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Title 7—AGRICULTURE

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SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1968 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

STATE RESERVE AND COUNTY ALLOTMENT

Basis and purpose. Section 722.562 is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended, 7 U.S.C. 1281 et seq.). This section establishes the State reserves and allocation thereof among uses for the 1968 crop of extra long staple cotton. It also establishes the county allotments. Such determinations were made initially by the respective State committees and are hereby approved and made effective by the Administrator, ASCS, pursuant to delegated authority (28 F.R. 4368, 29 F.R. 16210, 30 F.R. 8756, 32 F.R. 11895).

Notice that the Secretary was preparing to establish State and county allotments was published in the FEDERAL REGISTER on August 9, 1967 (32 F.R. 11475), in accordance with 5 U.S.C. 553. No written submissions were received in response to such notice.

Since the allocations under this section require immediate action by the Agricultural Stabilization and Conservation State and county committees, it is essential that § 722.562 be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest, and § 722.562 shall be effective upon filing this document with the Director, Office of the Federal Register.

§ 722.562 State reserves and county allotments for the 1968 crop of extra long staple cotton.

(a) *State reserve.* The State reserve for each State shall be established and allocated among uses as shown in the following table for the 1968 crop of extra long staple cotton pursuant to § 722.508 of the Regulations for Acreage Allotments for 1966 and Succeeding Crops of Extra Long Staple Cotton (31 F.R. 6247, as amended). It is hereby determined that no State reserve for trends, abnormal conditions, small farms or new farms is required. The allocation of State reserve for inequity and hardship cases to counties in New Mexico is required primarily to adjust allotments for certain farms in order that they may receive allotments that are equitable as compared with those for other farms.

State	Total State reserve	Allocations from State reserve for	
		Inequity and hardship cases	Set-aside
Arizona	10		10
California			
Florida	18		18
Georgia			
New Mexico	150	140	10
Texas			
Puerto Rico	2		2

(b) *County allotments.* The county allotments are established for the 1968 crop of extra long staple cotton in accordance with § 722.509 of the Regulations for Acreage Allotments for 1966 and Succeeding Crops of Extra Long Staple Cotton (31 F.R. 6247, as amended). The following table sets forth the county allotments and allocations from the State reserve:

ARIZONA

County	County allotment (1)	Allocations from State reserve for inequity and hardship cases (2)
	Acres	*Acres*
Cochise	173	0
Gila	11	0
Graham	8,569	0
Maricopa	12,788	0
Pima	2,424	0
Pinal	6,335	0
Yuma	300	0
State	30,600	0

CALIFORNIA

Imperial	95	0
Riverside	379	0
State	474	0

FLORIDA

Alachua	38	0
Hamilton	4	0
Jefferson	1	0
Lake	13	0
Madison	19	0
Marion	44	0
Sumter	10	0
Suwanee	2	0
Union	32	0
State	163	0

GEORGIA

Berrien	77	0
Cook	20	0
State	97	0

NEW MEXICO

County	County allotment (1)	Allocations from State reserve for inequity and hardship cases (2)
	Acres	*Acres*
Chaves	26.0	13.0
Dona Ana	13,674.0	84.1
Eddy	112.0	3.0
Hidalgo	14.0	6.2
Luna	87.0	21.0
Otero	28.0	5.7
Sierra	173.0	7.0
State	14,114.0	140.0

TEXAS

Brewster	10	0
Culberson	215	0
El Paso	17,427	0
Hudspeth	2,169	0
Loving	8	0
Pecos	456	0
Presidio	87	0
Reeves	4,352	0
Ward	127	0
State	24,851	0

PUERTO RICO

North area	21.0	0
State	21.0	0

(Secs. 344, 347, 375, 63 Stat. 670, as amended, 675, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1344, 1347, 1375)

Effective date: Date of filing this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on November 15, 1967.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 67-13692; Filed, Nov. 17, 1967; 12:48 p.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

PART 912—GRAPEFRUIT GROWN IN INDIAN RIVER DISTRICT IN FLORIDA

Expenses and Rate of Assessment

On November 4, 1967, notice of rule making was published in the FEDERAL REGISTER (32 F.R. 15436) regarding proposed expenses and the related rate of assessment for the period beginning August 1, 1967, and ending July 31, 1968, pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian

River District in Florida. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Indian River Grapefruit Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 912.207 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Indian River Grapefruit Committee during the period August 1, 1967, through July 31, 1968, will amount to $25,000.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 912.41, is fixed at $0.005 per standard packed box of grapefruit.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of grapefruit are now being made, (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable grapefruit handled during the aforesaid period, and (3) such period began on August 1, 1967, and said rate of assessment will automatically apply to all such grapefruit beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 17, 1967.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 67-13693; Filed, Nov. 21, 1967; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of International Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[10th Gen. Rev. of Export Regs., Amdt. 41]

PART 379—EXPORT CLEARANCE AND DESTINATION CONTROL

General Requirements

Part 379 of the Code of Federal Regulations is amended as set forth below:

Section 379.1(a)(3) is revised to read as follows:

§ 379.1 General export clearance requirements.

(a) *Exports by water or air carrier.*

* * *

(3) A shipment to Canada or to Country Group S, T, or V does not require the submission of a Shipper's Export Declaration if the shipment is valued at less than $100 and is not made under the provisions of General License GLV or a validated export license.[3] As used in this subparagraph (3), a "shipment" is defined as all of the commodities classified under a single seven-digit Schedule B Number that are shipped on the same exporting carrier from one exporter to one importer.

* * * * *

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023; E.O. 10945, 26 F.R. 4487, 3 CFR 1959–63 Comp.; E.O. 11038, 27 F.R. 7003, 3 CFR 1959–63 Comp.)

Effective date: November 16, 1967.

RAUER H. MEYER,
Director, Office of Export Control.

[F.R. Doc. 67-13674; Filed, Nov. 21, 1967; 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 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

Subpart D—Food Additives Permitted in Food for Human Consumption

NICKEL SULFATE

Sections 121.242 *Nickel sulfate* and 121.1122 *Nickel sulfate* are hereby deleted. These regulations, which established tolerances for residues of nickel sulfate in the bran of wheat and oats to be ingested as or converted to food or feed, are obsolete since the U.S. Department of Agriculture's experimental permit under which in part they were issued expired February 15, 1967.

(Secs. 409, 701(a), 52 Stat. 1055, 72 Stat. 1785; 21 U.S.C. 348, 371(a))

Dated: November 15, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-13709; Filed, Nov. 21, 1967; 8:47 a.m.]

SUBCHAPTER C—DRUGS

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

Tetracycline-Nystatin for Oral Suspension

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357), and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), § 146c.236(c) is revised to read as follows to provide for an extension of the maximum expiration date for the subject antibiotic drug:

§ 146c.236 Tetracycline-nystatin for oral suspension.

* * * * *

(c) It shall be labeled in accordance with the requirements of § 148.3 of this chapter. Its expiration date is 12 months.

* * * * *

Notice and public procedure and delayed effective date are unnecessary prerequisites to the promulgation of this order, and I so find, since the change provided for by this amendment cannot be applied to any specific product unless its manufacturer has supplied adequate data regarding that article.

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

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: November 16, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-13710; Filed, Nov. 21, 1967; 8:47 a.m.]

PART 148b—AMPHOTERICIN

Amphotericin B; Amphotericin B Cream

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), Part 148b is amended to effect a technical change in the assay procedure for amphotericin

B and a cross-reference change in the regulation for amphotericin B cream. Accordingly, §§ 148b.1(b)(2)(i) and (ii) and 148b.5(b) are revised to read as follows:

§ 148b.1 Amphotericin B.

* * * * *

(b) * * *

(2) *Amphotericin A content*—(i) *Amphotericin A.* Dry approximately 20 milligrams of the amphotericin A working standard as described in § 141a.5(a) of this chapter. Accurately weigh the dried working standard and quantitatively transfer into a 200-milliliter volumetric flask. Add exactly 20.0 milliliters of dimethyl sulfoxide and dissolve. Make to mark with methyl alcohol and mix thoroughly. Pipette 4.0 milliliters of this solution into a 50-milliliter volumetric flask. Add methyl alcohol to mark and mix thoroughly.

(ii) *Amphotericin B.* Dry approximately 50 milligrams of the amphotericin B working standard as described in § 141a.5(a) of this chapter. Accurately weigh the dried working standard and quantitatively transfer into a 50-milliliter volumetric flask and proceed as directed in subdivision (i) of this subparagraph.

* * * * *

§ 148b.5 Amphotericin B cream.

* * * * *

(b) *Tests and methods of assay; potency.* Proceed as directed in § 148b.4(b)(1). The amphotericin B content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of amphotericin B per gram that it is represented to contain.

This order merely provides a technical change in the assay procedure for amphotericin B and a cross-reference change in the regulation for amphotericin B cream and raises no points of controversy; therefore, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

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

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: November 16, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-13711; Filed, Nov. 21, 1967; 8:48 a.m.]

PART 148f—GRAMICIDIN
PART 148o—PAROMOMYCIN
Miscellaneous Amendments

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), Parts 148f and 148o of the antibiotic-drug regulations are amended as follows to effect miscellaneous editorial and technical changes:

§ 148f.1 [Amended]

1. In § 148f.1 *Gramicidin*, paragraph (b)(6) is amended by changing "0.02" to "0.05" in the first and second sentences.

2. Section 148o.1(b)(6) is revised to read as follows:

§ 148o.1 Paromomycin sulfate.

* * * * *

(b) * * *

(6) *Residue on ignition.* Proceed as directed in § 141e.401(g) of this chapter.

3. Section 148o.2(b)(1) is revised to read as follows:

§ 148o.2 Paromomycin sulfate capsules.

* * * * *

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 148o.1(b)(1), except prepare a stock solution of convenient concentration by pooling the entire contents of a representative number of capsules in an appropriate-sized volumetric flask and dissolve with 0.1*M* potassium phosphate buffer, pH 8.0. The paromomycin content is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of milligrams of paromomycin that each capsule is represented to contain.

* * * * *

4. Section 148o.3(a)(1) is revised to read as follows:

§ 148o.3 Paromomycin sulfate syrup.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Paromomycin sulfate syrup contains the equivalent of 25 milligrams of paromomycin per milliliter. It may contain one or more suitable and harmless solvents, flavorings, colorings, preservatives, and buffers in water. Its pH is not less than 7.5 and not more than 8.5. The paromomycin sulfate used conforms to the requirements of § 148o.1(a)(1)(i), (ii), (iv), (v), and (vi). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

* * * * *

Since the amendments herein are merely of a minor technical or editorial nature and raise no points of controversy, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

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

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: November 16, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-13712; Filed, Nov. 21, 1967; 8:48 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter III—Corps of Engineers, Department of the Army

PART 311—PUBLIC USE OF CERTAIN RESERVOIR AREAS

J. Percy Priest Reservoir Area, Tenn.

The Secretary of the Army having determined that the use of J. Percy Priest Reservoir Area, Stones River, Tenn., by the general public for boating, swimming, bathing, fishing, and other recreational purposes will not be contrary to the public interest and will not be inconsistent with the operation and maintenance of the reservoir for its primary purposes, hereby prescribes rules and regulations for its public use, pursuant to the provisions of section 4 of the Flood Control Act of 1944, as amended (76 Stat. 1195), adding the reservoir to the list in § 311.1, as follows:

§ 311.1 Areas covered.

* * * * *

TENNESSEE

* * * * *

J. Percy Priest Reservoir Area, Stones River.

* * * * *

[Regs., Oct. 27, 1967, ENGCW-OM] (Sec. 4, 58 Stat. 889, as amended; 16 U.S.C. 460d)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 67-13677; Filed, Nov. 21, 1967; 8:45 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Republication

In order to facilitate its distribution and use, Part 601 of Chapter I of Title 26, Code of Federal Regulations is hereby republished. This republication is a compilation reflecting amendments to such part subsequent to January 1, 1961 and includes the latest amendment to the part dated September 14, 1967 (32 F.R. 13058).

The compilation as set forth below contains no substantive changes.

SHELDON S. COHEN,
Commissioner of Internal Revenue.

AUTHORITY: The provisions of this Part 601 issued under 5 U.S.C. 301 and 552.

Subpart A—General Procedural Rules

§ 601.101 Introduction.

(a) *General.* The Internal Revenue Service is a branch of the Treasury Department under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue and also of other functions relating to the administration and enforcement of laws applicable to alcohol and certain firearms which are in addition to those related to taxes. The Internal Revenue Service is the agency by which these functions are performed. Within an internal revenue district the internal revenue laws are administered by a district director of internal revenue. The Director of International Operations administers the internal revenue laws applicable to taxpayers residing or doing business aboard, foreign taxpayers deriving income from sources within the United States and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations. For purposes of these procedural rules any reference to a district director or a district office includes the Director of International Operations or the Office of International Operations, if appropriate. Generally, the procedural rules of the Service are based on the Internal Revenue Code of 1939 and the Internal Revenue Code of 1954, and the procedural rules in this part apply to the taxes imposed by both Codes except to the extent specifically stated or where the procedure under one Code is incompatible with the procedure under the other Code. Reference to sections of the Code are references to the Internal Revenue Code of 1954, unless otherwise expressly indicated.

(b) *Scope.* This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statement (26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules. Subpart A provides a descriptive statement of the general course and method by which the Service's functions are channeled and determined, insofar as such functions relate generally to the assessment and collection of internal revenue taxes. Certain provisions special to particular taxes are separately described in Subpart D of this part. Conference and practice requirements of the Internal Revenue Service are contained in Subpart E of this part. Specific matters not generally involved in the assessment and collection functions are separately described in Subpart B of this part. A description of the rulemaking functions of the Treasury Department with respect to internal revenue tax matters is contained in Subpart F of this part. The procedural rules of the Service with respect to distilled spirits, wines,

beer, cigars, cigarettes, and cigarette papers and tubes, and certain firearms are described in Subpart C of this part. Subpart G of this part relates to matters of official record in the Internal Revenue Service and the extent to which records and documents are subject to publication or open to public inspection. This part does not contain a detailed discussion of the substantive provisions pertaining to any particular tax or the procedures relating thereto, and for such information it is necessary that reference be made to the applicable provisions of law and the regulations promulgated thereunder. The regulations relating to the taxes administered by the Service are contained in Titles 26 and 27 of the Code of Federal Regulations.

§ 601.102 Classification of taxes collected by the Internal Revenue Service.

(a) *Principal divisions.* Internal revenue taxes fall generally into the following principal divisions:

(1) Taxes collected by assessment.

(2) Taxes collected by means of revenue stamps.

(b) *Assessed taxes.* Taxes collected principally by assessment fall into the following two main classes:

(1) Taxes within the jurisdiction of the Tax Court of the United States. These include:

(i) Income and profits taxes imposed by chapters 1 and 2 of the 1939 Code and taxes imposed by subtitle A of the 1954 Code, relating to income taxes.

(ii) Estate taxes imposed by chapter 3 of the 1939 Code and chapter 11 of the 1954 Code.

(iii) Gift tax imposed by chapter 4 of the 1939 Code and chapter 12 of the 1954 Code.

(2) Taxes not within the jurisdiction of the Tax Court of the United States. Taxes not imposed by chapter 1, 2, 3, or 4 of the 1939 Code or subtitle A or chapter 11 or 12 of the 1954 Code are within this class, such as:

(i) Employment taxes,

(ii) Various sales taxes collected by return,

(iii) Miscellaneous excise taxes collected by return, and

(iv) Miscellaneous excise taxes collected by sale of revenue stamps.

(3) The difference between these two main classes is that only taxes described in subparagraph (1) of this paragraph, i. e., those within the jurisdiction of the Tax Court, may be contested before an independent tribunal prior to payment. Taxes of both classes may be contested by first making payment, filing claim for refund, and then bringing suit to recover if the claim is disallowed or no decision is rendered thereon within six months.

(c) *Stamp taxes.* Taxes collected by means of revenue stamps may in special circumstances be collected by assessment, but references hereinafter to the assessment process do not contemplate taxes ordinarily collectible by means of stamps, except as specially stated. For provisions special to taxes collected by means of revenue stamps, see § 601.404. Taxes collectible by assessment may be collected by suit without assessment, but this is seldom done.

§ 601.103 Summary of general tax procedure.

(a) *Collection procedure. The* Federal tax system is basically one of self-assessment. In general each taxpayer (or person required to collect and pay over the tax) is required to file a prescribed form of return which shows the facts upon which tax liability may be determined and assessed. Generally, the taxpayer must compute the tax due on the return and make payment thereof on or before the due date for filing the return. If the taxpayer fails to pay the tax when due, the district director of internal revenue or the director of the regional service center after assessment issues a notice and demands payment within 10 days from the date of the notice. In the case of wage earners and nonresident aliens, the income tax is collected in large part through withholding at the source. Another means of collecting the income tax is through payments on declarations of estimated tax which are required by law to be filed by certain individual and corporate taxpayers. Neither withholding nor a declaration of estimated tax relieves a taxpayer from the duty of filing a return otherwise required. Certain excise taxes are collected by the sale of internal revenue stamps.

(b) *Examination and determination of tax liability.* After the returns are filed in the office of the district director of internal revenue or in the office of the director of a regional service center, they are sorted, classified, and processed. Many of these returns are selected for examination. If adjustments are proposed with which the taxpayer does not agree, he is ordinarily afforded certain appeal rights, including an opportunity to discuss the proposed adjustments (except mathematical errors) in a conference in the district director's office. If this conference results in agreement on the proposed adjustments, the taxpayer is requested to execute an agreement form. If the tax involved is an income, profits, estate, or gift tax, and if the taxpayer waives restrictions on the assessment and collection of the tax (see § 601.105(b)), the deficiency will be immediately assessed.

(c) *Disputed liability*—(1) *General.* If the conference on the proposed adjustments does not result in agreement, the taxpayer is given an opportunity to request that his case be considered by the regional Appellate Division, provided that Division has jurisdiction (see § 601.106(a)(3)). If the taxpayer requests such consideration, the case will be referred to the regional Appellate Division where the taxpayer may have another conference. The determination of tax liability by the Appellate Division is final insofar as the taxpayer's appellate rights within the Service are concerned. Upon protest of cases under the jurisdiction of the Director of International Operations exclusive settlement authority is vested in the regional Appellate Division having jurisdiction of the place where the taxpayer requests the Appellate Division conference. If the taxpayer does not specify a location for the conference, or if the location specified is outside the territorial limits of the regional Appellate Divisions, the Washington, D.C., branch office of the Appellate Division for the Mid-Atlantic region assumes jurisdiction. The fact that conferences were held by the Office of International Operations either before or after the receipt of a protest does not foreclose a taxpayer from having the Appellate Division consider his case.

(2) *Petition to the Tax Court of the United States.* In the case of income, profits, estate, and gift taxes, before a deficiency may be assessed a statutory notice of deficiency (commonly called a "90-day letter") must be sent to the taxpayer by certified mail or registered mail unless the taxpayer waives this restriction on assessment. See, however, § 601.105(h) and § 601.109 for exceptions. The taxpayer may then file a petition for a redetermination of the proposed deficiency with the Tax Court of the United States within 90 days from the date of the mailing of the statutory notice. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period within which a petition may be filed in the Tax Court is 150 days in lieu of 90 days. In other words, the taxpayer has the right in respect of these taxes to contest any proposed deficiency before an independent tribunal prior to assessment or payment of the deficiency. Unless the taxpayer waives the restrictions on assessment and collection after the date of the mailing of the statutory notice, no assessment or collection of a deficiency (not including the correction of a mathematical error) may be made in respect of these taxes until the expiration of the applicable period or, if a petition is filed with the Tax Court, until the decision of the Court has become final. If, however, the taxpayer makes a payment with respect to a deficiency, the amount of such payment may be assessed. See, however, § 601.105(h). If the taxpayer fails to file a petition with the Tax Court within the applicable period, the deficiency will be assessed upon the expiration of such period and notice and demand for payment of the amount thereof will be mailed to the taxpayer. If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by a final decision of the Tax Court will be assessed and is payable upon notice and demand. There are no restrictions on the timely assessment and collection of the amount of any deficiency determined by the Tax Court, and a petition for review of the Court's decision will not stay the assessment and collection of the deficiency so determined, unless on or before the time the petition for review is filed the taxpayer files with the Tax Court a bond in a sum fixed by the Court not exceeding twice the portion of the deficiency in respect of which the

petition for review is filed. No part of an amount determined as a deficiency but disallowed as such by a decision of the Tax Court which has become final may be assessed or collected by levy or by proceeding in court with or without assessment.

(3) *Claims for refund.* After payment of the tax a taxpayer may, within the applicable period of limitations, contest the assessment by filing with the district director a claim for refund of all or any part of the amount paid, except with respect to certain taxes determined by the Tax Court, the decision of which has become final. If the claim is allowed, the overpayment of tax and allowable interest thereon will be credited against other liabilities of the taxpayer, or will be refunded to the taxpayer. Generally, if the claim for refund is rejected in whole or in part, the taxpayer is notified of the rejection by certified mail or registered mail. He may then bring suit in the United States District Court or in the United States Court of Claims for recovery of the tax. Suit may not be commenced before the expiration of six months from the date of filing of the claim for refund, unless a decision is rendered thereon within that time, nor after the expiration of two years from the date of mailing by certified mail or registered mail to the taxpayer of a notice of the disallowance of the part of the claim to which the suit relates. Under the 1954 Code, the 2-year period of limitation for bringing suit may be extended for such period as may be agreed upon in a properly executed Form 907. Also, under the 1954 Code, if the taxpayer files a written waiver of the requirement that he be sent a notice of disallowance, the 2-year period for bringing suit begins to run on the date such waiver is filed. See section 6532(a) of the Code.

§ 601.104 Collection functions.

(a) *Collection methods*—(1) *Returns.* Generally, an internal revenue tax assessment is based upon a return required by law or regulations to be filed by the taxpayer upon which he himself computes the tax in the manner indicated by the return. If a taxpayer fails to make a return it may be made for him by a district director or other duly authorized officer or employee. See section 6020 of the Code and the regulations thereunder. Returns must be made on the forms prescribed by the Internal Revenue Service. Forms are obtainable at the principal and branch offices of district directors of internal revenue. Forms are generally mailed to persons whom the Service has reason to believe may be required to file returns, but failure to receive a form does not excuse failure to comply with the law or regulations requiring a return. Returns, supplementary returns, statements or schedules, and the time for filing them, may sometimes be prescribed by regulations issued under authority of law by the Commissioner with the approval of the Secretary of the Treasury or his delegate. In the case of certain individual income taxpayers having gross income from specified sources of less than $10,000, a special form (Form 1040A) is prescribed upon which the taxpayer may set forth the information necessary to a determination of his tax liability. A taxpayer filing a return on Form 1040A shall compute the tax and transmit with the return any unpaid balance of tax, except that if his income was less than $5,000 he may elect to have the Internal Revenue Service compute the tax and mail him a notice stating the amount of tax due. A husband and wife may make a single income tax return jointly. Certain affiliated groups of corporations may file consolidated income tax returns. See section 1501 of the Code and the regulations thereunder.

(2) *Withholding of tax at source.* Withholding at the source of income payments is an important method used in collecting taxes. For example, in the case of wage earners, the income tax is collected in large part through the withholding by employers of taxes on wages paid to their employees. The tax withheld at the source on wages is applied as a credit in payment of the individual's income tax liability for the taxable year. In no case does withholding of the tax relieve an individual from the duty of filing a return otherwise required by law. The chief means of collecting the income tax due from nonresident alien individuals and foreign corporations not engaged in trade or business within the United States is the withholding of the tax by persons paying or remitting the income to the recipients. The tax withheld is allowed as a credit in payment of the tax imposed on such nonresident alien individuals and foreign corporations.

(3) *Declarations of estimated tax.* Any individual who may reasonably expect to receive gross income for the taxable year from wages or from sources other than wages, in excess of amounts specified by law, or who can reasonably expect his estimated tax to be $40 or more, is required to file a declaration of estimated income tax. Payments of estimated tax are applied in payment of the tax for the taxable year. A husband and wife may make a single declaration jointly, and the amount of the estimated tax paid on the declaration may be applied in payment of the income tax liability of either spouse in any proportion they may specify. For taxable years ending on or after December 31, 1955, the law requires a declaration of estimated tax by certain corporations. See section 6016 of the Code.

(4) *Collection by sale of revenue stamps.* Certain taxes are collected by sale of revenue stamps. These taxes fall into three general classes: Documentary stamp taxes, commodity stamp taxes, and occupational stamp taxes. The documentary and commodity stamp taxes are paid by having affixed to the document, package, container, etc., in respect to which the tax is imposed, internal revenue stamps in the amount equal to the tax due and by canceling such stamps in the manner prescribed. Payment of occupational taxes is evidenced by posting or displaying a special occupational tax stamp on the premises where the business is operated. In certain situations where it is not practicable to collect the tax by stamp, for example, where the instrument or commodity subject to stamp tax is no longer in existence or for other reasons cannot be stamped or where it is discovered that an occupational stamp tax was due for a prior taxable year, the tax may be collected by assessment. For special provisions applicable to stamp taxes, see § 601.404.

(5) *Collection of tax by another person.* Certain miscellaneous excise taxes are imposed on the person making the payment for telephone service, air transportation, and other facilities or services. Such taxes are required to be collected by the telephone company, airline, or other person receiving the payment. All taxes collected in this manner are held by the collecting agent in trust for the United States until paid over to the district director of internal revenue. If the person from whom the tax is required to be collected refuses to pay it, or if for any reason it is impossible for the collecting agency to collect the tax from such person, the collecting agency is required to report the facts to the district director of internal revenue, and the tax will then be collected by direct assessment against the person failing or refusing to pay the tax to the collecting agent. For special provisions applicable to excise taxes collected by another person, see § 601.403.

(b) *Extension of time for filing returns.* Under certain circumstances the Commissioner is authorized to grant a reasonable extension of time for filing a return or declaration. This authority has been delegated to the several district directors of internal revenue. The maximum period for extensions cannot be in excess of six months, except in the case of taxpayers who are abroad. With an exception in the case of estate tax returns, written application for extension must be received by the district director on or before the date prescribed by law for filing the return or declaration. On or before the last date prescribed by law for filing its income tax return, a corporation may obtain an automatic three-month extension of time for filing the income tax return by filing Form 7004 and paying an estimated amount not less than would be required as the first installment of tax due should the corporation elect to pay the tax in installments. An extension of time for filing a declaration of estimated tax (generally limited to a period of not more than 15 days) automatically extends the time for paying the estimated tax (without interest) for the same period.

(c) *Enforcement procedure*—(1) *General.* Taxes shown to be due on returns, deficiencies in taxes, additional or delinquent taxes to be assessed, and penalties, interest, and additions to taxes, are recorded by the district director or the director of the regional service center as "assessments." Under the law an assessment is prima facie correct for

all purposes. Generally, the taxpayer bears the burden of disproving the correctness of an assessment. Upon assessment, the district director is required to effect collection of any amounts which remain due and unpaid. Generally, payment within 10 days from the date of the notice and demand for payment is requested; however, payment may be required in a shorter period if collection of the tax is considered to be in jeopardy.

(2) *Levy.* If a taxpayer neglects or refuses to pay any tax within the period provided for its payment, it is lawful for the district director to make collection by levy on the taxpayer's property. See section 6331 of the Code. No suit for the purpose of restraining the assessment or collection of an internal revenue tax may be maintained in any court, except to restrain the assessment or collection of income, estate, or gift taxes during the period within which the assessment or collection of deficiencies in such taxes is prohibited. See section 7421 of the Code. Property taken under authority of any revenue law of the United States is irrepleviable. 28 U.S.C. 2463.

(3) *Liens.* The United States' claim for taxes is a lien on the taxpayer's property at the time of assessment. Such lien is not valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice has been filed by the district director. Despite such filing, the lien is not valid with respect to certain securities as against any purchaser of such security who, at the time of purchase, did not have actual notice or knowledge of the existence of such lien and as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien. Certain motor vehicle purchases are similarly protected. Even though a notice of lien has been filed, certain other categories are afforded additional protection. These categories are: Retail purchases, casual sales, possessory liens, real property taxes and property assessments, small repairs and improvements, attorneys' liens, certain insurance contracts and passbook loans. A valid lien generally continues until the liability is satisfied, becomes unenforceable by reason of lapse of time or is discharged in bankruptcy. A certificate of release of lien may be issued upon the taxpayer's furnishing proper bond in lieu of the lien, or when the liability is satisfied, becomes unenforceable by reason of lapse of time or discharged in bankruptcy. The Code also contains additional provisions with respect to the discharge of specific property from the effect of the lien. Also, under certain conditions, a lien may be subordinated. The Code also contains additional provisions with respect to liens in the case of estate and gift taxes. For the specific rules with respect to liens, see subchapter C of chapter 64 of the Code and the regulations thereunder.

(4) *Penalties.* In the case of failure to file a return within the prescribed time, a certain percentage of the amount of tax is, pursuant to statute, added to the tax unless the failure to file the return within the prescribed time is shown to the satisfaction of the district director or the director of the regional service center to be due to reasonable cause and not neglect. Civil penalties are also imposed for fraudulent returns; in the case of income and gift taxes, for intentional disregard of rules and regulations or negligence; and additions to the tax are imposed for the failure to comply with the requirements of law with respect to the estimated income tax. See chapter 68 of the Code. A 50 percent penalty, in addition to the personal liability incurred, is imposed upon any person who fails or refuses without reasonable cause to honor a levy. Civil penalties may also be imposed for failure to pay the tax on liquors, cigars, cigarettes, and cigarette papers and tubes within the time prescribed. See chapters 51 and 52 of the Code. Criminal penalties are imposed for willful failure to make returns, keep records, supply information, etc. See chapter 75 of the Code.

(5) *Informants' rewards.* Payments to informers are authorized for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws. See section 7623 of the Code and the regulations thereunder. Claims for rewards should be made on Form 211. Relevant facts should be stated on the form, which after execution should be forwarded to the district director of internal revenue for the district in which the informer resides, or to the Commissioner of Internal Revenue, Washington, D.C. 20224.

§ 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(a) *Processing of returns.* When the returns are filed in the office of the district director of internal revenue or the office of the director of a regional service center, they are checked first for form, execution, and mathematical accuracy. Mathematical errors are corrected and a correction notice of any such error is sent to the taxpayer. Notice and demand is made for the payment of any additional tax so resulting, or refund is made of any overpayment. All returns are then sorted according to such classifications and subclassifications as are prescribed by the uniform management directive of the Commissioner. The purpose of these classifications is to facilitate prompt processing of returns showing refunds due and returns received with insufficient or no remittance, the selection of refunds for audit, and the compilation of income and other statistics.

(b) *Examination of returns*—(1) *General.* The original examination of income, profits, estate, gift, excise, and employment tax returns is a primary function of internal revenue agents in the Audit Division of the office of each district director of internal revenue. Such internal revenue agents are organized in groups, each of which is under the immediate supervision of a group supervisor designated by the district director. Revenue agents (and such other officers or employees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of audit. These are commonly called "office audit" and "field audit". During the audit of a return a taxpayer may be represented before the examining officer by an attorney, certified public accountant, or other representative. See Subpart E of this part for conference and practice requirements.

(2) *Office audit.* Certain returns are examined by office audit. These are returns susceptible to office audit techniques and include certain business returns in addition to the full range of nonbusiness individual income tax returns. Office audits are conducted either by correspondence or by office interview. The method employed normally depends upon the complexity of the items questioned. When an examination can be conducted by either method, the convenience of the taxpayer generally will be the principal consideration. In a correspondence audit, the taxpayer is asked to supply explanations or supporting evidence by mail. In an office interview audit the taxpayer is asked to come to the district director's office for a personal interview and to bring certain records with him in support of his return. During the audit the taxpayer has the right, of course, to bring to the attention of the examining officer any amounts included in his return which are not taxable or any deductions which he failed to claim on his return. If it develops that a field audit is necessary, an appropriate transfer will be made.

(3) *Field audit.* Certain returns are examined by field audit which involves an examination by an internal revenue agent of the taxpayer's books and records on the taxpayer's premises. The revenue agent will check the entire return filed by the taxpayer and will examine all books, papers, records, and memoranda dealing with matters required to be included in the return. If the return presents an engineering or appraisal problem (e.g., depreciation or depletion deductions, gains or losses upon the sale or exchange of property, or losses on account of abandonment, exhaustion, or obsolescence), it may be investigated by an engineer agent who makes a separate report.

(4) *Conclusion of audit.* At the conclusion of an office or field audit, the taxpayer is given an opportunity to agree with the findings of the examining officer. If the taxpayer does not agree, the examining officer will inform the taxpayer of his appeal rights. See paragraph (c) of this section for district conference procedure. If the taxpayer does agree with the proposed changes, the examining officer will invite him to execute either Form 870 or another appropriate agreement form. When the

taxpayer agrees with the proposed changes but does not offer to pay any deficiency or additional tax which may be due, the examining officer will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, or gifts taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment. Even though the taxpayer signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a waiver may still claim a refund of any part of the deficiency assessed against him and paid by him, or any part of the tax originally assessed and paid by him. The taxpayer's acceptance of an agreed overassessment does not prevent his filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.

(5) *Technical advice from the National Office*—(i) *Definition and nature of technical advice.* (*a*) As used in this subparagraph, "technical advice" means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination or consideration of a taxpayer's return or claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent positions in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

(*b*) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

(*c*) If a district director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and he requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice and the procedures set out in this subparagraph will be followed. (For procedures relating to a request for a ruling, see § 601.201.)

(*d*) The provisions of this subparagraph apply only to a case under the jurisdiction of a district director. They do not apply to a case under the jurisdiction of the Alcohol and Tobacco Tax Division or of the Appellate Division.

(*e*) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles or policies for the uniform interpretation and application of substantive tax laws other than those which are under the jurisdiction of the Alcohol and Tobacco Tax Division. This authority has been largely redelegated to subordinate officials.

(ii) *Areas in which technical advice may be requested.* (*a*) District directors may request technical advice or assistance on any technical or procedural question which develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(*b*) District directors are encouraged to request technical advice on any technical or procedural question arising in connection with any case of the type described in subdivision (i) of this subparagraph, at any stage of the proceedings in the district office, which cannot be resolved on the basis of law, regulations, or a clearly applicable Revenue Ruling or other precedent issued by the National Office.

(iii) *Requesting technical advice.* (*a*) It is the responsibility of the district office to determine whether technical advice is to be requested on any issue before that office. However, during the course of an examination or a conference in a district office, a taxpayer or his representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reasons for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the examining officer or conferee is of the opinion that the circumstances do not warrant referral of the case to the National Office, he will so advise the taxpayer.

(*b*) The taxpayer may appeal the decision of the examining officer or conferee not to request technical advice by submitting to that official, within 10 days (or such longer period as may be agreed upon), a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice.

(*c*) The examining officer or conferee will submit the statement of the taxpayer through channels to the Chief, Audit Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Audit Division, will determine, on the basis of the statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Audit Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer may not appeal the decision of the Chief, Audit Division, not to request technical advice from the National Office. However, he will have 15 days in which to notify the Chief, Audit Division, whether he agrees with the proposed denial. If he does not agree, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements will be submitted to the National Office, Attention: Director, Audit Division, for review. After review in the National Office, the district office will be notified as to whether the proposed denial is approved or disapproved.

(*d*) While the matter is being reviewed in the National Office, the district office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(*e*) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (*f*) of this subdivision. If the examining officer or the conferee initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice submitted by the district director should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(*f*) The taxpayer will be given 10 days (or such longer period as may be agreed upon) in which to indicate in writing the extent, if any, to which he may not be in complete agreement with the statement of facts and specific questions presented to him by the district office. Every effort should be made to reach agreement as to the facts and the specific point at issue. If agreement cannot be reached, the taxpayer may submit a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice.

(*g*) If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are

not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

(h) If the taxpayer has not already done so, he may submit a statement explaining his position on the issues, citing precedents which he believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(i) At the time the taxpayer is informed that the matter is being referred to the National Office, he will also be informed of his right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether he desires such a conference.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of taxpayer, advising taxpayers of the referral of issues, and the granting of conferences in the National Office, are not applicable to matters primarily of internal concern or in instances where it would be prejudicial to the interests of the Internal Revenue Service (as for example in cases involving fraud or jeopardy assessments).

(iv) *Preparation of technical advice memorandum by the National Office.* (a) Immediately upon receipt in the National Office, the technical assistant to whom the case is assigned will analyze the file to ascertain whether it meets all requirements of subdivision (iii) of this subparagraph. If the case is not complete, appropriate steps will be taken to complete the file.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (vi) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the district director and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the "Technical Memorandum") will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical memorandum to the taxpayer, upon his request, after it has been adopted by the district director. See (c) of this subdivision. However, where no definitive answer is given to the specific question presented, where the factual submission is such as to indicate that the issue should be decided by the district office, or where it would not be in the interest of wise administration of the tax laws, a copy of the technical memorandum will not be furnished the taxpayer. The National Office will specifically advise the district director in those cases where it is determined that a copy of the technical memorandum is not to be made available to the taxpayer.

(v) *Action on technical advice in district offices.* (a) Upon adoption of the technical advice by a district director, the district office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum. Except as provided in (b) of this subdivision, a copy of the technical memorandum will be furnished to the taxpayer, upon his request, for his information as to the position of the Service on the issue.

(b) In those cases in which the National Office advises the district director that he should not furnish a copy of the technical memorandum to the taxpayer, the district director will so inform the taxpayer, if he requests such a copy.

(vi) *Conference in the National Office.* (a) If, after a comprehensive study of the case file, it appears that advice which is adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (a) through (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division in the office of the Assistant Commissioner (Technical) and will usually be attended by a person who has authority to act for the branch chief. (See § 601.201(a)(2) for the divisions involved.) If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no "right" of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of consideration, in the National Office, of a position proposed by a branch, it may appear that the position of the Service will involve a reversal of the position proposed by the branch with a result that will be less favorable to the taxpayer or it may appear that an adverse position proposed by a branch will be sustained and become the position of the Service, but on a new or different issue or on substantially different grounds than those on which the branch turned the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of responsible National Office personnel, such need arises. All additional conferences of the type discussed in this subdivision are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, for addition to the case file, a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing. This additional record should be addressed to the National Office, but it should be sent to the appropriate district director who will forward it for association with the case file. The district director may verify the additional facts and data presented and comment upon it, to the extent he deems it appropriate, when he forwards it to the National Office.

(e) A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the appropriate division in the office of the Assistant Commissioner (Technical). (See § 601.201(a)(2) for the divisions involved.)

(vii) *Effect of technical advice.* (a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting district officials in the examination and closing of the case involved.

(b) A technical memorandum given a taxpayer will, in general, be afforded the same effect as a ruling to the taxpayer on a closed and completed transaction. In this connection see paragraph (1) of § 601.201. Since technical advice, in connection with cases of the type described in subdivision (i)(a) of this subparagraph will always be issued with respect to a closed transaction, the taxpayer may not expect a modification or revocation of the position stated in the technical memorandum to be applied nonretroactively, except under circumstances of the type described in paragraph (1) (7) and (8) of § 601.201, relating to continuing transactions.

(c) A district director may raise an issue in any taxable period, even though he may have asked for and been furnished, technical advice with regard to the same or a similar issue in any other taxable period.

(c) *District conference procedure*—(1) *Office audit.* (i) In a correspondence audit the taxpayer is informed of the examining officer's proposed findings by

a form letter. He is asked to sign and return an agreement if he accepts the findings. The letter also informs the taxpayer of several courses of appeal available to him, including a district conference and consideration of his case by the regional Appellate Division. A conference in the district director's office will be granted the taxpayer upon request without submission of a written protest. If no agreement is reached at the conference, the taxpayer will be furnished a report of the findings and a 30-day letter describing his further appeal rights.

(ii) In an office interview audit the taxpayer will usually be informed of the examining officer's findings at the interview. If no agreement is reached at the conference, the taxpayer is given an opportunity to request a district conference at the end of the interview or is invited in a 15-day letter to arrange for such a conference. The balance of the procedure in a correspondence audit is also applicable in an office interview audit.

(2) *Field audit.* (i) If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed by the examining officer, a complete examination report will be prepared fully explaining all proposed adjustments. Before the report or any invitation to a district Audit Division conference is sent to the taxpayer, the case file will be submitted to the district Review Staff for a thorough technical and procedural review. Following such review, the taxpayer will receive a copy of the examination report under cover of a transmittal letter (30-day letter) providing him with a detailed explanation of the available appeal procedure and requesting the taxpayer to inform the district director of his choice of action.

(ii) If the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed $1,000 for any taxable year, the taxpayer will be granted a district Audit Division conference on request. A written protest is not required.

(iii) If the amount of proposed additional tax, proposed overassessment, or claimed refund exceeds $1,000 for any taxable year, the taxpayer, on request will be granted a district Audit Division conference, provided a written protest is filed setting forth the facts, law, and arguments upon which the taxpayer relies.

(iv) If the issues involved are such that there appears to be little possibility of disposing of them in a district Audit Division conference, the taxpayer will be encouraged to bypass the district conference in favor of prompt consideration of his case by the regional Appellate Division. In such a case, unless the taxpayer expressly requests a district conference, the taxpayer's protest and case file, after preliminary screening by the Chief, Conference Staff, will be forwarded to the regional Appellate Division.

(v) Ordinarily, the examining officer will not attend the district Audit Division conferences.

(vi) Changes made by the Conference Staff in the proposals set forth in the examining officer's examination report will be reflected in a Conference Audit Statement which will be forwarded to the taxpayer to inform him of changes made and to serve as a supplement to the examination report.

(vii) The determination of the Conference Staff will not be submitted to the district Review Staff for review.

(3) *Scope of district conference procedure.* The conference procedure described in this paragraph is applicable in the determination of any liability in respect of income, profits, estate, gift, excise, or employment taxes. This procedure, however, is not applicable in the determination of liability for any excise tax imposed by subtitle E of the Internal Revenue Code (relating to alcohol, tobacco, machineguns, and certain other firearms), or by subchapter D of chapter 78 (relating to certain import taxes) insofar as it relates to alcohol and tobacco. The procedure described in this paragraph does not apply in any case where criminal prosecution is under consideration, or in any case in which, in the discretion of the district director of internal revenue, the Government's interest would be prejudiced thereby. Nor does this procedure preclude the taking of appropriate action where the assessment or collection of the tax is in jeopardy. See paragraph (h) of this section.

(4) *Rules governing district conferences.* The objective of the district conference procedure is to give taxpayers a greater oportunity to reach an early agreement with respect to disputed items arising from office and field audits. If the taxpayer is represented at a district conference, see the conference and practice requirements of Subpart E. In conduct of conferences, it is the duty of the conferee (i) to conduct the conference in acocrdance with the objectives of the conference procedure, (ii) to provide the taxpayer a fair and courteous hearing at which the taxpayer may discuss the issues, (iii) to make certain that all pertinent facts are included in the record and are considered in arriving at the proposed recommnedation, (iv) to make certain that the pertinent provisions of the Internal Revenue Code are applied in arriving at the proposed recommendation and that the proposed recommendation is in accord with the interpretations of the Internal Revenue Service as expressed in regulations and rulings, and (v) to explain fully to the taxpayer the conclusions reached and the reasons therefor. If an agreement with the taxpayer is reached at the conference, the taxpayer will be requested to execute Form 870 or another appropriate agreement form. Any deficiency in tax or additional tax proposed will then be assessed, or any overpayment will be credited or refunded.

(5) *Settlement authority.* The authority of the Chief, Conference Staff, may be extended to include the settlement of selected issues on a basis reflecting an evaluation of litigating hazards, provided a substantially identical issue has been previously so disposed of by a regional Appellate Division. This procedure applies only if the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed $1,000 for any year.

(d) *Thirty-day letters and protests.* (1) *General.* The report of the examining officer, as approved after review, recommends one of four determinations:

(i) Acceptance of the return as filed and closing of the case;

(ii) Assertion of a given deficiency or additional tax;

(iii) Allowance of a given overassessment, with or without a claim for refund, credit, or abatement;

(iv) Denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit.

In an unagreed case, the district director sends to the taxpayer a preliminary or "30-day letter" if any one of the last three determinations is made (except a full allowance of a claim in respect of any tax). The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examining officer's report explaining the basis of the proposed determination. It suggests to the taxpayer that if he concurs in the recommendation, he indicate his agreement by executing and returning a waiver or acceptance. The preliminary letter also advises the taxpayer that if he disagrees with the proposed determination he may file a written protest (see §§ 601.103(c)(1) and 601.509) within 30 days (60 days if taxpayer is outside of the country) from the date of the letter stating the grounds for his disagreement, and he may have a conference in the Appellate Division of the region if requested and if that Division has jurisdiction (see § 601.106(a)(3). If the taxpayer does not respond to the letter within 30 days a statutory notice of deficiency will be issued or other appropriate action taken, such as the issuance of a notice of adjustment, the denial of a claim in income, profits, estate, and gift tax cases, or an appropriate adjustment of the tax liability or denial of a claim in excise and employment tax cases.

(2) *Protests.* (i) No written protest is required to obtain a district Audit Division conference in an office audit case. However, in a field audit case a written protest is required to obtain a district conference if the total amount of proposed additional tax, proposed overassessment or claimed refund exceeds $1,000 for any taxable year. A written protest is required in every case in which the taxpayer requests Appellate Division consideration. Instructions for the preparation of protests are sent with the preliminary letter.

(ii) Protests against proposed determinations of excise taxes imposed by chapter 35 of the Code (relating to wagering), and subchapter A of chapter 39 (relating to narcotic drugs and marihuana), which are excluded from Appellate Division jurisdiction, are reviewed in the Audit Division of the district director's office. In the event that an agree-

ment with the taxpayer is reached, he will be requested to execute an appropriate agreement form. If consideration of the protest does not result in closing the case on an agreed basis, the taxpayer is notified of the conclusions reached. Any additional tax will then be assessed or any overpayment will be credited or refunded.

(e) *Claims for refund or credit.* (1) After payment of the tax a taxpayer may (unless he has executed an agreement to the contrary) contest the assessment by filing a claim for refund or credit for all or any part of the amount paid, except as provided in section 6512 of the Code with respect to certain taxes determined by the Tax Court, the decision of which has become final. A claim for refund or credit is made on Form 843, which is obtainable from the district director. Generally, the claim, together with appropriate supporting evidence, must be filed in the office of the district director for the district in which the tax was paid. A claim for refund or credit must be filed within the applicable statutory period of limitation. In the case of individuals a properly executed income tax return may, if the taxpayer elects, operate as a claim for refund or credit of the amount of the overpayment disclosed by such return. If an individual income taxpayer files Form 1040A as a return and properly elects to have the tax computed by the district director or the director of the regional service center, such return operates automatically as a claim for refund for the amount of any overpayment disclosed by such computation.

(2) Generally, claims for refund or credit are investigated and considered by the Audit Division of the district director's office. The procedure applicable to the determination of correct tax liability upon the basis of a claim for refund or credit filed by the taxpayer is substantially the same as the procedure applicable to the original determination of tax liability upon the basis of a return filed by a taxpayer. See § 601.108 for procedure for review of proposed overpayment exceeding $100,000 of income, estate, and gift taxes.

(3) As to suits for refund, see § 601.103 (c).

(4) A special procedure is applicable to claims for excess profits tax relief (including credit or refund) under section 722 of the Internal Revenue Code of 1939. See § 601.107 for a description of the applicable procedure.

(5) There is also a special procedure applicable to applications for tentative carryback adjustments under section 6411 of the Code (consult Forms 1045 and 1139).

(6) For special procedure applicable to claims for payment or credit in respect of gasoline used on a farm for farming purposes, for certain nonhighway purposes, or by local transit systems, see sections 39, 6420, and 6421 of the Code and § 601.402(c)(3). For special procedure applicable to claims for payment or credit in respect of lubricating oil used otherwise than in a highway motor vehicle, see sections 39 and 6424 of the Code and § 601.402(c)(3).

