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of Agriculture on May 8, 1936<sup>1</sup> under the authority vested in him by the act, and upon the basis of the recommendation and report of the control committee established under the said order, the provisions of article III [§ 908.4, T. 7, Ch. IX, CFR] of the order regulating the handling of watermelons in Florida, Georgia, North Carolina, and South Carolina, are hereby suspended for a period beginning April 1, 1940, and ending March 31, 1941.

In witness whereof the undersigned has executed this order in duplicate and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, this 21st day of March 1940.

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

[F. R. Doc. 40-1194; Filed, March 22, 1940;  
9:19 a. m.]

## TITLE 9—ANIMALS AND ANIMAL PRODUCTS

### CHAPTER II—AGRICULTURAL MARKETING SERVICE

#### NOTICE UNDER PACKERS AND STOCKYARDS ACT<sup>2</sup>

MARCH 21, 1940.

TO HOWARD RASER,  
Doing business as Bozeman Livestock Commission Company, Bozeman, Mont.

Notice is hereby given that after inquiry, as provided by Section 302 (b) of the Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 202 (b)), it has been ascertained by me that the stockyard known as the Bozeman Livestock Commission

Company, at Bozeman, State of Montana, is subject to the provisions of said Act.

The attention of stockyard owners, market agencies, dealers, and other persons concerned is directed to Sections 303 and 306 (7 U.S.C. Secs. 203 and 207) and other pertinent provisions of said Act and the rules and regulations issued thereunder by the Secretary of Agriculture.

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

[F. R. Doc. 40-1199; Filed, March 22, 1940;  
11:54 a. m.]

## TITLE 21—FOOD AND DRUGS

### CHAPTER I—FOOD AND DRUG ADMINISTRATION

[Docket No. FDC-13]

IN THE MATTER OF PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE UPON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED AMENDING "REGULATIONS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT FOR THE LISTING OF COAL-TAR COLORS, CERTIFICATION OF BATCHES THEREOF, AND PAYMENT OF FEES FOR SUCH SERVICE", (A) BY CHANGING: (1) CERTAIN SPECIFICATIONS OF CERTAIN LISTED COLORS AND CERTAIN MIXTURES OF SUCH COLORS; (2) CERTAIN REQUIREMENTS AS TO THE SIZES OF SAMPLES; (3) THE LABELING FOR CERTAIN MIXTURES; (4) THE FEES TO BE PAID FOR THE SERVICE OF CERTIFICATION; AND (B) BY THE LISTING OF ADDITIONAL COAL-TAR COLORS

#### Order of the Secretary Promulgating Regulations

Pursuant to, and under and by virtue of, the authority and direction of the Federal Food, Drug, and Cosmetic Act [52 Stat. 1040-1055; 21 U.S.C. (Supp. IV) 301-392], Section 406 (b) [52 Stat. 1049; 21 U.S.C. 346 (b)]; Section 504 [52 Stat. 1052; 21 U.S.C. 354]; Section 604 [52 Stat. 1055; 21 U.S.C. 364]; Section 701 (a), (e) [52 Stat. 1055; 21 U.S.C. (Supp. IV) 371 (a), (e)]; Section 706 [52 Stat. 1058; 21 U.S.C. 376], and based upon substantial evidence of record at the hearing in the above-entitled matter, detailed findings of fact are made, as follows:

#### Findings of Fact

##### A. PROPOSED COLOR D&C RED NO. 38—CHEMICAL ASPECTS

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

2. *Intermediates chemically combined in color.* The coal-tar color is formed by interaction of the intermediates, which, when present in proper proportion and chemically combined constitute a part of the color.

3. *Intermediates not chemically combined—Impurities.* When the conditions set forth in paragraph 2 do not obtain, one of the intermediates may be present

in the finished product in free or chemically uncombined form; and in such form the intermediates are organic impurities in the color.

4. *D&C Red No. 38 a coal-tar color.* The color proposed as D&C Red No. 38 is a coal-tar color.

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

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

7. *Practicable limit for uncombined intermediates.* It is practicable in good manufacturing practice to restrict either of such uncombined intermediates to  $\frac{2}{10}$  of 1 percent.

8. *Impurities necessarily occurring.* Matter foreign to the pure dye, termed "impurities", necessarily occurs to some extent in the manufacture of this color under good manufacturing practice; and when so occurring such impurities are a part of the color.

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

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

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

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

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

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

15. *Practicable limit for sulfated ash.* It is practicable in good manufacturing practice to so manufacture the color that sulfated ash does not exceed 1½ percent.

