in the Commission's staff report;

The Commission finds that:

(1) Peoples Light Company's proposed reclassification and original cost studies and the information submitted subsequently do not justify or explain the Company's failure to adjust its accounts in accordance with the adjustments recommended in the "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937" made by the Commission's staff;

(2) The Company's proposed treatment and transfers of the amounts established as Common Utility Plant Adjustments within Account 108, Other Utility Plant, by the above-mentioned "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937" as outlined in its letters of October 15, 1940, and December 21, 1940, do not constitute a complete plan for the disposition of the above-mentioned amounts;

(3) It is advisable, necessary and proper in the public interest that a public hearing be held for the purpose of requiring Peoples Light Company to show cause, under oath, why this Commission should not order (a) adjustment of the Company's accounts in conformity with the recommendations made in the above-mentioned "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937"; (b) disposition of the amounts established in Account 107, Electric Plant Adjustments and as Common Utility Plant Adjustments within Account 108, Other Utility Plant; all in accordance with the evidence adduced at such public hearing;

The Commission orders that:

A public hearing be held on March 17, 1941, at 9:30 a. m., in the Court Room, Second Floor, Federal Building, Davenport, Iowa, and at such hearing Peoples Light Company show cause, under oath, why the Commission should not determine by order that:

(A) Adjusting entries be made to bring the Company's accounts in con-

formity with all of the recommendations made by the Commission's staff in its "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937," referred to in paragraph (b) above;

(B) Disposition be made of the amounts established in Account 107, Electric Plant Adjustments, and as Common Utility Plant Adjustments within Account 108, Other Utility Plant; in accordance with the evidence adduced at such public hearing.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 41-739; Filed, January 31, 1941; 11:54 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

IN THE MATTER OF MASLAND, FERNON & ANDERSON, PACKARD BUILDING, PHILADELPHIA, PENNSYLVANIA

ORDER FOR CONTINUANCE

At a regular session of the Securities and Exchange Commission, held at its offices in the City of Washington, D. C., on the 30th day of January, A. D. 1941.

For good cause shown it is hereby ordered that the hearing in this matter heretofore set for the 11th day of February 1941, be and the same is hereby continued to the 17th day of February 1941, at 10 o'clock, A. M., at the New York Regional Office of the Securities and Exchange Commission, 120 Broadway, New York, New York, and thereafter at such times and places in New York City, or elsewhere, as the officer heretofore designated to conduct this proceeding may determine.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 41-735; Filed, January 31, 1941; 11:39 a. m.]

[File Nos. 46-190, 70-217]

IN THE MATTER OF NORTH WEST UTILITIES COMPANY AND LAKE SUPERIOR DISTRICT POWER COMPANY

ORDER GRANTING APPLICATIONS

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 31st day of January 1941.

Lake Superior District Power Company and North West Utilities Company, having filed an application pursuant to sections 6 (b) and 10 of the Public Utility Holding Company Act of 1935 regarding the issue and sale of 35,000 shares of 5% $100 par value preferred stock and 5,000 shares of $75 par value common stock by Lake Superior District Power Company and the acquisition of such 5,000 shares of common stock by North West Utilities Company; and

A public hearing having been duly held after appropriate notice, the Commission having examined the record and filed its findings herein;

It is ordered, That the applications of Lake Superior District Power Company and North West Utilities Company be, and the same hereby are, granted, subject to the conditions prescribed by Rule U-9.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 41-734; Filed, January 31, 1941; 11:38 a. m.]