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TITLE 3—THE PRESIDENT

PROCLAMATION 3145

MODIFICATION OF RESTRICTIONS ON IMPORTS OF LONG-STAPLE COTTON

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS, pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U. S. C. 624), the President issued a proclamation on September 5, 1939 (No. 2351; 54 Stat. 2640), limiting imports of cotton having a staple length of 1⅛ inches or more to an annual quota of 45,656,420 pounds, which proclamation was amended by Proclamation No. 2450 of December 19, 1940 (54 Stat. 2769), suspending the quota on cotton having a staple length of 1 11/16 inches or more, and by Proclamation No. 2856 of September 3, 1949 (14 F. R. 5517), changing the opening date from September 20 to February 1 for the annual quota for cotton having a staple length of 1⅛ inches or more but less than 1 11/16 inches;

WHEREAS section 202 (a) of the Agricultural Act of 1956 (Public Law 540, 84th Congress), approved May 28, 1956, provides as follows:

SEC. 202 (a). Hereafter the quota for cotton having a staple length of one and one-eighth inches or more, established September 20, 1939, pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended, shall apply to the same grades and staple lengths included in the quota when such quota was initially established. Such quota shall provide for cotton having a staple length of one and eleven sixteenths inches and longer, and shall establish dates for the quota year which will recognize and permit entry to conform to normal marketing practices and requirements for such cotton.

WHEREAS I find and declare that the termination of the said Proclamation No. 2450 of December 19, 1940, and the modifications hereinafter indicated of the said Proclamation No. 2351 of September 5, 1939, are necessary in order to carry out the provisions of the said section 202 (a) of the Agricultural Act of 1956:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by section 202 (a) of the said Agricultural Act of 1956, do hereby terminate the said Proclamation No. 2450 of December 19, 1940, and do hereby further modify the said Proclamation No. 2351 of September 5, 1939, so that (1) the quota year for cotton having a staple length of 1⅛ inches or more shall hereafter commence on August 1, and (2) the quantity of such cotton which may be entered or withdrawn from warehouse for consumption during the period May 28, 1956, to July 31, 1956, inclusive, together with the quantity of cotton having a staple length of 1⅛ inches or more but less than 1 11/16 inches which was entered or withdrawn from warehouse for consumption during the period February 1, 1956, to May 27, 1956, inclusive, shall not exceed 22,828,210 pounds.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-ninth day of June in the year of our Lord nineteen hundred and fifty-six, and of the Independence of the United States of America the one hundred and eightieth.

[SEAL]

DWIGHT D. EISENHOWER

By the President:

HERBERT HOOVER, Jr.,
Acting Secretary of State.

[F. R. Doc. 56-5410; Filed, July 5, 1956; 11:07 a. m.]

PROCLAMATION 3146

MODIFYING PROCLAMATION NO. 3140 CARRYING OUT THE SIXTH PROTOCOL OF SUPPLEMENTARY CONCESSIONS TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS by Proclamation No. 3140 of June 13, 1956 (21 F. R. 4237), the President has proclaimed such modifications of existing duties and other import restrictions of the United States, or such continuance of existing customs or excise treatment of articles imported into the United States as were found to be re-

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THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

quired or appropriate to carry out the Sixth Protocol of Supplementary Concessions to the General Agreement on Tariffs and Trade, including the schedule of United States concessions (House Doc. 421, 84th Cong., 2d Sess.);

WHEREAS the description of products in item 806 (a) in Part I of Schedule XX annexed to the said Sixth Protocol of Supplementary Concessions reads as follows:

Cherry juice, and other fruit juices and fruit sirups, not specially provided for, containing less than ½ of one per centum of alcohol (not including prune juice, prune sirup, or prune wine, and except pineapple juice or sirup and naranjilla (*solanum quitoense lam*) juice or sirup);

WHEREAS the said item 806 (a) was not intended to cover citrus fruit juices, but such juices other than naranjilla juice inadvertently were not excepted from the description of products set forth in the said item 806 (a);

WHEREAS that portion of the description of products in item 1510 [second] in Part I of the said Schedule XX which follows the last semicolon therein, was erroneously worded to provide for buttons "wholly or in chief value of textile material" instead of for buttons "wholly or in part of textile material":

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the Statutes, including section 350 of the Tariff Act of 1930, as amended (48 Stat. (pt. 1) 943, ch. 474, 57 Stat. (pt. 1) 125, ch. 118, 59 Stat. (pt. 1) 410, ch. 269, 63 Stat. (pt. 1) 698, ch. 585, 69 Stat. 165, ch. 169), do proclaim, effective June 30, 1956:

(a) That the said Proclamation No. 3140 of June 13, 1956, is hereby terminated, to the extent that it shall be applied as though the description of products in item 806 (a) in Part I of Schedule XX to the Sixth Protocol of Supplementary Concessions to the General Agreement on Tariffs and Trade were stated as follows:

Cherry juice, and other fruit juices and fruit sirups, not specially provided for, containing less than ½ of one per centum of alcohol (not including prune juice, prune sirup, or prune wine, and except pineapple juice or sirup, naranjilla (*solanum quitoense lam*) and other citrus fruit juices, and naranjilla sirup).

(b) That item 1510 [second] in Part I of the said Schedule XX shall be applied as though that portion of the description of products therein which follows the last semicolon read as follows: "or wholly or in part of textile material".

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 29th day of June in the year of our Lord nineteen hundred and [SEAL] fifty-six, and of the Independence of the United States of America the one hundred and eightieth.

DWIGHT D. EISENHOWER

By the President:

HERBERT HOOVER, Jr.,
Acting Secretary of State.

[F. R. Doc. 56-5411; Filed, July 5, 1956; 11:30 a. m.]

RULES AND REGULATIONS

TITLE 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

Subchapter B—Farm Ownership Loans

[FHA Instruction 443.2]

PART 332—PROCESSING INITIAL LOANS

Subchapter D—Soil and Water Conservation Loans

[FHA Instructions 442.2 and 442.4]

PART 352—PROCESSING LOANS TO INDIVIDUALS

PART 354—PROCESSING LOANS TO ASSOCIATIONS

AUTHENTICATION OF SIGNATURES FOR INSURED LENDERS

Sections 332.13 (g), 352.4 (c) (2), and 354.8 (b) (1) of Title 6, Code of Federal Regulations (20 F. R. 8657, 21 F. R. 1227, 20 F. R. 7214), are amended to provide for authentication of the signature of the County Supervisor who signs the insurance endorsement on the promissory note when someone else signed the request for issuance of the loan check by an insured lender, and to read as follows:

§ 332.13 *Action by County Supervisor following receipt of closing instructions.* * * *

(g) *Insurance endorsement for insured loan.* The County Supervisor is authorized to execute the insurance endorsement on the reverse of Form FHA–240, "Promissory Note (Insured Farm Ownership Loan)," or 240A, "Bond (Insured Farm Ownership Loan)." The State Director also is authorized to sign the insurance endorsement. Execution of the insurance endorsement constitutes the Government's insurance of the loan. If for any reason it is not possible for the same County Supervisor who signed Form FHA–971 to sign the insurance endorsement on the promissory note, the original of the completed note will be sent to the State Office, instead of directly to the lender. In such case, the State Director, or other authorized State Office official, will attest on the reverse of the note the signature of the different County Supervisor before sending the note to the lender. This will not be necessary when a local lender has no objection to a different signature on the insurance endorsement than that which appeared on Form FHA–971.

(Sec. 41 (1), 60 Stat. 1066; 7 U. S. C. 1015 (l))

§ 352.4 *Loan closing.* * * *

(c) *Preparation of promissory note.* * * *

(2) The County Supervisor is authorized to sign the insurance endorsement on Form FHA–965 and Form FHA–965B. The State Director also is authorized to sign the insurance endorsement. Execution of the insurance endorsement constitutes the Government's insurance of the loan. If for any reason it is not possible for the same County Supervisor who signed Form FHA–971 to sign the insurance endorsement on the promissory note, the original of the completed note will be sent to the State Office, instead of directly to the lender. In such case, the State Director, or other authorized State Office official, will attest on the reverse of the note the signature of the different County Supervisor before sending the note to the lender. This will not be necessary when a local lender has no objection to a different signature on the insurance endorsement than that which appeared on Form FHA–971.

(Sec. 6 (3), 50 Stat. 870, sec. 10 (a) (7), 68 Stat. 735; 16 U. S. C. 590w (3), 590x-3 (a) (7))

§ 354.8 *Loan closing.* * * *

(b) *Preparation of promissory note.* * * *

(1) The County Supervisor is authorized to sign the insurance endorsement on Form FHA–520. The State Director also is authorized to sign the insurance endorsement. Execution of the insurance endorsement constitutes the Government's insurance of the loan. If for any reason it is not possible for the same County Supervisor who signed Form FHA–971 to sign the insurance endorsement on the promissory note, the original of the completed note will be sent to the State Office, instead of directly to the lender. In such case, the State Director, or other authorized State Office official, will attest on the reverse of the note the signature of the different County Supervisor before sending the note to the lender. This will not be necessary when a local lender has no objection to a different signature on the insurance endorsement than that which appeared on Form FHA–971.

(Sec. 6 (3), 50 Stat. 870, sec. 10 (a) (7), 68 Stat. 735; 16 U. S. C. 590w (3), 590x-3 (a) (7))

Dated: July 2, 1956.

[SEAL] H. C. SMITH,
Acting Administrator,
Farmers Home Administration.

[F. R. Doc. 56-5361; Filed, July 5, 1956; 8:52 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 29—TOBACCO INSPECTION

ORDER DESIGNATING TOBACCO AUCTION MARKETS OF SWAINSBORO AND THOMASVILLE, GA., AND MADISON, FLA.

Upon referenda conducted, pursuant to prior notice (21 F. R. 4258), during the period June 21, 1956–June 23, 1956, both dates inclusive, among tobacco growers, who, during the 1955 marketing season, sold tobacco at auction on the market at Swainsboro, Ga., on the market at Thomasville, Ga., and on the market at Madison, Fla., it is found that more than two-thirds of the growers voting in each such referendum favor the designation of each such market under section 5 of the Tobacco Inspection Act (7 U. S. C. 511 et seq.) for the free and mandatory inspection and certification of tobacco sold on each such market. Therefore, pursuant to the authority vested in the Administrator of the Agricultural Marketing Service, and for the purposes of said act, the orders of designation of tobacco markets (7 CFR 29.601) are amended by adding thereto at the end thereof the following paragraph (tt):

§ 29.601 *Designation of tobacco markets.* * * *

(tt) *The tobacco markets at Swainsboro, Georgia, Thomasville, Georgia, and Madison, Florida.* Effective 30 days after the date of publication in the FEDERAL REGISTER no tobacco of any type shall be offered for sale at auction on the market at Swainsboro, Georgia, on the market at Thomasville, Georgia, and on the market at Madison, Florida, until such tobacco shall have been inspected and certified by an authorized representative of the U. S. Department of Agriculture according to standards established under the Tobacco Inspection Act (7 U. S. C. 511 et seq.): *Provided, however,* that such requirement of inspection and certification may be suspended at any time when it is found impracticable to provide inspection or when the quantity of tobacco available for inspection is not sufficient to justify the cost of such service.

(Sec. 14, 49 Stat. 734; 7 U. S. C. 511m)

Issued this 29th day of June 1956.

[SEAL] FRANK E. BLOOD,
Acting Deputy Administrator,
Agricultural Marketing Service.

[F. R. Doc. 56-5347; Filed, July 5, 1956; 8:49 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Bartlett Pear Order 1]

PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

REGULATION BY GRADES AND SIZES

§ 936.537 *Bartlett Pear Order 1*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the Bartlett Pear Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Bartlett pears, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than July 8, 1956. A reasonable determination as to the supply of, and the demand for, Bartlett pears must await the development of the crop and adequate information thereon was not available to the Bartlett Pear Commodity Committee until June 26, 1956; recommendation as to the need for, and the extent of, regulation of shipments of such pears was made at the meeting of said committee on June 26, 1956, after consideration of all available information relative to the supply and demand conditions for such pears, at which time the recommendation and supporting information was submitted to the Department; shipments of the current crop of such pears are expected to begin on or about July 13, 1956; and this section should be applicable to all shipments of such pears in order to effectuate the declared policy of the act; and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., P. s. t., July 8, 1956, and ending at 12:01 a. m., P. s. t., January 1, 1957, no shipper shall ship any box or container of Bartlett pears unless:

(i) All such pears grade not less than U. S. No. 2;

(ii) At least 75 percent by count of the pears contained in any box or container grade at least U. S. No. 1, except that such pears may fail to be fairly well formed only because of short shape but shall not be seriously misshapen; and

(iii) All such pears are of a size not smaller than the size known commercially as size 180.

(2) Section 936.143, sets forth the requirements with respect to the inspection and certification of shipments of Bartlett pears. Such section also prescribes the conditions which must be met if any shipment is to be made without prior inspection and certification. Notwithstanding that shipments may be made without inspection and certification, each shipper shall comply with all grade and size regulations applicable to the respective shipment.

(c) *Definitions.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

(2) "Size known commercially as size 180" means a size Bartlett pear that will pack a standard pear box, packed in accordance with the specifications of a standard pack, with five tiers, each tier having six rows with six pears in each row, and with the twenty-one smallest pears weighing not less than five pounds.

(3) "Standard pear box" means the container so designated in § 828.3 of the Agricultural Code of California.

(4) "U. S. No. 1," "U. S. No. 2," "fairly well formed," "seriously misshapen," and "standard pack" shall have the same meaning as when used in the United States Standards for Pears (summer and fall), §§ 51.1260–51.1278 of this title.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: July 2, 1956.

[SEAL] G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc 56-5360; Filed, July 5, 1956; 8:52 a. m.]

Chapter XI—Agricultural Conservation Program Service, Department of Agriculture

[ACP-1955, Supp. 16]

PART 1101—NATIONAL AGRICULTURAL CONSERVATION

SUBPART—1955

ESTABLISHMENT OF ADDITIONAL ACREAGES OF VEGETATIVE COVER FOR GREEN MANURE AND FOR PROTECTION FROM EROSION

Pursuant to the authority vested in the Secretary of Agriculture under sections 7–17 of the Soil Conservation and Domestic Allotment Act, as amended, and the Department of Agriculture Appropriation Act, 1955, the 1955 National

Agricultural Conservation Program, approved July 1, 1954 (19 F. R. 4138), as amended August 3, 1954 (19 F. R. 4953), September 15, 1954 (19 F. R. 6059), October 25, 1954 (19 F. R. 6910), March 1, 1955 (20 F. R. 1336), April 7, 1955 (20 F. R. 2414), April 26, 1955 (20 F. R. 2881), May 16, 1955 (20 F. R. 3494), June 10, 1955 (20 F. R. 4209), June 14, 1955 (20 F. R. 4281), July 22, 1955 (20 F. R. 5340), August 30, 1955 (20 F. R. 6511), November 10, 1955 (20 F. R. 8491), February 21, 1956 (21 F. R. 1261), March 14, 1956 (21 F. R. 1717), and April 20, 1956 (21 F. R. 2651), is further amended as follows:

Section 1101.687 is amended by changing the period at the end of the third sentence to a comma and adding the following: "except that the State committee may authorize the harvesting of the growth for hay or silage in areas where it determines that a serious shortage of hay or silage exists due to adverse weather conditions and the growth harvested is needed for use on farms in the area."

(Sec. 4, 49 Stat. 164; 16 U. S. C. 590d. Interprets or applies secs. 7–17, 49 Stat. 1148, as amended, 68 Stat. 311; 16 U. S. C. 590g–590q)

Done at Washington, D. C., this 29th day of June 1956.

[SEAL] E. L. PETERSON,
Assistant Secretary.

[F. R. Doc. 56-5348; Filed, July 5, 1956; 8:49 a. m.]

[ACP-1956, Supp. 6]

PART 1101—NATIONAL AGRICULTURAL CONSERVATION

SUBPART—1956

ESTABLISHMENT OF VEGETATIVE COVER FOR SUMMER PROTECTION FROM EROSION; ESTABLISHMENT OF VEGETATIVE COVER FOR GREEN MANURE AND FOR PROTECTION FROM EROSION; EMERGENCY WIND EROSION CONTROL MEASURES

Pursuant to the authority vested in the Secretary of Agriculture under sections 7–17 of the Soil Conservation and Domestic Allotment Act, as amended, the Department of Agriculture and Farm Credit Administration Appropriation Act, 1956, and Public Law 875, 81st Congress, the 1956 National Agricultural Conservation Program, approved June 14, 1955 (20 F. R. 4281), as amended July 22, 1955 (20 F. R. 5341), August 30, 1955 (20 F. R. 6511), November 10, 1955 (20 F. R. 8491), April 9, 1956 (21 F. R. 2372), and April 20, 1956 (21 F. R. 2651), is further amended as follows:

1. Section 1101.786 is amended by changing the period at the end of the second sentence to a comma and adding the following "except that the State committee may authorize the harvesting of the growth for hay or silage in areas where it determines that a serious shortage of hay or silage exists due to adverse weather conditions and the growth harvested is needed for use on farms in the area."

2. Section 1101.787 is amended by changing the period at the end of the third sentence to a comma and adding the following: "except that the State committee may authorize the harvesting of the growth for hay or silage in areas where it determines that a serious shortage of hay or silage exists due to adverse weather conditions and the growth harvested is needed for use on farms in the area."

3. Section 1101.797 (a) is amended by deleting the first sentence and substituting therefor the following:

This practice is applicable in the following counties:

Colorado. Adams, Arapahoe, Baca, Bent, Boulder, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Larimer, Las Animas, Lincoln, Logan, Morgan, Otero, Prowers, Pueblo, Washington, Weld, Yuma.

Kansas. Barber, Barton, Cheyenne, Clark, Cloud, Comanche, Decatur, Edwards, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Lane, Lincoln, Logan, McPherson, Meade, Mitchell, Morton, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Reno, Republic, Rice, Rooks, Rush, Russell, Saline, Scott, Sedgwick, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wallace, Wichita.

New Mexico. Colfax, Curry, Harding, Lea, Roosevelt, Quay, Socorro, Torrance, Union, Santa Fe.

Oklahoma. Beaver, Cimarron, Ellis, Roger Mills, Texas.

Texas. Andrews, Armstrong, Bailey, Baylor, Borden, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard, Hutchinson, Jones, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Martin, Midland, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Runnels, Scurry, Sherman, Sterling, Stonewall, Swisher, Taylor, Terry, Tom Green, Wheeler, Wilbarger, Yoakum.

Wyoming. Goshen, Platte.

(Sec. 4, 49 Stat. 164; 16 U. S. C. 590d. Interpret or apply secs. 7–17, 49 Stat. 1148, as amended, 69 Stat. 55, 64 Stat. 1109, 66 Stat. 64; 16 U. S. C. 590g–590q, 42 U. S. C. 1855)

Done at Washington, D. C., this 29th day of June 1956.

[SEAL] E. L. PETERSON,
Assistant Secretary.

[F. R. Doc. 56-5349; Filed, July 5, 1956; 8:49 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

[Supp. 24]

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

ALTERNATE AIRPORT LANDING MINIMUMS

This supplement is issued to permit the authorization of alternate airport landing minimums of as low as 600–2 at airports where the ILS is not equipped with approach lights.

Section 40.390–3 is added to read as follows:

§ 40.390–3 *Establishment of alternate airport landing minimums at airports served by ILS (CAA policies which apply to § 40.390 (a)).* The landing minimums prescribed in § 40.390 (a) may be authorized at airports where the ILS is not equipped with approach lights.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interprets or applies secs. 601, 602, 52 Stat. 1007, 1010, as amended; 49 U. S. C. 551, 554)

This supplement shall become effective July 12, 1956.

[SEAL] C. J. LOWEN,
Administrator of Civil Aeronautics.

[F. R. Doc. 56-5330; Filed, July 5, 1956; 8:45 a. m.]

[Supp. 27]

PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

ALTERNATE AIRPORT LANDING MINIMUMS

This supplement is issued to permit the authorization of alternate airport landing minimums of as low as 600–2 at airports where the ILS is not equipped with approach lights.

Section 41.1–4 is amended by adding a paragraph (d) to read as follows:

§ 41.1–4 *Ceiling and visibility minimums (CAA policies which apply to § 41.1).* * * *

(d) *Establishment of alternate airport landing minimums at airports served by ILS.* Alternate airport landing minimums of 600–2, 700–1½, or 800–1 may be authorized at airports where the ILS is not equipped with approach lights.

(Sec. 205, 52 Stat. 984, as amended 49 U. S. C. 425. Interprets or applies secs. 601, 602, 52 Stat. 1007, 1010, as amended; 49 U. S. C. 551, 554)

This supplement shall become effective July 12, 1956.

[SEAL] C. J. LOWEN,
Administrator of Civil Aeronautics.

[F. R. Doc. 56-5331; Filed, July 5, 1956; 8:45 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

Subchapter B—Food and Food Products

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

TOLERANCES FOR RESIDUES OF SYSTOX

A petition was filed with the Food and Drug Administration requesting the establishment of tolerances for residues of Systox in or on certain raw agricultural commodities.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (2), 68 Stat. 512; 21 U. S. C. 346a (d) (2)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 120.7 (g)), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR Part 120; 21 F. R. 301) are amended by changing § 120.105 to read as follows:

§ 120.105 *Tolerances for residues of Systox (O,O-diethyl-(2-ethylmercaptoethyl) thiophosphate, a mixture of thiono and thiol isomers).* Tolerances for residues of Systox (O,O-diethyl-(2-ethylmercaptoethyl) thiophosphate, a mixture of thiono and thiol isomers) and derived anticholinesterase products as determined by in vitro cholinesterase inhibition of pooled human plasma, using technical Systox as a standard (this standard effects 50-percent inhibition of pooled human plasma cholinesterase at a concentration of 0.3±0.025 part per million in water as a medium) are established as follows:

(a) 5 parts per million in or on almond hulls.

(b) 1.25 parts per million in or on grapes.

(c) 0.75 part per million in or on almonds, apples, broccoli, brussels sprouts, cabbage, cauliflower, grapefruit, lemons, lettuce, mushmelons, oranges, pears, pecans, potatoes, strawberries, walnuts.

(d) 0.3 part per million in or on beans.

Any person who will be adversely affected by the foregoing order may, at any time prior to the thirtieth day from the effective date thereof, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by this order, specify with particularity the provisions of the order deemed objectionable and reasonable grounds or the objections, and request a public hearing upon the objections. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies sec. 408, 68 Stat. 511; 21 U. S. C. 346a)

Dated: June 28, 1956.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F. R. Doc. 56-5333; Filed, July 5, 1956; 8:45 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter A—Income and Excess Profits Taxes

[T. D. 6189; Regs. 111, 118]

PART 29—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

PART 39—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1951

CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN

In order to conform Regulations 118 (26 CFR (1939) Part 39) and Regulations 111 (26 CFR (1939) Part 29), relating to income taxes, to the decisions in Saalfield Publishing Company v. Commissioner (1948) 11 T. C. 756 (A., C. B. 1952–2, 3), Philadelphia Suburban Transportation Company v. Smith (1952) 105 F. Supp. 650, Lincoln Electric Co. Profit-Sharing Trust, et al. v. Commissioner (CA 6th, 1951) 190 F. 2d 326, Commissioner v. Produce Reporter Company (CA 7th, 1953) 207 F. 2d 586, and McClintock-Trunkey Company v. Commissioner (CA 9th, 1954) 217 F. 2d 329, such regulations are hereby amended as follows:

PARAGRAPH 1. Section 39.23 (p)–6 (e) of Regulations 118 is amended by striking the last sentence thereof.

PAR. 2. Section 39.165–1 (a) (2) of Regulations 118 is amended by striking the sixth, seventh, and eighth sentences thereof and substituting the following: "A profit-sharing plan, on the other hand, is a plan established and maintained by an employer to provide for the participation in his profits, by his employees or their beneficiaries, based on a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as illness, disability, retirement, death, or severance of employment. A formula for allocating the contributions among the participants is definite if, for example, it provides for an allocation in proportion to the basic compensation of each participant. A plan (whether or not it contains a definite predetermined formula for determining the profits to be shared with the employees) does not qualify under section 165 (a) if the contributions to the plan are made at such times or in such amounts that the plan in operation discriminates in favor of officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. For the rules with respect to discrimination, see §§ 39.165–3 and 39.165–4."

