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The President

EXECUTIVE ORDER

AMENDING PARAGRAPH 7, SUBDIVISION I, SCHEDULE A OF THE CIVIL SERVICE RULES

By virtue of and pursuant to the authority vested in me by paragraph Eighth, Subdivision SECOND, section 2 of the Civil Service Act (22 Stat. 404), it is ordered that paragraph 7, Subdivision I, Schedule A of the Civil Service Rules be, and it is hereby, amended to read as follows:

"7. Any person employed in a foreign country or in the Virgin Islands, or in Puerto Rico when public exigency warrants, or in any island possession of the United States in the Pacific Ocean (except the Hawaiian Islands), or in the Philippine Islands, when in the opinion of the Civil Service Commission it is not practicable to treat the position as in the competitive classified service; but this paragraph shall not apply to any person employed in Canada or Mexico in the service of the Immigration and Naturalization Service, Department of Justice, or to any person employed in any foreign country by the Bureau of Customs of the Treasury Department."

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,

Nov. 7, 1940.

[No. 8585]

[F. R. Doc. 40-4791; Filed, November 8, 1940; 9:20 a. m.]

Rules, Regulations, Orders

**TITLE 16—COMMERCIAL PRACTICES
CHAPTER I—FEDERAL TRADE
COMMISSION**

[Docket No. 1897]

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

**IN THE MATTER OF MAF HAT WORKS, INC.,
ETC., ET AL.**

§ 3.69 (b) (1) *Misrepresenting oneself and goods—Goods—Composition:*

15 F.R. 3602.

§ 3.69 (b) (9) *Misrepresenting oneself and goods—Goods—Old, secondhand or reconstructed as new—Old and used as unused or new:* § 3.71 (a) *Neglecting, unfairly or deceptively, to make material disclosure—Composition:* § 3.71 (c) *Neglecting, unfairly or deceptively, to make material disclosure—Old and used as unused or new.* Representing, in connection with offer, etc., in commerce, of hats, (a) that hats composed in whole or in part of used or secondhand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of secondhand or used materials, or (b) representing in any manner that hats made in whole or in part from old, used or secondhand materials are new or are composed of new materials, prohibited; subject to the provision, however, that if sweat bands are not affixed to such hats then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Sup. IV, sec. 45b) [Cease and desist order, Maf Hat Works, Inc., etc., et al., Docket 1897, November 1, 1940]

In the Matter of Maf Hat Works, Inc., a Corporation, Trading Under Its Own Name and Also Trading as New System Hat Manufacturing Company, and Alex Milder, Individually and as an Officer of Maf Hat Works, Inc.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 1st day of November, A. D. 1940.

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answer of respondents, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commis-

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FEDERAL REGISTER

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sion (respondents not having filed brief, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That respondent Maf Hat Works, Inc., a corporation, trading under its own name and also trading as New System Hat Manufacturing Company, or trading under any other name or names, its officers, representatives, agents and employees, and respondent Alex Milder, individually and as an officer of said corporation, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hats in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies;

2. Representing in any manner that hats made in whole or in part from old, used or second-hand materials are new or are composed of new materials.

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

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-4797; Filed, November 8, 1940;
11:27 a. m.]

TITLE 24—HOUSING CREDIT

CHAPTER V—FEDERAL HOUSING ADMINISTRATION

PART 501—CLASS 1 AND CLASS 2 PROPERTY IMPROVEMENT LOANS UNDER SECTION 2, TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED, EFFECTIVE JULY 1, 1939

Section 501.11 (a) is hereby amended by adding at the end thereof the following:

If at any time during default a person primarily or secondarily liable for the repayment of any loan is a "person in military service", as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which he is in military service shall be excluded in computing the time within which claim must be made for reimbursement under the provisions of this Regulation.

PART 502—CLASS 3 PROPERTY IMPROVEMENT LOANS UNDER SECTION 2, TITLE I OF THE NATIONAL HOUSING ACT, AS AMENDED EFFECTIVE JULY 1, 1939

Section 502.11 (a) is hereby amended by adding at the end thereof the following:

If at any time during default the mortgagor is a "person in military service", as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which he is in such service shall be excluded in computing the one year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this Regulation.

Issued at Washington, D. C. this 21st day of October 1940.

STEWART McDONALD,
Federal Housing Administrator.

[F. R. Doc. 40-4802; Filed, November 8, 1940;
11:49 a. m.]

PART 522—REGULATIONS FOR MUTUAL MORTGAGE INSURANCE UNDER SECTION 203 OF THE NATIONAL HOUSING ACT

Section 522.13 is hereby amended by the addition of the following paragraph at the end thereof:

If at any time during default the mortgagor is a "person in military service", as such term is defined in the Soldiers' and Sailors' Civil Relief Act

of 1940, the period during which he is in such service shall be excluded in computing the one year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this section and no postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this section.

Issued at Washington, D. C., this 21st day of October 1940.

STEWART McDONALD,
Federal Housing Administrator.

[F. R. Doc. 40-4801; Filed, November 8, 1940;
11:49 a. m.]

TITLE 26—INTERNAL REVENUE

CHAPTER I—BUREAU OF INTERNAL REVENUE

[Regulations 19]

SUBCHAPTER C—MISCELLANEOUS EXCISE TAXES

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Scope of Regulations

§ 195.1 *Production of vinegar by the vaporizing process.* These regulations are prescribed pursuant to the provisions of law governing the production of vinegar by the vaporizing process.*

Regulations Superseded

§ 195.2 *Effective date.* These regulations shall, on and after the sixtieth day following the date of approval, supersede all prior regulations relating to the production of vinegar by the vaporizing process to the extent that such prior regulations are inconsistent herewith. All prior regulations which are inconsistent herewith shall remain in force and effect for the assessment and collection of all taxes and penalties, for the imposition of all penalties, civil and criminal, and for the enforcement of all forfeitures which have accrued thereunder.*

Definitions

§ 195.3 *Definitions.* As used in these regulations, the following words and phrases shall have the meanings as herein defined:

(a) "Collector" shall mean the collector of internal revenue of the collection district in which the vinegar factory is located.

(b) "Commissioner" shall mean the Commissioner of Internal Revenue.

(c) "Distilling materials" shall mean the fermented mash of grain, molasses, or other materials produced for distillation.

(d) "District supervisor" or "supervisor" shall mean the person having charge of a supervisory district of the Alcohol Tax Unit of the Bureau of Internal Revenue in which the vinegar factory is located.

(e) "I.R.C." shall mean the Internal Revenue Code (Public, No. 1, Seventy-sixth Congress).

(f) "Person," "proprietor," or "vinegar maker," shall include natural persons, associations, copartnerships, and corporations.

* §§ 195.1 to 195.131 issued under authority contained in section 3176, Internal Revenue Code (Public, No. 1, 76th Congress). Citations of more specific authority and citations of statutory provisions interpreted or applied are included in parentheses at the end of particular sections.

(g) "Secretary" shall mean Secretary of the Treasury.

(h) "Vinegar factory" shall mean a vinegar factory using the vaporizing process in the manufacture of vinegar, established or operated under these regulations, and as described in the notice, Form 27-F.

(i) Words in the plural form shall include the singular, and *vice versa*, and words in the masculine gender shall include females, a trust or estate, associations, copartnerships, and corporations.

(j) The term "including" shall not be deemed to exclude things other than those enumerated which are in the same general class.*

Location and Use

§ 195.4 *Restrictions.* Vinegar factories producing vinegar by the vaporizing process may not be located on board of any vessel or boat, or in any building or on any premises where beer, lager beer, ale, porter, or other fermented liquors, or other, are manufactured or produced, or sugars or sirups are refined, or where any liquors of any description are stored or retailed, or where any other business is carried on, or within 600 feet in a direct line of a registered distillery, fruit distillery, industrial alcohol plant, or rectifying plant. If the vinegar factory is in the same building in which is located a tax-paid bottling house, or in which denatured alcohol is produced, stored, or used, there must be no means of communication within the building between the vinegar factory and such premises.*

§ 195.5 *Use of premises.* The premises of a vinegar factory using the vaporizing process shall be used exclusively for the manufacture of vinegar by the use of an alcoholic vapor separated from a fermented mash on such premises. The production at vinegar factories of low wines exceeding 30 degrees in proof will not be permitted.*

Construction

§ 195.6 *Buildings or rooms.* The vinegar factory must be so constructed and equipped as to be suitable for the production of vinegar by the use of the vaporizing process, and must be completely separated from contiguous buildings or rooms, which are not used in conjunction with the vinegar factory, by solid, unbroken, partitions or floors of substantial construction. Such partitions shall extend from the ground to the roof, or from the floor to the ceiling if a room is used: *Provided*, That necessary openings for the passage of approved water, steam, fuel, or similar lines may be permitted in the walls or partitions.*

§ 195.7 *Means of ingress or egress.* Except as provided in § 195.6, the doors and other openings must lead into the yard connected with the vinegar factory or a public street: *Provided*, That where a room or floor is used, the door may open into an elevator shaft, or a common passageway partitioned off from other businesses, leading either directly or

through another elevator shaft or similar passageway to the street or yard. Where the door of the vinegar factory opens into a common passageway, as provided above, the partitions forming the common passageway shall be substantially constructed of solid materials or expanded metal or woven wire of not less than 9 gauge nor more than 2-inch mesh, and shall extend from the floor to the ceiling or roof, but doors may be permitted therein. Common passageways must be used exclusively as means of communication.*

§ 195.8 *Doors, windows, and other openings.* The doors, windows, or other openings in the room or building comprising the distilling department must be so arranged and constructed that they may be securely fastened. No door, window, or other opening will be permitted in the walls or floors leading into another room or building which is not a part of the vinegar factory.*

§ 195.9 *Distilling department.* A room or rooms must be provided in which will be located the stills and low wine tanks. Such room or rooms shall be known as the distilling department and shall be used exclusively for the production and storage of low wines. A sign must be posted over the door to the distilling department bearing the words "Distilling Department," and if more than one room is used, such rooms shall be given alphabetical designations, as "A," "B," "C," etc.*

Sign

§ 195.10 *Posting of sign.* The proprietor shall place and keep conspicuously on the outside and at the front of the vinegar factory or over the front entrance thereto, where it can be plainly seen, a sign exhibiting, in plain and legible letters, not less than 3 inches in height and of a proper and proportionate width, the name of the proprietor and the words "Vinegar Factory No. -----," followed by the registry number assigned by the Commissioner.*

Equipment

§ 195.11 *Fermenting material storage tanks.* Each fermenting material storage tank shall have plainly and legibly painted thereon the words "Fermenting Material Storage Tank," followed by its serial number and capacity in wine gallons.* (Sec. 2829, I.R.C.)

§ 195.12 *Mash tubs and fermenters.* Mash tubs and fermenters shall be located in the distilling department or in a separate room or building and must be so placed as to be accessible to examination by Government officers. Each such mash tub or fermenter must have painted thereon its designated use, as "Mash Tub" or "Fermenter," followed by its serial number and capacity in wine gallons.

(a) *Mash tub coils.* A closed coil cannot be maintained in a mash tub on the premises of a vinegar factory using the vaporizing process except under the fol-

lowing conditions: If a coil is employed for the conveyance of water for the purpose of cooling the mash, the upper portion of the coil must be open, with flanges projecting upward, so as to prevent overflow making the upper ring of the coil, in effect, an open trough; or the coil within the tub may be closed on condition that the pipe is left open for a distance of several feet immediately after it leaves the tub and is properly protected by flanges so as to form, in effect, an open trough several feet in length.* (Sec. 2829, I.R.C.)

