

ADDRESS ONLY THE COMMISSIONER OF THE GENERAL LAND OFFICE

Enc.
UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
WASHINGTON

JAN 13 1938

IN REPLY PLEASE REFER TO

1705661 "A" ML

Executive Order No. 7784.

The Commissioner,
General Land Office,
Austin, Texas.

Sir:

Enclosed for your information is a copy of the Federal Register dated January 5, 1938, in which is printed the President's Order No. 7784 of December 31, 1937.

This order reserves, as the Aransas Migratory Waterfowl Refuge, all lands within the therein described area acquired or to be acquired by the United States.

Very respectfully,

Mr. W. Johnson
Commissioner.

*Marked on map
1-19-38
J.G.B.*

1-12 bbj

COUNTER # 13177

THE NATIONAL ARCHIVES
LITTE
SCRIPTA
MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 3 NUMBER 3

Washington, Wednesday, January 5, 1938

PRESIDENT OF THE UNITED STATES.

EXECUTIVE ORDER

MODIFYING EXECUTIVE ORDER NO. 1919½ OF APRIL 21, 1914, AND SETTING APART CERTAIN LANDS FOR THE USE OF THE ALASKA ROAD COMMISSION FOR AVIATION-FIELD PURPOSES

Alaska

By virtue of and pursuant to the authority vested in me by the act of March 12, 1914, ch. 37, 38 Stat. 305, and the act of June 25, 1910, ch. 421, 36 Stat. 847, as amended by the act of August 24, 1912, ch. 369, 37 Stat. 497, it is ordered as follows:

SECTION 1. Executive Order No. 1919½ of April 21, 1914, withdrawing and reserving certain lands for townsite purposes, is hereby modified to the extent, and only to the extent, necessary to permit the Alaska Road Commission to use the following-described townsite lots for aviation-field purposes:

TALKEETNA TOWNSITE

- Lots 1, 2, 13 and 14, block 15
- Lot 1, block 16,
- " 3, block 17,
- Lots 7 and 8, block 18,
- " 7 and 8, block 19.

SECTION 2. The following-described tract of public land is hereby reserved and set apart for the use described in section 1 hereof:

Beginning at a point on the south boundary of the Talkeetna townsite (survey No. 1260) 483.70 feet west of corner No. 9; thence south 1,880 feet to the bank of the Susitna River; thence north 41° west 639.98 feet approximately following bank of Susitna River; thence north 1,380.42 feet to south boundary of townsite; thence east 400 feet along south boundary of townsite to point of beginning, comprising parts of Lots 1 and 2, sec. 25, T. 26 N., R. 5 W., S. M.,—containing 14.97 acres, more or less.

SECTION 3. This order shall remain in force until revoked by the President or by act of Congress.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
Dec. 31, 1937.

[No. 7783]

[F. R. Doc. 38-26; Filed, January 3, 1938; 3:33 p. m.]

EXECUTIVE ORDER

ESTABLISHING THE ARANSAS MIGRATORY WATERFOWL REFUGE

Texas

By virtue of and pursuant to the authority vested in me as President of the United States and in order to effectuate

further the purposes of the Migratory Bird Conservation Act (45 Stat. 1222), it is ordered that the lands acquired, or to be acquired, by the United States within the following-described area, comprising approximately 47,215 acres, in Aransas and Refugio Counties, Texas, be, and they are hereby, reserved and set apart, subject to valid existing rights, for the use of the Department of Agriculture as a refuge and breeding ground for migratory birds and other wildlife: *Provided*, that any private lands within the area described shall become a part of the refuge hereby established upon the acquisition of title thereto or lease thereof by the United States:

All that part of Blackjack Peninsula, including Bludworth Island, Cape Carlos, and the small island near the westernmost point of Cape Carlos, lying between St. Charles Bay and San Antonio Bay, south of the following-described line:

Beginning at a point at the head of St. Charles Bay, on the west bank and at the mouth of Twin (Willow) Creek, said point being marked with a U. S. Biological Survey standard concrete post;

Thence from said initial point, upstream with the west bank meanders of Twin (Willow) Creek, northwesterly, 122.304 chains, to a point; 2955.94

Thence crossing Twin (Willow) Creek and Blackjack Peninsula N. 13°39' E., 48.90 chains; N. 18°06' E., 42.81 chains; N. 12°13' E., 2.271 chains; S. 0°49' E., 80.08 chains; N. 89°12' E., 94.53 chains; N. 0°43' W., 39.85 chains; N. 89°11' E., 119.08 chains; N. 0°51' W., 80.04 chains; N. 89°15' E., 120.03 chains; N. 0°44' W., 61.58 chains; N. 89°07' E., 76.70 chains; S. 1°30' E., 40.44 chains; S. 89°28' E., 40.27 chains; South, 0.352 chain; East, 0.188 chain; S. 0°28' E., 6.85 chains; N. 89°31' E., 163.06 chains, to a point on Webb Point on the west shore of San Antonio Bay, said point being marked with a U. S. Biological Survey standard concrete post set in a shell bank.

This reservation shall be known as the Aransas Migratory Waterfowl Refuge.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
Dec. 31, 1937.

[No. 7784]

[F. R. Doc. 38-27; Filed, January 3, 1938; 3:33 p. m.]

WAR DEPARTMENT.

AMENDMENT TO RULES AND REGULATIONS GOVERNING ANCHORAGE GROUNDS IN THE PORT OF NEW YORK, PRESCRIBED BY THE SECRETARY OF WAR, DECEMBER 24, 1935.

Sheepshead Bay Anchorages Nos. 48-A, 48-B, and 48-C, are amended to read:

48-A. Within an area at the western end of the bay to the southward of a line 25 feet south of and parallel to the bulk-



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head wall along the south side of Emmons Avenue; to the eastward of a line 200 feet easterly of and parallel to the prolonged west side of East 15th Street; to the northward of a line 200 feet northerly of and parallel to the south side of Shore Boulevard, said line extending easterly to a point 60 feet easterly of its intersection with the prolonged easterly side of Dover Street; to the northward of a line from the last-mentioned point to a point 25 feet westerly of the prolonged west side of Ocean Avenue and 250 feet southerly of the south side of Emmons Avenue; and to the westward of a line parallel to and 25 feet west of the prolonged west side of Ocean Avenue.

48-B. Within an area on the north side of, and in the east end of the bay to the southward of the established United States pierhead line on the north side of the bay; to the westward of the prolonged west side of Coyle Street; to the northward of a line from a point 90 feet south of said pierhead line in said prolonged west side of Coyle Street, ranging toward the intersection of the curb lines at the southwest corner of Shore Boulevard and Kensington Avenue; and to the northward of a line (intersecting said last-mentioned line westward of Brown Street, prolonged) extending westerly parallel to and 450 feet north of the south side of Shore Boulevard; to the northeastward of a line extending northwesterly from the point of intersection of the last described line with the prolonged east side of East 28th Street, to a point on the prolonged east side of East 27th Street and 245 feet south of the established United States pierhead line on the north side of the bay, and to the eastward of the prolonged east side of East 27th Street.

48-C. Within an area on the south side of the bay to the southward of a line extending from a point 300 feet northerly from the south side of Shore Boulevard (perpendicular distance) and in the prolonged west side of Hastings Street, to a point on the prolonged east side of Mackenzie Street 250 feet north of the south side of Shore Boulevard, and southward of a line extending thence easterly parallel to, and 250 feet north of, said south side of Shore Boulevard; to the westward of the prolonged west side of Coyle Street; to the northward of a line parallel to, and 150 feet north of, the south side of Shore Boulevard; and to the eastward of the prolonged west side of Hastings Street.

Approved, December 20, 1937.

[SEAL]

HARRY H. WOODRING,
Secretary of War.

E. T. CONLEY,
Major General,
The Adjutant General.

[F. R. Doc. 38-28; Filed, January 4, 1938; 10:17 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

1937 AGRICULTURAL CONSERVATION PROGRAM—SOUTHERN REGION

BULLETIN 101—KEMPER COUNTY, MISSISSIPPI, AMENDMENT 4

Pursuant to the authority vested in the Secretary of Agriculture under Section 8 of the Soil Conservation and Domestic Allotment Act, Section 62 of Southern Region Bulletin 101, Kemper County, Mississippi,¹ is hereby amended by adding the following new subsection:

(g) Notwithstanding any other provisions of this bulletin, all adjacent or nearby farm land to which one person holds legal title, all or part of which is field-rented to and operated by other persons, may be covered by one work sheet and one application for payment with the consent (indicated by signatures on the application for payment) of all persons who have an interest in the crops (or the proceeds thereof) grown in 1937 on such land.

The provisions of this Amendment 4 shall be effective as of October 14, 1937, so as to be covered by the provisions of

¹ 2 F. R. 649 (DI).

the "Order Increasing the Allowances, Deductions, and Rates of Payment Under the 1937 Agricultural Conservation Program in the East Central, Northeast, North Central, Southern, and Western Regions" issued by the Secretary of Agriculture on October 14, 1937.¹

Done at Washington, D. C., this 3rd day of January 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

M. L. WILSON,
Acting Secretary of Agriculture.

[F. R. Doc. 38-35; Filed, January 4, 1938; 12:47 p. m.]