PAR. 3. The last undesignated paragraph of § 29.23 (p)–6 of Regulations 111, as amended by Treasury Decision 5666, approved November 2, 1948, is further amended by striking the last sentence thereof.

PAR. 4. The second paragraph, which is undesignated, of § 29.165–1 (a) of Regulations 111, as amended by Treasury Decision 5422, approved December 13, 1944, and Treasury Decision 6033, approved July 27, 1953, is further amended by striking the sixth, seventh, and eighth sentences thereof and substituting the following: "A profit-sharing plan, on the other hand, is a plan established and maintained by an employer to provide for the participation in his profits, by his employees or their beneficiaries, based on a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as illness, disability, retirement, death, or severance of employment. A formula for allocating the contributions among the participants is definite if, for example, it provides for an allocation in proportion to the basic compensation of each participant. A plan (whether or not it contains a definite predetermined formula for determining the profits to be shared with the employees) does not qualify under section 165 (a) if the contributions to the plan are made at such times or in such amounts that the plan in operation discriminates in favor of officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. For the rules with respect to discrimination, see §§ 39.165–3 and 39.165–4."

Because the purpose of this Treasury decision is merely to eliminate from the regulations provisions which the courts have held to be invalid, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4 (a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4 (c) of said act.

(53 Stat. 32, 467; 26 U. S. C. 62, 3791. Interpret or apply sec. 211, 53 Stat. 867, as amended; 26 U. S. C. 23)

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

Approved: July 2, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

[F. R. Doc. 56-5359; Filed, July 5, 1956; 8:51 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter A—Income Tax

[T. D. 6188]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

BANKING INSTITUTIONS

On October 25, 1955, notice of proposed rule making regarding the regulations

under subchapter H of chapter 1 of the Internal Revenue Code of 1954, approved August 16, 1954, was published in the FEDERAL REGISTER (20 F. R. 7992). After consideration of such relevant suggestions as were presented by interested persons regarding the proposals, the following regulations are hereby adopted:

BANKING INSTITUTIONS

RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

AUTHORITY: §§ 1.581 to 1.601–1 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply sec. 584, 68 Stat. 203; 26 U. S. C. 7805.

BANKING INSTITUTIONS

RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

§ 1.581 *Statutory provisions; definition of bank.*

SEC. 581. *Definition of bank.* For purposes of sections 582 and 584, the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under section 11 (k) of the Federal Reserve Act (38 Stat. 262; 12 U. S. C. 248 (k)), and which is subject by law to supervision and examination by State, Territorial, or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

§ 1.581–1 *Tax on banks.* A bank, as defined in section 581, is subject to the tax on corporations imposed by section 11.

§ 1.581–2 *Mutual savings banks, building and loan associations, and cooperative banks.* (a) Mutual savings banks, building and loan associations, and cooperative banks not having capital stock represented by shares are subject to tax as in the case of other corporations. For special rules governing the taxation of a mutual savings bank conducting a life insurance business, see section 594 and § 1.594–1.

(b) While the general principles for determining the taxable income of a corporation are applicable to a mutual savings bank, a building and loan association, and a cooperative bank not having capital stock represented by shares, there are certain exceptions and special rules governing the computation in the case of such institutions. See section 593 and § 1.593–1 for special rules concerning additions to reserves for bad debts. See section 591 and § 1.591–1, relating to dividends paid by banking corporations, for special rules concerning deductions for amounts paid to, or credited to the accounts of, depositors or holders of withdrawable accounts as dividends. See also section 592 and § 1.592–1, relating to deductions for repayment of certain loans.

(c) For the purpose of computing the net operating loss deduction provided in section 172, any taxable year for which a mutual savings bank, building and loan association, or a cooperative bank not having capital stock represented by shares was exempt from tax shall be disregarded. Thus, no net operating loss carryover shall be allowed from a taxable year beginning before January 1, 1952, and, in the case of any taxable year beginning after December 31, 1951, the amount of the net operating loss carryback or carryover from such year shall not be reduced by reference to the income of any taxable year beginning before January 1, 1952.

§ 1.582 *Statutory provisions; bad debt and loss deduction with respect to securities held by banks.*

SEC. 582. *Bad debt and loss deduction with respect to securities held by banks*—(a) *Securities.* Notwithstanding sections 165 (g) (1) and 166 (e), subsections (a), (b), and (c) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165 (g) (2) (C).

(b) *Worthless stock in affiliated bank.* For purposes of section 165 (g) (1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) *Bond, etc., losses of banks.* For purposes of this subtitle, in the case of a bank, if the losses of the taxable year from sales or exchanges of bonds, debentures, notes, or certificates, or other evidences of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, exceed the gains of the taxable year from such sales or exchanges, no such sale or exchange shall be considered a sale or exchange of a capital asset.

§ 1.582–1 *Bad debt and loss deduction with respect to securities held by banks.* (a) A bank, as defined in section 581, is allowed a deduction for bad debts to the extent and in the manner provided by subsections (a), (b), and (c) of section 166 with respect to a debt which has become worthless in whole or in part and which is evidenced by a security (a bond, debenture, note, certificate, or other evidence of indebtedness to pay a fixed or determinable sum of money) issued by any corporation (including governments and their political subdivisions), with interest coupons or in registered form.

(b) For purposes of section 165 (g) (1), relating to the deduction for losses involving worthless securities, if the taxpayer is a bank (as defined in section 581) and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) With respect to the taxation under subtitle A of a bank (as defined in section 581), if the losses of the taxable year from sales or exchanges of bonds, debentures, notes, or certificates, or other evidences of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, exceed the gains of the taxable year from such sales or exchanges, no such sale or exchange shall be considered a sale or exchange of a capital asset.

§ 1.583 *Statutory provisions; deductions of dividends paid on certain preferred stock.*

SEC. 583. *Deductions of dividends paid on certain preferred stock.* In computing the taxable income of any national banking association, or of any bank or trust company organized under the laws of any State, Territory, possession of the United States, or the Canal Zone, or of any other banking corporation engaged in the business of industrial banking and under the supervision of a State banking department or of the Comptroller of the Currency, or of any incorporated domestic insurance company, there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this subtitle, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the prefered stock of the corporation owned by the United States or such instrumentality. The amount allowable as a deduction under this section shall reduce the deduction for dividends paid otherwise computed under section 561.

§ 1.584 *Statutory provisions; common trust funds.*

SEC. 584. *Common trust funds*—(a) *Definitions.* For purposes of this subtitle, the term "common trust fund" means a fund maintained by a bank—

(1) Exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) In conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

(b) *Taxation of common trust funds.* A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) *Income of participants in fund*—(1) *Inclusions in taxable income.* Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(A) As part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months;

(B) As part of its gains and losses from sales or exchanges of capital assets held for more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 6 months;

(C) Its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) *Dividends and partially tax exempt interest.* The proportionate share of each participant in the amount of dividends to which section 34 or section 116 applies, and in the amount of partially tax exempt interest on obligations described in section 35 or section 242, received by the common trust fund shall be considered for purposes of such sections as having been received by such participant. If the common trust fund elects under section 171 (relating to amortizable bond premium) to amortize the premium on such obligations, for purposes of the preceding sentence the proportionate share of the participant of such interest received by the common trust fund shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 171 as is attributable to such share.

(d) *Computation of common trust fund income.* The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) There shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) After excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) An ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) The deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed; and

(4) The standard deduction provided in section 141 shall not be allowed.

(e) *Admission and withdrawal.* No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) *Different taxable years of common trust fund and participant.* If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) *Net operating loss deduction.* The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Secretary or his delegate.

§ 1.584–1 *Common trust funds*—(a) *Method of taxation.* A common trust fund maintained by a bank is not subject to taxation under this chapter and is not considered a corporation. Its participants are taxed on their proportionate share of income from the common trust fund. Except as otherwise provided in §§ 1.584–1 to 1.584–6, inclusive, the term "participant" refers to any trust or estate, the moneys of which have been contributed to the common trust fund.

(b) *Conditions for qualification.* Under section 584, two conditions must be satisfied by a fund maintained by a bank (as defined in section 581) before such fund may be designated as a "common trust fund." These conditions are that such fund must be maintained by such a bank:

(1) Exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank, whether acting alone or in conjunction with one or more co-fiduciaries, but solely in its capacity: (i) As a trustee of a trust created by will, deed, agreement, declaration of trust, or order of court, (ii) as an executor of the will of, or as an administrator of the estate of, a deceased person, or (iii) as a guardian (by whatever name known under local law) of the estate of an infant, of an incompetent individual, or of an absent individual; and

(2) In conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks, whether or not the bank maintaining such fund is a national bank or a member of the Federal Reserve System.

§ 1.584–2 *Income of participants in common trust fund.* (a) Each participant in a common trust fund is required to include in computing its taxable income for its taxable year within which or with which the taxable year of the fund ends, whether or not distributed and whether or not distributable:

(1) Its proportionate share of the gains and losses from sales or exchanges of capital assets held for not more than six months, computed as provided in § 1.584–3, as part of its gains and losses from sales or exchanges of capital assets held for not more than six months;

(2) Its proportionate share of the gains and losses from sales or exchanges of capital assets held for more than six months, computed as provided in § 1.584–3, as part of its gains and losses from sales or exchanges of capital assets held for more than six months; and

(3) Its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in § 1.584–3.

(b) (1) Each participant's proportionate share in the amount of dividends to which section 34 or section 116 applies received by the common trust fund shall be deemed to have been received by such participant as such dividends.

(2) Each participant's proportionate share in the amount of partially tax exempt interest described in section 35 or section 242 received by the common trust fund shall be deemed to have been received by such participant as such interest. If the common trust fund elects under section 171 (relating to amortizable bond premium) to amortize the premium on such obligations, for purposes of the preceding sentence the proportionate share of each participant of such interest received by the fund shall be his proportionate share of such interest (determined without regard to this sentence) reduced by so much of the deduction under section 171 as is attributable to such shares. See section 171 and the regulations thereunder.

(3) Any tax withheld at the source from income of the fund shall be deemed to have been withheld proportionately from the participants to whom such income is allocated.

(c) (1) The proportionate share of each participant in gains and losses from sales or exchanges of capital assets held for not more than six months, gains and losses from sales or exchanges of capital assets held for more than six months, ordinary taxable income or ordinary net loss, dividends received, partially exempt interest, and tax withheld at the source shall be determined under the method of accounting adopted by the bank in accordance with the written plan under which the common trust fund is established and administered, provided such method clearly reflects the income of each participant.

(2) The items of income and deductions are, therefore, to be allocated to the periods between valuation dates within the taxable year established by such plan in which they were realized or sustained, and the ordinary taxable income or ordinary net loss, gains and losses from sales or exchanges of capital assets held for not more than six months, and gains and losses from sales or exchanges of capital assets held for more than six months computed for each such period. The proportionate shares of the participants in such items are then to be determined.

(3) The provisions of subparagraph (2) of this paragraph may be illustrated by the following example:

Example. (i) The plan of a common trust fund provides for quarterly valuation dates and for the computation and the distribution of the income upon a quarterly basis, except that there shall be no distribution of capital gains. The participants are as follows: Trusts A, B, C, and D for the first quarter; Trusts A, B, C, and E for the second quarter; and Trusts A, B, F, and G for the third and fourth quarters, the participants having equal participating interests. As computed upon the quarterly basis, the ordinary taxable income, the short-term capital gain, and the long-term capital loss for the taxable year were as follows:

	First quarter	Second quarter	Third quarter	Fourth quarter	Total
Ordinary taxable income	$200	$300	$200	$400	$1,100
Short-term capital gain	200	100	200	100	600
Long-term capital loss	100	200	100	200	600

(ii) The participants' shares of ordinary taxable income are as follows:

PARTICIPANTS' SHARES OF ORDINARY TAXABLE INCOME

Participant	First quarter	Second quarter	Third quarter	Fourth quarter	Total
A	$50	$75	$50	$100	$275
B	50	75	50	100	275
C	50	75	------	------	125
D	50	------	------	------	50
E	------	75	------	------	75
F	------	------	50	100	150
G	------	------	50	100	150
Total	200	300	200	400	1,100

(iii) The participants' shares of the short-term capital gain are as follows:

PARTICIPANTS' SHARES OF SHORT-TERM CAPITAL GAIN

Participant	First quarter	Second quarter	Third quarter	Fourth quarter	Total
A	$50	$25	$50	$25	$150
B	50	25	50	25	150
C	50	25	------	------	75
D	50	------	------	------	50
E	------	25	------	------	25
F	------	------	50	25	75
G	------	------	50	25	75
Total	200	100	200	100	600

(iv) The participants' shares of the long-term capital loss are as follows:

PARTICIPANTS' SHARES OF LONG-TERM CAPITAL LOSS

Participant	First quarter	Second quarter	Third quarter	Fourth quarter	Total
A	$25	$50	$25	$50	$150
B	25	50	25	50	150
C	25	50	------	------	75
D	25	------	------	------	25
E	------	50	------	------	50
F	------	------	25	50	75
G	------	------	25	50	75
Total	100	200	100	200	600

(4) If in the above example the common trust fund also had short-term capital losses and long-term capital gains, the treatment of such gains or losses would be similar to that accorded to the short-term capital gains and long-term capital losses in the above example.

(d) The provisions of Subparts A, B, C, D, and E of Part I of Subchapter J are applicable in determining the extent to which each participant's proportionate share of the income of the common trust fund is taxable to the participant, or to the beneficiaries or the grantor of the participant.

§ 1.584-3 *Computation of common trust fund income.* The taxable income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that:

(a) No deduction shall be allowed under section 170 (relating to charitable, etc., contributions and gifts);

(b) The gains and losses from sales or exchanges of capital assets of the common trust fund are required to be segregated. A common trust fund is not allowed the benefit of the capital loss carryover provided by section 1212;

(c) The ordinary taxable income (the excess of the gross income over deductions) or the ordinary net loss (the excess of the deductions over the gross income) shall be computed after excluding all items of gain and loss from sales or exchanges of capital assets; and

(d) The standard deduction provided in section 141 shall not be allowed.

§ 1.584-4 *Admission and withdrawal of participants in the common trust fund*—(a) *Gain or loss.* The common trust fund realizes no gain or loss by the admission or withdrawal of a participant, and the basis of the assets and the period for which they are deemed to have been held by the common trust fund for the purposes of section 1202 are unaffected by such an admission or withdrawal. If a participant withdraws the whole or any part of its participating interest from the common trust fund, such withdrawal shall be treated as a sale or exchange by the participant of the participating interest or portion thereof which is so withdrawn. A participant is not deemed to have withdrawn any part of its participating interest in the common trust fund so as to have completed a closed transaction by reason of the segregation and administration of an investment of the fund, pursuant to the provisions of subdivision (c) (7) of section 17 of Regulation F of the Board of Governors of the Federal Reserve System, as amended, for the benefit of all the then participants in the common trust fund. Such segregated investment shall be considered as held by, or on behalf of, the common trust fund for the benefit ratably of all participants in the common trust fund at the time of segregation, and any income or loss arising from its administration and liquidation shall constitute income or loss to the common trust fund apportionable among the participants for whose benefit the investment was segregated.

(b) *Basis for gain or loss upon withdrawal.* The participant's gain or loss upon withdrawal of its participating interest or portion thereof shall be measured by the difference between the amount received upon such withdrawal and the adjusted basis of the participating interest or portion thereof withdrawn plus the additions prescribed in paragraph (c) of this section and minus the reductions prescribed in paragraph (d) of this section. The amount received by the participant shall be the sum of any money plus the fair market value of property (other than money) received upon such withdrawal. The basis of the participating interest or portion thereof withdrawn shall be the sum of any money plus the fair market value of any property (other than money) contributed by the participant to the common trust fund to acquire the participating interest or portion thereof withdrawn. Such basis shall not be reduced on account of the segregation of any investment in the common trust fund pursuant to the provisions of subdivision (c) (7) of section 17 of Regulation F of the Board of Governors of the Federal Reserve System, as amended. For the purpose of making the adjustments, additions, and reductions with respect to basis as prescribed in this paragraph, the ward, rather than the guardian, shall be deemed to be the participant; and the grantor, rather than the trust, shall be deemed to be the participant, to the extent that the income of the trust is taxable to the grantor under subpart E of part I of subchapter J.

(c) *Additions to basis.* As prescribed in paragraph (b) of this section, in computing the gain or loss upon the withdrawal of a participating interest or portion thereof, there shall be added to the basis of the participating interest or portion thereof withdrawn an amount equal to the aggregate of the following items (to the extent that they were properly allocated to the participant for a taxable year of the common trust fund and were not distributed to the participant prior to withdrawal):

(1) Wholly exempt income of the common trust fund for any taxable year,

(2) Net income of the common trust fund for the taxable years beginning after December 31, 1935, and prior to January 1, 1938,

(3) Net short-term capital gain of the common trust fund for each taxable year beginning after December 31, 1937,

(4) The excess of the gains over the losses recognized to the common trust fund upon sales or exchanges of capital assets held (i) for more than 18 months for taxable years beginning after December 31, 1937, and before January 1, 1942, and (ii) for more than 6 months for taxable years beginning after December 31, 1941, and

(5) Ordinary net or taxable income of the common trust fund for each taxable year beginning after December 31, 1937.

(d) *Reductions in basis.* As prescribed in paragraph (b) of this section, in computing the gain or loss upon the withdrawal of a participating interest or portion thereof, the basis of the participating interest or portion thereof withdrawn shall be reduced by such portions of the following items as were allocable to the participant with respect to the participating interest or portion thereof withdrawn:

(1) The amount of the excess of the allowable deductions of the common trust fund over its gross income for the taxable years beginning after December 31, 1935, and before January 1, 1938, and

(2) The amount of the net short-term capital loss, net long-term capital loss, and ordinary net loss of the common trust fund for each taxable year beginning after December 31, 1937.

§ 1.584-5 *Returns of banks with respect to common trust funds.* For rules applicable to filing returns of common

trust funds, see section 6032 and the regulations thereunder.

§ 1.584–6 *Net operating loss deduction.* The net operating loss deduction is not allowed to a common trust fund. Each participant in a common trust fund, however, will be allowed the benefits of such deduction. In the computation of such deduction, a participant in a common trust fund shall take into account its pro rata share of items of income, gain, loss, deduction, or credit of the common trust fund. The character of any such item shall be determined as if the participant had realized such item directly from the source from which realized by the common trust fund, or incurred such item in the same manner as incurred by the common trust fund.

MUTUAL SAVINGS BANKS, ETC.

§ 1.591 *Statutory provisions; deduction for dividends paid on deposits.*

SEC. 591. *Deduction for dividends paid on deposits.* In the case of mutual savings banks, cooperative banks, and domestic building and loan associations, there shall be allowed as deductions in computing taxable income amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

§ 1.591–1 *Deduction for dividends paid on deposits*—(a) *In general.* (1) A mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit may deduct from gross income amounts which during the taxable year are paid to or credited to the accounts of depositors or holders of accounts, as dividends on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

(2) The deduction provided in section 591 is applicable to the taxable year in which amounts credited as dividends become withdrawable by the depositor or holder of account subject only to customary notice of intention to withdraw. Thus, amounts credited as dividends as of the last day of the taxable year which are not withdrawable by depositors or holders of accounts until the following business day are deductible under section 591 in the year subsequent to the taxable year in which they were credited. A deduction under this section will not be denied by reason of the fact that the amounts credited as dividends, otherwise deductible under section 591, are subject to the terms of a pledge agreement between the institution and the depositor or holder of account. In the case of a building and loan association having nonwithdrawable capital stock represented by shares, no deduction is allowable under this section for amounts paid or credited as dividends on such shares.

(b) *Serial associations, bonus plans, etc.* If a building and loan association operates in whole or in part as a serial association, maintains a bonus plan, or issues shares subject to fines, penalties, forfeitures, or other withdrawal fees, it may deduct under section 591 the total amount credited as dividends upon such shares, credited to a bonus account for such shares, or allocated to a series of shares for the taxable year, notwithstanding that as a customary condition of withdrawal:

(1) Amounts invested in, and earnings credited to, series shares must be withdrawn in multiples of even shares, or

(2) Such association has the right, pursuant to by-law, contract, or otherwise, to retain or recover a portion of the total amount invested in, or credited as earnings upon, such shares, such bonus account, or series of shares, as a fine, penalty, forfeiture, or other withdrawal fee.

In any taxable year in which the right referred to in subparagraph (2) of this paragraph is exercised, there is includible in the gross income of such association for such taxable year amounts retained or recovered by the association pursuant to the exercise of such right.

§ 1.592 *Statutory provisions; deduction for repayment of certain loans.*

SEC. 592. *Deduction for repayment of certain loans.* In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank without capital stock organized and operated for mutual purposes and without profit, there shall be allowed as deductions in computing taxable income amounts paid by the taxpayer during the taxable year in repayment of loans made before September 1, 1951, by (1) the United States or any agency or instrumentality thereof which is wholly owned by the United States, or (2) any mutual fund established under the authority of the laws of any State.

§ 1.592–1 *Repayment of certain loans by mutual savings banks, building and loan associations, and cooperative banks.* There is deductible, under section 592, from the gross income of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank without capital stock organized and operated for mutual purposes and without profit, amounts paid by such institutions during the taxable year in repayment of loans made before September 1, 1951, by the United States or any agency or instrumentality thereof which is wholly owned by the United States, or by any mutual fund established under the authority of the laws of any State. For example, amounts paid by such institution in repayment of loans made by the Reconstruction Finance Corporation before September 1, 1951, are deductible under this section. Section 592 is not applicable, however, in the case of amounts paid in repayment of loans made by an agency or instrumentality not wholly owned by the United States.

§ 1.593 *Statutory provisions; additions to reserve for bad debts.*

SEC. 593. *Additions to reserve for bad debts.* In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit, the reasonable addition to a reserve for bad debts under section 166 (c) shall be determined with due regard to the amount of the taxpayer's surplus or bad debt reserves existing at the close of December 31, 1951. In the case of a taxpayer described in the preceding sentence, the reasonable addition to a reserve for bad debts for any taxable year shall in no case be less than the amount determined by the taxpayer as the reasonable addition for such year; except that the amount determined by the taxpayer under this sentence shall not be greater than the lesser of—

(1) The amount of its taxable income for the taxable year, computed without regard to this section, or

(2) The amount by which 12 percent of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year.

§ 1.593–1 *Additions to reserve for bad debts*—(a) *In general.* A mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit may, as an alternative to a deduction from gross income under section 166 (a) for specific debts which become worthless in whole or in part, deduct amounts credited to a reserve for bad debts in the manner and under the circumstances prescribed in this section and § 1.593–2. In the case of such an institution, the selection of either of the alternative methods for treating bad debts may be made by the taxpayer in the return for its first taxable year beginning after December 31, 1951. The method selected shall be subject to the approval of the Commissioner upon examination of the return. If the method selected is approved, it must be followed in returns for subsequent years, unless permission is granted by the Commissioner to change to another method. Application for permission to change the method of treating bad debts shall be made at least 30 days prior to the close of the taxable year for which the change is to be effective.

(b) *Addition to reserve.* Except as otherwise provided in § 1.593–2, the reasonable addition to a reserve for bad debts shall be any amount determined by the taxpayer which does not exceed the lesser of:

(1) The amount of its taxable income for the taxable year, computed without regard to section 593 and without regard to any section providing for a deduction the amount of which is dependent upon the amount of taxable income (such as section 170, relating to charitable, etc., contributions and gifts), or

(2) The amount by which 12 percent of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year.