§ 195.13 *Stills.* The stills must have a clear space of not less than 1 foot around them. Every still must be numbered, commencing with number 1, and shall have painted thereon the word "Still," followed by its serial number and spirit-producing capacity in proof gallons in 24 hours, computed in accordance with the rules set forth in the Appendix to these regulations. Where the still is insulated or the manufacturer's serial number is otherwise obscured, such number will likewise be painted on the covering of the still. No reflux line, worm, gooseneck, pipe, conductor, or contrivance of any description whatever whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar.* (Secs. 2829, 2834, I.R.C.)

§ 195.14 *Pipes for conveying vapor.* The alcoholic vapor which the vinegar maker is authorized to separate from the mash shall be conducted to the liquid receiving it by the shortest and most direct line practicable. The pipes used for this purpose must be constructed of metal and exposed to view throughout their entire lengths and must not be surrounded with water.* (Sec. 2829, I.R.C.)

§ 195.15 *Presence of worm forbidden.* The law specifically provides that no worm shall be permitted on or near premises used for the manufacture of vinegar by the vaporizing process.* (Sec. 2834, I.R.C.)

§ 195.16 *Spray tanks or condensers.* The spray tanks or condensers must be so constructed that the alcoholic vapor cannot be condensed by itself and so become distilled spirits. Spray tanks are to be so constructed that the vapors will be conveyed into the water or other liquid used in making vinegar for condensation. The alcoholic vapor must be mingled with the water or other liquid used in the manufacture of vinegar. The spray tank or condenser shall be so constructed that the water or other liquid used in the manufacture of vinegar is sprayed through the top of the tank to condense the alcoholic vapors, or a constant level of water or such liquid must be maintained in the tank or condenser at all times so that the end of the vapor pipe will be completely immersed therein. The vapors must not be condensed before or without infusion into such water

or other liquid.* (Secs. 2829, 2834, I.R.C.)

§ 195.17 *Closed condensers.* Closed or covered condensers may be used only where the alcoholic vapor is condensed simply by being introduced into the water or other liquid used in the production of vinegar without the use of artificial means for cooling the liquid. The condensers in such cases must be provided with a manhole which will permit ready examination of the whole interior of the condensing vessel.* (Secs. 2829, 2834, I.R.C.)

§ 195.18 *Artificial means of condensing vapors.* Where artificial means are employed for condensing alcoholic vapor at vinegar factories, the condensing vessels shall be open and uncovered and the condensing apparatus shall be simple in construction.* (Secs. 2829, 2834, I.R.C.)

§ 195.19 *Contrivance for cooling liquid.* No contrivance may be used for cooling the liquid which receives the vapors to such a degree that a small or limited quantity of water or liquid would be enabled to receive and condense an unlimited quantity of alcohol.* (Secs. 2829, 2834, I.R.C.)

§ 195.20 *Low wine receiving tanks.* The proprietor must provide one or more low wine receiving tanks which shall be equipped with a suitable measuring device whereby the actual contents will be correctly indicated. The tanks must be so constructed as to permit examination of every part thereof, and so arranged as to leave an open space of not less than 3 feet between the top and the roof or floor above. All openings in tanks and other distilling apparatus and equipment, which are not absolutely necessary, and which can be permanently closed without interference with operations, shall be closed by brazing, welding, or otherwise securely fastening and sealing. Each such tank shall have painted thereon the words "Low Wine Receiving Tank," followed by its serial number and capacity in wine gallons. The pipe lines connecting the tanks with stills or other apparatus must be constructed in accordance with § 195.22. The receiving tanks must be located in the distilling department.* (Sec. 2829, I.R.C.)

§ 195.21 *Low wine storage tanks.* If it is desired to store low wines prior to the use thereof in the manufacture of vinegar, storage tanks for such purpose must be provided in the distilling department. Each such tank shall be constructed and equipped as provided in § 195.20 for receiving tanks, and shall have painted thereon the words "Low Wine Storage Tank," followed by its serial number and capacity in wine gallons.* (Sec. 2829, I.R.C.)

§ 195.22 *Pipe lines.* The distilling apparatus and equipment must be closed and continuous (except as otherwise provided in these regulations), commencing with the still in which the vapors rise and continuing with securely closed pipes

to the low wine receiving tanks in which the product is deposited. All such pipe lines must be of a fixed and permanent character, constructed of metal, and so arranged as to be exposed to view throughout their entire lengths. All valves, unions, flanges, and other detachable connections in the pipe lines of the distilling equipment from the point where the vapors rise in the still to the receiving tanks and from the receiving tanks to storage tanks (if provided) must be so secured by brazing, welding, fastening, and sealing as to effectually prevent disconnection and access to the low wines.* (Sec. 2829, I.R.C.)

§ 195.23 *Colors for pipe lines.* The pipe lines connected with the stills and low wine tanks used for conveying the following substances shall be kept painted in the colors indicated:

Black.....	Low wines.
Blue.....	Vapor.
Red.....	Mash, beer, or other distilling material.
Brown.....	Spent beer or slop.
White.....	Water.
Aluminum.....	Steam.

These colors are intended for such pipe lines only, and are prescribed for the purpose of distinguishing such pipe lines from each other and from all other pipe lines on the premises which are painted but for which colors are not prescribed. The painting of one of the pipe lines indicated above in a color other than prescribed for it, or the painting in one of the prescribed colors, or a color similar thereto, of a pipe line for which a color is not prescribed is prohibited. Pipe lines for which colors are not prescribed may be painted in other colors or in sections of not more than 3 feet in contrasting colors.* (Sec. 2829, I.R.C.)

§ 195.24 *Details of construction and equipment.* Where details of construction and equipment are not covered by these regulations, such construction and equipment must afford adequate supervision and control. The Commissioner may approve details of construction and equipment in lieu of those specified herein where it is shown that it is impracticable to conform to the prescribed specifications, and the proposed construction and equipment will afford adequate supervision and control. Where it is proposed to substitute construction and equipment for that for which specifications are prescribed, approval of the Commissioner should be first obtained.* (Secs. 2829, 2834, I.R.C.)

§ 195.25 *Vinegar factories heretofore established.* Vinegar factories heretofore established may continue to operate if the equipment and method used for condensing the alcoholic vapors from the stills conform to that prescribed in these regulations, and the other construction and equipment afford adequate security and protection to the revenue. The Commissioner or district supervisor may at any time require the proprietor to make changes in construction and equipment conforming to the provisions

of these regulations, if deemed necessary to safeguard the revenue or to permit more economical and efficient supervision and control by Government officers. All vinegar factories hereafter established, and changes in existing vinegar factories, must be in conformity with these regulations.* (Secs. 2829, 2834, I.R.C.)

Qualifying Documents

§ 195.26 *Notice, Form 27-F.* Every person now engaged in the business of manufacturing vinegar by the use of the vaporizing process must file notice on Form 27-F, "Notice by Proprietor of Vinegar Factory," in triplicate, with the district supervisor within 60 days after the effective date of these regulations, and in the case of new establishments before engaging in the business. Except as provided in section 195.31, in the case of amended and supplemental notices, all of the information indicated by the lines of the form and instructions printed thereon, and by these regulations, shall be furnished. Notices on Form 27-F must be signed in accordance with the instructions printed on the form and sworn to before an officer authorized to administer oaths. Such notices must be numbered serially, commencing with number 1 and continuing in regular sequence for all notices thereafter filed, whether amended or supplemental.* (Sec. 4041, I.R.C.)

§ 195.27 *Description of premises.* The notice, Form 27-F, shall contain a complete description of the building constituting the vinegar factory, including the height, width, and length, the materials of which constructed, and the number of stories.* (Sec. 4041, I.R.C.)

§ 195.28 *Description of distilling department.* All rooms comprising the distilling department of the vinegar factory shall be described on Form 27-F. The description shall include the designated name of each room which shall be according to its use, such as, still room, fermenting room, etc., and the dimensions thereof. If more than one room is used for the same purpose, the same shall include an alphabetical designation to distinguish them, as "Still Room A," "Still Room B," etc.* (Sec. 4041, I.R.C.)

§ 195.29 *Description of apparatus and equipment.* There must be described on Form 27-F in the space provided therefor the number of fermenting material storage tanks (if any), mash tubs, fermenters, stills, spray tanks, condensers, low wine receiving tanks, and low wine storage tanks which shall be listed separately as to serial number and capacity in wine gallons. All other regular and permanent equipment must be described on Form 27-F.* (Sec. 4041, I.R.C.)

§ 195.30 *Capacity.* The kind of fermenting materials to be used, the maximum quantity of low wines, in proof gallons, that can be produced in 24 hours, and the proof at which the low wines will be produced, must be stated on Form 27-F.* (Sec. 4041, I.R.C.)

§ 195.31 *Amended and supplemental notices.* Amended and supplemental notices on Form 27-F may be executed in skeleton form, except as to the items amended or supplemented. All other items which are correctly set forth in prior notices, and in which there has been no change since the last preceding notice, may be incorporated in the amended or supplemental notice by reference to the respective notice previously filed. Such incorporation by reference shall be made by entering for each such item in the space provided therefor the statement, "No change since filing Form 27-F, Serial No. _____" (the number being inserted), and the date of such form.* (Sec. 4041, I.R.C.)

§ 195.32 *Corporate documents.* There must be submitted with, and made a part of, the original or initial notice on Form 27-F, given by a corporation to engage in the business of manufacturing vinegar by the vaporizing process, properly certified copies, in triplicate, of the following documents:

(1) Extracts of the minutes of meetings of the board of directors, authorizing certain officers or other persons to sign for the corporation.

(2) List of the names and addresses of the officers and directors.* (Sec. 4041, I.R.C.)

§ 195.33 *Power of attorney, Form 1534.* If the notice or other qualifying documents are signed by an attorney in fact for an individual, partnership, association, or corporation, or by one of the members for a copartnership or association, or, in the case of a corporation, by an officer or other person not authorized to sign by the corporate documents described in § 195.32, such notice or other qualifying documents must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the document to execute the same. Such powers of attorney will be executed on Form 1534, in triplicate, and submitted to the district supervisor.* (Sec. 4041, I.R.C.)

§ 195.34 *Execution of power of attorney.* Where the principal giving the power of attorney is an individual, it must be executed by him in person, and not by an agent. In the case of a copartnership or association, powers of attorney authorizing one or more of the members, or another person, to execute documents on behalf of the copartnership or association must be executed by all of the members constituting the copartnership or association. However, if one or more members less than the whole number constituting the copartnership or association have been delegated the authority to appoint agents or attorneys in fact, the power of attorney may be executed by such member or members, provided it is supported by a duly authenticated copy, in triplicate, of the document conferring authority upon the member or members to execute the

same. Where, in the case of a corporation, powers of attorney are executed by an officer thereof, such documents must be supported by triplicate copies of the authorization of such officer so to do, certified by the secretary or assistant secretary of the corporation, under the corporate seal, if any, to be true copies.* (Sec. 4041, I.R.C.)

§ 195.35 *Duration of power of attorney.* Powers of attorney authorizing the execution of documents on behalf of a person engaged in, or intending to engage in, the business of a vinegar maker shall continue in effect until written notice, in triplicate, of the revocation of such authority is received by the district supervisor, unless terminated by operation of law.* (Sec. 4041, I.R.C.)