16. *Nitrobenzene determinative of impurity.* The color is soluble in nitroben-

<sup>1</sup> 1 F.R. 389.

<sup>2</sup> Modifies list posted stockyards 9 CFR 204.1.



zene; and any matter therein which is insoluble in nitrobenzene is an impurity.

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

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

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

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

Sulfated ash, not more than 1.5 percent;

Matter insoluble in nitrobenzene, not more than 0.5 percent;

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

3-Hydroxy-N-(m-nitrophenyl)-2-naphthamide; not more than 0.2 percent; and

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

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

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

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

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

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

22. *Necessity for restricting ether extracts in lakes.* The presence of ether extracts, which are a measure of certain organic impurities that are liable to occur in the lakes described in paragraph

20 hereof, makes necessary the restriction of ether extracts.

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

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

25. *Practicable limit for soluble chlorides and sulfates in lakes.* It is practicable, in good manufacturing practice, to restrict soluble chlorides and sulfates in the lakes described in paragraph 20 hereof, and expressed by chemical analysts as sodium salts, to 2 percent.

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

27. *Practicable limit for inorganic matter insoluble in hydrochloric acid in lakes.* It is practicable in good manufacturing practice to restrict inorganic matter insoluble in hydrochloric acid in the lakes described in paragraph 20 hereof to  $\frac{1}{10}$  of 1 percent.

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

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

#### Specifications

Ether extracts, not more than 0.3 percent;

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

Inorganic matter, insoluble in HCl, not more than 0.5 percent; and

Intermediates, not more than 0.1 percent.

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

29. *Such lakes harmless and suitable for use when applied to shell eggs.* Lakes made as described in paragraph 28 and meeting the specifications set forth therein, as well as the other specifications of the regulations applicable to colors listed in § 135.03 of the regula-

tions, are harmless and suitable for use when applied to shell eggs.

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

30. *Nomenclature in regulations for colors not practicable for lakes.* That the applying to each lake of two names, each being the listed name of the color from which the lake is made and each lake bearing different symbols dependent upon whether the lake is listed under § 135.03 or § 135.04 is impracticable and liable to be confusing. [To illustrate, the names of lakes now listed in the regulations are composed of (1) the listed name of the color from which the lake is prepared (except that, if the lake is made under § 135.04 from a color listed under § 135.03, the symbol FD&C is changed to the symbol D&C), (2) the name of the basic radicle combined in such color, and (3) the word "Lake". The lakes made as described in paragraph 28 hereof are now listed under § 135.04 with names bearing the symbol D&C. Such lakes, if listed under the provisions of § 135.03 with names composed in the manner described in the first sentence within the brackets herein, would be listed under names bearing the symbol FD&C].

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

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

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

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

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



of one-quarter pound, in most cases, is sufficient.

35. *Sizes of samples of mixtures and repacks.* A one-quarter pound sample of a mixture or a repack is, in many cases, larger than is necessary for the analyses made in connection with its certification; and, except in the case of mixtures containing 2.0 percent, or less, of pure dye, where one-quarter of a pound is always necessary, a sample of one-eighth of a pound will, in most cases, be sufficient.

36. *Label declaration of percentage of pure dye.* It is impracticable in good manufacturing practice to manufacture coal-tar colors containing uniform percentages of pure dye, different batches of the same color necessarily varying to some degree. A proper label declaration of the percentage of pure dye may be made either by declaring the percentage stated in the certificate covering the color, or by declaring a minimum percentage below which the actual percentage does not fall and above which it does not vary to an unreasonable degree.

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

38. *Lot number on label in certain cases.* Problems and difficulties for the manufacturer arise under § 135.11 (a) of the regulations, requiring the lot number of the batch to be stated on the label, when the color to be labeled is a mixture and is in a package which contains not more than two fluid ounces, if the mixture is a liquid, or not more than two avoirdupois ounces if the mixture is solid, semi-solid, or viscous.