(f) *Interruption of audit and conference procedure.* The process of field audits and the course of the administrative procedure described in this section and in the following section may be interrupted in some cases by the imminent expiration of the statutory period of limitations for assessment of the tax. In this event the district director of internal revenue or other appropriate officer concerned must dispatch a statutory notice of deficiency (income, profits, estate or gift tax cases) or take other appropriate action with a view to assessment, even though the audit or conferences may then be going forward. In order to avoid interruption of the established procedure (except in estate tax cases), it is suggested to the taxpayer that he execute an agreement on Form 872 (or such other form as may be prescribed for this purpose). To be effective this agreement must be entered into by the taxpayer and the district director or other appropriate officer concerned prior to the expiration of the time otherwise provided for assessment. Such a consent extends the period for assessment of any deficiency, or any additional or delinquent tax, and extends the period during which the taxpayer may claim a refund or credit to a date 6 months after the agreed time of extension of the assessment period.

(g) *Fraud.* The procedure described in this section does not apply in any case in which criminal prosecution is under consideration. Such procedure does obtain, however, in cases involving the assertion of the civil fraud penalty after the criminal aspects of the case have been closed.

(h) *Jeopardy assessments.* If the district director believes that the assessment or collection of a tax will be jeopardized by delay, he is authorized and required to assess the tax immediately, together with interest and other additional amounts provided by law, notwithstanding the restrictions on assessment or collection of income, estate and gift taxes contained in section 6213(a) of the Code. A jeopardy assessment does not deprive the taxpayer of his right to file a petition with the Tax Court. Collection of a tax in jeopardy may be immediately enforced by the district director upon notice and demand. To stay collection the taxpayer may file with the district director a bond equal to the amount for which the stay is desired.

(i) *Regional post review of examined cases.* Regional commissioners review samples of the examined cases closed in their district offices to assure uniformity throughout their districts in the application of the provisions of the Code, regulations, and rulings, as well as the general policies of the Service. The Audit Division of the National Office in a similar manner reviews samples of the examined cases closed in the Office of International Operations. In certain circumstances, such as where substantial errors are found or where there is evidence of fraud or collusion, the regional commissioner has authority to reopen the case. When a reexamination of books and records is necessary, Form 2756, notice of reexamination, will be delivered to the taxpayer at the time the reexamination is begun.

§ 601.106 Appellate functions.

(a) *General.* (1) There is provided in each region an Appellate Division with office facilities within the region. Unless they otherwise specify, taxpayers residing outside the territorial limits of the regional Appellate Divisions use the facilities of the Washington, D.C., branch office of the Appellate Division of the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appellate Division of each region authority to represent the regional commissioner in his exclusive and final authority for the determination of Federal income, profits, estate, or gift tax liability (whether before or after the issuance of a statutory notice of deficiency) and for the determination of employment or certain Federal excise tax liability in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region in which the taxpayer has protested the determination of liability made by that officer and no agreement has been reached. The Appellate Division has complete jurisdiction of every income, profits, estate, or gift tax case after the issuance of the statutory notice of deficiency, subject to the limitations provided in subparagraph (2) of this paragraph. If the statutory notice of deficiency was issued by a district director or the Director of International Operations, the Appellate Division may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court the Appellate Division continues to have exclusive jurisdiction of the case, subject to the provisions of subparagraph (2) of this paragraph. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appellate Division of the region authority to represent the regional commissioner in his exclusive authority to settle (i) all cases docketed in the Tax Court of the United States and designated for trial at any place within the territory comprising the region and (ii) all docketed cases originating in the office of any district director situated within the region or in which jurisdiction has been transferred to the region, which are designated for trial at Washington, D.C., unless the petitioner resides in and his books and records are located (or can be made available) in the region which includes Washington, D.C.

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court on and after the opening date of the session at which the case is calendared for trial, or of any pre-trial hearing of or report session thereon, otherwise referred to as "session" cases;

(ii) Make or approve a settlement in presession cases docketed in the Tax Court, except with the concurrence of regional counsel;

(iii) Eliminate the ad valorem fraud penalty in any income, profits, estate or gift tax case in which the penalty has been determined by the district office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of the Regional Counsel;

(iv) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of regional counsel; nor

(v) Modify any decision of the Excess Profits Tax Council with respect to any issue arising under section 722 of the Internal Revenue Code of 1939, except with the concurrence of the Director of the Appellate Division.

Authority to negotiate and make a settlement or concession in a case docketed in the Tax Court in a session status referred to in subdivision (i) of this subparagraph is delegated to the regional counsel.

(3) The authority vested in the Appellate Division does not extend to the determination of liability for any excise tax imposed by the following chapters of the Internal Revenue Code (and the corresponding provisions of the 1939 Code): chapter 35 (relating to wagering); subchapter A of chapter 39 (relating to narcotic drugs and marihuana); subtitle E (relating to alcohol, tobacco, machine guns and certain other firearms); and subchapter D of chapter 78 (relating to certain import taxes) insofar as it relates to alcohol and tobacco.

(b) *Initiation of proceedings before the Appellate Division.* In any case in which the district director has issued a preliminary or "30-day letter" and the taxpayer files a written protest (see paragraph (c)(1) of § 601.103 and § 601.509) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the regional office of the Appellate Division. Organization such as labor unions and trade associations which have been examined by the district director to determine the amounts expended by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as "taxpayers" for the purpose of this right of administrative appeal. Thus, upon filing a protest to the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the organization will be afforded full rights of administrative appeal to the Appellate Division of the region similar to those rights afforded to taxpayers generally. After review of any protest by the district director, the case and its administrative record are referred to the Appellate Division. No taxpayer is required to submit his case to the Appellate Division for consideration. Appeal is at the option of the taxpayer. A request for administrative appeal to the Appellate Division will not be denied because no district conference was held in the district director's office. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, the Appellate Division may take up the case for settlement and may grant the taxpayer a conference thereon. Except in unusual circumstances, however, no conference will be granted prior to the filing of a petition in the Tax Court for a redetermination of the deficiency proposed in the statutory notice.

(c) *Nature of proceedings before the Appellate Division.* Proceedings before the Appellate Division are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted in the form of affidavits, or declared to be true under the penalties of perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by the Appellate Division on a nondocketed case, the district director will be represented if he and the Appellate Division official having settlement authority deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, the Regional Counsel will be represented if he so desires.

(d) *Disposition and settlement of cases before the Appellate Division*—(1) *Cases not docketed in the Tax Court.* (i) If after consideration of the case by the Appellate Division of the region a satisfactory settlement of the issues is reached with the taxpayer, he will be requested to sign Form 870–AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement.

(ii) If after consideration of the case by the Appellate Division of the region it is determined that there is a deficiency in income, profits, estate, or gift tax, to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by the Appellate Division after consideration by the regional counsel of the memorandum recommending the issuance of such statutory notice. Officers of the Appellate Division having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court of the United States for a redetermination of the deficiency. In any other unagreed case, the case and its administrative file will be forwarded to the service center director or returned to the district director with directions to take such action with respect to the tax liability determined in the Appellate Division as may be appropriate, such as the issuance of a statutory notice of disallowance of a claim for refund or credit in whole or in part, the preparation of a notice of adjustment or other appropriate action, or the collection of any additional tax (excise and employment tax cases).

(2) *Cases docketed in the Tax Court.* (i) If the case under consideration in the Appellate Division is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in the Appellate Division is docketed in the Tax Court and the issues remain unsettled after consideration and conference in the Appellate Division, the case will be referred to the regional counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appellate Division and no recommendation for criminal prosecution is pending, the case will be referred by the regional counsel to the Appellate Division for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(*a*) The Appellate Division will arrange a conference for settlement purposes promptly after receipt of the file. Except in unusual circumstances, the regional counsel will be represented at the conference and will actively participate in it.

(*b*) If a settlement is agreed upon by the Appellate Division and the regional counsel as a result of a conference with the taxpayer, the stipulation of settle-

ment will be prepared and filed with the Tax Court without delay.

(c) If no settlement is reached at a conference with the taxpayer, the file will be returned promptly to the regional counsel for preparation for trial and the taxpayer will be so advised by appropriate letter by the Appellate Division.

(d) In the event of disagreement between the Appellate Division and the regional counsel as to the settlement of the case, any issue in the case, or with respect to the amount of a counter offer which should be made, efforts will be made to resolve the matter quickly. If agreement cannot be reached the case will promptly be referred in writing to the Chief Counsel for decision.

(e) During the period between receipt of the Tax Court's "Trial Status Order" (usually issued from 60 to 90 days in advance of the issuance of the trial calendar) and the receipt of the trial calendar (usually issued about 90 days in advance of the opening date of the trial calendar) the Appellate Division will conclude settlement negotiations on any case not previously settled or referred to the regional counsel.

(f) In order to enable the regional counsel to prepare the case for trial and stipulate the undisputed facts in any case on the trial calendar which has not been settled, the Appellate Division will ordinarily, upon receipt of the trial calendar, return to the regional counsel any file still in its possession in any case on the calendar. Concurrent with any such return of the file, the Appellate Division will advise the taxpayer by letter that, since settlement negotiations have not been productive, the case is being referred to the regional counsel for preparation for trial.

(g) Upon receipt of the trial calendar, the regional counsel will address an appropriate letter to the taxpayer in each case on the calendar which has not been settled, or where the file has been retained by the Appellate Division, or in which the parties are not then negotiating a stipulation of facts. This letter will arrange or suggest a conference at an early date for the purpose of stipulating facts, as required by Rule 31(b) of the Tax Court, to clarify and, if possible, limit the issues.

(h) Any request for conferences received after receipt of the trial calendar will be referred to the regional counsel.

(e) *Transfer and centralization of cases.* (1) If a case is docketed in the Tax Court of the United States and the place designated by the Court for trial is within one region, and such case originated in the office of a district director situated within another region, the Commissioner has the authority to confer all or any part of the jurisdiction, authority, and duties vested in the Appellate Division of the region in which the case originated upon the Appellate Division of the region within which the place designated for trial is located. Except in unusual cases, jurisdiction will not be transferred to the Appellate Division of the region which includes Washington, D.C., in any docketed case designated for trial at Washington, D.C., which did not originate within such region, unless the taxpayer currently resides within that region and can produce all required books and records there. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of another region within which the case has been designated for trial before the Tax Court.

(2) Should a regional commissioner determine that it would better serve the interests of the Government, he may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Applelate Division of the region, and provide for its disposition under his personal direction.

(f) *Conference and practice requirements.* Practice and conference procedure before the Appellate Division is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before the Appellate Division:

(1) *Rule I.* The Appellate Division conferee shall bear in mind that an exaction by the U.S. Government which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the United States Constitution. The conferee, in his conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be the duty of the conferee to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) *Rule II.* In recognition of the difference between abstract theory and practical administration, where substantial uncertainties exist either in law or in fact, or both, as to the correct application of the law to the whole record of a controversy, the Appellate Division will give serious consideration to an offer of settlement of the disput on a basis which fairly reflects the strength or weakness of the opposing views. However, no settlement will be countenanced based upon nuisance value of the case to either party.

(3) *Rule III.* Where the Appellate Division conferee recommends acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in the Appellate Division, the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appellate Division may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) *Rule IV.* Where the Appellate Division official having settlement authority and the district director deem it advisable, the district director may be represented at any Appellate Division conferences on a nondocketed case. This rule is also applicable to the Director of International Operations in the event his office issued the preliminary or "30-day letter".

(5) *Rule V.* In order to bring before the Appellate Division an unagreed income, estate, or gift tax case in prestatutory notice status, an unagreed employment or excise tax case, or an offer in compromise, the taxpayer or his representative must first file with the district director a written protest setting forth specifically the reasons for his refusal to accept the district director's findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement must be declared to be true under the penalties of perjury (see paragraph (c)(1) of § 601.103 and § 601.509). The protest and any new facts, law, or arguments presented therewith will be reviewed by the district director for the purpose of deciding whether further development or action is required prior to referring the case to the Appellate Division. Where the Appellate Division has an issue under consideration as a result of the filing of a protest or Tax Court petition, it may, with the concurrence of the taxpayer, assume jurisdiction in a related case without the necessity of an additional protest, after the district director has completed any necessary action. The Director, Appellate Division, may authorize the regional Appellate Division to accept jurisdiction (after any necessary action by the district director) in specified classes of cases without a written protest, provided a written request for Appellate Division consideration is submitted by or on behalf of each taxpayer.

(6) *Rule VI.* A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before the Appellate Division, at a conference in nondocketed status, without being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to the Appellate Division, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his consideration and comment.

(7) *Rule VII.* Where the taxpayer has had the benefit of a conference either before the office of the district director of internal revenue or before the Appellate Division, as the case may be, in the prestatutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appellate Division in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) *Rule VIII.* In any case docketed in the Tax Court of the United States on

which a conference is being conducted by the Appellate Division, the regional counsel will be invited to participate in the conference. In cases not docketed in the Tax Court of the United States on which a conference is being conducted by the Appellate Division, the regional counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) *Rule IX.* Prior to the receipt of the Tax Court trial calendar on which a docketed case is listed for trial, the taxpayer may request a conference for the purpose of reopening or resuming settlement negotiations before the Appellate Division. If the taxpayer requests reopening or resumption of settlement negotiations subsequent to the issuance of the trial calendar and prior to the opening date of the session of the Tax Court, the request for such a conference shall be referred to regional counsel. (See paragraph (d)(2)(iii)(*h*) of this section.)

(g) *Limitation on the jurisdiction and functions of the Appellate Division*—(1) *Overpayments of more than $100,000.* If the Appellate Division of a region determines in any case that there is an overpayment of income, war profits, excess profits, estate or gift tax, including penalties and interest, in excess of $100,000, such determination will be considered by the Joint Committee on Internal Revenue Taxation. See § 601.108.

(2) *Offers in compromise.* For jurisdiction of the Appellate Division with respect to offers in compromise of tax liabilities, see § 601.203.

(3) *Closing agreements.* For jurisdiction of the Appellate Division with respect to closing agreements under section 7121 of the code relating to any internal revenue tax liability, see § 601.202.

(4) *Bankruptcy and receivership.* For limitations on the authority and functions of the Appellate Division in bankruptcy and receivership cases, see § 601.109.

§ 601.107 Excess Profits Tax Council; appellate functions and procedures under section 722 of the Internal Revenue Code of 1939.

(a) *General.* (1) Subchapter E of chapter 2 of the Internal Revenue Code of 1939 imposed on corporations an excess profits tax based on their "adjusted excess profits net income" as defined in section 711 of such Code. This tax was effective as to taxable years beginning after December 31, 1939, and was repealed by the Revenue Act of 1945, with respect to taxable years beginning after December 31, 1945. Section 722 of the 1939 Code provides that, if the taxpayer, pursuant to certain rules and standards in such section, establishes that the tax computed under subchapter E is excessive and discriminatory, relief under limitations contained in section 722 will be granted. The appellate functions of the Excess Profits Tax Council, which is under technical supervision and administrative control of the Director of the Appellate Division, Washington, D.C., relate to the consideration and the determination of issues arising under section 722 of the 1939 Code.

(2) The rules bearing upon the procedure applicable with respect to section 722 of the 1939 Code are found in Regulations 109 (26 CFR, 1938 Ed., and Supps., Part 30) and Regulations 112 (26 CFR, 1938 Ed. and Supps., Part 35). There has also been published "Bulletin on Section 722 of the Internal Revenue Code", copies of which may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Practice and conference procedure before the Council is also governed by the requirements of Subpart E of this part.

(b) *Procedure.* (1) To secure excess profits tax relief under section 722 of the 1939 Code an application therefor must be filed within the applicable period of time prescribed by section 322 of such Code. The application is required to be filed in duplicate on Form 991, copies of which are obtainable at district directors' offices. The regulations promulgated under section 722 (see paragraph (a)(2) of this section) provide that an application must be filed for each year for which the benefits of section 722 are claimed and that only one section 722 application for any year may be filed. Such applications are required to be so framed as to adequately disclose the essential facts and issues involved.

(2) Applications for relief under section 722 are referred for investigation and consideration to section 722 field committees established at the offices of district directors of internal revenue. After completion of investigation and consideration of an application for relief by a section 722 field committee, the taxpayer is afforded opportunity for a conference for the consideration of the committee's findings. After field committee consideration and conference with the taxpayer, the recommendations of the field committee are certified to the Excess Profits Tax Council for review. In the event that the taxpayer and the field committee cannot reach an agreement on the application or where an agreement between the taxpayer and the field committee is not approved by the Council, the taxpayer will be afforded an adequate opportunity to have its case heard before the Council. The Director of the Appellate Division is authorized exclusively to exercise final authority in all issues under section 722 of the 1939 Code in cases not docketed in the Tax Court.

(3) Determinations of the Director, Appellate Division are subject to appeal to the Tax Court of the United States under the provisions of section 732 of the 1939 Code.

(4) With respect to all issues under section 722 of the 1939 Code docketed with the Tax Court, the Director of the Appellate Division represents the Commissioner in functions comparable to those delegated to the Regional Appellate Divisions in standard issue docketed cases. See § 601.106(d)(2).

§ 601.108 Review of overpayments exceeding $100,000.

(a) *General.* Section 6405(a) of the Code provides that no refund or credit of income, profits, estate, or gift taxes in excess of $100,000 may be made until 30 days after a report has been made to the Joint Committee on Internal Revenue Taxation. Taxpayers in cases requiring review by the Joint Committee are afforded the same district conference and appeal rights as other taxpayers. In general, these cases follow regular procedures, except for preparation of reports to and review by the Joint Committee.

(b) *Reports to Joint Committee.* In any case in which no protest is made to the Appellate Division and no petition docketed in the Tax Court, the report to the Joint Committee is prepared by a Joint Committee Coordinator, who is an Audit Division regional specialist. In cases in which such a protest has been made or such a petition docketed, the report to the Joint Committee is prepared by an Appellate Division conferee.

(c) *Procedure after report to Joint Committee.* After compliance with section 6405 of the Code, the case is processed for issuance of a certificate of overassessment, and payment or credit of any overpayment. If the final determination involves a rejection of a claimed overpayment in whole or in part, a statutory notice of disallowance will be sent by certified or registered mail to the taxpayer, except where the taxpayer has filed a written waiver of such notice of disallowance.

§ 601.109 Bankruptcy and receivership cases.

(a) *General.* (1) Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act or the appointment of a receiver for any taxpayer in any receivership proceeding before a court of the United States or of any State or Territory or of the District of Columbia, the assessment of any deficiency in income, profits, estate, or gift tax (together with all interests, additional amounts, or additions to the tax provided for by law) shall be made immediately. See section 6871 of the Code. In such cases the restrictions imposed by section 6213(a) of the Code upon assessments are not applicable. (In the case of an assignment for the benefit of creditors, the assessment will be made under section 6861, relating to jeopardy assessments. See § 601.105(h).) Cases in which immediate assessment will be made include those of taxpayers in receivership or in bankruptcy, agricultural composition, reorganization, arrangement, or wage earner proceedings under chapters I to VII, sections 75, 77, chapters X, XI, XII, and XIII of the Bankruptcy Act. The term "approval of a petition in any other proceeding under the Bankruptcy Act" includes the filing

of a petition under section 75 or chapters XI to XIII of the Bankruptcy Act with a court of competent jurisdiction. A fiduciary in any proceeding under the Bankruptcy Act (including a trustee, receiver, debtor in possession, or other person designated by the court as in control of the assets or affairs of a debtor) or a receiver in any receivership proceeding may be required, as provided in regulations prescribed under section 6036 of the Code, to give notice in writing to the district director of his qualification as such. Failure on the part of such fiduciary in a receivership proceeding or a proceeding under the Bankruptcy Act to give such notice, when required, results in the suspension of the running of the period of limitations on the making of assessments from the date of the institution of the proceeding to the date upon which such notice is received by the district director, and for an additional 30 days thereafter. However, in no case where the required notice is not given shall the suspension of the running of the period of limitations on assessment exceed 2 years. See section 6872 of the Code.

(2) Except in cases where departmental instructions direct otherwise, the district director will, promptly after ascertaining the existence of any outstanding Federal tax liability against a taxpayer in any proceeding under the Bankruptcy Act or receivership proceeding, and in any event within the time limited by appropriate provisions of law or the appropriate orders of the court in which such proceeding is pending, file a proof of claim covering such liability in the court in which the proceeding is pending. Such a claim may be filed regardless of whether the unpaid taxes involved have been assessed. Whenever an immediate assessment is made of any income, estate, or gift tax after the commencement of a proceeding, the district director will send to the taxpayer notice and demand for payment together with a copy of such claim.

(b) *Procedure in office of district director.* (1) While the district director is required by section 6871 of the Code to make immediate assessment of any deficiency in income, estate, or gift taxes, such assessment is not made as a jeopardy assessment (see paragraph (h) of § 601.105), and the provisions of section 6861 of the Code do not apply to any assessment made under section 6871. Therefore, the notice of deficiency provided for in section 6861 (b) will not be mailed to the taxpayer. Nevertheless, a letter (Form 7900) will be prepared and addressed in the name of the taxpayer, immediately followed by the name of the trustee, receiver, debtor in possession, or other person designated to be in control of the assets or affairs of the debtor by the court in which the bankruptcy or receivership proceeding is pending. Such letter will state how the deficiency was computed, advise that within 30 days a written protest under penalties of perjury may be filed with the district director showing wherein the deficiency is claimed to be incorrect, and advise that upon request a district conference will be granted with respect to such deficiency. If, after protest is filed and a district conference is held, adjustment appears necessary in the deficiency, appropriate action will be taken. Except where the interests of the Government require otherwise, Form 7900 letters are issued by the office of the district director. If at the time of the adjudication of bankruptcy in a liquidating proceeding, the approval of a petition in any other proceeding under the Bankruptcy Act, or appointment of a receiver, a case was pending before the Tax Court, the prescribed Form 7900 letter will not advise the addressee of any right to request a conference in the office of the district director. Protests must be filed in triplicate. The district conference procedures described in paragraph (c) of § 601.105 are generally applicable to a district conference held after the issuance of a Form 7900 letter.

(2) The immediate assessment required by section 6871 of the Code represents an exception to the usual restrictions on the assessment of Federal income, estate, and gift taxes. Since there are no restrictions on the assessment of Federal excise or employment taxes, immediate assessment of such taxes will be made in any case where section 6871 of the Code would require immediate assessment of income, estate, or gift taxes.

(3) If after such assessment a claim for abatement is filed and such claim is accompanied by a request in writing for a conference, a district conference in the office of the district director of internal revenue will be granted. Ordinarily, only one conference will be held, unless it develops that additional information can be furnished which has a material bearing upon the tax liability, in which event the conference will be continued to a later date.

(c) *Procedure before the Appellate Division restricted.* (1) Except as provided in subparagraph (2) of this paragraph, a case involving an immediate assessment under section 6871 of the Code or an assessment of excise or employment taxes will not be referred by a district director to a field office of the Appellate Division after (i) the adjudication of bankruptcy of any taxpayer in any liquidating proceeding; (ii) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act; or (iii) the appointment of any receiver. Therefore, the taxpayer, or the trustee, receiver, or debtor in possession or other person designated by the court as in control of the assets or affairs of the debtor, may not request consideration of the case by the Appellate Division. If at the time of the adjudication of bankruptcy, or the filing of the approval of a petition or the appointment of a receiver, an income, estate, or gift tax case is under consideration by a field office of the Appellate Division, whether before or after issuance of a statutory notice of deficiency, the case will be returned to the district director for assessment (if not previously made), and for issuance of the Form 7900 letter, and filing proof of claim in the proceeding. Excise and employment tax cases pending in the Appellate Division at such time will likewise be returned to the district director for assessment (if not previously made) and for filing proof of claim in the proceeding. Thereafter, such cases will not be referred by the district director to the Appellate Division except as provided in subparagraph (2) of this paragraph. A petition for redetermination of a deficiency may not be filed in the Tax Court after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver. See section 6871(b) of the Code. However, the Tax Court is not deprived of jurisdiction where the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver, occurred after the filing of the petition. In such a case, the jurisdiction of the bankruptcy or receivership court and the Tax Court is concurrent.

(2) If a petition for redetermination of the deficiency has been filed in the Tax Court prior to the adjudication of bankruptcy or the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, the taxpayer in any other bankruptcy proceeding, or the appointment of a receiver, the proceeding may be prosecuted in the Tax Court. All such docketed cases will be referred to the Appellate Division promptly after issuance of the Form 7900 letter. If a case not docketed in the Tax Court is under Appellate Division consideration at the time that circumstances require the issuance of a Form 7900 letter, that Division may request return of the file in order to continue its consideration and arrive at a determination.

(d) *Priority of claims.* Under section 3466 of the Revised Statutes and section 3467 of the Revised Statutes, as amended, and section 64 of the Bankruptcy Act, taxes are entitled to the priority over other claims therein stated and the trustee, receiver, debtor in possession or other person designated as in control of the assets or affairs of the debtor by the court in which the bankruptcy or receivership proceeding is pending may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Sections 75 (1), 77 (e), 199, 337 (2), 455 and 659 (6) of the Bankruptcy Act also contain provisions with respect to the rights of the United States relative to priority of payment. Bankruptcy courts have jurisdiction under the Bankruptcy Act to determine all dis-

putes regarding the amount and the validity of tax claims against a bankrupt or a debtor in a proceeding under the Bankruptcy Act. A bankruptcy or receivership proceeding or an assignment for the benefit of creditors does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under section 77 or chapter X of the Bankruptcy Act; and any portion of a claim of the United States for taxes which has been allowed by the court in which the bankruptcy or receivership is pending and which remains unsatisfied after the termination of the proceeding shall be collected with interest in accordance with law.

Subpart B—Rulings and Other Specific Matters

§ 601.201 Rulings and determination letters.

(a) *General practice and definitions.* (1) It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax effects of their acts or transactions. One of the functions of the National Office of the Internal Revenue Service is to issue rulings in such matters. District directors apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayers' inquiries or request. For purposes of this section any reference to district director or district office also includes, where appropriate, the office of the Director, Office of International Operations.

(2) A "ruling" is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts. Rulings are issued only by the National Office. The issuance of rulings is under the general supervision of the Assistant Commissioner (Technical) and has been largely redelegated to the Directors of three divisions: Director, Income Tax Division; Director, Exempt Organization and Pension Trust Division; and Director, Miscellaneous Tax Division.

(3) A "determination letter" is a written statement issued by a district director in response to an inquiry by an individual or an organization, which applies to the particular facts involved, the principles, and precedents previously announced by the National Office. Determination letters are issued only where a determination can be made on the basis of clearly established rules as set forth in the statutes, Treasury decisions or regulations, or by rulings, opinions, or court decisions published in the Internal Revenue Bulletin. Where such a determination cannot be made, such as where the question presented involves a novel issue, or the matter is excluded from the jurisdiction of a district director by the provisions of paragraph (c) of this section, a determination letter will not be issued.

(4) An "information letter" is a statement issued either by the National Office or by a district director which does no more than call attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter may be issued when the nature of the request from the individual or the organization suggests that it is seeking general information, or where the request does not meet all the requirements of paragraph (e) of this section, and it is believed that such general information will assist the individual or organization.

(5) A "Revenue Ruling" is an official interpretation by the Service which has been published in the Internal Revenue Bulletin. Revenue Rulings are issued only by the National Office and are published for the information and guidance of taxpayers, Internal Revenue Service officials, and others concerned.

(6) A "closing agreement," as the term is used herein, is an agreement between the Commissioner of Internal Revenue or his delegate and a taxpayer with respect to a specific issue or issues entered into pursuant to the authority contained in section 7121 of the Internal Revenue Code. Such a closing agreement is based on a ruling which has been signed by the Commissioner or his delegate and in which it is indicated that a closing agreement will be entered into on the basis of the holding of the ruling letter. Closing agreements are final and conclusive except upon a showing of fraud, malfeasance, or misrepresentation of material fact. They may be entered into where it is advantageous to have the matter permanently and conclusively closed, or where a taxpayer can show good and sufficient reasons for an agreement and the Government will sustain no disadvantage by its consummation. See § 601.202 for closing agreements of the type not covered in this section.

(b) *Rulings issued by the National Office.* (1) In income and gift tax matters, the National Office issues rulings on prospective transactions and on completed transactions before the return is filed. However, rulings will not ordinarily be issued if the identical issue is also involved in a return of the taxpayer already filed for a taxable period with respect to which the statutory period of limitations on assessment or refund of tax has not expired. The National Office issues rulings involving qualifications of plans under section 401 of the Code or the exempt status of organizations under section 501 or 521 of the Code, only to the extent provided in paragraphs (o) and (n), respectively, of this section. The National Office will not issue rulings with respect to the replacement of involuntarily converted property, even though replacement has not been made, if the taxpayer has filed a return for the taxable year in which the property was converted. However, see paragraph (c) (6) of this section as to the authority of district directors to issue determination letters in this connection.

(2) In estate tax matters, the National Office issues rulings with respect to transactions affecting the estate tax of a decedent before the estate tax return is filed. It will not rule with respect to such matters after the estate tax return has been filed, nor will it rule on matters relating to the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters, the National Office issues rulings with respect to prospective transactions and to completed transactions either before or after the return is filed. However, the National Office will not ordinarily rule with respect to an issue, whether related to a prospective or a completed transaction, if it knows or has reason to believe that the same or an identical issue is before any field office (or any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(4) Ordinarily, the Service will not issue rulings to business, trade, or industrial associations or to other similar groups relating to the application of the tax laws to members of the group. However, rulings may be issued to such groups or associations relating to their own tax status or liability provided such tax status or liability is not an issue before any field office (or any branch office of the Appellate Division) in connection with an examination or audit of the liability of the same taxpayer for the same or a prior period.

(c) *Determination letters issued by district directors.* (1) In income and gift tax matters, district directors issue determination letters in response to taxpayers' requests submitted to their offices involving completed transactions which affect returns required to be filed in their districts, but only if the question presented is covered specifically by statute, Treasury decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. A determination letter will not usually be issued with respect to a question which involves a return to be filed by the taxpayer if the identical question is involved in a return or returns already filed by the taxpayer. District directors may not issue determination letters as to the tax consequence of prospective or proposed transactions, except as provided in subparagraphs (5) and (6) of this paragraph.

(2) In estate tax matters, district directors issue determination letters in response to requests submitted to their offices affecting the estate tax returns of decedents which will be filed in their districts, but only if the questions presented are specifically covered by statute, Treasury decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. District directors may not issue determination letters relating to matters involving the application of the estate tax to property or the estate of a living person.

(3) In employment and excise tax matters, district directors issue deter-

mination letters in response to requests from taxpayers who have filed or who are required to file returns in their districts, but only if the questions presented are covered specifically by statute, Treasury decision or regulation, or specifically by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Because of the impact of these taxes upon the business operation of the taxpayer and because of special problems of administration both to the Service and to the taxpayer, district directors may take appropriate action in regard to such requests, whether they relate to completed or prospective transactions or returns previously filed or to be filed.

(4) Notwithstanding the provisions of subparagraphs (1), (2), (3), (5), and (6) of this paragraph, a district director may not issue a determination letter in response to an inquiry, although the inquiry presents a question covered specifically by statute, regulations, rulings, etc., published in the Internal Revenue Bulletin, where (i) it appears that the taxpayer has directed a similar inquiry to the National Office, (ii) the identical issue involving the same taxpayer is pending in a case before the Appellate Division, (iii) the determination letter is requested by an industry, trade association, or similar group, or (iv) the request involves an industry-wide problem. Under no circumstances will a district director issue a determination letter unless it is clearly indicated that the inquiry is with regard to a taxpayer or taxpayers who have filed or are required to file returns in the district under his supervision. Nothwithstanding the provisions of subparagraph (3) of this paragraph, a district director may not issue a determination letter on an employment tax question when the specific question involved has been or is being considered by the national office of the Social Security Administration. Nor may district directors issue determination letters on excise tax questions if a request is for a determination of a constructive sales price under sections 4216(b) and 4218 of the Code. However, the National Office will issue rulings in this area. See paragraph (d)(3) of this section.

(5) District directors issue determination letters as to the qualification of plans under section 401 of the Code, and as to the exempt status of related trusts under section 501 of the Code, to the extent provided in paragraph (o) of this section. They also issue determination letters as to the qualification of certain organizations for exemption from Federal income tax under sections 501 and 521 of the Code, to the extent provided in paragraph (n) of this section.

(6) District directors issue determination letters with regard to the replacement of involuntarily converted property under section 1033 of the Code even though the replacement has not been made, if the taxpayer has filed his income tax return for the year in which the property was involuntarily converted.

(7) A request received by a district director with respect to a question involved in an income, estate, or gift tax return already filed will, in general, be considered in connection with the examination of the return. If response is made to such inquiry prior to an examination or audit, it will be considered a tentative finding in any subsequent examination or audit of the return.

(d) *Discretionary authority to issue rulings and determination letters.* (1) It is the practice of the Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and the tax effect of their acts or transactions.

(2) There are, however, certain areas where, because of the inherently factual nature of the problem involved, or for other reasons, the Service will not issue rulings or determination letters. A specific area or a list of these areas is published from time to time in the Internal Revenue Bulletin. Such list is not all inclusive since the Service may decline to issue rulings or determination letters on other questions whenever warranted by the facts or circumstances of a particular case. The National Office and district directors may, when it is deemed appropriate and in the best interest of the Service, issue information letters calling attention to well-established principles of tax law.

(3) The National Office will issue rulings in all cases on prospective or future transactions when the law or regulations require a determination of the effect of a proposed transaction for tax purposes, as in the case of a transfer coming within the provisions of sections 1491 and 1492 of the Code, or an exchange coming within the provisions of section 367 of the Code. The National Office will issue rulings in all cases involving the determination of a constructive sales price under section 4216(b) or 4218 of the Code.

(e) *Instructions to taxpayers.* (1) A request for a determination letter or a ruling is to be submitted in duplicate if (i) it is a request for exemption under section 501(c) or 501(d) of the Code; (ii) more than one issue is presented in the request; or (iii) a closing agreement is requested with respect to the issue presented. It is not necessary to present requests in duplicate under other circumstances including requests for exemption from tax under section 521 of the Code or with respect to the qualification of plans under section 401 of the Code. Requests relating to prospective transactions may not contain alternative plans.

(2) Each request for a determination letter or a ruling must contain a complete statement of facts relating to the transaction. This includes, but is not necessarily limited to, the names, addresses, and taxpayer identifying numbers of all interested parties; the district office where each files or will file its return or report; a full and precise statement of the business reasons for the transaction; and true copies of all contracts, wills, deeds, agreements, or other documents involved in the transaction. (The term "all interested parties" is not to be construed as requiring a list of all shareholders of a widely held corporation requesting a ruling relating to a reorganization, or a list of employees where a large number may be involved in a plan.) The request must contain a statement whether, to the best of the knowledge of the taxpayer or his representative, the identical issue is being considered by any field office of the Service in connection with an examination or audit of a tax return of the taxpayer already filed. Where the request pertains to only one step of a larger integrated transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. As documents and exhibits become a part of the Internal Revenue Service file and cannot be returned, the original documents should not be submitted. When documents and exhibits are submitted, they must be accompanied by an analysis of their bearing on the issue or issues, specifying the pertinent provisions. If the request is with respect to a corporate distribution, reorganization, or other similar or related transaction, the corporate balance sheet nearest the date of the transaction should be submitted. (If the request relates to a prospective transaction, the most recent balance sheet should be submitted.)

(3) If the taxpayer is contending for a particular determination, he must furnish an explanation of the grounds for his contentions, together with a statement of relevant authorities in support of his views. Even though the taxpayer is urging no particular determination with regard to a proposed or prospective transaction, he must state his views as to the tax results of the proposed action and furnish a statement of relevant authorities to support such views.

(4) If the request is with respect to the qualification of a plan under section 401(a) of the Code, see paragraph (o) of this section. If the request is with respect to the qualification of an organization for exemption from Federal income tax under section 501 or 521 of the Code, see paragraph (n) of this section.

(5) A request by or for a taxpayer must be signed by the taxpayer or his authorized representative. If the request is signed by a representative of the taxpayer, or if the representative is to appear before the Internal Revenue Service in connection with the request, he must either be:

(i) An attorney who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as an attorney and he is authorized to represent the principal,

(ii) A certified public accountant who is duly qualified to practice in any State, possession, territory, Commonwealth, or the District of Columbia, and who files with the Service a written declaration that he is currently qualified as a cer-

tified public accountant and he is authorized to represent the principal, or

(iii) A person, other than an attorney or certified public accountant, enrolled to practice before the Service. (See Treasury Department Circular No. 230, as amended, C.B. 1966–2, 1171.)

The above requirements do not apply to an individual representing his full-time employer, or to a bona fide officer, administrator, trustee, etc., representing a corporation, trust, estate, association, or organized group. An unenrolled preparer of a return (other than an attorney or certified public accountant referred to in subdivisions (i) and (ii) of this subparagraph (5)) who is not a full-time officer, administrator, trustee, etc., may not represent a taxpayer with respect to a ruling or a determination letter. Any authorized representative, whether or not he is enrolled to practice, must also comply with the conference and practice requirements of Subpart E of this part.

(6) A request for a ruling by the National Office should be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. A request for a determination letter should be addressed to the district director of internal revenue for the district with which the tax return of the taxpayer has been filed or is required to be filed. See also paragraphs (n) and (o) of this section.

(7) Any request for a ruling or a determination letter which does not comply with all the provisions of this section will be acknowledged, pointing out the requirements which have not been met. See Subpart E for power of attorney requirements.

(8) A taxpayer or his representative who desires an oral discussion of the issue or issues involved should indicate such desire in writing when filing the request or soon thereafter in order that the conference may be arranged at that stage of consideration when it will be most helpful.

(9) It is the practice of the Service to process requests for rulings or determination letters in regular order and as expeditiously as possible. Compliance with a request for consideration of a particular matter ahead of its regular order, or by a specified time, tends to delay the disposition of other matters. Requests for processing ahead of the regular order, made in writing and showing clear need for such treatment, will be given consideration as the particular circumstances warrant. However, no assurance can be given that any ruling or determination letter will be processed by the time requested. Requests by telegram will be treated in the same manner as requests by letter. Rulings and determination letters ordinarily will not be issued by telegram. A taxpayer or his representative desiring to obtain information as to the status of his case may do so by contacting the appropriate division in the office of the Assistant Commissioner (Technical).

(10) Where a taxpayer receives a determination letter or a ruling prior to the filing of his return he should attach to his return the determination letter or ruling (or a copy thereof) with respect to any transaction which has been consummated and which is relevant to the return being filed.

(f) *Conferences in the National Office.* (1) If a conference has been requested, the taxpayer will be notified of the time and place of the conference. In order to promote a free and open discussion of the vital issues, the conference will usually be held after the branch has had an opportunity to thoroughly study the issue. If conferences are being arranged with respect to more than one request for a ruling involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer.

(2) A taxpayer is entitled as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in this paragraph exists. This conference will usually be held at the branch level of the appropriate division in the office of the Assistant Commissioner (Technical) and will usually be attended by a person who has authority to act for the branch chief. (See § 601.201(a)(2) for the divisions involved.) If more than one subject is to be discussed at the conference, the discussion will constitute a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. No taxpayer has a "right" to appeal the action of a branch to a Division Director or to any other official of the Service.

(3) In the process of consideration, in the National Office, of a position proposed by a branch, it may appear that the position of the Service will involve a reversal of the position proposed by the branch with a result that will be less favorable to the taxpayer. Or it may appear that an adverse position proposed by a branch will be sustained and become the position of the Service, but on a new or different issue or on substantially different grounds than that on which the branch turned the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this section limiting the number of conferences to which a taxpayer is entitled will not foreclose the invitation of a taxpayer to attend further conferences when, in the opinion of responsible National Office personnel, such need arises. All additional conferences of the type discussed in this subparagraph are held only at the invitation of the Service.

(4) It is the responsibility of the taxpayer to add to the case file a written record of any additional data, lines of reasoning, precedents, etc., which are proposed by the taxpayer and discussed at the conference but which were not previously or adequately presented in writing.

(g) *Reference of matters to the National Office.* (1) Requests for determination letters received by district directors which, in accordance with the provisions of paragraph (c) of this section may not be acted upon by a district office shall be forwarded to the National Office for reply and the taxpayer advised accordingly. District directors also may refer to the National Office any request for a determination letter which in their judgment warrants the attention of the National Office. See also the provisions of paragraph (o) of this section, with respect to requests relating to qualification of a plan under section 401 of the Code and paragraph (n) of this section, with respect to the applications for exemption from tax under sections 501 and 521 of the Code.

(2) If the request is with regard to an issue or an area with respect to which the Service will not issue a ruling or a determination letter, such request will not be forwarded to the National Office, but the district office will advise the taxpayer that the Service will not issue a ruling or a determination letter on the issue. See paragraph (d)(2) of this section.

(h) *Reference of matters to district offices.* Requests for rulings received in the National Office which, pursuant to the provisions of paragraph (b) of this section, may not be acted upon by the National Office, but which, under the authorities set out in paragraph (c) of this section, may be acted upon by a district office will be forwarded for appropriate action to the district office in which the return has been or will be filed. If the request is with respect to an issue or an area of the type discussed in paragraph (d)(2) of this section, the taxpayer will be so advised and the request may be forwarded to the appropriate district office for association with the proper return or report of the taxpayer.

(i) *Review of determination letters.* (1) Determination letters issued with respect to the types of inquiries authorized by paragraph (c) (1), (2), and (3) of this section are not generally reviewed by the National Office as they merely inform a taxpayer of a position of the Service which has been previously established either in the regulations or in a ruling, opinion, or court decision published in the Internal Revenue Bulletin. If a taxpayer believes that a determination letter of this type is in error, he may ask the district director to reconsider the matter. He may also ask the district director to request advice from the National Office. If the district director, in his discretion, decides to request such advice, the procedure in paragraph (b)(5) of § 601.105 will be followed.

(2) The procedures for review of determination letters relating to the qualification of employers' plans under section 401(a) of the Code are provided in paragraph (o) of this section.

(3) The procedures for review of determination letters relating to the exemption from Federal income tax of certain organizations under sections 501 and 521 of the Code are provided in paragraph (n) of this section.

(j) *Withdrawal of requests.* The taxpayer's request for a ruling or a determination letter may be withdrawn at any time prior to the signing of the letter of

reply. However, in such a case, the National Office may furnish its views to the district director in whose office the return has been or will be filed. The information submitted will be considered by the district director in a subsequent audit or examination of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be retained in the Service and may not be returned to the taxpayer.

(k) *Oral advice to taxpayers.* (1) The Service does not issue rulings or determination letters upon oral requests. Furthermore, National Office officials and employees ordinarily will not discuss a substantive tax issue with a taxpayer or his representative prior to the receipt of a request for a ruling, since oral opinions or advice are not binding on the Service. This should not be construed as preventing a taxpayer or his representative from inquiring whether the Service will rule on a particular question, or from discussing questions relating to procedural matters with regard to submitting a request for a ruling.

(2) A taxpayer may, of course, seek oral technical assistance from a district office in the preparation of his return or report, pursuant to other established procedures. Such oral advice is advisory only and the Service is not bound to recognize it in the examination of the taxpayer's return.

(l) *Effect of rulings.* (1) A ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes. See paragraph (a)(6) of this section for the effect of a closing agreement. If a ruling is revoked or modified, the revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary power under section 7805(b) of the Code to limit the retroactive effect of the ruling. The manner in which the Commissioner or his delegate generally will exercise this power is set forth in this paragraph. With reference to rulings relating to the sale or lease of articles subject to the manufacturers excise tax, see specifically subparagraph (8) of this paragraph.

(2) As part of the determination of a taxpayer's liability, it is the responsibility of the district director to ascertain whether any ruling previously issued to the taxpayer has been properly applied. It should be determined whether the representations upon which the ruling was based reflected an accurate statement of the material facts and whether the transaction actually was carried out substantially as proposed. If, in the course of the determination of the tax liability, it is the view of the district director that a ruling previously issued to the taxpayer should be modified or revoked, the findings and recommendations of that office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be treated as a request for technical advice and the procedures of paragraph (b)(5) of § 601.105 will be followed. Otherwise, the ruling is to be applied by the district office in its determination of the taxpayer's liability.

(3) Appropriate coordination with the National Office shall be undertaken in the event that any other field official having jurisdiction of a return or other matter proposes to reach a conclusion contrary to a ruling previously issued to the taxpayer.

(4) A ruling found to be in error or no longer in accord with the position of the Service may be modified or revoked. Modification or revocation may be effected by a notice to the taxpayer to whom the ruling originally was issued, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin.

(5) Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such ruling if (i) there has been no misstatement or omission of material facts, (ii) the facts subsequently developed are not materially different from the facts on which the ruling was based, (iii) there has been no change in the applicable law, (iv) the ruling was originally issued with respect to a prospective or proposed transaction, and (v) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to his detriment. To illustrate, the tax liability of each employee covered by a ruling relating to a pension plan of an employer is directly involved in such ruling. Also, the tax liability of each shareholder is directly involved in a ruling related to the reorganization of a corporation. However, the tax liability of members of an industry is not directly involved in a ruling issued to one of the members, and the position taken in a revocation or modification of ruling to one member of an industry may be retroactively applied to other members of that industry. By the same reasoning, a tax practitioner may not obtain the nonretroactive application to one client of a modification or revocation of a ruling previously issued to another client.

(6) A ruling issued to a taxpayer on a particular transaction applies to that transaction only. If the ruling is later found to be in error or no longer in accord with the position of the Service, it will afford the taxpayer no protection with respect to a like transaction in the same or subsequent year, except to the extent provided in subparagraphs (7) and (8) of this paragraph.

(7) If a ruling is issued covering a continuing action or a series of actions and it is determined that the ruling was in error or no longer in accord with the position of the Service, the Assistant Commissioner (Technical) ordinarily will limit the retroactivity of the revocation or modification to a date not earlier than that on which the original ruling was modified or revoked. To illustrate, if a taxpayer rendered service or provided a facility which is subject to the excise tax on services or facilities, and in reliance on a ruling issued to the same taxpayer did not pass the tax on to the user of the service or the facility, the Assistant Commissioner (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling.

(8) A ruling holding that the sale or lease of a particular article is subject to the manufacturers excise tax or the retailers excise tax may not revoke or modify retroactively a prior ruling holding that the sale or lease of such article was not taxable, if the taxpayer to whom the ruling was issued, in reliance upon such prior ruling, parted with possession or ownership of the article without passing the tax on to his customer. Section 1108(b), Revenue Act of 1926.

(9) With respect to Revenue Rulings published in the Internal Revenue Bulletin, taxpayers generally may rely upon such rulings in determining the rule applicable to their own transactions and need not request a specific ruling applying the principles of a published Revenue Ruling to the facts of their particular cases where otherwise applicable. However, see subparagraph (10) of this paragraph. Revenue Rulings published in the Internal Revenue Bulletin ordinarily are not revoked or modified retroactively.

(10) Since each Revenue Ruling represents the conclusion of the Service as to the application of the law to the entire state of facts involved, taxpayers, Service personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. Furthermore, they should consider the effect of subsequent legislation, regulations, court decisions, and Revenue Rulings.

(m) *Effect of determination letters.* A determination letter issued by a district director, in accordance with this section, shall be given the same effect upon examination of the return of the taxpayer to whom the determination letter was issued as is described in paragraph (l) of this section, in the case of a ruling issued to a taxpayer, except that reference to the National Office is not necessary where, upon examination of the return, it is the opinion of the district director that a conclusion contrary to that expressed in the determination letter is indicated. A district director may not limit the modification or revocation of a determination letter but may refer the matter to the National Office for exercise by the Commissioner or his delegate of the authority to limit the modification or revocation.

(n) *Organization claiming exemption under section 501 or 521 of the Code—*(1) *Filing applications for exemption.* (i) An organization seeking a ruling or determination letter of exemption under section 501 or section 521 of the Code is required to file an application (in duplicate, if under section 501) with the district director of internal revenue for the district where it would otherwise be required to file a tax return. Any applica-

tion received by the National Office or by a district director other than as provided above will be forwarded, without any action thereon, to the appropriate district director.