§ 195.36 *Registry of stills, Form 26.* Every person having in his possession or custody, or under his control, any still or distilling apparatus set up must register the same with the supervisor for the district in which the still is located, on Form 26, "Registry of Stills," immediately it is set up. The Form 26 shall be executed in triplicate in accordance with the requirements of the columns, lines, and instructions on the form.* (Secs. 2810, as amended, 3170, I.R.C.)

§ 195.37 *Plat and plans.* Every person now engaged, or intending to engage, in the business of manufacturing vinegar by the use of the vaporizing process must submit to the district supervisor with his notice, Form 27-F, an accurate plat of the vinegar factory premises and accurate plans of the distilling apparatus and equipment, in triplicate, conforming to the requirements of §§ 195.40-195.50.* (Sec. 4041, I.R.C.)

§ 195.38 *Additional information.* The Commissioner or the district supervisor may at any time, in his discretion, require the proprietor to furnish such additional information as he may deem necessary.* (Sec. 4041, I.R.C.)

§ 195.39 *Instruments and papers.* The terms, conditions, and instructions contained in instruments and papers required to be furnished by law or regulations are hereby made a part of these regulations as fully and to the same extent as if incorporated herein.* (Sec. 4041, I.R.C.)

Plats and Plans

§ 195.40 *Plat and plans required.* Every person now engaged, or intending to engage, in the business of manufacturing vinegar by the use of the vaporizing process must, as provided in § 195.37, file an accurate plat of the vinegar factory premises, and accurate plans of the distilling apparatus and equipment, in triplicate, with the district supervisor.* (Sec. 4041, I.R.C.)

§ 195.41 *Preparation.* Each sheet of the plat and plan shall bear a distinctive title, and the complete name and address of the proprietor, enabling ready identification. Each sheet of the original plat and plans shall be numbered, the first being designated number 1 and the other

sheets numbered in consecutive order. The dimensions of plats and plans shall be 15 by 20 inches, outside measurement, with a clear margin of at least 1 inch on each side of the drawing, lettering, and writing. Plats and plans may be original drawings, or reproductions made by the "Ditto Process," or by blue or brown line lithoprint, if such reproductions are clear and distinct.* (Sec. 4041, I.R.C.)

§ 195.42 *Depiction of premises.* Plats must show the outer boundaries of the vinegar factory premises, in feet and inches, in a color contrasting with those used for other drawings on the plat, and must contain an accurate depiction of the building or buildings comprising the premises. The depiction of the premises should agree with the description in the notice, Form 27-F. If two or more buildings are to be used, they must be shown in their relative positions and the designated name or use of each indicated. Where two or more buildings are used for the same purpose, the name of each such building shall include an alphabetical designation, beginning with "A." All first floor openings of each building on the premises will be shown on the plat. If the vinegar factory consists of a room or a floor of a building, an outline of the building, the precise location and dimensions of the room or floor, and the means of ingress from and egress to a public street or yard shall be shown.* (Sec. 4041, I.R.C.)

§ 195.43 *Contiguous premises.* The plat must show the relative location of any distillery, internal revenue bonded warehouse, industrial alcohol plant, industrial alcohol bonded warehouse or denaturing plant, rectifying plant, or tax-paid bottling house, or other premises on which beer, lager beer, ale, porter, or other fermented liquors, or ether or denatured alcohol are manufactured or produced, stored, used, or sold, contiguous to the vinegar factory premises, and all pipe lines and other connections, if any, between them, and the distance they are from each other. The outlines of such contiguous premises and the vinegar factory premises must be shown in contrasting colors.* (Sec. 4041, I.R.C.)

§ 195.44 *Floor plan of distilling department.* A floor plan of the distilling department shall be submitted, showing the location of all apparatus and equipment and pipe lines therein. The serial number and capacity of each still and tank shall be indicated on the plan.* (Sec. 4041, I.R.C.)

§ 195.45 *Elevational plans of distilling equipment.* Vertical, sectional, or elevational plans of the distilling apparatus and equipment shall be submitted, and such plans shall clearly depict the construction of all equipment and all pipe lines and other connections of the distilling equipment and the location of valves, flanges (except as provided in § 195.47), measuring devices, etc. The plans must be so drawn that all such pipe lines may be traced from beginning to end.* (Sec. 4041, I.R.C.)

§ 195.46 *Pipe lines and colors.* The fixed pipe lines connected with the stills and low wine tanks must be shown on the plans in the colors in which they are required to be painted, as follows:

Black-----	Low wines.
Blue-----	Vapor.
Brown-----	Spent beer and slop.
Red-----	Distilling material.
White-----	Water.
Aluminum-----	Steam.

* (Sec. 4041, I.R.C.)

§ 195.47 *Location of valves, flanges, etc.* All valves, flanges, and other connections and pipe lines in the distilling equipment must be properly indicated on the plans: *Provided*, That where flanges, unions, or other connections in pipe lines are brazed, welded, or otherwise permanently secured in such a manner as to constitute a continuous single pipe line, the location of such flanges, unions, or other connections, and the manner of securing the same, need not be shown on the plans.* (Sec. 4041, I.R.C.)

§ 195.48 *Direction of flow.* The direction of the flow of the distilling material, vapor, low wines, etc., through pipe lines connected with the stills and low wine tanks must be indicated on the plans by arrows.* (Sec. 4041, I.R.C.)

§ 195.49 *Certificate of accuracy.* Every sheet of every plat and plan, whether original, supplemental, or superseding, shall bear a certificate of accuracy dated and signed by the draftsman, proprietor, and district supervisor. The certificate shall be placed in the lower right hand corner of each sheet and shall be in the following form:

----- SUPERVISORY DISTRICT, -----, 19--
 It is hereby certified that this is an accurate
 (Original, supplemental, or superseding)
 sheet No. ----- of the ----- of
 (Plat or plan)
 Vinegar Factory No. -----, of
 (Name of proprietor)

 (Street and number) (City and State)
 in this district.

 (Draftsman)

 (Proprietor)

 (District Supervisor)
 Date of district supervisor's approval.
 -----, 19--
 (Date)

* (Sec. 4041, I.R.C.)

§ 195.50 *Supplemental, superseding, and additional plats and plans.* The sheets of superseding plats or plans shall bear the same numbers as the sheets superseded. The sheets of supplemental plats or plans shall bear the same numbers as the sheets supplemented, and will be further identified by letter designation, as "1-A," "5-B," etc. Additional sheets of plans, filed to cover extensions of the vinegar factory premises, will be given the next number in sequence to the last sheet of the plan on file. Additional sheets of plats, filed to cover extensions of the vinegar factory premises, will be given the same number as the last sheet of the plat on

file, further identified by an additional number, as 1-1, 2-1, etc.* (Sec. 4041, I.R.C.)

Requirements Governing Changes in Name, Proprietorship, Control, Location, Premises and Equipment

§ 195.51 *General requirement.* Notice in writing must be given, in the form hereinafter prescribed, to the district supervisor in case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of the vinegar factory.* (Sec. 4041, I.R.C.)

§ 195.52 *Change in individual, firm, or corporate name.* Where there is a change in the individual, firm, or corporate name of the proprietor, he must comply with the following requirements:

(a) *Notice, Form 27-F.* Submit to the district supervisor, notice on Form 27-F, in triplicate, covering the new name, which notice must be approved before operations may be commenced under the new name.

(b) *Sign.* Change the vinegar factory sign to conform to the provisions of § 195.10.

(c) *Records.* Keep records and submit reports covering operations under the new name as provided in §§ 195.88-195.91.* (Sec. 4041, I.R.C.)

§ 195.53 *Change in proprietorship—*
 (a) *Suspension.* Where there is to be a change in the proprietorship of the vinegar factory, the outgoing proprietor must, preparatory to transfer of the business to the successor, comply with the following requirements:

(1) *Notice, Form 27-F.* If the outgoing proprietor is to discontinue permanently the business of manufacturing vinegar by the vaporizing process, file with the district supervisor Form 27-F, in triplicate, stating thereon the purpose to be "Discontinuance of business," and giving the date of the discontinuance.

(2) *Registry of stills.* Register the still "Not for use" on Form 26, in triplicate, in accordance with § 195.94.

(3) *Notice of suspension.* File with the district supervisor a written notice, in triplicate, in accordance with §§ 195.92, 195.93.

(4) *Records.* Make appropriate entries in the vinegar factory records and submit reports in accordance with the provisions of §§ 195.95-195.98.

(b) *Qualification of successor.* Where there is a change in proprietorship, and the successor intends to continue the operation of the premises as a vinegar factory, he must comply with the following requirements:

(1) *Nonfiduciary successor.* If the change in proprietorship is brought about by any means, except by the appointment of an administrator, executor, receiver, trustee, assignee, or other fiduciary, the successor must qualify in the same manner as the proprietor of a new vinegar factory, except that he may

adopt the plat and plans of his predecessor as provided in subparagraph (3).

(2) *Fiduciary.* If the successor is an administrator, executor, receiver, trustee, assignee, or other fiduciary, and intends to produce low wines, or to possess or dispose of low wines on hand in the vinegar factory, he must comply with the provisions of Article VIII to the extent that such provisions are applicable, except that in lieu of filing a new plat and plans, the fiduciary may adopt the plat and plans of such predecessor in accordance with subparagraph (3). The fiduciary must also furnish certified copies, in triplicate, of the order of the court or other pertinent documents showing his qualification as such fiduciary. The effective date of the qualifying documents filed by a fiduciary must be the same as the date of the court order, or the date specified therein, for him to assume control.

(3) *Adoption of plat and plans.* The plat and plans of the vinegar factory may be adopted by a successor where they correctly describe and depict the premises and the buildings, apparatus, and equipment thereon, to be taken over by the successor. The adoption by a successor of the plat and plans of his predecessor shall be in the form of a certificate, in triplicate, in which shall be set forth the name of the predecessor, the address and number of the vinegar factory, a description of the vinegar factory premises, the number of each sheet comprising each plat and plan covered by such certificate, and a statement that the vinegar factory premises, and the buildings, apparatus, and equipment thereon, are correctly described and depicted on such plat and plans.

(4) *Sign.* The successor, if other than a fiduciary temporarily operating the vinegar factory, must change the vinegar factory sign to conform to the requirements of § 195.10.

(5) *Materials and low wines.* If distilling materials and low wines are received by transfer from the predecessor, the successor must comply with the requirements of §§ 195.95-195.98.* (Sec. 4041, I.R.C.)

§ 195.54 *Changes in partnership.* The withdrawal of one or more members of a partnership or the taking in of a new partner, whether active or silent, shall constitute a change in proprietorship. Likewise, the bankruptcy or adjudicated insolvency of one or more of the copartners results in a dissolution of the partnership and, consequently, a change in proprietorship. Where such a change in proprietorship of the vinegar factory occurs, the successor must qualify in the same manner as a new proprietor of a vinegar factory, except that the successor may adopt the plat and plans of the predecessor as provided in § 195.53 (b) (3).* (Sec. 4041, I.R.C.)

§ 195.55 *Changes in stockholders, officers, and directors of corporation.* The sale or transfer of the capital stock of a corporation operating a vinegar factory

does not constitute a change in the proprietorship of the vinegar factory. However, where the sale or transfer of capital stock results in a change in the control or management of the business, or where there is a change in the officers or directors, the proprietor must give notice thereof, in triplicate, to the district supervisor. Mere changes in stockholders of corporations not constituting a change in control need not be so reported.* (Sec. 4041, I.R.C.)