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

#### Conclusions and Order

Based upon the foregoing findings of fact, it is concluded that the "Regulations Under The Federal Food, Drug, and Cosmetic Act For The Listing of Coal-Tar Colors, Certification of Batches Thereof, and Payment of Fees for Such Service", promulgated by the Secretary of Agriculture by order dated May 4, 1939, published in the FEDERAL REGISTER May 9,

1939 (Vol. 4, No. 89, pp. 1922-1947), as amended by Regulations promulgated by the Secretary of Agriculture by order dated September 14, 1939, published in the FEDERAL REGISTER September 16, 1939 (Vol. 4, No. 179, pp. 3931-3940), be, and they are hereby, amended, (A) by changing: (1) Certain specifications of certain listed colors and certain mixtures of such colors; (2) certain requirements as to the sizes of samples; (3) the labeling for certain mixtures; (4) the fees to be paid for the service of certification; and (B) by the listing of additional coal-tar colors; as specifically set out hereinafter in amendments to such Regulations; and the said amendments are hereby promulgated, as follows:

#### AMENDMENTS TO REGULATIONS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

REGULATIONS AMENDING §§ 135.03, 135.04, 135.06, 135.08, 135.10, 135.11 AND 135.15 OF "REGULATIONS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT FOR THE LISTING OF COAL-TAR COLORS, CERTIFICATION OF BATCHES THEREOF, AND PAYMENT OF FEES FOR SUCH SERVICE," (A) BY CHANGING: (1) CERTAIN SPECIFICATIONS OF CERTAIN LISTED COLORS AND CERTAIN MIXTURES OF SUCH COLORS; (2) CERTAIN REQUIREMENTS AS TO THE SIZES OF SAMPLES; (3) THE LABELING FOR CERTAIN MIXTURES; (4) THE FEES TO BE PAID FOR THE SERVICE OF CERTIFICATION; AND (B) BY THE LISTING OF ADDITIONAL COAL-TAR COLORS

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

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

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

"A batch of a straight color listed herein may be certified, in accordance with the provisions of these regulations, for use in food (subject to the restrictions prescribed by subsection (c) hereof), drugs, and cosmetics, if such batch conforms to the requirements of § 135.02 and to the specifications herein set forth for such color."

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

#### "Lakes

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

#### "Specifications

"Ether extracts, not more than 0.3 percent.

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

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

"Intermediates, not more than 0.1 percent."

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

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

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

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

"Third, the word 'Lake'.

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

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

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

#### "D&C RED NO. 38

#### "Specifications

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

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

"Sulfated ash, not more than 1.5 percent.

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

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

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

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

6. § 135.04 is amended by striking out the sentence beginning with the words "Any lake made by" following the caption "Lakes" in subsection (a) and inserting in lieu thereof the following:

"Any lake, other than those listed in § 135.03, made by extending on a substratum of alumina, blanc fixe, gloss white, clay, titanium dioxide, zinc oxide, talc, rosin, aluminum benzoate, or any combination of two or more of these, (1)



one of the straight colors (except lakes) listed in § 135.03 or hereinbefore listed in this subsection, which color is a salt in which is combined the basic radicle sodium, potassium, aluminum, barium, calcium, strontium, or zirconium; or (2) a salt prepared from one of the straight colors (except lakes) listed in § 135.03, or hereinbefore listed in this subsection, by combining such color with the basic radicle sodium, potassium, aluminum, barium, calcium, strontium, or zirconium."

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

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

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

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

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

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

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

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

11. Subsection (b) of § 135.08 is amended by striking out the word "and" at the end of clause (1); by changing the period at the end of clause (2) to a semicolon and inserting the word "and"; and by changing the first word of clause (3) to read "in".

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

thereof the words "one-fourth pound sample".

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

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

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

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

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

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

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

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

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

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

19. Subsection (a) of § 135.11 is amended by changing the period at the end of clause (4) to a semicolon and inserting the following:

"or in case such batch contains any lake listed in section 135.03 or any diluent permitted by clause (3) of § 135.06 (a) only because such batch is for use in coloring

shell eggs, the statement 'Not for use in coloring any food except shell eggs'."

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

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

"(1) the percentage of pure dye shown in the certificate covering such color; or  
"(2) the minimum percentage by weight of pure dye in such color.

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

*It is ordered*, That the foregoing amendments to the said regulations, which are hereby issued and promulgated, become and be effective on the 90th day after the issuance of this order, and the filing of the same with the Archivist of the United States for publication in the FEDERAL REGISTER: *Provided, however*, That the amendments hereby promulgated may be availed of from the date hereof;

*And it appearing*, That the charging of fees for certification now provided in § 135.15 (a) of the said regulations results in inequities which may be avoided if fees for certification be charged as hereinafter set forth, and that the fees to be charged for the admitting to listing and certification of coal-tar colors in accordance with the provisions of § 135.15 of the said regulations as hereinafter amended are such as are necessary to provide, maintain and equip an adequate service for such purposes;

*It is further ordered*, That, effective upon the filing of this order with the Archivist of the United States for publication in the FEDERAL REGISTER, § 135.15 of the said regulations be amended by changing subsection (a) thereof to read as follows:

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

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

Done at Washington, D. C., this 22d day of March 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

[F. R. Doc. 40-1200; Filed, March 22, 1940; 11:54 a. m.]