1937 AGRICULTURAL CONSERVATION PROGRAM—SOUTHERN REGION
BULLETIN 101—PULASKI COUNTY, ARKANSAS, AMENDMENT 3

Pursuant to the authority vested in the Secretary of Agriculture under Section 8 of the Soil Conservation and Domestic Allotment Act, section 32 of Southern Region Bulletin 101—Pulaski County, Arkansas,² is hereby amended by adding the following new subsection:

(g) Notwithstanding any other provision of this bulletin, all adjacent or nearby farm land to which one person holds legal title, all or part of which is field-rented to and operated by other persons, may be covered by one work sheet and one application for payment with the consent (indicated by signatures on the application for payment) of all persons who have an interest in the crops (or the proceeds thereof) grown in 1937 on such land.

The provisions of this Amendment 3 shall be effective as of October 14, 1937, so as to be covered by the provisions of the "Order Increasing the Allowances, Deductions, and Rates of Payment Under the 1937 Agricultural Conservation Program in the East Central, Northeast, North Central, Southern, and Western Regions" issued by the Secretary of Agriculture on October 14, 1937.¹

Done at Washington, D. C., this 3rd day of January 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

M. L. WILSON,
Acting Secretary of Agriculture.

[F. R. Doc. 38-36; Filed January 4, 1938; 12:47 p. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of December, A. D. 1937.

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

[Docket No. 3088]

IN THE MATTER OF OLIVER BROTHERS, INC., A CORPORATION; AND W. D. ALLEN MFG. CO., A CORPORATION, BLACK HARDWARE CO., A CORPORATION, JACOBI HARDWARE CO., A CORPORATION, MATTHEWS & BOUCHER, A CO-PARTNERSHIP COMPOSED OF WILLIAM G. FISHER AND WILLIAM S. JOHNSON, CHARLOTTE SUPPLY CO., A CORPORATION, VIRGINIA-CAROLINA HARDWARE COMPANY, A CORPORATION; AND GLOBE CRAYON CO., INC., A CORPORATION, E. V. CRANDALL OIL & PUTTY MFG. CO., INC., A CORPORATION, CHAS. F. BAKER & CO., INC., A CORPORATION, KEYSTONE EMERY MILLS, A CORPORATION, JAS. CORNER & SONS, A SOLE PROPRIETORSHIP, JAMES A. REILLY, SOLE PROPRIETOR, RESPONDENTS

FINDINGS AS TO THE FACTS AND CONCLUSIONS

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for

¹ 2 F. R. 2574 (DI).
² 2 F. R. 785 (DI).

other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914 as amended (U. S. C. title 15, Sec. 13) and for other purposes," the Federal Trade Commission on January 13, 1937, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of Subsection C of Section 2 of the said Act as amended. After the issuance of said complaint and the filing of respondents' answers thereto, the taking of testimony and other evidence herein was waived by a stipulation entered into on November 5, 1937, between W. T. Kelley, Chief Counsel for the Commission and Grosvenor Calkins, Attorney for Charles F. Baker & Co., Inc., F. L. Degener, Jr., Attorney for Keystone Emery Mills, and Felix H. Levy, Attorney for all the other above-named respondents, which stipulation was thereafter duly approved by the Commission and filed in the office of the Commission. Said stipulation was so executed in conformity with and as supplemental to a certain stipulation entered into between the said parties above named on April 27, 1937. By the terms of the stipulations above referred to and in the answers to the complaint filed herein respondents admitted certain facts alleged in said complaint and certain other facts then before the Commission in this and another proceeding (respondents reserved, however, the right to contest this proceeding upon any review before the U. S. Circuit Court of Appeals or the U. S. Supreme Court with respect to any conclusions of fact or conclusion of law drawn herein by the Commission), and by said stipulations respondents agreed that the Commission might proceed to dispose of this proceeding on the record. And a final hearing before the Commission on the said record, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel aforesaid, having been waived by the stipulations aforesaid, and the Commission having considered the record and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

PARAGRAPH 1. Respondent Oliver Brothers, Inc., herein-after at times referred to as Oliver, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 417-421 Canal Street, in the City and State of New York.

PAR. 2. Respondent W. D. Allen Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 566 West Lake Street in the City of Chicago, State of Illinois. Respondent Black Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of Texas, with an office and principal place of business located at 2217 Avenue B in the City of Galveston, State of Texas. Respondent Jacobi Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 12 South Front Street in the City of Wilmington, State of North Carolina. Respondent Matthews & Boucher is a co-partnership composed of William G. Fisher and William S. Johnson, with an office and principal place of business located at 26 Exchange Street, in the City of Rochester, State of New York. Respondent Charlotte Supply Company is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 500 South Mint Street, in the City of Charlotte, State of North Carolina. Respondent Virginia-Carolina Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with an office and principal place of business located at 1316 East Main Street, in the City of Richmond, State of Virginia.

PAR. 3. Respondent Globe Crayon Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 383 Third Avenue, in the City of Brooklyn, State of New York. Respondent E. V. Crandall Oil & Putty Manufacturing Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 1105 Metropolitan Avenue, in the City of Brooklyn, State of New York. Respondent Charles F. Baker & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and principal place of business located at 113 State Street, in the City of Boston, State of Massachusetts. Respondent Keystone Emery Mills is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with an office and principal place of business located at 4329 Paul Street, Frankford, in the City of Philadelphia, State of Pennsylvania. Respondent James Corner & Sons is a sole proprietorship, owned by James A. Reilly, sole proprietor, with an office and principal place of business located at 438 North Front Street, in the City of Baltimore, State of Maryland.

PAR. 4. Respondent Oliver Brothers, Inc., is engaged in the business of selling a market information service and also purchasing services to over 300 distributing concerns scattered over the United States, who are principally wholesalers of automobile, electrical, radio, mill, machine, plumbing, steam and hardware supplies. These distributing concerns are located in many cities in forty-two States of the United States, and in the District of Columbia, Canada and Haiti. Respondents named in Paragraph Two hereof are among the distributing concerns purchasing the market information service and the purchasing services of respondent Oliver Brothers, Inc., and they are representative members of the entire group, insofar as the practices charged in the complaint are concerned. This group will hereafter be referred to as buyers. In making available and providing its purchasing services to the said buyers, the respondent Oliver Brothers, Inc., agrees to and does purchase merchandise for said buyers from several hundred individual manufacturers, processors, importers or producers who are scattered over the United States. Respondent manufacturers, processors and producers named in Paragraph Three hereof are representative of this entire group, all of whom in making sales to the buyers above mentioned through respondent Oliver Brothers, Inc., use the same methods as the named respondents. This group will hereafter be referred to as sellers.

PAR. 5. Respondent sellers are engaged in selling commodities in the course of interstate commerce. Respondent buyers are engaged in purchasing commodities in the course of interstate commerce. Respondent Oliver Brothers, Inc., transmits orders for merchandise from respondent buyers to respondent sellers, as a result of which commodities are shipped from sellers to buyers usually from one State to another. All of said respondents are engaged in interstate commerce in participating in the commercial transactions hereafter more specifically described.

PAR. 6. Respondent Oliver Brothers, Inc. was incorporated under the laws of the State of New York on July 19, 1905, and has a branch office in Chicago, Illinois. It has a force of several salesmen who habitually travel throughout the United States to solicit distributing concerns to purchase the Oliver market information service and purchasing services. These men at times also contact manufacturers and processors. It also has a number of buyers and assistant buyers who place orders for Oliver subscribers and who contact manufacturers, processors and producers on behalf of Oliver clients. Respondent Oliver Brothers, Inc., often examines and tests the wares of such manufacturers and producers and gets descriptions of goods and prices, which information is sent to the Oliver subscribers. Oliver also furnishes to said buyers a loose-leaf price book containing price lists on, and sources of supply from which can be obtained, the majority of the types of commodities purchased and resold

by said buyers, which said loose-leaf price book Oliver keeps current by the issuance of revised sheets from time to time as market prices and sources of supply change. It is in a favorable position to furnish accurate, constant, regular and reliable market information service. It handles, through its buying operations, the goods upon which it reports to its clients. Among its employees are specialists who have devoted many years to their respective lines of merchandise and who are in constant contact with the markets in performing their duties with said respondent.

PAR. 7. The Oliver Brothers, Inc. subscribers severally employ Oliver at a stipulated monthly sum ranging from \$25.00 upward. This employment is evidenced by a contract between Oliver and the subscriber which is in the following form:

OLIVER BROTHERS, INC. (Established 1892).
200 Hudson Street, New York, N. Y.

RESIDENT BUYERS FOR WHOLESALE OF HARDWARE, IRON, STEEL, METALS, BLACKSMITHS, RAILWAY, MILL, MINING, MACHINERY, ENGINEERS, AUTOMOBILE, ELECTRICAL, RADIO, PLUMBERS AND STEAM-FITTERS SUPPLIES

Cable Address: Oliveleaf, New York. Codes Used: A. B. C. (5th Edition), Bentleys, Rudolph Mosse General Motors, Lieber's Standard-Lieber's 5 letter edition, Western Union Universal and 5 letter edition, United States Steel Corporation.

Branch Offices: Chicago, Illinois: 59 E. Van Buren Street.

Pittsburgh, Pennsylvania: P. O. Box 6462 North Side Station.

Please mark your reply: Dept. A.B.C.

Telephone 16 lines.

DEAR SIR:

Subject: Contract for-----

We hereby agree to act as your New York, Chicago and Pittsburgh Resident Representatives in the capacity of Purchasing Agents.

We agree to furnish you our loose-leaf Price Book and send you our General Service covering lines as per the subject hereof; also to send you Oliver Brothers' Comment Letters, letters on Market Conditions, lists of special offerings, and submit to you other information in the way of prices and market information which we may consider to be of interest to you.