(c) *Adjustments to reserve.* Bad debt losses sustained during the taxable year shall be charged against the bad debt reserve. Recoveries of debts charged against the bad debt reserve during a prior taxable year in which the institution was subject to tax under this chapter or under chapter 1 of the Internal Revenue Code of 1939 shall be

credited to the bad debt reserve. The establishment of such reserve and all adjustments made thereto must be reflected on the regular books of account of the institution at the close of the taxable year, or as soon as practicable thereafter. Minimum amounts credited in compliance with Federal or State statutes, regulations, or supervisory orders to reserve or similar accounts, or additional amounts credited to such reserve or similar accounts and permissive under such statutes, regulations, or orders, against which charges may be made for the purpose of absorbing losses sustained by an institution, will be deemed to have been credited to the bad debt reserve.

(d) *Definitions.* When used in this section and in § 1.593–2:

(1) *Institution.* The term "institution" means either a mutual savings bank not having capital stock represented by shares, a domestic building and loan association as defined in section 7701 (a) (19), or a cooperative bank without capital stock organized and operated for mutual purposes and without profit.

(2) *Surplus, undivided profits, and reserves.* (i) The phrase "surplus, undivided profits, and reserves" means the amount by which the total assets of an institution exceed the amount of the total liabilities of such an institution.

(ii) For this purpose the term "total assets" means the sum of money, plus the aggregate of the adjusted basis of the property other than money, held by an institution. Such adjusted basis for any asset is its adjusted basis for determining gain upon sale or exchange for Federal income tax purposes. (See sections 1011 through 1022, and the regulations thereunder. For special rules with respect to adjustments to basis for prior taxable years during which the institution was exempt from tax, see section 1016 (a) (3) and the regulations thereunder.) The determination of the total assets of any taxpayer shall conform to the method of accounting employed by such taxpayer in determining taxable income and to the rules applicable in determining its earnings and profits.

(iii) The term "total liabilities" means all liabilities of the taxpayer, which are fixed and determined, absolute and not contingent, and includes those items which constitute liabilities in the sense of debts or obligations. The total deposits or withdrawable accounts, as defined in subparagraph (3) of this paragraph, shall be considered a liability. In the case of a building and loan association having permanent nonwithdrawable capital stock represented by shares, the paid-in amount of such stock shall also be considered a liability. Reserves for contingencies and other reserves, however, which are mere appropriations of surplus, are not liabilities.

(3) *Total deposits or withdrawable accounts.* The phrase "total deposits or withdrawable accounts" means the aggregate of (i) amounts placed with an institution for deposit or investment and (ii) earnings outstanding on the books of account of the institution at the close of the taxable year which have been credited as dividends upon such accounts prior to the close of the taxable year, except that such term, in the case of a building and loan association, does not include permanent nonwithdrawable capital stock represented by shares, or earnings credited thereon.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) Institution X, which keeps its books on the basis of the calendar year, has surplus, reserves, and undivided profits of $800,000 as of January 1, 1955, and total deposits or withdrawable accounts of $10,000,000 as of December 31, 1955. During 1955 the institution credits $30,000, as required by a Federal agency, to a Federal insurance reserve for the sole purpose of absorbing losses. Likewise, it credits $25,000, as permitted by State statute, to another reserve fund for the purpose of absorbing losses. In 1955 Institution X charges $5,000 against its bad debt reserve for losses sustained during the taxable year.

(ii) The taxable income of Institution X for the taxable year 1955, computed without regard to section 593 and without regard to any section providing for a deduction the amount of which is dependent upon the amount of taxable income, is $200,000.

(iii) Upon the basis of the facts as stated in subdivision (i) above, the amount by which 12 percent of the total deposits or withdrawable accounts of Institution X at the close of taxable year 1955 exceeds the sum of such institution's surplus, undivided profits, and reserves at the beginning of the taxable year is $400,000 (12% of $10,000,000, minus $800,000).

(iv) Institution X, therefore, may deduct, for the taxable year 1955, as an addition to a reserve for bad debts, any amount it may determine that does not exceed the lesser of the amounts determined in subdivision (ii) or (iii) above. That amount is $200,000 (as determined in subdivision (ii) above). Since under paragraph (c) of this section, the $30,000 credited to the reserve as required by the Federal agency and the $25,000 credited to the reserve as permitted by the State statute are regarded as amounts credited to a reserve for bad debts account, Institution X can credit an additional $145,000 ($200,000 minus $55,000) to a general reserve for bad debts account at any time during the taxable year.

(v) The loss of $5,000 charged to the bad debt reserve during the taxable year does not affect the amount of the addition to the bad debt reserve provided for in paragraph (b) of this section. It is of significance only in determining the surplus, undivided profits, and reserves of Institution X as of January 1, 1956.

Example (2). The taxable income of Institution Y for the taxable year 1955, computed without regard to the deduction under section 593 and without regard to any section providing for a deduction the amount of which is dependent upon the amount of taxable income, is determined to be $250,000. The amount by which 12 percent of the total deposits or withdrawable accounts of Institution Y at the close of the taxable year exceeds the sum of such institution's surplus, undivided profits, and reserves at the beginning of the taxable year is $500,000. Institution Y credits $250,000 to its bad debt reserve in 1955. In 1957, it is determined that the correct taxable income of Institution Y for 1955, computed without regard to any deduction under section 593 and without regard to any section providing for a deduction the amount of which is dependent upon the amount of taxable income, is $275,000 and not $250,000. Assuming that Institution Y credits the additional $25,000 to its bad debt reserve, $275,000 is allowable as a deduction from gross income for such institution for the taxable year 1955.

§ 1.593–2 *Additions to reserve for bad debts where surplus, reserves, and undivided profits equal or exceed 12 percent of deposits or withdrawable accounts.* Where 12 percent of the total deposits or withdrawable accounts of an institution at the close of the taxable year is equal to or less than the sum of such institution's surplus, undivided profits, and reserves at the beginning of the taxable year, a reasonable addition to the reserve for bad debts as determined under the general provisions of section 166 (c) may be allowable as a deduction from gross income. In making such determination, there shall be taken into account (a) surplus or bad debt reserves existing at the close of December 31, 1951 (i. e., the amount of surplus, undivided profits, and reserves accumulated prior to January 1, 1952, and in existence at the close of December 31, 1951), and (b) changes in the surplus, undivided profits, and reserves of the institution from December 31, 1951, until the beginning of the taxable year. A deduction for an addition to the reserve for bad debts pursuant to this section will be authorized only in those cases where the institution proves to the satisfaction of the Commissioner that the bad debt experience of the institution warrants an addition to the reserve for bad debts in excess of that provided in § 1.593–1 (b). For definitions, see § 1.593–1 (d).

§ 1.594 *Statutory provisions; alternative tax for mutual savings banks conducting life insurance business.*

SEC. 594. *Alternative tax for mutual savings banks conducting life insurance business*—(a) *Alternative tax.* In the case of a mutual savings bank not having capital stock represented by shares, authorized under State law to engage in the business of issuing life insurance contracts, and which conducts a life insurance business in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, there shall be imposed in lieu of the taxes imposed by section 11 or section 1201 (a), a tax consisting of the sum of the partial taxes determined under paragraphs (1) and (2):

(1) A partial tax computed on the taxable income determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, at the rates and in the manner as if this section had not been enacted; and

(2) A partial tax computed on the income of the life insurance department determined without regard to any items of gross income or deductions not properly allocable to such department, at the rates and in the manner provided in subchapter L (sec. 801 and following) with respect to life insurance companies.

(b) *Limitations of section.* Subsection (a) shall apply only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section 801.

[Sec. 594 as amended by sec. 5 (3), Life Insurance Company Tax Act for 1955]

§ 1.594–1 *Mutual savings banks conducting life insurance business*—(a) *Scope of application.* Section 594 applies to the case of a mutual savings bank not having capital stock represented by shares which conducts a life insurance business, if:

(1) The conduct of the life insurance business is authorized under State law,

(2) The life insurance business is carried on in a separate department of the bank,

(3) The books of account of the life insurance business are maintained separately from other departments of the bank, and

(4) The life insurance department of the bank would, if it were treated as a separate corporation, qualify as a life insurance company under section 801.

(b) *Computation of tax.* In the case of a mutual savings bank conducting a life insurance business to which section 594 is applicable, the tax upon such bank consists of the sum of the following:

(1) A partial tax computed under section 11 upon the taxable income of the bank determined without regard to any items of income or deduction properly allocable to the life insurance department, and

(2) A partial tax computed on the income (or, in the case of taxable years beginning before January 1, 1955, the taxable income (as defined in section 803)) of the life insurance department determined without regard to any items of income or deduction not properly allocable to such department, at the rates and in the manner provided in subchapter L (section 801 and following) with respect to life insurance companies.

BANK AFFILIATES

§ 1.601 *Statutory provisions; special deduction for bank affiliates.*

SEC. 601. *Special deduction for bank affiliates.* In the case of a holding company affiliate (as defined in section 2 of the Banking Act of 1933; 12 U. S. C. 221a (c)), there shall be allowed as a deduction, for purposes of section 535 (b) (8) (relating to the computation of accumulated taxable income) and section 545 (b) (6) relating to the computation of undistributed personal holding company income), the amount of the earnings and profits which the Board of Governors of the Federal Reserve System certifies to the Secretary or to his delegate has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with section 5144 of the Revised Statutes (12 U. S. C. 61). The amount of the deduction under this section for any taxable year shall not exceed the taxable income for such year computed without regard to the special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.). The aggregate of the deductions allowable under this section and the credits allowable under the corresponding provision of any prior income tax law for all taxable years shall not exceed the amount required to be devoted under such section 5144 to such purposes.

§ 1.601–1 *Special deduction for bank affiliates.* (a) The special deduction described in section 601 is allowed:

(1) To a holding company affiliate of a bank, as defined in section 2 of the Banking Act of 1933 (12 U. S. C. 221a), which holding company affiliate holds, at the end of the taxable year, a general voting permit granted by the Board of Governors of the Federal Reserve System.

(2) In the amount of the earnings or profits of such holding company affiliate which, in compliance with section 5144 of the Revised Statutes (12 U. S. C. 61), has been devoted by it during the taxable year to the acquisition of readily marketable assets other than bank stock.

(3) Upon certification by the Board of Governors of the Federal Reserve System to the Commissioner that such an amount of the earnings or profits has been so devoted by such affiliate during the taxable year.

No deduction is allowable under section 601 for the amount of readily marketable assets in excess of what is required by section 5144 of the Revised Statutes (12 U. S. C. 61) to be acquired by such affiliate, or in excess of the taxable income for the taxable year computed without regard to the special deductions for corporations provided in sections 241–247, inclusive. Nor may the aggregate of the deductions allowable under section 601 and the credits allowable under the corresponding provision of any prior income tax law for all taxable years exceed the amount required to be devoted under such section 5144 to the acquisition of readily marketable assets other than bank stock.

(b) Every taxpayer claiming a deduction provided for in section 601 shall attach to its return a supplementary statement setting forth all the facts and information upon which the claim is predicated, including such facts and information as the Board of Governors of the Federal Reserve System may prescribe as necessary to enable it, upon the request of the Commissioner subsequent to the filing of the return, to certify to the Commissioner the amount of earnings or profits devoted to the acquisition of such readily marketable assets. A certified copy of such supplementary statement shall be forwarded by the taxpayer to the Board of Governors at the time of the filing of the return. The holding company affiliate shall also furnish the Board of Governors such further information as the Board shall require. For the requirements with respect to the amount of such readily marketable assets which must be acquired and maintained by a holding company affiliate to which a voting permit has been granted, see section 5144 (b) and (c) of the Revised Statutes (12 U. S. C. 61).

[SEAL] O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved: June 29, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

[F. R. Doc. 56-5351; Filed, July 5, 1956; 8:50 a. m.]

[T. D. 6187]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS; RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

On January 26, 1956, notice of proposed rule making regarding the regulations under chapters 3 and 4 of the Internal Revenue Code of 1954 was published in the FEDERAL REGISTER (21 F. R. 583). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted, the regulations under chapter 3 being effective with respect to payments made after December 31, 1954:

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS

NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Sec.
1.1441 Statutory provisions; withholding of tax on nonresident aliens.
1.1441–1 Requirement for withholding of tax on nonresident aliens and foreign corporations.
1.1441–2 Income subject to withholding.
1.1441–3 Exceptions and rules of special application.
1.1441–4 Exemptions from withholding.
1.1441–5 Claiming United States citizenship or residence.
1.1442 Statutory provisions; withholding of tax on foreign corporations.
1.1442–1 Withholding of tax on foreign corporations.
1.1443 Statutory provisions; foreign tax-exempt organizations.
1.1443–1 Rents paid to foreign tax-exempt organizations.

TAX-FREE COVENANT BONDS

1.1451 Statutory provisions; tax-free covenant bonds.
1.1451–1 Tax-free covenant bonds issued before January 1, 1934.
1.1451–2 Exemptions from withholding under section 1451.

APPLICATION OF WITHHOLDING PROVISIONS

1.1461 Statutory provisions; return and payment of withheld tax.
1.1461–1 Ownership certificates for bond interest.
1.1461–2 Return and payment of tax withheld.
1.1462 Statutory provisions; withheld tax as credit to recipient of income.
1.1462–1 Withheld tax as credit to recipient of income.
1.1463 Statutory provisions; tax paid by recipient of income.
1.1463–1 Tax paid by recipient of income.
1.1464 Statutory provisions; refunds and credits with respect to withheld tax.
1.1464–1 Refunds and credits.
1.1465 Statutory provisions; definition of withholding agent.
1.1465–1 General provisions relating to withholding agents.

RULES APPLICABLE TO RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

1.1471 Statutory provisions; recovery of excessive profits on government contracts.
1.1471–1 Recovery of excessive profits on government contracts.

MITIGATION OF EFFECT OF RENEGOTIATION OF GOVERNMENT CONTRACTS

1.1481 Statutory provisions; mitigation of effect of renegotiation of government contracts.

AUTHORITY: §§ 1.1441 to 1.1481 issued under sec. 7805, 68 Stat. 917; 26 U. S. C. 7805. Interpret or apply secs. 1441, 1443, 6041, 68A Stat. 357, 358, 745; 26 U. S. C. 1441, 1443, 6041.

WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS

NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

§ 1.1441 *Statutory provisions; withholding of tax on nonresident aliens.*

SEC. 1441. *Withholding of tax on nonresident aliens*—(a) *General rule.* Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in section 1451 and except as otherwise provided in regulations prescribed by the Secretary or his delegate under section 874) deduct and withhold from such items a tax equal to 30 percent thereof.

(b) *Income items.* The items of income referred to in subsection (a) are interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, and amounts described in section 402 (a) (2), section 631 (b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets.

(c) *Exceptions*—(1) *Dividends of foreign corporations.* No deduction or withholding under subsection (a) shall be required in the case of dividends paid by a foreign corporation unless (A) such corporation is engaged in trade or business within the United States, and (B) more than 85 percent of the gross income of such corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under part I of subchapter N of chapter 1.

(2) *Owner unknown.* The Secretary or his delegate may authorize the tax under subsection (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(3) *Bonds with extended maturity dates.* The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

(4) *Compensation of certain aliens.* Under regulations prescribed by the Secretary or his delegate, there may be exempted from deduction and withholding under subsection (a) the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals.

(5) *Special items.* In the case of amounts described in section 402 (a) (2), section 631 (b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets, the amount required to be deducted and withheld shall, if the amount of such gain is not known to the withholding agent, be such amount, not exceeding 30 percent of the proceeds from such sale or exchange, as may be necessary to assure that the tax deducted and withheld shall not be less than 30 percent of such gain.

(d) *Alien resident of Puerto Rico.* For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

§ 1.1441–1 *Requirement for withholding of tax on nonresident aliens and foreign corporations.* Except as otherwise provided in §§ 1.1441–3 and 1.1441–4, withholding of a tax of 30 percent is required in the case of the items of income specified in § 1.1441–2 (to the extent that such items constitute gross income from sources within the United States) paid to a nonresident alien individual, a nonresident partnership composed in whole or in part of nonresident alien individuals, or a nonresident foreign corporation. The rate of 30 percent shall be reduced as may be provided by treaty with any country. See section 894, relating to income exempt under treaty. For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

§ 1.1441–2 *Income subject to withholding*—(a) *Fixed or determinable annual or periodical income.* (1) The gross amount of fixed or determinable annual or periodical income is subject to withholding. Section 1441 specifically includes in such income interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments; but other kinds of income are included, as, for instance, royalties. The term "fixed or determinable annual or periodical" income is merely descriptive of the character of a class of income. If an item of income falls within the class of income contemplated by the statute, it is immaterial whether payment of that item is made in a series of repeated payments or in a single lump sum. Thus, $5,000 in royalty income would come within the meaning of the term, whether paid in 10 payments of $500 each or in one payment of $5,000.

(2) Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. The fact that a payment is not made annually or periodically does not, however, necessarily prevent its being fixed or determinable annual or periodical income. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not make the payments any the less determinable or periodical. A salesman working by the month for a commission on sales which is paid or credited monthly receives determinable periodical income. The share of the fixed or determinable annual or periodical income of an estate or trust from sources within the United States which is required to be distributed currently, or which has been paid or credited during the taxable year, to a nonresident alien beneficiary of such estate or trust constitutes fixed or determinable annual or periodical income. Such items as taxes, interest on mortgages, or premiums on insurance paid to or for the account of a nonresident alien landlord by a tenant, pursuant to the terms of the lease, constitute fixed or determinable annual or periodical income.

(3) Income derived from the sale in the United States of property, whether real or personal, is not fixed or determinable annual or periodical income. However, the consideration received from the transfer of property is fixed or determinable annual or periodical income if for purposes of the income tax the consideration is treated as rentals or royalties and not as the proceeds of a sale of property.

(b) *Amounts considered to be gains from the sale or exchange of capital assets.* Withholding is also required on the gross amount of the items described in section 402 (a) (2), relating to treatment of total distributions from certain employees' trusts; section 631 (b) and (c), relating to treatment of gain on disposal of timber or coal with a retained economic interest; and section 1235, relating to treatment of gain on sale or exchange of patents, which are considered to be gains from the sale or exchange of capital assets.

§ 1.1441–3 *Exceptions and rules of special application*—(a) *Income from sources without the United States.* To the extent that items of income constitute gross income from sources without the United States, they are not subject to withholding under § 1.1441–1. For rules governing the determination of the sources of income, see sections 861 to 864, inclusive, and the regulations thereunder.

(b) *Corporate distributions*—(1) *Nontaxable portion.* The tax shall be withheld at the source under § 1.1441–1 on the gross amount of any distribution made by a corporation other than—

(i) A nontaxable distribution payable in stock or stock rights, and

(ii) A distribution which is treated as a distribution in part or full payment in exchange for stock.

This rule shall apply without regard to any claim that all or a portion of the distribution is not taxable under section 871 or 881. The tax shall be withheld on the gross amount of the distribution even though the payee may be entitled to the benefits of section 34, relating to the credit for dividends received by individuals, or section 116, relating to partial exclusion of dividends received by individuals. Appropriate adjustment, if any, will be made upon the payee's filing of a claim for refund, together with appropriate supporting evidence, in accordance with paragraph (h) of this section.

(2) *Dividends paid by a foreign corporation.* No withholding under

§ 1.1441–1 is required in the case of dividends paid by a foreign corporation unless (i) the corporation is engaged in trade or business within the United States, and (ii) more than 85 percent of the gross income of the corporation for the 3-year period ending with the close of its taxable year preceding the declaration of the dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of sections 861–864, inclusive, and the regulations thereunder.

(3) *Dividends paid by a China Trade Act corporation.* Withholding is required under § 1.1441–1 on dividends paid by a corporation organized under the China Trade Act of 1922 (15 U. S. C., c. 4) if the dividends are treated as income from sources within the United States under sections 861–864, inclusive, and are distributed to—

(i) A nonresident alien other than a resident of Formosa or Hong Kong at the time of the distribution, or

(ii) A nonresident partnership composed in whole or in part of nonresident aliens (other than a partnership resident in Formosa or Hong Kong), or

(iii) A nonresident foreign corporation (other than a corporation resident in Formosa or Hong Kong).

(4) *Dividends paid to shareholder whose status is not definite.* When a payer corporation or any other person, including a nominee, having the control, receipt, custody, disposal, or payment of dividends has no definite knowledge of the status of a shareholder, the tax shall be withheld under § 1.1441–1 if the shareholder's address is outside the United States. If the shareholder's address is within the United States, it may be assumed for the purpose of withholding on dividends that the shareholder is a citizen or resident of the United States. Unless the name and style of the shareholder are such as to indicate clearly that he is a nonresident alien, an address in care of another person in the United States does not of itself warrant treating the shareholder as a nonresident alien for such purpose. If a shareholder changes his address from a place without the United States to a place within the United States, the tax shall be withheld on dividends unless proof is furnished showing that he is a citizen or resident of the United States. For general provisions for claiming United States citizenship or residence, see § 1.1441–5.

(c) *Interest*—(1) *Government obligations.* Withholding is required under § 1.1441–1 in the case of interest paid on obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. See section 103 and the regulations thereunder, relating to the taxation of such interest, and § 1.1461–1, relating to ownership certificates.

(2) *Assumed obligations.* If, in connection with the sale of a corporation's property, payment of the bonds or other obligations of the corporation is assumed by the assignee, the assignee, whether an individual, partnership, or corporation, shall deduct and withhold such taxes under § 1.1441–1 as would be required to be withheld by the assignor had no such sale or transfer been made.

(3) *Defaulted interest coupons.* The tax shall be withheld at the source under § 1.1441–1 on the gross amount of interest without regard to whether or not the payment constitutes a return of capital or the payment of income within the meaning of section 61. Thus, for example, the tax shall be withheld in accordance with § 1.1441–1 from defaulted interest payments upon bonds which were purchased flat at quotations representing the price of both the bonds and the defaulted matured interest coupons. Appropriate adjustment, if any, will be made upon the payee's filing of a claim for refund, together with appropriate supporting evidence, in accordance with paragraph (h) of this section.

(4) *Unknown owner.* Withholding is required under § 1.1441–1 in the case of interest upon all bonds or securities the owners of which are not known to the withholding agent unless such bonds or securities were issued by a corporation before January 1, 1934, contain a tax-free covenant, and do not have a maturity date which was extended on or after that date. For withholding under section 1451 in the case of unknown owners, see paragraph (a) (2) of § 1.1451–1.

(5) *Tax-free covenant bonds*—(i) *Issued on or after January 1, 1934.* Withholding is required under § 1.1441–1 in the case of interest upon bonds or other corporate obligations issued on or after January 1, 1934, and containing a tax-free covenant.

(ii) *Issued before January 1, 1934.* Withholding is not required under §1.-1441–1 in the case of interest upon bonds or other corporate obligations issued before January 1, 1934, containing a tax-free covenant, and not having a maturity date which was extended on or after that date. A domestic or resident fiduciary is required, however, to withhold tax under § 1.1441–1 in the case of so much of such interest as is properly allocable under section 652 or 662 to a nonresident alien beneficiary. See paragraph (f) of this section and of § 1.1451–1. For general rules respecting the withholding of tax under section 1451 in the case of such interest, see § 1.1451–1.

(iii) *Extended maturity date.* Withholding is required under § 1.1441–1 in the case of interest upon bonds or other corporate obligations issued before January 1, 1934, and containing a tax-free covenant, if the maturity date of the bonds or obligations has been extended on or after that date. See paragraph (c) of § 1.1451–1.

(iv) *Special rate of 27½ percent.* The rate of tax to be withheld at the source under § 1.1441–1 shall not exceed 27½ percent in the case of interest on bonds, mortgages, or deeds of trust, or other similar obligations of a corporation if—

(*a*) The liability assumed by the debtor exceeds 27½ percent of the interest, and

(*b*) The interest would be subject to withholding under the provisions of subsections (a), (b), and (c) of section 1451 except for the fact that the maturity date of the obligations has been extended on or after January 1, 1934. See paragraph (c) of § 1.1451–1.

(d) *Amounts considered to be gains from the sale or exchange of capital assets.* (1) If, in the case of the amounts enumerated in paragraph (b) of § 1.1441–2 which are considered to be gains from the sale or exchange of capital assets, the withholding agent does not know the amount of recognized gain, he is required to deduct and withhold such amount under § 1.1441–1 as may be necessary to assure that the tax withheld will not be less than 30 percent of the recognized gain. For this purpose the recognized gain shall be determined without regard to the deduction allowed by section 1202 in respect of capital gains. The amount so withheld shall not exceed 30 percent of the gross proceeds from the transaction giving rise to the recognized gain, except that the gross proceeds may be determined by excluding the net unrealized appreciation described in section 402 (a) (2). Appropriate adjustment, if any, will be made upon the payee's filing of a claim for refund, together with appropriate supporting evidence, in accordance with paragraph (h) of this section.