**TITLE 33—NAVIGATION AND NAVIGABLE WATERS**

**CHAPTER I—COAST GUARD, DEPARTMENT OF THE TREASURY**

**PART 2—REGULATION OF WHALING**

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2.19	Previous regulations superseded.

**JOINT REGULATIONS OF THE SECRETARY OF THE TREASURY AND THE SECRETARY OF THE INTERIOR CONCERNING WHALING**

§ 2.0 *Preamble.* Pursuant to the authority of the Whaling Treaty Act of May 1, 1936, 49 Stat. 1246 (U.S.C., Sup. IV, title 16, secs. 901-915), to give effect to the Convention between the United States and certain other countries for the regulation of whaling, concluded at Geneva, September 24, 1931, signed on the part of the United States, March 31, 1932, and effective January 16, 1935 (49 Stat. pt. 2, 3079); and in accordance with the International Agreement for the Regulation of Whaling, signed at London, June 8, 1937, and effective May 7, 1938 (52 Stat. 1460); and the Protocol Amending the International Agreement of June 8, 1937, signed at London, June 24, 1938, and effective March 30, 1939 (53 Stat. 1794); and pursuant to other applicable provisions of law, we, the Secretary of the Treasury and the Secretary of the Interior, having determined after due investigation, when and to what extent, if at all, and by what means whales may be taken or transported, hereby make, prescribe, and promulgate the following joint regulations:\*

§ 2.1 When used in these regulations, the term—

(a) "Convention" means the Convention between the United States and cer-

\* §§ 2.1 to 2.19, inclusive, issued under authority contained in the Whaling Treaty Act of May 1, 1936, 49 Stat. 1246 (U.S.C., Sup. IV, title 16, secs. 901-915), to give effect to the Convention for the regulation of whaling, effective January 16, 1935, 49 Stat., Pt. 2, 3079, the International Agreement for the Regulation of Whaling, effective May 7, 1938, 52 Stat. 1460, and the Protocol Amending the International Agreement, effective March 30, 1939, 53 Stat. 1794.

tain other countries for the regulation of whaling, concluded at Geneva, September 24, 1931, signed on the part of the United States, March 31, 1932, and effective January 16, 1935 (49 Stat. pt. 2, 3079).

(b) "Act" means the Whaling Treaty Act of May 1, 1936, 49 Stat. 1246 (U.S.C., Sup. IV, title 16, secs. 901-915).

(c) "Inspector" means any officer of the United States Coast Guard assigned to duty in connection with whaling operations by the Commandant, United States Coast Guard.

(d) "Factory ship" means a ship in which or on which whales are treated whether wholly or in part.

(e) "Whale catcher" means a ship used for the purpose of hunting, taking, towing, holding on to, or scouting for whales.

(f) "Land station" means a factory on the land, or in the territorial waters adjacent thereto, or a factory ship which remains moored in territorial waters in one position during a whaling season, in which or at which whales are treated whether wholly or in part.

(g) "Length" in relation to any whale means the distance measured on the level in a straight line between the tip of the upper jaw and the notch between the flukes of the tail.

(h) "Baleen whale" means any whale having blades of whalebone attached to the roof of its mouth.

(i) "Right whale" means any whale known by the name of Atlantic right whale, Arctic right whale, Biscayan right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, pigmy right whale, southern pigmy right whale, or southern right whale.

(j) "Gray whale" means any whale known by the name of gray whale, California gray, devil fish, hard head, mussel digger, gray back or rip sack.

(k) "Blue whale" means any whale known by the name of blue whale, Sibbald's rorqual, or sulphur bottom.

(l) "Fin whale" means any whale known by the name of common finback, common rorqual, common finner, finback, fin whale, herring whale, razorback, or true fin whale.

(m) "Humpback whale" means any whale known by the name of bunch, humpback, humpback whale, humpbacked whale, hump whale, or hunchbacked whale.

(n) "Sei whale" means any whale known by the name of sei whale, Bryd's whale, pollock whale, or Rudolphi's whale.