(ii) An exemption ruling or determination letter will be issued to an organization, provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization clearly will be exempt. A mere restatement of purpose or a statement that proposed activities will be in furtherance of such purposes will not satisfy the requirements for an advance ruling. Where the Service considers it warranted, a record of actual operations may be required before a ruling or determination letter will be issued.

(iii) Requests for rulings or determination letters other than in the form of applications for exemption are governed by the procedures outlined in paragraphs (a) through (m) of this section.

(2) *Processing applications.* (i) Under the general procedures outlined in paragraphs (a) through (m) of this section, district directors are authorized to issue determination letters involving applications for exemption under sections 501 and 521 of the Code.

(ii) A district director will refer applications which present questions not covered by established precedents to the National Office for ruling. The National Office will consider each such application, issue a ruling directly to the organization, and send a copy of the ruling to the district director. In the event of a conclusion unfavorable to the applicant, it will be informed of the basis for the conclusion and of its rights to file a protest and to a conference in the National Office. If a conference is requested, the conference procedures outlined in subdivision (vi) of paragraph (b)(5) of § 601.105 will be followed. After reconsideration of the application in the light of the protest and any information developed in conference, the National Office will affirm, modify, or reverse the original conclusion, issue a ruling to the organization, and send a copy of the ruling to the district director.

(iii) An exemption application which does not contain the required information will be classified as an "incomplete application case." The applicant will be advised in writing why a determination will not be made.

(3) *Effect of exemption rulings or determination letters.* (i) An exemption ruling or determination letter is usually effective as of the date of formation of an organization if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption. If the organization is required to alter its activities or to make substantive amendments to its enabling instruments in order to qualify for exemption, the exemption ruling or determination letter will be effective only for the period specified therein.

(ii) An exemption ruling or determination letter may not be relied upon if there is a material change inconsistent with exemption in the character, the purpose, or the method of operation of the organization.

(4) *National Office review of determination letters.* The National Office will review determination letters to assure uniformity in the application of the established principles and precedents of the Service. Where the National Office takes exception to a determination letter, the district director will be advised. If the organization protests the exception taken, the file and protest will be returned to the National Office. The referral will be treated as a request for technical advice and the procedures of paragraph (b)(5) of § 601.105 will be followed.

(5) *Protest of adverse determination letters.* (i) Upon the issuance of a determination letter adverse to the applicant the district director will advise the organization of its right to protest the determination by submitting a statement of the facts, law, and arguments in support of its application for exemption, and of its right to a district office conference.

(ii) The organization may waive its right to a district office conference and request referral of the matter directly to the National Office. The district director will advise the organization in writing that the matter will be referred to the National Office in accordance with its request only after a statement is filed setting forth the facts, law, and arguments in support of its application for exemption. In addition, the organization will be requested to specify whether it desires a conference in the National Office in the event an adverse decision is indicated.

(iii) If, after considering the organization's protest and any information developed in conference, the district director maintains his position and the organization does not agree, the case will be referred to the National Office. The referral will be considered a request for technical advice and the procedures of paragraph (b)(5) of § 601.105 will be followed.

(iv) The adverse determination letter will serve to inform the organization of the pertinent facts and the question or questions proposed for submission to the National Office, and will be deemed to satisfy the requirements of subdivision (iii)(*e*) of paragraph (b)(5) of § 601.105.

(v) The organization will not be afforded protest and conference rights if the determination letter is based on technical advice.

(6) *Revocation or modification of exemption rulings or determination letters.* (i) An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph.

(ii) If a district director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons therefor. The district director will also advise the organization of its right to protest the proposed action by submitting a statement of the facts, law, and arguments in support of its continued exemption, and of its right to a district office conference.

(iii) The organization may waive its right to a district office conference and request referral of the matter directly to the National Office. The district director will advise the organization in writing that the matter will be referred to the National Office in accordance with its request only after it files a statement setting forth the facts, law, and arguments in support of continued exemption. In addition, the organization shall be requested to specify whether it desires a conference in the National Office in the event an adverse decision is indicated.

(iv) If the organization agrees with the proposed action, either before or after a district office conference, or if no protest is filed, the district director will issue a determination letter revoking or modifying the organization's exemption.

(v) If, after considering the organization's protest and any information developed in conference, the district director maintains his position and the organization does not agree, the file and protest will be referred to the National Office. The referral will be considered a request for technical advice and the procedures of paragraph (b)(5) of § 601.105 will be followed.

(vi) The letter advising the organization of the proposed revocation or modification action will serve to inform the organization of the pertinent facts and the question or questions proposed for submission to the National Office, and will be deemed to satisfy the requirements of subdivision (iii)(*e*) of paragraph (b)(5) of § 601.105.

(vii) If it is concluded that an organization entered into a prohibited transaction for the purpose of diverting corpus or income from its exempt purpose and if the transaction involved a substantial part of the corpus or income of the organization, its exemption is revoked effective as of the beginning of the taxable year during which the prohibited transaction was commenced. An organization is ordinarily notified of such revocation of exemption by regular mail.

(viii) In all other prohibited transaction cases, the exemption is revoked effective as of the beginning of the first taxable year after the date of the revocation letter. In these cases the organization will be notified of the revo-

cation of exemption by registered or certified mail, sent to its last known address.

(ix) While the organization, in a prohibited transaction case, will usually be permitted to submit its brief and to be heard in conference before the revocation notice is issued, the Service may, at its discretion, issue the revocation notice by registered or certified mail, prior to the receipt of the brief or prior to granting a conference. If it is later determined that the revocation was in error, it will be rescinded as of the date it was issued.

(x) The provisions of this section relating to protests and conference before a revocation notice is issued are not applicable to matters where delay would be prejudicial to the interests of the Internal Revenue Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the period of limitations, or where immediate action is necessary to protect the interests of the Government).

(7) *Prohibited transactions.* (i) Section 503 of the Code denies exemption to certain organizations which engage in transactions of the type described therein. The National Office may issue a ruling as to whether an organization has entered into, or proposed to enter into, a prohibited transaction; but, except as provided in subdivision (ii) of this subparagraph, a ruling will not be issued where the determination is primarily one of fact, e.g., market value of property, reasonableness of compensation, etc. Also no ruling will be issued with respect to such transactions as sales and leasebacks, gifts and leasebacks, and other rental transactions of real or personal property directly or indirectly with the creator or a related or controlled interest.

(ii) Where the adequacy of the security of a loan is involved, a ruling may be issued, but only if there is a clear indication of value which can be established by reference to recognized sources without requiring physical valuation or appraisal. The following are examples of transactions where the adequacy of security can be established by reference to recognized sources:

(*a*) A surety bond issued by a recognized surety company doing a surety bond business under applicable state law;

(*b*) An assignment of an insurance contract having a cash surrender value sufficient to cover the loan, interest, and possible costs of collection;

(*c*) A first mortgage on real property in an amount not in excess of 50 percent of its assessed value for local tax purposes; or,

(*d*) Collateral represented by securities listed on a recognized exchange of an aggregate value equal to twice the amount of the loan.

(iii) An organization whose exemption is revoked by reason of section 503 of the Code may file a new application in any taxable year following the taxable year in which the notice of revocation was issued. But the exempt status of an organization may not be renewed before the beginning of the first taxable year following the year in which its new application is filed. Thus, if a revocation notice was issued in 1966, the organization may not file a new application for exemption until 1967, and the new exemption may not be granted for a taxable year prior to 1968. If the organization does not file a new application until 1968, the new exemption may not be recognized for a year prior to 1969.

(e) *Employees' trusts or plans*—(1) *Determination letters.* (i) Determination letters authorized in paragraph (c)(5) of this section are limited to the qualification of plans or trusts under section 401(a) of the Code and bond purchase plans under section 405(a), and to the exempt status of trusts under section 501 (a). This includes consummated and proposed transactions relating to the following:

(*a*) The initial qualification of a plan and, if trusteed, the status for exemption of a trust;

(*b*) Compliance with the applicable requirements of foreign situs trusts as to taxability of beneficiaries (section 402(c)) and deductions for employer contributions (section 404(a)(4));

(*c*) Amendments to plans and trusts;

(*d*) Curtailment of plans;

(*e*) Termination of plans and trusts; and

(*f*) The effect on the qualification of the plan, and status for exemption of the trust, of an investment of trust funds in the stock or securities of the employer or controlled corporation (ownership of 50 percent or more of all voting stock or 50 percent or more of the total value of shares of all classes of stock).

(ii) Determination letters authorized by subdivision (i) of this subparagraph do not include determinations or opinions relating to other inquiries with respect to plans or trusts. Thus, except as provided in subdivision (i)(*b*) of this subparagraph, district directors may not issue determination letters relating to issues under other sections of the Code, such as sections 72, 402 through 404, 502, 503, and 511 through 515, unless such determination letters are otherwise authorized under paragraph (c) of this section.

(iii) Employees' trusts must be maintained and operated for the exclusive benefit of the employees or their beneficiaries, and investments by such trusts must be consistent with that purpose. District directors are authorized to issue determination letters with respect to the investments of such trusts in the stocks or securities of corporations of the type described in subdivision (i)(*f*) of this subparagraph, relating to the compliance with these requirements. However, they may not issue determination letters with regard to the fair market value of the investment or with respect to the adequacy of security behind a loan. These issues are within the prohibited transactions area. In this connection see subparagraph (3) of this paragraph.

(2) *Instructions to taxpayers.* (i) All of the provisions of paragraph (e) of this section are applicable to requests for determination letters of the type discussed in this paragraph. In addition, the information required by subdivisions (ii) through (vi) of this subparagraph, together with the identification number of a participating trust, must also be furnished in requesting a determination letter on the qualification of an employees' plan or trust.

(ii) If the request relates to the initial qualification of a plan or the compliance with the requirements for a foreign situs trust, the following information must be submitted:

(*a*) The information required by § 1.404(a)–2 of this chapter (Income Tax Regulations);

(*b*) Type of organization of employer;

(*c*) Date incorporated, if a corporation, or date business commenced, if other type of organization;

(*d*) Nature of business of employer; and

(*e*) Name of predecessor business, if any, type of organization of predecessor, and when transfer took place; and

(*f*) Date on which the accounting year of the trust ends.

(iii) If the request relates to an amendment to a plan, the following information must be submitted:

(*a*) A copy of the amendment;

(*b*) The information required by § 1.404(a)–2 of this chapter (Income Tax Regulations) unless it was furnished with a request for a determination letter for the same year for which the amendment is to become effective. (However, if the amendment changes the requirements for coverage, contributions, or benefits, the information must be submitted even though previously submitted with a prior request.);

(*c*) The information required by subdivision (ii) (*b*) through (*f*) of this subparagraph, unless it was previously furnished with a request for a determination letter.

(iv) If the request relates to a curtailment or termination of the plan, the following information must be submitted:

(*a*) The date the plan was, or is proposed to be, terminated or curtailed;

(*b*) A statement of the reasons and circumstances for the termination or curtailment;

(*c*) A statement whether any of the funds under the plan will revert to or become available to the employer; if so, details must be furnished;

(*d*) A statement, with full particulars, as to any funds under the plan which at any time were contributed in the form of, or invested in, obligations or property of the employer or related companies;

(*e*) The information specified in this subdivision, in columnar form, with respect to each of the 25 highest paid employees covered by the plan at the time of termination or curtailment (the most recent anniversary date of the plan if the action is proposed), listed in the order of their compensation, and with respect to all other employees covered by the plan (as a group) and showing the number in the group:

(*1*) Name and whether an officer or supervisor;

(*2*) Percentage of each class of stock owned directly or indirectly by the employee or members of his family;

(3) Data, separately for the year of termination or curtailment and for each of the 5 preceding years of the plan's operation (if more are required they will be requested) with respect to (i) total compensation other than deferred compensation, (ii) employer's contribution, (iii) employee's contribution, and (iv) employee's share of forfeitures;

(4) Totals for each of the columns under (3) of this subdivision for each year;

(5) Summary columns aggregating for all years (totaled horizontally) with respect to each employee listed and for all others, data similar to that required by (3) of this subdivision; and

(6) Total value of benefits distributed or to be distributed to each employee listed, and to all others;

(f) A schedule showing separately for the year of termination or curtailment and for each of the 5 preceding years of the plan (if more are required they will be requested):

(1) Number of participants at beginning of year;

(2) Number of participants added in year;

(3) Number of participants dropped in year; and

(4) Number of participants remaining at end of year.

(v) If the request relates to an investment of trust funds in the stock or securities of the employer, the following information, without duplicating information previously furnished, must be submitted:

(a) Balance sheets of the employer (and controlled corporation, if involved) as of the close of the last 2 taxable years;

(b) Comparative statements of income and profit and loss for the last 5 taxable years;

(c) Analysis of surplus for the last 5 years, specifically showing the amount and rate of dividends paid on each class of stock;

(d) A statement accounting for all material changes from the latest dates of the information in (a), (b), and (c) of this subdivision to the date of filing the information;

(e) A schedule showing the nature and amounts of the various assets in trust fund; and

(f) A statement setting forth the amount to be invested in the stock or securities of the employer or a controlled corporation (or both), the nature of the investment, the present rate of return, collateral or type of security for the loan, if any, and the reasons for the investment.

(The information called for under (a), (b), and (f) of this subdivision, and related data, may be submitted in composite form.) A full disclosure must be made where trust funds are invested in stock or securities of, or loaned to, the employer, whether or not a determination letter is requested. This information must in all cases be furnished to the appropriate district director. See subdivision (vii) of this subparagraph.

(vi) When in connection with the request for a determination on the qualification of the plan, it is necessary to determine whether an organization is an association taxable as a corporation as defined in section 7701(a)(3) of the Code, and that an employer-employee relationship exists between it and its associates, the district director will make such determination. The request, in such case shall also be accompanied by copies of the articles of association or agreement establishing the organization, bylaws, and all other data relevant to the formation and operation of the association, and should show all pertinent dates. The organization should also support its request by furnishing copies of applicable local law relating to its status, copies of contracts of employment with its associates, and a brief of its position on its status for taxation and its relationship with its associates.

(vii) Requests for determination letters with respect to matters authorized by subparagraph (1)(i) of this paragraph and the necessary supporting data, are to be addressed to the district director specified in this subdivision:

(a) A single employer will address his request to the district director for the district in which its principal place of business is located.

(b) If a parent company and its subsidiaries have a single plan, the request will be addressed to the district director for the district in which the principal place of business of the parent company is located, whether separate or consolidated returns are filed.

(c) If the plan is established or proposed for an industry by all subscribing employers, whose principal places of business are located within the jurisdiction of more than one district director, the request will be addressed to the district director for the district in which is located the principal place of business of the trustee, or if more than one trustee, the usual meeting place of the trustees.

(d) In the case of a pooled fund arrangement (individual trusts under separate plans pooling their funds for investment purposes through a master trust), the request on behalf of the master trust will be addressed to the district director for the district where the principal place of business of such trust is located. Requests on behalf of the participating trusts and related plans will be addressed as otherwise provided in (a) through (c) of this subdivision.

(e) In the case of a plan of multiple employers not otherwise provided for in (a) through (f) of this subdivision, the request will be addressed to the district director for the district in which is located the principal place of business of the trustee, or if not trusteed, or if more than one trustee, the principal or usual meeting place of the trustees or plan supervisors.

(f) If the plan is with respect to an organization of the type described in subdivision (vi) of this subparagraph, the association will address its request to the district director with whom it is required to file its tax returns.

(3) *Prohibited transactions.* (i) Section 503 of the Code denies exemption to certain organizations which engage in transactions of the type described in such section. The National Office may issue a ruling as to whether a trust has entered into, or proposes to enter into, a prohibited transaction, but, except as provided in subdivision (ii) of this subparagraph, a ruling will not be issued where the determination is primarily one of fact, e.g., market value of property, reasonableness of compensation, etc. Also, no rulings or determination letters will be issued with respect to such transactions as sales and leasebacks, gifts and leasebacks, and other rental transactions of real or personal property directly or indirectly with the creator, or a related or controlled interest.

(ii) Where the adequacy of the security of a loan is involved, a ruling may be issued, but only if there is a clear indication of value which can be established by reference to recognized sources without requiring physical valuation or appraisal. The following are examples of transactions where the adequacy of security can be established by reference to recognized sources:

(a) A surety bond issued by a recognized surety company doing a surety bond business under applicable State law;

(b) An assignment of an insurance contract having a cash surrender value sufficient to cover the loan, interest, and possible costs of collection;

(c) A first mortgage on real property in an amount not in excess of 50 percent of its assessed value for local tax purposes; or

(d) Collateral represented by securities listed on a recognized exchange of an aggregate value equal to twice the amount of the loan.

Such rulings may be issued only with respect to proposed transactions and with respect to completed transactions where the return for the first year for which the transaction is effective has not been filed or the filing date has not passed. This subparagraph does not preclude the National Office from ruling as to whether a transaction is within the purview of section 503 (c), (h), or (i) of the Code.

(iii) If, upon examination of the return or returns of a trust, or from other sources, a district director is of the opinion that a trust has entered into a prohibited transaction, the trust will be advised in writing that it is proposed to revoke its exemption, and the reasons for such proposed action. The district office will also advise the trust of its rights to protest the proposed action by submitting a statement of the facts, law, and arguments in support of its continued exemption, and of its rights to a conference in the district office.

(iv) If the trust agrees with the proposed action, either before or after an informal conference, or if no protest is filed, the district director will advise the organization in writing of the revocation of the exempt status.

(v) If, after considering the information submitted by the trust, both in writing and in conference, the district office

is still of the opinion that the exemption should be revoked, and the trust does not agree, the findings of the district office will be forwarded to the National Office for consideration prior to further action. Such reference to the National Office will be considered a request for technical advice and the procedures in paragraph (b)(5) of § 601.105 will be followed.

(vi) If it is concluded that a prohibited transaction was entered into for the purpose of diverting corpus or income from its exempt purpose and if the transaction involved a substantial part of the corpus or income of the trust, its exemption is revoked, effective as of the beginning of the taxable year during which the prohibited transaction was commenced. No notification to the trust of the loss of its exemption is required under these circumstances. In all other cases, however, its exemption is revoked, effective as of the beginning of the first taxable year after the date of the revocation letter. Under these circumstances, a revocation letter is sent by registered or certified mail to the last known address of the organization.

(vii) The trust will usually be permitted to submit its brief and to be heard in conference before final action is taken. However, the Service may, at its discretion, issue the revocation letter prior to the receipt of the brief or prior to granting a conference. If it is later determined that the revocation was in error, it will be rescinded as of the date it was issued.

(viii) A trust which is denied exemption under section 503 of the Code may file a new claim for exemption in any taxable year following the taxable year in which the notice of denial was issued. But it may not be granted a new exemption before the beginning of the first taxable year following the year in which its new claim is filed. Thus, if a revocation notice is issued in 1961, the trust may not file a new claim for exemption until 1962, and the new exemption may not be granted for a taxable year prior to 1963. If the trust does not file a new claim until 1963, the new exemption may not be granted for a year prior to 1964.

(ix) District directors have the authority to determine that a trust will not knowingly again engage in a prohibited transaction and that the trust also satisfies all other requirements under section 401(a) of the Code, and to notify such trust of the reestablishment of its exemption.

(4) *Reference of matters to the National Office.* (i) Technical advice is defined in paragraph (b)(5) of § 601.105 as advice or guidance furnished upon request of a field official in connection with the examination or consideration of a return of a taxpayer. Although a taxpayer may request a determination letter with respect to the qualification of its plan or trust under section 401(a) of the Code, prior to the filing of any return affected by the plan or trust, the consideration or examination of the facts relating to the qualification, amendment, curtailment, or termination of the plan or relating to the exempt status of the trust will be considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may request technical advice with respect to issues which arise as the result of requests for determination letters of the type discussed in this paragraph.

(ii) Where issues arise in a district director's office with respect to matters within the contemplation of subparagraph (1)(i) of this paragraph, and the district office does not request technical advice from the National Office, the organization may notify the district director that it intends to request National Office consideration. The notice will consist of a copy of the request which the organization intends to file with the National Office. See subdivision (iv) of this subparagraph. Should the district director make an adverse determination, or should no action be taken within 30 days after the notice is filed with the district director, the request may be filed with the National Office.

(iii) Requests for National Office consideration will be entertained upon a clear showing—

(*a*) That the position of the district office is contrary to the law or regulations on the points at issue;

(*b*) That the position of the district office is contrary to the position of the Service as set forth in a Revenue Ruling currently in effect;

(*c*) That the position of the district office is contrary to a court decision which is followed by the Service, i.e., acquiescence in an adverse Tax Court decision;

(*d*) That the contemplated district office action is in conflict with a determination made in a similar case in the same or another district; or

(*e*) That the issues arise because of unique or novel facts which had not previously been passed upon, in any published Revenue Ruling or announcement.

(iv) The request to the National Office must show the following:

(*a*) Date of request;

(*b*) Name and address of taxpayer (employer), and name and address of representative, if any, who has been authorized to represent taxpayer (see paragraph (e)(5) of this section);

(*c*) District office in which the case is pending;

(*d*) Type of plan (pension, annuity, profit sharing, stock bonus) and type of action involved (initial qualification, amendment, curtailment, termination, or investment);

(*e*) Date of filing a copy of this request with the district director and the date and symbols of determination letter, if any;

(*f*) A concise statement of the issues without presentation of the facts or argumentation (e.g., whether a limitation may be imposed on employer contributions used to provide benefits for stockholder-employees);

(*g*) Grounds for requesting National Office consideration, e.g., action of the district office contrary to law or regulations (cite sections involved), contrary to published precedent (cite), conflict between districts or in same district (give name and district of case in conflict), unique or novel facts (describe briefly);

(*h*) Whether the applicable information required by subparagraph (2) of this paragraph has been filed with the district director;

(*i*) Whether a conference is desired in the National Office.

(v) Upon receipt of the request in the National Office, a determination will be made as to whether the case is to be considered at the National Office, and the taxpayer will be advised as to this determination. If the National Office determines that it will consider the case, the file will be called in from the district office and the taxpayer will be afforded an opportunity to furnish a statement on the points at issue and to a conference in Washington, if such a conference was requested. Copies of all written submissions are to be furnished the district director. The district director will have an opportunity to make such comments to the National Office as he deems appropriate. After full consideration of the entire file, including any conference discussion, the National Office will notify the taxpayer of its determination, and the case file will be returned to the district office for appropriate disposition in accordance with the National Office determination. The procedures in paragraphs (a) through (m) of this section will control to the extent they are not inconsistent with the provisions of this subparagraph.

(vi) Should a district director determine that an organization of the type described in subparagraph (2)(vi) of this paragraph is not an association taxable as a corporation or that the proper employer-employee relationship does not exist between the organization and its associates, the district director will so advise the organization. Inasmuch as the primary issue here is not the qualification of the plan under section 401(a) of the Code, the appeals procedures of subdivision (ii) through (v) of this subparagraph are not applicable.

(5) *Review of determination letters.* All determination letters issued by district directors under the procedures in this paragraph are subject to post review in the National Office under the jurisdiction of the Assistant Commissioner (Technical). If, during the course of review, a determination letter does not appear to conform to the interpretations and policies of the Service, the district director will be advised of the exceptions noted. If the taxpayer protests the exceptions taken by the National Office, the matter will be returned to the National Office. The determination letter and the protest will be treated as a request for technical advice. The procedures in paragraph (b)(5) of § 601.105 will be followed.

(6) *Oral advice to taxpayers.* (i) In conformity with the general principle announced in paragraph (k) of this section, district officials will not ordinarily confer with taxpayers or their representatives on matters regarding the formation or qualification of pension or similar plans, or related matters, including

amendments or curtailments to approved plans, prior to the submission of a plan, amendment, or curtailment for a determination.

(ii) A district director may grant such a conference upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been developed for submission to the Service, but that special problems or issues are involved, and the district director concludes that such a conference would be warranted in the interest of facilitating review and determination when the plan, etc., is formally submitted.

(iii) The furnishing of advice or assistance, whether requested by personal appearance, telephone, or correspondence, except as otherwise provided in subdivision (ii) of this subparagraph, will be limited to general procedures, or will direct the inquirer to source material, such as pertinent Code provisions, regulations, Revenue Procedures, and Revenue Rulings which may aid the inquirer in resolving his question or problem.

(7) *Effect of pension trust determination letters.* Determination letters issued pursuant to the provisions of this paragraph have the effect, generally, of any other determination letter as provided in paragraph (l) of this section. Determination letters issued under provisions of this paragraph contain only opinions as to the qualification of plans under section 401(a) of the Code and the status of related trusts under section 501(a). While favorable determination letter may serve as a basis for determining deductions for employer contributions thereunder, it is not to be taken as an indication that contributions are necessarily deductible as made. Such determinations can be made only upon an examination of the employer's tax return, in accordance with the limitations and subject to the conditions of section 404 of the Code.

§ 601.202 Closing agreements.

(a) *General.* (1) Under section 7121 of the Code and the regulations and delegations thereunder, the Commissioner, or any officer or employee of the Internal Revenue Service authorized in writing by the Commissioner, may enter into and approve a written agreement with a person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period. Such agreement, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, shall be final and conclusive.

(2) Closing agreements under section 7121 of the Code may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ended prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer. A closing agreement may also be entered into in order to provide a "determination", as defined in section 1313 of the Code, and for the purpose of allowing a deficiency dividend deduction under section 547 of the Code. But see also sections 547(c)(3) and 1313(a)(4) of the Code and the regulations thereunder as to other types of "determination" agreements. With respect to taxable periods ending subsequent to the date of the agreement, the matter agreed upon may relate to one or more separate items affecting the tax liability of the taxpayer. A closing agreement with respect to any taxable period ending subsequent to the date of the agreement is subject to any change in or modification of the law enacted subsequent to the date of the agreement and applicable to such taxable period, and each closing agreement shall so recite. Closing agreements may be entered into even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of agreements relating to the tax liability for a single period. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or where good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner or his representatives that the Government will sustain no disadvantage through consummation of such an agreement.

(b) *Use of prescribed forms.* In cases in which it is proposed to close conclusively the total tax liability for a taxable period ending prior to the date of the agreement Form 866, Agreement as to Final Determination of Tax Liability, will be used. In cases in which agreement has been reached as to the disposition of one or more issues and a closing agreement is considered necessary to insure consistent treatment of such issues in any other taxable period Form 906, Closing Agreement as to Final Determination Covering Specific Matters, generally will be used. A request for a closing agreement which determines tax liability may be submitted at any time before the determination of such liability becomes a matter within the province of a court of competent jurisdiction. The request should be submitted to the district director of internal revenue with whom the return for the period involved was filed. However, if the matter to which the request relates is pending before an office of the Appellate Division, the request should be submitted to that office. A request for a closing agreement which relates only to a subsequent period should be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224.

(c) *Approval.* (1) Closing agreements relating to alcohol, tobacco, and firearms taxes (other than the manufacturers excise tax on firearms arising from application of secs. 4181 and 4182 of the Internal Revenue Code of 1954) in respect of any prospective transactions or completed transactions affecting returns to be filed may be entered into and approved by the Assistant Commissioner (Compliance).

(2) Closing agreements relating to taxes other than those taxes covered by delegation to the Assistant Commissioner (Compliance) in subparagraph (1) of this paragraph in respect of any prospective transactions or completed transactions affecting returns to be filed may be entered into and approved by the Assistant Commissioner (Technical).

(3) Closing agreements for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods may be entered into and approved by the Assistant Commissioner (Compliance).

(4) Closing agreements in cases under the jurisdiction of regional commissioners, assistant regional commissioners (appellate), and chiefs and associate chiefs of appellate branch offices and also in cases in which a closing agreement has been recommended for approval by the office of a district director (but excluding cases docketed before the Tax Court of the United States) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods may be entered into and approved by such regional commissioners, assistant regional comissioners (appellate), and chiefs and associate chiefs of appellate branch offices.

(5) Closing agreements in cases under the jurisdiction of regional commissioners, assistant regional commissioners (appellate), and chiefs and associate chiefs of appellate branch offices docketed in the Tax Court of the United States but only in respect to related specific items affecting other taxable periods may be entered into and approved by such regional commissioners, assistant regional commissioners (appellate), and chiefs and associate chiefs of appellate branch offices.

(6) Closing agreements providing for the mitigation of economic double taxation under section 3 of Revenue Procedure 64–54, C.B. 1964–2, 1008, or for such mitigation and relief under Revenue Procedure 65–17, C.B. 1965–1, 833, may be entered into and approved by the Director of International Operations. The Director of International Operations may also enter into and approve closing agreements for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods, as the competent authority in the administration of the operating provisions of the tax conventions of the United States.

(7) Closing agreements in cases under the jurisdiction of a district director providing that the taxibility of earnings from a deposit or account of the type described in Revenue Procedure 64–24, C.B. 1964–1 (Part 1), 693, opened prior to November 15, 1962, will be determined on the basis that earnings on such deposits or accounts are not includible in gross income until maturity or termination, whichever occurs earlier, and that the full amount of earnings on the deposit or account will constitute gross income in the year the plan matures, is

assigned, or is terminated, whichever occurs first, may be entered into and approved by such district director.

(d) *Applicability of ruling requirements.* The requirements relating to requests for rulings (see § 601.201) shall be applicable with respect to requests for closing agreements pertaining to future periods only (see paragraph (b) of § 601.202).

§ 601.203 **Offers in compromise.**

(a) *General.* (1) The Commissioner may compromise, in accordance with the provisions of section 7122 of the Code, any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense. Certain functions of the Commissioner with respect to compromise of civil cases involving liability under $100,000, and of certain specific penalties involving only the regulatory provisions of the Code and related statutes, have been delegated to district directors. In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel are performed by the Chief Counsel for the Internal Revenue Service. In certain cases these functions are performed in the National Office and in other cases by Regional Counsel. (See also paragraph (c) of this section.)

(2) An offer in compromise of taxes, interest, ad valorem penalties, or specific penalties may be based on either inability to pay or doubt as to liability. Offers in compromise arise usually when payments of assessed liabilities are demanded, ad valorem penalties for delinquency in filing returns are asserted, or specific civil or criminal penalties are incurred by taxpayers. A criminal liability will not be compromised unless it involves only the regulatory provisions of the Internal Revenue Code and related statutes. However, if the violations involving the regulatory provisions are deliberate and with intent to defraud, the criminal liabilities will not be compromised.

(b) *Use of prescribed form.* Offers in compromise are required to be submitted on Forms 656 (Rev. 7–57), properly executed, and accompanied by a financial statement on Form 433 (if based on inability to pay). Form 656 is used in all cases regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be paid by deferred payment or payments. Copies of Form 656 may be obtained from district directors. An offer in compromise should be filed with the district director charged with the duty of collecting the tax sought to be compromised.

(c) *Consideration of offer.* (1) An offer in compromise is first considered by the district director with whom the offer is filed. An examining officer, after investigation of the financial condition of the taxpayer, makes a written recommendation for acceptance or rejection of the offer. If the district director has jurisdiction over the processing of the offer he will:

(i) Reject the offer, or

(ii) Accept the offer if it involves a civil liability under $500, or

(iii) Accept the offer if it involves a civil liability of $500 or more, but less than $100,000, or involves a specific penalty (including in the case of narcotics, smoking opium, and marihuana taxes only those specific penalties which involve delinquency in registration or delinquency in payment), and the Regional Counsel concurs in the acceptance of the offer, or

(iv) Recommend to the National Office the acceptance of the offer if it involves a civil liability of $100,000 or over.

(2) (i) If the district director does not have jurisdiction over the entire processing of the offer, the offer is transmitted to the appropriate Regional Counsel if the case is one in which:

(*a*) Recommendations for prosecution are pending in the Office of the Chief Counsel, the Department of Justice, or in an office of a United States attorney, including cases in which criminal proceedings have been instituted but not disposed of and related cases in which offers in compromise have been submitted or are pending;

(*b*) The taxpayer is in receivership or is involved in a proceeding under any provision of the Bankruptcy Act;

(*c*) The taxpayer is deceased (without regard to the class of tax involved);

(*d*) A proposal is made to discharge property from the effect of a tax lien or liens;

(*e*) An insolvent bank is involved;

(*f*) An assignment for the benefit of creditors is involved;

(*g*) A liquidation proceeding is involved; or

(*h*) Court proceedings are pending, except Tax Court cases.

(ii) The Regional Counsel considers and processes offers submitted in cases described in subdivisions (*a*) through (*h*) of subdivision (i) of this subparagraph with the exception of offers submitted in those cases being handled in the Office of the Chief Counsel in Washington. Where a case described in (*a*) through (*h*) of subdivision (i) of this subparagraph is being handled in the Office of the Chief Counsel in Washington, consideration and processing of the offer is accomplished in Washington, D.C.

(iii) In those cases described in (*a*) of subdivision (i) of this subparagraph no investigation will be made unless specifically requested by the office having jurisdiction of the criminal case.

(iv) In those cases described in (*b*) through (*h*) of subdivision (i) of this subparagraph the district director retains the duplicate copy of the offer and the financial statement for investigation. After investigation, the district director transmits to the appropriate regional counsel for consideration and processing his recommendation for acceptance or rejection of the offer together with the examining officer's report of his investigation.

(v) An offer under the processing jurisdiction of the Regional Counsel which is considered acceptable is either referred to the district director or to the Office of the Chief Counsel in Washington for approval, depending upon the amount of civil liability involved.

(3) The district directors are authorized to reject any offer in compromise referred for their consideration. Unacceptable offers considered by the Chief Counsel, regional counsel, or the Appellate Division are also rejected by district directors. If an offer is not acceptable, the taxpayer is promptly notified of the rejection of that offer. If an offer is rejected, the sum submitted with the offer is returned by the district director to the proponent, unless the taxpayer, in submitting the offer, authorized the district director to retain the sum submitted with the offer. A selective post review of offers rejected by a district director involving liabilities totaling $5,000 or more is made by each regional commissioner. A selected post review of offers rejected by the Director of International Operations involving liabilities totaling $5,000 or more is made by the Audit Division of the National Office.

(4) If an offer involving unpaid liability of $100,000 or more is considered acceptable by the office having jurisdiction over the offer, a recommendation for acceptance is forwarded to the National Office for review. If the recommendation for acceptance is approved, the offer is forwarded to the Office of the Chief Counsel for approval. After approval by the Office of the Chief Counsel, it is forwarded to the Commissioner for acceptance. The taxpayer is notified of the acceptance of the offer in accordance with its terms. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(d) *Conferences.* Before filing a formal offer in compromise, a taxpayer may request a conference in the office which would have jurisdiction of the offer filed by him for the purpose of exploring the possibilities of compromising the unpaid tax liability. A conference may also be requested by the taxpayer in the office which has jurisdiction of the offer filed by him after all investigations have been made for the purpose of determining the amount which may be accepted as a compromise. If the offer is one with respect to which the district director has processing jurisdiction and the proponent does not agree with the rejection or proposed rejection, and neither the examining officer nor the conferee of the district director's office has been able to convince the proponent of the correctness of the conclusion reached, the proponent will be apprised of his privilege of submitting a request in writing, accompanied by a protest, for a district conference. If the controversial issues cannot be resolved at the district conference level, the taxpayer may appeal the case to the appropriate appellate branch office for a conference provided the required protest has been filed. The procedure outlined in the preceding sentence will not be followed if the offer relates to a tax over which the Appellate Division has no authority

(see paragraph (a)(3) of § 601.106). Taxpayers and their representatives are required to fulfill and comply with the applicable conference and practice requirements. See Subpart E of this part.

§ 601.204 Changes in accounting periods and in methods of accounting.

(a) *Accounting periods.* A taxpayer who changes his accounting period shall, before using the new period for income tax purposes, comply with the provisions of the income tax regulations relating to changes in accounting periods. In cases where the regulations require the taxpayer to secure the consent of the Commissioner to the change, the application for permission to change the accounting period shall be made on Form 1128 and shall be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224, within the period of time prescribed in such regulations. See section 442 and the regulations thereunder (under the 1939 Code, § 39.46–1 of Regulations 118) (26 CFR Rev. 1953, Parts 1–79, 39.46–1). If the change is approved by the Commissioner, the taxpayer shall thereafter make his returns and compute his net income upon the basis of the new accounting period. A request for permission to change the accounting period will be considered by the Income Tax Division.

(b) *Methods of accounting.* A taxpayer who changes the method of accounting employed in keeping his books shall, before computing his income upon such method for purposes of income taxation, comply with the provisions of the income tax regulations relating to changes in accounting methods. The regulations require that, in the ordinary case, the taxpayer secure the consent of the Commissioner to the change. See section 446 of the Code and the regulations thereunder. Application for permission to change the method of accounting employed shall be made on Form 3115 and shall be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224, within 90 days after the beginning of the taxable year in which it is desired to make the change. Permission to change the method of accounting will not be granted unless the taxpayer and the Commissioner agree to the terms and conditions under which the change will be effected. The request will be considered by the Income Tax Division.

(c) *Verification of changes.* Written permission to a taxpayer by the National Office consenting to a change in his annual accounting period or to a change in his accounting method is a "ruling." Therefore, in the examination of returns involving changes of annual accounting periods and methods of accounting, district directors must determine whether the representations upon which the permission was granted reflect an accurate statement of the material facts, and whether the agreed terms, conditions, and adjustments have been substantially carried out as proposed.

§ 601.205 Tort claims.

Claims for property loss or damage, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Service, acting within the scope of his office or employment, filed under the Federal Tort Claims Act, as amended, must be prepared and filed in accordance with Treasury Department regulations entitled "Central Office Procedures" and "Claims Regulations" (31 CFR Parts 1 and 3). Such regulations contain the procedural and substantive requirements relative to such claims, and set forth the manner in which they are handled. The claims should be filed with the Commissioner of Internal Revenue, Washington, D.C. 20224, and must be filed within 2 years after the accident or incident occurred.

Subpart C—Provisions Relating to Distilled Spirits, Wines, Beer, Cigars, Cigarettes, and Cigarette Papers and Tubes and Certain Firearms

DISTILLED SPIRITS, WINES, AND BEER

§ 601.301 Imposition of taxes, qualification requirements, and regulations.

(a) *Imposition of taxes.* Subchapter A of Chapter 51 of the Internal Revenue Code of 1954 imposes taxes on distilled spirits (including alcohol), wine, and beer. Except as specifically provided, additional taxes are imposed when distilled spirits and wine are rectified by blending, compounding, etc. Subchapter A of chapter 51 of the Code also imposes taxes on stills and condensers used to produce spirits. Occupational taxes are imposed upon still manufacturers, brewers, rectifiers, dealers in liquors, and as a prerequisite for drawback under section 5134 of the Code, upon manufacturers of nonbeverage products.

(b) *Qualification requirements.* Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, liquor bottle manufacturers, dealers in specially denatured alcohol, users of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with the Internal Revenue Service, usually by filing notice or application and bond with, and procuring permit from, the assistant regional commissioner (alcohol and tobacco tax) of the region in which operations are to be conducted. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Regulations.* The procedural requirements with respect to matters relating to distilled spirits, wines, and beer which are within the jurisdiction of the Alcohol and Tobacco Tax Division are published in the regulations described in this paragraph. These regulations contain full information as to the general course and method by which the functions concerning liquors are channeled and determined, including the nature and requirements of formal and informal procedures, the forms, records, reports, and other documents required, and the contents of applications, notices, registrations, permits, bonds, and other documents. Supplies of prescribed forms may be obtained from the office of assistant regional commissioners (alcohol and tobacco tax), except that Forms 52–A, 52–B, 122, 133, 338, 2051, 2056–2060, 2621, and 2637 must be provided by the users at their own expense. Users and commercial printers may procure specimen copies of such forms from such offices. The following is a brief description of the several regulations arranged according to the principal subjects and operations concerned:

(1) *Establishment and operation of distilled spirits plants.* Part 201 of this chapter contains the regulations relating to the location, qualification, construction, arrangement, equipment, and operations (including activities incident thereto) of distilled spirits plants for the production and/or warehousing (including denaturation), rectification, and bottling (including bottling in bond) of distilled spirits.

(2) *Miscellaneous liquor transactions.* Part 170 of this chapter contains miscellaneous regulations relative to:

(i) Restamping of packages of distilled spirits by persons other than proprietors of distilled spirits plants;

(ii) Refunds of tax and duty paid on distilled spirits, wine, rectified products, and beer lost as a result of floods, hurricanes, or other disasters;

(iii) Application of section 6423, Internal Revenue Code of 1954, as amended, to refund or credit of tax on distilled spirits, wines, and beer;

(iv) Regulations in effect on June 30, 1959, which were prescribed on July 1, 1959, as interim regulations;

(v) Manufacture and sale of certain compounds, preparations, and products containing alcohol; and

(vi) Temporary regulations respecting the filing of deferred payment tax returns by proprietors of distilled spirits plants, by proprietors of bonded wine cellars, and by brewers.

(3) *Disposition of substances used in the manufacture of distilled spirits and articles and of containers used for the packaging of distilled spirits.* Part 173 of this chapter contains the regulations relative to the returns and records of the disposition of articles from which distilled spirits may be recovered, of substances of the character used in the manufacture of distilled spirits, and of containers of the character used for the packaging of distilled spirits.

(4) *Manufacture and use of containers of distilled spirits.* Part 175 of this chapter contains the regulations relating to the traffic in containers of distilled spirits of a capacity of not more than 5 wine gallons. The regulations cover the manufacture, sale, and use of liquor bottles for packaging distilled spirits for other than industrial use; use of liquor bottles for purposes other than packaging distilled spirits; labeling of distilled spirits; permits and revocation proceedings; imports and exports of liquor bottles; records, reports, and inventories of liquor bottles; reuse or refilling of liquor bottles (see also Part 194 of this chapter); and the purchase, sale, and possession of refilled or used liquor bottles.

(5) *Gauging of distilled spirits.* Part 186 of this chapter contains the regulations that prescribe the gauging instruments, and methods or techniques to be used in measuring distilled spirits (including denatured spirits). Tables are provided for use in making the necessary computation from gauge data.

(6) *Stills and condensers.* Part 196 of this chapter contains the regulations relative to the manufacture, taxpayment, removal, use, and registration of stills and condensers, and the exportation or transfer to foreign-trade zones of stills and condensers with benefit of drawback of internal revenue tax or without payment of tax.

(7) *Rules of practice in permit proceedings.* Part 200 of this chapter contains the rules governing the procedure and practice in connection with the disapproval of applications for basic permits, and for the issuance of citations for the suspension, revocation and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.), and disapproval, suspension, revocation of container, industrial use, operating, withdrawal, and tobacco permits under the Code. Such rules also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to be determined on the record, after opportunity for hearing, under laws administered by the Alcohol and Tobacco Tax Division.

(8) *Basic permit requirements under the Federal Alcohol Administration Act.* Regulations No. 1 (27 CFR Part 1), issued pursuant to the Federal Alcohol Administration Act, as amended, contain the requirements relative to the issuance under that Act of basic permits to producers, rectifiers, blenders, bottlers, warehousemen, importers, and wholesalers of distilled spirits, wine, or beer, and the amendment, duration, revocation, suspension, or annulment of such permits.

(9) *Bulk sales and bottling of distilled spirits.* Regulations No. 3 (27 CFR Part 3), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk.

(10) *Labeling and advertising of distilled spirits.* Regulations No. 5 (27 CFR Part 5), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the labeling and advertising of distilled spirits under the Federal Alcohol Administration Act, including standards of identity for distilled spirits, standards of fill for bottles of distilled spirits, withdrawal of bottled imported distilled spirits from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(11) *Credit period to be extended to retailers of alcoholic beverages.* Regulations No. 8 (27 CFR Part 8) issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the credit period which may be extended by vendors to retailers of alcoholic beverages.

(12) *Production and removal of wine.* Part 240 of this chapter contains the regulations relative to the establishment and operation of bonded wine cellars, including bonded wineries, for the production, cellar treatment, and storage of wines, including amelioration, sweetening, addition of volatile fruit-flavor concentrates, addition of wine spirits (including distillates containing aldehydes), blending, and other cellar treatment; removals; taxpayment; return of unmerchantable taxpaid wine; use of wine for distilling material and manufacture of vinegar; and record and report requirements.

(13) *Bottling or packaging of taxpaid wine.* Part 231 of this chapter contains the regulations relative to the establishment, qualification, and operations of taxpaid wine bottling houses on premises other than those of a plant operated under Part 201 of this chapter, and to the bottling and packaging of taxpaid United States and foreign wines at such premises.

(14) *Nonindustrial use of distilled spirits and wine.* Regulations No. 2 (27 CFR Part 2), issued under the Federal Alcohol Administration Act, as amended, specify what uses of distilled spirits and wine are considered "nonindustrial", as that term is used in section 17 of the Federal Alcohol Administration Act.

(15) *Labeling and advertising of wine.* Regulations No. 4 (27 CFR Part 4), issued under the Federal Alcohol Administration Act, as amended contain the requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, the withdrawal of imported wine from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(16) *Establishment and operations of breweries.* Part 245 of this chapter contains the regulations relating to the production (including concentration and reconstitution incident thereto) and removal of beer and cereal beverages. The regulations cover the location, construction, equipment, and operations of breweries; and the qualification of such establishments, including the ownership, control, and management thereof.

(17) *Labeling and advertising of malt beverages.* Regulations No. 7 (27 CFR Part 7), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the labeling and advertising of malt beverages (beer) under the Federal Alcohol Administration Act, including withdrawal of imported malt beverages from customs custody, and the issuance of certificates of label approval.

(18) *Liquor dealers.* Part 194 of this chapter contains the regulations relative to the special (occupational) taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers; restrictions on purchases of distilled spirits; reuse or refilling of liquor bottles (see also Part 175 of this chapter); sale or possession of refilled or used liquor bottles; repackaging of alcohol for industrial use; recordkeeping and reporting requirements; and provisions relating to entry of premises and inspection of records by internal revenue officers.

(19) *Production of vinegar by the vaporizing process.* Part 195 of this chapter contains the regulations relating to the production of vinegar by the vaporizing process (fermentation and distillation of alcoholic liquid). The regulations cover the location, construction, equipment, qualification, and operation of vinegar plants.

(20) *Drawback of tax on spirits used in nonbeverage products.* Part 197 of this chapter contains the regulations which relate to obtaining drawback of internal revenue tax on distilled spirits used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes.

(21) *Production of volatile fruit-flavor concentrates.* Part 198 of this chapter contains the regulations relating to the manufacture, removal, sale, storage, transfer in bond, transportation, recordkeeping and reporting requirements, and use of volatile fruit-flavor concentrates. It includes provisions regarding the location, qualification, use, and operations of concentrate plants.

(22) *Inducements furnished to retailers.* Regulations No. 6 (27 CFR Part 6), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the furnishing, giving, renting, lending, or selling of equipment, fixtures, signs, supplies, money, services, or other things of value to retailers of distilled spirits, wine, and malt beverages, by other members of the liquor industry (principally vendors), including the furnishing of samples and advertising cuts.

(23) *Distribution and use of denatured spirits.* Part 211 of this chapter contains the regulations relating to the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits; and includes requirements in respect to industrial use and withdrawal permits; and the packaging, labeling, sale, rebottling, and reprocessing of articles containing specially denatured spirits.

(24) *Formulas for denatured spirits.* Part 212 of this chapter contains the regulations relating to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the uses of specially denatured spirits; and to the specifications for denaturants. The procedural requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in Part 201 of this chapter, and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in Part 211 of this chapter.

(25) *Distribution and use of tax-free spirits.* Part 213 of this chapter contains the regulations relating to tax-free alcohol and covers the procurement, storage, use, and recovery of such alcohol; and includes requirements in respect to industrial use and withdrawal permits.