§ 195.56 *Reincorporation.* Where a corporation operating a vinegar factory is reorganized and a new charter or certificate of incorporation is secured, the new corporation must qualify in the same manner as a new proprietor of the vinegar factory, except that the new corporation may adopt the plat and plans of the predecessor as provided in § 195.53 (b) (3).*

§ 195.57 *Change in location.* Where there is a change in the location of the vinegar factory, the proprietor must comply with all applicable provisions of §§ 195.4-195.50, inclusive.*

§ 195.58 *Changes in premises.* Where the vinegar factory premises are to be extended or curtailed, the proprietor must file with the district supervisor an amended notice, Form 27-F, and an amended plat of the premises as extended or curtailed. If the plans are affected by the extension or curtailment, they must also be amended.* (Sec. 4041, I.R.C.)

§ 195.59 *Changes in equipment.* Where changes are to be made in the apparatus and equipment of the distilling department, the proprietor shall first secure approval thereof by the district supervisor pursuant to application, in triplicate, setting forth specifically the proposed changes: *Provided*, That emergency repairs may be made without prior approval of the district supervisor. Where such emergency repairs are made, the proprietor shall file immediately a report thereof, in triplicate, with the district supervisor. Upon completion of changes in equipment, the proprietor must file an amended notice and amended plans, except that in the case of minor changes, such as general repairs, changes in pipe lines, or the addition or removal of a tank, an amended notice and amended plans need not be filed immediately: *Provided further*, That the Commissioner or the district supervisor may, at any time, in his discretion, require the filing of an amended notice and amended plans covering such minor changes. Where an amended notice and amended plans are not filed immediately upon completion of minor changes in equipment, the proprietor must include such changes in the next amended notice and plans filed by him.* (Sec. 4041, I.R.C.)

Action by District Supervisor

Original Establishment

§ 195.60 *Examination of qualifying documents.* Upon receipt of notice, plat,

plans, and other documents required by these regulations of persons now engaged, or intending to engage, in the business of manufacturing vinegar by the vaporizing process, the district supervisor will examine the same to determine whether they have been properly executed, and whether they reflect compliance with the requirements of the law and regulations. Where any required document has not been filed, or where errors or discrepancies are found in those filed, or where the documents filed do not reflect compliance with these regulations, action thereon will be held in abeyance until the omission, or error, or discrepancy, has been rectified, and there has been full compliance with all requirements.*

§ 195.61 *Inspection of premises.* When the required documents have been filed in proper form, the district supervisor will assign an inspector to examine the premises, building, apparatus, and equipment, and determine whether they conform with the description thereof in the notice, plat and plans, and whether the apparatus and equipment and measures of protection afforded meet the requirements of the law and regulations. The inspector will observe particularly the manner in which the rooms or buildings on the premises are separated from other premises, means of communication, ingress and egress, and the construction of the distilling apparatus and equipment. Where the inspection discloses minor irregularities in the qualifying documents or in the construction, the inspector will, at the time of their discovery, direct the attention of the proprietor to the same in order that the proprietor may correct the defects before completion of the inspection. Upon completion of the inspection, a report thereof will be submitted to the district supervisor.*

§ 195.62 *Report of inspection.* The report of the inspection shall describe separately all irregularities and discrepancies found during the course of the inspection, and shall include a complete statement describing all unusual or special conditions. Where irregularities are corrected during the inspection, the report will indicate the corrections so made. The report need not describe in detail each description as set forth in the notice, plat, and plans. The description of buildings and equipment in the report should be general and brief. However, construction, equipment, signs, etc., which are not in conformity with the regulations, will be completely described. If there are any pipe lines or other connections or openings between the vinegar factory premises and other premises, the same shall be described in detail. There shall be further embodied in the report a statement as to whether or not another business is being conducted, or is intended to be conducted, on the vinegar factory premises or in buildings thereon.*

§ 195.63 *Inaccurate documents.* Where the district supervisor's examination, or the inspector's report, discloses discrepancies in the qualifying docu-

ments, the inaccurate or incomplete documents will be returned to the proprietor for correction.*

§ 195.64 *Defective construction.* Where it is found that the construction of the distilling apparatus and equipment does not conform to the requirements of the law and regulations, the district supervisor will inform the proprietor concerning the defects, and further action will be held in abeyance pending correction thereof.*

§ 195.65 *Approval of qualifying documents.* If the district supervisor finds, upon examination of the inspection report, that the person seeking to qualify as proprietor of the vinegar factory has complied in all respects with the requirements of the law and regulations, he will note his recommendation for approval on all copies of the notice, and his approval on all copies of the plat and plans, and will forward all copies of the notice, and the original copy of the plat, plans, and other documents, together with a copy of all inspection reports, to the Commissioner for final action.*

§ 195.66 *Disapproval of qualifying documents.* If the district supervisor finds that the applicant has not complied in all respects with the requirements of the law and regulations, or that the situation of the vinegar factory is such as would enable the proprietor to defraud the United States, he will not recommend approval of the notice, or approve the plat and plans, and will forward to the Commissioner for final action such copies of the qualifying documents as are required to be so forwarded by the preceding section in the case of recommendation of approval, together with a copy of all inspection reports. Where a notice is not recommended for approval, the district supervisor will furnish the Commissioner with a full statement of the reasons therefor.*

§ 195.67 *Disposition of qualifying documents.* Where the notice, Form 27-F, is approved by the Commissioner, the district supervisor will, upon receipt of approved copies thereof from the Commissioner, as provided in §§ 195.70-195.72, forward one copy of the notice, plat, plans, and other qualifying documents to the proprietor and will retain one copy of such qualifying documents for the file of the proprietor. If the notice is disapproved, the district supervisor will, upon receipt from the Commissioner of the disapproved copies thereof and other qualifying documents submitted therewith, return all copies of the qualifying documents to the proprietor, with advice as to the reasons for disapproval.*

Changes Subsequent to Establishment

§ 195.68 *Procedure applicable.* The foregoing provisions of this article respecting the action required of district supervisors in connection with the establishment of vinegar factories will be followed, to the extent applicable, where there is a change in the individ-

ual, firm, or corporate name of the proprietor, or where there is a change in the proprietorship, location, premises, distilling apparatus and equipment, of the vinegar factory, or where operations are permanently discontinued.*

§ 195.69 *Applications and reports covering changes.* Where an application covering changes in the distilling apparatus or equipment is approved by the district supervisor, he will retain one copy of the application and forward one copy to the proprietor and one copy to the Commissioner. Similar disposition will be made of reports received from the proprietor covering emergency repairs of the apparatus and equipment in the distilling department.*

Action by Commissioner

Original Establishment

§ 195.70 *Examination of qualifying documents.* The Commissioner will review the notice, plat, plans, and other qualifying documents upon their receipt from the district supervisor. If the Commissioner approves the vinegar factory construction and equipment, and the notice, plat, plans, and other qualifying documents, he will assign a registry number to the vinegar factory, in accordance with § 195.71, note his approval on all copies of the notice, retain the original copy of the notice, and plat, plans, and other qualifying documents, and will return two copies of the approved notice to the district supervisor with advice as to his action on the qualifying documents. If the Commissioner disapproves the notice, he will note his disapproval thereon and will return all copies thereof to the district supervisor, accompanied by the other qualifying documents submitted therewith, and a statement of the reasons for disapproval of the notice.*

§ 195.71 *Registry numbers.* Vinegar factories hereafter established will be numbered serially in the order of their establishment. A separate series will be used for each State. Registry numbers will be assigned to existing establishments in the order of approval of Form 27-F by the Commissioner, and new vinegar factories will be assigned numbers in sequence thereto. Registry numbers previously assigned to discontinued vinegar factories will not be reassigned to other vinegar factories. The same registry number will be continued whenever there is a change of proprietorship.*

Changes Subsequent to Original Establishment

§ 195.72 *Procedure applicable.* The foregoing provisions of this article respecting the action of the Commissioner in connection with the establishment of vinegar factories will be followed, to the extent applicable, where there is a change in the individual, firm, or corporate name, or where there is a change

in the proprietorship, location, premises, or distilling apparatus and equipment, of the vinegar factory.*

Plant Operation

General

§ 195.73 *Compliance with requirements of law and regulations.* Under no circumstances will a person conduct any operations in connection with the production of low wines to be used in the manufacture of vinegar until compliance with all the requirements of law and regulations, and the required notice, Form 27-F, and supporting documents have been approved in accordance with the provisions of these regulations: *Provided*, That vinegar factories heretofore established may continue to operate pending qualification under these regulations.*

§ 195.74 *Inspection of premises and records.* All persons manufacturing vinegar by use of the vaporizing process shall permit any internal revenue officer to inspect at any reasonable hour the premises, equipment, stocks and records, as required by law and regulations.*

Commencement of Operations

§ 195.75 *Fermenting and distilling materials.* Low wines may be produced at a vinegar factory using the vaporizing process under the provisions of these regulations from any kind of raw materials suitable for the production of low wines. Fermenting and distilling materials must be weighed or, in the case of liquids, weighed or measured, when brought upon the premises, and when used. The receipt and use of the materials will be recorded by the proprietor on Form 1623, "Proprietor's Report of Operations at Vinegar Factory."

(a) *Removal of fermenting material from premises.* If fermenting material is stored on the premises, and it is desired to remove the same, or any portion thereof, from the premises for any purpose whatsoever, the proprietor will enter on Form 1623 the kind and quantity to be removed, and the reasons therefor.* (Sec. 4041, I.R.C.)

Mashing and Fermenting

§ 195.76 *Production of mash.* Proprietors at vinegar factories may, under the provisions of law, produce on such premises fermented mash or fermented liquors to be used for the manufacture of vinegar exclusively. The proprietor may mash molasses, grain, or other fermentable material, in any quantity, proportion, or strength that he may desire.

(a) *Quantity of mash and beer determined.* The proprietor will determine the number of gallons of mash in each fermenter at the time of filling, and the quantity of beer in each fermenter after fermentation is complete, and will enter the same on Form 1623.* (Sec. 4041, I.R.C.)

Distillation

§ 195.77 *Production of low wines.* All processes of distillation shall be conducted in the distilling department of the vinegar factory. The alcoholic vapor separated from the mash produced must be condensed by introducing the vapor into the water or other liquid used in making vinegar. The vapor must not be condensed before or without infusion into such water or other liquid. Under no circumstances will the low wines be used as a condensing medium.

(a) *Conversion of vapor into distilled spirits forbidden.* No worm, gooseneck, pipe, reflex line, conductor, or contrivance of any description whatever, whereby vapor might in any manner be conveyed away and converted into distilled spirits, shall be used or employed, or be fastened to, or connected with, any vaporizing apparatus used for the manufacture of vinegar. The alcoholic vapor shall not be conducted in any manner, or by any contrivance, into a receptacle where it could be condensed by itself or with a small or limited quantity of water and so become distilled spirits.* (Sec. 2834, I.R.C.)

§ 195.78 *Test of condensing material.* The water or other liquid used as the recipient of the alcoholic vapor should be frequently tested to see that the proof of the liquid is not raised above 30 degrees.*

§ 195.79 *Deposit of low wines in receiving tanks.* All low wines produced shall be promptly conveyed to the receiving tanks. The receiving tanks must be so arranged that each day's production may be ascertained, and the amount shall be recorded daily on Form 1623, as indicated by the headings of the columns and the instructions printed on the form. Where the production of more than one day is run into the same tank the operation must be so conducted that the production of a full day or more may be measured. The quantity noted as the production of a particular date must be the quantity actually produced on that date.* (Sec. 4041, I.R.C.)