(o) "Least rorqual whale" means any whale known by the name of least rorqual whale, Davidson's piked whale, little piked whale, Minke's whale, or sharp-nosed finner.

(p) "Calf" means any suckling baleen whale having a length less than that prescribed by section 4 of the Act.\*

§ 2.2 (a) For the purposes of these regulations immature whales shall be

deemed to include whales having a length less than the following dimensions, and of greater length than calves:

	<i>Feet</i>
Blue whales.....	70
Fin whales.....	55
Humpback whales.....	35
Sei whales.....	40
Least rorqual whales.....	22

(b) For the purposes of these regulations the suckling calves of sei and least rorqual whales shall be deemed to include whales having a length less than the following dimensions:

	<i>Feet</i>
Sei whales.....	30
Least rorqual whales.....	18*

§ 2.3 The provisions of the Convention, the Act, and these regulations apply to any national, vessel or boat of the United States, or whale catcher operating pursuant to a whaling license under the Act in any waters in the world, and to any person, vessel or boat in the United States, its territories or possessions, including the territorial waters thereof: *Provided*, That in enforcing the provisions of the Convention, the Act, and these regulations no whaling vessel or whale, or parts or products thereof, which may be liable to seizure, shall be seized within the territorial waters of any other sovereign power, its possessions, territories, or colonies.\*

§ 2.4 Except as provided in Articles 5 to 9 inclusive of these regulations, the hunting, taking, capturing, killing, possession, sale, purchase, shipment, transportation, carriage, import, or export of any baleen whale, or the possession, sale, purchase, shipment, transportation, carriage, import or export of any part or product thereof, is compatible with the terms of the Convention and is permitted by these regulations.\*

§ 2.5 The hunting, taking, capturing, killing, possession, sale, purchase, shipment, transportation, carriage, import, or export of any right or gray whale, or of any female baleen whale accompanied by a calf, or of any calf, or of any immature whale, or the possession, sale, purchase, shipment, transportation, carriage, import, or export of any part or product thereof, is prohibited by these regulations, except that blue whales of not less than 65 feet, and fin whales of not less than 50 feet in length may be taken for delivery to land stations provided that the meat of such whales is to be used for local consumption as human or animal food.\*

§ 2.6 (a) The use of a factory ship, or a whale catcher operated in connection therewith, for the purpose of taking or treating baleen whales in any waters south of 40° South Latitude, except during the period from the 8th day of December to the 7th day of March following, both days inclusive, is prohibited by these regulations, except that the treatment of whales which have been taken during the open season may be completed after the end of the open season; and the use of a factory ship, or a whale catcher operated in connection therewith,



for the purpose of taking or treating baleen whales in the waters south of 40° South Latitude from 70° West Longitude westwards as far as 160° West Longitude for a period of two years from the 8th day of December, 1938, is prohibited by these regulations.

(b) The use of a factory ship, or a whale catcher operated in connection therewith, for the purpose of taking or treating humpback whales in any waters south of 40° South Latitude prior to the 30th of September 1940, is prohibited.\*

§ 2.7 (a) The use of a land station, or of a whale catcher operated in connection therewith, for the purpose of taking or treating baleen whales in any area or in any waters for more than six months in any period of twelve months, such periods of six months to be continuous, is prohibited by these regulations. No factory ship shall be operated as a land station.

(b) The use of a land station, or of a whale catcher operated in connection therewith, in the territorial waters of the United States, except during the period from April 1 to October 31, both dates inclusive, is prohibited by these regulations.\*

§ 2.8 The use of a factory ship, or a whale catcher operated in connection therewith, for the purpose of taking or treating baleen whales in any of the following areas, is prohibited by these regulations:

(1) in the waters north of 66° North Latitude; except that from 150° East Longitude eastwards as far as 140° West Longitude the taking or killing of whales by such ship or catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(2) in the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(3) in the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(4) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(5) in the Indian Ocean and its dependent waters north of 40° South Latitude.\*

§ 2.9 The provisions of Articles 5 to 8 inclusive of these regulations shall not apply—

(a) To whales killed, taken, or treated for scientific purposes for or on behalf of the United States Government under a special permit issued by the Secretary of the Interior: *Provided*, That, in case of the importation or exportation of any such whale or the product of any such whale, including oil, meat, bone, meal, or fertilizer, competent evidence that the Secretary of the Interior has authorized the killing, taking or treating thereof, must be presented to the Collector of

Customs at the port of importation or exportation.