(2) The withholding agent may rely upon the written statement of the person entitled to the income described in this paragraph as to the amount of gain recognized on the transaction involved. This statement shall show the computation of the gain and shall be furnished to the withholding agent in duplicate. The duplicate copy of the statement shall be forwarded with a letter of transmittal to the District Director of Internal Revenue, Baltimore 2, Maryland; except that on and after January 1, 1957, such copy shall be forwarded to the Director of International Operations, Internal Revenue Service, Washington 25, D. C.

(e) *Personal exemption.* (1) The taxation of nonresident alien individuals is provided for in sections 871 to 877, inclusive. Section 874 (a) makes the filing of a return a prerequisite to the allowance of deductions, including deductions of personal exemptions. Except in the circumstances described in subparagraph (2) of this paragraph, personal exemptions do not serve to reduce the amount of tax to be withheld under § 1.1441–1.

(2) In the determination of the tax to be withheld at the source under § 1.1441–1 from remuneration paid for labor or personal services performed within the United States by a nonresident alien, the benefit of the deduction for one personal exemption provided in section 151 shall be allowed, prorated upon a daily basis for the period of employment during any portion of which labor or personal services are performed within the United States by the alien. The proration is on the basis of $1.70 per day. Thus, if A, a nonresident alien seaman employed by X Shipping Corporation, is paid in 1955 upon the termination of a voyage covering 100 days and A performs personal services within the United States during, or incident to, the voyage, the amount of $170 will be allocated as the portion of the deduction

to be allowed against the remuneration for personal services performed within the United States during that voyage; and withholding at 30 percent shall be applied against the balance, if any, of the remuneration. If, for example, the total remuneration paid to A for that voyage is $2,000, of which the amount of $800 is allocable to sources within the United States, a tax in the amount of $189 is required to be withheld under § 1.1441–1. As to what constitutes remuneration for labor or personal services performed within the United States, see section 861 (a) (3) and the regulations thereunder.

(f) *Fiduciaries.* Resident or domestic fiduciaries are required to withhold the tax at source under § 1.1441–1 on all items of income specified in § 1.1441–2 of nonresident alien beneficiaries, to the extent that such items constitute gross income from sources within the United States. Such income paid to a nonresident alien fiduciary is subject to withholding under § 1.1441–1 even though the beneficiaries of the estate or trust are citizens or residents of the United States.

(g) *Trust income taxable to grantor.* The income of a trust created by a nonresident alien individual and taxable to the grantor under the provisions of subpart E of part I of subchapter J is subject to withholding under § 1.1441–1, even though the fiduciary or beneficiaries of the trust are citizens or residents of the United States and regardless of whether the beneficiaries are exempt from income tax.

(h) *Claims for refund.* Notwithstanding § 301.6402–2 of this chapter, any claim for refund referred to in paragraphs (b), (c), and (d) of this section which is filed on and after January 1, 1957, shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D. C. For special rules permitting the use of the income tax return as a claim for refund, see § 301.6402–3 of this chapter.

(i) *Rents paid to foreign tax-exempt organizations.* For the rule for withholding on rents paid to foreign tax-exempt organizations, see § 1.1443–1.

§ 1.1441–4 *Exemptions from withholding*—(a) *Interest*—(1) *Interest on bank deposits.* Interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States is not subject to withholding under § 1.1441–1.

(2) *Sale of bonds between interest dates.* The tax is not required to be withheld under § 1.1441–1 on accrued interest paid by the buyer in connection with the sale of bonds between interest dates, even though the interest is subject to tax under section 871 or 881. The exemption from withholding granted by this subparagraph is not a determination that the accrued interest is not fixed or determinable annual or periodical income.

(b) *Compensation for personal services*—(1) *Exemption under section 1441.* The salary or other compensation for personal services of a nonresident alien individual who enters and leaves the United States at frequent intervals shall not be subject to withholding of tax under § 1.1441–1 if—

(i) The nonresident alien is a resident of Canada or Mexico, or

(ii) The nonresident alien is engaged in agricultural labor as defined in section 3121 (g) and the regulations thereunder.

(2) *Withholding of tax under section 3402.* For collection of the income tax at source under section 3402 upon remuneration paid for services performed by a nonresident alien individual who is a resident of Canada or Mexico and who enters and leaves the United States at frequent intervals, see section 3401 (a) (7) and the regulations thereunder.

(3) *Proration of personal exemption.* For provisions allowing the benefit of the deduction for the personal exemption on a prorated basis, see paragraph (e) of § 1.1441–3.

(c) *Dividends paid by China Trade Act corporations.* Withholding is not required under § 1.1441–1 upon dividends distributed by a corporation organized under the China Trade Act of 1922 (15 U. S. C., c. 4) to or for the benefit of a resident of Formosa or Hong Kong and which are exempt from taxation by section 943.

(d) *Inhabitants of Virgin Islands*—(1) *Allowance of exemption.* No withholding is required under § 1.1441–1 upon any item of income paid to any person who at the time of payment reasonably expects to satisfy his income tax obligations with respect to that item under section 28 (a) of the Revised Organic Act of the Virgin Islands. That section provides that all persons whose permanent residence is in the Virgin Islands "shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the Treasury of the Virgin Islands." For the purpose of this paragraph, the term "person" shall include an individual, partnership, and corporation.

(2) *Claiming exemption.* To avoid withholding of tax at source under § 1.1441–1 the payee of the income shall notify the withholding agent by letter in duplicate that he expects to satisfy his income tax obligations under section 28 (a) of the Revised Organic Act of the Virgin Islands with respect to all income to be paid to him by the withholding agent during the current calendar year. This letter of notification shall constitute authorization to the payer of the income to pay income to the payee during that year without deduction of the tax at source under § 1.1441–1.

(3) *Disposition of letter.* The duplicate copy of each letter of notification shall be forwarded with a letter of transmittal to the District Director of Internal Revenue, Baltimore 2, Maryland; except that on and after January 1, 1957, such copy shall be forwarded to the Director of International Operations, Internal Revenue Service, Washington 25, D. C.

§ 1.1441–5 *Claiming United States citizenship or residence*—(a) *Individuals.* For purposes of chapter 3 an individual's written statement that he is a citizen or resident of the United States may be relied upon by the payer of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate. An alien may claim residence in the United States by filing Form 1078 with the withholding agent in duplicate in lieu of the above statement.

(b) *Partnerships and corporations.* For purposes of chapter 3 a written statement from a partnership or corporation claiming residence in the United States may be relied upon by the payer of the income as proof that such partnership or corporation is a resident of the United States. This statement shall be furnished to the withholding agent in duplicate. It shall contain the address of the taxpayer's office or place of business in the United States and shall be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer shall also be given.

(c) *Manner of filing statement or form.* (1) The statement of citizenship or residence, or Form 1078 in the case of residence, shall be filed with the withholding agent for each successive three-calendar-year period during which the income is paid in respect of which the statement or form is furnished. The statement or form shall be filed with the withholding agent not later than 20 days preceding the date of the first payment within the three-calendar-year period for which the statement or form is furnished, or, if that is not possible because of special circumstances, as soon as possible after such first payment.

(2) Once a statement or form has been filed in respect of any three-calendar-year period, no additional statement or form is required to be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an additional statement or form shall be filed by the taxpayer. If, after filing a statement or form, the taxpayer ceases to be a citizen or resident of the United States, he shall promptly notify the withholding agent.

(3) Upon the expiration of any three-calendar-year period, the statement or form filed in respect of that period may not be relied upon by the payer of the income as proof of citizenship or residence.

(d) *Disposition of statement and form.* The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to the Director of International Operations, Internal Revenue Service, Washington 25, D. C.

(e) *Definitions.* As to who are nonresident alien individuals, see sections 871, 7701, and the regulations thereunder. As to what partnerships and corporations are deemed to be nonresident, see sections 881, 882, 7701, and the regulations thereunder.

(f) *Effective date.* This section shall apply with respect to payments made after December 31, 1956. The provisions of §§ 39.143–3 (a) and 39.144–2 of Regulations 118 corresponding to the provisions of this section, which were made applicable to chapter 3 of the 1954 Code by Treasury Decision 6091, 19 F. R. 5167,

shall be deemed to apply under such chapter with respect to all payments made after December 31, 1954, and before January 1, 1957.

§ 1.1442 *Statutory provisions; withholding of tax on foreign corporations.*

SEC. 1442. *Withholding of tax on foreign corporations.* In the case of foreign corporations subject to taxation under this subtitle not engaged in trade or business within the United States, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 or section 1451 a tax equal to 30 percent thereof; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein.

§ 1.1442–1 *Withholding of tax on foreign corporations.* For regulations respecting the withholding of tax at source under section 1442 in the case of nonresident foreign corporations, see §§ 1.1441–1 and 1.1451–1.

§ 1.1443 *Statutory provisions; foreign tax-exempt organizations.*

SEC. 1443. *Foreign tax-exempt organizations.* In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to rents includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary or his delegate.

§ 1.1443–1 *Rents paid to foreign tax-exempt organizations.* The gross amount of rents paid to a foreign organization subject to the tax imposed by section 511, which are includible under section 512 in computing its unrelated business taxable income, is subject to withhodling of a tax of 30 percent in the manner prescribed for withholding of the tax under § 1.1441–1, even though the organization is engaged in trade or business within the United States.

TAX-FREE COVENANT BONDS

§ 1.1451 *Statutory provisions; tax-free covenant bonds.*

SEC. 1451. *Tax-free covenant bonds*—(a) *Requirement of withholding.* In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this subtitle on the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 percent (regardless of whether the liability assumed by the obligor is less than, equal to, or greater than 2 percent) of the interest on such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to—

(1) An individual,

(2) A partnership, or

(3) A foreign corporation not engaged in trade or business within the United States.

(b) *Payments to foreigners.* Notwithstanding subsection (a), if the liability assumed by the obligor does not exceed 2 percent of the interest, then the deduction and withholding shall be at the rate of 30 percent in the case of—

(1) A nonresident alien individual,

(2) Any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, and

(3) A foreign corporation not engaged in trade or business within the United States.

(c) *Owner unknown.* If the owners of such obligations are not known to the withholding agent, the Secretary or his delegate may authorize such deduction and withholding to be at the rate of 2 percent, or, if the liability assumed by the obligor does not exceed 2 percent of the interest, then at the rate of 30 percent.

(d) *Benefit of personal exemptions.* Deduction and withholding under this section shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the deduction for personal exemptions provided in section 151; nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Secretary or his delegate under section 874.

(e) *Alien residents of Puerto Rico.* For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(f) *Income of obligor and obligee.* The obligor shall not be allowed a deduction for the payment of the tax imposed by this subtitle, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

§ 1.1451–1 *Tax-free covenant bonds issued before January 1, 1934*—(a) *Rates of withholding*—(1) *Rate of 2 percent.* Withholding of a tax equal to 2 percent is required in the case of interest upon bonds or other corporate obligations containing a tax-free covenant and issued before January 1, 1934, paid to an individual, a fiduciary, or a partnership, whether resident or nonresident, or to a nonresident foreign corporation, regardless of whether the liability assumed by the obligor is less than, equal to, or greater than 2 percent.

(2) *Rate of 30 percent.* Notwithstanding subparagraph (1) of this paragraph, if the liability assumed by the obligor does not exceed 2 percent of the interest, withholding is required at the rate of 30 percent in the case of payments to a nonresident alien individual, a nonresident partnership composed in whole or in part of nonresident aliens, a nonresident foreign corporation, or an owner who is unknown to the withholding agent.

(3) *Obligations of resident payers.* The rates of withholding specified in subparagraphs (1) and (2) of this paragraph are applicable to interest on such tax-free covenant bonds issued by a domestic corporation or by a resident foreign corporation.

(4) *Obligations of nonresident payers.* A nonresident foreign corporation having a fiscal or paying agent in the United States is required to withhold a tax of 2 percent in the case of interest upon its tax-free covenant bonds issued before January 1, 1934, which is paid to an individual or fiduciary who is a citizen or resident of the United States, to a partnership any member of which is a citizen or resident, or to an unknown owner.

(5) *Interest from sources without the United States.* Withholding is not required under section 1451 in the case of interest upon bonds or other corporate obligations issued before January 1, 1934, and containing a tax-free covenant if the interest is not to be treated as income from sources within the United States and the payments are made to a nonresident alien, a partnership composed wholly of nonresident aliens, or a nonresident foreign corporation.

(6) *Tax treaties.* The rates of tax to be withheld in accordance with this paragraph shall be reduced as may be provided by treaty with any country. See section 894, relating to income exempt under treaty.

(b) *Date of issue.* The withholding provisions of section 1451 are applicable only to bonds, mortgages, or deeds of trust, or other similar obligations of a corporation which were issued before January 1, 1934, and which contain a tax-free covenant. For the purpose of section 1451, bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, are issued when delivered. If a broker or other person acts as selling agent of the obligor, the obligation is issued when delivered by the agent to the purchaser. If a broker or other person purchases the obligation outright for the purpose of holding or reselling it, the obligation is issued when delivered to such broker or other person.

(c) *Extended maturity date.* In cases where on or after January 1, 1934, the maturity date of bonds or other obligations of a corporation is extended, the bonds or other obligations shall be considered to have been issued on or after January 1, 1934. The interest on such obligations is not subject to the withholding provisions of section 1451 but falls within the class of interest described in section 1441. See paragraph (c) (5) (iii) of § 1.1441–3.

(d) *Covenant in trust deed.* Bonds issued under a trust deed containing a tax-free covenant are treated as if they contain such a covenant. If neither the bonds nor the trust deeds given by the obligor to secure them contained a tax-free covenant, but the original trust deeds were modified before January 1, 1934, by supplemental agreements containing a tax-free covenant executed by the obligor corporation and the trustee, the bonds issued before January 1, 1934, are subject to the provisions of section 1451, provided appropriate authority existed for the modification of the trust deeds in this manner. The authority must have been contained in the original trust deeds or actually secured from the bondholders.

(e) *Notation showing date of issue.* In order that the date of issue of bonds, mortgages, deeds of trust, or other similar corporate obligations containing a tax-free covenant may be readily determined by the owner for the purpose of preparing the ownership certificates required by § 1.1461–1, the issuing or debtor corporation shall indicate the date of issue by an appropriate notation, or use the phrase "issued on or after January 1, 1934," on each such obligation or in a statement accompanying the delivery of the obligation.

(f) *Effect of withholding on income taxes of bondholder and issuing corporation*—(1) *Federal tax.* In the case of corporate bonds or other corporate ob-

ligations issued before January 1, 1934, and containing a tax-free covenant, the corporation paying a Federal tax, or any part of it, for someone else pursuant to its agreement is not entitled to deduct such payment from its gross income on any ground; nor shall the tax so paid be included in the gross income of the bondholder. The amount of the tax so paid may, nevertheless, be claimed by the bondholder in accordance with paragraph (a) of § 1.1462–1 as a credit against the total amount of income tax due. See also section 32. The tax so paid by the corporation upon tax-free covenant bond interest payable to a domestic or resident fiduciary and allocable to any nonresident alien beneficiary under section 652 or 662 is allowable, pro rata, as a credit against—

(i) The tax required to be withheld by the fiduciary in accordance with paragraph (f) of § 1.1441–3 from the income of the beneficiary, and

(ii) The total income tax computed in the return of the beneficiary, as indicated in paragraph (a) of § 1.1462–1.

(2) *State taxes.* In the case of corporate bonds or other obligations containing an appropriate tax-free covenant, the corporation paying for someone else, pursuant to its agreement, a State tax or any tax other than a Federal tax may deduct such payment as interest paid on indebtedness.

(g) *Alien resident of Puerto Rico.* For purposes of this section the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(h) *Other rules for withholding of tax under section 1451.* The rules for withholding stated in paragraphs (c) (2) and (3), (f), and (g) of § 1.1441–3 shall also apply for purposes of withholding the tax under this section.

§ 1.1451–2 *Exemptions from withholding under section 1451*—(a) *Claiming personal exemptions.* Withholding under § 1.1451–1 from interest on bonds or other obligations of corporations issued before January 1, 1934, and containing a tax-free covenant shall not be required if there is filed with the withholding agent when presenting coupons for payment, or not later than February 1 of the following year, an ownership certificate on Form 1000 stating—

(1) In the case of a citizen or resident of the United States, that his taxable income does not exceed his deductions for personal exemptions allowed under section 151; or

(2) In the case of an estate or trust the fiduciary of which is a citizen or resident of the United States, that its taxable income does not exceed the deduction for the personal exemption allowed under section 642 (b).

(b) *Claiming residence in United States.* To claim residence in the United States for purposes of section 1451, see § 1.1441–5.

(c) *Other exemptions.* The exemptions allowed by paragraphs (a) (2) and (d) of § 1.1441–4 shall also apply for purposes of section 1451.

APPLICATION OF WITHHOLDING PROVISIONS

§ 1.1461 *Statutory provisions; return and payment of withheld tax.*

SEC. 1461. *Return and payment of withheld tax.* Every person required to deduct and withhold any tax under this chapter shall, on or before March 15, of each year, make return thereof and pay the tax to the officer designated in section 6151. Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

§ 1.1461–1 *Ownership certificates for bond interest*—(a) *Citizens and residents of the United States.* In accordance with section 6041, citizens, resident individuals, fiduciaries, and partnerships, and nonresident partnerships all of the members of which are citizens or residents, owning bonds, mortgages, or deeds of trust, or other similar obligations issued by a domestic corporation, a resident foreign corporation, or a nonresident foreign corporation having a fiscal or paying agent in the United States, shall, when presenting interest coupons for payment, file ownership certificates for each issue of such obligations issued before January 1, 1934, and containing a tax-free covenant. This rule shall apply without regard to the amount of the interest coupons.

(b) *Nonresident aliens and foreign corporations.* (1) In accordance with section 6041, nonresident alien individuals, nonresident partnerships composed in whole or in part of nonresident aliens, nonresident foreign corporations, and unknown owners, owning bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, shall, when presenting interest coupons for payment, file ownership certificates for each issue of all such obligations whether or not the obligation contains a tax-free covenant. This rule shall apply without regard to the amount of the interest coupons and without regard to the date on which the obligations were issued.

(2) Ownership certificates are not required to be filed, however, by a nonresident alien individual, a partnership composed wholly of nonresident aliens, or a nonresident foreign corporation in connection with interest payments on bonds, mortgages, or deeds of trust, or other similar obligations of a nonresident foreign corporation or of any domestic or foreign corporation which qualifies under section 861 (a) (1) (B) (relating to interest from payers deriving substantially all their income from sources without the United States).

(3) Ownership certificates shall also be filed in the case of interest paid on obligations of the United States or of any agency or instrumentality thereof, irrespective of the date on which the obligations are issued or of the amount of the interest, if the obligations are owned by a nonresident alien individual, nonresident partnership composed in whole or in part of nonresident aliens, nonresident foreign corporation, or an unknown owner.

(c) *Overdue coupon bonds.* In the case of interest payments on overdue coupon bonds, the interest coupons of which have been exhausted, ownership certificates are required to be filed when collecting the interest in the same manner as if interest coupons were presented for collection.

(d) *Information shown on ownership certificate.* The ownership certificate shall show the name and address of the obligor, the name and address of the owner of the obligations, a description of the obligations, the amount of interest and its due date, the rate at which tax is to be withheld, and the date upon which the interest coupons were presented for payment.

(e) *Ownership certificates not required.* Ownership certificates are not required to be filed in the case of interest payments on—

(1) Obligations of a State, Territory, or possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia;

(2) Bonds, mortgages, or deeds of trust, or other similar obligations issued by an individual or a partnership; and

(3) Obligations owned by a domestic corporation, resident foreign corporation, or foreign government.

(f) *Interest coupons unaccompanied by ownership certificates.* (1) When interest coupons detached from corporate bonds, or from obligations of the United States or of any agency or instrumentality thereof, are received unaccompanied by ownership certificates, the first bank to which the coupons are presented for payment shall require of the payee a statement showing the name and address of the person from whom the coupons were received by the payee and alleging that the owner of the bonds is unknown to the payee. This rule shall not apply if the owner of the bonds is known to the bank and the bank is satisfied that the owner is a person who is not required to file an ownership certificate.

(2) The bank shall also require the payee to prepare an ownership certificate on Form 1001, which shall be modified by crossing out "owner," inserting "payee," stamping or writing across the face of the certificate "Statement furnished," and adding the name of the bank.

(3) The statement furnished pursuant to this paragraph shall be forwarded to the District Director of Internal Revenue, Baltimore 2, Maryland, with the quarterly return on Form 1012.

(g) *Noncoupon bonds*—(1) *General rule.* Ownership certificates on Form 1000 or Form 1001 are required in connection with interest payments on noncoupon bonds as in the case of coupon bonds. If an ownership certificate is not furnished by the owner of a noncoupon bond, the certificate shall be prepared by the withholding agent but is not required to be signed by the owner.

(2) *Application of tax treaties.* Ownership certificates are not required, however, when claiming the benefit of an exemption from tax, or reduced rate of tax, granted by an applicable tax convention in respect of interest payments on noncoupon bonds. Regulations under the various income tax conventions require, in lieu of an ownership certificate, the use of an exemption (or reduced rate) certificate (or corresponding letter) in the case of such interest payments. Such a certificate may not be

prepared by the withholding agent but must be signed by the owner of the interest, or by his trustee or agent, in accordance with the applicable tax treaty regulation.

(h) *Form of ownership certificate for citizens and residents.* Form 1000 shall be used in preparing ownership certificates of individuals or fiduciaries who are citizens or residents of the United States, of resident partnerships, and of nonresident partnerships all of the members of which are citizens or residents. If the obligations are issued by a nonresident foreign corporation having a fiscal or paying agent in the United States, Form 1000 shall be modified to show the name and address of the fiscal agent or the paying agent in addition to the name and address of the debtor corporation.

(i) *Form of ownership certificate for nonresident aliens and foreign corporations.* Form 1001 shall be used in preparing ownership certificates of nonresident alien individuals, nonresident partnerships composed in whole or in part of nonresident aliens, nonresident foreign corporations, and unknown owners. A special variation of Form 1001 (designated by a letter or letters following the number 1001) shall be used, however, in preparing ownership certificates of persons claiming the benefit of an exemption from tax, or reduced rate of tax, granted by an applicable income tax convention in respect of interest payments on coupon bonds. See the applicable tax treaty regulation.

(j) *Ownership certificates in the case of fiduciaries and joint owners.* (1) Fiduciaries having the control and custody of more than one estate or trust, the assets of which include bonds of corporations and other securities, shall execute a certificate of ownership for each estate or trust even though the bonds are of the same issue. The ownership certificate shall show both the name of the estate or trust and the name and address of the fiduciary.

(2) Separate ownership certificates shall be executed in behalf of each person owning bonds jointly with another.

§ 1.1461–2 *Return and payment of tax withheld*—(a) *Interest on certain bonds*—(1) *Form 1013.* Every withholding agent shall make on or before March 15 an annual return on Form 1013 of the tax withheld under chapter 3 from interest (other than interest on noncoupon bonds with respect to which a reduced rate certificate (or corresponding letter) has been filed with the withholding agent in accordance with regulations under a tax convention) on (i) bonds or other obligations of corporations and (ii) obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof. This return shall be filed with the District Director of Internal Revenue, Baltimore 2, Maryland.