§ 195.80 *Gauge prior to removal.* The low wines may be transferred by pipe line from the receiving tanks to low wine storage tanks, or direct to the vinegar factory proper for use in the manufacture of vinegar: *Provided*, That the quantity thus removed or used is first accurately ascertained, and recorded on Form 1623.* (Sec. 4041, I.R.C.)

Losses

§ 195.81 *In receiving or storage tanks.* The quantity of low wines lost in receiving or storage tanks must be determined and reported monthly. The extent of the losses for each month shall be established by comparison of the quantity shown by inventory with the amount carried in the receiving or storage tank

accounts as remaining therein at the end of the month. The actual quantity in the tanks must be ascertained.*

§ 195.82 *Allowance for loss.* Where the loss of low wines during any calendar month does not exceed 1 per cent of the aggregate quantity of low wines on hand the 1st of the month and produced during the month, application for the allowance of such loss will not be required to be filed by the proprietor, provided there are no circumstances indicating that the low wines lost, or any part thereof, were unlawfully used or were unlawfully removed. Where such loss exceeds 1 per cent, application under oath for remission of tax on the total losses during the month shall be filed by the proprietor with the district supervisor. Such allowance of 1 percent shall apply to the losses for each month, which must be determined separately.*

§ 195.83 *Losses not cumulative.* The allowance of 1 per cent during any one month on account of losses of low wines in receiving and storage tanks shall not be cumulative.*

§ 195.84 *Time for filing application.* Application for allowance on account of losses must be made within 10 days after the end of the month during which the losses occurred for which allowance is requested. Each application for allowance of losses must set out all the material facts relating to the loss, and must state particularly the nature and cause thereof; i. e., whether by leakage, evaporation, theft, casualty, or other unavoidable cause, as well as the extent of the loss. The application must be accompanied by affidavits of persons having personal knowledge of the facts.*

§ 195.85 *Tax must be paid on illegally diverted low wines.* The internal revenue tax must be paid on all low wines diverted to illegal uses on the premises of the vinegar factory and on all low wines removed therefrom contrary to law or regulations.*

Removal and Testing of Vinegar

§ 195.86 *Removal.* No person shall remove, or cause to be removed, from any vinegar factory any vinegar or other fluid or material containing a greater proportion than 2 per cent of proof spirits.* (Sec. 2834, I.R.C.)

§ 195.87 *Test of vinegar.* The vinegar removed from vinegar factories should be tested from time to time to ascertain if it contains any greater proportion of proof spirits than is permitted by law.*

Proprietor's Records and Reports

§ 195.88 *General.* The proprietor of every vinegar factory shall keep monthly records and render reports on Form 1623 as hereinafter provided. Entries shall be made as indicated by the headings of the various columns and lines, and in accordance with the instructions on the form and as set forth in these regulations. The entries will be made not later than the close of business on the day on which the transactions occur. At the close of the month, but in no case later than the 5th

day of the succeeding month, the proprietor will prepare and forward two copies of Form 1623 to the district supervisor.* (Sec. 4041, I.R.C.)

§ 195.89 *Execution.* The monthly report, Form 1623, must be subscribed and sworn to before an officer authorized to administer oaths by the proprietor or his authorized agent at the vinegar factory. Where the reports are signed by an agent, proper power of attorney authorizing the agent to execute the reports for the proprietor must be filed, in triplicate, with the district supervisor.* (Sec. 4041, I.R.C.)

§ 195.90 *Permanent record.* One copy of Form 1623 will be retained by the proprietor as a permanent record, in bound form, and such bound record shall be kept on the premises available for inspection by Government officers at all reasonable hours.* (Sec. 4041, I.R.C.)

§ 195.91 *Monthly report, Form 1623.* The kind and quantity of materials received, and fermented or mashed, each day will be entered separately on the Form 1623, "Proprietor's Report of Operations at Vinegar Factory," and the saccharine content of molasses mashed must be entered when the same is available. The quantity of low wines produced, and the quantity used in the manufacture of vinegar daily, will be entered on the Form 1623. The quantity of vinegar produced, and the quantity removed from the vinegar factory, must also be reported daily. The summaries of the form will be completed at the end of the month, and the losses and other information as required by the headings and lines of the summaries will be correctly indicated on the form.* (Sec. 4041, I.R.C.)

Suspension and Resumption of Operations

§ 195.92 *Suspension.* Any proprietor of a vinegar factory desiring to suspend operations in connection with the production and use of low wines for an indefinite period, or for a definite period exceeding 15 days, shall give notice to such effect, in triplicate, to the district supervisor, stating when he will suspend operations. The giving of such notice will not be required where operations are temporarily suspended. The proprietor will fix in the notice the time when all fermented distilling material will be distilled and all low wines will be used.

(a) *Registry of stills, Form 26.* When operations are suspended, the stills used for the production of low wines must be registered on Form 26, in triplicate, "Not for use," in accordance with the provisions of § 195.94.* (Secs. 2810, as amended, 3170, 4041, I.R.C.)

§ 195.93 *Resumption.* No proprietor of a vinegar factory may carry on the business of distilling low wines after the time stated in his notice of suspension until he shall have given another notice, in triplicate, to the district supervisor, stating the time when he will resume work. The stills must be registered "For use" in conformity with § 195.94.*

Registry of Stills "For Use" and "Not for Use"

§ 195.94 *Registry on Form 26.* Every person having in his possession or custody or under his control any still set up, must register the same with the district supervisor for the district in which it is located. The registry must be made on Form 26, in triplicate, immediately the still is set up. When the proprietor intends to use the still, he must register it "For use," and when he intends to discontinue the use of the still he must register it "Not for use." This registry will be made on Form 26, in triplicate, with the district supervisor, as in the case of original registry. The district supervisor will, upon approval of the form, retain one copy, forward the original copy to the Commissioner, and return the remaining copy to the proprietor. The proprietor will retain his copy on the premises available for inspection by Government officers.

(a) *Alternate use of stills.* Where the proprietor has two or more stills, and intends to discontinue the use of one or more of them, and to continue the use of one or more stills, he must immediately register as "Not for use" the still or stills he does not intend to use. It will not be necessary to register the still or stills "Not for use" because of temporary suspension.* (Secs. 2810, as amended, 3170, I.R.C.)

Change of Persons Interested in Business

§ 195.95 *Completion of operations required.* When a succession, or actual change, in the person or persons operating the vinegar factory shall take place, other than a change brought about by operation of law, as by the appointment of an administrator, executor, receiver, trustee, assignee, or other fiduciary, the business of producing and using low wines must be completely finished by the person or persons who have been carrying on the business, and the operations suspended before the business shall be undertaken or begun by the successor, unless by agreement of the predecessor and the successor it shall be arranged to transfer from the former to the latter at midnight on a certain day all low wines and all materials to be used in the manufacture of low wines in the vinegar factory at that hour; and provided that in either case the notice and other qualifying documents of the successor prescribed by these regulations have been approved, to take effect on the day next succeeding that at the close of which the transfer is made. Such documents should, therefore, be submitted to the district supervisor in sufficient time to permit such approval for the date desired. The successor shall not commence operations until all documents required for his qualification have been approved by the Commissioner.*

§ 195.96 *Requirements as to predecessor.* In accordance with the provisions of §§ 195.99-195.101, the predecessor must file Form 27-F, notice of suspension, and

Form 26, registering the stills "Not for use" in his name, and there shall be stated the name of the successor in proprietorship in accordance with the instructions printed on the forms.* (Secs. 2810, as amended, 3170, 4041, I.R.C.)

§ 195.97 *Reports and records.* The predecessor shall enter on his record, Form 1623, all fermenting or distilling materials, materials in process and low wines, transferred to his successor, who shall in turn enter such items on his record, Form 1623, as received from his predecessor. The predecessor will make appropriate notation on all forms and records required to be kept by him showing the change in proprietorship of the vinegar factory and the date thereof.* (Sec. 4041, I.R.C.)

§ 195.98 *Succession by fiduciary.* Where a change in proprietorship is brought about by operation of law, the administrator, executor, receiver, trustee, assignee, or other fiduciary, may not commence or complete operations until the required qualifying documents have been filed and approved. In the case of such change, the fiduciary will make appropriate notation on Form 1623 of his succession, and the date thereof.* (Sec. 4041, I.R.C.)

Discontinuance of Business

§ 195.99 *Discontinuance.* Upon permanent discontinuance of business, and prior to the filing of Form 27-F, Form 26, and notice of suspension, as prescribed in § 195.92, all distilling materials, low wines, and vinegar must have been disposed of. All fermenting and distilling materials, low wines, and vinegar must be accounted for on Form 1623, which must be submitted to the district supervisor, in triplicate, and be marked "Final report, permanent discontinuance of business."* (Sec. 4041, I.R.C.)

§ 195.100 *Notice, Form 27-F.* When all distilling materials, low wines, and vinegar have been lawfully disposed of, the proprietor shall file Form 27-F, in triplicate, with the district supervisor, stating the purpose of the filing thereof to be "Permanent discontinuance of business." The district supervisor will forward the original of the Form 27-F to the Commissioner.* (Sec. 4041, I.R.C.)

§ 195.101 *Registry of stills, Form 26.* All distilling apparatus must be registered on Form 26 "Not for use," with an explanatory note that the proprietor is permanently discontinuing business. Some essential portion of the distilling apparatus shall be removed to a safe place of storage pending the final dismantling and disposition of the apparatus.* (Secs. 2810, as amended, 3170, I.R.C.)

General Provisions Relating to Vinegar Factories

§ 195.102 *Production of mash, wort, or wash.* No mash, wort, or wash fit for distillation or for the production of spirits or alcohol shall be made or fer-

mented in any building or on any premises other than a distillery or industrial alcohol plant duly authorized according to law, except for the manufacture of fermented liquors or for the manufacture of vinegar.* (Sec. 2834, I.R.C.)

§ 195.103 *Sale or removal of mash, wort, or wash; distillation.* No mash, wort, or wash made and fermented in any distillery, industrial alcohol plant, or vinegar factory shall be sold or removed therefrom before being distilled; and no person other than an authorized distiller or proprietor of an industrial alcohol plant shall by distillation or by any other process separate the alcoholic spirits from any fermented mash, wort, or wash, except for the manufacture of vinegar.* (Sec. 2834, I.R.C.)

§ 195.104 *Inspection of records and premises.* All records and reports kept and filed under the provisions of these regulations and all liquid or property to which such records or reports relate shall be subject to inspection at any reasonable hour by any official or officer of the Bureau of Internal Revenue.*

§ 195.105 *Samples may be taken by officers.* Officers of the Bureau of Internal Revenue may take samples of low wines and vinegar, or of products manufactured with vinegar, whether at the place of manufacture or on trucks or other conveyances leaving the place of manufacture.*

Instructions Concerning Government Officers

Inspection of Vinegar Factories

§ 195.106 *Entry of vinegar factory or premises used in connection therewith.* Under the law, any internal revenue officer may at all times, as well by night as by day, enter any vinegar factory or building or place used for the business of distilling or used in connection therewith for storage or other purposes, and, if not admitted upon demand, having declared his name and office, he may break open any doors or windows or break through any of the walls of such premises necessary to be broken to enable him to enter.* (Sec. 2827, I.R.C.)