(b) To whales killed, taken, or treated by natives or Eskimos engaged in whaling who use only canoes or other native craft propelled by oars or sails, do not carry firearms, are not employed by others than natives or Eskimos, and are not under contract to deliver products of their whaling to any third person: *Provided*, That, in the case of the importation or exportation of any such whale or the product of any such whale, including oil, meat, bone, meal, or fertilizer, the Collector of Customs for the Customs Collection District of Alaska (No. 31) may require, and all other collectors of customs for all other customs collection districts shall require, the presentation at the port of importation or exportation of satisfactory evidence of such facts.\*

§ 2.10 (a) At the time when each whale is caught by a whale catcher attached to a factory ship, a report thereof by radio shall be made from the whale catcher to the factory ship. A record of these messages shall be maintained on the factory ship.

(b) Whales caught by such whale catchers shall be marked as follows:

A Roman numeral to indicate the number of the whale catcher shall be cut on the tail. Under this numeral, one or more horizontal strokes shall be cut to indicate the number of each whale taken by the whale catcher on that day, e. g. No. 2 whale catcher shall mark the first whale taken on each day:

II

the fifth whale taken:

II

III

No. 6 whale catcher shall mark the third whale taken,

VI

III

The day shall commence at midnight and end at the following midnight.\*

§ 2.11 (a) A tally board shall be maintained on the flensing platform of each factory ship or land station, on which shall be marked the following particulars of each whale as it is being flensed:

Time hauled up for flensing.

Number of whale catcher which took whale and number of that whale as marked on its tail.

Species.

Length.

Sex.

Length and sex of foetus.

Milk-filled or lactating.

(b) The official catch log book or record shall be written up every twelve hours from the information on the tally board and certified by the inspector. The inspector shall note any discrepancies or inaccuracies in the log book or record prior to certification thereof. In writing

up the catch log book or record, the date of each day shall be taken as extending from midnight to midnight, and the international 24-hour system of time shall be used.\*

§ 2.12 The length of a whale shall be measured as accurately as possible with a steel tapemeasure, to be provided by the owners of the factory ship or land station, fitted at the zero end of the tape with a spiked handle which can be stuck into the flensing platform opposite the notch between the tail flukes of the whale, the tapemeasure to be stretched in a straight line parallel with the whale's body and read opposite the tip of the upper jaw of the whale, or vice versa. Measurements shall be logged to the nearest foot; e. g., a whale 75'6" or longer, and less than 76'6" shall be logged as 76'; except that no measurement shall be logged to the nearest foot when to do so would cause a calf to be logged as of legal length.\*

§ 2.13 The fullest possible use shall be made of the carcasses of all whales taken. The oil shall be extracted by boiling or otherwise, from all blubber and from the head and tongue and, in addition, from the tail as far forward as the outer opening of the lower intestine, of all whales delivered to the factory ship or land station.\*

§ 2.14 (a) Each factory ship and land station shall have such inspectors on the ship or at the station as may be assigned to such duty by the Commandant, United States Coast Guard. The owner of any factory ship or land station shall notify the Commandant, United States Coast Guard of the date on which the ship will depart on any whaling cruise, or of the date on which the station will begin whaling operations, at such time in advance thereof as will permit inspectors to report on the ship prior to its departure, or to report at the station before it begins whaling operations.

(b) The master or person in charge of any factory ship or land station shall provide inspectors with suitable and adequate subsistence and accommodations. For every day that each inspector is provided with subsistence and accommodations as aforesaid, he shall pay to the master or person in charge of the factory ship or land station a pro-rata share of the cost of subsisting the personnel of the factory ship or land station, not to exceed one dollar per day.

(c) Inspectors are authorized to be present at any whaling operations conducted by a factory ship, land station, or any vessel operated in connection therewith; to address inquiries to the master, person in charge, members of the crew, or any other employee of any such ship, station or vessel concerning such operations; to measure any whales taken; and to inspect and examine any such whales or the parts or products thereof.

(d) Inspectors shall report as soon as practicable to the Commandant, United



States Coast Guard, the violation of any provision of the Convention, the Act, or these regulations, forwarding a complete statement of all the facts relative to the violation. If the violation involves the taking of any whale, the report shall include the amount of oil and other products derived from such whale.\*

§ 2.15 (a) The master or person in charge of any factory ship or land station shall so regulate and restrict the taking of baleen whales by whale catchers attached to such factory ship or land station, that no whale carcass shall remain in the sea for a longer period than 33 hours from the time of killing to the time when it is taken up on the deck of the factory ship or land station for treatment.