(2) *Form 1012.* The withholding agent also shall make and file with the District Director of Internal Revenue, Baltimore 2, Maryland, a quarterly return on Form 1012 of the tax so withheld from such interest, on or before the last day of the month following the termination of the quarter for which the return is made. The ownership certificates (Form 1000, Form 1001, and all special variations of Form 1001 referred to in paragraph (i) of § 1.1461–1) shall be forwarded with the quarterly return, even though the interest in respect of which the certificate is filed is exempt from withholding of tax. Forms 1001 shall be listed on the quarterly return. All special variations of Form 1001 (referred to in paragraph (i) of § 1.1461–1) which have been used to secure a reduction in the rate of tax withheld at source shall also be listed on the quarterly return. While Forms 1000 need not be listed on the return, the number of such forms submitted, the total amount of interest paid, and the total amount of the tax required to be withheld in respect of such forms shall be entered in the spaces provided on Form 1012.

(3) *Modification of Forms 1012 and 1013.* If Form 1000 is modified in accordance with paragraph (h) of § 1.1461–1 to show the name and address of a fiscal or paying agent in the United States, Forms 1012 and 1013 shall be likewise modified.

(b) *Payments other than interest on certain bonds*—(1) *Form 1042.* Every withholding agent shall make on or before March 15 an annual return on Form 1042 of the tax withheld under chapter 3 from income other than bond interest in respect of which the tax is required to be reported on Form 1012. This return shall be filed with the District Director of Internal Revenue, Baltimore 2, Maryland. The return shall show the amount of tax required to be withheld from each nonresident alien, nonresident partnership composed in whole or in part of nonresident aliens, and nonresident foreign corporation, to which income other than such bond interest was paid during the previous calendar year.

(2) *Income exempt from tax.* The withholding agent shall also report on Form 1042—

(i) All such items of income, otherwise required to be returned thereon pursuant to subparagraph (1) of this paragraph, upon which the tax has not been withheld at source because of an income tax convention which is in effect between the United States and a foreign country, and

(ii) Interest paid to such persons on noncoupon bonds with respect to which an exemption certificate (or corresponding letter) has been filed with the withholding agent in accordance with regulations under a tax convention.

(3) *Proration of personal exemption.* In a case where the personal exemption is prorated in accordance with paragraph (e) of § 1.1441–3 the amount of the compensation allocable to labor or personal services performed within the United States, together with the amount of the deduction for the prorated personal exemption, shall be shown on a separate statement attached to the annual return on Form 1042.

(c) *Date of payment; penalties.* The tax required to be returned on Forms 1012, 1013, and 1042 shall be paid to the district director on or before March 15 of the following year. For penalties and additions to the tax attaching upon failure to make returns or such payments, see sections 6651, 6653, 7202, and 7203.

(d) *Information returns.* For the extent to which ownership certificates and returns filed by withholding agents will constitute, and be treated as, returns of information required by section 6041, see the regulations issued pursuant to that section.

§ 1.1462 *Statutory provisions; withheld tax as credit to recipient of income.*

SEC. 1462. *Withheld tax as credit to recipient of income.* Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

§ 1.1462–1 *Withheld tax as credit to recipient of income*—(a) *Return of income from which tax was withheld.* The entire amount of the income from which the tax is required to be withheld shall be included in gross income in the return required to be made by the recipient of the income, without deduction for the amount required to be withheld, but the tax so withheld shall be allowed as a credit against the total income tax computed in the taxpayer's return.

(b) *Amounts paid to fiduciaries.* Tax withheld at the source under chapter 3 upon income paid to any fiduciary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if any taxpayer is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income of a nonresident alien estate or trust, the part of any tax withheld at the source which is properly allocable to the income so taxed to such taxpayer shall be credited against the amount of the income tax computed upon his return, and any excess shall be credited against any income, war profits, or excess profits tax, or installment thereof, then due from the taxpayer, and any balance shall be refunded.

§ 1.1463 *Statutory provisions; tax paid by recipient of income.*

SEC. 1463. *Tax paid by recipient of income.* If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

§ 1.1463–1 *Tax paid by recipient of income.* If the tax required to be withheld under chapter 3 is paid by the recipient of the income or by the withholding agent, it shall not be re-collected from the other, regardless of the original liability therefor; and, in such event, no penalty will be asserted against either person for failure to return or pay the tax where no fraud or purpose to evade payment is involved.

§ 1.1464 *Statutory provisions; refunds and credits with respect to withheld tax.*

SEC. 1464. *Refunds and credits with respect to withheld tax.* Where there has been an overpayment of tax under this chapter, any

refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

[Section 6414, which is contained in chapter 65, provides as follows: "In the case of an overpayment of tax imposed by chapter 24, or by chapter 3, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent."]

§ 1.1464–1 *Refunds and credits.* The refund or credit under chapter 65 of an overpayment of tax which has actually been withheld at the source under chapter 3 shall be made to the taxpayer from whose income the amount of such tax was in fact withheld. To the extent that the overpayment under chapter 3 was not in fact withheld at the source, but was paid, by the withholding agent the refund or credit under chapter 65 of the overpayment shall be made to the withholding agent. Thus, where a debtor corporation assumes liability pursuant to its tax-free covenant for the tax required to be withheld under chapter 3 upon interest and pays the tax in behalf of its bondholder, and it can be shown that the bondholder is not in fact liable for any tax, the overpayment of tax shall be credited or refunded to the withholding agent in accordance with chapter 65 since the tax was not actually deducted and withheld from the interest paid to the bondholder. In further illustration, where a withholding agent who is required by chapter 3 to withhold $300 tax from rents paid to a nonresident alien individual mistakenly withholds $320 and mistakenly pays $350 as internal revenue tax, the amount of $30 shall be credited or refunded to the withholding agent in accordance with chapter 65 and the amount of $20 shall be credited or refunded in accordance with such chapter to the person from whose income such amount has been withheld.

§ 1.1465 *Statutory provisions; definition of withholding agent.*

SEC. 1465. *Definition of withholding agent.* The term "withholding agent" means any person required to deduct and withhold any tax under this chapter.

§ 1.1465–1 *General provisions relating to withholding agents*—(a) *Withholding agents in case of United States obligations.* In the case of interest on obligations of the United States or of any agency or instrumentality thereof the withholding agents shall be—

(1) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt;

(2) The Treasurer of the United States, for all interest paid by him, whether by check or otherwise; and

(3) Each Federal Reserve bank, for all interest paid by it, whether by check or otherwise.

(b) *Person designated to act for withholding agent.* (1) A debtor corporation having an issue of bonds or other similar obligations which appoints a duly authorized agent to act on its behalf under the withholding provisions of chapter 3 is required to file a notice of such appointment with the District Director of Internal Revenue, Baltimore 2, Maryland, giving the name and address of the agent; except that on and after January 1, 1957, such notice shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D. C.

(2) If the person designated by a debtor corporation to act for it as withholding agent has not withheld any tax from the income nor received any funds from the debtor corporation to pay the tax which the debtor corporation assumed in connection with its tax-free covenant bonds, then that person cannot be held liable for the tax assumed by the debtor corporation merely by reason of the designee's appointment as withholding agent.

(3) If a duly authorized withholding agent has become insolvent or for any other reason fails to make payment under section 1461 of money deposited with it by the debtor corporation to pay taxes, or of money withheld from bondholders, the debtor corporation is not discharged of its liability under chapter 3 since the withholding agent is merely the agent of the debtor corporation.

(c) *Payments other than money.* In any case where income is payable in any medium other than money the withholding agent shall not release the property so received until the property has been converted into funds sufficient to enable the withholding agent to pay over in money the tax required to be withheld under chapter 3 with respect to such income.

RULES APPLICABLE TO RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

§ 1.1471 *Statutory provisions; recovery of excessive profits on government contracts.*

SEC. 1471. *Recovery of excessive profits on government contracts*—(a) *Method of collection.* If the amount of profit required to be paid into the Treasury under section 3 of the Act of March 27, 1934, as amended (34 U. S. C. 496), with respect to contracts completed within taxable years subject to this code is not voluntarily paid, the Secretary or his delegate shall collect the same under the methods employed to collect taxes under this subtitle.

(b) *Laws applicable.* All provisions of law (including penalties) applicable with respect to the taxes imposed by this subtitle and not inconsistent with section 3 of the Act of March 27, 1934, as amended, shall apply with respect to the assessment, collection, or payment of excess profits to the Treasury as provided by subsection (a), and to refunds by the Treasury of overpayments of excess profits into the Treasury.

§ 1.1471–1 *Recovery of excessive profits on government contracts.* The inclusion of the statutory provisions of section 1471 of the Internal Revenue Code of 1954 in this part does not supersede the provisions of Treasury Decision 4906, 26 CFR (1939) Part 17, and Treasury Decision 4909, 26 CFR (1939) Part 16, as made applicable to section 1471 of the 1954 Code by Treasury Decision 6091, 19 F. R. 5167.

MITIGATION OF EFFECT OF RENEGOTIATION OF GOVERNMENT CONTRACTS

§ 1.1481 *Statutory provisions; mitigation of effect of renegotiation of government contracts.*

SEC. 1481. *Mitigation of effect of renegotiation of government contracts*—(a) *Reduction for prior taxable year*—(1) *Excessive profits eliminated for prior taxable year.* In the case of a contract with the United States or any agency thereof, or any subcontract thereunder, which is made by the taxpayer, if a renegotiation is made in respect of such contract or subcontract and an amount of excessive profits received or accrued under such contract or subcontract for a taxable year (referred to in this section as "prior taxable year") is eliminated and, the taxpayer is required to pay or repay to the United States or any agency thereof the amount of excessive profits eliminated or the amount of excessive profits eliminated is applied as an offset against other amounts due the taxpayer, the part of the contract or subcontract price which was received or was accrued for the prior taxable year shall be reduced by the amount of excessive profits eliminated. For purposes of this section—

(A) The term "renegotiation" includes any transaction which is a renegotiation within the meaning of the Federal renegotiation act applicable to such transaction, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

(B) The term "excessive profits" includes any amount which constitutes excessive profits within the meaning assigned to such term by the applicable Federal renegotiation act, any part of the contract price of a contract with the United States or any agency thereof, any part of the subcontract price of a subcontract under such a contract, and any profits derived from one or more such contracts or subcontracts.

(C) The term "subcontract" includes any purchase order or agreement which is a subcontract within the meaning assigned to such term by the applicable Federal renegotiation act.

(D) The term "Federal renegotiation act" includes section 403 of the Sixth Supplemental National Defense Appropriation Act (Public Law 528, 77th Cong., 2d Sess.), as amended or supplemented, the Renegotiation Act of 1948, as amended or supplemented, and the Renegotiation Act of 1951, as amended or supplemented.

(2) *Reduction of reimbursement for prior taxable year.* In the case of a cost-plus-a-fixed-fee contract between the United States or any agency thereof and the taxpayer, if an item for which the taxpayer has been reimbursed is disallowed as an item of cost chargeable to such contract and the taxpayer is required to repay the United States or any agency thereof the amount disallowed or the amount disallowed is applied as an offset against other amounts due the taxpayer, the amount of the reimbursement of the taxpayer under the contract for the taxable year in which the reimbursement for such item was received or was accrued shall be reduced by the amount disallowed.

(3) *Deduction disallowed.* The amount of the payment, repayment, or offset described in paragraph (1) or paragraph (2) shall not constitute a deduction for the year in which paid or incurred.

(4) *Exception.* The foregoing provisions of this subsection shall not apply in respect of any contract if the taxpayer shows to the satisfaction of the Secretary or his delegate that a different method of accounting for the amount of the payment, repayment, or disallowance clearly reflects income, and in such case the payment, repayment, or disallowance shall be accounted for with respect

to the taxable year provided for under such method, which for the purposes of subsections (b) and (c) shall be considered a prior taxable year.

(b) *Credit against repayment on account of renegotiation or allowance*—(1) *General rule.* There shall be credited against the amount of excessive profits eliminated the amount by which the tax for the prior taxable year under this subtitle is decreased by reason of the application of paragraph (1) of subsection (a); and there shall be credited against the amount disallowed the amount by which the tax for the prior taxable year under this subtitle is decreased by reason of the application of paragraph (2) of subsection (a).

(2) *Credit for barred year.* If at the time of the payment, repayment, or offset described in paragraph (1) or paragraph (2) of subsection (a), refund or credit of tax under this subtitle for the prior taxable year is prevented (except for the provisions of section 1311) by any provision of the internal revenue laws other than section 7122, or by rule of law, the amount by which the tax for such year under this subtitle is decreased by the application of paragraph (1) or paragraph (2) of subsection (a) shall be computed under this paragraph. There shall first be ascertained the tax previously determined for the prior taxable year. The amount of the tax previously determined shall be the excess of—

(A) The sum of—

(i) The amount shown as the tax by the taxpayer on his return (determined as provided in section 6211 (b) (1) and (3)), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(ii) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(B) The amount of rebates, as defined in section 6211 (b) (2), made.

There shall then be ascertained the decrease in tax previously determined which results solely from the application of paragraph (1) or paragraph (2) of subsection (a) to the prior taxable year. The amount so ascertained, together with any amounts collected as additions to the tax or interest, as a result of paragraph (1) or paragraph (2) of subsection (a) not having been applied to the prior taxable year, shall be the amount by which such tax is decreased.

(3) *Interest.* In determining the amount of the credit under this subsection no interest shall be allowed with respect to the amount ascertained under paragraph (1); except that if interest is charged by the United States or the agency thereof on account of the disallowance for any period before the date of the payment, repayment, or offset, the credit shall be increased by an amount equal to interest on the amount ascertained under such paragraph at the same rate and for the period (prior to the date of the payment, repayment, or offset) as interest is so charged.

(c) *Credit in lieu of other credit or refund.* If a credit is allowed under subsection (b) with respect to a prior taxable year no other credit or refund under the internal-revenue laws founded on the application of subsection (a) shall be made on account of the amount allowed with respect to such taxable year. If the amount allowable as a credit under subsection (b) exceeds the amount allowed under such subsection, the excess shall, for purposes of the internal revenue laws relating to credit or refund of tax, be treated as an overpayment for the prior taxable year which was made at the time the payment, repayment, or offset was made.

(d) *Renegotiation of government contracts affecting taxable years prior to 1954.* If a recovery of excessive profits through renegotiation as described in this section relates to profits of a taxable year subject to the Internal Revenue Code of 1939, the adjustments in respect of such renegotiation shall be made under section 3806 of such code.

[SEAL] O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved: June 29, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

[F. R. Doc. 56-5350; Filed, July 5, 1956; 8:49 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

Subchapter F—Reserve Forces

PART 864—ENLISTED RESERVE

VOLUNTARY ENTRY ON EXTENDED ACTIVE DUTY

In Part 864, §§ 864.51 to 864.64 are rescinded and the following substituted therefor:

Sec.
864.51 Purpose.
864.52 Use of reserve personnel.
864.53 Eligibility.
864.54 Submission of applications.

AUTHORITY: §§ 864.51 to 864.54 issued under R. S. 161, sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 22, 171a. Interpret or apply sec. 233d, 66 Stat. 490; 50 U. S. C. 961d.

DERIVATION: AFR 45-21, March 20, 1956.

§ 864.51 *Purpose.* Sections 864.51 to 864.54 explain how warrant officers and airmen of the Air Force Reserve and the Air National Guard may volunteer for extended active duty. It does not apply to airmen retired and transferred to the Reserve after twenty years of active military service.

§ 864.52 *Use of reserve personnel.* (a) The needs for specific grades and skills throughout the Air Force determine the recall requirement.

(1) Airmen selected for extended active duty must possess an Air Force Specialty in needed, needed overseas only, scarce, or scarce overseas only categories.

(2) Master Sergeants and Technical Sergeants are eligible for recall provided they possess a 7-skill level in the Air Force Specialty in which they will be ordered to extended active duty.

(3) Applicants who possess the 5-skill level in the Air Force Specialty in which they will be ordered to extended active duty are eligible for recall in a grade no higher than Staff Sergeant.

(4) Airmen in pay grades E-1 through E-4 who reside in the Zone of Interior and who do not possess an Air Force Specialty in one of the categories listed in subparagraph (1) of this paragraph, may apply for entry on extended active duty for the purpose of attending technical training which leads to the award of an Air Force Specialty in the scarce or needed category.

(b) Section 233d, Armed Forces Reserve Act of 1952 (66 Stat. 490; 50 U. S. C. 961 (d)) is the statutory authority governing the voluntary entry on extended active duty by reservists.

§ 864.53 *Eligibility.* The approval of an application by a unit commander indicates only that the reservist concerned meets the general requirements established by §§ 864.51 to 864.54. This approval does not mean the applicant possesses the qualifications required by the Air Force at any given time. The factors listed in this section affect eligibility as indicated:

(a) *Extended active duty for purpose of technical training.* In addition to other requirements of §§ 864.51 to 864.54, airmen applying for extended active duty to attend technical training as outlined in § 864.52 (a) (4) must have an Airman Classification Battery or Airman Qualifying Examination aptitude index equal to or higher than those desired minimums as shown in the USAF training prospectus for the appropriate course. However, airmen who possess the minimum desired aptitudes only in equipment operator or craftsman of the Airman Classification Battery are not eligible for recall for technical training. Airmen who do not have a recorded Airman Classification Battery or Airman Qualifying Examination test on their records will be required to take an Airman Qualifying Examination. Individuals scoring below the desired minimums will not be accepted for extended active duty.

(b) *Dependents*—(1) *Male airmen.* (i) In pay grade E-1, E-2 or E-3, having more than one dependent, are not eligible.

(ii) In pay grade E-4, having more than two dependents, are eligible if at least four years of service for pay purposes have accrued.

(iii) In pay grade E-5, E-6 or E-7, having one or more dependents, are eligible.

(2) *Female airmen.* (i) The provisions of subparagraph (1) of this paragraph apply to female airmen.

(ii) Women with minor dependents as indicated in (*a*) through (*c*) of this subdivision are not eligible.

(*a*) Women who are parents by birth or adoption of a child under 18 years of age of whom they have legal or personal custody.

(*b*) Women who are stepparents of a child under 18 years of age and if the child is within their household for a period of more than 30 days a year.

(*c*) Women who have personal custody of any child under 18 years of age.

(3) Waivers of any of the restrictive conditions of subparagraph (2) of this paragraph will not be granted.

(c) *Previous release for hardship or dependency reasons.* Reservists whose last release from active duty resulted for hardship or dependency factors are not normally eligible for recall within 1 year from date of release. They may request waivers if they can furnish sworn statements and other evidence that the conditions which caused the release no longer exist.

(d) *Reserve airmen residing outside of the Zone of Interior.* Reserve airmen who are bona-fide residents of the territories and possessions of the United States may apply for extended active

duty. However, reserve airmen residing in other areas outside the Zone of Interior will not be ordered to extended active duty under the provisions of §§ 864.51 to 864.54.

(e) *Medical standards.* All applicants must meet the medical standards for general service. Warrant officers on active duty as airmen will undergo examinations at the installations to which they are assigned. All other applicants may request examination at any convenient installation. Appointments should be made in advance of reporting to the installation. Travel required for this purpose must be accomplished without any expense to the Government.

(f) *Purpose of extended active duty.* Sections 864.51 to 864.54 do not authorize the recall to extended active duty of reservists to:

(1) Stand trial by court martial.

(2) Appear as a witness in a military trial.

(3) Correct an error made by the individual during a previous tour of active duty.

(4) Complete a job left unfinished at the time of last release from active duty.

(5) Appear before a physicial evaluation board.

(g) *Tours of duty*—(1) *A warrant officer applicant.* (i) With a minimum of one year extended active duty in W/O or commissioned grade, must agree to serve in a voluntary indefinite status and submit the following statement:

I agree to remain on active duty for an indefinite period. I understand that this does not preclude my requesting separation from active military service under applicable directives and that approval of any request for separation will be dependent upon the requirements of the Air Force.

(ii) With less than one year extended active duty in W/O or commissioned grade, must agree to serve three years and sign a written agreement.

(2) *An airman applicant.* (i) With a minimum of 90 days active duty, must agree to serve four years and sign a written agreement. Short, special or school tours may be credited.

(ii) With a minimum of 30 days active duty and a minimum of 18 consecutive months satisfactory training in Training Category "A" or an Air National Guard United States unit, must agree to serve four years and sign a written agreement. Short, special or school tours may be credited.

(3) No previous duty or training is required for an airman applicant to enter technical training. He must serve four years and sign a written agreement.

(4) Applicants in the Reserve who have fewer than four year remaining in their enlistment may be discharged and reenlist for a period of five years upon authorization by Headquarters Air Reserve Records Center, 3800 York St., Denver 5, Colorado. Members of Air National Guard United States, whose term of enlistment is limited by the National Defense Act of 1916 to three years, may apply for a conditional release to enlist in the Air Force Reserve for five years.

(h) *Reserve grade and date of rank.* Applicants must agree to enter extended active duty in their Reserve grades. Date of rank will be determined in accordance with existing instructions and entered on extended active duty orders.

(i) *Security clearance.* Warrant officer applicants must possess favorable National Agency Check. Unless there is reason to believe that an up-to-date National Agency Check would be in the best interest of the Air Force, the completion of a favorable National Agency Check at any time in the past, as indicated in the master personnel record, will satisfy this requirement.

§ 864.54 *Submission of applications.* Reservists are responsible for the accuracy of all information furnished on their applications for extended active duty. If any of the information changes after submission of the application, they must report this in writing to the commander to whom the data was originally sent. Reservists cannot withdraw applications after extended active duty orders have been issued.

(a) Warrant officers must submit AF Form 125, Application for Extended Active Duty with the United States Air Force in Commissioned Officer Grade.

(b) Airmen must submit a typewritten letter of application including the following:

(1) Full name _____
(2) Permanent home address _____
(3) Mailing address _____
(4) Primary Air Force specialty code and title _____
(5) Education level _____
(6) Number of months of overseas duty _____
(7) Date of birth _____
(8) Marital status _____ Number of dependents, and their relationship _____
(9) Dates of prior active military service, including tours of active duty for training _____
(10) Present unit of reserve assignment _____
(11) List Three Zone of Interior Station Choices: (No assurance of assignment to Station of choice may be given since recalls are based on Air Force-wide requirements.)
(12) My skill is in the scarce only overseas or needed only overseas category and providing Air Force requirements permit, my choice of oversea theater is:

( ) FEAF ( ) USAFE ( ) NEAC ( ) AAC

I clearly understand that recall for a specific area within an overseas theater is not authorized.

(13) If I am selected for assignment overseas, I understand that my dependents are not authorized to accompany or join me at the personnel processing activity to which I am being assigned for overseas processing. I understand also that concurrent travel or advance application for movement of my dependents overseas is not authorized prior to my arrival overseas. I understand application may be submitted subsequent to my arrival at my overseas destination in accordance with applicable directives of the oversea command.

(14) I understand that I will be retained at the first station to which I am sent for processing and further assignment provided that I can be utilized in my Air Force Specialty. I also understand that no assurance can be given that I will be retained for the duration of my active duty tour at my first station of assignment.

(15) Subparagraphs (11), (12), (13) and (14) of this paragraph do not apply to personnel applying for extended active duty to enter technical training courses.

[SEAL] E. E. TORO,
Colonel, U. S. Air Force,
Air Adjutant General.

[F. R. Doc. 56-5328; Filed, July 5, 1956; 8:45 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 36—SERVICEMEN'S READJUSTMENT ACT OF 1944

SUBPART A—TITLE III; LOAN GUARANTY

SUPPLEMENTAL LOANS

In § 36.4355, paragraph (b) is amended to read as follows:

§ 36.4355 *Supplemental loans.* * * *

(b) Such loans shall be secured as required in §§ 36.4337 and 36.4351: *Provided,* That a lien of lesser dignity than therein specified will suffice if the lien obtained is immediately junior to the lien of the original guaranteed or insured obligation: *Provided further,* The liens of successive supplemental loans may be of lesser dignity so long as they are immediately junior to the lien of the last previous guaranteed or insured obligation having a lien of required dignity.

* * * * *

(Sec. 504, 58 Stat. 293, as amended; 38 U. S. C. 694d)

This regulation is effective July 6, 1956.

[SEAL] H. V. HIGLEY,
Administrator of Veterans' Affairs.