We will use our best efforts to secure the lowest possible prices on your inquiries or orders. We will forward to the manufacturers or parties with whom we have favorable arrangement such orders for merchandise as you may send to us.

Orders which we may receive from you or letters which we may receive are to be regarded as authority to act as your Agents in connection with any transaction which may transpire between us. While we will use our best efforts in acting as your Agent it is understood that we will not be liable for the failure of any manufacturer or supplier to perform his agreements or promises in connection with quotations or shipments.

It is mutually agreed that all communications between us in the way of correspondence, Comment Letters, letters on Market Conditions or Confidential Price Sheets, shall be treated as strictly confidential and used solely in connection with your own business and shall not be divulged to other parties nor procured for the use of other parties.

All business transacted between us is to be subject to satisfactory credit arrangements. In some instances, we secure special prices by reason of having the merchandise charged to our own account.

You agree to pay us for performing the services mentioned above the sum of \$ ----- Dollars per month, to be paid in equal monthly installments. This agreement shall commence ----- and shall continue from year to year thereafter without further notice but with the understanding that either of us may terminate this agreement at the end of any period of one year after date by giving to the other notice in writing of an intention to do so at least sixty days before the end of such yearly period.

It is agreed that upon the termination of this contract you will return our loose-leaf Price Book and Private Code.

Accepted -----

OLIVER BROTHERS, INC.

Per -----

No subscriber has any exclusive right to the Oliver services, but they are sold to any wholesaler who wants them, subject only to the requirement that he have good credit rating. The Oliver services are quite often bought by several dealers in the same line in the same town. Oliver yearly buys for its subscribers from said sellers several million dollars worth of commodities for resale by the buyers and as a result of said purchases such merchandise is shipped and transported from the state in which the same is located when the order is placed into and through other states of the United States, where they are delivered to

purchasers who are Oliver subscribers. Oliver receives daily from its subscribers approximately one hundred orders. When a subscriber forwards an order to Oliver, usually at a specified price, Oliver transmits the order to the seller. The seller ships the product direct to the buyer, in most cases billing the buyer at the price specified in the order. The buyer in most cases makes payment direct to the seller. The seller then sends a commission or brokerage on the transaction and Oliver pays this to the buyer or credits it to his account. If a buyer fails to name the purchase price, he expects to get the last price quoted by Oliver in its bulletins, or a lower price. If Oliver finds that the market has advanced he communicates with the buyer and confirms the order at the new price before transmitting it to the seller. The buyer in some cases names the seller whose products are wanted, but in some cases he relies upon Oliver to transmit the order to some producer who will supply goods of the quality and standard required.

PAR. 8. All respondent sellers have made sales of commodities in interstate commerce through Oliver Brothers, Inc. to respondent buyers and other Oliver buyers and have paid brokerage fees on such transactions to respondent Oliver Brothers, Inc., which brokerage fees were later paid over or credited by respondent Oliver Brothers, Inc. to the particular respondent buyer or other buyer. Respondent Keystone Emery Mills, after the service of the complaint herein, discontinued the practice of paying Oliver Brothers, Inc. brokerage on sales made to the Oliver buyers through Oliver Brothers, Inc. All of the respondent sellers at the time of payment of brokerage fees to respondent Oliver Brothers, Inc. had knowledge of the fact that Oliver Brothers, Inc. paid such fees over to the buyer placing the order and to whom the goods were shipped.

PAR. 9. The sellers from whom respondent Oliver Brothers, Inc. buys for its clients pay to Oliver brokerage fees at the same rate that they pay other brokers who sell goods for them. This rate ranges from 1% to 10%, but being usually from 2½ to 5%, of the invoice price of the commodities sold. It is a matter of common knowledge in the trade that Oliver Brothers, Inc. receives these fees for the use of its subscribers and pays them over in their entirety to the buyers. Respondent Oliver Brothers, Inc. receives and accepts these brokerage fees for the use and benefit of its subscribers and does not claim any right, title or interest in such fees. The buyers receive and accept these brokerage fees from respondent Oliver Brothers, Inc. and know that they are to receive them at the time they place orders for merchandise for execution by Oliver. The Oliver buyers, by reason of the fact that they receive the brokerage fees paid to Oliver, get a lower price on commodities, purchased through Oliver from the sellers than other buyers who are not members of the Oliver organization get on similar goods in like quantity bought direct from said sellers.

PAR. 10. In all of the purchasing transactions which the respondent Oliver Brothers, Inc. executes for its buyers, Oliver Brothers, Inc. is the agent and representative of the buyer, and acts in fact for such buyer and in his behalf, and is subject to his control, insofar as such purchasing transaction is concerned. Said respondent Oliver Brothers, Inc. in such purchasing transactions is neither the agent nor representative of the seller nor does it act for or in behalf or is it under the control of such seller. Such services as respondent Oliver Brothers, Inc. may render to the seller in selling his commodities are incidental to the particular purchase and sale transaction, and if any services are so rendered by Oliver in connection with the sale or purchase of such commodities, such services are donated by Oliver Brothers, Inc. to the seller. There is not, in fact, any payment of brokerage commissions made by any of respondent sellers to respondent Oliver Brothers, Inc., which is not intended for the buyer and which does not reach the buyer. Such brokerage commissions, being intended for the buyers, are not in fact paid in satisfaction of any contractual or other indebtedness due from the seller to respondent Oliver Brothers, Inc. for serv-

ices rendered, or otherwise. These payments, in effect, are actually made from the seller to the buyer and the buyer receives a discount in price equivalent to the brokerage fee paid to him. Respondent buyers render no service to respondent sellers in connection with the purchase of commodities through respondent Oliver Brothers, Inc. Respondent buyers render no service to respondent Oliver Brothers, Inc. in connection with the purchase of goods, wares and merchandise made for them by said respondent Oliver Brothers, Inc.

PAR. 11. The contract between respondent Oliver Brothers, Inc. and its subscribers is construed by the parties thereto as being a contract for the sale and purchase of the Oliver market information service with a privilege extended to the buyers of using the Oliver purchasing services at their option. The buyers pay the monthly fee stipulated in the contract for the market information service. The buyers exercise their option to use the purchasing services of Oliver Brothers, Inc. in order to secure a discount in price from the current market price and the buyers when purchasing commodities through Oliver compute the net price at which the purchase is made as being the quoted price less the fee or commission paid by the seller as brokerage to Oliver and by Oliver transmitted to them. The buyers, in their bookkeeping, do not treat the brokerage fees and commission received from respondent Oliver Brothers, Inc. as being an offset to the monthly fee paid by them to Oliver. The amount of the monthly fee paid by the buyers to Oliver is fixed at the time the contract is made, but the amount of the brokerage fees and commissions which may be received by a given buyer from the utilization of the Oliver purchasing services is unknown and incapable of ascertainment at the time the contract is entered into.

PAR. 12. All payments of brokerage fees made by respondents as hereinabove set forth are made as a part of a general plan or scheme which contemplates and results in payment of brokerage fees from the seller to the buyer through the respondent Oliver Brothers, Inc., and which enables the buyers to secure discounts in price from the sellers under the guise of brokerage payments.

CONCLUSION

The Commission concludes that the respondents Globe Crayon Company, Inc., E. V. Crandall Oil & Putty Manufacturing Company, Inc., Charles F. Baker & Company, Inc., Keystone Emery Mills and James Corner & Sons, have violated and are violating Subsection C, Section 2 of the Clayton Act as amended, by paying fees and commissions as brokerage to respondent Oliver Brothers, Inc., in the sale of commodities to respondent buyers and other buyers, with knowledge of the fact that such fees and commissions were and are intended to be and were and are being paid over by said respondent Oliver Brothers, Inc., to said buyers.

The Commission further concludes that respondents W. D. Allen Manufacturing Company, Black Hardware Company, Jacobi Hardware Company, Matthews & Boucher, Charlotte Supply Company and Virginia-Carolina Hardware Company have violated and are violating the provisions of Subsection C, Section 2 of the said statute, by receiving and accepting fees and commissions paid as brokerage by said respondent sellers and other sellers, in connection with the purchase of commodities by said buyers through respondent Oliver Brothers, Inc.

The Commission further concludes that respondent Oliver Brothers, Inc. has violated and is violating the provisions of Subsection C, Section 2 of said statute, by receiving such fees and commissions as brokerage from respondent sellers and transmitting and paying over the same to respondent buyers; further, that said respondent Oliver Brothers, Inc. is the instrumentality and means by which respondent sellers unlawfully are enabled to make payment of such fees and commissions as brokerage to respondent buyers, and by which respondent buyers are enabled to receive and accept the same.

The Commission further concludes that the violations of said statute referred to are in pursuance of a general plan and scheme whereby fees and commissions paid by the sellers are made available to and transmitted to the buyers.

By the Commission.

[SEAL]

W. A. AYRES, *Chairman*.

Dated this 31st day of December, A. D. 1937.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of December, A. D. 1937.