§ 195.107 *Authority to break up grounds or walls.* Under the law, any internal revenue officer, and any persons acting in his aid, may break up the ground on any part of the vinegar factory or premises of a vinegar maker, or any wall or partition thereof or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil, and upon finding any pipe or conveyance leading from or to the vinegar factory premises, to break up any ground, house, wall, or other place through or into which such pipe or conveyance leads, and to break or cut away such pipe or other conveyance.* (Sec. 2830, I.R.C.)

§ 195.108 *Proprietors to furnish assistance.* Under the law, on demand of any internal revenue officer, every vinegar maker shall furnish convenient lad-

ders to enable the officer to examine any vessel or utensil in his vinegar factory, and shall furnish all assistance, lights, tools, or other things necessary for inspecting the premises and apparatus, and shall open all doors, boxes, packages, and all casks, barrels, tanks, and other vessels.* (Sec. 2828, I.R.C.)

§ 195.109 *Officers to keep themselves informed.* Inspectors must inform themselves fully of the limitations and requirements of the internal revenue laws and regulations. They should familiarize themselves with the theory and practice of fermentation and distillation, the making of such simple chemical determinations as are requisite for a check of the yield of low wines at vinegar factories, the proper use of instruments, the gauging and testing of low wines and vinegar, the records that proprietors are required to keep, and the reports they are required to render.*

§ 195.110 *Frequency of inspection.* District supervisors will cause the premises of vinegar factories to be inspected at irregular and unexpected intervals, in accordance with the prevailing inspection policy as determined by the Commissioner from time to time.*

§ 195.111 *Scope of inspection.* The scope of the inspection will likewise be in accordance with the prevailing inspection policy as determined by the Commissioner from time to time. It is not intended that all of the following provisions respecting points to be covered shall necessarily apply in the case of each inspection. Such provisions are set forth for the guidance of the inspectors when within the scope of the inspection required by their assignments.*

§ 195.112 *Examination of records.* The inspectors will see that the records of the proprietor are properly kept, but will not audit such records, or take an inventory, unless conditions indicate the necessity for a complete inspection. When a record is checked the inspector will note such fact on the margin thereof with the date of checking and his initials so that other officers on subsequent visits need not verify the record for the period covered by such inspection.*

§ 195.113 *Examination of distilling equipment.* The inspectors will ascertain whether the distilling equipment in vinegar factories conforms to the plans and will trace the equipment, including pipe lines, to determine whether the flow of alcoholic vapor and low wines conform to the requirements of these regulations, and whether the low wines on storage are adequately protected against diversion. The inspector will require correction of any unsafe condition discovered by him.*

§ 195.114 *Materials.* The inspectors should inquire into the kind and quantities of distilling materials used, and any abnormal differences between the actual yield and the normal yield of low wines therefrom.*

§ 195.115 *Test of low wines and vinegar.* The inspecting officer will examine

the process of manufacture, test the low wines in the spray tank or condenser to see to what proof it is raised, and the proof of the low wines in the receiving tanks and storage tanks. He will also determine the proof at which the low wines are acetified. The inspector shall also test vinegar and other fluids or materials to be removed from the vinegar factory premises to determine that such material does not contain a greater proportion than 2 per cent of proof spirits, which is the maximum proportion permitted by law.*

§ 195.116 *Storage of low wines.* The means of storing the low wines and the security thereof should be ascertained by inspectors. When low wines are stored in storage tanks the officer should ascertain the contents of the tanks and compare the same with the quantity carried in the records as on hand in the tanks. Any deficiency found should be thoroughly inquired into at the time. The proprietor should be called upon for an explanation of any shortage, unless the inspectors deem it advisable to inquire further into the matter before advising him of their discovery of the shortage.*

§ 195.117 *Additional inquiries.* The inspectors will make such further inquiries as may be necessary to determine whether the mode of operations followed by the proprietor, particularly in respect to the receipt, storage, and use of fermenting or distilling materials, the distilling process employed, the transfer of low wines to receiving tanks, and from such tanks to storage tanks, and to the vinegar factory proper to be used in the manufacture of vinegar, is in conformity with the intentment of the law and these regulations.*

§ 195.118 *Inspection reports.* Inspectors will promptly render reports of their inspection to district supervisors. They will call the attention of the proprietor to any condition or mode of operation which is unsatisfactory or irregular, and will describe fully the unsatisfactory or irregular condition or mode of operation in their reports, and state what steps have been taken or ought to be taken to remedy the same. Any unusual conditions discovered in the course of inspection should be noted by the inspectors and covered fully by their reports. Any cases of irregular removal of low wines, or other unlawful acts coming to the knowledge of inspectors, should be immediately reported to the district supervisor.*

Instructions to District Supervisors *Losses*

§ 195.119 *Investigation by district supervisors.* Where large losses of low wines are reported by the proprietors of vinegar factories, the district supervisor will immediately make such investigation and require such evidence to be submitted as he may deem necessary, and will advise the Commissioner of his findings and recommendations relative to allowance or disallowance of the losses.*

§ 195.120 *Examination of reports of proprietors.* Upon receipt of a report rendered by a proprietor of a vinegar factory for the month the district supervisor will examine such report to determine whether the proprietor has accounted for all the low wines produced by him during the month. If the district supervisor finds that the proprietor apparently has not accounted for all the low wines produced by him, he shall make such investigation as he may deem necessary and determine, from all the evidence he can obtain, the quantity of low wines actually produced by the proprietor.*

§ 195.121 *Use of materials not reported.* If the district supervisor should find that the proprietor has received on his premises materials which have not been accounted for, or has used materials which have not been reported as used, and has produced low wines which have not been reported, the quantity of low wines produced and not reported should be determined from all the evidence that can be obtained, including evidence of the normal actual yield of low wines from such materials at the particular vinegar factory.*

§ 195.122 *Determining low wines produced.* If it is determined that all materials received have been accounted for and all materials used have been reported, but that the proprietor has not accounted for all the low wines produced, the quantity actually produced should be determined from all the evidence that can be obtained. The evidence that low wines have been produced from materials reported used and that have not been accounted for by the proprietor should be direct and positive. The fraudulent removal of low wines will not be assumed from the mere fact that the quantity of low wines reported is not equal to the number of gallons which the materials reported used will ordinarily produce.*

§ 195.123 *Notice to proprietor.* If it is determined that the proprietor has not accounted for all the low wines produced by him, the district supervisor will, unless the interests of the Government require an immediate assessment, notify the proprietor of the proposed assessment and afford him an opportunity to submit within 30 days, or such further time as the district supervisor may consider reasonable, evidence showing why the proposed assessment should not be made.*

§ 195.124 *Nature of evidence.* The evidence submitted by the proprietor should be in the form of affidavits and certified documents.*

§ 195.125 *Consideration of response.* If the proprietor responds to the notice and submits evidence bearing on the merits of the proposed assessment, the district supervisor will give due consideration thereto and make such further investigation as he may deem advisable. If, after consideration of all the facts,

the district supervisor finds that the tax is due, he will report the same to the Commissioner in accordance with the prescribed assessment procedure. If the district supervisor finds that the tax should not be assessed, he will forward the affidavits and other documents submitted by the proprietor, together with any investigation reports, to the Commissioner, with his recommendation thereon.*

§ 195.126 *Evidence of loss.* Where the proprietor claims, pursuant to notice of proposed assessment, that the low wines produced and not accounted for were actually lost, without any fraud or collusion on his part, and were not illegally used or removed from the premises, he will submit evidence in support thereof.*

§ 195.127 *Proprietor's failure to respond.* If the proprietor fails to respond to the notice of proposed assessment within the time specified, the district supervisor will report to the Commissioner, in accordance with the prescribed assessment procedure, the amount found to be due for assessment.*

§ 195.128 *Examination of evidence.* When such evidence of loss is received by the district supervisor, he will carefully examine the same to see that all the required information has been furnished, and will cause such investigation to be made, or require such additional evidence to be submitted, as he may deem necessary. Upon completion of his investigation, if any, the district supervisor will forward the evidence and accompanying papers, together with any pertinent reports and documentary evidence, to the Commissioner, with his recommendation in regard to the allowance or disallowance of the loss.*

§ 195.129 *District supervisor's credit for losses.* Upon receipt of Forms 1623 the district supervisor will take credit on his Form 1624 for the quantity of low wines reported lost in receiving and storage tanks within the 1 per cent allowance provided for in these regulations. Losses in excess of the authorized allowance will be reported as unaccounted for on the first and last of the month on Form 1624 until it is determined what disposition has been made of the low wines, or until the loss is tax-paid or is allowed by the Commissioner.*

Audit of Reports

§ 195.130 *Audit of reports of vinegar manufacturers.* The district supervisor will, after audit and not later than the last day of the month succeeding that for which the reports are rendered, forward one copy of Form 1623 to the Commissioner and retain the remaining copy.*

District Supervisor's Report

§ 195.131 *District supervisor's report, Form 1624.* District supervisors will prepare, in duplicate, Form 1624, "District Supervisor's Report of Low Wines and Vinegar," from the monthly returns rendered in their districts on Form 1623. A separate report will be made for each

State in the district. Entries shall be made as indicated by the headings of the various columns and lines and in accordance with the instructions printed on the form, and as set forth in these regulations. One copy will be retained by the district supervisor for his files and the other copy will be forwarded to the Commissioner not later than the last day of the month succeeding that for which the form is rendered.*

[SEAL] TIMOTHY C. MOONEY,
Acting Commissioner of
Internal Revenue.

Approved: November 5, 1940.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

[F. R. Doc. 40-4796; Filed, November 8, 1940;
11:25 a. m.]

TITLE 30—MINERAL RESOURCES
CHAPTER III—BITUMINOUS COAL
DIVISION

PART 301—RULES OF PRACTICE AND
PROCEDURE

Pursuant to the provisions of the Bituminous Coal Act of 1937 and sections 2 (a), 4 II (j) and 5 (b) thereof, the following rules and regulations are hereby established pertaining to practice and procedure in respect to complaints filed pursuant to sections 4 II (j) and 5 (b) of the Act charging a violation of any provision of the Code or any regulation made thereunder including effective minimum prices,¹ marketing rules and regulations,² rules and regulations for the registration of distributors and rules and regulations for the registration of bona fide and legitimate farmers' cooperative organizations.³

RULES OF PRACTICE AND PROCEDURE IN PROCEEDINGS INSTITUTED PURSUANT TO SECTIONS 4 II (j) AND 5 (b) OF THE BITUMINOUS COAL ACT OF 1937

- Sec.
301.121 Meaning of terms.
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§ 301.121 *Meaning of terms*—(a) *Complainants*. Any Code member, District Board, or any State or political subdivision of a State, or the Consumers' Counsel, may file a complaint under section 4 II (j) or section 5 (b) of the Act. A member of a District Board may also file a complaint under section 4 II (j).

(b) *"Consumers' Counsel"* refers to the Director of the Consumers' Counsel Division in the Office of the Solicitor of the Department of the Interior.