(26) *Liquors and articles from Puerto Rico and the Virgin Islands.* Part 250 of this chapter contains the regulations relating to the production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax and the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

(27) *Importation of liquors.* Part 251 of this chapter contains the substantive and procedural requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, and labeling, and stamping of containers and packages.

(28) *Exportation of liquors.* Part 252 of this chapter contains the regulations relating to exportation including, where applicable, lading for use on vessels and aircraft, transfer to a foreign-trade zone, or transfer to a manufacturing bonded warehouse, Class 6, of distilled spirits (including specially denatured spirits), beer (including beer concentrate), and wine, whether without payment of tax, free of tax, or with benefit of drawback. It includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

§ 601.302 Taxes.

(a) *Collection.* Taxes on distilled spirits, wines, beer, and rectified products are paid by returns. If the person responsible for paying the tax has filed a proper bond with the assistant regional commissioner (alcohol and tobacco tax), he may file semimonthly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, beer, and rectified products during such semimonthly period. If the taxpayer is not qualified to defer taxpayment, or has been placed on a prepayment basis by the assistant regional commissioner, he must prepay the tax on the distilled spirits, wines, beer, or rectified products. Distilled spirits and rectification tax returns are filed with an officer designated by the assistant regional commissioner (alcohol and tobacco tax), or with the district director when so directed by the assistant regional commissioner, except that where a remittance is in cash the return must be filed with the district director. Returns of tax on beer and wine are filed with the district director in all cases. The forms for filing these tax returns are furnished to industry members by the assistant regional commissioner (alcohol and tobacco tax). Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, rectifiers, still manufacturers, and manufacturers of nonbeverage products; such stamps are required to be posted in the taxpayer's place of business as evidence of taxpayment. Special tax stamps are also issued to denote payment of the commodity tax on stills and condensers, and are required to be cancelled and secured to the article or furnished to the user of the apparatus for retention at the premises where such apparatus is set up, available for inspection by internal revenue officers. Detailed information respecting the payment of tax on liquors and the payment of occupational and commodity taxes, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in § 601.301(c).

(b) *Assessment.* If additional or delinquent tax liability is disclosed by an investigation, or by an examination of records, of a qualified plant or permittee, a notice (except where delay may jeopardize collection of the tax, or where the amount involved is nominal or the result of an evident mathematical error) is sent to the taxpayer advising him of the basis and amount of the liability and affording him an opportunity to submit a protest, with supporting facts, or to request a conference.

§ 601.303 Claims.

(a) *Claims for remission.* When distilled spirits (including distilling material and denatured spirits) or beer on which the tax has not been paid or determined is lost, and the person liable for payment of the tax thereon desires to be relieved from such liability, he may file claim on Form 2635 for remission of tax on the quantity that was lost. The assistant regional commissioner may, in any event, require such a claim to be filed, and will require it if circumstances indicate that the loss was caused by theft or, in the case of distilled spirits (including distilling material), unauthorized voluntary destruction. On receipt of a claim the assistant regional commissioner makes a factual determination, and notifies the claimant of allowance or rejection of his claim. If the claim is rejected, and circumstances so warrant, the assistant regional commissioner will take appropriate steps to collect the tax.

(b) *Claims for abatement.* When the tax on distilled spirits, wines, beer, or the rectification tax is assessed and the taxpayer thinks that the tax is not due under the law, he may file a claim for abatement of the tax on Form 843 with the district director of internal revenue or, where required by regulations, with the assistant regional commissioner (alcohol and tobacco tax). Forms 843 may be procured from the district director or the assistant regional commissioner. The district director forwards the claim to the assistant regional commissioner (alcohol and tobacco tax) for consideration, and the district director may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, both the taxpayer and the district director are notified of the allowance or rejection of the claim. If the claim is rejected, the district director will proceed to collect the tax.

(c) *Claims for refund.*—(1) *Taxes illegally, erroneously, or excessively collected.* A claim on Form 843 for refund of taxes illegally, erroneously, or excessively collected may be filed by a taxpayer with the district director of internal revenue to whom the tax was paid. Such claim must be filed within three years (two years under certain circumstances) after the date of payment of the tax. The district director forwards the claim to the assistant regional commissioner (alcohol and tobacco tax) for consideration. If the claim is rejected, the taxpayer is notified of the rejection by registered or certified mail, and he may then bring suit in the United States District Court or the Court of Claims for recovery of the tax. Such suits must be filed generally within two years from the date of mailing of the rejection notice. If the claim is allowed, an appropriate notice of allowance with a check for the amount of the refund and allowable interest is forwarded to the taxpayer; however, if there are other unpaid taxes outstanding against the taxpayer, the overpayment may be applied to the outstanding taxes and the balance, if any, refunded.

(2) *Taxes on liquors lost, destroyed, returned to bond, or taken as samples by the United States.* A taxpayer may, subject to the conditions in the appropriate regulations, file claim on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for refund of tax paid on (i) spirits returned to bonded premises, lost in rectification or bottling operations, lost by accident or disaster, or taken as samples by the United States, or (ii) wine returned to bond as unmerchantable, or lost by disaster, or (iii) beer removed from the market, or lost by disaster. If the claim is allowed, a notice of allowance with a check for the amount of the refund is forwarded to the claimant; except, that where there are any unpaid taxes outstanding against the claimant, the refund may be applied to the outstanding taxes and a check for the balance, if any, forwarded to the claimant. If the claim is rejected, a notice giving the reasons for rejection is forwarded to the claimant.

(d) *Claims for allowance, credit, or relief.* A qualified permittee, manufacturer, or proprietor may, subject to the conditions in the appropriate regulations, file claim on Form 2635 with the assistant regional commissioner (alcohol and tobacco tax) for allowance of loss, credit of tax, or relief from tax liability, as applicable, on (1) spirits returned to bonded premises, lost or destroyed on bonded premises or in transit thereto, or lost in rectification or bottling operations; (2) wine lost or destroyed on bonded premises or in transit thereto, and unmerchantable domestic wine returned to bond; (3) beer removed from the market, lost

(other than by theft), or destroyed by fire, casualty, or act of God; (4) denatured spirits lost or destroyed in bond, or lost on the premises of a qualified dealer or user or in transit to such premises; and (5) tax-free spirits lost on the premises of a qualified user or in transit to such premises.

(e) *Claims for payment—disaster losses.* When distilled spirits, wines, rectified products, or beer held or intended for sale is lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, the person holding such product for sale at that time may, subject to the conditions in the appropriate regulations, file claim on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) of the region in which the product was lost, rendered unmarketable, or condemned, for payment of an amount equal to the internal revenue taxes paid or determined and any customs duties paid thereon. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Planning, identifies the specific disaster area.

§ 601.304 Preparation and filing of claims.

(a) *Distilled spirits at distilled spirits plants.* Procedural instructions in respect of claims for remission, abatement, credit, or refund of tax on spirits (including denatured spirits) lost or destroyed on or lost in transit to, or on spirits returned to, the premises of a distilled spirits plant are contained in Part 201 of this chapter. It is not necessary to file a claim for credit of tax on taxpaid samples taken by internal revenue officers from distilled spirits plants, as the assistant regional commissioner will allow credit, without claim, for tax on such samples.

(b) *Specially denatured spirits.* Procedural instructions in respect of claims for allowance of loss on specially denatured spirits lost on the premises of a bonded dealer or user, or while in transit to such premises, are contained in Part 211 of this chapter.

(c) *Tax-free alcohol.* Procedural instructions in respect of claims for allowance of loss on tax-free alcohol lost on the premises of a qualified user, or while in transit to such premises, are contained in Part 213 of this chapter.

(d) *Wine spirits and wine at bonded wine cellar.* Procedural instructions in respect of claims for (1) remission of tax on wine spirits lost on the premises of a bonded wine cellar or in transit thereto, (2) allowance of losses of wine in bond, and (3) credit or refund of tax paid on unmerchantable domestic wine returned to bond are contained in Part 240 of this chapter.

(e) *Beer.* Procedural instructions in respect of claims for refund or credit of tax which has been paid (or allowance, credit, or relief of tax liability if the tax has not been paid) on domestic beer removed from the market or lost or destroyed by fire, casualty, or act of God are contained in Part 245 of this chapter.

(f) *Distilled spirits, wines, or beer for export.* Procedural instructions in respect of claims for (1) drawback of internal revenue tax on distilled spirits or wines, for export, use as supplies on certain vessels or aircraft, deposit in a foreign-trade zone or customs manufacturing bonded warehouse and on beer removed for export, use as supplies on certain vessels and aircraft, or transfer to a foreign-trade zone, and (2) remission of tax on distilled spirits, specially denatured spirits, wines, or beer, withdrawn without payment of tax and lost during transportation to the port of export, manufacturing bonded warehouse, vessel or aircraft, or foreign-trade zone, are contained in Part 252 of this chapter.

(g) *Miscellaneous.* Procedural instructions are contained in Part 170 of this chapter in respect of claims for—

(1) Refund or credit of tax on distilled spirits, wines, or beer where such refund or credit is claimed on the grounds that tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive, and where such refund or credit is subject to the limitations imposed by section 6423 of the Code,

(2) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a major disaster occurring in the United States after June 30, 1959, and

(3) Redemption, in Puerto Rico, of unused rectification tax sheet stamps and unused special Puerto Rican rectification stamps.

(h) *Special taxes.* Procedural instructions in respect of claims for abatement of assessments or refund of overpayments of liquor dealers occupational taxes and penalties are contained in Part 194 of this chapter. When claim is filed for refund of an occupational tax for which a stamp was issued, the stamp (or a Certificate in Lieu of Lost or Destroyed Special Tax Stamp, accompanied by affidavits attesting to loss or destruction of the stamp) must be surrendered with the claim. Such claims must be submitted within three years from the date of payment of the tax.

(i) *Low wines at vinegar plants.* Procedural instructions in respect of claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process are contained in Part 195 of this chapter.

(j) *Stills and condensers.* Procedural instructions in respect of claims for drawback of the internal revenue tax paid on stills and condensers which have been exported or deposited in a foreign-trade zone for exportation, destruction, or storage therein pending exportation, are contained in Part 196 of this chapter.

(k) *Distilled spirits used in nonbeverage products.* Procedural instructions in respect of claims (1) for drawback of tax on distilled spirits used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, and (2) for refund or adjustment of special (occupational) tax, are contained in Part 197 of this chapter.

§ 601.305 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under chapter 51 of the Code and of penalties for violation of the Federal Alcohol Administration Act, is set forth in § 601.327.

§ 601.306 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.

Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier, or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the Director of the Alcohol and Tobacco Tax Division. Applications for such permission to take office shall be prepared and filed in accordance with instructions available from the assistant regional commissioner (alcohol and tobacco tax) or from the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224.

§ 601.307 Rulings.

The procedure for rulings in alcohol tax matters is set forth in § 601.328.

§ 601.308 Conferences.

Any person desiring a conference in the office of the assistant regional commissioner (alcohol and tobacco tax) of his region or of the Director, Alcohol and Tobacco Tax Division, in Washington, relative to any matter arising in connection with his operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

§ 601.309 Representatives.

Subpart E, conference and practice requirements, is applicable to all representatives of the taxpayer before the Service, in the office of the Director Alcohol and Tobacco Tax Division, or in the office of the assistant regional commissioner (alcohol and tobacco tax).

§ 601.310 Forms.

For forms to be used, see § 601.301(c).

CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

§ 601.311 Imposition of taxes; regulations.

(a) *Taxes.* Subchapter A of chapter 52 of the Internal Revenue Code of 1954, as amended, imposes taxes on cigars, cigarettes, and cigarette papers and tubes manufactured in or imported into the United States. Subchapter D of chapter 78 of the Code imposes a tax (equal to the internal revenue tax im-

posed in the United States upon the like articles of merchandise of domestic manufacture) on cigars, cigarettes, and cigarette papers and tubes of Puerto Rican manufacture brought into the United States and withdrawn for consumption or sale, and on such articles brought into the United States from the Virgin Islands.

(b) *Regulations.* The procedural requirements with respect to matters relating to cigars, cigarettes, and cigarette papers and tubes are contained in the regulations listed below:

(1) Part 200 of this chapter relates to the procedure and practice in connection with the disapproval of applications for permits, and the suspension and revocation of permits, under chapter 52 of the Code.

(2) Part 270 of this chapter relates to the manufacture of cigars and cigarettes; the payment by manufacturers of tobacco products of internal revenue taxes imposed by chapter 52 of the Code; and the qualification of and operations by manufacturers of tobacco products.

(3) Part 275 of this chapter relates to cigars, cigarettes, and cigarette papers, and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of cigars from a customs bonded manufacturing warehouse, Class 6; and the release of such articles from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

(4) Part 285 of this chapter relates to the manufacture of cigarette papers and tubes; the payment by manufacturers of cigarette papers and tubes of internal revenue taxes imposed by chapter 52 of the Code; and the qualification of and operations by manufacturers of such articles.

(5) Part 290 of this chapter relates to the exportation (including supplies for vessels and aircraft and transfers to a foreign-trade zone) of cigars, cigarettes, and cigarette papers and tubes, without payment of tax, or with benefit of drawback of tax, and the qualification of and operations by export warehouse proprietors.

(6) Part 295 of this chapter relates to the removal of cigars, cigarettes, and cigarette papers, and tubes, without payment of tax, for use of the United States.

(7) Part 296 of this chapter relates to the provisions of a miscellaneous nature or not of continuing application. Included are regulations relating to:

(i) Limitations imposed by section 6423 of the Code on the refund or credit of tax paid or collected on cigars, cigarettes, and cigarette papers and tubes;

(ii) Losses of cigars, cigarettes, and cigarette papers and tubes caused by disasters occurring in the United States on or after September 3, 1958;

(iii) Purchase, receipt, possession, offering for sale, or sale or other disposition of cigars and cigarettes by dealers in such products;

(iv) Authorizations to execute bonds and extensions of coverage of bonds on behalf of corporate sureties; and

(v) Periods to be covered by tax returns filed by manufacturers for the deferred payment of taxes on cigars and cigarettes.

§ 601.312 Qualification and bonding requirements.

(a) *Manufacturers of tobacco products and proprietors of export warehouses.* Every person, before commencing business as a manufacturer of tobacco products or as a proprietor of an export warehouse, is required to qualify with the Internal Revenue Service by making application for permit and filing bond and other required documents with, and obtaining a permit from, the assistant regional commissioner (alcohol and tobacco tax) for the region in which operations are to be conducted.

(b) *Manufacturers of cigarette papers and tubes.* Every person, before commencing business as a manufacturer of cigarette papers and tubes, is required to qualify with the Internal Revenue Service by filing bond and other required documents with the assistant regional commissioner (alcohol and tobacco tax) for the region in which operations are to be conducted.

(b–1) *Puerto Rican manufacturers of cigars and cigarettes.* Every manufacturer of cigars and cigarettes in Puerto Rico who desires to defer payment in Puerto Rico of the internal revenue tax imposed by section 7652(a) of the Code on cigars and cigarettes of Puerto Rican manufacture coming into the United States must file a bond with the Director's Representative of the Office of International Operations, in Puerto Rico. Such bond is conditioned on the principal's paying, at the time and in the manner prescribed in the regulations, the full amount of tax computed on the cigars and cigarettes which are released for shipment to the United States. No bond is required if the tax is prepaid.

(c) *Proprietors of customs warehouses.* Every proprietor of a customs bonded manufacturing warehouse, Class 6, who desires to remove under Part 290 tax-exempt cigars for exportation (including supplies for vessels and aircraft), or for delivery for subsequent exportation, is required to file a bond with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the customs warehouse is located. However, removal of cigars for sale or consumption in the United States is subject to customs regulations.

(d) *Drawback of tax.* Taxpaid cigars, cigarettes, and cigarette papers and tubes may be exported with benefit of drawback of tax. Drawback may be allowed only to the person who paid the tax on such articles and who files claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 601.311. As a condition precedent to the allowance of any drawback claim, the claimant is required to file a bond in an amount not less than the amount of tax covered in the claim.

(e) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 601.311.

§ 601.313 Collection of taxes.

(a) *Cigars and cigarettes.* Taxes on cigars and cigarettes are paid by the manufacturer on the basis of a return. If the manufacturer has filed a proper bond, he may defer payment at the time of removal and file semimonthly returns to cover the taxes. If the manufacturer has not filed such a bond or if he has defaulted in any way in paying his taxes, he is required to file a prepayment return prior to removal of such products, and to continue so doing until the assistant regional commissioner (alcohol and tobacco tax) finds that the revenue will not be jeopardized by deferred payment. Tax returns, with remittances, are filed by the domestic manufacturer with the appropriate district director of internal revenue. Taxes on cigars produced in a customs bonded manufacturing warehouse, Class 6, are paid on the basis of a return to the collector of customs in accordance with customs procedures and regulations. Taxes on cigars and cigarettes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid by the importer to the collector of customs on the basis of a return made on the customs form by which release from customs custody is to be effected. However, taxes on cigars and cigarettes manufactured in Puerto Rico and brought into the United States may be prepaid in Puerto Rico on the basis of a return. If a Puerto Rican manufacturer has filed a proper bond, he may defer payment at the time of release for shipment to the United States and file a semimonthly return to cover the taxes. If the manufacturer has not filed such a bond or if he has defaulted in any way in payment of his taxes, he must file a prepayment return prior to removal of such products for shipment to the United States, and continue to do so until the Director's Representative of the Office of International Operations in Puerto Rico finds that the revenue will not be jeopardized by deferred payment. Tax returns in Puerto Rico, with remittances, are filed with the Director's Representative.

(b) *Cigarette papers and tubes.* Taxes on cigarette papers and tubes are paid by the manufacturer on the basis of a monthly return. Such returns, with remittances, are filed with the district director of internal revenue for the district in which the factory is located. Taxes on cigarette papers and tubes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid to the collector of customs before removal on the basis of a return made on the customs form by which release from customs custody is effected. However, taxes on cigarette papers and tubes of Puerto Rican manufacture which are to be

shipped to the United States may be prepaid in Puerto Rico on the basis of a return.

(c) *General.* Detailed information about the payment of taxes on cigars, cigarettes, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 601.311.

§ 601.314 Assessments.

When additional or delinquent tax liability on cigars, cigarettes, and cigarette papers and tubes is disclosed by an investigation or by an examination of the taxpayer's records, a notice (except where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error) is forwarded to the taxpayer advising him of the basis for, and amount of, the liability and affording him an opportunity to show cause, in writing, against assessment.

§ 601.315 Claims.

(a) *Abatement of assessment.* Abatement of the unpaid portion of an assessment of any tax on cigars, cigarettes, and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. The taxpayer against whom such assessment has been made may file a claim for abatement of the tax on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax or liability was assessed.

(b) *Allowance of tax.* Relief from the payment of tax on cigars, cigarettes, and cigarette papers and tubes may be extended to a manufacturer by allowance of the tax, where such articles, after removal from the factory upon determination of tax and prior to the time for payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by him from the market. A claim for allowance is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the cigars, cigarettes, and cigarette papers and tubes were removed from the factory. A manufacturer may not anticipate allowance of his claim by making an adjusting entry in a tax return, pending consideration and action on the claim by the assistant regional commissioner.

(c) *Remission of tax liability.* Remission of tax liability on cigars, cigarettes, and cigarette papers and tubes may be extended to a manufacturer or export warehouse proprietor liable for the tax, where such articles, before removal, or after removal for tax-exempt purposes (including transfers in bond), are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer or export warehouse proprietor. Remission of tax liability on shortages of cigars and cigarettes in bond may be extended to manufacturers of these products. A claim for remission of such tax liability is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the factory or warehouse is located.

(d) *Refund of tax.* Taxes paid by return, or otherwise, on cigars, cigarettes, and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, importer, or export warehouse proprietor, or withdrawn by him from the market, may be refunded. A claim for refund of tax is filed on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax was paid. If tax was paid in more than one region, a claim may be filed with the assistant regional commissioner for any one of the regions in which tax was paid.

(e) *Losses caused by disaster.* Payment of an amount equal to the amount of internal revenue taxes paid or determined and customs duties paid on cigars, cigarettes, and cigarette papers and tubes removed from the factory or released from customs custody, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, may be made only if, at the time of the disaster, such articles were being held for sale by the claimant. A claim for payment of the internal revenue taxes for such losses is filed on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the internal revenue region in which the articles were lost, rendered unmarketable, or condemned. A separate claim in respect of customs duties is also filed on Form 843 with the same assistant regional commissioner. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Planning, identifies the specific disaster area.

(f) *Drawback of tax.* Drawback may be allowed only to the person who paid the tax on cigars, cigarettes, and cigarette papers and tubes which are shipped to a foreign country, Puerto Rico, and the Virgin Islands, or a possession of the United States. A claim for drawback of tax is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which such articles covered by the claim are held by the claimant. See the appropriate regulation listed under § 601.311 for information as to proper form to be used.

(g) *Credit of tax.* Taxes paid on cigars, cigarettes, and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, or withdrawn by him from the market, may be credited. A claim for credit of tax is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax was paid. If the tax was paid in more than one region, a claim may be filed with the assistant regional commissioner for any one of the regions in which tax was paid. See the appropriate regulation listed under § 601.311 for information as to the proper form to be used.

(h) *General.* Detailed information as to the requirements necessary to be complied with and the procedure to be followed in the filing of a claim, the forms to be used, the time within which a claim may be filed, and the supporting documents which must be submitted with a claim, is contained in the applicable regulations referred to in § 601.311.

§ 601.316 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under chapter 52 of the Code is set forth in paragraph (a) of § 601.327.

§ 601.317 Rulings.

The procedure for rulings in tobacco tax matters is set forth in § 601.328.

§ 601.318 Forms.

Detailed information as to all forms prescribed for use in connection with tobacco taxes is contained in the regulations referred to in § 601.311(b). Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from assistant regional commissioners (alcohol and tobacco tax).

FIREARMS

§ 601.319 Applicable laws.

Chapter 53 of the Internal Revenue Code of 1954 (26 U.S.C. 5801–5862), the provisions of which are chiefly derived from the National Firearms Act, as amended (act of June 26, 1934, 48 Stat. 1236), imposes a tax on the manufacture, and transfer in the United States, of machine guns and certain other types of firearms, and an occupational tax upon every importer and manufacturer of, and dealer and pawnbroker in, such machine guns and firearms. Section 1(b)(2) of the act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. 781–788) makes provision for the seizure and forfeiture of vessels, vehicles, and aircraft which are used to transport, carry, or possess, or to facilitate the same, any firearm with respect to which there has been committed any violation of the National Firearms Act or any regulations issued pursuant thereto. The Federal Firearms Act as amended (52 Stat. 1250; 15 U.S.C. 901–910) makes it unlawful for any manufacturer or dealer (except a manufacturer or dealer having a license issued under the provisions of the act) or any person who is a fugitive from justice or, except as provided in § 177.31 of this chapter, any person who is under indictment for, or has been convicted of, a crime punishable by imprisonment for a term exceeding 1 year, to transport, ship, or receive in interstate or foreign commerce any

firearm or ammunition: *Provided*, That a person who has been convicted of a crime punishable by imprisonment for a term exceeding 1 year (other than a crime involving a firearm or other weapon, or a violation of the Federal Firearms Act or of the National Firearms Act) may make application to the Secretary of the Treasury for relief from the disabilities incurred by reason of such conviction.

§ 601.320 Taxes relating to machine guns and certain other firearms.

Part 179 of this chapter contains the regulations relative to the (a) payment of special (occupational) taxes by manufacturers and importers of, and dealers (including pawnbrokers) in, certain types of firearms, including machine guns and silencers or mufflers, (b) payment of the tax on the making or transfer of such firearms, (c) registration, identification, importation and exportation of such firearms, (d) keeping of books and records and rendering of returns, and (e) the forfeiture and disposition of seized firearms under the provisions of the National Firearms Act.

§ 601.321 Interstate traffic in firearms and ammunition.

Part 177 of this chapter contains the regulations relative to the licensing of manufacturers of, and dealers in, firearms and ammunition, the records required to be kept by the licensees, the interstate traffic in firearms and ammunition, and the forfeiture and disposition of seized firearms or ammunition, under the provisions of the Federal Firearms Act.

§ 601.322 Rulings.

The procedure for rulings in matters in the firearms area is set forth in § 601.328.

§ 601.323 Assessments.

Where the evidence disclosed by investigation establishes that additional or delinquent tax liability has been incurred and not paid, the assistant regional commissioner (alcohol and tobacco tax), will notify the district director to list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued the taxpayer by the district director.

§ 601.324 Claims.

The procedures applicable to the filing of claims under chapter 53 of the Code are set forth below:

(a) Claims for abatement or refund of the making and transfer taxes are prepared and filed in accordance with the procedures set forth in § 601.303 (b) and (c).

(b) Claims for the redemption of "National Firearms Act" stamps are prepared and filed in accordance with the procedure set forth in Part 179 of this chapter.

(c) Claims for the abatement or refund of occupational taxes and penalties erroneously assessed or collected, and claims for redemption of stamps for occupational taxes are prepared and filed in accordance with the procedure set forth in § 601.304(h).

§ 601.325 Offers in compromise.

The procedure in the case of offers in compromise of liability under chapter 53 of the Code is set forth in paragraph (a) of § 601.327.

SEIZED PROPERTY

§ 601.326 Seizure and forfeiture of personal property.

Part 172 of this chapter contains the regulations relative to the personal property seized by officers of the Internal Revenue Service as subject to forfeiture as being used, or intended to be used, to violate certain Federal laws; the remission or mitigation of such forfeitures; and the administrative sale or other disposition, pursuant to forfeiture, of such seized property other than firearms seized under the National or Federal Firearms Act. For disposal of firearms under such Acts, see 26 U.S.C. 5862(b) and 15 U.S.C. 905(b), respectively.

OFFERS IN COMPROMISE

§ 601.327 Offers in compromise.

(a) *Liabilities (other than forfeiture) under Internal Revenue Code.* Persons desiring to submit offers in compromise in order to avoid prosecution proceedings, and taxpayers who disclaim liability in whole or in part for taxes or claim inability to pay the taxes in full, may submit offers in compromise to the district director of internal revenue or to an internal revenue officer for forwarding to the district director. Each assistant regional commissioner (alcohol and tobacco tax) has the authority to accept or reject offers in compromise of (1) tax liabilities arising from (i) the illegal production of untaxpaid distilled spirits, wines, or beer, (ii) the failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, or firearms, and (iii) the failure to pay firearms "making" or transfer taxes; (2) criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles; and (3) liabilities arising under chapter 52 of the Code (cigars, cigarettes, and cigarette papers and tubes). The Director, Alcohol and Tobacco Tax Division, has the authority to accept or reject offers in compromise of civil liability (of less than $100,000) and criminal liability arising under chapters 51 and 53 of the Code in cases not subject to compromise by assistant regional commissioners (alcohol and tobacco tax). The Commissioner accepts or rejects all other offers in compromise except those in compromise of liabilities listed in paragraphs (b) and (c) of this section. (For offers in compromise generally, see § 601.203.) Form 656 is used in all cases arising under this paragraph, regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be paid by deferred payment or payments. Offers received by the district director which come within the purview of the assistant regional commissioner (alcohol and tobacco tax) or the Director, Alcohol and Tobacco Tax Division, are forwarded to such assistant regional commissioner for consideration and appropriate action. When final action has been taken, the district director, the assistant regional commissioner (when applicable), and the proponent are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer is returned to the proponent, and prosecution or collection proceedings are resumed. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(b) *Violations of Federal Alcohol Administration Act.* The Federal Alcohol Administration Act provides penalties for violations of its provisions. The Director, Alcohol and Tobacco Tax Division, is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 656-D to the assistant regional commissioner (alcohol and tobacco tax) or an internal revenue officer under his jurisdiction. Such offers are considered by such assistant regional commissioner and are forwarded to the Director, Alcohol and Tobacco Tax Division, for final action. When the offer is acted upon, the proponent and the assistant regional commissioner (alcohol and tobacco tax) are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

(c) *Forfeiture liabilities.* The assistant regional commissioner (alcohol and tobacco tax) is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Internal Revenue Service, including liabilities to forfeiture under the internal revenue laws pertaining to wagering. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656-E to the supervisor-in-charge (alcohol and tobacco tax). Such offers are forwarded to the assistant regional commissioner (alcohol and tobacco tax) for final action. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

RULINGS

§ 601.328 Rulings.

(a) *Requests for rulings.* Any person who is in doubt as to any matter arising in connection with (1) operations or transactions in the alcohol tax area or under the Federal Alcohol Administration Act, (2) operations or transactions in the tobacco tax area, or (3) the taxes relating to machine guns and certain other firearms imposed by chapter 53 of the Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; and the licensing of manufacturers of, and dealers in, firearms or ammunition under sections 901 through 910 of Title 15 of the United States Code, may request a ruling thereon by addressing a letter to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224, or to the assistant regional commissioner (alcohol and tobacco tax) of the region in which the inquirer's business is located. Since a ruling as defined in paragraph (a)(2) of § 601.201 can issue only from the National Office, any such request made to an assistant regional commissioner will be referred by him to the Director, Alcohol and Tobacco Tax Division, for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations. If a request for a ruling is signed by a representative, or if the representative is to appear before the Internal Revenue Service, such representative must present a tax information authorization or a power of attorney, signed by the taxpayer authorizing him to receive or inspect confidential information in the matter (see Subpart E of this part).

(b) *Routine requests for information.* Routine requests for information should be addressed to the assistant regional commissioner (alcohol and tobacco tax) of the region in which the inquirer is located.

Subpart D—Provisions Special To Certain Employment and Excise Taxes

§ 601.401 Employment taxes.

(a) *General*—(1) Description of taxes. Federal employment taxes are imposed by Subtitle C of the Internal Revenue Code. Chapter 21 (Federal Insurance Contributions Act) imposes a tax on employers of one or more individuals and also a tax on employees, with respect to "wages" paid and received. Chapter 22 (Railroad Retirement Tax Act) imposes a tax on employers and their employees with respect to "compensation" paid and received. It also imposes a tax on employee representatives with respect to "compensation" received. Chapter 23 (Federal Unemployment Tax Act) imposes a tax on employers of four or more individuals with respect to "wages" paid. Chapter 24 (collection of income tax at source on wages) requires every employer making payment of "wages" to deduct and withhold upon such wages the tax computed or determined as provided therein. The tax so deducted and withheld is allowed as a credit against the income tax liability of the employee receiving such wages.

(2) *Applicable regulations.* The descriptive terms used in this section to designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(3) *Collection methods.* Employment taxes are collected by means of returns and by withholding by employers. Employment tax returns are not required to be filed by employees, but taxes imposed upon them must be deducted and withheld by employers from their wages. Employee representatives (as defined in the Railroad Retirement Tax Act) are required to file returns. All employers who are liable for or who must withhold employment taxes are required to file returns with the district director of internal revenue. The return of the Federal unemployment tax is required to be filed annually on Form 940 with respect to wages paid during the calendar year. All other returns of Federal employment taxes (with the exception of returns filed for agricultural employees) are required to be filed for each calendar quarter except that if pursuant to regulations the district director so notifies the employer, returns on Form 941 are required to be filed on a monthly basis. The employer and employee taxes imposed by chapter 21 (other than the employer and employee taxes on wages paid for agricultural labor) and the tax required to be deducted and withheld upon wages by chapter 24 are combined in a single return on Form 941. In the case of wages paid by employers for domestic service performed in a private home not on a farm operated for profit, the return of both the employee tax and the employer tax imposed by chapter 21 is on Form 942. However, if the employer is required to file a return for the same quarter on Form 941, he may at his election include the taxes with respect to such domestic service on Form 941. The employer and employee taxes imposed by chapter 21 with respect to wages paid for agricultural labor are required to be reported annually on Form 943. Under the Railroad Retirement Tax Act, the return required of the employer is on Form CT-1, and the return required of each employee representative is on Form CT-2.

(4) *Receipts for employees.* Employers are required to furnish each employee a receipt or statement, in duplicate, showing the total wages subject to income tax withholding, the amount of income tax withheld, the amount of wages subject to tax under the Federal Insurance Contributions Act, and the amount of employee tax withheld. See section 6051 of the Code.

(5) *Use of Federal Reserve banks and authorized commercial banks in connection with payment of Federal employment taxes.* Most employers are required to deposit employment taxes either on a monthly basis or a semimonthly basis as follows:

(i) *Semimonthly deposits.* With respect to wages paid during February and March of 1967 or any calendar quarter thereafter, special deposits within 3 banking days after the close of a semimonthly period are required if the employee tax deducted and the employer tax under chapter 21, and income tax withheld at source on wages under chapter 24, exclusive of taxes reportable on Form 942 and Form 943, aggregate more than $2,500 ($4,000 in the case of wages paid after May 1966 and before February 1967) for any month in the preceding calendar quarter. An amount not required to be deposited by this subdivision may nevertheless be directly remitted by the employer with his return, or may be deposited and the validated depositary receipt attached to his return.

(ii) *Monthly deposits.* With respect to employers not required to make deposits under subdivision (i) of this subparagraph, if (*a*) during any calendar month, other than the last month of a calendar quarter, the aggregate amount of the employee tax deducted and the employer tax under chapter 21 and the income tax withheld at source on wages under chapter 24, exclusive of taxes reportable on Form 942 and Form 943, exceeds $100, or (*b*) at the end of any month or period of 2 or more months and prior to December 1 of any calendar year, the total amount of undeposited taxes imposed by chapter 21, with respect to wages paid for agricultural labor, exceeds $100, it is the duty of the employer to deposit such amount within 15 days after the close of such calendar month. However, in the case of the last month of any calendar quarter (last month of the calendar year in the case of agricultural employers) the employer may either include with his return direct remittance to the district director for the amount of such taxes or attach to his return a depositary receipt validated by a Federal Reserve bank.

(iii) *Additional rules.* If a deposit is made for the last month of the quarter (last month of the year for agricultural employers), or any other voluntary deposit, it must be made in ample time to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return at the time prescribed for filing such return. Deposits under subdivisions (i) and (ii) of this subparagraph are made with a Federal Reserve bank or a commercial bank authorized in accordance with Treasury Department Circular No. 848, revised, to accept remittances of these taxes for transmission to a Federal Reserve bank. The remittance of such amount must be accompanied by a Federal Depositary Receipt (Form 450). After the Federal Reserve bank has validated the depositary receipt, it will be returned to the

employer. The validated receipts must be attached to the return on Form 941 or Form 943 and the employer shall pay to the district director the balance, if any, of the taxes due for the quarter or the year, as the case may be.

(iv) *Employers under chapter 22 of the Code.* Depositary procedures similar to those prescribed in this subparagraph are prescribed for employers as defined by the Railroad Retirement Tax Act, except that Railroad Retirement taxes are not required to be deposited semimonthly and must be deposited by using Form 515 (Railroad Retirement Depositary Receipt).

(6) *Separate accounting.* If an employer fails to withhold and pay over income, social security, or railroad retirement tax due on wages of employees, he may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(b) *Provisions special to the Federal Insurance Contributions Act*—(1) *Employers' identification numbers.* For purposes of the Federal Insurance Contributions Act each employer who files Form 941 or Form 943 must have an identification number. Any such employer who does not have an identification number must secure a Form SS–4 from the district director of internal revenue or from a district office of the Social Security Administration and, after executing the form in accordance with the instructions contained thereon, file it with the district director or the district office of the Social Security Administration. At a subsequent date the district director will assign the employer a number which must appear in the appropriate space on each tax return, Form 941 or Form 943, filed thereafter. The requirement to secure an identification number does not apply to an employer who has in his employ only employees who are engaged exclusively in the performance of domestic service in his private home not on a farm operated for profit.

(2) *Employees' account numbers.* Each employee (or individual making a return of net earnings from self-employment) who does not have an account number must file an application on Form SS–5, a copy of which may be obtained from any district office of the Social Security Administration or from a district director of internal revenue. The form, after execution in accordance with the instructions thereon, must be filed with the district office of the Social Security Administration, and at a later date the employee will be furnished an account number. The employee must furnish such number to each employer for whom the employee works, in order that such number may be entered on each tax return filed thereafter by the employer.

(3) *Reporting of wages.* Forms 941, 942, and 943 each require, as a part of the return, that the wages of each employee paid during the period covered by the return be reported thereon. Form 941a is available to employers who need additional space for the listing of employees. Employers who meet the requirements of the Social Security Administration may, with the approval of the Commissioner of Internal Revenue, submit wage information on reels of magnetic tape in lieu of Form 941a. It is necessary at times that employers correct wage information previously reported. A special form, Form 941c, has been adopted for use in correcting erroneous wage information or omissions of such wage information on Form 941, 942, or 943. Instructions on Form 941, 941c, 942, and 943 explain the manner of preparing and filing the forms. Any further instructions should be obtained from the district director for the district in which the returns are filed.

(c) *Adjustments by employers*—(1) *Adjustments with respect to income tax withheld at source upon wages.* If an employer for any quarter of a calendar year deducts and withholds more or less than the correct amount of tax upon wages, or pays more or less than the correct amount of tax to the district director, such employer may make proper adjustment without interest in any subsequent quarter in the same calendar year. No adjustment may be made in respect of an underpayment for any quarter after the district director sends notice and demand for payment of the additional tax. In such case the additional tax must be paid in accordance with the notice and demand. Nor may any adjustment be made in respect of an overpayment for any quarter after the employer files a claim for refund of such overpayment. If an employer makes an adjustment on any return in respect of errors in a preceding quarter there must be attached to the return a detailed explanation of the adjustment and a designation of the quarterly return period in which the errors occurred. If an adjustment relates to an excess withholding of tax from an employee, the explanation attached to the return must include the fact that such tax has been repaid to the employee. Errors occurring in any quarterly return period may be corrected in making the return for such period, if such errors are ascertained prior to the filing of the return. For information as to the manner of correcting errors in withholding which cannot be adjusted in a return for a subsequent quarter of the same calendar year, employers should consult the local district director of internal revenue. Refunds or credits with respect to an overpayment of income tax withheld may be made to an employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(2) *Adjustments with respect to employee tax or employer tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* Errors in withholding during any return period under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act should be corrected in the return for such period, if such errors are ascertained prior to the time the return is required to be filed with the district director. In the case of errors in withholding of employee tax or in payments of employer tax under either the Federal Insurance Contributions Act or the Railroad Retirement Tax Act, where such errors are ascertained subsequent to the time prescribed for filing the return for the period in which they occurred, the regulations relating to such taxes prescribe the conditions under which such errors may be adjusted. If adjustments cannot be made in accordance with the provisions of such regulations, underpayments of both the employer and employee tax will be assessed and collected in the usual manner, and refunds of overpayments must be claimed on Form 843.

(d) *Special refunds of employee social security tax.* (1) In the case of an employee receiving wages from more than one employer during the calendar year, amounts may be deducted and withheld as employee social security tax (that is, employee tax under the Federal Insurance Contributions Act) with respect to wages in excess of $4,800 ($4,200 for certain calendar years prior to 1959). Under certain conditions, the employee may receive a so-called "special refund" of the amount of employee social security tax deducted and withheld from wages in excess of such amount. An employee who is entitled to a special refund of employee tax with respect to wages received during a calendar year, and who is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year), may obtain the benefits of such special refund only by claiming credit for such special refund on such income tax return in the same manner as if such special refund were an amount deducted and withheld as income tax at source on wages.

(2) The amount of the special refund allowed as a credit shall be considered as an amount deducted and withheld as income tax at source on wages. If the amount of such special refund when added to amounts deducted and withheld as income tax under chapter 24 exceeds the income tax imposed by chapter 1, the amount of the excess constitutes an overpayment of income tax, and interest on such overpayment is allowed to the extent provided under section 6611 of the Code upon an overpayment of income tax resulting from a credit for income tax withheld at source on wages.

(3) If an employee entitled to a special refund of employee social security tax is not required to file an income tax return for the year in which such special refund may be claimed as a credit, he may file a claim for refund of the excess social security tax on Form 843. Claims must be filed with the district director of internal revenue for the district in which the employee resides.

§ 601.402 Sales taxes collected by return.

(a) *General.* Sales taxes collected by return include the following:

(1) The retailers excise taxes, imposed by chapter 31 of the Code, with respect to:

Diesel fuel;
Special motor fuels.

(2) The manufacturers excise taxes, imposed by chapter 32 of the Code, with respect to the following items:

(i) Motor vehicles and related items:

Automobiles, trucks, buses, trailers;
Truck parts and accessories;
Tires, tubes, and tread rubber;
Gasoline and lubricating oil.

(ii) Recreational equipment:

Fishing rods, creels, and reels;
Artificial lures, baits, and flies;
Pistols and revolvers;
Other firearms, shells, and cartridges.

(b) *Applicable regulations.* The descriptive terms used in this section to designate the various articles and commodities subject to tax are intended only to indicate their general classes. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from any district director of internal revenue.

(c) *Returns, refunds, and credits*—(1) *Returns.* The sales taxes referred to in paragraph (a) of this section are collected by means of returns. Any person liable for tax is required to file returns with the district director of internal revenue for the district in which the principal place of business of such person is located. A procedure similar to the Depositary Receipt procedure with respect to the payment of certain Federal employment taxes, described in paragraph (a)(5) of § 601.401, is prescribed with respect to the sales taxes referred to in paragraph (a) of this section. For information relating to the use of depositary receipts for the payment of such taxes, see the applicable regulations and the instructions on Form 720, Quarterly Federal Excise Tax Return.

(2) *Refunds and credits.* After the assessment and collection of a sales tax which the taxpayer claims is not due, the taxpayer may either file a claim for refund of such tax on Form 843 or claim a credit for such amount on a return filed by him for a period subsequent to that in respect of which the alleged erroneous payment has been made. However, no claim for refund may be filed or credit taken on a return after the expiration of the applicable period of limitations on the allowance of refunds and credits. In the case of a credit claimed for an amount of tax alleged to have been erroneously paid, no particular forms for the claiming of such a credit are prescribed. The procedure to be followed in such a case is for the taxpayer to enter on the line provided for credits on the return form the amount claimed to have been erroneously paid and to file with the return a supporting statement which should set out clearly and fully the basis on which the credit is claimed. Notice as to the disallowance of any credit is forwarded to the taxpayer and the amount of the credit is then entered on an assessment list for collection in the usual manner.

(3) *Payments to certain ultimate purchasers of gasoline and lubricating oil.* Sections 6420, 6421, and 6424 of the Code provide for certain payments to ultimate purchasers of gasoline used on a farm for farming purposes, used for certain nonhighway purposes, or used by local transit systems, and of lubricating oil used otherwise than in a highway motor vehicle. Payments allowable under section 6420, 6421, and 6424 of the Code may be claimed by an income taxpayer as a credit under section 39 of the Code against the tax due on his income tax return. Governmental agencies and certain exempt organizations may file claims for allowable payments on Form 2240 or Form 843. In the case of gasoline used for certain nonhighway purposes or used by local transit systems, and in the case of lubricating oil used otherwise than in a highway motor vehicle, the ultimate purchaser may file a claim for payment in lieu of such income tax credit, with respect to any of the first three quarters of his taxable year for which he is entitled to a payment of $1,000 or more. Applicable regulations and instructions accompanying the prescribed forms provide detailed procedures.

(d) *Registration and bonding requirements.* (1) Under temporary regulations effective January 1, 1959, an article may, in general, be sold tax free under chapter 32 of the Code by the manufacturer for certain uses, provided the seller, first purchaser, and second purchaser, as the case may be, have been registered. In the case of State governments, registration is optional. Also, the requirements for registration do not apply to sales or purchases by the United States, or to a purchaser located in a foreign country or a possession of the United States where an article is sold for export. Any person who has been issued a certificate of registry prior to January 1, 1959, which has not been revoked, is registered for purposes of the temporary regulations. Any other person entitled to sell or purchase articles tax free under such regulations who has not previously registered, may register by completing Form 637 setting forth the prescribed information and forwarding it to his district director. Such person shall be considered to be registered for purposes of making such tax-free sales or purchases upon receipt of a validated Form 637 from his district director.

(2) If not previously registered, producers and importers of gasoline and manufacturers of lubricating oil (including wholesale distributors of gasoline who qualify as producers under applicable regulations) must, before incurring any liability for tax under section 4081 or 4091 of the Code, make application for registration on Form 637. Detailed instructions as to the filing of applications for registration by producers and importers of gasoline and manufacturers of lubricating oil are prescribed in applicable regulations.

(3) Every importer of foreign cars, trucks, buses, etc., taxable under chapter 32 of the Code must make application to the district director for the district in which he will file returns of the tax for a determination whether he is required to give bond securing the payment of the tax on his sales of such commodities. Detailed instructions as to the information required to be included in the application and the procedure to be followed by the importer are set forth in the applicable regulations. Form 3006 has been prescribed for the convenience of importers and may be obtained from the district director.

§ 601.403 Miscellaneous excise taxes collected by return.

(a) *General.* Miscellaneous excise taxes collected by return include the following:

(1) *Communications.* Subchapter B of chapter 33 of the Code imposes a tax on amounts paid for local telephone service, toll telephone service, and teletypewriter exchange service.

(2) *Transportation of persons by air.* Subchapter C of chapter 33 of the Code imposes a tax with respect to transportation of persons by air, including seating or sleeping accommodations furnished in connection with such transportation.

(3) *Foreign insurance policies.* Under chapter 34 of the Code a tax is imposed on premiums paid for foreign insurance policies.

(4) *Wagers.* Subchapter A of chapter 35 of the Code imposes a tax on wagers as defined therein.

(5) *Highway motor vehicle use.* Subchapter D of chapter 36 of the Code imposes a tax for each taxable year (commencing after June 30, 1956, and ending before October 1, 1972) upon the use, at any time during the taxable year, on the public highways in the United States of any highway motor vehicle which (together with certain semitrailers and trailers) has a taxable gross weight in excess of 26,000 pounds.

(6) *Sugar.* Chapter 37 of the Code also imposes a tax upon manufactured sugar manufactured in the United States.

(7) *Circulation other than of national banks.* Subchapter E of chapter 39 of the Code imposes a tax with respect to (i) the average circulation outstanding of any bank, association, corporation, company, or person, and (ii) the circulation paid out by every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association.

(8) *Interest equalization.* Chapter 41 of the Code imposes (subject to specified exemptions) a tax on the acquisition by U.S. persons of foreign securities from a foreign person. The tax became effective July 19, 1963.

(9) *Hydraulic mining.* The act entitled "An Act to create the California Debris Commission and regulate hydraulic mining in the State of California",

approved March 1, 1893, as amended (33 U.S.C. 661–687), imposes a tax with respect to certain hydraulic gold mining in the State of California.

(b) *Applicable regulations.* The descriptive terms used in this section to designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(c) *Collection of tax*—(1) *Imposed taxes.* The tax on the manufacture of sugar and the tax on the issuance of foreign insurance policies are collected in the same manner as manufacturers' sales taxes. See § 601.402. Returns of the tax on wagers are required to be filed monthly; returns of interest equalization tax and of tax on foreign insurance premiums are required to be filed quarterly; returns of the tax on circulation other than of national banks are required to be filed on June 1 and December 1 each year; and returns of the taxes on hydraulic mining and on the use of highway motor vehicles are required to be filed annually.

(2) *Collected taxes.* The other miscellaneous excise taxes referred to in this section are imposed on the person making the payment for the telephone, air transportation, or other service involved. These taxes are required to be collected by the telephone company, airline, or other person receiving the payment. All taxes collected in this manner are held by the collecting agent in trust for the United States until deposited in accordance with the Depositary Receipt procedure or paid over to the district director of internal revenue. The collecting agencies are required to file returns and the tax is payable, without notice from the district director, at the time fixed for filing the returns. If the person from whom the tax is required to be collected refuses to pay it or, if for any reason it is impossible for the collecting agency to collect the tax from such person, the collecting agency is required to report to the district director of internal revenue for the district in which its returns are required to be filed the name and address of such person, the nature of the service or facility rendered, the amount paid therefor, and the date on which paid. Upon receipt of this information the district director will proceed against the person to whom the facilities were provided or the services rendered to assert the amount of tax due, affording such person the same district conference, protest and appellate rights as are available to other excise taxpayers. In addition, when a field or office audit of a collecting agency's records, or of a taxpayer's records, discloses that the collecting agency failed during prior reporting periods to collect taxes due, the district director may assert such taxes directly against the person to whom the facilities were provided or the services rendered, whether or not the collecting agency had attempted collection or the person liable for the tax had refused payment thereof.