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

[Docket No. 3088]

IN THE MATTER OF OLIVER BROTHERS, INC., A CORPORATION; AND W. D. ALLEN MFG. CO., A CORPORATION, BLACK HARDWARE CO., A CORPORATION, JACOBI HARDWARE CO., A CORPORATION, MATTHEWS & BOUCHER, A CO-PARTNERSHIP COMPOSED OF WILLIAM G. FISHER AND WILLIAM S. JOHNSON, CHARLOTTE SUPPLY CO., A CORPORATION, VIRGINIA-CAROLINA HARDWARE COMPANY, A CORPORATION; AND GLOBE CRAYON CO., A CORPORATION, E. V. CRANDALL OIL & PUTTY MFG. CO., INC., A CORPORATION, CHAS. F. BAKER & CO., INC., A CORPORATION, KEYSTONE EMERY MILLS, A CORPORATION, JAS. CORNER & SONS, A SOLE PROPRIETORSHIP, JAMER A. REILLY, SOLE PROPRIETOR, RESPONDENTS

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and the stipulations as to certain facts entered into by counsel for the Commission and said respondents, in which stipulations and answers respondents admitted certain facts contained in the said complaint and certain other facts before the Commission in this and another proceeding and waived formal hearings herein and agreed that without further evidence or other intervening procedure the Commission might proceed to dispose of this proceeding. And the Commission having made its findings as to the facts and its conclusion that said respondents had violated and were violating the provisions of Subsection C, Section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies' approved October 15, 1914 as amended (U. S. C. Title 15, Sec. 13) and for other purposes";

It is ordered, That respondents Globe Crayon Company, Inc., E. V. Crandall Oil & Putty Manufacturing Company, Inc., Charles F. Baker & Company, Inc., Keystone Emery Mills and James Corner & Sons, and their officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from paying or granting to respondent Oliver Brothers, Inc. any fee or commission on sales of commodities, as brokerage or as an allowance in lieu thereof, which fee or commission is intended to be paid over or which is in fact subsequently to be paid over, in whole or in part, by said respondent Oliver Brothers, Inc. to any purchaser of such commodities;

It is further ordered, That respondents W. D. Allen Manufacturing Company, Black Hardware Company, Jacobi Hardware Company, Matthews & Boucher, Charlotte Supply Company and Virginia-Carolina Hardware Company, and their officers, representatives, agents and employees, in connection with the purchase of commodities in interstate commerce or

in the District of Columbia, do forthwith, cease and desist from accepting or receiving from respondent Oliver Brothers, Inc., any fee or commission which has been paid or granted to said Oliver Brothers, Inc., as brokerage or as an allowance in lieu thereof, by a seller of commodities on sales made by such seller to said respondents.

It is further ordered, That respondent Oliver Brothers, Inc., its officers, representatives, agents and employees, in connection with the purchase or sale of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Receiving or accepting any fee or commission, as brokerage or as an allowance in lieu thereof, from any seller of commodities, which fee or commission is intended to be paid over to the purchaser of such commodities, or which is to be applied for the use and benefit of such purchaser;

(2) Paying or granting to any purchaser of commodities any fee or commission received or accepted by said Oliver Brothers, Inc., as brokerage or an allowance in lieu thereof, from the seller of such commodities.

It is further ordered, That the respondents and each of them shall within ninety (90) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL]

OTIS B. JOHNSON, *Secretary*.

[F. R. Doc. 38-25; Filed, January 3, 1938; 3:30 p. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 31st day of December, A. D., 1937.

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

[File No. 21-288]

IN THE MATTER OF TRADE PRACTICE RULES FOR THE HOUSE DRESS AND WASH FROCK MANUFACTURING INDUSTRY

Due proceedings having been had¹ under the trade practice conference procedure in pursuance of the Act of Congress approved September 26, 1914 (38 Stat. 717),

It is now ordered, That the trade practice rules of Group I which have been approved by the Commission in this proceeding and the rules in Group II which have been received by the Commission as expressions of the industry be, and the same are, hereby promulgated for the House Dress and Wash Frock Manufacturing Industry.

TRADE PRACTICE RULES, HOUSE DRESS AND WASH FROCK MANUFACTURING INDUSTRY

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of the industry and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

Group I

The unfair trade practices which are embraced in Group I rules are considered to be unfair methods of competition 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 of such unlawful practices in or directly affecting interstate commerce.

¹ 2 F. R. 2836 (DI).

RULE 1. Making, or causing to be made or published, directly or indirectly, any false, untrue or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, serviceability, color, color fastness, workmanship, washability, fiber content or identification, shrinkage properties, manufacture or distribution of any product of the industry, or in any other material respect, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

RULE 2. The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public with respect to the grade, quality, quantity, substance, character, nature, origin, size, serviceability, color, color fastness, workmanship, washability, fiber content or identification, shrinkage properties, manufacture or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 3. The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies or services, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

RULE 4. Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 5. Wilfully inducing or attempting to induce the breach of existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 6. The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 7. Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 8. Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 9. Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

RULE 10. It is an unfair trade practice for any member of the industry to use the practice of shipping goods on

consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: Provided, however, that nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 11. (a) Prohibited discriminatory rebates, refunds, discounts, credits and other price differentials.—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, credit or other price differential, where such rebate, refund, discount, credit or other price differential effects a discrimination in price between different purchasers of goods of like grade and quality and where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ 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 manufacture, 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 commerce¹ 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 brokerages 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 commerce¹ 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

¹ See footnote on page 20.

proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited discriminatory services or facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ 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 by 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) *Illegal price discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 12. Discriminatory returns.—It is an unfair trade practice for any member of the industry, engaged in commerce,¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of dresses, 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 dresses 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.

Group II

The trade practices embraced in these Group II rules are considered to be conducive to sound business methods and are 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. However, the failure to observe them under certain circumstances may result in an unfair method of competition contrary to law. In such event, a corrective proceeding may be instituted by the Commission as in the case of a violation of Group I rules.

RULE A. In view of the fact that certain fabric may be damaged or destroyed by contact with certain types of deodorants or depilatories, the industry recommends that in the case of garments made of such fabric a tag or label be placed thereon by the manufacturer informing the purchasing public of such fact and of the desirability of avoiding contact between the fabric and such deodorants or depilatories which will damage or destroy the fabric.

RULE B. Return of merchandise—Expression of industry.—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 to the detriment of both the industry and the public and is condemned by the industry, subject, however, to require-

¹ As herein 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.*

ments and limitations set forth in the provisions of Rule 12 of Group I, herein.

RULE C. The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE D. Contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE E. The industry recommends that truthful and accurate descriptions of the washability, color fastness, and shrinkage properties of fabrics used be attached to the dress or frock or be printed on the labels used by members of the industry on such dresses or frocks.

By the Commission.

[SEAL]

OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 38-24; Filed, January 3, 1938; 3:28 p. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 31st day of December, A. D. 1937.

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

[File No. 21-300]

IN THE MATTER OF TRADE PRACTICE RULES FOR THE POPULAR PRICED DRESS MANUFACTURING INDUSTRY

Due proceedings having been had¹ under the trade practice conference procedure in pursuance of the Act of Congress approved September 26, 1914 (38 Stat. 717),

It is now ordered, That the trade practice rules of Group I which have been approved by the Commission in this proceeding and the rules in Group II which have been received by the Commission as expressions of the industry be, and the same are, hereby promulgated for the Popular Priced Dress Manufacturing Industry.

TRADE PRACTICE RULES, POPULAR PRICED DRESS MANUFACTURING INDUSTRY

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of the industry and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

Group I

The unfair trade practices which are embraced in Group I rules are considered to be unfair methods of competition 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 of such unlawful practices in or directly affecting interstate commerce.

RULE 1. Wilfully inducing or attempting to induce the breach of existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring or prejudicing competitors in their businesses, is an unfair trade practice.

¹ 2 F. R. 1647 (DI).

RULE 2. The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies or services, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

RULE 3. Making, or causing to be made or published, directly or indirectly, any false, untrue or deceptive statement or representation, by way of advertisement, or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, or in any other material respect, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

RULE 4. Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 5. (a) Prohibited discriminatory rebates, refunds, discounts, credits and other price differentials.—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, credit or other price differential, where such rebate, refund, discount, credit or other price differential effects a discrimination in price between different purchasers of goods of like grade and quality and where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ 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 manufacture, 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 commerce¹ 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 brokerages 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 commerce¹ 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 or facilities.—It is an unfair trade practice for any member of the industry engaged in commerce¹ 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 by 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) Illegal price discrimination.—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 6. Discriminatory returns.—It is an unfair trade practice for any member of the industry, engaged in commerce,¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of dresses, 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 dresses 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.

RULE 7. The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 8. Directly or indirectly to give, or permit to be given or offer to give, money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or con-

¹ As herein 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.*

tract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 9. The imitation or simulation of the trade-marks, trade names, labels or brands of competitors, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

RULE 10. Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority, and the wrongful use thereof to unduly hinder or stifle the competition of such competitors, is an unfair trade practice.

RULE 11. It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however,* That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 12. Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Group II

The trade practices embraced in these Group II rules are considered to be conducive to sound business methods and are 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. However, the failure to observe them under certain circumstances may result in an unfair method of competition contrary to law. In such event, a corrective proceeding may be instituted by the Commission as in the case of a violation of Group I rules.

RULE A. Return of merchandise—Expression of industry.—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 to the detriment of both the industry and the public and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 6 of Group I, herein.

RULE B. Contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE C. In the interest of consumer protection, the industry records itself as favoring, and recommends, the practice of members making fair and truthful disclosure, in their advertisements, labels, or other available means, of the fiber content of their garments.

RULE D. The industry records its approval of distributing information covering delinquent and slow accounts in so far as it may be lawfully done.

By the Commission.

[SEAL]

OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 38-23; Filed, January 3, 1938; 3:28 p. m.]

INTERSTATE COMMERCE COMMISSION.