(b) The master or person in charge of any factory ship or land station shall keep an accurate daily record of whaling operations including (1) the number of whales taken and the number of whales injured or killed and not recovered by the whale catchers; and also the time and place of taking, injuring, or killing such whales; (2) the species, sex, and length of each whale taken, and if any such whale contains a foetus, the length and sex, if ascertainable, of the foetus; (3) whether any whale taken was producing milk; and (4) the aggregate amounts of oil of each grade and the quantities of meal, fertilizer and other products derived from whales taken; and also shall forward a signed and dated report containing the foregoing data to the Commissioner of the Bureau of Fisheries within six weeks after the close of each whaling season. The master or person in charge of any factory ship or land station shall have available in his possession copies of the contracts of the gunners and members of the crew of such ship or station or any whale catcher operated in connection therewith. He shall have available in his possession also an accurate account showing the monthly pay of such persons and the factors upon which such pay is based and shall furnish within three months after the close of each whaling season, to the Secretary of the Interior, an account showing the total emolument of each gunner and member of the crew and the manner in which the emolument of each of them is calculated.

(c) The master or person in charge of any factory ship or land station shall permit any officer authorized to enforce the provisions of the Convention, the Act, or these regulations, to examine and inspect any such record, contract, or account, and to make copies thereof, or excerpts therefrom at any time; shall furnish any such officer with such other data or information as may be required by the Secretary of the Treasury or the Secretary of the Interior pursuant to law and shall render all possible assistance to, and fully cooperate with, any such officer.\*

§ 2.16 Nothing in these regulations shall be construed as applying to dolphins

or porpoises, or permitting any act contrary to the laws or regulations of any State or Territory made for the purpose of giving further protection to whales when such laws or regulations are not inconsistent with the Convention, or the Act.\*

§ 2.17 Nothing in these regulations shall be construed to limit or restrict the exercise of any authority conferred upon such inspectors or any other officers of the United States by any other provision of law or regulation.\*

§ 2.18 Copies of the Act and of these regulations shall be posted in a conspicuous and accessible place on each factory ship and at each land station.\*

§ 2.19 The joint regulations concerning whaling approved December 20, 1938,<sup>1</sup> are hereby superseded.\*

[SEAL] A. J. WIRTZ,  
Acting Secretary of the Interior.

[SEAL] HERBERT E. GASTON,  
Acting Secretary of the Treasury.

Approved:

FRANKLIN D. ROOSEVELT.  
THE WHITE HOUSE,  
March 13, 1940.

[F. R. Doc. 40-1197; Filed, March 22, 1940;  
11:13 a. m.]

### Notices

#### DEPARTMENT OF THE INTERIOR.

##### Bituminous Coal Division.

[Docket No. 492-FD]

#### IN THE MATTER OF THE APPLICATION OF FREEPORT BRICK COMPANY FOR EXEMPTION TION

#### ORDER GRANTING RENEWAL OF EXEMPTION

The Freeport Brick Company, Applicant herein, having on June 16, 1937 filed with the National Bituminous Coal Commission a verified application for exemption with respect to certain bituminous coal produced and consumed by the Applicant, or produced and transported by the Applicant to itself for consumption by it in its manufacture of brick; and

The Commission, having on October 17, 1938 entered an order pursuant to such application in Docket No. 492-FD, ordering that the provisions of Section 4-II-(1) of the Bituminous Coal Act of 1937 apply to the bituminous coal produced by the Applicant at its mine located near Freeport, in Armstrong County, Pennsylvania, which is consumed by the Applicant in the manufacture of brick in its plant located at Freeport, Pennsylvania, and that such coal shall not be deemed subject to the provisions of Section 4 of the Bituminous Coal Act of 1937, and further ordering the Applicant to apply annually thereafter, and at such other times as the Commission may require for renewal of said order,

and to file such accompanying reports as will enable the Commission to determine whether the facts as found in said order continue to exist; and

Applicant, having on March 5, 1940, filed with the Director of the Bituminous Coal Division a verified application for renewal of said order, which application contains a statement of the quantity of coal produced by the Applicant during the year preceding the filing of the application for renewal, at its mine located in Armstrong County, Pennsylvania, and the portion thereof which was consumed by the Applicant in its manufacture of brick, and which application also contains a statement that the facts set forth in the application of June 16, 1937, remain unchanged; and