(c) *"Rules of Practice and Procedure"* refers to the "Rules of Practice and Procedure before the Commission" heretofore adopted and ratified by the Division and as subsequently amended by the Division.*

§ 301.122 *Form of complaints*. Any person or entity eligible under § 301.121 (a) may file a complaint under section 4 II (j) and section 5 (b) of the Act, or either of them, on Form BCD No. 348 (June, 1940) set forth in Appendix "A", or in such form as complies with § 301.12, alleging the facts required by Form BCD No. 348 to the extent applicable to the alleged violations.*

§ 301.123 *Interveners*. Any Code member, District Board, or member thereof, any State or political subdivision of a State, or the Consumers' Counsel, possessing an interest which may be affected by any proceeding instituted pursuant to section 4 II (j) or section 5 (b) of the Act, may petition for leave to intervene as a party to any such proceeding either on behalf of the complainant or the defendant in such proceeding.*

§ 301.124 *Specifications, numbers of copies and filing and serving of complaints, answers, petitions for intervention and other pleadings*—(a) *Form in general, subscription and verification*. Each pleading except as otherwise provided in § 301.121 in respect to complaints shall conform to "Specifications as to complaints, applications, petitions, answers, protests, briefs, etc.", set forth in § 301.12 and shall be duly subscribed and verified in the manner set forth in § 301.6 (g).

(b) *Number of copies and place of filing and service thereof*—(1) *Complaints*. An original and three (3) conformed copies of the complaint must be filed. They may be filed with the Bituminous Coal Division, Department of the Interior, 734 15th Street NW., Washington, D. C., or with one of the Statistical Bureaus of the Division and shall be regarded as filed when received at any such office. A true copy of such complaint shall be served upon each defendant, and proof of service thereof shall be made in the manner provided in Rule XIII of the Rules of Practice and Procedure.

(2) *Answers*. Answers to the complaint must be filed with the Bituminous Coal Division at its Washington Office or

* §§ 301.121-301.131, inclusive, issued under authority contained in sec. 2 (a), 4 II (j), 5 (b), 50 Stat. 72, 76, 83; U.S.C., Sup., 829 (a), 833 (j), 836 (b).

* Form BCD No. 348 was filed as a part of the original document.

with one of the Statistical Bureaus of the Division within twenty (20) days after the date on which such complaint was served on the defendants. An original and three (3) conformed copies of the answer should be so filed. The period so fixed may be shortened or extended by the Division when it is deemed advisable. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Each defendant shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case the defendant shall so state. Any charges not specifically denied in the answer shall be deemed to be admitted and may be so found by the presiding officer unless the defendant disclaims such knowledge upon which to make denial.

Any defendant failing to file an answer within such period, unless the Director or the presiding officer shall otherwise order, shall be deemed to have admitted the allegations of the complaint and to have consented to the entry of an appropriate order on the basis of the facts alleged.

(3) *Petitions for intervention*. Any person or entity eligible under § 301.123 may file a petition of intervention not later than five (5) days before date set for hearing on the complaint. An original and three (3) conformed copies of such petition may be filed with the Bituminous Coal Division, Department of the Interior, 734 15th Street NW., Washington, D. C., or with one of the Statistical Bureaus of the Division, and a true copy thereof shall be served on the complainants and defendants and on any other persons who have intervened on or before the date when such petition is filed. The petition shall be regarded as filed when received at any such office, together with proof of service of a true copy thereof upon the complainants and defendants. Hearing on any such petition will be had at the opening of the hearing on the complaint.

Each petition of intervention shall show the name and post office address of the intervener, the eligibility of the intervener under § 301.123, and the interest of the intervener which may be affected by the proceedings and the reasons why such petition should be granted.*

§ 301.125 *Notice of hearing*. Upon the filing of any original complaint the Director will cause the same to be set for hearing as promptly as he deems reasonable and will cause Notice of Hearing to be published in the FEDERAL REGISTER and copies thereof to be mailed to the complainants and defendants, and to all petitioners for intervention, and to the Consumers' Counsel, and to each District Board, and to each Statistical Bureau. Notice of filing of complaint under section 5 (b) of the Act and hearing thereon in substantially the form set forth in Appendix "B" may be served upon the defendants.*

* Filed as a part of the original document.

¹ 5 F.R. 2961, 3199, 3405.

² 5 F.R. 2961.

³ 5 F.R. 2346.

§ 301.126 *Hearings*—(a) *Appearances*. In addition to the parties to the proceeding, any Code member or District Board or member thereof, or any State or political subdivision of a State, or the Consumers' Counsel, or any consumer or employee, and the Commissioner of Internal Revenue, shall be entitled to present evidence and to be heard. Any such person or entity desiring to present evidence or to be heard shall file a written appearance, setting forth the name and address of applicant, the nature of the applicant's interest, and applicant's desire to be heard, and the Director or presiding officer at the hearing shall make such order as he shall deem appropriate in view of the interests of the applicant, the state of the hearing, etc., which order may include leave to present evidence, cross-examine witnesses, file briefs, and to make oral argument, etc.

(b) *Order of procedure*. Unless otherwise directed by the presiding officer, first the evidence in support of the allegations of the complaint shall be presented, and then evidence in opposition to the complaint, and thereafter the complainants and others appearing in support of the complaint will be afforded an opportunity to present rebuttal evidence.

Oral argument before the presiding officer and submission of briefs shall be within the discretion of the presiding officer.

(c) *Evidence Judicially Noticed*. The effective minimum prices, the Marketing Rules and Regulations, the Rules and Regulations for Registration of Distributors, and the Rules and Regulations for Registration of Bona Fide and Legitimate Farmers' Cooperative Organizations, and any final order, finding, or determination made by the Division, not revoked or revised, or in respect of which no appeal is pending, may be judicially noticed or offered and received in evidence, and shall not be subject to collateral attack at any stage of the hearing on any complaint filed pursuant to § 301.121.*

§ 301.127 *Consolidation of proceedings*. The Director of the presiding officer may, upon motion of any party, or the Director may upon his own motion, order that the proceedings on two or more complaints be consolidated into one proceeding whenever in his judgment, the issues raised by such complaints are so related that consolidation of the proceedings will facilitate an expeditious and a just consideration of the issues.*

§ 301.128 *Findings of fact and order*. If the hearing is held before an Examiner, he shall, as expeditiously as possible, prepare and file with the Director a report of said hearing, setting forth therein proposed findings of fact and his recommendations of an appropriate order. The Records Section of the Division shall thereupon cause a copy of such report to be mailed to each party, and to every person who has entered his appearance in the proceeding pursuant to the provisions of § 301.126.

If the hearing is held before the Director, he will as expeditiously as possible, make findings of fact and enter his order in the premises.*

§ 301.129 *Exceptions to Examiner's report*. Exceptions to the report, findings and recommendations of the Examiner, and requested findings and order may be filed with the Director within ten (10) days after such report, findings and recommendations are filed, or such shorter or longer period as the Director may prescribe, and, if so desired, briefs in support of such exceptions and a request for oral argument before the Director may be filed within such period. Copies of any such exceptions, briefs, and requested findings and order shall be served by the party filing the same on all parties.*

§ 301.130 *Waiver of report of Examiner*. The parties may, by written stipulation waive the filing of a report, findings and recommendations by the Examiner, subject to the disapproval of the Examiner or the Director. If the Examiner's report, findings and recommendations have been waived, the Examiner shall file with the Director a notice that the hearing has been concluded. Within ten (10) days after the conclusion of the hearing, or such shorter or longer period as the Director may prescribe, the parties may, and if so directed by the Director, shall file requested findings and order and briefs.

Any request for oral argument before the Director shall be filed within five (5) days after the conclusion of the hearing where the Examiner's report is waived.*

§ 301.131 *Matters not governed by foregoing rules*. If any provision of §§ 301.121–301.131, inclusive, conflicts with any provision of the Rules of Practice and Procedure, the provisions of §§ 301.121–301.131, inclusive, shall govern. In any matter not covered by §§ 301.121–301.131, inclusive, the Rules of Practice and Procedure, and all amendments thereto, whether prior or subsequent to the effective date of §§ 301.121–301.131, inclusive, shall apply.*

Dated, October 31, 1940.

[SEAL]

H. A. GRAY,
Director.

Approved, November 4, 1940.

HAROLD L. ICKES,
Secretary of the Interior.

[F. R. Doc. 40-4790; Filed, November 7, 1940; 1:30 p. m.]

Notices

DEPARTMENT OF STATE.

TRADE AGREEMENT NEGOTIATIONS WITH CANADA

NOTICE OF INTENTION TO NEGOTIATE

Pursuant to section 4 of an act of Congress approved June 12, 1934, entitled

"An Act to Amend the Tariff Act of 1930," as extended by Public Resolution No. 61, approved April 12, 1940, and to Executive Order No. 6750, of June 27, 1934, I hereby give notice of intention to negotiate a trade agreement with the Government of Canada, to replace the supplementary trade agreement with that Government signed at Washington, December 30, 1939.

All presentations of information and views in writing and applications for supplemental oral presentation of views with respect to the negotiation of such agreement should be submitted to the Committee for Reciprocity Information in accordance with the announcement of this date issued by that Committee concerning the manner and dates for the submission of briefs and applications, and the time set for public hearings.

[SEAL]

CORDELL HULL,
Secretary of State.

NOVEMBER 8, 1940.

[F. R. Doc. 40-4799; Filed, November 8, 1940; 11:45 a. m.]

Committee for Reciprocity Information.

TRADE AGREEMENT NEGOTIATIONS WITH CANADA

PUBLIC NOTICE

Closing Date for Submission of Briefs, November 22, 1940; Closing Date for Application To Be Heard, November 22, 1940; Public Hearings Open, November 27, 1940

The Committee for Reciprocity Information hereby gives notice that all information and views in writing, and all applications for supplemental oral presentation of views, in regard to the negotiation of a trade agreement with the Government of Canada, notice of intention to negotiate which has been issued by the Secretary of State on this date, shall be submitted to the Committee for Reciprocity Information not later than 12 o'clock noon, November 22, 1940. Such communications should be addressed to "Chairman, Committee for Reciprocity Information, Tariff Commission Building, Eighth and E Streets NW., Washington, D. C."

A public hearing will be held beginning at 10 a. m. on November 27, 1940, before the Committee for Reciprocity Information in the hearing room of the Tariff Commission in the Tariff Commission Building, where supplemental oral statements will be heard.

Six copies of written statements, either typewritten or printed, shall be submitted, of which one copy shall be sworn to. Appearance at hearings before the Committee may be made only by those persons who have filed written statements and who have within the time prescribed made written application for a

hearing, and statements made at such hearings shall be under oath.

By direction of the Committee for Reciprocity Information this 8th day of November 1940.

JOHN P. GREGG,
Secretary.

[F. R. Doc. 40-4800; Filed, November 8, 1940; 11:45 a. m.]

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

MEMORANDUM AND ORDER OF SECRETARY OF THE INTERIOR DISMISSING PETITION OF BITUMINOUS COAL PRODUCERS BOARD FOR DISTRICT NO. 1 FOR REHEARING, REARGUMENT, RECONSIDERATION AND MODIFICATION OF CERTAIN FINDINGS AND CONCLUSIONS IN THIS PROCEEDING, AND FOR PRELIMINARY AND PERMANENT ORDER OF MODIFICATION

Bituminous Coal Producers Board for District No. 1, on behalf of itself and the code members it represents, has filed a petition for rehearing, reargument, reconsideration, and modification of certain matters involved in this proceeding, asking that a preliminary and permanent order be entered modifying in certain respects my Order dated September 24, 1940, and the findings of fact and conclusions issued in connection therewith.