ORDER IN THE MATTER OF ANNUAL REPORTS OF BLOCK SIGNALS, INTERLOCKING, AUTOMATIC TRAIN STOP, TRAIN CONTROL AND CAB SIGNAL AND TRAIN ORDER STATISTICS REQUIRED TO BE FILED BY ALL COMMON CARRIERS BY RAIL SUBJECT TO THE INTERSTATE COMMERCE ACT

Present: Frank McManamy, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

The matter of annual reports of block signal, interlocking, automatic train stop, train control and cab signal and train order statistics required to be filed by all common carriers by rail subject to the Interstate Commerce Act, being under consideration,

It is ordered, That the date on which the above reports as of January 1, 1938, are required to be filed with the Commission by its order of November 3, 1937,¹ be and the same is hereby extended from January 15, 1938, to March 1, 1938.

Dated at Washington, D. C., this thirty-first day of December, 1937.

By the Commission, Commissioner McManamy.

[SEAL]

W. P. BARTEL, *Secretary.*

[F. R. Doc. 38-30; Filed, January 4, 1938; 12:14 p. m.]

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 28th day of December, A. D. 1937

ORDER IN THE MATTER OF ANNUAL REPORTS FROM STEAM RAILWAY COMPANIES AND SWITCHING AND TERMINAL COMPANIES OF CLASS I AND CLASS II

The subject of the requirement of annual reports from steam railway companies and switching and terminal companies of Class I and Class II being under consideration:

It is ordered:

1. That the Order of this Commission dated January 27, 1937,² in the Matter of Annual Reports from Steam Railway Companies and Switching and Terminal Companies of Class I and Class II is hereby annulled.

2. That all steam railway companies and switching and terminal companies of Class I and Class II subject to the Interstate Commerce Act be, and they hereby are, required to file annual reports for the year ending December 31, 1937, and for each succeeding year until further order, in accordance with Annual Report Form A (Large and Medium Steam Roads and Switching and Terminal Companies), which is hereby approved and made a part of this order.

It is further ordered, That the annual report shall be filed in duplicate, in the Bureau of Statistics, Interstate Commerce Commission, Washington, D. C., on or before March 31, of the year following the one to which it relates.

By the Commission, division 4.

[SEAL]

W. P. BARTEL, *Secretary.*

[F. R. Doc. 38-29; Filed, January 4, 1938; 12:14 p. m.]

RAILROAD RETIREMENT BOARD.

REGULATIONS COVERING THE PREPARATION OF EMPLOYERS' REPORTS OF MONTHLY COMPENSATION OF EMPLOYEES AND REGISTRATION OF EMPLOYEES SUBJECT TO THE RAILROAD RETIREMENT ACT

The following regulations will, upon the effective dates, supersede all other instructions on the same subjects previously issued by the Railroad Retirement Board. Section A, "Preparation of Employers' Reports of Monthly Compensation of Employees," will become effective with the quarterly

¹ 2 F. R. 3209 (DI).

² 2 F. R. 269 (DI).

period ending March 31, 1938. Section B, "Registration of Employees Subject to the Railroad Retirement Act," will become effective as of January 1, 1938.

SECTION A

Preparation of Employers' Reports of Monthly Compensation of Employees

To facilitate administration of the Railroad Retirement Act of 1937, and in order to make possible compliance with Section 8 thereof, it is necessary that a record be maintained by the Railroad Retirement Board showing the monthly earnings of each individual for employment covered by the Act in any calendar month subsequent to December 31, 1936.

The Board desires to cooperate with the employers in every way possible, subject to limitations imposed by available funds for administrative purposes, in order to reduce to a minimum the cost of reporting compensation. The Board may accept punched tabulating cards in substitution of report forms hereinafter prescribed.¹ The Board cannot permit substitution of report forms which would materially increase the cost of recording, or provide for reporting at longer intervals than those prescribed herein for regular reports.

Unless otherwise specifically agreed heretofore or hereafter, in writing approved by the Director of the Bureau of Accounts of the Railroad Retirement Board, every employer as defined in and subject to the Railroad Retirement Act of 1937 shall forward to the Board on or before the expiration of thirty days after the close of each quarter ending March 31, June 30, September 30 and December 31, of each year a report of compensation earned by each employee for service during each month of such quarter. Generally, an individual is an employee if he is in the service of one or more employers. An individual is in the service of an employer if he is subject to the continuing authority of the employer to supervise and direct the manner in which he renders services for compensation. Questions may arise as to whether or not specific individuals such as doctors, lawyers, and other professional people may be employees or independent contractors. In such cases a letter should be forwarded to the Board giving full particulars and a determination will be made with respect to each individual based on the particular facts of the case. The report of compensation of employees shall consist of:

1. Form BA-3, "Report of Compensation of Employees for 3 Months Ended ----- 193...."
2. Form BA-4 (Revised December 31, 1937), "Report of Compensation Adjustments for the 3 Months Ended ----- 193...."
3. Form BA-5 (Revised December 31, 1937), "Summary Report of Compensation of Employees for the 3 Months Ended ----- 193...."

A brief description of the items for which provision is made follows:

1. *Employer.*—The corporate name of the employer shall be shown on each sheet of the report.
2. *Employer number.*—The identification number assigned by the Railroad Retirement Board to the employer shall be shown on each sheet of the report.
3. *Employee account number.*—The 9-digit number assigned either by the Social Security Board or the Railroad Retirement Board and shown on the employee's account number card shall be shown. If, at the time of preparing the report there are employees to whom account numbers have not been assigned, but for whom Forms CER-1 have been forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C., such employees should be reported on Form BA-3 in the regular manner except that the "Account Number" column should be left blank. These employees should then be re-listed on a separate BA-3 made

¹ Forms were a part of original document filed with the Division of the Federal Register, The National Archives; requests for copies should be addressed to the Railroad Retirement Board.

up in duplicate, leaving the "Account Number" column blank and reporting to the right of the name in the remaining columns the notation "CER-1 submitted on -----,"

(Date)

together with the Sheet Number and Line Number on which the employee is reported on the regular Form BA-3. An employer who regularly assigns account numbers should show no employees without account numbers except those individuals who applied for a number while working for another employer but who never received one, or who lost their original number and do not recall it. In both cases Forms CER-1 should have been forwarded to this Bureau with the proper explanation on line 14.

4. *Employee name.*—The last name, or surname, of the employee shall be shown in full as it appears on the account number card, together with the first name or initials. The order in which this information is shown is optional with the employer and may follow the method used in preparation of his payroll. The Board prefers the surname first, followed by either the first name and middle initial, or by both initials.

5. *I. C. C. occupation classification.*—The number of the occupation classification to be shown on each quarterly report shall be that to which the employee is assigned in reports to the Interstate Commerce Commission during the first month in which the individual was employed in each reporting period. No employee should be reported under more than one occupation classification on any one quarterly report. In assigning the occupation classification code the predominant type of service rendered should govern. Since certain employers do not submit a "Monthly Report of Employees, Service and Compensation" to the Interstate Commerce Commission they may not be familiar with the I. C. C. Occupation Classification. For the benefit of these employers excerpts from the complete "List of Occupations of Positions in Each Reporting Division" for those divisions which appear to be applicable to the employees of such employers are shown hereunder together with explanatory notes:

| Code | Description |
|--|--|
| EXECUTIVES, OFFICIALS, AND STAFF ASSISTANTS | |
| 1.... | Executives, General Officers, and Assistants: Executive officer or assistant. General officer or assistant. <i>NOTE.</i> —Executive officers and general officers, assistant executive officers and assistant general officers of railroad and other associations and of national railway labor organizations should be reported under this classification. |
| 2.... | Division Officers, Assistants, and Staff Assistants: Division officer. Official staff assistant. <i>NOTE.</i> —Division or district officials occupying positions of importance comparable to "Superintendent of Shops" in a railroad organization shall be reported under this classification. |
| PROFESSIONAL, CLERICAL AND GENERAL | |
| 3.... | Attorney: Legal Assistant. Draftsman. Assistant Engineer. Chemist. <i>NOTE.</i> —Employees whose work is comparable to the duties generally performed by employees of carriers in the positions indicated shall be reported under this classification. |
| 5.... | Chief Clerk and Assistant Chief Clerk, and Supervising Cashiers. Supervisor or chief clerk. Supervising cashier. |
| 6.... | Clerks and Clerical Specialists: Clerk. Accountant. Statistician. Cashier or teller. <i>NOTE:</i> This classification should include all clerks who are performing work of a very difficult nature comparable to that performed by accountants, statisticians, cashiers and tellers in carrier organizations. |
| 7.... | Clerks: Clerk. Ticket clerk. |
| 9.... | Secretaries. |
| 10.... | Stenographers and Typists. |
| 15.... | Messengers and Office Boys. |