[F. R. Doc. 56-5346; Filed, July 5, 1956; 8:48 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 1310]

[68027]

UTAH

POWER SITE RESTORATION NO. 515; PARTIALLY REVOKING TEMPORARY POWER SITE WITHDRAWAL NO. 1 OF MAY 4, 1909, AND EXECUTIVE ORDERS OF JULY 2, 1910 AND JANUARY 23, 1912, WHICH ESTABLISHED POWER SITE RESERVES NO. 1 AND NO. 243, RESPECTIVELY.

By virtue of the authority vested in the President by Section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. The order of the Secretary of the Interior of May 4, 1909, described as Temporary Power Site Withdrawal No. 1, temporarily withdrawing certain lands in Utah in aid of proposed legislation affecting the disposal of the water-power

sites on the public domain, and the Executive order of July 2, 1910, ratifying, confirming, and continuing the said order of May 4, 1909, in full force and effect, and reserving the lands so withdrawn for water-power sites as Power Site Reserve No. 1, are hereby revoked so far as they affect the following-described lands:

UINTA SPECIAL MERIDIAN

T. 2 S., R. 5 W.,
Sec. 19, lots 1, 4, and SE¼NE¼;
Sec. 20, N½SE¼;
Sec. 21, N½SW¼, SE¼SW¼, and S½SE¼;
Sec. 27, NW¼NW¼;
Sec. 28, N½NE¼;
Sec. 29, NE¼NE¼ and S½NW¼;
Sec. 30, lot 1, S½NE¼, NW¼NE¼, and E½NW¼;
Sec. 33, N½NE¼, and SE¼NE¼;
Sec. 34, SE¼NW¼, W½NW¼, N½SW¼, SE¼SW¼, and S½SE¼.
T. 3 S., R. 5 W.,
Sec. 2, lot 4, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 3, lots 1, 2, and SE¼NE¼;
Sec. 11, W½NE¼, E½NW¼, and NW¼SE¼;
Sec. 12, W½E½;
Sec. 13, W½E½.
T. 2 S., R. 6 W.,
Sec. 13, N½SW¼ and S½SE¼;
Sec. 14, NE¼SE¼ and N½SW¼;
Sec. 15, N½S½;
Sec. 16, N½S½ and S½SW¼;
Sec. 17, N½S½ and S½SE¼;
Sec. 18, lot 3, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 19, lots 1, 2, SE¼NW¼, and S½NE¼;
Sec. 20, S½N½;
Sec. 21, S½N½;
Sec. 22, S½N½;
Sec. 23, S½N½;
Sec. 24, S½NW¼.
T. 2 S., R. 7 W.,
Sec. 10, W½SW¼ and SE¼SW¼;
Sec. 13, SW¼SW¼ and NE¼SE¼;
Sec. 14, SW¼NW¼, N½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 15, S½NE¼, NW¼NE¼, and NE¼NW¼;
Sec. 23, N½NE¼;
Sec. 24, N½N½ and SE¼NE¼.

The areas described aggregate 5,079.96 acres.

2. The Executive order of January 23, 1912, reserving certain lands in Utah for water-power sites as Power Site Reserve No. 243, is hereby revoked so far as it affects the following-described lands:

UINTA SPECIAL MERIDIAN

T. 2 S., R. 7 W.,
Sec. 9, SW¼NE¼ and NE¼SE¼.
T. 1 S., R. 8 W.,
Sec. 3, W½SW¼;
Sec. 4, NE¼SE¼;
Sec. 10, NE¼NW¼;
Sec. 14, SW¼NW¼.

The areas described aggregate 280 acres.

3. The lands described in paragraphs 1 and 2 above are undisposed of opened lands of the Uintah and Ouray Indian Reservation restored to tribal ownership for use and benefit of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, and added to and made a part of the existing reservation by the order of the Secretary of the Interior of August 25, 1945 (10 F. R. 12409).

This order shall be known as Power Site restoration No. 515.

WESLEY A. D'EWART,
Assistant Secretary of the Interior.

JUNE 29, 1956.

[F. R. Doc. 56-5334; Filed, July 5, 1956; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

NOTICE OF FILING OF PETITION FOR ESTABLISHMENT OF EXEMPTION FROM NECESSITY OF TOLERANCE FOR RESIDUES OF DIPHENYL

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (1), 68 Stat. 512; 21 U. S. C. 346a (d) (1)), the following notice is issued:

A petition has been filed by Crown Zellerbach Corporation, 343 Sansome Street, San Francisco 19, California, proposing that the pesticide chemical diphenyl be exempted from the requirement of a tolerance when it is applied as a post-harvest treatment to grapefruit, lemons, and oranges.

Three analytical methods are proposed in the petition for determining residues of diphenyl, as follows:

1. The method published in the Journal of Agricultural and Food Chemistry, Volume 2, page 1031 (1954).

2. The method published in Analytical Chemistry, Volume 26, page 1234 (1954).

3. A method in which diphenyl is extracted in a liquid-liquid extractor (modified Clevenger) so constructed that the distillate from citrus juice or from a water slurry of the sample is continuously extracted by heptane during the operation. Interfering substances are removed from the heptane extract by oxidizing with a solution of potassium permanganate in 50-percent acetic acid. The diphenyl in the heptane fraction is then determined spectrophotometrically at 248 mμ by comparison with a standard solution of diphenyl in heptane that has been treated in the same way as the sample.

Dated: June 28, 1956.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F. R. Doc. 56-5332; Filed, July 5, 1956; 8:45 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The Department of the Army has filed an application, Serial No. Anchorage 023002, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws including the mining and mineral leasing laws.

The applicant desires the land for use as a training and impact area.

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official for the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

FORT RICHARDSON—TRACT M

Beginning at the northeast corner of Section 6, Township 12 North, Range 2 West, Seward Meridian, Alaska; thence South along the East line of Section 6 for one mile; thence East two miles; thence South one mile; thence East one mile; thence South one mile; thence East two miles; thence South one mile; thence East one mile to the top of the ridge separating the Campbell and Ship Creek drainages; thence in a northerly direction along said ridge line for a distance of approximately five miles to a point that will be the northeast corner of Section One, Township 12 North, Range 2 West, when surveyed; thence West five miles to the Point of Beginning.

Containing approximately 8,465.94 acres.

ROGER R. ROBINSON,
Operations Supervisor.

[F. R. Doc. 56-5336; Filed, July 5, 1956; 8:46 a. m.]

[Group 294]

ARIZONA

NOTICE OF FILING OF PLAT OF SURVEY

JUNE 29, 1956.

Notice is given that the plat of survey accepted October 25, 1955, of T. 35 N., R. 5 W., G. & S. R. B. & M., Arizona, including lands hereinafter described, will be officially filed in the Land Office at Phoenix, Arizona, effective at 10:00 a. m. on the 35th day after the date of this notice:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 35 N., R. 5 W.,
Lots 1, 2, 3, 4, S½N½, S½ (all),
Sec. 2.

Within the above-described areas are 639.96 acres of non-public lands.

Available data indicates that this land in T. 35 N., R. 5 W. is gently rolling, and the soil is sandy and gravelly clay loam.

Subject to valid, existing rights, the State's title attached to all of the subject land upon the acceptance of the plat of survey.

In view of the above, the lands described will not be subject to disposition under the general public land laws by reason of the official filing of this plat.

THOS. F. BRITT,
Manager.

[F. R. Doc. 56-5339; Filed, July 5, 1956; 8:47 a. m.]

[Document 132]

ARIZONA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

JUNE 29, 1956.

The Department of Agriculture has filed an application, Serial No. AR-011738, for the withdrawal of the lands described below, from all forms of appropriation including the general mining laws.

The applicant desires the land for research purposes in the improvement and management of semi-desert grassland ranges and for protection of a reservoir, its catchment area and the springs which supply water for the Headquarters of the Santa Rita Experimental Station.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, 233A Main Post Office Building, Phoenix, Arizona.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

GILA AND SALT RIVER MERIDIAN

Santa Rita Experimental Range:
T. 17 S., R. 15 E.,
Sec. 33: All;
Sec. 34: All.
T. 18 S., R. 13 E.,
Sec. 24: All;
Sec. 25: All;
Sec. 36: All.
T. 18 S., R. 14 E.,
Sec. 29: All;
Sec. 30: All;
Sec. 31: All;
Sec. 32: All;
Sec. 33: SW¼.
T. 18 S., R. 15 E.,
Sec. 3: All;
Sec. 4: N½, SE¼.
T. 19 S., R. 14 E.,
Sec. 4: All;
Sec. 5: All;
Sec. 6: All;
Sec. 9: All;
Sec. 10: S½, NW¼;
Sec. 15: All;
Sec. 16: All;
Sec. 22: E½NE¼, NE¼SE¼.
Florida Canyon, Coronado National Forest:
T. 19 S., R. 15 E.,
Sec. 19: W½W½, NE¼;
Sec. 20: W½SW¼;
Sec. 29: W½NW¼, SW¼;
Sec. 30: N½NE¼, SE¼NE¼, NE¼NW¼.
T. 20 S., R. 15 E. (unsurveyed),
Sec. 5: NW¼NW¼.

The areas described total 751.04 acres in the Coronado National Forest and 10,536.44 acres in the Santa Rita Experimental Range.

E. R. TRAGITT,
State Lands and Minerals Staff Officer.

[F. R. Doc. 56-5341; Filed, July 5, 1956; 8:47 a. m.]

COLORADO

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

JUNE 28, 1956.

The United States Forest Service of the Department of Agriculture has filed an application, Serial No. Colorado 013297, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining laws but not the mineral leasing laws, subject to existing valid claims.

The applicant desires the land for use as picnic and camp grounds in the Uncompahgre National Forest.

For a period of thirty (30) days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, 357 New Custom House, P. O. Box 1018, Denver 1, Colorado.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

UNCOMPAHGRE NATIONAL FOREST

SIXTH PRINCIPAL MERIDIAN, COLORADO

Carson Hole Picnic Ground:
T. 15 S., R. 101 W.,
Sec. 24: E½NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼.

NEW MEXICO PRINCIPAL MERIDIAN, COLORADO

Sunshine Campground:
T. 42 N., R. 9 W.,
Sec. 20: E½E½SW¼NW¼, SE¼NW¼, less small acreage included in MS 1495 Gilden Age Placer in the E½E½SW¼NW¼.
Canyon Creek Picnic Ground:
T. 43 N., R. 8 W.,
Sec. 12: NW¼NE¼SW¼, NE¼NW¼SW¼ (less any portion included within mining patents).
Antone Springs Picnic Ground:
T. 47 N., R. 12 W.,
Sec. 15: SW¼NE¼, W½SE¼NE¼.
Iron Springs Picnic Ground:
T. 47 N., R. 12 W.,
Sec. 23: S½NW¼NW¼, N½SW¼NW¼, NW¼SE¼NW¼.
Smokehouse Picnic Ground:
T. 48 N., R. 14 W.,
Sec. 9: SE¼NE¼.
Columbine Picnic Ground:
T. 48 N., R. 14 W.,
Sec. 11: E½SW¼NE¼SW¼, W½SW¼NE¼SW¼, NE¼SE¼SW¼.
Cobb Springs Picnic Ground:
T. 48 N., R. 14 W.,
Sec. 14: SE¼SE¼.
T-Bone Springs Picnic Ground:
T. 49 N., R. 15 W.,
Sec. 32: NE¼SE¼NE¼NE¼, SE¼NE¼NE¼NE¼;
Sec. 33: SW¼NW¼NW¼NW¼, NW¼SW¼NW¼NW¼.

Total area, 375 acres, more or less.

J. ELLIOTT HALL,
Acting State Supervisor.

[F. R. Doc. 56-5337; Filed, July 5, 1956; 8:46 a. m.]

[Montana 021637]

MONTANA

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

JUNE 28, 1956.

1. In exchange of lands made under the provisions of section 8 of the act of June 28, 1934 (48 Stat. 1272) as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976) the following described lands have been reconveyed to the United States:

MONTANA PRINCIPAL MERIDIAN

T. 3 N., R. 61 E.,
Sec. 19: Lot 12.
T. 26 N., R. 38 E.,
Sec. 36: All.
T. 26 N., R. 39 E.,
Sec. 16: All.
T. 27 N., R. 34 E.,
Sec. 30: E½SW¼;
Sec. 31: NE¼NW¼.
T. 28 N., R. 34 E.,
Sec. 26: S½.
T. 33 N., R. 27 E.,
Sec. 11: W½;
Sec. 14: N½;
Sec. 15: NE¼.
T. 9 S., R. 12 W.,
Sec. 10: NE¼SW¼.
T. 5 S., R. 60 E.,
Sec. 24: W½NE¼, SE¼NE¼.
T. 5 S., R. 61 E.,
Sec. 19: S½N½, NE¼NW¼.
T. 7 S., R. 49, E.,
Sec. 26: E½SW¼;
Sec. 27: Lot 1.

2. The areas described above total 3,040 acres of lands. The lands produce grass and other forage that are used for support of livestock and wildlife. The

topography varies from flat to rough and broken areas. All the tracts are classified as grazing lands as they are unsuited to a more intensive type of agricultural development.

3. No application for these lands will be allowed under the homestead, desert land, small tract, or other non-mineral public land law, unless the lands have already been classified as valuable, or suitable for such type of application, or shall be so classified upon consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. The lands described as the S½ Sec. 26, T. 28 N., R. 34 E., W½NE¼, SE¼ NE¼ Sec. 24, T. 5 S., R. 60 E., S½N½, NE¼NW¼ Sec. 19, T. 5 S., R. 61 E., E½ SW¼ Sec. 26, Lot 1, Sec. 27, T. 7 S., R. 49 E., have been open for location and entry under the general mining laws and mineral leasing laws. On other lands affected by this order for opening the minerals have been reserved to former owners.

5. Subject to any existing rights and the requirements of applicable law, the lands described in paragraph 1, above, are hereby opened to filing of applications and selections in accordance with the following:

(a) Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the Act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284 as amended), presented prior to 10:00 a. m. on August 3, 1956, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on November 2, 1956, will be governed by the time of filing.

(3) All valid applications and selections under the non-mineral public land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on November 2, 1956, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

Persons claiming veterans' preference rights under paragraph (2) above, must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries regarding the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Billings, Montana.

THEO E. ANHDER,
Manager, Land Office.

[F. R. Doc. 56-5335; Filed, July 5, 1956; 8:46 a. m.]

ACTING AREA ADMINISTRATOR ET AL.; AREA I

DELEGATION OF AUTHORITY WITH RESPECT TO REAL PROPERTY AND RELATED PERSONAL PROPERTY

Under authority conferred by Director's Order No. 614, dated June 12, 1956, the Acting Area Administrator, the Area Administrative Officer, and the Area Property and Supply Officer are authorized to transfer, donate, or dispose of real property and related personal property excess to the needs of the Bureau of Land Management, Area I.

Dated this 26th day of June 1956.

JAMES F. DOYLE,
Area Administrator, Area I,
Bureau of Land Management.

[F. R. Doc. 56-5338; Filed, July 5, 1956; 8:47 a. m.]

[Classification 56-2, Amdt.]

OREGON

SMALL TRACT OPENING

JUNE 27, 1956.

Effective June 8, 1956, paragraphs 4, 8 and 9, of the Federal Register Document No. 56-4709 appearing on page 4233 of the issue for June 15, 1956, are hereby amended or revoked as follows:

A. The items listed in the tabulation contained in paragraph 4, under the heading "Advance Rentals 3-years," are amended to read: $30.00.

B. Paragraph 8 is revoked in its entirety and the following paragraph substituted:

8. The lands are now open to filing of drawing-entry cards (Form 4–775) only by persons entitled to veterans' preference. In brief, persons entitled to such preference are (a) honorably discharged veterans who served in the armed forces of the United States for a period of at least 90 days after September 15, 1940, (b) surviving spouse or minor orphan children of such veterans, and (c) with the consent of the veteran, the spouse of living veterans. The 90-day requirement does not apply to veterans who were discharged on account of wounds or disability incurred in the line of duty or the surviving spouse or minor children of veterans killed in the line of duty. Drawing-entry cards (Form 4–775) are available upon request from the Manager, Land Office, P. O. Box 3861, 1001 N. E. Lloyd Blvd., Portland 8, Oregon.

Drawing-entry cards will be accepted if filled out in compliance with the instructions on the form and filed with the above-named official prior to 10:00 a. m. Thursday, August 2, 1956. A public drawing will be held on that date but persons filing cards need not be present to qualify. Any person who submits more than one card will be declared ineligible to participate in the drawing. The successful drawees will be awarded the tracts in the order in which they are drawn. Persons who file cards will be notified of the results of the drawing. Successful drawees will be allowed 15 days in which to execute the lease forms (Form 4–776), in accordance with instructions and return them with the payment of filing fees and rentals.

Any tracts for which lease forms have not been filed and accompanied by the required payments within the 15 day period will immediately thereafter become available to alternate drawees in the order in which their cards were drawn.

C. Paragraph 9 is revoked in its entirety and the following paragraph substituted:

9. The Oregon State Highway Commission has waived its right to apply for any part or portion of the lands described in paragraph 1 of the above cited document for highway right-of-way or material site as allowed by the act of May 28, 1948 (16 Stat. 275).

RUSSELL E. GETTY,
Acting State Supervisor.

[F. R. Doc. 56-5340; Filed, July 5, 1956; 8:47 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

MATSON NAVIGATION CO. AND FRED. OLSEN & CO.

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 8058–2, between Matson Navigation Company and Fred. Olsen & Co. (Fred. Olsen Line), modifies approved transhipment agreement (No. 8058), (1) to include ports in Africa as ports of destination, and (2) to provide through rates to additional ports as specified. Agreement No. 8058, as amended, presently covers the transportation of canned pineapple and canned pineapple juice under through bills of lading from Hawaii to Great Britain, Northern Ireland, Irish Free State, European Continental, Baltic, Scandinavian and Mediterranean Sea ports, with transhipment at U. S. Pacific Coast ports.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may sub-

mit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: June 29, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS, *Secretary.*

[F. R. Doc. 56-5362; Filed, July 5, 1956; 8:52 a. m.]

ATOMIC ENERGY COMMISSION

[Docket No. F-27]

STATE COLLEGE OF WASHINGTON

NOTICE OF APPLICATION FOR UTILIZATION FACILITY LICENSE

Please take notice that on June 22, 1956 State College of Washington, Pullman, Washington, filed an application under section 104c of the Atomic Energy Act of 1954 for a license to construct, possess and operate a "swimming pool" type nuclear reactor designed to operate at 100 KW and to be located on the University's campus, Pullman, Washington.

Dated at Washington, D. C., this 28th day of June 1956.

For the Atomic Energy Commission.

H. L. PRICE, *Director, Division of Civilian Application.*

[F. R. Doc. 56-5353; Filed, July 5, 1956; 8:50 a. m.]

FEDERAL POWER COMMISSION

[Project No. 2207]

MOSINEE PAPER MILLS CO.

NOTICE OF APPLICATION FOR LICENSE

JUNE 29, 1956.

Public notice is hereby given that the Mosinee Paper Mills Company of Wausau, Wisconsin, has filed application under the Federal Power Act (16 U. S. C. 791a-825r) for license for constructed Project No. 2207 located on Wisconsin River in the city of Mosinee, Marathon County, Wisconsin, which consists of a rock-filled timbercrib spillway section about 356 feet long with flash boards and a 20-foot concrete spillway section on each end; a timber dam about 47 feet long with rock-filled timber-crib abutment sections on each end; a concrete guard lock section, which comprises the main spillway, with 9 vertical gate sections and 5 sections equipped with stop logs; a reservoir with a normal elevation of 1138.5 feet (USGS) and an area of 674 acres; a powerhouse and dam section located about 1500 feet downstream from the main structures comprised of two rock-filled timber crib sections, one concrete gated spillway section, two separate concrete powerhouse sections and earth fill abutment sections; the West powerhouse containing a 2500-horsepower turbine connected to an 1800-kilowatt generator (2250 KVA, 80 percent PF); the East powerhouse containing two 884-horsepower turbines connected to 625-kilowatt generators (625 KVA, 100 percent PF); the center powerhouse section which contains operating and switching equipment; two 5 KV transmission lines each about 2000 feet long extending to the Paper Mill; and appurtenant mechanical and electrical equipment. The energy generated by this project is utilized by the applicant in the manufacture of paper products.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last date upon which protests may be filed is August 22, 1956. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 56-5356; Filed, July 5, 1956; 8:51 a. m.]

[Project No. 2000]

DEPARTMENT OF PUBLIC UTILITIES OF COMMONWEALTH OF MASSACHUSETTS V. POWER AUTHORITY OF STATE OF NEW YORK

ORDER INVESTIGATING COMPLAINT AND FIXING HEARING

The Department of Public Utilities of the Commonwealth of Massachusetts (the Department) filed a complaint on February 24, 1956, stating that the commonwealth of Massachusetts has designated the Department as the bargaining agency on behalf of the Commonwealth for the procurement of a portion of the power capacity and power output of Project No. 2000, that the Power Authority of the State of New York (the Power Authority) has disapproved application made by the Department for a portion of such power in the amount of 250,000 Kw of firm demand, and that consequently the Department is requesting that the Federal Power Commission determine and fix the applicable portion of power capacity and power output of project No. 2000 to be made available to the Commonwealth of Massachusetts by the Power Authority, as Licensee for Project No. 2000, pursuant to Article 28 of the license.

A copy of the complaint was served on the Power Authority which filed its answer thereto on May 3, 1956. In its answer the Power Authority states among other things, that there is no valid reason to extend the market area of Project No. 2000 beyond a 150-mile area from the Project at Massena, New York. Article 28 of the license issued to the Power Authority for the construction, operation, and maintenance of Project No. 2000 in the International Rapids section of the St. Lawrence River, reads as follows:

ARTICLE 28. The Licensee shall make a reasonable portion of the power capacity and a reasonable portion of the power output available for use within the economic market area in neighboring States and shall cooperate with agencies in such States to insure compliance with this requirement. In the event of disagreement between the Licensee and the power marketing agencies (public and private) in any of the other States within the economic market area, the Licensee further agrees that the Commission may determine and fix the applicable portion of power capacity and power output to be made available hereunder and the terms applicable thereto: *Provided*, That if any State shall have designated a bargaining agency for the procurement of such power capacity and power output on behalf of such State, the Licensee shall cooperate and deal only with such agency in that State.

In addition to its view that no part of the Commonwealth of Massachusetts is within the economic market area of Project No. 2000, it appears that the Power Authority is also of the view that the request made by the Department was not for a reasonable portion of the power capacity and power output of the project.

The Commission finds: It is appropriate and in the public interest in carrying out the provisions of the Federal Power Act, and the provisions of the license for project No. 2000 issued thereunder, that a hearing be held on the aforesaid complaint and answer, as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly sections 306 and 308 thereof, and the Commission's rules of practice and procedure, a public hearing shall be held on September 11, 1956 at 10:00 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., for the purpose of investigating the matters involved and the issues presented by the aforesaid complaint and answer and determining and fixing the applicable portion of power capacity and power output of Project No. 2000, if any, to be made available to the Department of Public Utilities of the Commonwealth of Massachusetts, and the terms applicable thereto, pursuant to Article 28 of the license.

(B) Petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Commission's rules of practice and procedure (18 CFR 1.8) on or before August 20, 1956.

Issued: June 28, 1956.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 56-5354; Filed, July 5, 1956; 8:50 a. m.]

[Docket No. G-2281]

OHIO FUEL GAS CO.

FINDINGS AND ORDER DENYING MOTION TO DISMISS, REVERSING DECISION OF PRESIDING EXAMINER AND PRESCRIBING THE FILING OF TARIFF SHEETS

This is a rate proceeding under the Natural Gas Act involving our review of a rate filing by the Ohio Fuel Gas Com-

pany (Ohio Fuel). On September 18, 1953, Ohio Fuel tendered for filing its FPC Gas Tariff, Second Revised Volume No. 1, embodying an increase in the then effective rates and charges to its wholesale customers. The tariff would increase the rates then being collected subject to refund in Docket No. G–1965 by approximately $1,418,940, or 7.6 percent annually, based on sales for the year ended June 30, 1953. Importantly, the filing also would apply a contract demand (CD), rate form to sales made to Ohio Fuel's distribution company customers. Under this rate form, determination of billing demand would be based on the customer's single day peak during the twelve-month period ending with the current billing month but would not be less than 90 percent of the customer's contract demand nor more than the contract demand. The customers would be required to pay for at least 90 percent of the contract demand over the life of the service agreement, usually twenty years.