(3) *Depositary receipts.* A procedure similar to the Depositary Receipt procedure with respect to the payment of certain Federal employment taxes, described in § 601.401 (a) (5), is prescribed with respect to the miscellaneous excise taxes (except the taxes on the use of highway motor vehicles, wagers, hydraulic mining, and circulation other than of national banks) referred to in paragraph (a) of this section. For information relating to the use of depositary receipts for the payment of such taxes, see the applicable regulations and the instructions on Form 720, Quarterly Federal Excise Tax Return.

(4) *Separate accounting.* Collecting agents who fail to collect and pay over the excise taxes on facilities or services may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(d) *Refunds and credits.* The procedure in § 601.402 (c) (2) regarding refunds and credits in respect of sales taxes collected by return is, in general, applicable with respect to the miscellaneous excise taxes collected by return, except that in the case of the collected taxes referred to in paragraph (c) (2) of this section, the person upon whom the tax is imposed may file a claim on Form 843 for refund of erroneous or illegal payment of tax, but cannot take a credit since he is not required to file a return with respect to such taxes.

(e) *Licensing and registration*—(1) *Hydraulic mining.* Every person who desires to engage in hydraulic mining operations in the State of California within the scope of the Act (see paragraph (a) (9) of this section) must procure a license to operate the mine from the California Debris Commission before beginning operations, in accordance with the rules and regulations promulgated by that Commission.

(2) *Wagering.* For the occupational tax upon any person liable for the tax on wagers or engaged in receiving wagers for or on behalf of any person so liable, see § 601.404(d) (1).

§ 601.404 Miscellaneous excise taxes collected by sale of revenue stamps.

(a) *General.* Miscellaneous excise taxes collected by sale of revenue stamps may be grouped into 3 general classes. A brief description of each class is set forth in the 3 paragraphs immediately following.

(b) *Documentary stamp taxes*—(1) *Deeds of conveyance.* Chapter 34 of the Internal Revenue Code imposes a tax on deeds of conveyance of realty sold.

(2) *Cotton futures.* Subchapter D of chapter 39 of the Code imposes a tax on each contract of sale of any cotton for future delivery unless the contract complies with certain specified conditions.

(c) *Commodity stamp taxes*—(1) *Oleomargarine.* Subchapter F of chapter 38 of the Code imposes a tax with respect to all oleomargarine imported from foreign countries.

(2) *Adulterated and process or renovated butter.* Part I of subchapter C of chapter 39 of the Code imposes taxes with respect to adulterated and process or renovated butter and also imposes an occupational tax on manufacturers of adulterated and process or renovated butter and on wholesale and retail dealers in adulterated butter.

(3) *Filled cheese.* Part II of subchapter C of chapter 39 imposes a tax with respect to filled cheese and also imposes an occupational tax on manufacturers of, and wholesale and retail dealers in, filled cheese.

(4) *Opium, isonipecaine, opiates, and coca leaves.* Part I of subchapter A of chapter 39 of the Code imposes a tax upon narcotic drugs produced in or imported into the United States, and sold, or removed for consumption or sale and also imposes an occupational tax on (i) importers, manufacturers, producers or compounders of such drugs; (ii) wholesale or retail dealers in such drugs; (iii) physicians, dentists, veterinary surgeons or other practitioners dispensing such drugs; (iv) persons engaged in research, instruction or analysis using such drugs; and (v) persons not otherwise taxed dispensing preparations containing such drugs. The responsibility for the administration and enforcement of these taxes is jointly shared by the Internal Revenue Service and the Bureau of Narcotics.

(5) *Opium for smoking purposes.* Subpart B of part I of subchapter A of chapter 39 of the Code imposes a tax upon all opium manufactured in the United States for smoking purposes. The responsibility for the administration and enforcement of this tax is jointly shared by the Internal Revenue Service and the Bureau of Narcotics.

(6) *Marihuana.* Part II of subchapter A of chapter 39 of the Code imposes a tax upon all transfers of marihuana and also imposes an occupational tax with respect to marihuana on similar classes of persons as those enumerated in subparagraph (4) of this paragraph and in addition imposes a tax on millers of marihuana. The responsibility for the administration and enforcement of this tax is jointly shared by the Internal Revenue Service and the Bureau of Narcotics.

(7) *White phosphorous matches.* Subchapter B of chapter 39 of the Code imposes a tax upon white phosphorous matches.

(d) *Occupational stamp taxes*—(1) *Wagers.* Subchapter A of chapter 35 of the Code imposes a tax on wagers. Subchapter B of chapter 35 of the Code imposes an occupational tax upon each person who is liable for the tax on wagers or who is engaged in receiving wagers for or on behalf of any person so liable.

(2) *Coin-operated gaming devices.* Subchapter B of chapter 36 of the Code imposes an occupational tax with respect to coin-operated gaming devices, or similar devices operated without a coin.

(e) *Applicable regulations.* The descriptive terms used in this section to

designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(f) *General procedure.* (1) The documentary and commodity stamp taxes are paid by having affixed to the document, package, container, etc., an internal revenue adhesive stamp or stamps, in an amount equal to the tax due and by thereafter canceling such stamps in the manner prescribed. In addition, documentary stamp taxes may be paid by stamps produced by authorized documentary stamp meter machines. Payment of occupational taxes is evidenced by the posting or displaying of a special occupational tax stamp on the premises where the business is operated. If the taxpayer required to display the special occupational tax stamp has no fixed place of business, the stamp must be kept on his person. The stamps used for such purposes are prepared by the Internal Revenue Service and distributed through the district director of internal revenue.

(2) Documentary stamp taxes are payable with respect to every transfer of real property. Commodity stamp taxes are payable with respect to the manufacture, importation, or transfer, as the case may be, of the contents of each package or container. Occupational taxes are payable annually for the privilege of doing business beginning with July 1 of each year, when the taxpayer is in business on that date, or from the beginning of the month in which the business is commenced on a pro rata basis.

(3) Documentary stamps may be purchased from (i) district directors of internal revenue and duly authorized internal revenue employees; (ii) postmasters in all post offices of the first and second classes and such post offices of the third and fourth classes as are located in county seats; (iii) designated depositaries of the United States; and (iv) designated agents of any State. Commodity and occupational tax stamps may be purchased only from district directors and duly authorized internal revenue agents. Such purchases may be made only upon the filing of the prescribed requisition, application, or other form and from an official authorized by law to sell such stamps.

(4) Payments for such stamps may be made by means of cash, post office money order, or certified check, or by personal check to the extent provided by regulations. In situations (i) where the documents, commodities, etc., subject to stamp tax are no longer in existence or (ii) where, for other reasons, such documents, etc., cannot be stamped, or (iii) where it is discovered that occupational tax stamps are due for prior taxable years, or (iv) where a taxpayer, after being advised of his liability, refuses to affix stamps, the tax is collected by assessment.

(5) Detailed information as to the person liable for tax, the forms of stamps, the prescribed application or requisitions, and all other forms required in connection with miscellaneous excise taxes payable by revenue stamps is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(g) *Liability for delinquent tax.* When liability for delinquent tax is disclosed by the taxpayer or is discovered as a result of an examination of the taxpayer's books and records, the delinquent tax may be collected by assessment.

(h) *Administrative remedies available to taxpayers after purchase of documentary, commodity, or occupational tax stamps or after assessment or payment of tax*—(1) *Redemption of unused stamps.* Where stamps have been rendered useless by gumming or sticking together in transit or otherwise without fault of the purchaser, they may be exchanged by a district director of internal revenue for other stamps of the same quantity and denomination. Unused stamps which have been spoiled, destroyed, or rendered useless, or unfit for the purpose intended, or for which the owner may have no use, may be redeemed upon proper claim filed with the district director. Such claims must be prepared on Form 843 and must be filed with the district director for the district in which is located the principal office of the claimant, or if he has no such office, with the district director for the district in which he resides. The claim for redemption of unused stamps must be filed within 3 years after the date of purchase of the stamps from the Government. The unused stamps for which redemption is claimed shall be submitted with the claim. If the stamps have been destroyed or damaged to the extent that they cannot be presented for redemption, then proof satisfactory to the district director of such destruction or damage must accompany the claim. Where the actual date of purchase of the stamps from the Government cannot be given, it must be definitely shown in the claim that they were so purchased within 3 years prior to the date of the filing of the claim. Once filed, a claim for redemption follows generally the same channels as do claims for refund. See §§ 601.103 to 601.106.

(2) *Claims for abatement or refund.* In case of any tax payable by a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid or the stamps affixed. This includes the situation where stamps through mistake have been improperly or unnecessarily used, or have been used in excess of the amount of tax actually due. The used stamps either must actually be submitted with the claim, or if it is impracticable to remove them from the instruments, documents, etc., to which they are attached, the words "Claim for refund of $_____ filed.", with the appropriate amount inserted, shall be written across the face of the stamp by the claimant or the person having custody of the instruments or documents to which the stamps are affixed. The claimant must make a statement in his claim that the stamps have been so marked and by whom. Where a stamp tax is not paid by stamp but the amount thereof is assessed, the person against whom the assessment is made may file a claim for abatement of the tax or a claim for refund for any part of the assessment which has been paid. In either case the procedure to be followed by the claimant generally is the same as set forth in the case of claims for abatement or refund of other taxes. See §§ 601.103 to 601.106. All claims for refund of stamp tax paid pursuant to an assessment must be filed within 3 years next after payment of the tax.

(3) *Instructions.* Detailed instructions as to the manner in which claims for redemption of stamps and for abatement and refund of stamp taxes should be prepared and filed are contained in the applicable regulations.

(i) [Reserved]

(j) *Provisions special to commodity stamp taxes.* (1) Provision is made for the withdrawal of filled cheese from factories, free of tax, for the use of the United States. The procedure to be followed and the form of exemption certificate to be used in the case of such withdrawals are prescribed in the applicable regulations. Provision is also made for the exportation without payment of tax on adulterated butter. The procedure to be followed in the case of such exportation is prescribed in the applicable regulations.

(2) Every manufacturer of opium manufactured in the United States for smoking purposes must, before commencing business, furnish to the district director of the district in which his place of manufacture is located a notice on Form 268 and a bond on Form 269 with sureties satisfactory to the district director and in a penal sum of not less than $100,000. There shall be not less than 3 personal sureties, each of whom shall qualify in the full amount of the bond. The district director on approving the bond will issue to the manufacturer a certificate on Form 270 which will specify the penal sum of the bond furnished. This certificate shall contain a transcript from the manufacturer's notice, Form 268, giving an accurate description of the factory premises. This certificate must be posted by the manufacturer in a conspicuous place within his manufactory.

(3) Every manufacturer of adulterated and process or renovated butter, filled cheese, or white phosphorous matches must also give notice and register with the district director on Form 213 before engaging in the business and furnish a satisfactory bond on Form 214. Persons required to register with the district director or furnish bond should consult the applicable regulations and the appropriate forms.

(k) *Provisions applicable to special or occupational stamp taxes.* Every person liable to pay any occupational tax imposed under subtitle D of the Code is required to register with the district director of internal revenue his name or style, place of residence, trade or business, and the place where such trade or business is carried on. In the case of a partnership the names of the partners and their place of residence must be so registered. See section 7011 of the Code. The following forms are prescribed for registration: Form 678 (relating to occupational taxes with respect to narcotics and marihuana), Form 11 (relating to adulterated and process or renovated butter and filled cheese), Form 11–B (relating to the occupational tax for coin-operated gaming devices), Form 11–C (relating to occupational tax with respect to wagering).

Subpart E—Conference and Practice Requirements

AUTHORITY: The provisions of this Subpart E issued under sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805); 5 U.S.C. 301.

§ 601.501 Scope of conference and practice requirements; definitions.

(a) *Scope.* The conference and practice requirements prescribed in this subpart apply to all offices of the Internal Revenue Service, including the Office of the Chief Counsel. Such requirements are applicable to practice (including conferences) with respect to any matter involving any internal revenue tax, but do not extend to the mere signing of a tax return, claim, or election, since such an act, of itself, does not constitute practice before the Revenue Service. The signing of a tax return, claim, or election is governed by other rules or instructions relating to such matters. For special provisions relating to alcohol and tobacco tax activities, see §§ 601.521 through 601.527.

(b) *Definitions for purposes of this subpart*—(1) *Matter.* The application of each tax imposed by the Internal Revenue Code for each taxable period constitutes a separate matter.

(2) *Office of the Internal Revenue Service.* The office of each district director of Internal Revenue, the office of each regional commissioner, and the office of each regional counsel constitutes a separate office of the Internal Revenue Service.

(3) *Tax information authorization.* A document signed by the taxpayer authorizing his representative to receive or inspect confidential tax information in a specified matter constitutes a tax information authorization. For rules relating to the requirements of a tax information authorization, see paragraph (c)(2) of § 601.502.

GENERAL REQUIREMENTS

§ 601.502 Requirements for conference—recognition to practice and, in certain cases, power of attorney or tax information authorization.

(a) *General.* It is the policy of the Revenue Service to encourage the discussion of disputed tax liability or any other matter in connection with an internal revenue tax which affects the taxpayer's interest. Conferences, of course, may be accorded only to taxpayers or their duly authorized representatives. As a general rule, conferences with taxpayers or their representatives will not be held without previous arrangement. However, upon a proper showing, a request for an immediate conference without previous arrangement will be given consideration, and Revenue Service officials responsible for the arrangement of conferences may, in their discretion, make an exception to the general rule. Every protest, brief, or other statement in writing which the taxpayer or his representative desires to be considered at any conference should be submitted or filed at least 5 days prior to the date of the conference. If the taxpayer or his representative is unable to file such protest, brief, or other statement in writing at least 5 days prior to the date of the scheduled conference, the taxpayer or his representative should arrange with the appropriate Revenue Service official for a postponement of the conference to a date mutually agreeable to the parties. The taxpayer or his representative remains free, of course, to submit additional or supporting facts or evidence within a reasonable time after the conference.

(b) *Requirements to be met by taxpayer's representative in order to be recognized*—(1) *Explanation of recognition to practice.* Except as otherwise provided in this section, no person may appear in a representative capacity on behalf of any taxpayer or of a transferee or fiduciary unless such person is recognized to practice before the Revenue Service. A person will be recognized to practice before the Revenue Service if he meets the requirements set forth in Treasury Department Circular No. 230, as amended (31 CFR Part 10) (hereinafter referred to in this subpart as Circular No. 230), which circular contains rules governing practice before the Revenue Service. Circular No. 230 includes, among other things, the requirements of the Act of November 8, 1965 (Public Law 89–332, 79 Stat. 1281), which law governs the recognition of attorneys and certified public accountants. In general, the following persons will be recognized to practice before the Revenue Service—

(i) Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and who is not currently under suspension or disbarment from practice before the Revenue Service, and who files with the Revenue Service a written declaration that he is so currently qualified and is authorized to represent the particular party on whose behalf he acts (hereinafter referred to in this subpart as a qualified attorney);

(ii) Any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia, and who is not currently under suspension or disbarment from practice before the Revenue Service, and who files with the Revenue Service a written declaration that he is so currently qualified and is authorized to represent the particular party on whose behalf he acts (hereinafter referred to in this subpart as a qualified certified public accountant);

(iii) Any person currently enrolled as an agent pursuant to the requirements of Circular No. 230; and

(iv) Any person qualified under § 10.5 (c) (relating to temporary recognition of an applicant for enrollment) or § 10.7 (relating to limited practice without enrollment in the case of a full-time employee, or a bona fide officer of a corporation, trust, estate, association, or organized group, and certain others) of Circular No. 230.

The appearance of such person and his representation of taxpayers in every respect must be in strict compliance with the requirements of all pertinent statutes, Circular No. 230, and this subpart.

(2) *Enrollment not required for certain persons.* (i) The persons described in subparagraph (1)(iv) of this paragraph (see § 10.5(c) and § 10.7 of Circular No. 230) are authorized by Circular No. 230 to appear without enrollment under the circumstances and conditions described therein. However, such persons must present satisfactory identification and, if required by paragraph (c) of this section, submit a power of attorney or a tax information authorization. The formal requirements concerning identification and authority of a person acting in a fiduciary capacity are the same as those related to the execution by a fiduciary of powers of attorney or tax information authorizations (see § 601.504). Persons described in subparagraph (1)(iv) of this paragraph who without enrollment may appear on behalf of any person with respect to the tax liability of such person, may also without enrollment appear with respect to the liability of such person as a transferee of property of a taxpayer and with respect to the liability of a fiduciary under Revised Statute § 3467, as amended (31 U.S.C. 192).

(ii) A representative (who would have to be enrolled in order to practice before the Revenue Service) will not be required to become enrolled if such representative is only authorized to inspect or receive copies of returns filed by the taxpayer where an Executive order or regulations permit such action by a representative. The Commissioner reserves the right to withhold applying the above exception in any specific case.

(3) *Employees of persons recognized to practice.* Employees of persons recognized to practice before the Revenue Service, who themselves are not so recognized, will not be recognized by offices of the Revenue Service except for the purpose of filing papers or securing information as to the status of tax cases. Recognition of such employees for the purpose of securing information as to the status of tax cases will be given only when the employee presents, with reference to a particular case, written authority from his employer to request such

information, and a power of attorney or tax information authorization, if appropriate, in such matter has previously been filed by his employer and has not been revoked by the person who granted it.

(c) *Requirement of a power of attorney or a tax information authorization*—(1) *Requirement of power of attorney.* Except as otherwise provided in subparagraphs (3)(iii) and (4) of this paragraph, a power of attorney in proper form, or a copy thereof (for rules relating to copies, see paragraph (e) of § 601.504), executed by the taxpayer, will be required in a matter by the Revenue Service when the taxpayer's representative desires to perform one or more of the following acts on behalf of the taxpayer:

(i) Receipt (but not endorsement and collection) of a check in payment of any refund of internal revenue taxes, penalties, or interest. The endorsement and payment of a check drawn on the Treasurer of the United States after delivery to the taxpayer or his representative are governed by Treasury Department Circular No. 21, as amended (31 CFR Part 360). If the refund check is not to be endorsed by the payee personally, it should be endorsed under authority evidenced by one of the special types of powers of attorney prescribed by Circular No. 21. (For restrictions on the assignment of claims, see Revised Statute § 3477, as amended (31 U.S.C. 203). For rules relating to delivery of checks in payment of refunds, see paragraph (b) of § 601.506.)

(ii) Execution of a waiver of restriction on assessment or collection of a deficiency in tax, or a waiver of notice of disallowance of a claim for credit or refund.

(iii) Execution of a consent to extend the statutory period for assessment or collection of a tax.

(iv) Execution of a closing agreement under section 7121 of the Internal Revenue Code.

The power of attorney must specify which of the acts the representative is authorized to perform and no representative will be permitted to perform any of such acts without a proper power of attorney. Except as provided in paragraph (c)(2) of § 601.505, only one power of attorney is to be in effect in an office of the Revenue Service with respect to any of the acts enumerated in this subparagraph, and there must be included in such power of attorney the names and addresses of all representatives to whom the taxpayer has delegated authority to represent him with respect to any of the acts.

(2) *Requirement of a tax information authorization.* (i) Except as otherwise provided in subdivision (ii) of this subparagraph and subparagraphs (3) and (4) of this paragraph, in order that a taxpayer's representative may receive or inspect confidential tax information in a matter, a tax information authorization, or a copy thereof (for rules relating to copies, see paragraph (e) of § 601.504), will be required by the Revenue Service. The tax information authorization must be signed by the taxpayer and must specify the matter covered. Examples of the receipt or inspection of confidential information for which a tax information authorization is required are the inspection of the taxpayer's tax returns (see section 6103 and the regulations thereunder), the receipt from Revenue Service officials at a conference of information disclosing the position of the Revenue Service with respect to the taxpayer's liability, the discussion with Revenue Service officials on the substance or merits of a taxpayer's request for a ruling or determination letter, and the receipt of certain notices and other communications, such as a notice of deficiency under section 6212 of the Code or a "30-day letter" and examining officer's report under § 601.105(d), given to a taxpayer with respect to his tax affairs. A tax information authorization will not be required for receipt of notices and other communications which do not involve the disclosure of confidential information. For rules relating to the receipt of notices and other communications, see § 601.506.

(ii) Although the Revenue Service requires the taxpayer's representative to file a tax information authorization in order for such representative to receive or inspect confidential information in a matter, if such representative in connection with a matter has filed a power of attorney in order to perform one or more of the acts specified in subparagraph (1) of this paragraph he will be entitled to receive or inspect confidential information in the same matter without being required to file a separate tax information authorization.

(3) *Exceptions to requirement of power of attorney or tax information authorization in certain cases.* (i) A tax information authorization is not required of a taxpayer's representative at a conference which is also attended by the taxpayer. Unless the Revenue Service officials are advised to the contrary, in such a case, it will be presumed that the taxpayer in whose behalf the representative appears places no limitations upon the authority of his representative to receive confidential information at the conference.

(ii) A tax information authorization is not required at a conference concerning an estate tax case, even though the executor or administrator is not present at the conference, if the representative presents satisfactory evidence to the Revenue Service officials that he:

(*a*) Is recognized to practice before the Revenue Service within the meaning of paragraph (b)(1) of this section,

(*b*) Prepared the estate tax return on behalf of the executor or administrator, and

(*c*) Is the attorney of record for the executor or administrator before the court where the will is probated or the estate is administered.

(iii) A power of attorney or a tax information authorization is not required in the case of a trustee, receiver, or an attorney (designated to represent a trustee, receiver, or debtor in possession), appointed by a court having jurisdiction over a debtor. In such a case, Revenue Service officials may require the submission of a certificate from the court having jurisdiction over the debtor showing the appointment and qualification of the trustee, receiver, or attorney and that his authority has not been terminated. In cases pending before a district court of the United States, an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(4) *Commissioner's authority to substitute other requirements for power of attorney or tax information authorization.* The Commissioner may, with respect to the performance of a specific act, substitute a requirement other than a power of attorney or a tax information authorization for appropriate evidence of the authority of the taxpayer's representative.

§ 601.503 Requirements for filing evidence of recognition, power of attorney, and tax information authorization.

(a) *Filing evidence of recognition.* Evidence of recognition must be submitted when a representative presents himself for the initial meeting in the first office of the Revenue Service in which he represents the party on whose behalf he acts in connection with the matter under consideration. Once evidence of recognition has been submitted, it will not be necessary to submit it again either in the same office or in other offices of the Revenue Service which subsequently have the same matter under consideration, unless specifically requested. In the case of a qualified attorney or a qualified certified public accountant, the filing of the applicable written declaration described in paragraph (b)(1)(i) and (ii) of § 601.502 constitutes evidence of recognition. A standard written declaration form is available in Revenue Service offices. In the case of a person currently enrolled as an agent, the demonstration by such person that he is the holder of a valid enrollment card constitutes evidence of recognition.

(b) *Filing power of attorney and tax information authorization.* Except as otherwise provided in this paragraph, one copy of a power of attorney must be filed in each office of the Revenue Service in which the representative, in connection with the matter under consideration, desires to perform one or more of the acts enumerated in paragraph (c)(1) of § 601.502. If a power of attorney with respect to the matter has not been filed with the Revenue Service, one copy of a tax information authorization must be filed in each office of the Revenue Service in which the representative, in connection with the matter under consideration, receives or inspects confidential information. For rules relating to the filing of a power of attorney alone, see paragraph (c)(2)(ii) of § 601.502. One additional copy of a power of attorney or tax information authorization also must be filed for each tax matter covered by the power of attorney or tax information authorization. If, in addition to a past or present matter, a pre-

viously filed power of attorney or tax information authorization relates to a tax matter not presently under consideration, or for which tax returns are not yet due, copies of the power of attorney or tax information authorization will be required to be filed subsequently with respect to those matters. These copies of the power of attorney or tax information authorization may be submitted with the subsequent returns or when the matter is under consideration by the Revenue Service. Where a copy of a power of attorney or tax information authorization is filed with the office of a district director which has the matter under consideration, it is not necessary to file another such copy with the office of a regional commissioner or regional counsel which subsequently has the matter under consideration, unless such office specifically requests the additional copy. In case of a request for a ruling or other matter to be considered in the National Office, a copy of a power of attorney or a tax information authorization should be submitted with each request if the representative wishes to represent the taxpayer at a conference in the National Office or receive a copy of the ruling. Standard power of attorney and tax information authorization forms are available in Revenue Service offices. For rules relating to the receipt of the original of the ruling by a representative, see paragraph (a) of § 601.506.

(c) *Practice by correspondence.* If a representative desires to represent a taxpayer through correspondence with the Revenue Service, the requirements of recognition (see paragraph (b) of § 601.502) and submission of evidence thereof and, if applicable, of submission of a power of attorney or a tax information authorization (see paragraph (c) of § 601.502) must be met even though no actual appearance is made. In the case of a qualified attorney or certified public accountant, evidence of recognition shall be in the form of the written declaration referred to in paragraph (b)(1)(i) or (ii) of § 601.502. In the case of an enrollee, evidence of recognition shall be in the form of a statement that he is enrolled and either his enrollment number or the expiration date of his enrollment card.

§ 601.504 Requirement for execution, attestation, acknowledgment or witnessing, and certification of copies, of power of attorney and tax information authorization.

(a) *Formal requirements.* The use of technical language in the preparation of a power of attorney or a tax information authorization is not necessary, but the instrument should clearly express the taxpayer's intention as to the scope of the authority of the representative, and specify the tax matter to which the authority relates. A power of attorney or tax information authorization may relate to more than one matter as, for example, a tax information authorization which relates to a taxpayer's income taxes for several different taxable years. If the taxpayer wishes to authorize his representative to perform one or more of the acts set forth in paragraph (c)(1) of § 601.502 for which a power of attorney is required by the Revenue Service, the power must clearly specify which act or acts the representative is authorized to perform. Furthermore, if the taxpayer wishes to authorize his representative to make substitution of representatives or delegate authority to other representatives, the power of attorney must state this intention. The power of attorney need not specify the names of the representatives who may be substituted or to whom authority may be delegated, although such substitution or delegation, when it occurs, must be evidenced by a statement signed by the representative named in the power of attorney. The power of attorney or tax information authorization should also contain the mailing address of the representative and, if more than one person is to represent the taxpayer in the matter, a designation as to which representative is to receive notices and other written communications. Standard power of attorney and tax information authorization forms are available in Revenue Service offices. For rules relating to the mailing of notices or other written communications to a representative, see § 601.506.

(b) *Execution of a power of attorney or a tax information authorization*—(1) *Ordinary cases.* A power of attorney or a tax information authorization must be executed as follows:

(i) *Individual.* In the case of an individual taxpayer, by such individual.

(ii) *Husband and wife.* In the case of any taxable year for which a joint return was made by husband and wife, by both husband and wife except that either spouse may sign for the other if such signature is duly authorized in writing by the other spouse.

(iii) *Partnership.* In the case of a partnership, by all members, or if executed in the name of the partnership, by one of the partners duly authorized to act for the partnership.

(iv) *Corporation.* In the case of a corporation, by an officer of the corporation having authority to bind the corporation, who shall certify that he has such authority.

(v) *Association.* In the case of an association, the same requirements shall be applied as in the case of a corporation.

(2) *Special cases.* A power of attorney or a tax information authorization in the special cases set forth in subdivisions (i) through (vi) of this subparagraph must be executed by the party or parties having authority to act in the matter under consideration. In this connection, Revenue Service officials may require the submission of appropriate supplementary evidence of the authority of the party or parties. Such powers of attorney or tax information authorizations must be executed as follows:

(i) *Dissolved partnership.* In the case of a dissolved partnership, by each of the former partners. If one or more of the partners are dead, their legal representatives must sign in their stead (see subdivision (iv) of this subparagraph), unless, under the laws of the particular State, the surviving partners at the time of execution of the power of attorney or tax information authorization have exclusive right to control and possession of the firm's assets for the purpose of winding up its affairs, in which case their signatures alone will be sufficient. If only the surviving partners sign the power of attorney or tax information authorization, the Revenue Service officials may require the submission of a copy of or a citation to the pertinent provisions of the State law under which the surviving partners claim authority without legal representatives of the deceased partners.

(ii) *Dissolved corporation.* In the case of a dissolved corporation, by the liquidating trustee or trustees under dissolution, if one or more have been appointed, or by a trustee deriving authority under a statute of the State in which the corporation was organized. If there is more than one trustee, all must join unless it is established that less than all have authority to act in the matter under consideration. The Revenue Service officials may require the submission of a properly authenticated copy of the instrument under which the trustee derives his authority. If the trustee's authority is derived under a State statute, the Revenue Service officials may require the submission of a copy of or a citation to the pertinent provisions of such statute, together with a statement made under penalties of perjury setting forth the facts required by the statute as a condition precedent to the vesting of authority in said trustee and stating that in the case of any trustee, his authority has not been terminated. If there is no trustee, the power of attorney or tax information authorization must be signed by a sufficient number of individuals to constitute a majority of the voting stock of the corporation as of the date of dissolution. The Revenue Service officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to the power of attorney or tax information authorization, the date of dissolution, and positive averments as to the nonexistence of any trustee.

(iii) *Insolvent taxpayer.* In the case of an insolvent taxpayer, by the trustee, receiver, or attorney appointed by the court. The Revenue Service officials may require the submission of a certificate from the court having jurisdiction over the insolvent showing the appointment and qualification of the trustee, receiver, or attorney and that his authority has not been terminated. In cases pending before a district court of the United States, an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(iv) *Deceased taxpayers.* In the case of a deceased taxpayer, by the executor or administrator if one has been appointed and is acting and responsible for disposition of the matter under consideration. The Revenue Service officials may require the submission of a short-form certificate (or authenticated copies of letters testamentary or letters of ad-

ministration) showing that the authority of the executor or administrator is in full force and effect at the time the power of attorney or tax information authorization is submitted. In the event that a trustee under the will is acting, the power of attorney or tax information authorization should be executed by the trustee, unless the executor has not been discharged and is responsible for disposition of the matter. The Revenue Service officials may require the submission of evidence of the discharge of the executor and appointment of the trustee, or other appropriate evidence of the authority of the trustee to act. If no executor, administrator, or trustee under the will is acting or responsible for disposition of the matter and the estate has been distributed to the residuary legatee or legatees, the power of attorney or tax information authorization should be executed by the residuary legatee or legatees. The Revenue Service officials may require the submission of a statement from the court certifying that no executor, administrator, or trustee under the will is acting or responsible for disposition of the matter, and naming the residuary legatees and indicating the proper share to which each is entitled. In the event that the decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter, or none was ever appointed, the power of attorney or tax information authorization must be executed by the distributees. The Revenue Service officials may require the submission of evidence of the discharge of the administrator if one had been appointed and evidence that the administrator is not responsible for disposition of the matter, and statements made under penalties of perjury and such other appropriate evidence as can be produced tending to show the relationship to the deceased of the signatories to the power of attorney or tax information authorization and the right of each of them to the respective shares claimed under the law of the domicile of the deceased.

(v) *Guardians and other fiduciaries appointed by a court of record.* In the case of a taxpayer for whom a guardian or other fiduciary has been appointed by a court of record, by the fiduciary. The Revenue Service officials may require the submission of a court certificate or court order showing that such fiduciary has been appointed and that his appointment has not been terminated.

(vi) *Trustee under agreement or declaration.* In the case of a taxpayer who has appointed a trustee, by the trustee. If there is more than one trustee appointed, all should join unless it is shown that less than all have authority to act. The Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of the trust instrument, properly certified, or a certified copy of extracts from the trust instruments, showing:

(*a*) The date of the instrument,

(*b*) That it is or is not of record in any court,

(*c*) The beneficiaries,

(*d*) The appointment of the trustee, the authority granted, and such other information as may be necessary to show that such authority extends to Federal tax matters, and

(*e*) That the trust has not been terminated and the trustee appointed therein is still acting.

In the event that the trustee appointed in the original trust instrument is no longer acting and has been replaced by another trustee, documentary evidence of the appointment of the new trustee should be submitted.

(c) *Attestation and corporate seal.* It is not necessary that a power of attorney or a tax information authorization granted by a corporation be attested or that the corporate seal be affixed. Spaces provided on power of attorney or tax information authorization forms for affixing the corporate seal are for the convenience of corporations required by charter, or by the law of the jurisdiction in which they are incorporated, to affix their corporate seals in the execution of instruments. See paragraph (a)(1) of § 1.6062–1 of this chapter (Income Tax Regulations).

(d) *Acknowledgment or witnessing*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, a power of attorney must be acknowledged before a notary public, or in lieu thereof, witnessed by two disinterested individuals. The notarial seal must be affixed unless such seal is not required under the laws of the State in which the power of attorney is executed. A tax information authorization requires no acknowledgment or witnessing.

(2) *Exception.* If the power of attorney is granted to a representative who is recognized to practice before the Revenue Service under paragraph (b)(1)(i), (ii), or (iii) of § 601.502, and such representative executes a declaration on the power of attorney that he is so recognized, the acknowledgment or witnessing under subparagraph (1) of this paragraph will not be required.

(e) *Certification of copies.* A copy of a power of attorney or a tax information authorization, or a paper or document filed therewith, which is reproduced by photographic processes, need not be certified as a true and correct copy of the original. When such a copy is reproduced by other methods, it will be acceptable if its authenticity is certified either by a representative who is recognized to practice before the Revenue Service under paragraph (b)(1)(i), (ii), or (iii) of § 601.502, or by a notary public or other proper official who states that he has personally compared the copy with the original and finds it to be a true and correct copy.

§ 601.505 Requirements for changing representation.

(a) *No distinction between types of powers of attorney.* A power of attorney is only required by the Revenue Service for the performance of one or more of the acts enumerated in paragraph (c)(1) of § 601.502. Accordingly, for purposes of the rules relating to change in representation set forth in paragraph (c) of this section, no distinction will be made by the Revenue Service between a general and a limited power of attorney.

(b) *Prohibition against unreasonable delay in Circular No. 230.* See section 10.23 of Circular No. 230 for the rule prohibiting a recognized representative from unreasonably delaying the prompt disposition of any matter before the Revenue Service.

(c) *Change in representation*—(1) *New power of attorney or tax information authorization required.* In any case in which there has been filed a power of attorney with respect to one or more of the acts enumerated in paragraph (c)(1) of § 601.502, or a tax information authorization, and thereafter, with respect to the same matter, the taxpayer desires:

(i) To add or to reduce the number of representatives authorized to perform one or more of such acts, or to receive confidential information,

(ii) To revoke the authority granted to a representative and to authorize a new representative to perform one or more of such acts, or to receive such confidential information, or

(iii) To change the authority granted to a representative,

a new power of attorney or a new tax information authorization, whichever is appropriate, must be filed.

(2) *Rules of revocation of power of attorney and tax information authorization.* (i) Except as provided in the next sentence, a new power of attorney filed with respect to one or more of the acts enumerated in paragraph (c)(1) of § 601.502 will be deemed as revoking a prior power of attorney (regardless of whether the act or acts enumerated in the prior power are the same as or different from the act or acts enumerated in the new power) or tax information authorization granted by the taxpayer to another representative with respect to the same matter. A new power of attorney will not be deemed as revoking a prior power of attorney or tax information authorization if it contains a clause specifically stating that it does not revoke such prior power of attorney or tax information authorization, and there is attached to the new power of attorney a copy of the unrevoked prior power of attorney or tax information authorization or a statement signed by the taxpayer listing the names and addresses of all representatives authorized under the prior power of attorney or tax information authorization. This procedure permits a taxpayer to authorize additional representatives to perform one or more of the acts enumerated in paragraph (c)(1) of § 601.502, or to receive confidential information, without revoking the authority of representatives under a prior power of attorney or tax information authorization with respect to the matter referred to in the prior power of attorney or tax information authorization. For rules relating to the practice of the Revenue Service in giving no-

tices and other written communications in cases in which a taxpayer has more than one authorized representative, see paragraph (a) of § 601.506.

(ii) Except as provided in the next sentence, a new tax information authorization will be deemed as revoking a prior tax information authorization filed with respect to the same matter. A new tax information authorization will not be deemed as revoking a prior tax information authorization with respect to the same matter if it contains a clause specifically stating that it does not revoke such prior tax information authorization, and if there is attached to the new tax information authorization a copy of the unrevoked prior tax information authorization or a statement signed by the taxpayer listing the names and addresses of all representatives authorized under the prior tax information authorization. This procedure permits a taxpayer to authorize additional representatives to receive confidential information, without revoking the authority of representatives under a prior tax information authorization with respect to the matter referred to in the prior tax information authorization. For rules relating to the practice of the Revenue Service in giving notices and other written communications in cases in which a taxpayer has more than one authorized representative, see paragraph (a) of § 601.506.

(iii) Except as provided in the next sentence, a new tax information authorization will not be deemed as revoking a prior power of attorney filed with respect to the same matter. A new tax information authorization will be deemed as revoking a prior power of attorney with respect to the same matter if there is attached to the new tax information authorization a statement signed by the taxpayer listing the names and addresses of all representatives under the prior power of attorney whose authority is revoked. This procedure permits a taxpayer to authorize additional representatives to receive confidential information, and, at the same time, revoke the authority of representatives under a prior power of attorney with respect to the matter referred to in the prior power of attorney. For rules relating to the practice of the Revenue Service in giving notices and other written communications in cases in which a taxpayer has more than one authorized representative, see paragraph (a) of § 601.506.

(iv) A taxpayer may revoke a power of attorney or a tax information authorization granted to a representative without authorizing a new representative to act for him. Upon revocation of a power of attorney or a tax information authorization when no new power of attorney or tax information authorization is executed, the taxpayer must send a signed statement to those offices of the Revenue Service where he has filed copies of the power of attorney or tax information authorization which is to be revoked listing the names and addresses of the representatives whose authority is revoked.

§ 601.506 Notices to be given to recognized representatives; delivery of refund checks to recognized representatives.

(a) *Notices.* Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Revenue Service shall be given to the taxpayer's recognized representative. However, if such notice or communication contains confidential information with respect to the taxpayer, the notice or communication will be given to the representative only if there is on file with the Revenue Service a power of attorney or a tax information authorization in the matter signed by the taxpayer. For general rules relating to the requirement of a tax information authorization, see paragraph (c)(2) of § 601.502. Except as otherwise provided in this paragraph, if a taxpayer has more than one recognized representative in a matter, service upon any one shall be sufficient. To the extent feasible, it will be the practice of the Revenue Service to give copies of notices and other written communications to whichever of the representatives is designated by the taxpayer to receive such communications in the power of attorney or tax information authorization, whichever instrument reflects the latest date. If, in such instrument, the taxpayer designates more than one representative to receive notices and other written communications, it will be the practice of the Revenue Service to give copies of such communications to two, but not more than two, representatives so designated, but only if the two representatives have different mailing addresses. In a case in which the taxpayer does not designate which representative is to receive notices, it will be the practice of the Revenue Service to give notices to the representative first named on the instrument which reflects the latest date. In no event will failure to give notice or other written communication to a taxpayer's representative affect its validity which is to be determined solely under the provisions of the Internal Revenue Code. In the case of a request for a ruling, if it is desired that the original of the ruling (or of any correspondence in connection therewith) be addressed to the taxpayer's recognized representative, the power of attorney or tax information authorization should contain a statement to that effect and designate the mailing address of such representative.

(b) *Delivery of checks in payment of refunds*—(1) *In general.* The Revenue Service is not bound to deliver any check in payment of refund of internal revenue taxes, penalties, or interest to a representative of any taxpayer acting under authority evidenced by a power of attorney. However, it will be the general policy of the Revenue Service to mail such a check in care of a recognized representative who has filed a power of attorney from the taxpayer, specifically authorizing him to receive but not to endorse such check (see paragraph (c)(1)(i) of § 601.502), provided that such power of attorney has been filed in sufficient time for the section or division preparing the certificate of overassessment, or other appropriate notice, to show thereon the mailing address as "care of" the representative. When a representative has more than one address, a request to mail the check to an address other than that shown in the power of attorney will not be granted unless the address shown in the power of attorney is no longer that of the representative. In the event that a power of attorney is filed specifically authorizing more than one representative to receive checks on the taxpayer's behalf, and such representatives have different addresses, the Revenue Service will mail the check directly to the taxpayer, unless a statement is furnished, signed by all of the representatives named in the power of attorney, requesting that the check be mailed in care of one of their number. Furthermore, it will be the policy of the Revenue Service not to mail checks in payment of refunds to a representative who holds authority to receive such checks by reason of a substitute power of attorney obtained from the representative designated by the taxpayer.

(2) *Cases in litigation.* Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money. In an action arising in a U.S. district court, the check will be sent to the appropriate U.S. Attorney for delivery to the taxpayer or the counsel of record in the court proceeding. In an action arising in the U.S. Court of Claims, the check will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for such delivery.

§ 601.507 Evidence required to substantiate facts alleged in conferences.

All evidence, except that of a supplementary or incidental character, may be required to be submitted over the signed declaration of the taxpayer, made under penalties of perjury, that such evidence is true. Thus, in the case of any matter pending before the Revenue Service in respect of which the taxpayer submits a protest or other similar statement, such protest or statement should contain a recitation of the facts on which the taxpayer relies, made under the penalties of perjury, and should meet all the issues raised by the Revenue Service which the taxpayer desires to contest. In lieu of a declaration of the taxpayer made under penalties of perjury, every claim, written argument, brief, or recitation of the facts, prepared or filed by the taxpayer's representative in any matter pending before the Revenue Service, should have endorsed thereon a declaration signed by such representative as to whether or not he prepared such document and whether or not he knows of his own knowledge that the facts contained therein are true and correct. In any

case in which the taxpayer's representative is unable or unwilling to declare of his own knowledge that the facts are true and correct, the Revenue Service may request the taxpayer to make such a declaration under penalties of perjury.

§ 601.508 Contest between representatives of a taxpayer.

Where there is a contest between members of a dissolved firm or between two or more representatives as to which is entitled to represent a client in a matter pending before the Revenue Service, or to receive a check, thereafter the taxpayer only shall be recognized, unless the members or survivors of the dissolved firm, or the contesting representatives, file an agreement signed by all designating which of them shall be entitled to represent the taxpayer in such matter or to receive any check. In no case shall the delivery of a check to the taxpayer be delayed more than 60 days by reason of failure to file such agreement.

§ 601.509 Power of attorney or tax information authorization not required in cases docketed in the Tax Court of the United States.

In a case docketed in the Tax Court of the United States, the petitioner and the Commissioner stand in the position of parties litigant before a judicial body. The Tax Court has its own rules of practice and procedure and its own rules respecting admission to practice before it. Accordingly, a power of attorney or a tax information authorization is not required by the Revenue Service in cases docketed in the Tax Court. Correspondence in connection with cases docketed in the Tax Court will be addressed to counsel of record before the Court. In all cases pending in the Appellate Division, other than cases docketed in the Tax Court, the customary power of attorney or tax information authorization is required.

REQUIREMENTS FOR ALCOHOL AND TOBACCO TAX ACTIVITIES

§ 601.521 Requirements for conference and representation in conference.

The requirements for conference in the office of an assistant regional commissioner, alcohol and tobacco tax, or the Office of the Director, Alcohol and Tobacco Tax Division, are contained in § 601.308 of this part. Where an industry member or other person is to be represented in conference, the representative must be recognized to practice as provided in paragraph (b) of § 601.502. When a representative presents himself on behalf of an industry member or other person for the initial meeting in the office of an assistant regional commissioner, alcohol and tobacco tax, or of the Director, Alcohol and Tobacco Tax Division, he must submit evidence of recognition; or he should state in his first letter or other written communication with such office whether he is recognized to practice, and should enclose evidence of such recognition. In the case of a qualified attorney or a qualified certified public accountant, the filing of the applicable written declaration described in paragraph (b)(1)(i) and (ii) of § 601.502 shall constitute evidence of recognition. In the case of an enrollee, the filing of a notification, stating that he is enrolled to practice and giving his enrollment number or the expiration date of his enrollment card, shall constitute evidence of recognition.

§ 601.522 Power of attorney.

Except as otherwise provided in this section, a power of attorney, or copy thereof, will be required for a representative of a principal (a) to perform the acts specified in paragraph (c)(1) of § 601.502; or (b) to sign any application, bond, notice, return, report, or other document required by, or provided for in, regulations issued pursuant to chapter 51 (Distilled Spirits, Wines, and Beer), chapter 52 (Cigars, Cigarettes, and Cigarette Papers and Tubes), and chapter 53 (Machine Guns and Certain Other Firearms), Internal Revenue Code, the Federal Alcohol Administration Act, or the Federal Firearms Act, which is filed with or acted on by (1) the office of an assistant regional commissioner, alcohol and tobacco tax, or (2) the Director, Alcohol and Tobacco Tax Division. The power of attorney may be executed on Form 1534, copies of which may be obtained from the assistant regional commissioner (alcohol and tobacco tax). A power of attorney will not be required for a person authorized to sign on behalf of the principal by articles of incorporation, by-laws, or a board of directors, where an acceptable copy of such authorization is on file in the office of the assistant regional commissioner or of the Director. A power of attorney filed under the provisions of this section may cover one or more acts for which a power of attorney is required and will continue in effect with respect to such acts until revoked as provided in § 601.526. The exceptions to the requirements for a power of attorney contained in paragraph (c)(3) and (4) of § 601.502 are applicable to powers of attorney under this section.

§ 601.523 Tax information authorization.

Where any of the acts specified in paragraph (c)(2)(i) of § 601.502 are to be performed by a representative, and a power of attorney for such representative has not been filed, a tax information authorization, or copy thereof, will be required. The authorization may be executed on Form 1534-A, copies of which may be obtained from the assistant regional commissioner (alcohol and tobacco tax). Such authorization may cover one or more of the acts for which a tax information authorization is required and will continue in effect with respect to such acts until revoked as provided in § 601.526. The exceptions to the requirements for a tax information authorization, provided in paragraph (c)(3) and (4) of § 601.502, are applicable to such authorizations under this section.

§ 601.524 Execution and filing powers of attorney and tax information authorizations.

(a) *Time of filing.* A copy of the power of attorney must be filed in each office (that is, office of an assistant regional commissioner and Office of the Director, Alcohol and Tobacco Tax Division) in which a document specified in § 601.522, covered by the power of attorney, is required to be filed, or in which the representative desires to perform one or more of the acts enumerated in paragraph (c)(1) of § 601.502. If a power of attorney covering an act otherwise requiring the filing of a tax information authorization has not been filed, a copy of the tax information authorization must be filed in each office in which the representative inspects or receives confidential information, or, where acts requiring a power of attorney or a tax information authorization are handled by correspondence, the representative should enclose a copy of the power or authorization with the initial correspondence. However, where a power of attorney or tax information authorization is on file with the assistant regional commissioner, alcohol and tobacco tax, an additional copy thereof will not be required in the office of the regional counsel of the same region.

(b) *Execution.* The power of attorney required by § 601.522, or tax information authorization required by § 601.523, shall be executed in the manner prescribed in paragraph (b) of § 601.504; shall indicate all acts to which it relates; should contain the mailing address of the representative; and, if more than one representative is authorized to perform the same acts on behalf of the industry member or other person, a designation as to which representative is to receive notices and other written communications. For rules relating to the mailing of notices or other written communications to a representative, see § 601.506.

(c) *Attestation and corporate seal.* In the case of a corporation, a power of attorney filed with an officer of the Alcohol and Tobacco Tax Division must be attested by the secretary and the corporate seal must be affixed. If the officer who signs the power of attorney is also the secretary, another officer of the corporation, preferably the president, vice president, or treasurer, must also sign the power of attorney so that two different individuals' signatures appear thereon. If the corporation has no seal, a certified copy of a resolution duly passed on by the board of directors of the corporation authorizing the execution of powers of attorney should be attached.