| Code | Description |
|--|--|
| 16---- | Elevator Operators and Other Office Attendants: Elevator operator. Elevator starter. Office matron. Office porter. |
| 18---- | Patrolmen and Watchmen. |
| 19---- | Traffic and Various Other Agents, Inspectors and Investigators. |
| 20---- | Claim Agents or Investigators. |
| 26---- | Janitors and Cleaners: Cleaner (brass, marble, etc.). Janitor and cleaner. Head janitor. |
| MAINTENANCE OF WAY AND STRUCTURES | |
| 27---- | Roadmasters, General Foremen, and Assistants. |
| 40---- | Gang or Section Foremen. |
| 42---- | Section Men. |
| 47---- | Linemen and Groundmen: Electrical worker. |
| MAINTENANCE OF EQUIPMENT AND STORES | |
| 50---- | General, Assistant General, and Department Foremen: Shop Foreman. Enginehouse Foreman. |
| 57---- | Carmen (Includes Inspector). |
| 61---- | Machinists (Includes engine inspectors). |
| 71---- | General Laborers. |
| 73---- | Stationary Engineers. |
| TRANSPORTATION (OTHER THAN TRAIN, ENGINE AND YARD) | |
| 76---- | Train Dispatchers. |
| 79---- | Station Agents (non-telegraphers): Station agent. Assistant station agent. Station agent—non-supervisory. Station agent—part time. |
| 80---- | Station Agents (telegraphers and telephoners): Agent—telegrapher. Agent—telephoner. |
| 83---- | Telegraphers, Telephoners and Towermen. |
| 90---- | Gang Foremen (freight station, grain elevator, warehouse and dock labor). |
| 92---- | Truckers. |
| 94---- | Common Laborers. |
| 98---- | Officers, Workers, and Attendants on Barges, Launches, Ferry Boats, Towing Vessels and Steamers; and Shore Workers. |
| 102---- | Bridge Operators and Helpers. |
| 103---- | Crossing and Bridge Flagmen and Gatemen. |
| 105---- | Yardmasters. |
| 107---- | Switch Tenders. |
| 108---- | Hostlers. |
| TRANSPORTATION (TRAIN AND ENGINE) | |
| 111---- | Road Passenger Conductors. |
| 114---- | Road Freight Conductors. |
| 115---- | Road Passenger Baggage-men. |
| 116---- | Road Passenger Brakemen and Flagmen. |
| 118---- | Road Freight Brakemen and Flagmen. |
| 119---- | Yard Conductors and Yard Foremen. |
| 120---- | Yard Brakemen and Yard Helpers. |
| 121---- | Road Passenger Engineers and Motormen. |
| 123---- | Road Freight Engineers and Motormen. |
| 124---- | Yard Engineers and Motormen. |
| 125---- | Road Passenger Firemen and Helpers. |
| 127---- | Road Freight Firemen and Helpers. |
| 128---- | Yard Firemen and Helpers. |
| EXPRESS COMPANIES WILL USE THE FOLLOWING CLASSIFICATION: EXECUTIVES, OFFICIALS AND STAFF ASSISTANTS | |
| 301---- | Executives and general officers. |
| 302---- | Staff officials, division officers and assistants. |
| PROFESSIONAL, CLERICAL AND GENERAL | |
| 303---- | Professional and subprofessional assistants. |
| 304---- | Chief Clerks A. |
| 305---- | Chief clerks B, head clerks and clerical specialists. |
| 306---- | Clerks. |
| 307---- | Non-listing adding and calculating machine operators. |
| 308---- | Stenographers and typists. |
| 309---- | Office attendants. |
| 310---- | Route agents. |
| 311---- | Agents—office, depot, and terminal. |
| 312---- | Foremen—vehicle, depot and platform. |
| 313---- | Warehouse and platform clerks. |
| 314---- | Warehouse and platform laborers. |
| 315---- | Vehicle employees. |
| 316---- | Police. |
| 317---- | Claim agents and claim adjusters. |
| TRAIN TRANSPORTATION | |
| 318---- | Train messengers. |
| 319---- | Train helpers and guards. |

| Code | Description |
|------------------------|-------------------------------------|
| MAINTENANCE AND STORES | |
| 320---- | Foremen. |
| 321---- | Machinists. |
| 322---- | Other craftsmen. |
| 323---- | Apprentices and helpers—all trades. |
| 324---- | Garage employees. |
| 325---- | Laborers, unclassified. |

In the event any employer has employees who do not appear to be includable in any of the classifications shown herein, a statement giving a brief description of the duties of such employees should be transmitted to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C., in duplicate, and the copy of that statement will be returned to the employer showing the classification in which the employee should be included.

The following account classifications have been provided by the Bureau of Accounts of the Railroad Retirement Board for use by all employers to cover employees not presently included in the "Monthly Report of Employees, Service and Compensation:"

| Code | Description |
|---------|---|
| 201---- | Station caretakers and other persons regularly employed on a part time basis. |
| 210---- | Miners, Laborers and other employees used in the operation of mines. |
| 211---- | Doctors. |
| 212---- | Hospital employees other than doctors. |

6. *Compensation.*—The total compensation shown on a payroll or other disbursement document for a particular calendar month shall be shown on Form BA-3 for every employee, with two exceptions:

(a) Compensation for employees in I. C. C. Occupation Classification 1, Executives, Officials and Staff Assistants, and 2, Division Officers, Assistants, and Staff Assistants, which exceeds \$300 in any one month may be reported on the basis of total compensation or \$300, unless such employees receive compensation from two or more employers, in which case the full amount of the compensation received from the reporting employer should be shown. (See *Adjustments*, paragraph 7.)

(b) Compensation for employees whose earnings are carried on weekly payrolls, provided such payrolls are required by State laws, shall include the total compensation received for all payroll weeks, all or a major portion of which falls within a particular calendar month, except that compensation earned in one calendar year shall not be reported as compensation earned in another calendar year, further provided that:

(1) The total compensation of any individual for a four-week month shall not exceed \$275, or

(2) The total compensation of any individual for a five-week month shall not exceed \$300, or

(3) No amount shall be reported as compensation for a particular calendar month which represents the only earnings of a particular individual in another calendar month.

All compensation for employees whose earnings are carried on weekly payrolls, the total of which exceeds \$275 in any four-week month, or \$300 in any five-week month, and: Amounts, the inclusion of which as a part of the compensation for a particular month would affect the service months creditable, shall be separated and allocated to the calendar month in which earned and shall be reported in accordance with the general instructions applicable to all employers.

The practice of reporting under exceptions (a) and (b) above shall be constant for a particular employer and may be changed only after approval by the Director, Bureau of Accounts, Railroad Retirement Board.

7. *Adjustments.*—Any adjustment of compensation shown on a payroll or other disbursement document for a current month, and included in the report as compensation for the month which represents an adjustment of compensation shown on the payroll for a prior month, or any adjustment of compensation shown on a payroll or other disbursement

document for a prior month which was made subsequent to the filing of the report and therefore not included as compensation for that month shall be reported on Form BA-4 (Revised December 31, 1937), "Report of Compensation Adjustments for the 3 Months Ended _____ 193-," provided, (a) it affects the service period, or (b) it affects creditable earnings.

The total amount earned in the service of the reporting employer by an employee who concurrently performs compensated service for two or more employers under the Act shall be reported on Form BA-3 regardless of occupation classification. If the total earnings of an individual from all employers under the Act exceed \$300, adjustment should be made on Form BA-4 to reduce the creditable earnings and to increase the non-creditable earnings in such manner as to accomplish a net of creditable earnings equivalent to the proportion of \$300 that the amount of total earnings from the reporting employer bears to the total earnings from all employers under the Act. If the total earned by such an employee from the reporting employer exceeds \$300, the amount in excess of \$300 should be included on Form BA-5 as the amount of compensation reported in excess of \$300 for any individual in any one month.

If an employee is paid for all service by a single employer who is reimbursed for a portion of those earnings by another employer, the employee shall be considered as the employee of the employer initially making the payment of earnings for the purposes of reports herein required.

It is the intent of instructions concerning the reporting of adjustments that any adjustment of compensation shown on a payroll or other disbursement document for a current month which would not affect the amount of annuity if reported as a part of current earnings instead of as an adjustment of prior earnings, shall be reported on Form BA-3 as a part of the compensation earned during the month covered by the payroll or other disbursement document on which the adjustment is made.

Example.—An employee is shown on August payrolls for \$260. On November payrolls the same employee is carried for \$270 current earnings plus \$10 underpay for August, or \$280. Form BA-3 shall include \$260 for August and \$280 for November. No entry is required on Form BA-4 since the employee is entitled to credit for two service months and \$540 earnings which are credited from Form BA-3 reportings.

The examples illustrated on Form BA-4 attached and hereunder explained all show adjustments affecting either the service period or creditable earnings under varying conditions. It will be noted that these adjustments are made so as to reflect not only the adjustment between the current and the prior reports, but to show the effect of the adjustments upon the employee's creditable earnings as previously recorded by the Board.

In considering these adjustments it should be borne in mind that all amounts up to but not exceeding \$300 per month reported on Form BA-3 are considered by the Bureau to be creditable earnings, and are transcribed as such to a punch card, and all amounts in excess of \$300 per month are considered to be non-creditable earnings and are transcribed to another punch card. By punching these two cards the Bureau is able to balance to the total compensation reported on Form BA-3 and to the excess and net compensation reported on the upper portion of Form BA-5.

(a) *Adjustment affecting the service period.*—An employee, C. G. Jones, was shown on the September payroll for \$200. On the January payroll the same employee is carried for \$25 omitted time from September without any current earnings. As this adjustment affects service months it must be reported on the BA-4 Revised. The proper entries on Form BA-4 are to decrease gross earnings for January (Col. 6) and increase gross earnings in like amount for September (Col. 5). Since the amounts involved are less than \$300, the only adjusting entries necessary to correct the employee's account as carried by

the Board are to decrease the employee's creditable earnings and service in January (Col. 10) and to increase the creditable earnings in September (Col. 9).