My Order of September 24, 1940 was duly mailed to petitioner on September 24, 1940, and the petition for rehearing, reargument, reconsideration and modification of said Order was filed with me on October 24, 1940.

The petition recites that it is filed pursuant to Rule XXIII of the Rules of Practice and Procedure of the Division. However, Rule XXIII (e)¹ of the Division's Rules of Practice and Procedure, as amended on May 14, 1940 with my approval, provides that a petition for rehearing, reargument, reconsideration or modification of a final order must be filed within ten (10) days after the date of the service of such order.

Since the petition here in question was not filed within the time required, it should be dismissed, without prejudice, however, to the right of the petitioner to proceed in accordance with section 4 II (d) of the Act, or to any other rights of petitioner in the premises.

It is so ordered.

[SEAL] HAROLD C. ICKES,
Secretary of the Interior.

Dated: November 6, 1940.

[F. R. Doc. 40-4794; Filed, November 8, 1940; 11:01 a. m.]

¹ 5 F.R. 1815.

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

MEMORANDUM AND ORDER OF SECRETARY OF THE INTERIOR DISMISSING PETITION OF WHEELING TOWNSHIP COAL MINING COMPANY FOR REHEARING, REARGUMENT AND RECONSIDERATION OF CERTAIN FINDINGS AND CONCLUSIONS IN THIS PROCEEDING, AND FOR STAY PENDING DETERMINATION OF SAID PETITION

Wheeling Township Coal Mining Company, a Code member producer in District 4, has filed a petition for rehearing, reargument and reconsideration of certain matters involved in this proceeding, and asks that my Order of September 24, 1940, the Director's Order of September 25, 1940, and the findings of fact and conclusions issued in connection therewith, be set aside pending such reconsideration.

The Orders were duly mailed to the said Wheeling Township Coal Mining Company on September 24, 1940, and September 25, 1940, respectively; each Order was received two days after being mailed. The petition for rehearing, reargument and reconsideration of said Orders was filed with me on October 24, 1940.

The petition recites that it is filed pursuant to Rule XXIII of the Rules of Practice and Procedure of the Division. However, Rule XXIII (e)¹ of the Rules of Practice and Procedure, as amended on May 14, 1940 with my approval, provides that a petition for rehearing, reargument, reconsideration, or modification of a final order must be filed within ten (10) days after the date of service of such order.

Since the petition here in question was not filed within the time required, it should be dismissed, without prejudice, however, to the right of the petitioner to proceed in accordance with section 4 II (d) of the Act, or to any other right of petitioner in the premises.

It is so ordered.

[SEAL] HAROLD L. ICKES,
Secretary of the Interior.

Dated: November 6, 1940.

[F. R. Doc. 40-4795; Filed, November 8, 1940; 11:01 a. m.]

[Docket No. A-196]

PETITION OF TUBE CITY COLLIERIES, INC., FOR A REDUCTION IN THE PRICE OF SIZE GROUP 10 (3/8" x 0 RAW SLACK) COAL PRODUCED AT ITS HUBBARD MINE (MINE INDEX NO. 93) IN DISTRICT NO. 2, FOR SHIPMENT INTO MARKET AREA 13

ORDER GRANTING, IN PART, TEMPORARY RELIEF

The original petition in the above-entitled matter, filed with this Division on October 21, 1940, prays for the issuance

¹ 5 F.R. 1815.

of temporary and final orders reducing from "D" to "E" the effective minimum price classification for the Hubbard Mine, Mine Index No. 93, District No. 2, in the 3/8" x 0 raw slack size, Size Group 10, for shipment to Market Area 13.

In its petition the original petitioner requested opportunity to make an informal presentation of its views. Pursuant to Rule 301.106 an informal conference was held on October 28, 1940. The conference was called upon telegraphic notice to the original petitioner, Bituminous Coal Producers Board for District No. 2 (District Board 2) and the Statistical Bureau for District 2, and upon notice by memorandum to Consumers' Counsel Division. At the conference Mr. Baton, president of petitioner company, stated that, as instructed by the Director, he had dispatched notice of the conference and a copy of the petition to District Boards 1, 3, 4, 6, and to the following producers in District No. 2: William Watt, Martin Riber, receiver of the Butler Consolidated Coal Company, and Messrs. Alford and Blakeslee, receivers of the Pittsburgh Terminal Coal Company.

At the conference, petitioner expressly limited its prayer for temporary relief to sales to Otis Steel Company, Cleveland, Ohio, Market Area 13. With respect to this limited prayer District Board 2 entered an appearance at the conference in support of the petition and District Board 6 withdrew any objection to temporary relief. No party objected to the granting of such restricted temporary relief.

This is a matter which will, by appropriate order, soon be made the subject of further proceedings. As of the present date, however, I feel that the temporary relief requested by petitioner, as restricted, is appropriate. I base this ruling upon the following considerations:

1. The injury to petitioner warrants a special order of temporary relief. At the conference, petitioner stated that Otis Steel Company had ceased purchasing from petitioner as of October 15, 1940, because its coal was priced five cents higher than, and was not superior to, coal produced at Terminal No. 8 Mine of the Pittsburgh Terminal Coal Company. The importance of this customer to petitioner is shown by the fact that between April 1, 1940, when petitioner started large production, and October 1, 1940, Otis Steel Company purchased more than 91% of the 3/8" x 0 slack produced by petitioner. That slack is a resultant of petitioner's stoker coal, and in August petitioner invested \$10,000 in its tippie to take care of the production of domestic and nut coal. In respect to the possible damage to the petitioner, it should be noted that petitioner is allowed by the railroad a no-bill capacity of only twenty-one cars on track. That is less than its daily production of 1450 tons (29% of which is 3/8" x 0 slack) because in the summer petitioner does most of its business by truck. Petitioner's repre-

sentative stated that it would be able to continue running until November 3 by making certain lake cargo shipments in another size, but that at that time it would close down because of inability to ship $\frac{3}{8}$ " minus slack.

2. The relief prayed for is very limited and will not have any repercussions with respect to any other parts of the price structure or any other producers.

a. In the first place, it does not raise the issue of size differentials between $\frac{3}{8}$ " screenings and $\frac{3}{4}$ " screenings or any other size. The question is one of comparative quality of petitioner's $\frac{3}{8}$ " coal as against other $\frac{3}{8}$ " coal produced in District 2, and in particular as against the $\frac{3}{8}$ " x 0 slack produced at Pittsburgh Terminal No. 8 Mine.

b. It appears from the conference that the particular consumer concerned, Otis Steel Company, has, since April 1, 1940, distributed its business on $\frac{3}{8}$ " raw slack to the particular fuel plant at Cleveland, between two companies, namely, petitioner and the Pittsburgh Terminal Coal Company (for supply from the Terminal No. 8 Mine), likewise located in District 2. Under the effective minimum prices petitioner's $\frac{3}{8}$ " x 0 coal has a five cent higher f. o. b. mine price, and also a five cent higher delivered price in Cleveland than that of the Terminal No. 8 Mine. Mr. Baton stated at the conference that Otis Steel Company regards the coal from the two mines as alike; that it was now purchasing all of its coal from the Terminal No. 8 Mine but would continue its former method of distributing purchases if petitioner obtained temporary relief; that he was informed by the Pittsburgh Terminal people that they thought the slacks from the two mines are exactly alike, and in fact that they thought theirs was a little better; and that the receiver had stated that they were not going to "flag" the petitioner on the question of temporary relief, and that the previously existing arrangements were satisfactory to both producers.

3. Finally it may be mentioned that the Hubbard Mine has really been operated by petitioner only since April 1, 1940, and that unlike its predecessor it uses a mechanical loader in mining down to the bottom of the seam, thus lowering the quality; and that the new proximate analyses are different from the analyses in the record for General Docket No. 15, and show the same average with respect to B. t. u.'s. as the $\frac{3}{8}$ " x 0 slack of Terminal No. 8.

In view of the foregoing circumstances the Director is of the opinion that a reasonable showing of the necessity for the temporary relief requested has been made and that this is peculiarly a case where restricted temporary relief protecting the petitioner and not affecting other producers can be arranged. It was stated at the conference that the one producer

who has succeeded to the business of petitioner has no objections to such restricted temporary relief, and in any event it did not oppose the petition for temporary relief, although duly notified thereof.

It is therefore ordered. That temporary relief, pending the final disposition of the petition herein, be and the same is hereby granted, as follows: Commencing forthwith the coal in Size Group 10 produced by the Tube City Collieries, Inc., at its Hubbard Mine (Mine Index No. 93) in District No. 2, when shipped to Otis Steel Company, at Cleveland, Ohio, shall be classified as a coal of "E" quality instead of "D", and shall accordingly have an f. o. b. mine price of \$1.65 per ton.

Notice is hereby given that applications to stay, terminate or modify the temporary relief herein granted may be filed pursuant to the Rules and Regulations Governing Practice and Procedure before the Division in Proceedings instituted pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

Dated: November 7, 1940.

[SEAL]

H. A. GRAY,
Director.

[F. R. Doc. 40-4793; Filed, November 8, 1940;
11:01 a. m.]

DEPARTMENT OF COMMERCE.

Civil Aeronautics Authority.

[Docket No. 470]

APPLICATION OF ALL AMERICAN AVIATION, INC.

NOTICE OF HEARING¹

The above-entitled proceeding, being the application of All American Aviation, Inc., for an amendment to its certificate of public convenience and necessity² for Route No. 49 to include Lewistown, Newport, Mechanicsburg, Carlisle, Newville and Shippensburg, Pa., and Ripley, W. Va., as additional intermediate stops, and rerouting of flights through Harrisburg, Pa., is hereby assigned for public hearing on November 25, 1940, 10 o'clock a. m. (Eastern Standard Time) at the Carlton Hotel, 923 16th Street NW., Washington, D. C., before Examiner Frank P. McIntyre.

Dated Washington, D. C., November 7, 1940.

[SEAL]

FRANK P. MCINTYRE,
Examiner.

[F. R. Doc. 40-4792; Filed, November 8, 1940;
9:47 a. m.]

¹ Issued by the Civil Aeronautics Board.
² Under section 401 (h) of the Civil Aeronautics Act of 1938.

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5928]

APPLICATION OF UNION BROADCASTING Co. (WARM)

NOTICE OF HEARING

Application dated, June 15, 1940; for license to cover construction permit; class of service, broadcast; class of station, broadcast; location, Scranton, Pa.; present assignment (under c. p. only); frequency, 1370 kc.; power, 250 w. night, 250 w. day; hours of operation, unlimited.

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

1. To determine whether false statements have been made in applications filed by the Union Broadcasting Company, Inc., with the Commission regarding the true ownership of Station WARM.

2. To determine whether false statements have been made in applications filed by the Union Broadcasting Company, Inc., with the Commission regarding the financing of Station WARM.

3. To determine whether the applicant has failed to make full disclosures as to control and management of the Union Broadcasting Company, Inc.

4. To determine whether the Union Broadcasting Company, Inc., is financially qualified to operate Station WARM.

5. To determine the true ownership and control of Station WARM.

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

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

The applicant's address is as follows:

Union Broadcasting Company,
Radio Station WARM,
Lincoln Trust Building,
228 Washington Avenue,
Scranton, Pa.

Dated at Washington, D. C., November 7, 1940.

By the Commission.

[SEAL]

T. J. SLOWIE,
Secretary.

[F. R. Doc. 40-4798; Filed, November 8, 1940;
11:41 a. m.]