(d) *Acknowledgment.* A power of attorney filed with an office of the Alcohol and Tobacco Tax Division must be acknowledged, witnessed, or certified as provided in paragraph (d) of § 601.504.

§ 601.525 Certification of copies of documents.

The provisions of paragraph (e) of § 601.504 with respect to certification of

copies are applicable to a power of attorney or a tax information authorization required to be filed under § 601.522 or § 601.523.

§ 601.526 Revocation of powers of attorney and tax information authorizations.

The revocation of the authority of a representative covered by a power of attorney or tax information authorization filed in an office of the Alcohol and Tobacco Tax Division shall in no case be effective prior to the giving of written notice to the proper official that the authority of such representative has been revoked.

§ 601.527 Other provisions applied to representation in alcohol and tobacco tax activities.

The provisions of paragraph (b) of § 601.505, and of §§ 601.506 through 601.508 of this subpart, as applicable, shall be followed in offices of the Alcohol and Tobacco Tax Division.

Subpart F—Rules, Regulations, and Forms

§ 601.601 Rules and regulations.

(a) *Formulation.* (1) Internal revenue rules take various forms. The most important rules are issued as regulations and Treasury decisions, prescribed by the Commissioner and approved by the Secretary or his delegate. Other rules may be issued over the signature of the Commissioner or the signature of any other official to whom authority has been delegated. The channeling of rules varies with the circumstances. Regulations and Treasury decisions, except those relating to alcohol, tobacco, and certain firearms, are prepared in the Office of the Chief Counsel. Alcohol, tobacco, and certain firearms regulations and Treasury decisions are prepared in the Office of the Assistant Commissioner (Compliance) and reviewed in the Office of the Chief Counsel. After approval by the Commissioner (and, in the case of regulations relating to narcotics and certain regulations relating to alcohol and tobacco taxes, the approval of the Commissioner of Narcotics or the Commissioner of Customs, as the case may be), regulations and Treasury decisions are forwarded to the Secretary or his delegate for further consideration and final approval.

(2) Where required by section 4 of the Administrative Procedure Act (60 Stat. 237) and in such other instances as may be desirable, the Commissioner publishes in the FEDERAL REGISTER general notice of proposed rules (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law). This notice includes (i) a statement of the time, place, and nature of public rule-making proceedings; (ii) reference to the authority under which the rule is proposed; and (iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Also, pursuant to section 5 of the Federal Alcohol Administration Act (27 U. S. C. 205 (f)) public notice and opportunity for hearing is given prior to the adoption of regulations under that section.

(b) *Comments on proposed rules.* Interested persons are privileged to submit any data, views, or arguments with respect to proposed rules. Any person submitting comments in response to a notice of proposed rule making published pursuant to 5 U.S.C. 553 shall specifically designate that portion, if any, of his comments which in his opinion contains confidential information or data. Any comments or any portion thereof not specifically designated as confidential will be made available pursuant to paragraph (c) of § 601.702 upon request. Any comments or any portion thereof specifically designated as confidential will not be disclosed to the public. The name of the person submitting the comments will not be treated as confidential unless such person requests that his name be so treated. Any portion of a comment which is designated as confidential shall be set forth on pages separate from the balance of the comment. The disclosure by the Internal Revenue Service of any name, or of any comments or any portion thereof, not specifically designated as confidential by the person submitting the comments will be a disclosure authorized by law within the meaning of any statute governing the disclosure of information. The name of any person requesting a public hearing and the issues which may be discussed at the hearing are not confidential. This paragraph applies only to comments submitted on or after August 2, 1967.

(c) *Petition to change rules.* Interested persons are privileged to petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule should identify the section or sections of law involved; and a petition for the amendment or repeal of a rule should set forth the section or sections of the regulations involved. The petition should also set forth the reasons for the requested action. Such petitions will be given careful consideration and the petitioner will be advised of the action taken thereon. Petitions should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

(d) *Publication of rules and regulations.* All internal revenue regulations and Treasury decisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations. See paragraph (a) of § 601.702. The Treasury decisions are also published in the weekly Internal Revenue Bulletin and the semiannual Cumulative Bulletin. The Internal Revenue Bulletin is the authoritative instrument of the Commissioner for the announcement of official rulings, decisions, opinions, and procedures, and for the publication of Treasury decisions, Executive orders, tax conventions, legislation, court decisions, and other items pertaining to internal revenue matters. It is the policy of the Internal Revenue Service to publish in the bulletin all substantive and procedural rulings of importance or general interest, the publication of which is considered necessary to promote a uniform application of the laws administered by the Service. It is also the policy to publish in the bulletin all rulings which revoke, modify, amend, or affect any published ruling. Rules relating solely to matters of internal practices and procedures are not published; however, statements of internal practices and procedures affecting rights or duties of taxpayers, or industry regulation, which appear in internal management documents, are published in the bulletin. No unpublished ruling or decision will be relied on, used, or cited by any officer or employee of the Internal Revenue Service as a precedent in the disposition of other cases.

§ 601.602 Forms and instructions.

(a) *Tax return forms and instructions.* Forms and instructions are developed by the Internal Revenue Service to explain the requirements of the internal revenue laws and regulations and are issued for the assistance of taxpayers in exercising their rights and discharging their duties under the internal revenue laws. All internal revenue taxes which are not collected by stamps are assessed and collected through the self-determination and self-application of the law and the regulations by taxpayers. The tax return forms are the instruments through which this is accomplished.

(b) *Other forms and instructions.* In addition to the forms and instructions for the return of internal revenue taxes, the Internal Revenue Service provides other necessary or appropriate forms for assisting the public in complying with the technical requirements of the internal revenue laws and regulations. The material contained in the forms and instructions, and the arrangement thereof is carefully considered in the Internal Revenue Service and is designed to lead the taxpayer step-by-step through an orderly accumulation of data to an accurate report of the information required.

(c) *Procurement of forms and instructions.* Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from district directors or, where appropriate, from assistant regional commissioners (alcohol and tobacco tax). Descriptions of many of the forms and publications of the Internal Revenue Service for public use are contained in Publication No. 480, *Description of Available Forms Relating to Alcohol and Tobacco Tax Division Activities*, and Publication No. 481, *Description of Principal Federal Tax Returns, Related Forms, and Publications.* Publication No. 480 and Publication No. 481 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Subpart G—Records

§ 601.701 Publicity of information.

(a) *General.* Effective July 4, 1967, section 552 of title 5 of the United States Code is amended to prescribe revised

provisions regarding the publicizing of information by Federal agencies. Generally, such section divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three major categories, for which the disclosure requirements of the Internal Revenue Service are set forth in § 601.702, are as follows:

(1) Information required to be published in the FEDERAL REGISTER;

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale; and

(3) Information required to be made available to any member of the public upon specific request.

The revised provisions of section 552 are intended to protect, subject to specified safeguards, the right of the public to information. Section 552 is not authority to withhold information from Congress.

(b) *Exemptions*—(1) *In general.* Under 5 U.S.C. 552(b), the disclosure requirements of section 552 do not apply to certain matters described in nine specific exemptions, as follows:

(i) Matters specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(ii) Matters related solely to the internal personnel rules and practices of an agency, such as staff manuals or instructions, or parts thereof, which set forth guidelines, operating rules, or other criteria for officers or employees in auditing or inspection procedures, or in the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for the defense, prosecution, or settlement of cases;

(iii) Matters specifically exempted from disclosure by statute, as described in subparagraph (2) of this paragraph;

(iv) (*a*) Trade secrets and (*b*) commercial, financial, or other information, which is privileged or confidential and thus would not customarily be made public by the person from whom it is obtained, such as business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, personal correspondence, or matter which the agency has obligated itself in good faith not to disclose;

(v) Interagency or intraagency memorandums or letters which would not be available by law to a party in litigation with an agency, including communications (such as internal drafts, memorandums between officials or agencies, opinions and interpretations prepared by agency staff personnel or consultants for the use of the agency, and records of the deliberations of the agency or staff groups) which the agency has received from another agency, or which the agency generates, in the process of issuing an order, decision, ruling, or regulation, drafting proposed legislation, or otherwise carrying out its functions and responsibilities, if such communications would not routinely be available to such party through use of the discovery process;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of any officer or employee of an agency or of any other person;

(vii) Investigatory files compiled for any law enforcement purpose, including files prepared in connection with related Government litigation and adjudicative proceedings, except to the extent available by law to a party other than an agency;

(viii) Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells, such as seismic reports and other exploratory findings of oil companies.

(2) *Matters specifically exempted from disclosure by statute.* For purposes of subparagraph (1) (iii) of this paragraph, statutory provisions which either specifically exempt certain matters from disclosure by officers or employees of the Internal Revenue Service or specifically provide for disclosure under appropriate circumstances include the following sections of the Code and the regulations thereunder:

(i) Section 4102, relating to inspection by certain State or local government officers of records with respect to taxes on petroleum products;

(ii) Section 4773, relating to inspection by certain Government officials of records with respect to narcotic drugs and marihuana;

(iii) Section 4775, relating to requests for names of persons listed as special taxpayers under the provisions of the Code dealing with narcotic drugs and marihuana;

(iv) Section 6103, relating to publicity of certain returns and disclosure of information as to persons filing income tax returns;

(v) Section 6104, relating to publicity of information required from certain exempt organizations and certain trusts;

(vi) Section 6105, relating to publication in the FEDERAL REGISTER of compilation of relief from excess profits tax cases;

(vii) Section 6106, relating to publicity of unemployment tax returns;

(viii) Section 6107, relating to the keeping of lists of special taxpayers for public inspection;

(ix) Section 6108, relating to the publication of statistics of income;

(x) Section 7213, relating to penalties for unauthorized disclosure of information by Federal officers or employees or other persons; and

(xi) Section 7237(e), relating to penalties for unlawful disclosure of information on returns or order forms pertaining to narcotic drugs or marihuana.

A reference in this subparagraph to a provision of the Code will be considered to be a reference also to any corresponding provisions of prior law and the regulations promulgated thereunder. See also 18 U.S.C. 1905, which provides penalties for the unlawful disclosure by Federal officers or employees of certain information coming to them in the course of their employment. See paragraph (d) of § 601.702 for special rules pertaining to the disclosure of information in the case of certain specified matters.

(3) *Application of exemptions.* Even though an exemption described in subparagraph (1) of this paragraph may be fully applicable to a matter in a particular case, the Internal Revenue Service may, if not precluded by law, elect under the circumstances of that case not to apply the exemption to such matter. The fact that the exemption is not applied by the Service in that particular case has no precedential significance as to the application of the exemption to such matter in other cases but is merely an indication that in the particular case involved the Service finds no compelling necessity for applying the exemption to such matter.

§ 601.702 Publication and public inspection.

(a) *Publication in the Federal Register*—(1) *Requirement.* Subject to the application of the exemptions described in paragraph (b) of § 601.701 and subject to the limitations provided in subparagraph (2) of this paragraph, the Internal Revenue Service is required under 5 U.S.C. 552(a) (1) to separately state and currently publish in the FEDERAL REGISTER for the guidance of the public the following information:

(i) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the Service;

(ii) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Service; and

(v) Each amendment, revision, or repeal of matters referred to in subdivisions (i) through (iv) of this subparagraph.

Pursuant to the foregoing requirements, the Commissioner publishes in the FEDERAL REGISTER from time to time a statement, which is not codified in this chapter, on the organization and functions of the Internal Revenue Service, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the FEDERAL REGISTER the rules set forth in this

part (Statement of Procedural Rules), such as those in subpart E, relating to conference and practice requirements of the Internal Revenue Service; the regulations in Part 177 of this chapter (Interstate Traffic in Firearms and Ammunition); the regulations in Part 200 of this chapter (Rules of Practice in Permit Proceedings); the regulations in Part 301 of this chapter (Procedure and Administration Regulations); the various substantive regulations under the Internal Revenue Code of 1954, such as the regulations in Part 1 of this chapter (Income Tax Regulations), in Part 20 of this chapter (Estate Tax Regulations), in Part 31 of this chapter (Employment Tax Regulations), in Part 47 of this chapter (Documentary Stamp Tax Regulations), or Part 201 of this chapter (Distilled Spirits Plants Regulations); and the substantive regulations under the Federal Alcohol Administration Act (49 Stat. 977, as amended, 27 U.S.C. 201 et seq.), such as 27 CFR Part 1 (Basic Permit Regulations), 27 CFR Part 4 (Wine Labeling and Advertising Regulations), or 27 CFR Part 5 (Distilled Spirits Labeling and Advertising Regulations).

(2) *Limitations*—(i) *Incorporation by reference in the Federal Register.* Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the FEDERAL REGISTER for purposes of subparagraph (1) of this paragraph when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Internal Revenue Service may not be incorporated in the FEDERAL REGISTER by reference. Matter may be incorporated by reference in the FEDERAL REGISTER only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.

(ii) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the FEDERAL REGISTER, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision (i) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.

(b) *Public inspection and copying*—(1) *In general.* Subject to the application of the exemptions described in paragraph (b) of § 601.701, the Internal Revenue Service is required under 5 U.S.C. 552(a)(2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(i) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases, such as opinions and orders by the Alcohol and Tobacco Tax Division pursuant to § 200.116 of this chapter in administrative procedures on applications for, or to suspend, revoke, or annul, permits under the alcohol, alcoholic beverages, and tobacco permit systems;

(ii) Those statements of policy and interpretations which have been adopted by the Internal Revenue Service but are not published in the FEDERAL REGISTER; and

(iii) Its administrative staff manuals and instructions to staff that affect a member of the public.

The Internal Revenue Service is also required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying current indexes identifying any matter described in subdivisions (i) through (iii) of this subparagraph which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. No matter described in subdivisions (i) through (iii) of this subparagraph which is required by this subparagraph to be made available for public inspection or published may be relied upon, used, or cited as precedent by the Internal Revenue Service against a party other than an agency unless such party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection, or published, as provided by this subparagraph. This subparagraph applies only to matters which have precedential significance. It does not apply, for example, to administrative manuals on property or fiscal accounting, vehicle maintenance, personnel administration, and similar proprietary functions of the Internal Revenue Service. Nor does it apply to any ruling or advisory interpretation which is issued to a taxpayer on a particular transaction or set of facts and applied only to that transaction or set of facts. This subparagraph does not apply to matters which have been made available pursuant to paragraph (a) of this section.

(2) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the Internal Revenue Service will, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in subparagraph (1) (i) through (iii) of this paragraph before making such matter available for inspection or publishing it. However, in every case where identifying details are so deleted, the justification for the deletion must be explained in writing. The written justification for deletion will be placed as a preamble to the document from which the identifying details have been deleted, except in the case of any matter which is published in the Internal Revenue Bulletin. An introductory statement will be placed in each Internal Revenue Bulletin providing that identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as section 7213 and 18 U.S.C. 1905, dealing with disclosure of information obtained from members of the public.

(3) *Public reading rooms*—(i) *In general.* The National Office and each regional office of the Internal Revenue Service will provide a reading room or reading area where the matters described in subparagraph (1) (i) through (iii) of this paragraph which are required by such subparagraph to be made available for public inspection or published, and the current indexes to such matters, will be made available to the public for inspection and copying. In addition, the reading rooms will contain other matters determined to be helpful for the guidance of the public, including a complete set of the rules and regulations contained in this title and title 27, any internal revenue matters which may be incorporated by reference in the FEDERAL REGISTER pursuant to paragraph (a)(2)(i) of this section, a set of Cumulative Bulletins, and copies of various Internal Revenue Service publications, such as the description of forms or publications contained in Publication No. 480 and Publication No. 481. Fees will not be charged for the use of the materials in the reading rooms, but fees will be charged for copying and certification services, as provided in subdivision (iii) of this subparagraph. The public will not be allowed to remove any record from a reading room.

(ii) *Addresses of public reading rooms.* The addresses of the reading rooms are as follows:

NATIONAL OFFICE

Mail address: Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224.
Location: Same as mail address.

NORTH ATLANTIC REGION

Mail address: Regional Public Information Officer, Room 1102, 90 Church Street, New York, N.Y. 10007.
Location: Same as mail address.

MID-ATLANTIC REGION

Mail address: Regional Public Information Officer, Post Office Box 12805, Philadelphia, Pa. 19108.
Location: 401 North Broad Street.

SOUTHEAST REGION

Mail address: Regional Public Information Officer, Post Office Box 926, Atlanta, Ga. 30301.
Location: Federal Office Building, 275 Peachtree Street.

MIDWEST REGION

Mail address: Regional Public Information Officer, 17 North Dearborn Street, Chicago, Ill. 60602.
Location: Same as mail address.

CENTRAL REGION

Mail address: Regional Public Information Officer, Room 7106, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.
Location: Same as mail address.

SOUTHWEST REGION

Mail address: Regional Public Information Officer, 1114 Commerce Street, Dallas, Tex. 75202.
Location: Same as mail address.

WESTERN REGION

Mail address: Regional Public Information Officer, Flood Building, 870 Market Street, San Francisco, Calif. 94102.
Location: Same as mail address.

(iii) *Copying facilities.* The National Office and each regional office will provide facilities whereby a person may obtain copies of material which is on the shelves of the reading room. Certification services with respect to copies will also be provided. The fees in respect of material on the shelves of the reading rooms are as follows:

Photocopies; each page	$0.25
Certification of photocopies by appropriate official; each certification	1.00
Sale of unpriced printed material; each 25 pages or fraction thereof	.25
Minimum charge applicable when one or more of the above charges is assessed	1.00

Generally, forms and instructions described in § 601.602 which may be obtained from district directors or from assistant regional commissioners (alcohol and tobacco tax) will not be available in the reading rooms. However, where such forms or instructions are available for distribution in the reading rooms, the fee listed in this subdivision for the sale of unpriced printed material will not apply. While certain relevant publications which are available for sale through the Government Printing Office will be placed on the shelves of the reading rooms, such publications will not be available for sale in the reading rooms. Persons desiring to purchase such publications, for example, Internal Revenue Bulletins and Cumulative Bulletins, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, copies of pages of such publications on the reading room shelves may be obtained at the reading rooms in accordance with the schedule of fees set forth in this subdivision.

(iv) *Inability to use public reading rooms.* If a person is unable or unwilling to visit a reading room in person but wishes to inspect identifiable reading room material, he may request permission to inspect such material at any office of the Internal Revenue Service. To the extent that requested material is available for inspection at the reading rooms and is also readily available for inspection at the office where the request is made, such material will promptly be made available for inspection at such office to the person making the request for inspection and, where facilities are available, for copying in accordance with the schedule of fees prescribed by subdivision (iii) of this subparagraph. Copies of the requested material may also be mailed to such person by such office upon request. If the requested reading room material is not readily available for inspection at the office where the request is made, then the request will be referred by such office to one of the reading rooms of the Internal Revenue Service. If the copies are to be transmitted by mail, the person making the request will promptly be advised of the cost of copying the requested material in accordance with the prescribed schedule of fees. Upon receipt of such fees, the requested material will be copied and mailed to the person making the request. Prepayment of fees is not required where the total fees with respect to the request are $5 or less and the request is filled by mail.

(c) *Specific requests for other identifiable records*—(1) *In general.* Subject to the application of the exemptions described in paragraph (b) of § 601.701, the Internal Revenue Service is required under 5 U.S.C. 552(a)(3) to make identifiable records, other than those made available pursuant to paragraphs (a) and (b) of this section, promptly available to any person upon request. The request for records under section 552(a)(3) must be made in accordance with the rules set forth in this paragraph. This paragraph applies only to records in being which are in the possession or control of the Internal Revenue Service. Where a record in the possession or control of the Internal Revenue Service is the paramount or exclusive concern of another agency, the request for such record will be transferred to that agency, and the requester notified to that effect, to insure that the determination to disclose or withhold the record will be made by that agency. In applying this paragraph, the Internal Revenue Service will not compile a record pursuant to a request, or procure a record from sources outside the Service.

(2) *Form of request.* The request for records must be in writing and signed by the person making the request. The request is required to identify the requested records in accordance with subparagraph (4) of this paragraph. The request must set forth the address where the person making the request desires to be notified of the determination by the Internal Revenue Service as to whether the request will be granted. If the requester desires to make the inspection in an office other than the office to which the request is delivered or mailed, the request should designate the office of the Internal Revenue Service where inspection is desired. Where the person making the request desires to have a copy of the requested records sent to him without first inspecting such records, his request should so state.

(3) *Time and place for making request.* The request for records may be made at any office of the Internal Revenue Service. A request delivered to an office in person must be delivered during the regular office hours of that office. The person making the request should allow a reasonable period of time for processing the request.

(4) *Identification of records.* The request for records must describe the records in reasonably sufficient detail to enable personnel of the Internal Revenue Service to locate the records. While no specific formula for adequate identification of a record may be established, it will generally suffice if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, the person making the request is advised to furnish the Internal Revenue Service with any additional information which will more clearly identify the requested records, since he has the burden of properly identifying them. The identification requirement will not be used by officers or employees of the Internal Revenue Service as a device for improperly withholding records from the public.

(5) *Fees.* A schedule of fees for the services and costs required of the Internal Revenue Service in locating, making available, copying, and certifying records pursuant to this paragraph is as follows:

Records search; each hour or fraction thereof	$3.50
Photocopies; each page	.25
Certification of photocopies by appropriate official; each certification	1.00
Minimum charge with respect to photocopies	1.00

Such fees are intended to make any services performed with respect to the request self-sustaining to the extent possible. See title V, Act of August 31, 1951 (65 Stat. 290, 31 U.S.C. (Supp. II) 483a). If the Internal Revenue Service estimates that the total fees for costs incurred in complying with the request will amount to $50 or more, the person making the request may be required to enter into a contract for the payment of actual fees with respect to the request before the Service will undertake actions necessary to comply with the request.

(6) *Processing a request*—(i) *In general.* The person making a request will be promptly advised in writing that the request has been received, that action is being taken thereon, and that he will be notified in writing of the determination as to whether the request is granted. If the request does not sufficiently identify a record, the person making the request will be promptly advised of such fact and notified that a more detailed description of the record is required by the Internal Revenue Service in order to proceed with the request.

(ii) *Determination by National Office.* Except in a case described in subdivision (iii) of this subparagraph, a request sufficiently identifying records will be immediately transmitted to the Assistant Commissioner (Compliance), Attention: CP:C:D, for prompt consideration. A copy of the requested records or a description thereof will also be transmitted to the Assistant Commissioner (Compliance) for consideration in connection with the request. The Assistant Commissioner (Compliance) will notify the requester in writing of his determination with respect to the request.

(iii) *Determination by a field office.* Where disclosure authorization with respect to the requested records has been delegated to an officer or employee of the Internal Revenue Service other than the Assistant Commissioner (Compli-

ance), such other officer or employee will make the determination as to whether the request for records should be granted or denied and will notify the requester in writing of his determination with respect to the request.

(7) *Granting of request.* If it is determined that the request is to be granted, the person making the request will be notified in writing of the determination, of the fees involved in complying with the request, and of the locations where such fees are payable. Upon receipt by the Internal Revenue Service of the fees stated in its reply, the person making the request will be promptly advised, in writing, of the time and place where inspection may be made; or, if he has requested that a copy of the records be sent to him without first inspecting the records or if it has been necessary to reproduce the records in order to provide for inspection, a copy of the records will be mailed to him for his retention. In the usual case, the records will be made available for inspection at the office of the Internal Revenue Service where the request was made. However, if the person making the request has expressed a desire to inspect the records at an office of the Service other than the office where the request was made, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished to him upon payment of the established fees prescribed by subparagraph (5) of this paragraph. Prepayment of fees is not required where the total fees with respect to the request are $5 or less and the request is filled by mail.

(8) *Denial of request.* If it is determined that the request for records should be denied, the person making the request will be notified of such determination by mail. The letter of notification will specify the city or other location where the requested records are situated, contain a brief statement of the grounds for denial, and advise the requester of his right to appeal to the Commissioner in accordance with subparagraph (9) of this paragraph.

(9) *Administrative appeal.* At any time within 30 days after the date of the letter of notification described in subparagraph (8) of this paragraph, the person making the request may file an appeal to the Commissioner. The appeal must be in the form of a statement signed by the appellant and mailed to the Commissioner of Internal Revenue, 1111 Constitution Avenue NW., Washington, D.C. 20224. The statement must contain the following information:

(i) The appellant's name and address,

(ii) The identification of the records requested,

(iii) The date of the request and the date of the letter denying the request, and

(iv) A request that the Commissioner consider the denial.

The appeal will be promptly considered by the Commissioner and the request either granted or denied by the Commissioner or referred by him to the Secretary for determination. The appellant will be notified of the determination by mail, and such determination shall be final.

(10) *Judicial review.* If the request is denied upon appeal pursuant to subparagraph (9) of this paragraph, or if no determination is made on the appeal within 30 days after filing, the appellant may commence an action in a U.S. district court pursuant to 5 U.S.C. 552(a)(3). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue: Attention: CC:OP:OS, 1111 Constitution Avenue NW., Washington, D.C. 20224. The district court will determine the matter de novo, and the burden will be upon the Internal Revenue Service to sustain its action in not making the requested records available.

(d) *Rules for disclosure of certain specified matters*—(1) *Inspection of certain tax returns.* The inspection of certain returns is governed by the provisions of the internal revenue laws and rules promulgated by the President or by the Secretary of the Treasury and approved by the President pursuant to such provisions. See section 6103 and the regulations thereunder in Part 301 of this chapter (Procedure and Administration Regulations).

(2) *Information as to persons filing income tax returns.* Information as to whether any person has filed an income tax return for a particular taxable year will be furnished to an inquirer as provided in § 301.6103(f)-1 of this chapter. See section 6103(f).

(3) *Public lists of persons paying special taxes.* Lists of persons paying special taxes under subtitle D (relating to miscellaneous excise taxes) or subtitle E (relating to alcohol, tobacco, and certain other excise taxes) of the Code are available for public inspection in the offices of district directors pursuant to the provisions and limitations of section 6107. See § 301.6107-1 of this chapter. For rules relating to the inspection of Record 10, see § 151.477 of this chapter (Regulatory Taxes on Narcotic Drugs) and § 152.131 of this chapter (Regulatory Taxes on Marihuana).

(4) *Record of seizure and sale of real estate.* Record 21, "Record of seizure and sale of real estate", is open for public inspection in offices of district directors and copies are furnished upon application, as provided in § 301.9000-1(e) of this chapter. However, Record 21 does not list real estate seized for forfeiture under the internal revenue laws (see sec. 7302).

(5) *Public lists of employers making returns under the Federal Unemployment Tax Act.* Information as to whether an employer has made an annual return on Form 940 under the Federal Unemployment Tax Act (chapter 23 of the Code) will be furnished to an inquirer as provided in §§ 301.6103(f)-1 and 301.6106-1 of this chapter. See sections 6103(f) and 6106.

(6) *Information returns of certain tax-exempt organizations and certain trusts.* Information furnished on the public portion of Form 990-A and information furnished pursuant to section 6034 (relating to annual information required of trusts claiming deduction under sec. 642(c)) on Form 1041-A is available for public inspection. The public inspection portion of Form 990-A is, however, only retained for a 4-year period. Information furnished on Form 1041-A for years ending before December 31, 1962, will be available for public inspection in the office of the district director with whom Form 1041-A was filed. Information furnished for years ending on or after December 31, 1962, will be available for public inspection in the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, as well as in the office of the district director with whom Form 990-A or Form 1041-A was filed. See section 6104(b) and § 301.6104-2 of this chapter.

(7) *Applications of certain organizations for tax exemption.* Applications, and certain papers submitted in support of such applications, filed by organizations described in section 501(c) or (d) and determined to be exempt from taxation under section 501(a) are open to public inspection in the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Copies of such applications filed after September 2, 1958, are open to public inspection in the offices of district directors. See section 6104(a) and § 301.6104-1 of this chapter.

(8) *Accepted offers in compromise*—(i) *Income, profits, estate, or gift tax.* For a period of 1 year, a copy of the Abstract and Statement for each accepted offer in compromise in respect of income, profits, capital stock, estate, or gift tax liability is made available for inspection (*a*) in the Office of the Director, Public Information Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, when the offer covers a liability of $5,000 and over, and (*b*) in the office of the appropriate district director when the offer covers a liability of less than $5,000. See 26 CFR (1939) 458.313 (17 F.R. 7688); § 301.6103(a)-1(j) of this

chapter; and section 10 of Rev. Proc. 64-44 (C.B. 1964-2, 974, 979).

(ii) *Liquors.* For each offer in compromise submitted and accepted pursuant to section 7122 in any case arising under Chapter 51 of the Code (relating to distilled spirits, wine, and beer), or pursuant to section 7 of the Federal Alcohol Administration Act (27 U.S.C. 207) in any case arising under that Act, a copy of the Abstract and Statement relating to the offer will be available for public inspection, for a period of 1 year from the date of acceptance, in—

(*a*) The office of the assistant regional commissioner (alcohol and tobacco tax) who received the offer, or the office of the district director for the internal revenue district in which the offer was submitted, in the case of offers accepted pursuant to the Code, or

(*b*) The office of the assistant regional commissioner (alcohol and tobacco tax) who received the offer, in the case of offers accepted pursuant to that Act.

Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, or apparatus, or confidential data or any other matter within the prohibition of 18 U.S.C. 1905.

(9) *Information regarding liquor permits*—(i) *Applications for permits.* Information with respect to the handling of applications for basic permits under the Federal Alcohol Administration Act (27 U.S.C. 204), operating permits under section 5171, and industrial use permits under section 5271 is maintained for public inspection in the offices of assistant regional commissioners (alcohol and tobacco tax) until the expiration of 1 year following final action on such applications. See 27 CFR 1.59.

(ii) *Card index record of permits.* A current card index record for—

(*a*) All persons to whom industrial use permits have been issued pursuant to section 5271,

(*b*) All proprietors of distilled spirits plants to whom operating permits have been issued pursuant to section 5171 to cover distilling for industrial use, bonded warehousing of spirits for industrial use, or denaturing of spirits, and

(*c*) All applicants for such industrial use and operating permits,

is available for public inspection in the offices of assistant regional commissioners (alcohol and tobacco tax).

(10) *List of plants and permittees.* Upon request, the assistant regional commissioner (alcohol and tobacco tax) will furnish a list of any type of qualified proprietor or permittee located in his region.

(11) *Information relating to certificates of label approval for distilled spirits, wine, and malt beverages.* Upon written request, the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 will furnish information as to the issuance, pursuant to section 5(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) and 27 CFR Part 4, 5, or 7, of certificates of label approval, or of exemption from label approval, for distilled spirits, wine, or malt beverages. The request must identify the class and type and brand name of the product and the name and address of the bottler or importer thereof or of the person to whom the certificate was issued. The person making the request may obtain reproductions or certified copies of such certificates upon payment of the established fees prescribed by paragraph (c)(5) of this section. Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, or apparatus, or confidential data or any other matter within the prohibition of 18 U.S.C. 1905.

(12) *State liquor cases or State firearms cases.* Assistant regional commissioners (alcohol and tobacco tax) may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize investigators and other employees under their supervision to attend trials and administrative hearings in liquor cases or firearms cases in which the State is a party, produce records, and testify as to facts coming to their knowledge in their official capacities, provided that information will not be divulged contrary to section 7213 by such production or testimony. See also § 301.9000-1(f) of this chapter.

(13) *Excess profits tax relief; publication of allowances.* There is published from time to time in the FEDERAL REGISTER the information specified in section 6105 relative to excess profits tax relief allowed particular taxpayers. See § 301.6105-1 of this chapter.

(14) *Publication of statistics of income.* Statistics with respect to the operation of the income tax laws are published annually in accordance with section 6108 and § 301.6108-1 of this chapter.

(e) *Other disclosure procedures.* For procedure to be followed by officers and employees of the Internal Revenue Service upon receipt of a request or demand for certain internal revenue records or information the disclosure procedure for which is not covered by this section, see § 301.9000-1 of this chapter.

[F.R. Doc. 67-13651; Filed, Nov. 21, 1967; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER B—SALES AND SERVICES

PART 812—USER CHARGES

Subchapter B of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

Part 812 is revised to read as follows:

Sec.
812.1 Purpose.
812.2 General policy.
812.3 Determining costs and fees for special services.
812.4 Determining charges for lease or sale.

AUTHORITY: The provisions of this Part 812 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

SOURCE: AFR 177-8, June 13, 1967.

§ 812.1 Purpose.

This part prescribes general policy for developing an equitable and uniform system of charges for certain Government services and property.

§ 812.2 General policy.

Air Force activities should not compete with available commercial facilities in providing services or in lease or sale of property to non-Government recipients. However, when authorized services are provided, or a lease or sale is made, the recipient of this benefit pays a reasonable charge as determined from instructions in §§ 812.3 and 812.4.

§ 812.3 Determining costs and fees for special services.

(a) *Determining costs.* Costs are determined or estimated from the best available records in the activity; cost accounting systems must not be established solely for this purpose. The cost computation covers the direct and indirect costs incurred by the activity performing the service. This includes but is not limited to:

(1) Civilian salaries (gross holiday, annual, and sick leave entitlements) and Air Force share of retirement and insurance.

(2) Military pay and allowances at standard rates.

(3) Travel expense.

(4) Cost of fee collection and postage.

(5) Material and supplies used.

(6) Maintenance and operation of buildings and equipment (including depreciation).

(7) A pro rata share of the management and supervisory costs of the activity performing the service.

(8) The costs of research, establishing standards, enforcement and regulation to the extent they are determined by the activity to be properly chargeable to the services performed.

(b) *Establishing fees to recover costs.* Unless otherwise prescribed by Air Force directives, fees are established under the policies and procedures of this part. The fee for a special service is governed by the total cost or fair market value, whichever is higher. Fees and rates must be reviewed at least once a year, and the fees adjusted as needed.

§ 812.4 Determining charges for lease or sale.

Where federally owned resources or property are leased or sold, obtain a fair market value. Determine charges, so far as practicable and feasible, in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs—they may produce net revenues to the Government. In the absence of a known market value, a fair value for sale of material is determined on the basis of the inventory standard price or a reduced price when authorized for sale within DoD, plus accessorial and administrative costs.

By order of the Secretary of the Air Force.

LUCIAN M. FERGUSON,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 67-13675; Filed, Nov. 21, 1967; 8:45 a.m.]

SUBCHAPTER W—AIR FORCE PROCUREMENT INSTRUCTION

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Subchapter W of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

PART 1001—GENERAL PROVISIONS

Subpart D—Procurement Responsibility and Authority

1. Section 1001.461 and the introduction of paragraph (c) of § 1001.750–4 are revised. These sections now read as follows:

§ 1001.461 Contracts for public utility services extending beyond current fiscal year.

(a) *Contracts for power, gas, and water.* (1) The Commander, AFLC, has been authorized to enter into contracts for public utility services (power, gas, water) for periods extending beyond the current fiscal year but not exceeding 10 years, under one or more of the following circumstances:

(i) Where there are obtained lower rates, larger discounts, or more favorable conditions of service than those available under contracts the firm term of which would not extend beyond a current fiscal year.

(ii) Where connection or special facility charges payable under contracts the firm term of which would extend beyond a current fiscal year are eliminated or reduced.

(iii) The utility refuses to render the desired service except under a contract the firm term of which extends beyond a current fiscal year. The authority will be exercised according to the applicable provisions of the "Statement of Areas of Understanding Between the Department of Defense and General Services Administration—Procurement of Utility Services" (AF Bulletin 53, Dec. 19, 1950, sec. III). The authority is also subject to the administrative procedures for review of contracts contained in AFR 91–5 (Utility Services).

(2) The authority of the Commander, AFLC, as described in subparagraph (1) of this paragraph has been delegated to the persons listed below:

(i) The Director and Deputy Director of Procurement and Production, HQ AFLC, with power of redelegation.

(ii) The Commander-in-Chief, U.S. Air Forces in Europe, with power of redelegation to the Director of Procurement and Production, without power of redelegation.

(3) The statute authorizing definite term utility service contracts for periods not exceeding 10 years is 40 U.S.C. 481 (a)(3). The statute as well as 10 U.S.C. 2304(a)(10) will be cited on all definite term utility service contracts extending beyond the current fiscal year.

NOTE: Indefinite term utility service contracts as contemplated in Subpart KK, Part 1007 of this chapter (which are in effect until terminated) do not impose any obligation on the Government except as the service is actually used therefore, do not come within the purview of this paragraph. Such contracts will be approved pursuant to § 1001.455 and § 1007.3706 of this chapter and will cite only 10 U.S.C. 2304(a)(10) as statutory authority.

(b) *Contracts for communication services.* (1) The Commander, AFLC, has been authorized to enter into contracts for communication services for periods extending beyond the current fiscal year but not to exceed 10 years, under one or more of the following circumstances.

(i) When services are obtained from communication common carrier whose rates are regulated by a Federal, State, or other public regulatory body;

(ii) Where the services are obtained by competitive means from other than communication carriers and;

(a) Where there are obtained lower rates, larger discounts, or more favorable conditions of service than those available under contracts the firm term of which would not extend beyond a current fiscal year.

(b) Where nonrecurring or termination charges payable under contracts the firm term of which would not extend beyond a current fiscal year are eliminated or reduced.

(iii) The termination liability incurred by the contract, when added to the cumulative termination liabilities of existing contracts does not exceed the termination liability ceilings imposed by public law or departmental administrative procedures.

(2) The authority of the Commander, AFLC, as described in subparagraph (1) of this paragraph has been delegated to the persons listed below:

(i) The Director and Deputy Director of Procurement and Production, HQ AFLC, with power of redelegation.

(ii) Commanders Air Force Communication Service and Air Procurement Region, European and Commander-in-Chief, U.S. Air Forces in Europe, with respect to leased private line services and leased tactical on-base communication services, with power of redelegation.

(iii) Commanders of major commands and commanders of air materiel areas, with respect to miscellaneous base services and facilities, may redelegate to contracting officers of subordinate functions that portion of the above authority involving the procurement of miscellaneous base services and facilities under indefinite delivery contracts issued by AMAs or GSA.

(iv) Commanders of air materiel areas with respect to (a) initial installations and major modification of base support leased facilities, and (b) miscellaneous base services and facilities in support of the responsibilities and mission of GEEIA in accordance with AFLCR 23–17, with power of redelegation to directors of procurement and production of such air materiel areas, but without power of redelegation to GEEIA.

(v) Commander, Ground Electronics Engineering Installation Agency (GEEIA), with respect to issuing Communication Service Authorizations (CSA) only, with power of redelegation to the commanders of GEEIA regions.

* * * * *

§ 1001.705–4 Certificates of competency.

* * * * *

(c) When a matter is referred to SBA, the contracting officer will furnish two copies of his determination pursuant to § 1.904–1 of this title and two copies of the preaward survey through channels to AFLC (MCP) or AFSC (SCK), as appropriate. MCP or SCK will, after review, forward the matter to Hq USAF (AFSPPBB).

* * * * *

PART 1006—FOREIGN PURCHASES

2. Section 1006.552 and Subpart H are revised to read as follows:

Subpart E—Canadian Purchases

§ 1006.552 Basic agreement.

The Air Force has in effect a Cost Reimbursement type basic agreement with the Canadian Commercial Corporation. Required copies of the current basic agreement may be obtained from the Aeronautical Systems Division (ASKBB-10), Wright-Patterson AFB, OH 45433.

Subpart H—Balance of Payments Program—Offshore Procurement

Sec.

AUTHORITY: The provisions of this Subpart H issued under secs. 8012, 2301, 70A Stat. 488, 127; 10 U.S.C. 8012, 2301–2314.

Subpart H—Balance of Payments Program—Offshore Procurement

§ 1006.850 Scope of subpart.

Procurement procedures of special application to BUSH (Buy U.S. Here) contracts and their resulting Authorized Price List (APL) are set forth in this subpart, and in certain instances other portions of this instruction having particular significance to BUSH contracts are cross-referenced herein.

§ 1006.850–1 Purpose.

The purpose of the BUSH program is to establish and maintain a comprehensive procurement support program. The program will be directed at making the maximum number of commercial U.S.

end products available for use by oversea Government agencies under advantageous conditions. The objectives of the BUSH program are to (a) assist in carrying out the full intent and purpose of the DoD Balance of Payments Program through the purchase of U.S. end products, (b) reduce administrative costs by centralization of contract placement where practicable, (c) effect cost savings through favorable prices and lower cost for delivery to an oversea destination, and (d) provide a readily available source of supply in oversea areas for U.S. end products.

§ 1006.850–2 Definitions.

As used in this subpart, the following terms have the meaning set forth below:

(a) *BUSH.* An acronym formed from using the first letters of the words "Buy United States Here." BUSH is a program for award of contracts by an overseas Procurement Activity for delivery of U.S. end products and services to overseas activities.

(b) *BUSH contractor.* A business concern, domestic or foreign, having a BUSH contract.

(c) *BUSH contract.* A contract, usually an indefinite delivery type, awarded under the BUSH Program.

(d) *BUSH delivery point.* An oversea delivery point that is either the final destination, a central point used for acceptance and redistribution, or a foreign Port of Entry (POE) for U.S. Government acceptance and transshipment to final destination.

(e) *Oversea, delivered cost(s).* The total cost, including purchase price, packing, crating, handling, shipping, and delivery costs of an item delivered to an oversea destination.

(f) *Authorized Price List (APL).* A price list of the products and/or services covered in the BUSH contract which contains minimum essential information needed by procuring activities for placing orders.

§ 1006.850–3 Method of procurement.

BUSH contract requirements will be negotiated pursuant to 10 U.S.C. 2304 (a)(6).

§ 1006.850–4 General policy.

(a) BUSH programs will be managed and controlled by the oversea Major Commands responsible for the respective oversea areas.

(b) BUSH contracting offices will:

(1) Be centrally located to the maximum practicable extent. This is intended to minimize the points of contact necessary to industry.

(2) Coordinate with other services in the respective oversea area so as to achieve the greatest degree of unified action.

(c) To qualify for BUSH contract coverage all of the following criteria must be met.

(1) The supplies covered will be U.S. end products.

(2) The contractor shall be responsible for making delivery to an overseas delivery point (§ 1006.850–2(d)).

(3) There must be a positive advantage when compared to other methods of procuring the same or similar U.S. end product for oversea delivery. Price comparisons will, at the minimum, involve oversea delivered costs (§ 1006.850–2(e)).

(d) BUSH contracts will:

(1) Be solicited from all possible qualified sources to insure maximum number of items available for oversea Government ordering activities use.

(2) Be executed and used to the maximum extent possible for:

(i) Small dollar items.

(ii) Equipment where periodic maintenance and servicing is available in the oversea area and/or where the delivered costs include such things as a warranty, maintenance for a stated period, installation and checkout, and operator orientation, instruction or training.

(3) Be governed by the provisions of § 5.106 of this title in the case of multiple awards of like items.

(4) Normally extend for a 1-year period.

(5) Be centrally administered by the BUSH office awarding the contract. All BUSH contracts and resulting APLs will require one copy of all delivery orders issued pursuant thereto to be furnished the administering office. One copy of all delivery order delinquent followup actions, when required, will be furnished the administering office for recording purposes.

(6) Require all shipments (direct and transshipments) to be consigned to the transportation officer at the first oversea delivery destination point for acceptance and foreign customs clearance. The shipment will be marked for delivery to the ordering activity at final destination for inspection.

(7) Be publicized through advance notices for the reasons set forth in § 1.1003–4 of this title and similar in format to § 1.1003–9(d)(1) of this title.

(8) Provide for use by any U.S. Government oversea ordering authority.

(9) Provide for distribution of an Authorized Price List (APL) to all oversea U.S. Government ordering activities.

§ 1006.850–5 BUSH contract pricing, competition and reporting.

(a) The following BUSH pricing techniques will be applied in developing BUSH procedures. They are categorized into two general supply item areas.

(1) *Prices based upon Federal Supply Schedule items.* The competitive nature of the Federal Supply Schedule pricing is unquestioned because the FSS prices as increased by the additional oversea delivered costs are the actual costs the Government will pay in the absence of a BUSH contract.

(2) *Prices based upon Non-Federal Supply Schedule items.* The prices and competitive nature for these items are influenced by the number of sources available for competition among oversea sources (e.g., multiple oversea subsidiaries and single oversea subsidiaries).

(b) Indefinite delivery BUSH contracts for non-FSS items from oversea and CONUS sources:

(1) *Multiple sources in same commodity area.* Contracts should be negotiated with each offeror for individual item requirements or all the product line, using § 3.807–1(b)(2) of this title in determining reasonableness of price only. Ordering activities will utilize § 5.106 of this title in selecting the contractor with whom to place delivery orders.

(2) *Single source for non-FSS items.* When multiple sources are not available, the contract may be negotiated on a sole source basis for individual items or product line. Section 3.807–1(b)(2) of this title will be used to determine reasonableness if applicable in accordance with the criteria listed under subparagraphs (i) through (iv) thereunder. If these criteria do not apply, then price reasonableness will be determined in accordance with §§ 3.807–2 and 3.807–3 of this title.

§ 1006.850–6 Format for BUSH contract.

BUSH contracts will consist of a cover page (Standard Form 26), Schedule, General Provisions for Fixed Price Supply Contract, additional General Provisions, when applicable, and BUSH Authorized Price List (§ 1006.850–7) in the format set forth in this section.

(a) Cover page (Standard Form 26).

(b) Schedule provisions.

(1) *Scope of contract.* (August 1967)

(i) The Contractor shall furnish and deliver in implementation of the Balance of Payments Program, U.S. end products as specified in the attached BUSH Authorized Price List at the unit price stated therein, when ordered by an authorized ordering activity in compliance with all terms and conditions of this contract.

(ii) The attached BUSH Authorized Price List is incorporated herein and shall be hereinafter referred to as the "APL."

(2) *Contractual period.*

Performance period of this contract will be effective _____ and ending _____. (August 1967)

(3) *Office of Administration.*

(i) The following office is assigned overall administrative responsibility for this contract:

(Insert BUSH Office Indigenous Address)

(ii) All correspondence written to U.S. Government activities concerning this contract shall be in the English language and all cost incident thereto is the responsibility of and shall be borne by the Contractor.

(4) *Printing and distribution of APLs.* (August 1967)

The Contractor, at no cost to the U.S. Government, shall print, package and deliver to the Procurement Office using this contract _____ copies of the APL. Packaging shall be in accordance with instructions issued by the Contracting Office. In the event additional copies of the APL are requested by ordering activities, the Contractor will furnish them at no cost to the U.S. Government.

(5) *Special marking instructions.* (August 1967)

Notwithstanding any other provisions of this contract concerning markings for shipment, the Contractor shall prepare a DD Form 1387, Military Shipment Label, and attach this label to the outside shipping container of all items delivered to (Insert First Destination delivery point), for subsequent transshipment by the Government as otherwise provided for under the terms of this contract. Copies of these forms and preparation instructions may be obtained by contacting the office having overall administrative responsibility for this contract.

§ 1006.850–7 Format for BUSH Authorized Price List (APL).

The APL is a contractor publication similar to the Contractors' Catalog published pursuant to a GSA Federal Supply Schedule. The cover of the APL is designed by the BUSH Contractor and will contain but is not limited to the following minimum essential information: BUSH office indigenous address awarding the contract; Procurement Instrument Identification Number (PIIN); Contractor's name and indigenous address; Federal Supply Group or Classes of the products covered in the APL; and the list of countries authorized to use the APL. The APL will be published by the contractor using the below prescribed minimum APL format, as applicable. The published APL will become an appendage to and form a part of the BUSH Contract by reference. The APL normally contains three sections. Section I, "Terms and Conditions," contains general ordering information. Section II, "Items, Description and Prices" contains photographic illustrations, purchases descriptions, stock numbers, and prices. Section III, "Foreign Sales and Services Offices," lists the contractors sales and service offices address where service capability exists for the products offered in the APL. The following prescribed format shall be used for all APLs authorized for issuance in a BUSH contract. The following provisions will appear in the APL in the sequence shown below when applicable. Nonapplicable provisions will be deleted and the next applicable provision in sequence will be used.