(b) *Adjustment affecting creditable earnings.*—An employee, S. L. Armstrong, was shown on the February payroll and reported for \$200. On the March payroll the same employee is carried for \$300 current earnings and \$100 omitted from February, or a total of \$400. Form BA-4 Revised should adjust February and March so that the employee's account may be corrected to include \$600 creditable earnings instead of \$500 as the BA-3's would accomplish. Since this change affects both the non-creditable and creditable earnings of this employee as carried by the Board, the BA-4 should show in addition to the BA-3 adjustment a reduction by \$100 in the non-creditable established in March (Col. 8) and an increase in the creditable earnings as established in February (Col. 9).

(c) *Adjustment affecting earnings reported for two or more prior months.*—An employee, R. S. Smith, was shown on the March payroll for \$350. Of this amount \$150 was earned during the current month and the balance of \$200 represents and adjustment increasing the reported earnings for the three previous months, December, January and February, to \$150 each. Since the amount as reported in March exceeds \$300, the BA-4 should reflect adjustments to correct both the non-creditable and creditable earnings as entered by the Board based on the BA-3. In the case of December, January and February, since neither service months nor non-creditable earnings are involved, it is only necessary to increase the creditable earnings for the individual months by the exact amount of the payroll increases.

(d) *Adjustment in case of an employee who earns in excess of \$300 from two or more carriers.*—T. V. Wilson received compensation from two carriers totalling \$600. Of this sum \$350 was paid by the carrier whose report is illustrated in example (d). Form BA-3 should report the amount actually earned, namely, \$350. Form BA-4 should reflect the adjustments necessary to reduce this amount to a creditable basis and to correct the employee's records as carried by the Board. In this case \$350 represents $\frac{1}{2}$ of the employee's total earnings and $\frac{1}{2}$ of \$300, or \$175, represents this carrier's portion of the total creditable earnings. However, non-creditable earnings must be corrected to show not \$50 as indicated by the BA-3 but \$175, or the total difference between the creditable amount \$175 and the reported amount \$350. The creditable earnings should be decreased \$125, making a total net for the month of \$175. When both carriers have correctly reported on this employee his account with the Board will show creditable earnings of \$300, of which \$175 will be reported by one carrier and \$125 by the other. An explanation of this adjustment should be made in the column headed "Employee Name," similar to the example shown.

(e) *Adjustment affecting earnings prior to January 1, 1937.*—J. C. Kline was shown on the January payroll for \$625. Of this amount \$75 was earned during the current month and the balance of \$550 represents an adjustment of earnings prior to January 1, 1937. Since the amount as reported in January 1938 exceeds \$300, the BA-4 should reflect adjustments to correct both the non-creditable and creditable earnings as entered by the Board based on the Form BA-3. In the case of the earnings applicable to 1936, the entire amount represents non-creditable earnings and should be so reported.

(f) *Adjustment affecting both non-creditable and creditable earnings.*—An employee, A. A. Harper, was shown on the December payroll and reported for \$296. On the January payroll the same employee is carried for \$303 current earnings and \$12 omitted from December, or a total of \$315. In increasing December earnings from \$296 to \$308 it is necessary to adjust both the non-creditable and creditable earnings as previously entered by the Board. The adjustments to be made are these: Decrease non-

creditable earnings in January \$12 and increase non-creditable and creditable earnings for December \$8 and \$4 respectively.

(g) *Adjustment covering recovery of overpayments from employees who leave the service.*—An employee, F. W. Marsh, was shown on the December payroll for \$100, which included an overpayment of \$5. As he had left the service this amount was subsequently recovered through the issuance of an Accounts Receivable Bill. The proper entries on Form BA-4 are to decrease gross earnings for December (Col. 6) \$5 and, since this change affects only the creditable earnings as carried by the Board to decrease creditable earnings (Col. 10) in a like amount.

8. *Summary and Recapitulation.*—The total for each sheet of Form BA-3 shall be shown and recapitulated on additional sheets of Form BA-3, using the name column for sheet number and the last three columns for the amounts. If the report is of sufficient size to justify a grand recapitulation, the same forms shall be used for that purpose. In addition to the summary of total compensation reported, a summary of amounts shown on BA-3 in excess of \$300 shall be shown by Department, State, Division, or any other convenient segregation conforming with the reporting divisions used in the preparation of the detail Form BA-3. The employer may show "excess" totals at the bottom of each sheet if he desires to do so. In summarizing excess earnings any amount reported on the detail Form BA-3 in excess of \$300 should be considered as non-creditable. No amounts shown on the BA-3 should be considered as excess unless the amount shown exceeds \$300, irrespective of the fact that some of these amounts not so considered may be non-creditable earnings. The latter should be adjusted by use of Form BA-4 Revised.

The grand total of the reports for each carrier as reflected on the recapitulations shall be shown on Form BA-5 (Revised December 31, 1937), "Summary Report of Compensation of Employees for the 3 Months Ended _____ 193...". This form permits an orderly accumulation of a net creditable earnings amount which can be readily compared with the amount of taxable compensation shown on Form CT-1, "Employer's Return Under the Carriers Taxing Act of 1937." The upper half of this form is for use in reporting gross, excess, and net compensation for each month, together with a crossfooting of these amounts to show the total gross, excess, and net for the quarter as included in the detail Form BA-3. The lower section will represent the total figures for the quarter, a summary of the adjustments, and the revised gross, non-creditable, and creditable earnings for the quarter.

The declaration shall be signed by an authorized responsible official of the employer, and the jurat completed by a notary public.

SECTION B

Registration of Employees Subject to the Railroad Retirement Act

On July 1, 1937 the Railroad Retirement Board took over the assignment of account numbers to employees covered by the Railroad Retirement Act, and the cooperative arrangement in effect with the Post Office Department was discontinued. All numbers previously issued to employees under the Social Security Act were issued on the basis of an application Form SS-5 while those issued to employees under the Railroad Retirement Act were issued on the basis of an application Form CER-1. The information shown on the application Form SS-5 or Form CER-1 was transcribed to Form OA-702. The original Forms OA-702 based on Form SS-5 are on file in the office of the Bureau of Old-Age Insurance of the Social Security Board, Baltimore, Maryland. The original Forms OA-702 based on Form CER-1 are on file in the office of the Bureau of Accounts, Railroad Retirement Board, Washington, D. C.

Account numbers assigned under the direction of the Railroad Retirement Board shall continue to be referred to as

"Social Security Account Numbers" and Form CER-1 ("Social Security—Carrier Employee Registration Application for Account Number") shall continue in use.

The principal change resulting from the transfer of the assignment of account numbers to the Railroad Retirement Board was the cooperative arrangement entered into between the Railroad Retirement Board and certain large employers whereby these employers secure supplies of pre-numbered office record forms and make direct assignments of account numbers.

Assignment of Account Numbers

It is essential that all persons who perform compensated service for an employer, and who are employees under the Act be assigned an account number. The account number is a 9-digit number under which a record of service and compensation is maintained for an employee under either the Railroad Retirement Act or the Social Security Act. A block of numbers, the first three digits of which are in the series of 700 to 739, has been allocated to the Railroad Retirement Board for assignment to employees under the Railroad Retirement Act of 1937 who have not previously received account numbers. The separation of the number into groups of three digits representing "area," two digits representing "group," and four digits representing "serial," with a dash between each group, has no meaning and is merely for convenience in writing the number.

Employees engaged in the future by employers in whose service they have not previously been engaged will come into one of the following classifications:

1. Persons who have not, since January 1, 1937, had any employment requiring an account number. These persons should fill out Form CER-1.

2. Persons having a number in other than the series seven hundred (700) to seven hundred thirty-nine (739) will continue to use such numbers, but should fill out Form CER-1 if they have not already done so while in prior service with some other employer under the Railroad Retirement Act, and turn it over to their employer for filing with the Board.

3. Persons holding account numbers of which the first three digits are in the seven hundred (700) to seven hundred thirty-nine (739) series, and persons holding account numbers in any series who have performed service for an "Employer" after June 30, 1937, should have been registered on Form CER-1, and there should be no necessity, so far as the Railroad Retirement Board is concerned, to secure their re-registration. But, if a person with an account number in this series works for an employer after June 30, 1937, and subsequently works for another employer under the Retirement Act, such subsequent employer may wish to maintain a complete file of Forms CER-1; in such case, however, no such form need be sent to the Board.

The procedure to be followed in filling out Form CER-1 and making account number assignments in the above cases is prescribed hereunder:

1. "Employers" will requisition the estimated number of Forms CER-1, "Social Security—Carrier Employee Registration Application for Account Number," for periods of six months in advance. The Board's Form BA-1, "Requisition for Forms CER-1," should be used for this purpose.

2. "Employers" will secure a properly executed Form CER-1 from each new employee who has not previously received an account number, the first three digits of which are within the series seven hundred (700) to seven hundred thirty-nine (739), unless such employee has previously completed such form. After entering the previously assigned account number on the original and duplicate of such form, it should be examined with particular reference to the following items:

(a) Is each question answer in full? If the answer to any question is unknown, the word "unknown" should be written. If on Line 1 the employee has no middle name, this should be indicated by a line; otherwise, middle name should be required.

(b) Addresses should be complete.

(c) The name on Line 1 should be the correct name of the applicant. If this name differs from the name signed on Line 16, an explanation should be attached to the CER-1 application. This applies to such cases as abbreviations of long foreign names, married women working under their maiden names, and other persons working under a name different from their correct name.