The Director, having determined that the conditions supporting the exemption granted by the order of October 17, 1938, continue to exist:

It is ordered, That the application filed by the Applicant for renewal of said order of October 17, 1938 be and the same is hereby granted;

Provided, however, That the said order dated October 17, 1938, and the exemption granted thereby and this renewal of said order, shall automatically terminate and expire:

1. Unless the Applicant, on or before February 21, 1941, files an application for renewal of said order;

2. Unless the Applicant, on or before October 21, 1940, files with the Director a verified report for the six-month period ending September 21, 1940, containing the following information, which the Director hereby finds to be necessary and appropriate to enable him to determine whether the conditions supporting the exemption granted to the Applicant continue to exist:

(a) The full name and business address of the Applicant, and the names and locations of the mines covered by the application;

(b) The total tonnage of bituminous coal produced by the Applicant during the preceding six months at such mines;

(c) The total tonnage of such production which was consumed by the Applicant and the nature and purpose of such consumption;

(d) A statement that all the facts set forth in the application of June 16, 1937, remain true and correct;

3. Unless the Applicant shall immediately notify the Director upon:

(a) Any change in the ownership of the mines from which the coal in question was produced or in the ownership of the plants or factories or other facilities at which the coal is consumed;

(b) Any change in the agency or instrumentality through which the coal is being produced on the date of this order.

It is further ordered, That the Director, at any time upon his own motion or

<sup>1</sup> 3 F.R. 3138.



upon the petition of any interested person, may direct the Applicant to show cause why the exemption granted by the order of October 17, 1938, should not be terminated. Any person filing such a petition shall serve a copy thereof upon the Applicant herein.

Dated, March 21, 1940.

[SEAL]

H. A. GRAY,  
Director.

[F. R. Doc. 40-1196; Filed, March 22, 1940;  
10:20 a. m.]

#### DEPARTMENT OF AGRICULTURE.

##### Sugar Division.

#### WAGE RATES FOR PRODUCTION, CULTIVATION, AND HARVESTING OF SUGARCANE AND PRICES FOR 1940 CROP IN HAWAII

#### NOTICE OF PUBLIC HEARING AND DESIGNATION OF PRESIDING OFFICER

Pursuant to the authority contained in subsections (b) and (d) of section 301 of the Sugar Act of 1937 (Public, No. 414, 75th Congress).

Notice is hereby given that a public hearing will be held at Honolulu, on the Island of Oahu, Territory of Hawaii, on April 1, 1940, at 9:30 a. m., in the Court

No. 58—2

Room of the Fourth Division of the First Judicial Circuit of the Territory of Hawaii, in the Judiciary Building of the Territory of Hawaii at Honolulu.

The purpose of the hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining, (1) pursuant to the provisions of subsection (b) of section 301 of the said act, fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane during the calendar year 1940 on farms with respect to which applications for payments under the act are made, and, (2) pursuant to the provisions of subsection (d) of section 301 of the said act, fair and reasonable prices for the 1940 crop of sugarcane to be paid, under either purchase or toll agreements, by processors who, as producers, apply for payments under the said act.

Such hearing, after being called to order at the time and place mentioned above, may for convenience be adjourned to such other place in the same city as the presiding officer may designate, and may be continued from day to day within the discretion of the presiding officer.

George W. Mills is hereby designated as presiding officer to conduct the foregoing hearing.

Done at Washington, D. C., this 21st day of March, 1940. Witness my hand

and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

[F. R. Doc. 40-1193; Filed, March 22, 1940;  
9:19 a. m.]

#### RAILROAD RETIREMENT BOARD.

#### NOTICE OF POSTPONEMENT OF HEARING ON PROPOSED REVISION OF REGULATIONS ON TIME LOST CLAIMS

Notice is hereby given to all persons interested that pursuant to the authority vested in me by Board Order 40-39, dated January 23, 1940, (5 F.R. 344-766-1118) the hearing to be held on proposed revision of regulations on time lost claims, scheduled for April 10, 1940, is postponed to Friday, April 12, 1940, at 10:00 a. m., at the offices of the Board, 10th and U Streets, Northwest, Washington, D. C. Any party interested therein may appear and may, prior thereto, on request, receive from the Chairman, copy of a statement on the proposed revision.

By Authority of the Board.

MURRAY W. LATIMER,  
Chairman.

Dated, March 21, 1940.

[F. R. Doc. 40-1195; Filed, March 22, 1940;  
10:11 a. m.]