SECTION I—TERMS AND CONDITIONS

A. *General conditions.* (August 1967)

(a) This Authorized Price List is subject to the terms and conditions of BUSH contract (insert number), which contains the following provisions:

(Identify Major Command Form No. (When Applicable), General Provisions, Fixed Price Supply Contracts, (Date)).

(Identify Major Command Form No. (When Applicable), BUSH Fixed Price Supply Contract. Additional General Provisions, (Date)). Insert when applicable.

B. *Authorized ordering activities.* (August 1967)

Any duly appointed U.S. Government contracting officer or otherwise authorized ordering officer assigned in the countries listed below may place delivery orders against this Authorized Price List. Foreign Source Procurement Determination is not required.

(Identify countries covered by BUSH contract.)

C. *Pricing.* (August 1967)

(a) All prices quoted within this Authorized Price List are net f.o.b. delivered to the various destinations as set forth below. In accordance with the tax clause of the General Provisions of this contract, the contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign government costs, assessments, or similar charges from which the U.S. Government is exempt. Contractor further warrants that any applicable taxes, duties, customs fees, other governmental costs, assessments, or similar charges, from which the U.S. Government is not exempt are included in the prices quoted within this APL, and that such prices are not subject to additions or increases for any such charges.

(b) Standard commercial packing, packaging, preservation, marking and installation are included in the unit prices of all items listed herein.

D. *Discounts.* (August 1967)

NOTE: Enter the following if the contractor proposes prompt payment discounts.

(a) Pursuant to the clause of the General Provisions entitled "Discounts," a _____ prompt payment discount is granted on all orders against this APL if payment is made within _____ days after the date of delivery and acceptance, or after receipt of a correct invoice, whichever is later.

(b) Enter here any quantity discounts the contractor wishes to offer.

E. F.O.B. points—direct and transshipments. (August 1967)

(a) Direct shipments.

The Contractor shall deliver all equipment ordered directly to cited destinations within the following countries:

(Identify only those countries to which the contractor proposes to deliver directly by his own means.)

All direct deliveries will be consigned to the Traffic Management Officer or Transportation Officer at the f.o.b. delivery points.

NOTE: Include the following paragraph only if Government transshipments are proposed.

(b) Transshipments.

(1) The contractor shall consign all goods ordered, destined for countries other than shown above, to the following f.o.b. address:

(Fill in applicable Port Transportation Officers or insert Transportation Officer at central f.o.b. points.)

(2) Each transshipment delivery will be indelibly marked as follows:

(i) Traffic management or transportation officer at final destination.

(ii) Ordering supply account number.

(iii) Contract number.

(iv) Order number.

(v) Federal stock number or manufacturer's serial number.

(vi) Nomenclature.

(vii) Quantity.

(viii) Box number _____ of _____ boxes.

(ix) Weight _____ Cubic feet _____.

(x) Transshipment priority _____.

(c) In addition to the above, the contractor shall prepare a DD Form 1387, Military Shipment Label, and attach this label to the outside shipping container of all items delivered to the central f.o.b. point for subsequent transshipment by the Government as otherwise provided for under the terms of this contract. Copies of these forms and preparation instructions may be obtained by contacting the office having overall administrative responsibility for this contract.

F. *Delivery schedule.* (August 1967)

(a) *Routine delivery.* Except as provided in paragraph (b) below, delivery of items ordered hereunder shall be accomplished within (insert maximum delivery time to f.o.b. point), after receipt of a correct order. Immediately upon receipt of each order issued against this APL, the Contractor shall acknowledge receipt thereof to the Contracting or Ordering Officer, in writing, and shall indicate the probable date of delivery of the items ordered.

(b) *Accelerated delivery.* The majority of the items contained herein are available for delivery within (insert delivery time that normally can be met) days. The Contracting or Ordering Officer issuing a delivery order against this APL may, prior to the issuance of an order, contact the Contractor for the purpose of negotiating a delivery schedule of less than (insert time specified in (a) above) at no change in unit price. The agreed accelerated delivery schedule shall be set forth in the order. The Contractor shall immediately acknowledge receipt of the order, in writing, and verify the delivery date set forth therein. Upon such verification by the Contractor, the accelerated delivery schedule shall become the firm delivery requirement of the order.

G. *Availability.* (August 1967)

The contractor shall not be required to accept orders for any item specified in this Authorized Price List if such item has been withdrawn from general sale in the United States at the time orders therefor are received.

H. *Warranty.* (August 1967)

(Insert standard commercial warranty)

I. *Installation, services, and training.* (August 1967)

(Insert installation, operator training, special schooling, or other services included in item price.)

J. *Electrical requirements.* (August 1967)

(Identify, if applicable, the variations of electrical possibilities available for contractor equipment.)

K. *Ordering instructions.* (August 1967)

(a) Issue all delivery orders to: (Insert complete mailing address, telephone number, telex call sign, and cable address if applicable.)

(b) All delivery orders must contain the following information (if applicable) to insure prompt processing and delivery of your requirements:

(1) Basic contract number.

(2) Delivery order number.

(3) Federal stock number where available; manufacturer's model, item or part number for each item being ordered.

(4) Description of nomenclature of item.

(5) Electrical requirements, when applicable.

(6) Quantity, unit and total price of each item.

(7) Marking requirements. (Shipments will be consigned to the traffic management or transportation officer at the first destination delivery point, marked for the ordering supply account, of the final delivery destination.)

(c) In addition to the number of copies of delivery orders required by each ordering activity for local distribution, the following minimum additional copies will be forwarded to:

(1) Contractor (Insert name and address).	2 copies
(2) The applicable traffic management officer at final destination.	2 copies
(3) The BUSH office awarding and administering the contract.	1 copy
(4) The port transportation officer or traffic management officer through which transshipment will be made (if applicable).	2 copies

L. *Instructions regarding administration of orders.* (August 1967)

Each ordering activity will deal directly with the Contractor and shall be responsible for the administration of orders placed by that activity. Such responsibility includes the placement and followup of orders and acceptance inspection of supplies and services, modification of orders, and termination and settlement of orders within the termination authority of the ordering officer. Ordering activities will not issue final decisions pursuant to the clause of the General Provisions entitled "Disputes." In the event an ordering activity is unable to resolve a dispute with the Contractor, and it appears to the ordering activity that a final decision under the "Disputes" clause may be necessary, the matter will be referred by the ordering activity to the office assigned overall administrative responsibility for this contract. Under no circumstances will an ordering activity issue a final decision under the

Disputes clause, nor will the Contractor accept the same.

M. Customs clearance. (August 1967)

The traffic management officer (TM) or transportation officer (TO) at the first destination delivery point will issue proper customs declaration or clearance forms when required.

N. Inspection and acceptance. (August 1967)

(a) *Direct shipments.* Inspection and acceptance shall be made at final destination by an authorized U.S. Government representative. Equipment which will be installed and checked out (see Installation and Warranty) will be inspected and accepted after such installation and check-out.

(b) *Transshipments.* (NOTE: Delete if Government transshipments are not applicable.)

(1) Acceptance will be made by the transportation officer or the appropriate port transportation officer, under the "Certificate of Conformance" provisions.

(2) Inspection will be made at the final destination by an authorized U.S. Government representative. Equipment to be installed and checked out will be inspected and accepted after such installation and checkout.

NOTE: If contractor proposes direct shipments only, delete all reference to transshipments.

O. Certificate of conformance (COC).

Insert clause in § 1007.4014.

P. Finance office, invoices and payment. (August 1967)

(a) The Finance and Accounting Office cited on the cover sheet of each delivery order is responsible for making payments for delivery orders issued against this contract.

(b) All payments for delivery orders against this contract will be made in U.S. dollar checks to: (Insert name and address to which payments should be made.)

(c) Invoices shall be prepared and submitted in _____ copies unless otherwise specified, and shall contain: Contract number, contract description of supplies, sizes, quantities, unit prices (exclusive of taxes or duties for which relief is available), and extended totals.

(d) This contract is subject to the clause entitled "Identification of Expenditures in the United States (October 1966)," copies of which may be obtained from the local procurement office.

(e) The Contractor shall be paid in accordance with the clause entitled Payments. (Reference General Provisions Number (insert paragraph number).)

SECTION II—ITEM DESCRIPTION AND PRICES

Q. Item(s) description and prices. (August 1967)

Identify items offered in the Authorized Price List.

(a) Pictures of items offered are encouraged.

(b) Include Federal stock numbers where possible.

(c) Item pricing should be shown with the item identification.

SECTION III—FOREIGN SALES AND SERVICE OFFICES

R. Foreign sales and service offices. (August 1967).

Identify all the contractors' sales and service offices by country which will be capable of servicing items delivered from the APL. This listing is normally included in the last page(s) of the APL.

PART 1007—CONTRACT CLAUSES

3. New §§ 1007.106–50, 1007.602–9, and 1007.6001–3 are added as follows:

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 1007.106–50 Escalation clause for platinum.

The following price escalation clause is authorized for use in advertised or negotiated fixed-price supply contracts for platinum.

PRICE ESCALATION (AUGUST 1967)

(a) The Contractor represents that the unit prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in the prices which the Contractor is charged for the platinum required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of platinum.

(c) The platinum price set forth elsewhere in the schedule of this contract shall be used by the contractor in computing his unit price for each item for which the contractor is required to furnish platinum. Within 60 days after completion of deliveries under the contract, the contractor shall submit to the Government a certified statement setting forth the number of troy ounces of platinum which the contractor has furnished in the performance of the contract and the price paid per troy ounce. This statement shall be supported by invoices showing payment to the supplier of the material; provided however, that written concurrance of the contracting officer will be obtained prior to purchase of any platinum subject to price revision under this clause, the price of which exceeds 110 percent of the price per troy ounce set forth in the contract.

(d) Upon receipt of the contractor's statement and invoices showing the amount of platinum which the contractor has furnished in performance of the contract, the difference between the price per troy ounce set forth in the contract for computation of unit prices and the price per troy ounce actually paid by the contractor shall be computed and multiplied by the number of troy ounces of platinum which the contractor has furnished in the performance of the contract. Any difference between the price per troy ounce allowed for computation of unit price in the contract and the price per troy ounce actually paid by the contractor shall be adjusted by a "Change Order" to the contract either increasing or decreasing the unit price per item and the total amount of the contract.

(e) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the contractor, if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current materials prices under paragraph: (c) and (d) hereof: *Provided, however,* That as to the quantity of such items which are not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said prices. In the case of termination of any item for default on the part of the contractor, any price revision shall be limited to the quantity of each item which has been delivered by the contractor and accepted by the Government prior to receipt by the contractor of notice of termination for default.

(f) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered: *Provided, however,* That in case of the failure of the contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

(g) Failure to agree upon any platinum prices under this clause shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

Subpart F—Clauses for Construction and Architect-Engineer Contracts

§ 1007.602–9 Preparation of material approval submittals.

The following clause will be included in all contracts for construction where it is contemplated that material approval submittals will be required.

PREPARATION OF MATERIAL APPROVAL SUBMITTALS (AUGUST 1967)

The submittals contemplated by the clause herein entitled "Material and Workmanship" shall be accomplished on and in accordance with instructions pertaining to AFPI Form 1, Material Approval Submitted.

Subpart HHH—Clauses and Special Provisions for Certain Contracts Not Listed in Subchapter A, Chapter I of This Title or Other Subparts of This Part

§ 1007.6001–3 Clauses and schedule provisions covering contracts for contractor plant services (CPS), contractor field services (CFS), and field service representatives (FSR).

The clauses and schedule provisions covering the above requirements pursuant to AFM 66–18 (Engineering and Technical Services Management and Control) will be issued, according to § 1001.108 of this Chapter only by EWPT, Wright-Patterson AFB, OH.

PART 1018—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

Subpart A—General Provisions

4. Subpart A is amended by adding a new § 1018.150 as follows:

§ 1018.150 Material Approval Submittal Form (AFPI Form 1).

(a) Material Approval Submittal for Construction Contracts Clause 9, Material and Workmanship, General Provisions, Construction Contract, Standard Form 23A (required by § 7.602–9 of this title) requires construction contractors when required by the contracting officer to furnish the contracting officer for approval full information concerning the

materials or articles which the contractor contemplates incorporating in the work. Within 10 days after commencement of work or within such time as established by the contracting officer, the contractor will submit for approval all materials or articles which the contractor will incorporate into the work. The contracting officer will establish a suspense date on action to be taken on submittals and retain the fourth copy for necessary followup action.

(1) Instructions to the contractor for preparation of AFPI Form 1 are contained on the reverse side thereof.

(2) Approvals or disapprovals will be entered by the construction activity by initials and a check mark as considered appropriate on the face of the submittal designated "For Government Use Only."

(3) Any controversial item which has been disapproved and which may lead to difficulties should be explained by separate correspondence.

(4) Insofar as practicable and prior to the commencement of work, the contracting officer with advance information from the construction activity will inform the contractor of the materials or articles requiring approval. See § 7.602–9 of this title.

(b) No implementation.

(Sec. 8012, 70A Stat. 488, secs. 2301–2314, 127–133; 10 U.S.C. 8012, 2301–2314) [AFPI Rev. No. 81, Aug. 29, 1967; AF Procurement Circulars No. 17, Aug. 30, 1967; No. 18, Sept. 19, 1967]

By order of the Secretary of the Air Force.

LUCIAN M. FERGUSON,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 67-13676; Filed, Nov. 21, 1967; 8:45 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission and Department of Transportation

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Docket No. 34650; Amdt. 1]

PART 180—CARRIERS BY PIPELINE

In Order No. 1, dated June 16, 1967 (32 F.R. 9228–9230, June 29, 1967), a final rule was issued amending the regulations governing the transportation of hazardous materials contained in Title 49, Code of Federal Regulations, Parts 171–179, by adding Part 180—Carriers by Pipeline. This rule was to have become effective on September 6, 1967, but its effective date was postponed by the timely filing of a petition for reconsideration by the Central Committee on Pipe Line Transportation of the American Petroleum Institute. Notice of this postponement was published in the FEDERAL REGISTER (32 F.R. 12851, Sept. 8, 1967).

Although the petition recognizes the Administration's authority to regulate the transportation of hazardous materials under the Explosives and Other Dangerous Articles Act (18 U.S.C. 831–835), it asserts that the Administration lacks authority under this statute to prohibit their transportation by pipeline or to require pipeline carriers to obtain prior permission through the special permit system prescribed in § 180.6 (49 CFR 180.6).

Regulations providing for the issuance of special permits to modes other than pipelines have been in effect and extensively utilized since 1945. See 49 CFR 173.22(a). Special permits are waivers of existing regulations, or are temporary regulations authorizing the transportation of hazardous materials, under specific conditions prescribed to assure safety.

Pipeline carriers were made subject to the Explosives and Other Dangerous Articles Act by Public Law 89–95, approved July 27, 1965. This law merely deleted the words "other than pipelines" from the definition of "carrier" in section 831 of that Act. This amendment was introduced at the request of and was strongly supported by major segments of the petroleum industry. Representatives of the industry stated at Congressional hearings that the industry preferred Federal regulations to a potential myriad of conflicting State regulations.

When it enacted Public Law 89–95, Congress neither prohibited the establishment of a similar special permit procedure for pipelines nor did it express its disapproval of the long-established special permit procedure applicable to other modes.

Accordingly, the petition's contention that the Administration lacks statutory authority to prohibit transportation of hazardous materials by pipeline or to require pipeline carriers to obtain permission prior to such transportation in accordance with the special permit procedure contained in § 180.6, is hereby rejected.

However, upon further consideration, it is hereby determined that the special permit procedure prescribed in § 180.6 is not required at this time to effectively regulate the safe transportation of hazardous materials by pipeline. Section 180.6 is therefore being amended.

As amended, § 180.6 will require pipeline carriers to give written notice to the Administration at least 90 days before the transportation is to begin. This notice must identify the hazardous materials and describe their properties and characteristics including their hazard classification. It must also contain the pipeline design specifications including maximum operating pressures. If the Administration determines that the transportation of hazardous materials by pipeline as described in the notice would be unduly hazardous, it will prior to the expiration of the 90-day period order the carrier in writing not to transport them until further notice and will initiate appropriate action as soon as practicable to determine a manner in which the hazardous materials may be transported by pipeline without undue hazard.

In view of the recently issued Departmental regulations concerning the public availability of information (32 F.R. 9284–9292, June 29, 1967), § 180.27 *Accident reports confidential* is deleted in its entirety.

In addition, a number of minor changes of an editorial nature have been made throughout Part 180.

In consideration of the foregoing, the Hazardous Materials Regulations of the Department of Transportation (49 CFR Parts 171–179) are hereby amended by revising the following Part 180 at the end thereof, effective December 31, 1967.

This part is issued under the authority of section 831–835 of title 18, United States Code, and section 6(e)(4) and (f)(3)(A) of the Department of Transportation Act 49 U.S.C. 1655 (e)(4) and (f)(3)(A).

Issued in Washington, D.C., on November 9, 1967.

A. SCHEFFER LANG,
Administrator,
Federal Railroad Administration.

Sec.

AUTHORITY: The provisions of this Part 180 issued under secs. 831–835, 18 U.S.C.; sec. 6 (e)(4), (f)(3)(A), Department of Transportation Act (49 U.S.C. 1655 (e)(4), (f)(3)(A)).

§ 180.1 Purpose of this part.

(a) To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation of dangerous goods (other than natural or artificial gas and water) by pipeline carrier in interstate or foreign commerce. This part prescribes the general rules under which pipeline carriers must design, construct, test, maintain, and operate pipeline systems to provide for safety to the public and to the carrier's personnel. It is the duty of each carrier to thoroughly instruct employees concerning the requirements of this part.

§ 180.2 Scope of the regulations in this part.

(a) Except as provided in § 180.3, all pipeline carriers subject to sections 831–835 of Title 18, U.S.C., which at any time transport dangerous goods, through their pipeline system shall be subject to Parts 171, 172, 173, and 180 of this chapter, as applicable.

§ 180.3 Exemptions from the regulations in this part.

(a) Pipelines which operate at a stress level of 20 percent or less of the specified minimum yield strength of line pipe in the system, and pipelines which move commodities from one point to another by gravity rather than by pumping are exempt from this part.

§ 180.4 Definitions.

(a) For the purposes of this part:

(1) "Dangerous goods" means explosives and other dangerous articles as defined in Part 173 of this chapter and petroleum as defined in this section but does not include natural or artificial gas and water.

(2) "Pipeline system" and "pipeline" are synonymous and mean all parts of a carrier's physical facilities through which dangerous goods move including, but not limited to: Line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, measurement and delivery stations and fabricated assemblies therein, and carrier-owned breakout tankage.

(3) "Pipe" or "line pipe" means a tube, usually cylindrical, through which a commodity flows from one point to another.

(4) "Specified minimum yield strength" means the minimum yield strength, expressed in pounds per square inch, prescribed by the specification under which the material is purchased from the manufacturer.

(5) "Stress level" means the level of tangential or hoop stress, usually expressed as a percentage of specified minimum yield strength.

(6) "Barrel" means a unit of measurement equal to 42 U.S. gallons at 60° F. used to determine quantity of petroleum.

(7) "Petroleum" means a general term including but not limited to: Crude oil, natural gasoline, liquefied petroleum gas (LPG), and liquid petroleum products.

§ 180.5 Acceptable commodities for transportation by pipeline.

(a) For the purpose of this part, all petroleum can be accepted for transportation by pipeline unless it will damage the pipeline and thereby create an undue safety hazard to persons or property.

§ 180.6 Transportation of dangerous goods not provided for in § 180.5.

(a) Except as provided in § 180.5 no dangerous goods may be transported by pipeline after April 15, 1968, unless the Administrator, Federal Railroad Administration, Department of Transportation, Washington, D.C. 20591, receives written notice thereof from the carrier at least 90 days prior to the date the transportation is to begin. If the Administrator determines that the transportation of the dangerous goods by pipeline would be unduly hazardous in the manner proposed, he will, before expiration of the 90 days, order the carrier in writing not to transport the dangerous goods until further notice. As soon as practicable after issuance of such an order, the Administrator will initiate appropriate action to determine whether and in what manner the dangerous goods may be transported by pipeline without undue hazard.

(b) The notice submitted to the Administrator by the carrier must state the chemical name, common name, hazard classification, properties, and characteristics of the dangerous goods to be transported. It must also include design specifications, including maximum operating pressures, for the pipeline through which dangerous goods are to be transported.

Subpart A—Accident Reporting

§ 180.25 Purpose of accident reporting.

(a) The purpose of accident reporting is to allow the determination of both causes of accidents and remedies to prevent accidents so that appropriate regulations may be formulated for the safe transportation of dangerous goods by pipeline in interstate and foreign commerce.

§ 180.26 Reportable accident.

(a) For the purpose of this part, a reportable accident is any failure in the system of a pipeline carrier transporting dangerous goods under pressure by pumping in which there is a liquid or vapor release of the commodity transported resulting in any of the following:

(1) Explosion or fire not intentionally set by carrier.

(2) Loss of 50 or more barrels of liquid.

(3) Escape to the atmosphere of more than 5 barrels per day of liquefied petroleum gas or other commodity which vaporizes upon release to the atmosphere.

(4) Death of any person.

(5) Bodily harm to any person resulting in one or more of the following:

(i) Loss of consciousness.

(ii) Necessity to carry the person from the scene.

(iii) Necessity for medical treatment.

(iv) Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.

(6) Property damage of at least $1,000 to other than the carrier's facilities, based upon actual cost or reliable estimates.

§ 180.28 Accident reporting.

(a) Each pipeline carrier subject to this part who experiences a reportable accident in the United States, shall prepare and file an accident report, on DOT Form 7000–1.[1]

[1] DOT Form 7000–1 filed as part of the original document.

§ 180.29 Instructions for preparing DOT Form 7000–1.

(a) Reports of accidents on DOT Form 7000–1 shall be prepared in accordance with the following instructions:

(1) General: Each applicable item must be marked or filled in as fully and as accurately as information accessible to the pipeline carrier at the time of filing the report will permit.

(2) Part A: Enter name as it is filed with the Interstate Commerce Commission. If the carrier's name is not filed with the Commission, enter the complete corporate name of the carrier. Enter the address of the pipeline carrier's principal place of business including zip code.

(3) Part B, Item 1: Enter the date the accident occurred or was discovered. If the accident was not discovered on the date it occurred, state this fact on the back of the form.

(4) Part B, Item 2: Enter the exact time in hours and minutes (i.e., 10:15) if known or a time range (i.e., 10–11) if exact time is not known. If the accident was not discovered on the date it occurred, enter the time it was discovered and state this fact on the back of the form as in Part B, Item 1.

(5) Part B, Item 3: Enter all three names, State, county, city or town, in or near which accident occurred.

(6) Part B, Item 4: Mark the appropriate box. If "other" is marked, state clearly on form what part of the pipeline system.

(7) Part B, Item 5: If the accident occurred in an uninhabited area, such as woods, cultivated field, swamp, etc., so state clearly on the form under Item 5. If not, a sketch shall be attached to the form showing the part of the pipeline system where the accident occurred, and the location of the accident as related to significant landmarks. Each item shown on the sketch must be clearly and distinctly marked to identify it. Approximate distances from accident location to all landmarks shown on the sketch must be indicated.

(8) Part C: Mark the appropriate box or boxes. If applicable, more than one box shall be marked. If "other" is marked, state clearly on form the exact origin of the liquid or vapor release.

(9) Part D: Mark the appropriate box. If "other" is marked, clearly state the cause of the accident.

(10) Part E: Indicate a number under each heading included "0" if none. If any of the numbers change after the form is filed, the revised number or numbers will be filed as a supplement to the report form (see § 180.31).

(11) Part F, Items 1 and 2: Report only material in the pipeline system that was actually damaged such as pipe, valves, or fittings. Do not include cost of commodity which was lost due to the accident or fittings used during repair which became permanently attached to system. The dollar value of damage should be based on replacement at present day costs.

(12) Part F, Items 3 and 4: This is damage to property other than that of the carrier. Dollar value must be actual or the best estimate available.

(13) Part G, Item 1: State the commonly used name of the commodity, such as fuel oil, regular gasoline, liquefied petroleum gas, etc. If the commodity name is one not commonly used, state the name here and give a brief description of it under "Account of Accident by Responsible Official of Carrier."

(14) Part G, Item 3: State the year installed or the best estimate possible. Pipe is excluded as the year of installation is required in Item 4 of Part H.

(15) Part H: Mark appropriate boxes and state information required in all items of this part only if the accident occurred in line pipe. If the accident occurred in any other part of the pipeline system, omit this part.

(16) Part I: Mark appropriate boxes and state information required in all items of this part if the accident was caused by corrosion in any component of the pipeline system. In Item 4, state the length of time between the type of tests, such as pipe-to-soil potential, stated in Item 5.

(17) Part J: Complete all three items only if the accident was caused by equipment rupturing the pipeline. In Item 2, all the information stated on the closest line marker must be shown.

(b) In the space provided after Part J, an account of the accident containing the most reliable information to which the pipeline carrier has access at the time of reporting, sufficiently detailed and complete to convey an understanding of the accident, shall be entered. This account should be continued on an extra sheet of paper if more space is needed.

(c) At the bottom of the back of DOT Form 7000–1, state the name and title of the pipeline official responsible for compiling and filing the report along with the telephone number where this official can be reached, and the date the report was completed.

§ 180.30 Filing of accident report.

(a) Two copies of each report prepared in compliance with § 180.28 shall be filed as soon as practicable, but no later than 15 days after discovery of the accident, with the Administrator, Federal Railroad Administration, Department of Transportation, Washington, D.C. 20591. The carrier shall retain a copy of each accident report.

§ 180.31 Changes in or additions to accident report.

(a) Changes or additions to the original report on DOT Form 7000–1 shall be filed immediately upon receipt of such information by the carrier with the Administrator, Federal Railroad Administration, as shown in § 180.30, as a supplement to the form.

§ 180.32 Immediate notice of fatal accident.

(a) Whenever a reportable accident results in the death of any person at the time of the accident or prior to the filing of DOT Form 7000–1, the pipeline carrier shall immediately transmit notice of such accident by telegraph or telephone to the Administrator, Federal Railroad Administration, as indicated in § 180.30. The notice shall include at least the following information:

(1) Name and address of the pipeline carrier.

(2) Date, time, and exact location of the accident.

(3) The number of persons killed and the number injured.

(4) Brief description of accident.

§ 180.33 Deaths occurring before filing report.

(a) In addition to the requirements of § 180.32, each death shall be reported on DOT Form 7000–1 whether it occurs at the time of the accident or subsequently, if the death occurs before the filing of the accident report form.

§ 180.34 Notice of death occurring after filing report.

(a) Whenever any accident results in the death of any person after filing of DOT Form 7000–1, written notice of that death shall be sent within 24 hours after it becomes known to the pipeline carrier as a supplement to the form and shall be filed with the Administrator, Federal Railroad Administration, as indicated in § 180.30. The filing shall include the following information:

(1) Name and address of the pipeline carrier.

(2) Date and location of the accident.

(3) Name and age of the deceased.

§ 180.35 Carrier to assist in investigation.

(a) If an investigation is made by the Department after a reportable accident, the pipeline carrier involved shall make available to the representative of the Department all records and information which in any way pertain to the accident, and shall afford all reasonable assistance in the investigation of any such accident.

§ 180.36 Supplies of accident report DOT Form 7000–1.

(a) For the purpose of compliance with this part, each pipeline carrier shall provide and maintain an adequate supply of DOT Form 7000–1 to enable prompt reporting of accidents. The Department will, upon request, furnish specimen copies of the form.

[F.R. Doc. 67-13733; Filed, Nov. 21, 1967; 8:49 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Parts 723, 724]

TOBACCO

Notice of Determinations To Be Made Regarding Marketing Quotas for 1968–69, 1969–70, and 1970–71 Marketing Years

Pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and as further amended by Public Law 90–106, approved October 12, 1967 (7 U.S.C. 1281 et seq., hereinafter referred to as the "Act"), the Secretary is preparing (1) with respect to burley, Virginia sun-cured, Maryland, and cigar-filler (type 41) tobacco to proclaim national marketing quotas for the 1968–69, 1969–70, and 1970–71 marketing years; to determine and announce the respective national marketing quotas for the 1968–69 marketing year; to convert such 1968–69 marketing quotas into national acreage allotments and announce such allotments; to apportion such national acreage allotments, less a reserve of not to exceed 1 percent thereof through the local committees among farms; to apportion the aforementioned reserve for use in (1) establishing acreage allotments for new farms and (2) making corrections and adjusting inequities in old farm allotments; and to conduct within 30 days after the proclamation an announcement of such national marketing quotas, referenda of farmers engaged in the 1967 production of each of such kinds of tobacco to determine whether they favor or oppose marketing quotas for the 1968–69, 1969–70, and 1970–71 marketing years; and (2) with respect to fire-cured (type 21), fire-cured (types 22, 23, and 24), dark air-cured (types 35 and 36), cigar binder (types 51 and 52), and cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco to determine and announce the respective national marketing quotas for the 1968–69 marketing year; to convert such 1968–69 marketing quotas into national acreage allotments and announce such allotments; to apportion such national acreage allotments, less a reserve of not to exceed 1 percent thereof through the local committees among farms; to apportion the aforementioned reserve for use in (1) establishing acreage allotments for new farms and (2) making corrections and adjusting inequities in old farm allotments.

Burley and Virginia sun-cured tobacco growers approved marketing quotas for the 1965–66, 1966–67, and 1967–68 marketing years (30 F.R. 4313); fire-cured and dark air-cured tobacco growers approved marketing quotas for the 1967–68, 1968–69, and 1969–70 marketing years (32 F.R. 4055); Maryland tobacco growers approved marketing quotas for the 1963–64, 1964–65, and 1965–66 marketing years (28 F.R. 2526); however, marketing quotas were disapproved by Maryland tobacco growers for the 1966–67, 1967–68, and 1968–69 marketing years (31 F.R. 4580) and for the 1967–68, 1968–69, and 1969–70 marketing years (32 F.R. 4305). Cigar-binder and cigar-filler and binder tobacco growers approved marketing quotas for the 1966–67, 1967–68, and 1968–69 marketing years (31 F.R. 4197). Cigar-filler (type 41) tobacco growers disapproved marketing quotas for the 1965–66, 1966–67, and 1967–68 marketing years (30 F.R. 4313).

The Act (7 U.S.C. 1312(a)) provides that the Secretary shall proclaim not later than February 1 of any marketing year, with respect to these kinds of tobacco, a national marketing quota for any of such kinds of tobacco for each of the next 3 succeeding marketing years whenever he determines with respect to such kind of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers: *Provided*, That if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed hereunder which would be in effect for any marketing year within the 3-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as he may prescribe, to proclaim a national marketing quota for each of the next 3 succeeding marketing years.

Since marketing quotas previously proclaimed (31 F.R. 1237; 32 F.R. 1124) for Maryland tobacco for the 1966–67, 1967–68, and 1968–69, and 1967–68, 1968–69, and 1969–70 marketing years were not in effect for Maryland tobacco because of disapproval by growers (32 F.R. 4305) and since neither of such disapprovals was the third successive disapproval subsequent to 1952; since the 1967–68 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for burley tobacco and Virginia sun-cured tobacco, respectively; and since the 1967–68 marketing year is the last year of a 3-year period for which national marketing quotas previously proclaimed were disapproved by producers voting in a referendum for cigar-filler (type 41) tobacco and since producers of such kind of tobacco disapproved national marketing quotas on such kind of tobacco in referenda held in 3 successive years subsequent to 1952; proclamations of quotas for the 1968–69, 1969–70, and 1970–71 marketing years, and referenda thereon, are required for these four kinds of tobacco.

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, and 24;
Dark air-cured tobacco, comprising types 35 and 36;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 32;
Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, and 55; and
Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) also provides that any one or more of the types comprising any such kind of tobacco shall be treated as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions as among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has determined (15 F.R. 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Pursuant to such authority, the Secretary has also determined (22 F.R. 367) that cigar-binder (types 51 and 52) tobacco, beginning with the 1957–58 marketing year, shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1968 with

respect to burley, Virginia sun-cured, fire-cured (type 21), fire-cured (types 22, 23, and 24), dark air-cured, Maryland, cigar-binder (types 51 and 52), cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) and cigar-filler (type 41) tobacco, the amount of the national marketing quota which will be in effect for the 1968–69 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of the 1968–69 national marketing quota (determined pursuant to such section) may, not later than March 1, 1968, be increased by not more than 20 per centum if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The Act (7 U.S.C. 1301(b)) defines the "total supply" of tobacco for any marketing year as the carryover at the beginning of the marketing year (on January 1 of such marketing year in the case of Maryland tobacco), plus the estimated production in the United States during the calendar year in which such marketing year begins. "Reserve supply level" is defined as the normal supply plus 5 per centum thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing year immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The Act (7 U.S.C. 1312(c)) requires that within 30 days after a national marketing quota is proclaimed under section 312(a) of the Act for the 1968–69, 1969–70, and 1970–71 marketing years for burley tobacco, Virginia sun-cured tobacco, Maryland tobacco, and cigar-filler (type 41) tobacco, the Secretary shall conduct referenda of farmers engaged in the production of the 1967 crops of burley tobacco, Virginia sun-cured tobacco, Maryland tobacco, and cigar-filler (type 41) tobacco, respectively, to determine whether such farmers are in favor of or opposed to quotas for the next 3 succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose such quota, such results shall be proclaimed by the Secretary and the national marketing quota so proclaimed shall not be in effect but such results shall in no way affect or limit the subsequent proclamation and subsequent submission to a referendum, as otherwise provided in section 312 of the Act (7 U.S.C. 1312), of a national marketing quota.

The Act (7 U.S.C. 1313(a)) provides for the apportionment of the national marketing quota, determined pursuant to section 312(b) of the Act, less the amount to be allotted under subsection (c) of section 313 for small farms and "new" farms, among the several States on the basis of the total production in each State during the 5 calendar years immediately preceding the calendar year in which the quota is proclaimed (plus, in applicable years, the normal production on the acreage diverted under previous agricultural adjustment and conservation programs), with such adjustments as are determined to be necessary to make corrections for abnormal conditions of production, for small farms, and for trends in production, giving due consideration to seed bed and other plant diseases during such 5-year period.

The Act (7 U.S.C. 1313(b)) provides for the apportionment of the State marketing quotas among farms. However, the Act (7 U.S.C. 1313(g)) authorized the Secretary, beginning with the year 1940, in lieu of apportioning the State marketing quota among farms on a poundage basis, to convert the State marketing quotas into State acreage allotments and to apportion the State acreage allotments on an acreage basis among farms. This latter provision has been utilized each year beginning with 1940 to determine farm allotments on an acreage basis for the kinds of tobacco involved herein for which quotas were proclaimed. It is proposed to continue to determine farm allotments on an acreage basis. However, the Act (7 U.S.C. 1313(g)) was further amended by Public Law 90–106, approved October 12, 1967, to eliminate the provision for converting the State marketing quotas into State acreage allotments, and to authorize the Secretary to convert the national marketing quota into a national acreage allotment on the basis of the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment (less a reserve of not to exceed 1 per centum thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among farms. It is proposed to utilize this recent amendment.

The Act (7 U.S.C. 1313(g)) provides that any acreage of tobacco harvested in excess of the farm acreage allotment for the year 1955 or any subsequent crop shall not be taken into account in establishing State and farm acreage allotments.

The Act (7 U.S.C. 1313(i)) provides that notwithstanding any other provision of the Act, whenever after investigation the Secretary determines with respect to any kind of tobacco that a substantial difference exists in the usage or market outlets for any one or more of the types comprising such kind of tobacco and that the quantity of tobacco of such type or types to be produced under marketing quotas and acreage allotments established pursuant to this section would not be sufficient to provide an adequate supply for estimated market demands and carryover requirements for such type or types of tobacco, the Secretary shall increase the marketing quotas and acreage allotments for farms producing such type or types of tobacco in the preceding year to the extent necessary to make available a supply of such type or types of tobacco adequate to meet such demands and carryover requirements; the increases in farm marketing quotas and acreage allotments shall be made on the basis of the production of such type or types of tobacco during the period of years considered in establishing farm marketing quotas and acreage allotments for such kind of tobacco; the additional production authorized by section 313(i) shall be in addition to the national marketing quota established pursuant to section 312 of the Act; and the increase in acreage under section 313(i) shall not be considered in establishing future State or farm acreage allotments.

Section 377 of the Act (7 U.S.C. 1377) reads in part as follows:

> In any case in which, during any year beginning with 1956, the acreage planted to a commodity on any farm is less than the acreage allotment for such farm, the entire acreage allotment for such farm * * * shall, except as provided herein, be considered for the purpose of establishing future State, county, and farm acreage allotments to have been planted to such commodity in such year on such farm, * * *: *Provided*, That beginning with the 1960 crop, except for federally owned land, the current farm acreage allotment established for a commodity shall not be preserved as history acreage pursuant to the provisions of this section unless for the current year or either of the 2 preceding years an acreage equal to 75 percentum or more of the farm acreage allotment for such year was actually planted or devoted to the commodity on the farm (or was regarded as planted under provisions of the Soil Bank or the Great Plains program) * * *.

Section 378 of the Act (7 U.S.C. 1378) provides that allotment acreage pooled under the provisions of such section shall be considered fully planted during the time it is in the pool within the period of eligibility, for purposes of future State and farm acreage allotments.

Acreage allotments for Maryland, cigar-binder (types 51 and 52), and cigar-filler (type 41) tobacco may be leased under the terms and conditions contained in section 316 of the Act. Fire-cured, dark air-cured, and Virginia sun-cured tobacco acreage allotments may be sold or leased by the owner and operator of the farm or transferred by the owner to another farm owned by him under the terms and conditions contained in section 318 of the Act. Acreage allotments for burley tobacco and for cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco may not be leased, sold, or transferred except as provided in 7 U.S.C. 1378.

The Soil Bank Act was repealed by section 601 of the Food and Agriculture Act of 1965, but it remains in effect with

respect to contracts entered into prior to such repeal.

Section 602(g) of the Food and Agriculture Act of 1965, approved November 3, 1965, reads as follows:

> Notwithstanding any other provision of law, the Secretary of Agriculture may, to the extent he deems it desirable, provide by appropriate regulations for preservation of cropland, crop acreage, and allotment history applicable to acreage diverted from the production of crops in order to establish or maintain vegetative cover or other approved practices for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation or for participation in such program. Subsections (b) (3) and (4) and (e) (6) of section 16 of the Soil Conservation and Domestic Allotment Act, as amended, are repealed, except that all rights accruing thereunder to persons who entered into contracts or agreements prior to such repeal shall be preserved.

Under the provisions of section 602(g) of the Food and Agriculture Act of 1965, such preservation of cropland, crop acreage, and allotment history, is provided, subject to the Secretary's regulations, with respect to acreage so diverted under the conservation reserve program, cropland conversion program, cropland adjustment program, agricultural conservation program, regional conservation programs, or vegetative cover established without Federal assistance and unrelated to any program.

The Secretary may, under section 317(c) of the Act, in his discretion, offer acreage-poundage quotas on fire-cured (type 21), fire-cured (types 22, 23, and 24), dark air-cured, cigar-binder (types 51 and 52), and cigar-filler and binder (types 42, 43, 44, 53, 54, and 55), tobacco for the 1968–69 marketing year if he determines that acreage-poundage quotas would result in a more effective marketing quota than the program on an acreage basis. The Secretary has not so determined, and does not contemplate offering acreage-poundage quotas on any of such kinds of tobacco for such marketing years. There is no provision under which acreage-poundage quotas may be offered on burley, Virginia sun-cured, Maryland or cigar-filler (type 41) tobacco for the 1968–69 marketing year.

The subjects and issues involved in the proposed determinations are:

1. The amount of the national marketing quota for each kind of tobacco for the 1968–69 marketing year.

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of same, less reserve of not to exceed 1 percent thereof, among old farms.

3. The amount of the national acreage allotment to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments.

4. The date(s) or period(s) of the four referenda on quotas for the 1968–69, 1969–70, and 1970–71 marketing years for burley tobacco, Virginia sun-cured tobacco, Maryland tobacco, and cigar-filler (type 41) tobacco, and whether any or all of such referenda should be conducted at polling places rather than by mail ballot (31 F.R. 12011).

5. Whether the Secretary should determine that any one or more of the types comprising a kind of tobacco should be treated as a separate kind of tobacco under section 301(b)(15) of the Act.

6. Whether the Secretary should take any action under section 313(i) of the Act.

7. Whether the Secretary should offer acreage-poundage quotas on fire-cured (type 21), fire-cured (types 22, 23, and 24), dark air-cured, cigar-binder (types 51 and 52), or cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco.

Consideration will be given to data, views, and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Policy and Program Appraisal Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to the notice will be made available for public inspection at such times and in a manner convenient to the public business (7 CFR 1.27(b)). All submissions must, in order to be considered, be postmarked not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D.C., on November 13, 1967.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 67-13731; Filed, Nov. 21, 1967; 8:49 a.m.]

[7 CFR Part 811]

[Sugar Reg. 611]

SUGAR

Proposed Determination for Calendar Year 1968

Notice is hereby given that the Secretary of Agriculture pursuant to authority vested in him by the Sugar Act of 1948, as amended (61 Stat. 922), is considering the determination of the amount of sugar needed to meet the requirements of consumers in the continental United States in 1968 and the establishment of sugar quotas for the calendar year 1968. Such determination is to be made during the last 3 months of this year.

In accordance with the rulemaking requirements of 5 U.S.C. 553 (80 Stat. 378), all persons who desire to submit written data, views, or arguments for consideration in connection with the proposed regulation shall file the same in duplicate with the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 15 days after the date of publication of this notice in the FEDERAL REGISTER.

The proposed determination of 1968 sugar requirements for the continental United States and quotas for the calendar year 1968 are set forth essentially in form and language appropriate for issuance, if adopted by the Secretary as follows:

Basis and purpose and bases and considerations. Distribution of refined sugar for consumption in the United States totaled about 10,160,000 short tons, raw value during the 12-month period which ended September 30, 1967. This was about 200,000 tons less than the quantity distributed in the previous 12-month period which ended September 30, 1966. However, it cannot be assumed that the actual consumption of sugar decreased in like degree. Inventories of sugar in the hands of secondary distributors and inventories of sugar and sugar containing products in the hands of food processors were abnormally low on September 30, 1965, and normal or slightly above normal on September 30, 1966. At the end of September 1967, such inventories were again somewhat below normal. After allowances for these factors, it would appear that disappearance of sugar during the 12-month period ending September 30, 1966, was of the order of 10,250,000 tons and for the year ending September 30, 1967, of about the same magnitude.

Absence of year-to-year growth may have resulted largely from the fact that weather during the most recent period was not as conducive to the consumption of sugar as in the earlier period when the weather was unusually favorable.

It appears reasonable to expect that sugar consumption during calendar year 1968 will resume its long-term trend of increasing about in line with population growth. On that basis, consumption of about 10,400,000 tons would be anticipated in 1968.

Sugar requirements for calendar year 1968 will amount to the sum of actual consumption, plus the usual refining loss of about 60,000 tons, as adjusted by any change which users, refiners, and importers may elect to make in their sugar inventories during the year. Those inventories at the beginning of 1968 are now expected to be larger than they had been a year earlier. What they may be at the end of next year cannot now be determined, but it is possible that some reduction could occur during the year. A reduction, should it occur, would have the effect of reducing requirements.

The domestic price of raw sugar increased steadily during the first 10 months of 1967. The average for that period was 7.26 cents per pound or 4 percent higher than the 6.97 cents per pound average for the first 10 months of 1966. In the development of this determination, consideration has been given to the desirability of obtaining generally stable prices that will carry out, over the long term, the price objectives of the act. In recognition of the foregoing and all relevant criteria, the amount of sugar needed to meet the requirements of consumers in the continental United States is herein determined to be 10,400,000 short tons, raw value.

A quota of 1,265,375 short tons, raw value, is established herein for Hawaii pursuant to section 202(a)(2)(B) of the

act. This is the maximum quota permitted Hawaii under that section and will be adjusted downward if necessary pending final data on the production and marketing of sugar by Hawaii in 1967.

It is determined that no reduction is required at this time pursuant to section 202(d) (3) and (4) of the act in the quotas established herein for foreign countries. This action is based on the assumption that each country will fill its 1967 quota within a reasonable tolerance.

The quota established herein for the Bahama Islands will be withdrawn unless the Secretary receives assurance from the Bahama Islands by January 1, 1968, that such quota will be filled with sugar produced in such country. The quota which otherwise would be allocated to Southern Rhodesia has been shown as reserved for possible disposition by the President pursuant to section 202(d) (1) (b) of the act.

In view of the wide differential between the price of domestic raw sugar and the world price, there would be a strong tendency for an excessive quantity of foreign sugar to be shipped to this country early in 1968. This would likely preclude the meeting of the objectives of the act. Accordingly, it is necessary that provision be made for quantitative limitations on the total importation of raw sugar from foreign countries for the first and second quarters of the year.

The total quantity of raw sugar which may be charged to quotas of foreign countries during the first half of 1968 is established at 2,100,000 short tons, raw value. All quantities imported in late 1967 under bond for refining and storage plus additional importations during January, February, and March of 1968 of 700,000 short tons, raw value, may be charged to foreign country quotas during the first quarter of 1968.

To give recognition to the seasonality of production and movement of sugar from the foreign countries, quota allocations to foreign countries during the first quarter and first half of 1968 will primarily be based on average imports from such foreign countries during such periods for the 5-year period 1963 through 1967.

Sec.
811.60 Sugar requirements 1968.
811.61 Quotas for domestic areas.
811.62 [Reserved]
811.63 Quotas for foreign countries.
811.64 Applicability of quotas.
811.65 Restrictions on importations and marketings within quotas.

AUTHORITY: §§ 811.60 to 811.65 issued under sec. 403, 61 Stat. 932, 7 U.S.C. 1153. Interprets or applies to secs. 201, 202, 207, 208, 209, 210; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 927, as amended, and 928, as amended; 7 U.S.C. 1111, 1112, 1117, 1118, and 1119.

§ 811.60 Sugar requirements 1968.

The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1968 is hereby determined to be 10,400,000 short tons, raw value.

§ 811.61 Quotas for domestic areas.

(a) For the calendar year 1968, domestic area quotas limiting the quantities of sugar which may be brought into or marketed for consumption in the continental United States are established, pursuant to section 202(a) of the act in column (1), and the amounts of such quotas for offshore areas that may be filled by direct-consumption sugar are established, pursuant to section 207 of the act in column (2), as follows:

Area	Quotas (1)	Direct-consumption limits (2)
	(Short tons, raw value)	
Domestic beet sugar	3,025,000	No Limit
Mainland cane sugar	1,100,000	No Limit
Hawaii	1,205,375	35,568
Puerto Rico	1,140,000	156,000
Virgin Islands	15,000	0

(b) Of the quantity established in paragraph (a) of this section for Puerto Rico which may be filled by direct-consumption sugar, 126,033 short tons, raw value, may be filled only by sugar principally of crystalline structure.

§ 811.62 [Reserved]

§ 811.63 Quotas for foreign countries.

(a) The quotas or prorations for foreign countries limiting the quantities of sugar which may be imported into the continental United States during the calendar year 1968 for consumption therein and the amounts of such quotas and prorations that may be filled by direct-consumption sugar are hereby established as set forth in paragraphs (b), (c), (d), and (e) of this section.

(b) For the calendar year 1968, the quota for the Republic of the Philippines is 1,126,020 short tons, raw value, and the quantity of such quota that may be filled by direct-consumption sugar is 59,920 short tons, raw value.