By order issued October 16, 1953, as amended by order of October 26, 1953, we suspended the use of the proposed tariff until March 1, 1954, and fixed a date for public hearing concerning the lawfulness of the rates, charges, classifications and services set forth therein. The rate schedule contained in the tariff (Rate Schedule CDS–1), which would be applicable to Ohio Fuel's twenty-five wholesale customers, was composed of a demand charge of $1.85 per Mcf and a commodity charge of 32.5 cents per Mcf. This compared with a rate of $1.75 per Mcf of demand and 30.0 cents per Mcf of commodity in effect subject to refund in Docket No. G–1965 at the time of the filing.

Subsequently, by order issued March 26, 1954, we permitted Ohio Fuel to substitute a revised tariff sheet which reduced the demand charge to $1.75 per Mcf without changing the commodity charge of 32.5 cents per Mcf. By the same order we made Ohio Fuel's FPC Gas Tariff, Second Revised Volume No. 1, as revised, effective subject to refund as of March 1, 1954.

As we have indicated, at the time of Ohio Fuel's filing in this docket, the Commission had under consideration earlier rate increase filings of Ohio Fuel. Those proceedings resulted in our Opinion No. 273, issued July 26, 1954, and an order on rehearing issued December 22, 1954, in Dockets Nos. G–1786 and G–1965 approving a settlement agreement. We there rejected the proposed use of the CD rate form and prescribed rates for the refund period March 1, 1952, through February 28, 1953 ($2.00/29.80 cents), and for the refund period March 1, 1953, through February 28, 1954 ($2.00/33.38 cents), both subject to further refunds and adjustments as therein provided. These rates utilized a billing demand based upon the greatest average daily delivery of gas to Buyer during any billing month in the twelve (12) billing months ending with the close of the current billing month (hereinafter referred to as the "average demand" basis).

Extensive hearings were held in this docket (No. G–2281) and, after briefs were filed by interested parties[1] and Commission Staff Counsel, the Presiding Examiner issued his initial decision on April 2, 1956.

In his decision, the Presiding Examiner found the proposed increase in the rate level and the proposed application of the CD rate form to be unjust and unreasonable. For the period March 1, 1954 (the date on which the proposed rates went into effect subject to refund), through the December 1954 billing month, the Presiding Examiner would prescribe a rate of $1.52 per Mcf of demand and 34.90 cents per Mcf of commodity, using the average demand basis. For the next twelve months, the January 1955 billing month through the December 1955 billing month, he would prescribe a rate of $1.60 per Mcf of demand and 35.76 cents per Mcf of commodity, likewise on the average demand basis. Without applicable adjustments for refunds, the latter rate for all wholesale sales as a group would result in the same rate level as the $2.00/33.38 cents rate which we accepted as just and reasonable upon a different record in our order issued December 22, 1954, in Docket Nos. G–1786 and G–1965. However, since the refund relates only to a past period, the Presiding Examiner recommends a balanced unit rate so that the demand and commodity components would recover only the amounts classified in each category. From the January 1956 billing month for the remainder of the refund period and for the future, the Presiding Examiner would prescribe a rate of $2.00 per Mcf of demand and 33.38 cents per Mcf of commodity. Absent applicable refund adjustments this is identical, both as to level and as to form, with the rate we accepted by our order issued December 22, 1954, in Docket Nos. G–1786 and G–1965 and results from the Presiding Examiner's finding that Ohio Fuel failed to sustain its burden of proof in justifying its proposed rate schedule changes.

Exceptions to the initial decision of the Presiding Examiner were filed by Ohio Fuel, The Cincinnati Gas & Electric Company, and the City of Cincinnati (referred to herein collectively as Cincinnati) and The Dayton Power and Light Company (Dayton). The exceptions raise several issues for our determination, the most important of which is the question of rate form. We also determine the question of the proper rates for the future and for the refund period, including the rate of return for that period. Additionally, we resolve questions as to the proper classification of costs between the demand and commodity components as they are associated with (a) gas purchased from Texas Eastern Transmission Corporation, (b) LPG Plant—Depreciation, Return and Taxes, and (c) Natural Gas Production Plant—Depreciation, Return and Taxes.

[1] By order issued March 12, 1954, we permitted the following to intervene: The Dayton Power and Light Company, The Cincinnati Gas & Electric Company, City of Lancaster, Ohio, and Ohio Gas Company.

Finally, in arriving at a cost of service, we resolve herein two adjustments to Ohio Fuel's cost of service which are questioned by Dayton.

After contesting Ohio Fuel's rate filing on its merits over a period of two and one-half years, Dayton, on June 1, 1956, filed a motion to dismiss and reject Ohio Fuel's filing so far as it relates to a change in rate form. Dayton now claims that the Commission has no jurisdiction to entertain the filing, basing its contention on the theory that the filing constitutes a unilateral change in its contract with Ohio Fuel forbidden by the recent decisions in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U. S. 332, and F. P. C. v. Sierra Pacific Power Co., 350 U. S. 348. Ohio Fuel, by answer filed on June 11, 1956, opposes the motion principally on the ground that the billing demand provision proposed to be changed in its filing had previously, in itself, altered and superseded the billing demand provision in the original contract now relied upon by Dayton. Ohio Fuel therefore contends that the billing demand provision in the contract is no longer applicable.

In the circumstances of these proceedings we deem it unnecessary for the purposes of our decision herein to decide between the foregoing opposing contentions. It is our opinion that the Sierra Pacific and Mobile decisions do not require us, at this stage of the proceedings where we have a complete record before us, to undo the work of the last two and one-half years. Significantly, the Supreme Court modified the instructions of the Court of Appeals in the Sierra Pacific case which would have required the Commission to begin anew with a proceeding under Section 206 of the Federal Power Act (comparable to section 5 of the Natural Gas Act). The Supreme Court directed that (350 U. S. at 353):

> If the proceedings here satisfied in substance the requirements of § 206 (a), it would seem immaterial that the investigation was begun as one into the reasonableness of the proposed rate rather than the existing contract rate.

Here, the proceedings satisfy, in substance, the requirements of section 5 of the Natural Gas Act. As we show below, continued billing by Ohio Fuel under the average demand basis heretofore used is no longer in the public interest. Since our order approves the CD rate form for the future only, no change in rate form is made effective prior to the date of issuance of our order.

We have given careful consideration to each of the issues presented to us by the exceptions of the various parties and by the motion to dismiss. We have decided that, for the reasons hereinafter stated, the decision of the Presiding Examiner in its major aspects should be reversed and the motion should be denied. The extent of our reversal of the Presiding Examiner's decision is clear from our findings and conclusions which follow.

Rate form. The Presiding Examiner rejected Ohio Fuel's proposal to make the CD rate form applicable to its juris-

dictional customers.[3] He apparently felt bound by our previous decision in Opinion No. 273, where we rejected the use of the CD rate form by Ohio Fuel. He found the CD rate form to be unjust and unreasonable even though by his own statement the record contains "facts and expert opinions extant upon which a different result could be based." Those facts, and the conclusions we draw from them, lead us to reverse the Presiding Examiner and to find that the use of CD rate form for the future is just and reasonable under the circumstances of this case.

We have had recent occasion In the Matter of United Fuel Gas Company, et al., Docket No. G–2451 et al., order issued May 11, 1956, to pass upon application of the CD rate form to the sales of natural gas by United Fuel and Central Kentucky to their distribution company customers. The significant factors leading to our approval of the CD rate form as applied to the jurisdictional sales of those affiliates of Ohio Fuel in the Columbia Gas System are also present in this case.

The primary factor, as disclosed in the record, which influences our decision is the effect of the tremendous increase in the space-heating load by ultimate consumers purchasing gas from the distribution company customers of Ohio Fuel. As an example, the record shows that the space-heating saturation on Dayton's system was approximately 77 percent in 1955, representing 110,800 residential customers. This compares with a 21 percent saturation in 1946. The peak-day requirements of Dayton, as shown by actual experience and as projected into the future, illustrate a comparable increase. The same condition pertains to the rate of growth of the space-heating load of other wholesale customers of Ohio Fuel.

It is characteristic of this space-heating load to fluctuate widely with changing weather conditions. These fluctuations are not only winter peaks but, more importantly, year-to-year variations in peak loads. When demand revenues accruing to Ohio Fuel are made dependent upon actual purchases by the wholesale customers which, in turn, are dependent upon the weather, it is clear that Ohio Fuel will be subjected to a "feast or famine" recovery of costs collected through demand charges. As the space-heating load with consequent high-peak requirement increases, the year-to-year fluctuations in recovery of costs collected through demand charges would become more accentuated by the weather conditions. In our judgment, a rate form which does not recognize this situation and bring a measure of stability in recovery of those costs collected through demand charges is no longer just and reasonable.

The CD rate form, as proposed by Ohio Fuel and which we find just and reasonable under the circumstances of this case, will tend to stabilize recovery of demand charges collected from the distribution company customers.[4] Additionally, the CD rate form, with its 90 percent ratchet provision, will encourage control of the peak demands by distribution company customers either thorugh construction and use of peak-shaving facilities or through use of other means available to them. Since distribution company customers will be obligated to pay for 90 percent of their contract demands over the period of the contract term they will be encouraged not only to keep their load factors high, but also to avoid year-to-year fluctuations in requirements from Ohio Fuel.[5] To the extent economical, the customers will stabilize peak demands from Ohio Fuel and Ohio Fuel will not be required to absorb, through varying demand revenues, the entire effect of year-to-year fluctuations.[6] At the same time, customers companies are afforded considerable protection in the provision of the tariff permitting them to reduce their contract demands in two successive 5 percent stages as a matter of right. The tariff further provides that the contract quantity can be reduced by additional amounts provided the capacity so released can be otherwise used.

Further, the uniform application of CD rate form will tend to reduce discrimination among customers. A rate form geared to average demand would work to the advantage of the low-load factor customer. Under the fluctuating weather conditions shown in this record to exist, we can anticipate that without the control afforded by the CD rate form this discrimination would be aggravated in the future.

Rate level. Since Ohio Fuel's proposed rate increase went into effect subject to refund as of March 1, 1954, our prescription of just and reasonable rates relates back to that date. Of course, the rate prescribed for periods prior to the effective date of this order will determine the amount of refunds to be paid to the jurisdictional customers.[7]

In order to prescribe the just and reasonable rates for the refund period and for the future it is necessary, of course, to determine the proper amount includible in cost of service for jurisdictional customers and to classify those costs between demand and commodity components. Exceptions to the initial decision of the Presiding Examiner raise several issues, both in regard to items properly includible in the cost of service and to the classification of certain costs between demand and commodity. There are set forth on sheets appended to this order (Appendices A and B) the costs of service, classified to demand and commodity, which we find to be proper upon evidence of record. Appendix A shows the cost of service based upon the year 1954, actual. In arriving at the cost of service in Appendix B we used the same allocation and classification procedures that form the basis for the cost of service for the year 1954, actual. However, Appendix B reflects pro forma changes from the actual cost experience.

Examination of Appendix B will show the extent to which the allocation and classification we deem to be proper result in a rate different from that prescribed by the Presiding Examiner. It should be noted that the total cost of service allocated to jurisdictional customers which we find to be proper, $21,127,008, varies slightly from the cost of service of $21,157,044 used by the Presiding Examiner. This adjustment results from our exclusion of $16,388 Documentary Stamp Tax expense from the cost of service and from the effect of our different cost classification. The Presiding Examiner included the Documentary Stamp Tax likening it to a financing cost. Exception was properly taken by Dayton on the ground that FPC Balance Sheet Account No. 140, FPC Balance Sheet Instruction No. 6C, and Income Account No. 531 of our Uniform System of Accounts prohibit its inclusion as an expense item in the cost of service. Therefore, we have reduced the cost of service by $16,388 and made the consequent adjustments.

The only other item relating to cost of service which merits specific mention here is the inclusion of $126,979, reflecting one-half the increase in the 1955 property tax over the 1954 property tax. This is an adjustment for known increases over the 1954 test year. The Presiding Examiner included this adjustment proposed by Ohio Fuel in its exhibit showing the cost of service. Since it reflects a known cost, we find that its inclusion is reasonable.

In determining the break-down between demand and commodity, there is one item which we would classify in a manner different from the Presiding Examiner. Under Purchased Gas Expense—purchases from Texas Eastern Transmission Corporation—we classify all demand charges to the demand component. The Presiding Examiner included the demand charges in the rate for gas purchased from Texas Eastern in the commodity component. This difference in classification results in a significant shift of costs from the commodity to the demand side. The amount involved is $6,296,373 prior to adjustments to gas placed in and withdrawn from storage.

[3] Pursuant to Ohio Fuel's proposal, jurisdictional customers taking less than 5,000 Mcf on peak day are eligible to purchase under the Small General Service (SGS) Rate Schedule containing a straight commodity rate. Twenty of the twenty-five jurisdictional customers are eligible for service under this rate schedule instead of under the CDS–1 Rate Schedule with its contract demand rate form. Our findings with respect to the rate level of the SGS Rate Schedule are set forth in a later portion of this order.

[4] It should be noted that although only 26 percent (by revenue) of Ohio Fuel's sales are made at wholesale, they are, nevertheless, significant. See Appendices A and B.

[5] A CD rate with a short-term commitment, such as a one-year contract, would not provide long-term stability in demand revenues.

[6] In time the reduction of the year-to-year fluctuations in Ohio Fuel's demand revenues should reflect a salutary effect on future financing by the Columbia Gas System which, in turn, will also redound to the benefit of Ohio Fuel's wholesale customers.

[7] It should be noted that all rates prescribed herein are based on costs of service which have not yet been finally determined because rate case proceedings of Ohio Fuel's suppliers have not been finally concluded. Hence, the rates prescribed herein are contingent upon refunds from suppliers of Ohio Fuel.

The record shows that during the test year purchases from Texas Eastern were made at significantly less than 100 percent load factor. Under this situation, we come to a different decision from the Presiding Examiner. The fact that Ohio Fuel is purchasing jointly with its affiliate, The Manufacturers Light and Heat Company, does not eliminate the effect of Texas Eastern's demand charges to Ohio Fuel. We find that the demand charges in the cost of gas purchased from Texas Eastern are properly classified as a demand element in Ohio Fuel's cost of service.

With respect to two items Ohio Fuel takes exception to the classification by the Presiding Examiner. These are Depreciation, Return and Taxes relating to its LPG Plant and Depreciation, Return and Taxes relating to its own production. The first, the Presiding Examiner classified entirely to demand; the second, entirely to commodity. We agree with each classification. The record shows that the LPG plant is used for peaking purposes. We find that all costs of LPG production, including over-head costs, should be classified to demand. We also uphold the Presiding Examiner in finding that there is no justification in the record for classifying part of Ohio Fuel's own production costs to demand. Its own production, serving a commodity function like that of gas purchased in the field on a straight commodity basis, should be classified entirely to commodity.

The Presiding Examiner used a 6¼ percent rate of return in determining rates both for the refund period and for the future. In its exceptions, Dayton argues for a 5¼ percent rate of return for the refund period but does not except to the use of the 6¼ percent rate of return for the future. Dayton presented no rate of return evidence in support of its position.

For the refund period, from March 1, 1954, through the June 1956 billing month, the substantial evidence supports a 6¼ percent rate of return for Ohio Fuel. Importantly, the 6¼ percent rate of return is coupled with billing on an average demand basis. We have previously held in our Opinion No. 273 in Dockets Nos. G–1786 and G–1965, issued July 26, 1954, that a rate of return of 6¼ percent was appropriate for Ohio Fuel for the refund periods there involved. The reasons for approving a 6¼ percent rate of return for the refund periods involved in the earlier proceedings are equally applicable to the refund period here. Of particular note is the fact that in both instances we approve the use of the average demand form of billing as distinguished from the contract demand rate form.

We have recognized in our recent order In the Matter of United Fuel Gas Co. et al., Docket No. G–2451 et al., that approval of the CD rate form will tend to shift the risk of weather fluctuations to the distribution company customers. Therefore, we stated we would give consideration to that shift in the risk in determining the rate of return in the rate level stage of those proceedings. While the record here supports a rate of return of 6¼ percent for the refund period on an average demand billing basis, there is not sufficient evidence in the record to show the effect our approval of the CD rate form will have upon the elements of risk affecting rate of return for the future. Therefore, we shall reopen the record in this proceeding for the purpose of taking additional rate of return evidence, including the effect of the application of the CD rate form to sales by Ohio Fuel to its resale customers.

Ohio Fuel and United Fuel are affiliates, both part of the Columbia Gas System. In many aspects, the elements entering into the determination of rates of return of both affiliates are common because both Ohio Fuel and United Fuel are dependent upon the Columbia Gas System for their financial requirements.

It is appropriate, therefore, since this same issue is involved in the proceedings In the Matter of United Fuel Gas Co. et al., Docket No. G–2451 et al., scheduled for hearing on July 5, 1956, that the record in this Docket No. G–2281 be consolidated with those proceedings for the purpose of taking evidence with respect to the reasonable rate of return for Ohio Fuel for the future to be effective prospectively from the date our order issues upon conclusion of the reopened proceeding.

With the adjustments to the wholesale cost of service mentioned above and the change in classification of costs, we arrive at a total cost of service for wholesale sales for the year 1954, pro forma, of $21,127,008. (Appendix B). This is classified $5,967,176 to demand and $15,159,832 to commodity. Using the billing units based upon wholesale sales for the year 1954, as shown on Ohio Fuel's Exhibit No. 33, we arrive at a rate for the future of $1.56 per Mcf of demand and 32.45 cents per Mcf of commodity on a contract demand basis. We find that this rate which covers Ohio Fuel's wholesale cost of service, including a 6¼ percent rate of return, is the just and reasonable rate for the future, to take effect as of the July 1956 billing month.

Calculation of the rates to be prescribed for the refund period presents an added problem in that refunds from suppliers of Ohio Fuel have yet to be determined in several proceedings. We stated in our order issued December 22, 1954, in Dockets Nos. G–1786 and G–1965, that a $2.00/33.38 cents rate, as adjusted by possible refunds from Ohio Fuel's suppliers, should be the underlying rate for this proceeding.[1] The Presiding Examiner would divided the refund period into three parts: (1) From March 1, 1954, through the December 1954 billing month; (2) the January 1955 billing month through the December 1955 billing month; and (3) the January 1956 billing month to the effective date of this order (for which he would prescribe the same rate as that for the future). For the first period he would prescribe a rate of $1.52/34.90 cents; for the second period, $1.60/35.76 cents; and for the third period, $2.00/33.38 cents. In its exceptions, Ohio Fuel objects to the $1.52/34.90 cents rate for the first portion of the refund period and proposes use of the $2.00/33.38 cents rate for that period. For the remainder of the refund period Ohio Fuel would abandon the underlying rate for a rate of $1.75/30.96 cents under the CD rate form.

In prescribing rates for the refund period, it should be kept clearly in mind that it is the dollar amount received by Ohio Fuel that is important—the rate level, not the rate form. As the record shows (compare Appendix A with Appendix B), a substantially different cost situation could be expected to prevail after the December 1954 billing month as compared with the costs actually incurred during the ten-month period in 1954. Therefore, we have prescribed different rates for the two parts of the refund period. The two rates result in a rate level closely approximating costs of service and at least equal to the contingent level of the underlying $2.00/32.75 cents rate.

As shown in Appendix A, the cost of service for the year 1954, actual, allocated to jurisdictional customers is $20,504,805. Our classification of costs results in $5,759,992 in demand and $14,744,813 in commodity. The resultant balanced unit rate, on an average demand basis, is $2.08 per Mcf of demand and 31.52 cents per Mcf of commodity. We prescribe this rate to apply to Ohio Fuel's jurisdictional sales for the period March 1, 1954, through the December 1954 billing month.

Appendix B shows the cost of service for the year 1954, pro forma, to be $21,127,008, classified $5,967,176 to demand and $15,159,832 to commodity. On an average demand basis this results in a balanced unit rate of $2.15 per Mcf of demand and 32.43 cents per Mcf of commodity. We prescribe this rate as applicable to the volumes sold during the remainder of the refund period. In combination with the $2.08/31.52 cents rate for the ten months in 1954, it will result in a rate level for the entire refund period at least equal to the underlying $2.00/32.75 cents rate after adjustments. Both of the foregoing rates for the refund period are subject to reductions giving effect to any reductions in the respective costs of service arising from refunds which Ohio Fuel has received or may receive from its suppliers and which are allocable to the refund period here involved.

Another matter remains for our consideration. Although the initial decision of the Presiding Examiner does not deal with this issue, Ohio Fuel proposes to make a Small General Service (SGS) Rate Schedule available to wholesale customers, the maximum daily takes of which do not exceed 5,000 Mcf, on an optional basis with the CD rate. Ohio Fuel proposes a straight commodity rate under the SGS schedule of 48 cents per Mcf, which is equivalent to its CD rate at a 35 percent load factor.

We find that a 48-cent rate would impose an undue burden upon the small wholesale customers which will be eligible for this service. The record shows that a straight commodity rate for all wholesale customers would be slightly in excess of 45 cents per Mcf (see Appendix

[1] We take administrative notice that on May 9, 1956, Ohio Fuel tendered for filing revised tariff sheets which would reduce the $2.00/33.38 cents tentative rate to $2.00/32.75 cents. Further downward adjustments may be anticipated.

B). However, if the large wholesale customers which would not be eligible for service under the SGS Rate Schedule are excluded from the computation, the rate would average slightly under 45 cents per Mcf (44.865 cents per Mcf). The 48-cent rate proposed by Ohio Fuel would impose too heavy a burden upon the small customer which is less able to protect itself through installation of peak-shaving equipment. We find 45 cents per Mcf to be the just and reasonable rate for service under the SGS Rate Schedule to be effective prospectively.

Consistent with our decision herein, customer companies should be permitted to negotiate new contract quantities under the contract demand rate form.

For the reasons stated above and based upon consideration of the substantial evidence of the entire record, the Commission further finds:

(1) Ohio Fuel owns and operates an integrated natural gas system located in the State of Ohio through which it transports and sells natural gas for resale in interstate commerce, and is a natural-gas company within the meaning of the Natural Gas Act.

(2) The granting of Dayton's motion to dismiss the proceedings with respect to the change in rate form as applied to sales to Dayton would not be in the public interest and should be denied.

(3) The rates and charges contained in Ohio Fuel's FPC Gas Tariff, Second Revised Volume No. 1, as filed on September 18, 1953, and as modified by revised tariff sheets permitted to be filed by Commission order issued March 26, 1954, are unjust and unreasonable and should be disallowed from March 1, 1954, the date upon which the filing first became effective subject to a corporate undertaking to refund.

(4) Continued billing by Ohio Fuel under the rate form previously prescribed does not give sufficient firmness to the demand revenues nor provide long-term commitments by the customers, both of which are essential for continued financial stability of Ohio Fuel; nor does such billing encourage use of peak shaving by the customers. Therefore, further use of this rate form, prospective from the July 1956 billing month, would not be in the public interest.

(5) Continued billing by Ohio Fuel at the rate level prescribed in Dockets Nos. G-1786 and G-1965 would result in rates for the future which would not return to Ohio Fuel all costs associated with rendering service to its jurisdictional customers thus impairing Ohio Fuel's financial ability to continue service. Therefore, continued billing at the rate level prescribed in Dockets Nos. G-1786 and G-1965 would not be in the public interest.

(6) For purposes of refund from March 1, 1954, through the June 1956 billing month, the rates and charges (on the average demand basis) set forth herein are just and reasonable for the periods noted:

(i) For the period March 1, 1954, through the December 1954 billing month, a demand charge of $2.08 per Mcf and a commodity charge of 31.52 cents per Mcf;

(ii) For the period beginning with the January 1955 billing month through the June 1956 billing month, a demand charge of $2.15 per Mcf, and a commodity charge of 32.43 cents per Mcf.