3. "Employers" who are supplied with Forms OA-702 will transcribe the information on Form CER-1 to the Form OA-702, in the case of each employee who has not previously received an account number. Before transcribing this information the same examination of Form CER-1 as described in paragraph 2 above should be made. In typing Form OA-702 the following rules should be adhered to:

(a) The lower part of the identification card which contains the employee account number can be detached and used by the employer or can be turned over to the employee at the discretion of the employer.

(b) Capitalize the first letter only of each name on the Form OA-702.

(c) If a name is too long to be typed in full on the account number card, initials may be typed for the middle name or for the first and middle names, if necessary. Include "Jr." or "Sr." if part of name given.

(d) Erasures are permitted if the result is neat and legible.

(e) Numerical sequence of Forms OA-702 should be maintained.

(f) If necessary to void a form, mark it "void" but include it in series sent to this office.

(g) When OA-702's are prepared and account numbers assigned, the account number should be transcribed from OA-702's to the upper right hand corner of the corresponding CER-1 in the space between the heading and the black corner.

The original account number card (right hand portion) of Form OA-702 should be delivered to the employee. The original of Form OA-702 (left hand portion) and Form CER-1 should be forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C. The carrier may retain the right hand portion of the duplicate Form OA-702 (Duplicate Account Number Card Portion) if desired, or it may be forwarded to the Bureau of Accounts. The left hand portion of the duplicate copy of Form OA-702 should be sent to:

Washington Regional Office
Social Security Board
Bond Building
New York Avenue & 14th St., N. W.
Washington, D. C.

The duplicate copy of Form CER-1 may be retained by the employer.

4. "Employers" who do not have a supply of Forms OA-702 will forward to the Bureau of Accounts, Railroad Retirement Board, Forms CER-1, covering employees who have not previously received an account number. The Board will thereupon prepare Form OA-702 and forward the account number card to the "Employer" for recording the number, and delivery to the employee.

Other problems which may arise at the time of filling out Form CER-1 and with which the employer should be familiar in order to expedite delivery of the account numbers to employees are set forth below:

1. *Corrections.*—All applications for correction of data previously furnished by the employee as a basis for the issuance of the account number, or correction in the account number card should be made over the signature of the employee concerned. This includes changes in names on account of marriage. The employee should prepare a corrected Form CER-1, inserting the correct information in all cases. The form should also show the word "correction" at the top of the form. The employee's account number should be shown under Item 14, if he has been assigned one. All applications for corrections in records (Form CER-1) should be forwarded to the Bureau of Accounts, Railroad Retirement

Board, Washington, D. C. If the correction involves a change of the name on the account number card, this card should be returned with the Form CER-1 and a corrected Account Card will be forwarded to the employer for delivery to the employee.

2. *Applications for duplicate account number cards.*—Applications for duplicate account number cards will be made on Form CER-1 over the signature of the employee. Applications for duplicate account number cards should be addressed to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C. In all applications for duplicate account number cards the reason should be indicated in the answer to question 14 as to why a duplicate card is necessary. Usually this will be because the original has been lost. If insufficient room is available in which to supply this explanation, a supplementary statement should be attached.

3. *Cancellations.*—The question of cancellations of account numbers for employees who hold two or more numbers should be handled as follows: If an employee holds two or more numbers, the first number issued, regardless of origin, should be retained by him, and subsequent account number cards should be picked up from the employee and forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C., with a letter of explanation indicating the account number which was retained by the employee.

4. *Assignment of numbers to former employees who have left the service before receiving an account number.*—

(a) If an employee applies for an account number on Form CER-1 but leaves the service of his employer before receiving his account number card, every possible effort should be made to deliver the employee's account number card to him. Where such delivery is impossible, the account number card should be forwarded to the Bureau of Accounts, Railroad Retirement Board, for filing and for reference in case of future inquiries concerning such number.

(b) If an employee leaves the service of his employer before having applied for an account number, an effort should be made to locate the former employee and have him prepare Form CER-1, at the same time getting his mailing address for delivery of account number upon assignment. If the former employee cannot be located, the employer should prepare Form CER-1, inserting all available information concerning the employee, including any information that might be helpful to subsequent identification even though not provided for by the form. This type of application should clearly state on Line 14 that the employer filed the Form CER-1 because he was unable to locate the former employee. The signature of the employer should be entered on Line 16, followed by the word "employer." If signature is stamped or typed, it should be initialed. If the employer cannot furnish the complete information called for on CER-1, an account number may be assigned subject to the minimum requirement of the name, place of employment, occupation, race and sex.

Employers who are supplied with Forms OA-702 should prepare this form and forward it without detaching the identification card to the Bureau of Accounts, Railroad Retirement Board, accompanied by the CER-1. The lower portion of the identification card should be noted "Undeliverable."

5. *Employees who refuse to sign CER-1.*—Where employees refuse to sign Forms CER-1 for religious or other reasons, the necessary information should be secured from employee, if possible. If the employee refuses any information, all data available to the carrier should be inserted on both the Form CER-1 and the Form OA-702, if in use, together with an explanation such as "Employee refuses to sign—religious conviction," or whatever the reason may be. The account number card should be delivered to the employee. Form CER-1 and Form OA-702 should be forwarded to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C.

6. *Employees who previously submitted application for an account number not yet received.*—An employee who has previously submitted an application Form CER-1 or SS-5 but has not received an account number should prepare Form CER-1, indicating on Line 14 the name of the employer for whom he was working at the time the original application was filed. All CER-1 forms of this type should be forwarded immediately to the Bureau of Accounts, Railroad Retirement Board, Washington, D. C. If our alphabetical files show that the employee has been assigned an account number, either the original account number card or a duplicate bearing the account number will be mailed to the present employer for delivery to the employee concerned. If a check develops the fact that no number has been assigned the employee, the CER-1 will be treated as an original and a number assigned and mailed to the employer for delivery to the employee. If the account number is not received by the date reports are prepared, the account number column of Form BA-3 should be left blank and the employees without numbers re-listed on additional sheets of Form BA-3, as prescribed under Section A, Paragraph 3, "Employee Account Number."

7. *Account number cards undelivered because of death of employee.*—If an employee dies before an account number card is received, the account number card should be delivered to his wife or next surviving relative. If this is impossible, make appropriate notation on the account number cards and forward to the Bureau of Accounts, Railroad Retirement Board, where they will be filed.

These Regulations are adopted by the Board pursuant to the authority conferred by Sections 8 and 10 of the Railroad Retirement Act of 1937.

By direction of the Board.

[SEAL]

R. B. BRONSON, *Secretary.*

DECEMBER 31, 1937.

[F. R. Doc. 38-31; Filed, January 4, 1938; 12:25 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

SECURITIES ACT OF 1933

ADOPTION OF RULE 170 UNDER ARTICLE 6

The Securities and Exchange Commission, acting pursuant to authority conferred upon it by the Securities Act of 1933, as amended, particularly Section 19 (a) thereof, and deeming such action necessary to carry out the provisions of the Act and necessary and appropriate in the public interest and for the protection of investors, hereby takes the following action:

The following new rule is adopted, to be inserted under a new Article, Article 6, of the "General Rules and Regulations under the Securities Act of 1933" as follows:

Article 6. Prohibition of Use of Certain Financial Statements

RULE 170. Prohibition of use of certain financial statements.—Financial statements which purport to give effect to the receipt and application of any part of the proceeds from the sale of securities for cash shall not be used unless the sale of such securities is underwritten and the underwriters are to be irrevocably bound, on or before the date of the public offering, to take the issue. The caption of any such financial statement shall clearly set forth the names of the underwriters and the assumptions upon which such statement is based. The caption shall be in type at least as large as that used generally in the body of the statement.

The foregoing action shall be effective March 1, 1938.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-32; Filed, January 4, 1938; 12:39 p. m.]

SECURITIES EXCHANGE ACT OF 1934

ADOPTION OF RULE MC9

The Securities and Exchange Commission, deeming it necessary for the execution of the functions vested in it and necessary and appropriate in the public interest and for the protection of investors so to do, pursuant to authority conferred upon it by the Securities Exchange Act of 1934, as amended, particularly Sections 15 (c) and 23 (a) thereof, hereby adopts the following rule:

RULE MC9. Use of pro forma balance sheets.—The term "manipulative, deceptive, or other fraudulent device or contrivance", as used in Section 15 (c) of the Act, is hereby defined to include the use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

The foregoing action shall be effective March 1, 1938.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-33; Filed, January 4, 1938; 12:39 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 3rd day of January, 1938.

[File No. 1-1530]

IN THE MATTER OF TECK-HUGHES GOLD MINES, LTD. COMMON STOCK, PAR VALUE \$1.00

ORDER SETTING HEARING ON APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

The Teck-Hughes Gold Mines, Ltd., pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule JD2 promulgated thereunder, having made application to the Commission to withdraw its Common Stock, Par Value \$1.00, from listing and registration on the New York Curb Exchange; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10:00 A. M., on Wednesday, February 2, 1938, in Room 1103, Securities and Exchange Commission Building, 1778 Pennsylvania Avenue NW., Washington, D. C., and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Charles S. Moore, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 38-34; Filed, January 4, 1938; 12:39 p. m.]



BEAL & McFARLAND, CHAS. C. CHAS.

General Land Office

State of Texas

San Antonio

COUNTER# 13194

Sketch File No.

"24"

Aransas County

Aransas Migratory Waterfowl
Refuge - Federal Register

January 5, 1938

Filed Jan 15 1938

WM. H. McDONALD, Com'r

J. L. Woodland
File Clerk

Descriptive: in Aransas &
Refugio Counties
Jan 5, 1938