(7) Subject to the limitations imposed by the ultimately effective underlying rate set forth in our order issued December 22, 1954, in Dockets Nos. G-1786 and G-1965, Ohio Fuel should refund to each of its customers with interest at 6 percent (6%) per annum, from the date of payment to Ohio Fuel to date of refund, the excess of the total amounts charged from March 1, 1954, under the rates in effect subject to refund, over the total amount which would have been charged for sales to such customers under the rates found just and reasonable in Finding (6) above, for the respective portions of the refund period.

(8) Ohio Fuel should refund to its wholesale customers on an equitable basis the proper part of any reductions in costs of service as used herein, received by it as refunds or otherwise which are not already reflected in rates herein determined, which it already has received or may receive in the future from its suppliers, as a result of disposition of proceedings involving the rates of its suppliers applicable to the period from March 1, 1954.

(9) Ohio Fuel should file revised tariff sheets reflecting rates and charges, to be effective commencing with the July 1956 billing month, of $1.56 per Mcf of demand and 32.45 cents per Mcf of commodity, based upon a contract demand rate form including the modifications proposed by Ohio Fuel in Exhibit No. 38 to this proceeding.

(10) Ohio Fuel should file revised tariff sheets reflecting rates and charges, to be effective commencing with the July 1956 billing month, of 45 cents per Mcf on a straight commodity basis to be available on an optional basis to small general service customers, the maximum daily takes of which do not exceed 5,000 Mcf.

(11) Ohio Fuel should make refunds and file changes in rates prescribed in Finding (9) above in the event that United Fuel Gas Company and Panhandle Eastern Pipe Line Company, or either of these, are required by any final orders of the Commission in Dockets Nos. G-2451, G-2506, and G-5475, to make refunds to Ohio Fuel or to make any reductions in the rates applicable to their sales of natural gas to Ohio Fuel; Ohio Fuel should also make refunds and file changes in rates prescribed in Finding (9) above at such time as Texas Gas Transmission Corporation gives effect to the Commission's order in Docket No. G-2017 and Texas Eastern Transmission Corporation gives effect to the Commission's order in Docket No. G-1964.

(12) In the event that the corporate income tax rate for the year 1956 is fixed at less than the current rate of fifty-two percent (52%) used in the Ohio Fuel cost-of-service statements, Ohio Fuel shall file changes in its cost of service occasioned by the reduction of the Federal Income Tax rate, and such changes shall have the same effective date as the mission the amount of refunds to each date upon which such tax rate reduction becomes effective.

(13) The record in this proceeding should be reopened for the purpose of taking additional evidence concerning the effect upon rate of return of Ohio Fuel of our approval of the application of the CD rate form to the sales to Ohio Fuel's resale customers. For the purpose of taking this additional evidence this proceeding should be consolidated with the hearing In the Matter of United Fuel Gas Co. et al., Docket No. G-2451 et al., commencing on July 5, 1956.

The Commission orders:

(A) Dayton's motion to dismiss filed June 1, 1956, is hereby denied.

(B) The rates and charges contained in Ohio Fuel's Second Revised Volume No. 1, as filed on September 18, 1953, and modified pursuant to the order of March 26, 1954, which were in effect subject to refund from March 1, 1954, are unjust and unreasonable and are hereby disallowed.

(C) Within 45 days from the effective date of this order, Ohio Fuel shall file revised tariff sheets to its FPC Gas Tariff consistent with this order, satisfactory to the Commission, reflecting rates as follows:

Period	Demand	Commodity
		Cents
Mar. 1, 1954, through the December 1954 billing month (average demand basis)	$2.08	31.52
January 1955 billing month through the June 1956 billing month (average demand basis)	2.15	32.43
July 1956 billing month and the future (contract demand rate form and in conformity with exhibit No. 38)	1.56	32.45
July 1956 billing month (SGS rate schedule) and the future	.45	

(D) Subject to the limitations imposed by the ultimately effective underlying rate as set forth in the order issued December 22, 1954, in Dockets Nos. G-1786 and G-1965, Ohio Fuel shall refund to each wholesale customer, with interest at six percent (6%) per annum from the date of payment to Ohio Fuel to the date of refund by it, the difference between the amounts which would have been collected by Ohio Fuel under the rates found herein to be just and reasonable and set forth in (C) above and the amounts actually received. Ohio Fuel shall bear all costs of refunding.

(E) Ohio Fuel shall refund to its wholesale customers, on an equitable basis to be approved by the Commission, the proper part of any reductions in purchased gas costs used in costs of service herein received by it as refunds or otherwise which are not already reflected in the rates herein determined and which it already has or may receive in the future from its suppliers. Ohio Fuel shall make refunds applicable to sales for the period beginning with March 1, 1954, to reflect any reductions in costs of gas purchased as used herein, which reductions would result from the disposition of proceedings involving rates of its suppliers. Ohio Fuel shall file revisions of its tariff sheets reflecting such refunds in the commodity component of its rates.

(F) Within 45 days from the effective date of this order Ohio Fuel shall report, in writing and under oath, to the Comcustomer for each of the periods, March 1, 1954, through the December 1954 bill-

ing month and the January 1955 billing month through the June 1956 billing month.

(G) For the purpose of taking additional evidence referred to in finding (13), the record in this proceeding shall be reopened and this proceeding shall be consolidated with the hearing in Docket No. G-2451 et al., In the Matter of United Fuel Gas Co. et al., commencing on July 5, 1956.

Issued: June 29, 1956.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

APPENDIX A—THE OHIO FUEL GAS COMPANY WHOLESALE COST OF SERVICE, YEAR 1954—ACTUAL

	Total	Demand	Commodity
Produced and purchased gas:			
Gas purchased:			
United Fuel Gas Co	$16,624,510	$3,068,460	$13,556,050
Panhandle Eastern Pipe Line Co	4,648,962	1,310,000	3,338,962
Texas Eastern Transmission Corp	21,407,679	6,296,373	15,111,306
Texas Gas Transmission Corp	6,842,835		
	2,563,043	1,950,376	7,455,502
Chicago Corp	1,028,104		1,028,104
Field purchases	1,894,864		1,894,864
Subtotal	55,009,997	12,625,209	42,384,788
Gas to storage—net	(4,290,379)	(984,642)	(3,305,737)
Total	50,719,618	11,640,567	39,079,051
Purchased gas expense	232,209		232,209
Gas used by company	(206,741)		(206,741)
Total	50,745,086	11,640,567	39,104,519
Administrative and general	50,428		50,428
Total	50,795,514	11,640,567	39,154,947
Depreciation	1,690		1,690
Federal income tax	12,150		12,150
Return at 6¼ percent	13,137		13,137
Taxes—other	4,117		4,117
	50,826,608	11,640,567	39,186,041
Natural gas production	4,981,727		4,981,727
Products extraction	36,479		36,479
Total produced and purchased gas	55,844,814	11,640,567	44,204,247
L-P gas air	302,446	302,446	
Underground storage	7,835,250	3,824,902	4,010,348
Transmission	12,555,963	5,990,502	6,565,461
Total	76,538,473	21,758,417	54,780,056
Percent applicable to wholesale sales		26.24	26.68
Amount applicable to wholesale sales	20,324,728	5,709,409	14,615,319
Rate case expense	23,430	6,581	16,849
State excise tax	156,647	44,002	112,645
Total	20,504,805	5,759,992	14,744,813
Mcf billing units at 14.73# (data from Company Ex. No. 33)		2,774,192	46,756,900
Units costs		$2.076277	31.53505¢
Balanced unit rates—rounded (average demand basis)		$2.08	31.52¢

APPENDIX B—THE OHIO FUEL GAS COMPANY WHOLESALE COST OF SERVICE, YEAR 1954—PRO FORMA

	TOTAL	Demand	Commodity
Produced and purchased gas:			
Gas purchased			
United Fuel Gas Co	$18,752,400	$3,887,233	$14,865,167
Texas Eastern Transmission Corp	21,528,257	6,296,373	15,231,884
Texas Gas Transmission Corp	9,382,257	1,950,102	7,432,155
Panhandle Eastern Pipe Line Co.—Regular	4,779,281	1,260,000	3,519,281
Manufacturers Light & Heat Co	1,042,401		1,042,401
Subtotal	55,484,596	13,393,708	42,090,888
The Preston Oil Co	53,411		53,411
Local Purchases	1,841,453		1,841,453
Panhandle Eastern Pipe Line Co.—Rural	4,604		4,604
Total gas purchased	57,384,064	13,393,708	43,990,356
Gas placed in storage—Cr	(13,626,601)		
Gas withdrawn from storage—Dr	9,133,636		
Net gas placed in storage—Cr	(4,492,965)	(1,084,602)	(3,408,363)
Other expenses	5,053,801		5,053,801
Total produced and purchased gas	57,944,900	12,309,106	45,635,794
L-P gas air	310,258	310,258	
Underground storage	7,929,157	3,871,543	4,057,614
Transmission	12,676,311	6,049,465	6,626,846
Total	78,860,626	22,540,372	56,320,254
Percent applicable to wholesale sales		26.24	26.68
Amount applicable to wholesale sales	20,940,838	5,914,594	15,026,244
Rate case expense	25,000	7,061	17,939
State excise tax	161,170	45,521	115,649
Total cost of service—wholesale sales	21,127,008	5,967,176	15,159,832
Mcf billing units at 14.73# (data from Company Ex. No. 33)		3,816,887	46,756,900
Unit costs	45.1848¢	$1.56336	32.42266¢
Unit rates	45¢ (SGS)	$1.56 (CD)	32.45¢
Unit costs (average demand basis)		$2.15096	32.42266¢
Balanced unit rates (average demand basis)		$2.15	32.43¢

[F. R. Doc. 56-5355; Filed, July 5, 1956; 8:51 a. m.]

[Docket No. G-3822 etc.]

OIL ASSOCIATES, INC., ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

Take notice that each of the Applicants listed below has filed an application for a certificate of public convenience and necessity pursuant to section 7 (c) of the Natural Gas Act, authorizing such Applicant to continue to sell natural gas subject to the jurisdiction of the Commission, all as more fully represented in the respective applications which are on file with the Commission and open for public inspection. These matters should be consolidated and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing will be held on the date and at the place hereinafter stated, concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) not less than ten days before the date of hearing. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request for waiver is made. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

The dockets, Applicants and material averments in applications to which reference is made above are as follows:

Docket No.; Name and Address; Filing Date; Gas Field; and Purchaser

G-3822; Oil Associates, Inc. Reading, Pa.; 9-30-54; Weesatche, Goliad County, Tex.; Texas Eastern Transmission Corporation.

G-3823; General Crude Oil Company, Houston, Tex.; 9-30-54; Keyes, Cimarron County, Okla.; Colorado Interstate Gas Company.

G-4024; Delta Drilling Company, M. Ascher and M. Ascher Trustee, Tyler, Tex.; 10-4-54; Bill Hill, Jefferson County, Tex.; Texas Gas Corporation.

G-4111; Adams & Haggarty, a partnership; The City National Bank of Houston, Executor of Ernest Adams; Louise Dickson Adams; George A. Schilling; George T. Schilling; Nancy Schilling Cheney; Richard John Schilling; William G. Lerchen, Jr.; Robert J. Byrnes; Alfred L. May; Milton F. McCaffrey; Frank R. Dimond; H. T. Williams; N. C. Ginther; H. C. Warren; W. L. Ginther; James Edward Adams and William McMillan, Houston, Tex.; 10-4-54; West Bill Hill, Jefferson County, Tex.; Texas Eastern Transmission Corporation.

G-4776; Amerada Petroleum Corporation, Tulsa, Okla.; 11-9-54; South Lewisburg,

Acadia and St. Landry Parishes, La.; Texas Northern Gas Corporation.

G-6593; Watson Oil & Gas Company, Inc., Jane Lew, W. Va.; 11-30-54; Murphy District, Ritchie County, W. Va.; Carnegie Natural Gas Company.

G-6594; Watson Oil & Gas Company, Inc.; 11-30-54; Union District, Marion County, W. Va.; Equitable Gas Company.

G-6595; Watson Oil & Gas Company, Inc.; 11-30-54; Court House District, Lewis County, W. Va.; Equitable Gas Company.

G-6596; Watson Oil & Gas Company, Inc.; 11-30-54; Washington and Union Districts, Upshur County, W. Va.; Cumberland & Allegheny Gas Company.

G-6597; Watson Oil & Gas Company, Inc.; 11-30-54; Washington District, Upshur County, W. Va.; Cumberland & Allegheny Gas Company.

G-6598; Watson Oil & Gas Company, Inc.; 11-30-54; Court House District, Lewis County, W. Va.; Cumberland & Allegheny Gas Company.

G-6599; Watson Oil & Gas Company, Inc.; 11-30-54; Salt Lick District, Braxton County, W. Va.; Equitable Gas Company.

A public hearing will be held on the 30th day of July, 1956, beginning at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by the above applications.

[SEAL] LEON M. FUQUAY, *Secretary.*

JUNE 29, 1956.

[F. R. Doc. 56-5357; Filed, July 5, 1956; 8:51 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[Files Nos. 54-89, 54-184]

UNITED CORP.

ORDER REGARDING PAYMENT OF FEES AND EXPENSES

JUNE 28, 1956.

The Commission having by orders dated November 29, 1944, and June 26, 1951 approved amended plans filed by The United Corporation in the above proceedings pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935 and having in such orders reserved jurisdiction over the payment of fees and expenses in connection with such plans;

Applications for the allowance of fees and reimbursements of expenses having been filed, public hearings having been held, a recommended decision having been filed by the Hearing Examiner and exceptions thereto and briefs having been filed, and the Commission having heard oral argument; and

The Commission having considered the record and having this day issued its findings and opinion, on the basis of such findings and opinion

It is ordered, That the application of Randolph Phillips for the allowance of a fee for services and the reimbursement of expenses alleged to have been rendered and incurred in connection with the plan approved by order dated November 29, 1944 (File No. 54-89) be, and it hereby is, denied;

It is further ordered, That the payment by The United Corporation of the following fees and expenses in connection with the plan approved by order dated June 26, 1951 (File No. 54-184) be, and hereby is, approved, and said company be, and it hereby is, authorized to make payment of such amounts thereof as have not already been paid:

	Fees	Expenses
Whitman, Ransom & Coulson	$238,500.00	$4,391.72
Burns, Blake & Rich	18,500.00	917.47
First Boston Corp	30,000.00	----------
Franklin Cole & Co	10,000.00	----------
Moody's Investors Service	19,952.29	----------
Arthur Young & Co	12,500.00	----------
J. P. Morgan & Co., Inc	29,885.82	(1)
Expenses of registration of shares of Niagara Mohawk Power Corp. and South Jersey Gas Co	----------	76,219.62
Printing and related services	----------	28,219.13
Miscellaneous expenses paid by the United Corp	----------	18,614.46
Randolph Phillips	50,000.00	(1)
Joseph B. Hyman	7,000.00	----------

[1] Included in fee.

It is further ordered, That the application of Sheldon Preschel for the allowance of a fee for services and the reimbursement of expense be, and it hereby is, denied; and

It is further ordered, That the application of the General Protective Committee for Holders of Option Warrants for an interim allowance for reimbursement of expenses be, and it hereby is, denied, without prejudice to a further application for the allowance of such expenses at a later time.

By the Commission.

[SEAL] OVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5343; Filed, July 5, 1956; 8:48 a. m.]

[File No. 27-107]

KEY OIL & GAS (1955) LTD. (N. P. L.)

ORDER TEMPORARILY DENYING EXEMPTION, STATEMENTS OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

JUNE 29, 1956.

I. Key Oil & Gas (1955) Ltd. (hereinafter referred to as the "issuer"), 800 Hall Building, 789 West Pender Street, Vancouver, British Columbia, Canada, having filed with the Commission on May 4, 1956, a Notification on Form 1-D relating to a proposed public offering of not exceeding 300,000 shares of its 50 cents par value stock at 30 cents per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933 as amended, pursuant to the provisions of section 3 (b) thereof and Regulation D promulgated thereunder; and

II. The Commission having reasonable cause to believe:

A. That the terms and conditions of Regulation D have not been complied with in that:

1. The Notification on Form 1-D, Item 5, fails to disclose that Raymond Shaw is an affiliate of the issuer;

2. The non-resident officers and directors of the issuer failed to furnish the Commission at the time of the filing of the Notification on Form 1-D consents to service of process required by Rule 507 (a);

3. The offering circular fails to describe the method by which the securities are to be offered as required by Rule 504 (b) (4);

4. The offering circular fails to state in tabular form on the outside front cover page of the offering circular the price to the public, underwriting commissions, and proceeds to the issuer as to the securities covered by the notification and securities concurrently to be offered in Canada, as required by Rule 504 (b) (5);

5. The offering circular fails to disclose the respective amounts of proceeds from the sale to be applied for each purpose for which the net cash proceeds from the sale of the securities are to be used, the priority of application of such amounts, and the disposition of proceeds in the event that the proceeds are insufficient for the purposes stated;

6. The offering circular fails to state, as required by Rule 504 (b) (7) and Supplemental Instructions to Regulation D referred to therein, the nature of issuer's interest in the properties to be developed and the development which has occurred to date on or near the properties held;

7. Issuer has failed to file for the information of the Commission, as required by the Supplemental Instructions to Regulation D, copies of pertinent reports and other data to support statements made in the offering circular concerning geology and engineering;

8. The offering circular fails to include financial statements in appropriate form as required by Rule 504 (b) (10).

B. That the offering circular is false and misleading in the following particulars:

1. In stating, "The most noted discoveries of oil producing lands have usually been preceded by indications of oil or gas seepages on, or very close to the surface";

2. In characterizing gamma ray surveys and aerial photography as "the finest exploration methods obtainable today";

3. In stating that "oil of commercial proportions is obtainable" upon drilling to the so-called "lower Burrard Formation";

4. In stating that according to many experts the issuer's property "could be the more productive extremity of the same formation producing oil in such abundance 2,500 miles farther south in California";

5. In stating that many years of exploratory work and past experience together with modern methods of geological surveying "enable us to minimize risk and abortive effort and locate our drillings in the more logical places";

6. In omitting to state in connection with promises of continuous and complete exploration of the properties the estimated cost of such a program and the proposed method of financing it;

7. In omitting to state that the State of Washington has issued a cease and desist order against the issuer, making it illegal to sell or offer to sell the securities in that state until further order.

C. That the use of said offering circular in connection with the offering of the issuer's securities would operate as a fraud and deceit upon the purchasers of such securities.

It is ordered, Pursuant to Rule 509 of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under section 3 (b) and Regulation D be, and it hereby is temporarily denied.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing; that, within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of denial should be vacated or made permanent, without prejudice however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5342; Filed, July 5, 1956; 8:47 a. m.]

[File No. 70-3483]

MICHIGAN WISCONSIN PIPE LINE CO. AND AMERICAN NATURAL GAS CO.

NOTICE OF FILING REGARDING PROPOSALS BY SUBSIDIARY OF REGISTERED HOLDING COMPANY TO ISSUE AND SELL AT COMPETITIVE BIDDING ADDITIONAL FIRST MORTGAGE BONDS, TO INCREASE ITS AUTHORIZED COMMON STOCK, AND TO ISSUE AND SELL ADDITIONAL COMMON STOCK; AND PROPOSAL BY PARENT TO ACQUIRE SUCH STOCK

JUNE 29, 1956.

Notice is hereby given that Michigan Wisconsin Pipe Line Company ("Michigan Wisconsin"), a non-public-utility company, and its parent, American Natural Gas Company ("American Natural"), a registered holding company, have filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("act"), a joint application-declaration regarding a proposal by Michigan Wisconsin to issue and sell $25,000,000 principal amount of its first mortgage bonds, and 60,000 shares of its $100 par value common stock. Applicants-declarants designate sections 6 (b), 9, 10, and 12 (f) of the act and Rules U-43 and U-50 (a) (3) thereunder as applicable to the proposed transactions.

All interested persons are referred to the joint application-declaration on file in the offices of the Commission for a statement of the transactions therein proposed, which are summarized as follows:

Michigan Wisconsin proposes to issue and sell, subject to the competitive bidding requirements of Rule U-50, $25,000,000 principal amount of its First Mortgage Pipe Line Bonds, __ percent Series due 1976. The interest rate (which shall be a multiple of ⅛ of 1 percent and the price to be received by the company for the bonds (which, exclusive of accrued interest, shall be not less than 100 percent nor more than 102¾ percent of the principal amount) are to be determined by competitive bidding. The bonds will be issued under and secured by the company's outstanding Mortgage and Deed of Trust, dated September 1, 1948, as heretofore supplemented, and as to be further supplemented by an Eighth Supplemental Indenture to be dated August 1, 1956.

Michigan Wisconsin also proposes, prior to or simultaneously with the issuance of the new bonds, to increase the authorized number of shares of its $100 par value common stock from 255,000 to 310,000, and to issue and sell to American Natural, and American Natural proposes to acquire, 60,000 additional shares of Michigan Wisconsin's authorized but unissued common stock for a cash consideration of $6,000,000. Prior to the purchase by American Natural of the additional shares of common stock, Michigan Wisconsin proposes to declare and pay American Natural a cash dividend of $6,000,000. The effect of this dividend declaration and contemporaneous purchase of stock is to convert $6,000,000 of retained earnings into common stock.

Michigan Wisconsin has outstanding $14,000,000 principal amount of notes due July 1, 1956, issued under a credit agreement heretofore approved by the Commission (File No. 70-3382) and has obtained approval of a new credit agreement under which it could borrow up to $25,000,000 on short-term bank notes, of which $14,000,000 will be used to pay the outstanding notes due July 1, 1956 (File No. 70-3483). The remainder will be applied to the payment of costs of construction, estimated at $12,500,000, of needed additional facilities to enable Michigan Wisconsin to deliver to its markets the additional gas which will become available upon completion of the new pipe line being constructed by American Louisiana Pipe Line Company, an associate company.

Applicants-declarants state that the Michigan Public Service Commission may be deemed to have jurisdiction over the proposed issuance of the securities by Michigan Wisconsin; that an application for approval thereof will be filed with such commission, and a copy thereof and of any order entered thereon, will be filed as an amendment herein. It is further stated that, apart from the foregoing, no regulatory authority other than this Commission has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than July 19, 1956, at 5:30 p. m., e. d. s. t., request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the application-declaration which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may grant exemption from its rules as provided in Rules U-20 (a) and U-100, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5344; Filed, July 5, 1956; 8:48 a. m.]

[File No. 70-3482]

STANDARD SHARES, INC.

ORDER PERMITTING DECLARATION REGARDING PROPOSED CASH DISTRIBUTION OUT OF CAPITAL SURPLUS

JUNE 29, 1956.

Standard Shares, Inc. ("Standard Shares"), a registered holding company, has filed a declaration pursuant to section 12 (c) of the Public Utility Holding Company Act of 1935 ("act") and Rule U-46 promulgated thereunder regarding a proposal by Standard Shares to make a cash distribution of $0.40 per share, in part out of earned surplus to the full extent thereof which at May 31, 1956, amounted to $178,857 and the balance out of capital surplus which as of the same date was $22,046,157, to each holder of record on June 29, 1956, of its outstanding 1,430,000 shares of common stock. The fees and expenses to be incurred in connection with said distribution are estimated not to exceed $1,500, including counsel fees not in excess of $500, which do not appear to be unreasonable.

Notice of the filing of the declaration having been duly given in the manner prescribed by Rule U-23 and no hearing having been ordered by or requested of the Commission, and the Commission finding that the applicable provisions of the act and the rules thereunder are satisfied and that, as requested by declarant, the declaration should be permitted to become effective upon issuance:

It is ordered, Pursuant to the applicable provisions of the act and the rules and regulations thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed by Rule U-24, and subject to the following additional terms and conditions:

That Standard Shares shall:

(1) Notify its shareholders to what extent the payment is being made out of capital or unearned surplus;

(2) Notify its shareholders that the Commission's action in permitting the declaration to become effective is not to be construed as a determination by the Commission that all or any portion of such payment is or is not taxable to the recipients pursuant to the provisions of the Internal Revenue Code; and

(3) Disclose in all published financial statements the extent to which the payment was made out of capital or unearned surplus.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5345; Filed, July 5, 1956; 8:48 a. m.]