(c) For the calendar year 1968, the prorations or allocations to individual foreign countries other than the Republic of the Philippines pursuant to section 202(c) (3) and (4) and section 202(d) of the act are as follows:

Production area	Basic quotas	Temporary quotas and prorations pursuant to Sec. 202(d)	Total quotas and prorations
	(Short tons, raw value)		
Mexico	209,735	218,653	428,388
Dominican Republic	205,122	213,843	418,965
Brazil	205,122	213,843	418,965
Peru	163,699	170,566	334,175
British West Indies	81,940	72,681	154,621
Ecuador	29,846	31,115	60,961
French West Indies	25,776	22,863	48,639
Argentina	28,283	26,306	61,589
Costa Rica	24,148	25,174	49,322
Nicaragua	24,148	25,174	49,322
Colombia	21,706	22,629	44,335
Guatemala	20,350	21,215	41,565
Panama	15,194	15,840	31,034
El Salvador	14,923	15,558	30,481
Haiti	11,396	11,880	23,276
Venezuela	10,310	10,749	21,059
British Honduras	5,969	5,295	11,264
Bolivia	2,442	2,546	4,988
Honduras	2,442	2,546	4,988
Australia	97,677	86,640	184,317
Republic of China	40,600	36,100	76,700
India	30,071	34,656	73,727
South Africa	28,700	25,510	54,270
Fiji Islands	21,435	19,012	40,447
Thailand	8,954	7,942	16,896
Mauritius	8,954	7,942	16,896
Malagasy Republic	4,612	4,091	8,703
Swaziland	3,527	3,129	6,656
Reserved	3,527	3,129	[1] 6,656
Ireland	5,351		5,351
Bahamas	10,000		[2] 10,000
Total	1,371,978	1,356,627	2,728,605

[1] This quantity which otherwise would be allocated to Southern Rhodesia has been reserved for possible disposition pursuant to section 202(d)(1)(B) of the Act.
[2] Quota established herein subject to the Secretary receiving assurance prior to Jan. 1, 1968, that such quota will be filled.

(d) (1) Of the total quotas and proration for foreign countries established in paragraphs (b) and (c) of this section, an amount not to exceed 2,100,000 short tons, raw value, of raw sugar, which includes quantities imported in late 1967 under bond for refining and storage, may be charged against such 1968 quotas and authorized for importation or release from bond from all such foreign countries in accordance with Part 817 of this chapter during the first 6 months of 1967. Such charges to such 1968 quotas shall be made in the following manner: (i) The quantities imported in late 1967 under bond for refining and storage will be released from bond and charged to such quotas on January 1, 1968; (ii) in addition 700,000 short tons, raw value of sugar will be authorized for importation and charged to such quotas during the first quarter of the year and; (iii) that part of the 2,100,000 short tons, raw value, not charged to such 1968 quotas under subdivisions (i) and (ii) of this subparagraph will be authorized for importation and charged to such quotas during the second quarter of 1968.

(2) (i) The importation of raw sugar within the quarterly limitations specified in subdivisions (ii) and (iii) of subparagraph (1) of this paragraph (d) will be authorized on the basis of applications for "Set Aside of Quota" on Form SU-8A or "Sugar Quota Clearance" on Form SU-3 in accordance with the provisions of Part 817 of this chapter, subject to the priorities for countries as provided in subparagraph (3) of this paragraph for first quarter importations and in subparagraph (4) of this paragraph for second quarter importations and the limitations as provided in subdivision (ii) of ths subparagraph. Applications to import raw sugar from the Republic of the Philippines must, before final approval within the quantity reserved for the Republic of the Philippines pursuant to subparagraphs (3) and (4) of this paragraph, be supplemented by certification from the Sugar Quota Administrator for the Government of the Philippines granting the applicant the permission to export sugar to the U.S. market.

(ii) Applications for the importation of sugar during the first quarter received on or before 10 days after the effective date of this subdivision will be considered as having been received at the same time. Applications for the importation of sugar during the second quarter received on or before January 15, 1968, will be considered as having been received at the same time.

(3) (i) Allocations of first quarter importations among countries will be made in the following manner within the limits of applications received.

(ii) First priority shall be given to countries from which sugar was imported during the first quarter of 1963, 1964, 1965, 1966, or 1967, but not to exceed the average of the country's first quarter importations as set forth in subparagraph (5) of this paragraph: *Provided*, That if the quantity of sugar which may be imported during the first quarter is less than the quantity needed to approve all applications for importation in the first quarter, the quantity of sugar which may be imported during the first quarter under this priority shall be prorated among countries on the basis of first quarter importations from countries as set forth in subparagraph (5) of this paragraph.

(iii) Second priority shall be given to countries by making an initial allocation under this priority to countries in order of size of quota, smallest first, limiting such initial allocation to any country to the smaller of 10,000 short tons, raw value, or the quantity which would permit the total importation from the country during the first quarter of up to 20 percent of the country's annual quota. Additional allocations under this priority shall be made to those countries receiving an initial allocation under this priority of 10,000 short tons, raw value, which additional allocation to any such country shall be so limited that the total allocations under priorities in subdivisions (ii) and (iii) of this subparagraph during the first quarter for such country as a percentage of its annual quota will not exceed the percentage similarly calculated for any other such country and shall be further limited so that the total quantity which may be imported from such country during the first quarter shall not exceed 20 percent of the country's annual quota.

(iv) Any quantity not allocated under subdivisions (ii) and (iii) of this subparagraph shall be prorated among countries having priority under subdivision (ii) of this subparagraph that received allocations less than the full amount applied for, and such additional proration shall be made on the basis of the average imports of sugar from the countries during the first quarter as set forth in subparagraph (5) of this paragraph.

(4) (i) Allocations of second quarter importations among countries will be made in the following manner within the limits of applications received.

(ii) First priority shall be given to countries from which sugar was imported during the first half of 1963, 1964, 1965, 1966, or 1967, but not to permit charges to the quotas of such countries by virtue of this subdivision during the first half to exceed the average importations from such country as set forth in subparagraph (5) of this paragraph: *Provided*, That if the quantity of sugar which may be imported during the second quarter is less than the quantity needed to approve all applications for importation in the second quarter, the quantity of sugar which may be imported during the second quarter under this priority shall be prorated among countries on the basis of first half importations from countries as set forth in subparagraph (5) of this paragraph.

(iii) Second priority shall be given to countries by making an initial allocation under this priority to countries in order of size of quota, smallest first, limiting such initial allocation to any country to the smaller of 10,000 short tons, raw value, or the quantity which would permit total charges during the first half of up to 50 percent of the country's annual quota. Additional allocations under this priority shall be made to those countries receiving an initial allocation under this priority of 10,000 short tons, raw value, which additional allocation to any such country shall be so limited that the total quota charges under subparagraph (3) of this paragraph, subdivision (ii) of this subparagraph and this subdivision during the first half for such country as a percentage of its annual quota will not exceed the percentage similarly calculated for any other such country; and shall be further limited so that the total quantity which may be imported from such country during the first half shall not exceed 50 percent of the country's annual quota.

(iv) Any quantity not allocated under subdivisions (ii) and (iii) of this subparagraph shall be prorated among countries having priority under subdivision (ii) of this subparagraph that received allocations less than the full amount applied for, and such proration shall be made on the basis of the average imports of sugar from the countries during the first half as set forth in subparagraph (5) of this paragraph.

(5) Average importations into the continental United States within quotas, during the first quarter and first half of the years 1963, 1964, 1965, 1966, and 1967 are as follows:

Country	First quarter	First half
	(Short tons, raw value)	
Philippines	216,608	528,982
Mexico	121,715	202,751
Dominican Republic	87,269	206,981
Brazil	79,141	129,766
Peru	73,395	132,913
British West Indies	20,353	75,471
Ecuador	9,739	15,561
French West Indies	7,324	39,889
Argentina	8,092	29,206
Costa Rica	7,039	27,830
Nicaragua	7,386	22,049
Columbia	3,348	15,019
Guatemala	14,927	36,955
Panama	3,880	10,980
El Salvador	5,666	16,076
Haiti	8,453	19,208
Venezuela	210	4,347
British Honduras	0	2,979
Bolivia	0	0
Honduras	0	0
Australia	8,549	8,549
Republic of China	5,263	57,478
India	4,700	50,297
South Africa	25,759	25,759
Fiji Islands	312	312
Thailand	146	146
Mauritius	0	0
Malagasy Republic	0	0
Swaziland	1,317	1,317
Total	720,651	1,820,831

(e) For the calendar year 1968, the quantity of each proration established in paragraph (c) of this section that may be filled by direct-consumption sugar pursuant to section 207(e) of the act is as follows:

County	Short tons, raw value
Ireland	5,351
Panama	3,817

(f) For the calendar year 1968, the quota for liquid sugar for foreign countries as a group is 2 million gallons of sirup of cane juice of the type of Barbados molasses, limited to liquid sugar containing soluable nonsugar solids (excluding any foreign substance that may have been added or developed in the product) of more than 5 percent of the total soluable solids, which is not to be used as a component of any direct-consumption sugar but is to be used as molasses without substantial modification of its characteristics after importation.

§ 811.64 Applicability of quotas.

(a) All sugar and liquid sugar marketed or imported into the continental United States is subject to the provisions of Part 816 or Part 817 of this chapter which prescribe the time, manner, and conditions under which quotas and prorations are filled by the marketing and importation of sugar or liquid sugar.

(b) The quantitative limitations established by §§ 811.61 to 811.63, inclusive, do not apply to sugar or liquid sugar marketed or imported pursuant to section 211 and 212 of the act in accordance with the provisions of Part 816 or Part 817 of this chapter.

§ 811.65 Restrictions on importations and marketings within quotas.

Subject to the provisions of Parts 816 and 817 of this chapter, all persons are prohibited from bringing or importing into or marketing in the continental United States any sugar or liquid sugar in excess of or after the applicable quota or quantity set forth in §§ 811.61 to 811.63, inclusive, has been filled or any sugar or liquid sugar as direct-consumption sugar after the direct-consumption portion of the applicable quota has been filled.

Signed at Washington, D.C., this 17th day of November 1967.

JOHN A. SCHNITTKER,
Under Secretary.

[F.R. Doc. 67-13698; Filed, Nov. 21, 1967; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

NORDIHYDROGUAIARETIC ACID

Proposed Removal From List of Substances Generally Recognized as Safe for Food Use

Nordihydroguaiaretic acid is listed in § 121.101(d)(2) of the food additive regulations (21 CFR 121.101(d)(2)) as a substance generally recognized as safe for use in food as a preservative. The Commissioner of Food and Drugs has considered the announced action of the Canadian Food and Drug Directorate proposing the banning of the additive for food use, and other relevant information, and concludes that nordihydroguaiaretic acid is no longer entitled to be classed as generally recognized as safe.

Accordingly, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120), it is proposed that § 121.101 *Substances that are generally recognized as safe* be amended by deleting from paragraph (d)(2) the item "Nordihydroguaiaretic acid."

Any interested person may, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written comments, preferably in quintuplicate, on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: November 13, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-13713; Filed, Nov. 21, 1967; 8:48 a.m.]

[21 CFR Part 148i]

NEOMYCIN SULFATE

Proposed Modification of Identity Method

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), it is proposed that § 148i.1 (a)(1)(vii) and (b)(7) and § 148i.22(a)(1)(v) be revised to read as follows to modify and improve the method of identity for the antibiotic neomycin sulfate:

§ 148i.1 Neomycin sulfate.

(a) * * *

(1) * * *

(vii) It gives a positive identity test for neomycin.

* * * * *

(b) * * *

(7) *Identity*—(i) *Reagents*—(*a*) Sulfuric acid solution: Mix concentrated sulfuric acid and distilled water in volumetric proportions of 40:60.

(*b*) Xylene.

(*c*) *p*-Bromoaniline: (Prepare and store this reagent in brown, nonactinic glassware.) Place 380 milliliters of thiourea-saturated glacial acetic acid solution in the bottle, add 10 milliliters of 20 percent sodium chloride solution, 5 milliliters of 5 percent oxalic acid solution, and 5 milliliters of 10 percent disodium phosphate solution, and mix well. Add 8.0 grams of *p*-bromoaniline and mix well. Let this reagent stand overnight before use. Prepare the reagent once weekly.

(ii) *Procedure.* Place about 10 milligrams of the sample into a test tube (19 millimeters x 150 millimeters), dissolved with 1 milliliter of water, and then carefully add 5 milliliters of the sulfuric acid solution. Heat in a boiling water bath for 100 minutes. Cool to room temperature. Add 10 milliliters of xylene to the test tube. Stopper the tube and shake vigorously for about 1 minute. Let the two layers separate and then decant the xylene layer into a second test tube. Add 10 milliliters of the *p*-bromoaniline reagent to the xylene solution, shake, and let stand. The development of a vivid pink-red color is a positive identity test for neomycin.

§ 148i.22 Neomycin sulfate for prescription compounding.

(a) * * *

(1) * * *

(v) It gives a positive identity test for neomycin.

* * * * *

Any interested person may, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written comments, preferably in quintuplicate, on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: November 16, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-13714; Filed, Nov. 21, 1967; 8:48 a.m.]

[21 CFR Part 166]

DEPRESSANT AND STIMULANT DRUGS

Proposed Listing of Additional Drug as Subject to Control

The Commissioner of Food and Drugs proposes, on the basis of his investigations and the recommendations of an advisory committee appointed pursuant to section 511(g)(1) of the Federal Food, Drug, and Cosmetic Act, that the drug set forth below be listed as a "depressant or stimulant" drug within the meaning of section 201(v) of the act because of its hallucinogenic effect. Therefore, pursuant to the provisions of the act (secs. 201(v), 511, 701, 52 Stat. 1055, as amended, 79 Stat. 227 et seq.; 21 U.S.C. 321(v), 360a, 371) and under the authority delegated by the Secretary of Health, Education, and Welfare to the Commissioner (21 CFR 2.120), it is proposed that § 166.3(c)(3) be amended by alphabetically inserting in the list of drugs a new item, as follows:

§ 166.3 Listing of drugs defined in section 201(v) of the act.

* * * * *

(c) * * *

(3) * * *

Established name	*Some trade or other names*
DOM(STP)	4-Methyl-2,5-dimethoxyamphetamine; 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; and "STP".
* * *	* * *

* * * * *

All interested persons are invited to submit their views in writing regarding this proposal. Comments concerning any additional trade or other names that may be properly listed for the subject drug are also invited. Views and comments should be submitted, preferably in quintuplicate, addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, within 30 days following the date of publication of this notice in the FEDERAL REGISTER, and may be accompanied by a memorandum or brief in support thereof.

Dated: November 14, 1967.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 67-13715; Filed, Nov. 21, 1967; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 67-WE-70]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter controlled airspace in the Provo, Utah, area.

Interested persons may participate in the proposed rule-making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 90007, Airport Station, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

New instrument approach and departure procedures, utilizing the Provo radio beacon, have been developed for the Provo, Utah, Airport. As a result, it is necessary to designate additional 700-foot and 1,200-foot floor transition area to protect aircraft executing the prescribed instrument procedures.

The 700-foot floor portion of the transition area would provide controlled airspace protection for aircraft executing the prescribed instrument approach procedure during descent from 1,500 to 700 feet above the surface. It will also provide controlled airspace protection for departing aircraft during climb from 700 to 1,200 feet above the surface.

The proposed 1,200-foot floor transition area will provide controlled airspace protection during those portions of prescribed instrument approach and departure procedures conducted at or above 1,500 feet above the surface.

In view of the foregoing, the FAA proposes the following airspace action:

In § 71.181 (32 F.R. 2242) the description of the Provo, Utah, transition area is amended to read as follows:

PROVO, UTAH

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Provo Municipal Airport (latitude 40°12'-56" N., longitude 111°43'14" W.), within 2 miles each side of the 218° bearing from the Provo radio beacon (latitude 40°13'10" N., longitude 111°43'26" W.) extending from the 5-mile radius area to 12 miles southwest of the RBN, within 5 miles each side of the 328° bearing from the Provo RBN extending from the 5-mile radius area to 6 miles northwest of the RBN, and within 5 miles northeast and 8 miles southwest of the 328° bearing from the Provo RBN extending from 6 to 20 miles northwest of the RBN; that airspace extending upward from 1,200 feet above the surface bounded on the north by latitude 40°30'00" N., on the southeast by the northwest edge of V-235 and V-21, on the west by the east edge of V-257, and that airspace bounded on the east and south by an arc of a 23-mile radius circle centered on the Provo VORTAC extending clockwise from the south edge of V-200 to the southeast edge of V-21, on the west by a line from the point of intersection of the 23-mile arc and the southeast edge of V-21 direct to latitude 40°30'00" N., longitude 111°49'00" W., and on the northeast by a line from latitude 40°30'00" N., longitude 111°49'00" W., direct to point of beginning.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348).

Issued in Los Angeles, Calif., on November 13, 1967.

LEE E. WARREN,
Acting Director, Western Region.

[F.R. Doc. 67-13686; Filed, Nov. 21, 1967; 8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 67-CE-128]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Coffeyville, Kans.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief.

Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

The close proximity of airports at Coffeyville, Independence, Parsons, and Chanute, Kans., and Bartlesville, Okla., makes diversity in IFR route assignments essential to the efficient control of air traffic in these areas. To provide this diversity, air traffic control must have the capability to clear aircraft direct between Independence and Oswego, Kans., and between Chanute and Coffeyville, Kans. Therefore, it is necessary to alter the Coffeyville transition area by the inclusion of additional airspace in order to provide this capability.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (32 F.R. 2148), the following transition area is amended to read:

COFFEYVILLE, KANS.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Coffeyville Municipal Airport (latitude 37°05'45" N., longitude 95°34'25" W.); and that airspace extending upward from 1,200 feet above the surface bounded on the northeast by a line 5 miles southwest of and parallel to the Oswego, Kans., VOR 306° radial, on the south by V-616, and on the west by V-131, excluding the portion which overlies the Independence, Kans., and Parsons, Kans., transition areas.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued at Kansas City, Mo., on November 3, 1967.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 67-13687; Filed, Nov. 21, 1967; 8:46 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 67-WE-73]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the controlled airspace in the Brigham City, Utah, area.

Interested persons may participate in the proposed rule-making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 90007, Airport Station, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered

before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

New instrument approach and departure procedures have been developed to serve the Brigham City, Utah, airport. As a result, it is necessary to designate a 700-foot floor transition area to protect aircraft executing the prescribed instrument procedures during descent from 1,500 to 700 feet above the surface and during climb from 700 to 1,200 feet above the surface.

In view of the foregoing, the FAA proposes the following airspace action:

In § 71.181 (32 F.R. 2148) the following transition area is added:

BRIGHAM CITY, UTAH

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Brigham City Airport (latitude 41°32'30" N., longitude 112°03'30" W.), and within 2 miles each side of the 212° bearing from the Brigham City RBN (latitude 41°30'58" N., longitude 112°04'38" W.) extending from the 5-mile radius area to latitude 41°27'00" N.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348).

Issued in Los Angeles, Calif., on November 13, 1967.

LEE E. WARREN,
Acting Director, Western Region.

[F.R. Doc. 67-13688; Filed, Nov. 21, 1967; 8:46 a.m.]

[14 CFR Parts 71, 73]

[Airspace Docket No. 67-EA-98]

RESTRICTED AREA, CONTINENTAL CONTROL AREA, AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would alter the boundaries of Restricted Area R-6609, Tangier Island, Va., and Restricted Area R-4006, Patuxent, Md., include R-6609 in the continental control area, and delete reference to R-6609 from the descriptions of the Norfolk, Va., and NAS Patuxent River, Md., transition areas.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposal contained in this notice may be changed in light of the comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The Navy Department has conducted a study of the Tangier Island restricted area usage with special attention directed to the relationship of aircraft types, speeds, altitudes, weather conditions, and radar surveillance of recovery patterns to restricted airspace requirement. The study results indicate a need to expand the present restricted area an average of 3 nautical miles to the south, west, and north. The eastern boundary would be moved approximately 3 miles west, thus leaving Tangier Island outside of the modified restricted area. This modification would allow the establishment of a proposed civil airport on the western edge of Tangier Island.

The Tangier Island target is a grounded Liberty Ship located at lat. 37°48'48" N., long. 76°01'58" W. All runs on the target are made from north to south on a 174° magnetic heading at speeds from 150 knots to 500 knots and at altitudes from just above the surface to 20,000 feet. Recovery from the run is always to the right with many variations depending on speed, type of run, number of planes in the pattern, etc. The target is used under all weather conditions including night and IFR. The Navy advised that radar surveillance by the Patuxent River Naval Air Station RATCC of the actual flight paths of participating aircraft has confirmed the requirement to extend the present boundary of R-6609 further south and west. Expansion to the north is necessary to align the boundary R-6609 to adjoin R-4005 so the target run in is within restricted airspace. High speed, low altitude bomb runs on this target require high pilot and radar operator concentration and attention to cockpit functions with little or no time for visual lookout. As speeds increase the recovery flight path also increases due to radius of turn and the distance traveled beyond bomb release point.

Realignment of the boundary of R-6609 will eliminate the present circular configuration, consequently, the southern and southeastern boundaries of R-4006, which are presently described around an arc of R-6609, would be described as straight lines.

If these actions are taken, the following modifications will be effected:

1. *Section 71.151.* In the text, add "R-6609 Tangier Island, Va."

2. *Section 71.181—Norfolk, Va.* In the text, delete "R-6609".

NAS Patuxent River, Md. In the text, delete "the portions within R-4002 and R-6609 are excluded" and substitute therefor "the portion within R-4002 is excluded."

3. *Section 73.40.* R—4006 Patuxent, Md. Change boundaries to read as follows:

Beginning at lat. 38°41'15" N., long. 75°46'00" W.; to lat. 38°32'30" N., long. 75°43'45" W.; to lat. 38°19'00" N., long. 75°37'00" W.; along Pennsylvania Railroad to lat 38°12'30" N., long. 75°41'30" W.; to lat. 38°02'30" N., long. 75°52'30" W.; to lat. 37°55'00" N., long. 75°52'30" W.; to lat. 37°45'00" N., long. 75°58'45" W.; to lat. 37°45'00" N., long. 76°23'30" W.; to lat. 37°50'30" N., long. 76°32'00" W.; to lat. 38°05'10" N., long. 76°34'15" W.; to lat. 38°11'10" N., long. 76°25'10" W.; to lat. 38°30'00" N., long. 76°04'00" W.; to lat. 38°36'00" N., long. 75°55'30" W.; along the Pennsylvania Railroad to point of beginning, excluding R-4002, R-4005, and R-6609.

4. *Section 73.66.* R-6609 Tangier Island, Va.

Change boundaries to read as follows:

Beginning at lat. 37°53'10" N., long. 76°14'00" W.; to lat. 37°55'15" N., long. 76°02'30" W.; to lat. 37°50'00" N., long. 76°00'52" W.; to lat. 37°41'00" N., long. 76°00'52" W.; to lat. 37°40'00" N., long. 76°01'30" W.; to lat. 37°40'00" N., long. 76°10'00" W.; to lat. 37°45'00" N., long. 76°11'33" W.; to point of beginning.

Change time of designation to read "local time" instead of "e.s.t."

Add: "Controlling agency: Federal Aviation Administration, Washington ARTC Center."

Change using agency to "Commanding Officer, U.S. Naval Air Station, Patuxent River, Md."

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Washington, D.C., on November, 15, 1967.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 67-13685; Filed, Nov. 21, 1967; 8:46 a.m.]

ATOMIC ENERGY COMMISSION

[10 CFR Parts 2, 50, 115]

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Notice of Proposed Rule Making

The Atomic Energy Commission has under consideration several amendments to its rules of practice, 10 CFR Part 2, including amendments to Appendix A of that part, "Statement of General Policy: Conduct of Proceedings for the Issuance of Construction Permits for Production and Utilization Facilities and 10 CFR Hearing Is Required Under section 189a.

of The Atomic Energy Act of 1954, as Amended" (Statement of General Policy) and conforming amendments to 10 CFR Part 50, Licensing of Production and Utilization of Facilities and 10 CFR Part 115, Procedures for Review of Certain Nuclear Reactors Exempted From Licensing Requirements. It is expected that the proposed amendments will expedite the Commission's facility licensing procedures in contested cases and will clarify certain provisions in existing regulations.

The proposed amendments to Part 2 reflect in part the recommendations made by a three-member Regulatory Review Panel appointed by the Commission to study contested proceedings involving applications to construct and operate nuclear facilities. A contested proceeding is a proceeding in which there is a controversy between the AEC regulatory staff and the applicant concerning the issuance of the license or any of its terms and conditions, or in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission. The Panel's report was submitted on June 15, 1967.

An earlier panel appointed by the Commission in 1965 to study its facility licensing procedures had made recommendations relating mainly to the conduct of uncontested licensing proceedings. Those recommendations were implemented in large part by the adoption of amendments to Part 2 published on September 30, 1966 (31 F.R. 12774). As the Commission then stated in the Statement of General Policy, that document reflects the Commission's intent that its facility licensing proceedings be conducted informally and expeditiously and its concern that its procedures maintain sufficient flexibility to accommodate that objective. The proposed amendments set out below are a further indication of the Commission's intention to adopt from time to time amendments of its regulations which experience in the operation of atomic safety and licensing boards might indicate as being necessary or desirable.

Section 2.714(a) of Part 2 now requires a petitioner for leave to intervene in a Commission proceeding to set forth, among other things, his contentions. The proposed amendments of § 2.714(a) which follows would require those contentions to be reasonably specific. It would also provide that petitions which set forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. As revised, § 2.714(a) would require the petition to be filed within such time as may be specified in the notice of hearing, or as permitted by the presiding officer, and would continue to provide that a petition which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

Section 2.721(b) of Part 2 would be amended to provide for the appointment of alternates for atomic safety and licensing boards who are qualified in the conduct of administrative proceedings. Section 2.721(b) presently provides for the appointment of technically qualified alternates for the boards.

Certain recommendations of the Second Regulatory Review Panel, together with certain other perfecting or clarifying changes, would be reflected in the proposed amendments to the Statement of General Policy which follow. Those which may be of particular interest are: (1) A provision that prehearing conferences will usually be held in the Washington, D.C., area, but that due regard shall be had for the convenience and necessity of the parties or their representatives; (2) a provision recognizing that requests may be made for a separate hearing on the matter of site selection; (3) a provision indicating that it is desirable for the applicant's summary of the application to discuss the evolution of the proposed reactor from reactors which have previously been approved or built; (4) a provision encouraging the submission to the board of the applicant's summary of the application, as well as the regulatory staff's safety analysis, at least 2 weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene; (5) a provision that the boards, in testing the sufficiency of the information contained in the application and in the record, and the adequacy of the regulatory staff's review, to support the proposals of the Director of Regulation in an uncontested proceeding, should be mindful that the applicant, not the regulatory staff, is the proponent of the license; (6) a provision clarifying the point that in contested proceedings, a board may obtain information from the Chairman or Vice Chairman of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy; and (7) a provision that two members of a board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, as amended, notice is hereby given that adoption of the following amendments of 10 CFR Parts 2, 50, and 115 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, within 60 days after publication of this notice in the FEDERAL REGISTER. Comments received after that time will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the period specified. Copies of comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

1. The first sentence of § 2.104(a) is amended by inserting "at least" before "thirty (30) days" where it appears. As amended, the first sentence of § 2.104(a) reads as follows:

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the FEDERAL REGISTER as required by law at least fifteen (15) days, and in the case of an application concerning a facility, at least thirty (30) days, prior to the date set for hearing in the notice. * * *

2. Paragraph (a) of § 2.714 is amended to read as follows:

§ 2.714 Intervention.

(a) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition under oath or affirmation for leave to intervene not later than the time specified in the notice of hearing, or as permitted by the presiding officer. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

* * * * *

3. Paragraph (b) of § 2.721 is amended to read as follows:

§ 2.721 Atomic safety and licensing boards.

* * * * *

(b) The Commission may designate a technically qualified alternate or an alternate qualified in the conduct of administrative proceedings, or both, for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a member of a board becomes unavailable before the hearing commences, the Chairman of the Atomic Safety and Licensing Board Panel may constitute the technically qualified alternate or the alternate qualified in the conduct of administrative proceedings, as appropriate, as a member of the board by notifying the Commission and the alternate who will, as of the date of such notification, serve as a member of the board.

* * * * *

4. Paragraphs (a) and (b) of section I of Appendix A to Part 2 are amended to read as follows:

* * * * *

I. PRELIMINARY MATTERS

(a) A public hearing is announced by the issuance of a notice of hearing signed by the Commission's Secretary, stating the nature of the hearing, its time and place and the issues to be considered. When a hearing is to be held before a board, the notice of hearing will ordinarily designate the chairman and the other members. The time and place of the prehearing conference will ordinarily be stated in the notice of hearing.

Subject to the provisions of paragraph (b) below, the prehearing conference will usually be held in the Washington, D.C., area. It is the Commission's policy and practice to hold the evidentiary hearing in the vicinity of the site of the proposed facility. The notice of hearing is published in the FEDERAL REGISTER at least 30 days prior to the date of hearing. In addition, a public announcement is issued by the Commission regarding the date and place of the hearing. The notice of hearing also states the procedures whereby persons may seek to intervene or make a limited appearance, explains the differences between those forms of participation in the proceeding, and states the times and places of the availability, in an appropriate office near the site of the proposed facility, of the notice of hearing, the report of the Advisory Committee on Reactor Safeguards and the staff safety analysis.

(b) In fixing the time and place of the prehearing conference or of any postponed hearing, due regard shall be had for the convenience and necessity of the parties or their representatives, as well as of the board members.

* * * * *

5. Paragraphs (e) and (f) of section I of Appendix A of Part 2 are redesignated paragraphs (f) and (g), respectively, and a new paragraph (e) is added to read as follows:

I. PRELIMINARY MATTERS

* * * * *

(e) It is possible that a party may request the Commission to consider the matter of the suitability of the proposed site separately from, and prior to, other questions relating to the effect of the construction and operation of the facility upon the public health and safety and the common defense and security. If the Commission should grant such a request, the notice of hearing or an appropriate amendment thereto will state the time and place of the separate hearing on the site question.

* * * * *

6. Paragraphs (b) and (e) of section II of Appendix A of Part 2 are amended and a new paragraph (f) is added to read as follows:

II. PREHEARING CONFERENCE

* * * * *

(b) The prehearing conference is usually held approximately 2 weeks before the opening of the evidentiary hearing. Prehearing conferences are open to the public except under exceptional circumstances involving matters such as those referred to in 10 CFR 2.790 (a) and (b) ("company confidential" information; classified information; and certain privileged information not normally a part of the hearing record).

* * * * *

(e) The applicant, the regulatory staff and other parties will ordinarily provide each other and the board with copies of prepared testimony in advance of the hearing. A schedule may be established at the prehearing conference for exchange of prepared testimony. The applicant ordinarily files a summary of his application, including a summary description of the reactor and his evaluation of the considerations important to safety, and the staff files a safety analysis prior to the hearing. These may constitute the testimony of witnesses sworn at the hearing. It is desirable for the applicant's summary statement to include, as appropriate, a discussion of the evolution of the proposed reactor, including associated safeguards, from reactors which have previously been approved or built. All of these documents and prepared testimony are filed in the Commission's Public Document Room and are available for public inspection.

(f) The conduct of the prehearing conference will be facilitated if the board is provided with the applicant's summary of the application and the staff's safety analysis well in advance of the prehearing conference. Failure of the board to receive those documents at least 2 weeks prior to the date specified in the notice of hearing for the receipt of petitions for leave to intervene may result in a rescheduling of the prehearing conference and the hearing.

7. Subparagraphs (b) (2), (3), and (4) of section III of Appendix A of Part 2 are amended to read as follows:

III. THE HEARING

* * * * *

(b) Intervention and limited appearances.

* * * * *

(2) The chairman should inquire of those in attendance whether there are any who wish to participate in the hearing by limited appearance.

(3) The board should rule on each request to participate in the hearing on either basis. The Commission's rules require that a petition for intervention be filed not later than the time specified in the notice of hearing. A board has general authority to extend the time for good cause with respect to allowing intervention.

(4) As required by § 2.714 of 10 CFR Part 2, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding, how the interest may be affected by Commission action, and his contentions in reasonably specific detail. After consideration of any answers, the board will rule on the petition. Petitions which set forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. In any event, the board should not permit enlarging of the issues, or receive evidence from an intervenor, with respect to matters beyond the jurisdiction of the Commission.

* * * * *

8. Subparagraph (c) (7) of section III of Appendix A of Part 2 is revised to read as follows:

III. THE HEARING

* * * * *

(c) * * *

(7) Objections may be made by counsel to any questions or any line of questioning, and should be ruled upon by the board. The board may admit the testimony, may sustain the objection, or may receive the testimony, reserving for later determination the question of admissibility. In passing on objections, the board, while not bound to view proferred testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction. Irrelevant material in prepared testimony submitted in advance under § 2.743(b) may be subject to a motion to strike under the procedures provided in § 2.730.

9. Paragraph (g) of section III of Appendix A of Part 2 is revised to read as follows:

III. THE HEARING

* * * * *

(g) Participation by board members.

(1) Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACRS, which have not been controverted by any party. The role of the board is to decide whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the provisional construction permit proposed by the Director of Regulation. The board will not conduct a de novo evaluation of the application, but rather, will test the sufficiency of the information contained in the application and the record of the proceeding and the adequacy of the staff's review to support the proposals of the Director of Regulation. In doing so, the board is expected to be mindful of the fact that it is the applicant, not the regulatory staff, who is the proponent of the provisional construction permit. If the board believes that additional information is required in the technical presentation in such a case, it would be expected to request the applicant or staff to supplement the presentation, again being mindful of the fact that it is the applicant, not the regulatory staff, who is the proponent of the provisional construction permit. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence on all issues has been received.

* * * * *

10. Paragraphs (a) and (b) of section V of Appendix A of Part 2 are amended to read as follows:

V. GENERAL

(a) Two members, being a majority of the board, constitute a quorum, if one of those members is the member qualified in the conduct of administrative proceedings. The vote of a majority controls in any decision by a board, including rulings during the course of a hearing as well as formal orders and the initial decision. A dissenting member is of course, free to express his dissent and the reasons for it in a separate opinion for the record.

(b) The Commission may designate a technically qualified alternate or an alternate qualified in the conduct of administrative proceedings, or both, for a board. The alternate will be constituted by the Chairman familiar with the application and other documents filed by the parties prior to the start of the hearing. It is expected that an alernate will be constituted by the Chairman of the Atomic Safety and Licensing Board Panel as a member of the board in situations where a technically qualified member of the board, or the member qualified in the conduct of administrative proceedings, becomes unavailable for further service prior to the start of the hearing.

* * * * *

11. Paragraph (b) of section VI of Appendix A of Part 2 is amended as follows:

VI. PROCEDURES APPLICABLE TO CONTESTED PROCEEDINGS

* * * * *

(b) Issues to be decided by board:

The board will, if the proceeding becomes a contested proceeding, make findings on the issues specified in the notice. In a contested proceeding, the board will determine:

* * * * *

In considering those issues, however, the board will, as to matters not in controversy, be neither required nor expected to duplicate the review already performed by the Commission's regulatory staff and the ACRS; the board is authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACRS, which are not controverted by any party.

* * * * *

12. Paragraph (d) of section VI of Appendix A of Part 2 is amended to read as follows:

VI. PROCEDURES APPLICABLE TO CONTESTED PROCEEDINGS

* * * * *

(d) Participation by board members:

In contested proceedings, the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made. Thus, in such proceedings, the board will determine the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACRS, which are not controverted by any party. Thus, the board need not evaluate those matters already evaluated by the staff which are not in controversy.

13. Paragraphs (f) and (g) of section VI of Appendix A of Part 2 are redesignated paragraphs (g) and (h), respectively; a new paragraph (f) is added and redesignated paragraph (h) is amended to read as follows:

VI. PROCEDURES APPLICABLE TO CONTESTED PROCEEDINGS

* * * * *

(f) Briefs and oral argument:

If, at the close of the hearing, the board should have uncertainties with respect to the matters in controversy because of a need for a clearer understanding of the evidence which has already been presented, it is expected that the board would normally invite further argument from the parties—oral or written or both—before issuing its initial decision. If the uncertainties arise from lack of sufficient information in the record, it is expected that the board would normally require further evidence to be submitted in writing with opportunity for the other parties to reply or reopen the hearing for the taking of further evidence, as appropriate; as to either of such courses, it is expected that the applicant would normally be afforded the opportunty to make the final submission.

* * * * *

(h) The intra-agency consultation and communications referred to in section V(c) are not permitted in contested proceedings. A board may, however, obtain information from the Chairman or Vice Chairman of the Atomic Safety and Licensing Board Panel for the purpose of identifying relevant decisions or statements of Commission policy.

14. Paragraph (b) of § 50.58 of Part 50 is amended to read as follows:

§ 50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.

* * * * *

(b) The Commission will hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days' notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

15. Paragraph (b) of § 115.46 of Part 115 is amended to read as follows:

§ 115.46 Hearings and reports of the Advisory Committee on Reactor Safeguards.

* * * * *

(b) The Commission will hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER on each application for authorization to construct a nuclear reactor subject to this part. When a construction authorization has been issued for such a nuclear reactor following the holding of a public hearing and an application is made for an operating authorization or for an amendment to a construction authorization or operating authorization, the Commission may hold a hearing after at least 30 days' notice and publication once in the FEDERAL REGISTER or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating authorization or an amendment to a construction authorization or operating authorization without a hearing, upon 30 days' notice and publication once in the FEDERAL REGISTER of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment of a contruction authorization or operating authorization, it may dispense with such notice and publication and may issue the amendment.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Washington, D.C., this 13th day of November 1967.

For the Atomic Energy Commission.

W. B. McCOOL,
Secretary.

[F.R. Doc. 67-13669; Filed, Nov. 21, 1967; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 17184; FCC 67-1261]

TELEVISION BROADCAST STATIONS

Table of Assignments; Bluefield, Va., etc.

Report and order. In the matter of amendment of the Table of Assignments for Television Broadcast Channels in § 73.606(b) of the Commission rules and regulations with respect to educational reservations at Bluefield, West Point, Williamsburg, and Wytheville, Va., Docket No. 17184, RM-866.

1. On October 7, 1965, the Advisory Council on Educational Television of the Commonwealth of Virginia, filed a petition requesting the assignment of television broadcast channels reserved for educational use at Manassas, Williamsburg and Wytheville, Va., in addition to the 17 channels already reserved for educational use in the State of Virginia. In response to the petition, the Commission on February 8, 1967, adopted a notice of proposed rule making which proposed to shift Channel 63 from Bluefield to Wytheville and Channel 46 from West Point to Williamsburg. Wytheville is only 23 miles from Bluefield and West Point is only 18.5 miles from Williamsburg. Assignments spaced so closely in an educational network planned for statewide coverage would appear to be wasteful because of the extensive overlap of service. Therefore, the Commission declined to add the requested channels but proposed to move existing assignments to the newly named places. The Commission was unable to find an assignment for Manassas on channels below Channel 70, which would comply with the required minimum geographical separations.

2. The only comments filed in this proceeding were those of the Advisory Council. In those comments, the Advisory Council opposed the shift of channels proposed by the Commission. In the case of Williamsburg, it was argued that any educational TV station that might be built for operation on the West Point assignment would probably be located some 13 miles northeast of West Point in order to serve the area between the York River, the Potomac River, and Chesapeake Bay. This would put the site approximately 30 miles from Williamsburg and the Advisory Council claims that this would provide no more than Grade B service to Williamsburg. It is

further argued that Williamsburg, as the site of William and Mary College, should have its own channel and that it is contemplated that a low power operation (1 kw transmitter) will be conducted there to serve Williamsburg and the immediately adjacent area. The statement did not indicate the power and antenna height contemplated for the West Point assignment but the estimated 30 miles range of the Grade B contour indicates that it would be substantially below a maximum facility. The Advisory Council requests that, if an additional assignment is not provided at Williamsburg, Channel 46 be left at West Point.

3. With respect to Wytheville-Bluefield, the Advisory Council calls attention to the extremely rugged terrain in that area and argues that even a high powered operation from the most favorable site would be severely terrain-limited. A map accompanying the comments shows the calculated Grade B contour to go out less than 10 miles in some directions. As in the case of Williamsburg-West Point, the comments did not indicate the actual power and antenna height used for estimating the coverage of the station but obviously maximum facilities would be unnecessary because of the terrain limitation. In reply to the Commission's suggestion that TV translators could be used more effectively, the Advisory Council reports that an engineering study shows that two translators at optimally chosen sites could provide line-of-sight transmission to only 5 schools in Tazewell County; that 3 schools would be up to 100 feet below line-of-sight, 18 schools 100 to 500 feet below line-of-sight, and 6 schools more than 500 feet below line-of-sight. The operation of a regular TV station instead of a translator could not alter terrain conditions although the signal would be increased to acceptability levels in marginal areas by the higher power.

4. With respect to the Manassas request, the Advisory Council states that in the light of recent developments in northern Virginia, it expects to submit a new proposal concerning a northern Virginia educational TV station in the near future.

5. The Commission has carefully considered the comments of the Advisory Council and concludes that the assignment of educational TV channels at West Point and Williamsburg is not justified. The terrain in that portion of Virginia is extremely flat and a single station employing reasonably high power and a reasonably high antenna could be located so as to serve Williamsburg, West Point, and all of the surrounding area that the Council estimated would be covered by the two stations. The case for Wytheville is somewhat more persuasive but there are a number of unanswered questions. The engineering data submitted with the comments seems to indicate that some improvement in a difficult situation might be had by making the additional assignment at Wytheville rather than moving the Bluefield assignment. On the other hand, the study of Tazewell County that showed a large percentage of the schools below line-of-sight again placed the emphasis on the use of these broadcast channels for in-school instruction or at best, indicated that an equally high percentage of homes would also be below line-of-sight. This suggests that most of the service will still have to be provided by translators and if that is so, a single TV station in the area could feed the translators. If there were an ample supply of available channels in that area of Virginia, the Commission would have no reluctance about assigning the additional channel. However, available but unassigned channels are scarce. Therefore, the Commission will not, at this time, assign a new channel to Wytheville or move the Bluefield assignment to Wytheville. When the plans of the Advisory Council are more concrete, consideration will be given to a new petition for an additional assignment in southwestern Virginia if it can be justified. The Advisory Council has already indicated that it expects to file a new petition with respect to northern Virginia.

6. In the light of the foregoing: *It is ordered*, That, the petition of the Advisory Council on Educational Television of the Commonwealth of Virginia is denied; the Commission will not amend the Table of Assignments as proposed; and this proceeding is terminated.

Adopted: November 15, 1967.

Released: November 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 67-13720; Filed, Nov. 21, 1967; 8:49 a.m.]

[47 CFR Part 73]

[Docket No. 17873; FCC 67-1263]

STANDARD BROADCAST STATIONS OPERATED BY REMOTE CONTROL

Transmission of Telemetry Signals Related to Technical Operation

In the matter of amendment of Part 73 of the Commission rules and regulations to permit standard broadcast stations operated by remote control to transmit telemetry signals directly related to the technical operation of the broadcast station, Docket No. 17873, RM-320.

1. On March 23, 1962, the Commission received a petition from Moseley Associates, Inc., of Santa Barbara, Calif., requesting that the rules be amended so as to permit the transmission of intermittent subsonic tones by standard broadcast stations which are operated by remote control, as a means of providing telemetric information to the remote control point. The use of the broadcast transmitter for this purpose would eliminate the need for wire lines or additional radio facilities operated on other frequency bands.

2. In support of its petition, Moseley states that advances in the art of remote control and telemetry make it possible to produce reliable and economical equipment for the radio control and supervision of a broadcast transmitter from a remote point. While information for this purpose may be transmitted over wire lines, such a physical connection is subject to impairment or destruction by storms, fires, explosions or other accidents or disasters as well as by enemy attack. It is during periods of emergency or disaster that broadcast facilities are most needed to communicate directly with the general public. The use of radio transmissions for control and metering functions offers the dual advantage of reducing the hazard of circuit destruction and permitting prompt remedial action should there be a failure, without having to rely upon action by an independent agent.

3. Under present rules, standard and FM broadcast stations utilizing an aural broadcast STL circuit operating in the 942-952 Mc/s band for program transmission may multiplex transmitter control signals on the program circuit, provided that there is no impairment of the program quality. Also, FM broadcast stations may transmit telemetering signals on the broadcast transmitter under a Subsidiary Communications Authorization (SCA). It would appear reasonable to allow essential metering data to be transmitted on the standard broadcast station carrier if this can be accomplished without impairment of program quality or annoyance to the public. The petitioner proposes to use tones having frequencies between 20 and 36 cycles per second. While such tones are not truly subsonic, the human ear is comparatively insensitive to sounds in this frequency range, and, of more importance, the great majority of AM receivers are incapable of appreciable audio output at such low frequencies. These considerations, and the fact that the tones would be transmitted at a restricted modulation level, all minimize the possibility of objectionable effects on program transmission. Unless there are secondary effects, which are not foreseen, the likelihood appears quite remote that a station employing tones in the manner proposed would cause increased interference to other stations.

4. During a 90-day test period in the spring and summer of 1964, WSM, Nashville, Tenn., pursuant to Commission authority provided information to its remote control point as to meter indications at the transmitter by modulating tones on its broadcast carrier at the 10-percent level. This test was conducted with equipment supplied by the petitioner. Observations by WSM's engineers at various points in the station's service area failed to reveal any deleterious effects on program reception. Throughout the entire period of the test no listener complained of interference of a nature which could be ascribed to the tone transmissions.

5. WSM found, under the conditions which obtained in the test, that tone modulation at a level no greater than 5 percent would provide reliable meter indications at its remote control point. It

[1] Commissioners Bartley and Lee absent.

is, of course, desirable that the amplitude of the tone modulation be restricted to a level no greater than is necessary for its intended function to be satisfactorily performed. Accordingly, although the petitioner has recommended a maximum tone amplitude of 10 percent, and the proposed rule amendment specifies this figure, comment is requested as to whether a lower percentage would, in general, be adequate.

6. WSM further noted that the combined program and tone modulations should not be permitted to exceed 100 percent, or audio distortion and a violation of § 73.55 of the rules may result. In this connection, we would note that paragraph (b)(4) of § 73.50 of the rules, which establishes requirements for type approval for modulation monitors, requires that the frequency characteristic of a monitor be substantially flat over the range of from 30 to 10,000 cycles. Comment is requested, supported by measurements, as to whether modulation monitors presently type approved will accurately indicate total modulation levels when the telemetric tones from 20 to 30 cycles are included in the modulation envelope. Comment is also requested on the effect of automatic gain control amplifiers and peak limiting devices on the utimate accuracy of remote readings by this method of telemetry.

7. Over the years, the Commission has rejected various proposals which contemplated utilizing AM broadcast station carriers for the transmission of secondary signals for uses unrelated to broadcasting. However, tone transmission for the purpose of providing economical and efficient supervision of the technical performance of the broadcast transmitter is a function sufficiently important to overall broadcast operation as to permit its consideration in this rule making proceeding as a permissible ancillary use of the broadcast carrier. It should be emphasized that the proceeding is concerned only with such use, and will not be broadened to consider proprosals for other special uses of the broadcast signal.

8. Accordingly, it is proposed to amend Part 73 of the Commission rules as set forth below. Pursuant to applicable procedures set out in § 1.415 of Commission rules interested parties may submit comments on or before December 26, 1967, and replies to such comments on or before January 5, 1968. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

9. Authority for the adoption of the rules proposed herein is contained in sections 4(i) and 303(b) of the Communications Act of 1934, as amended.

10. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: November 15, 1967.

Released: November 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

Section 73.67 is amended by adding a new paragraph (c) to read as follows:

§ 73.67 **Remote control operation.**

* * * * *

(c) The broadcast transmitter carrier may be modulated with tones for the purpose of transmitting to the remote control point essential meter indications and other data on the operational condition of the broadcast transmitter and associated devices, subject to the following conditions:

(1) No tone shall have a frequency higher than 36 cycles per second.

(2) The maximum modulation amplitude of the broadcast transmitter carrier by the audiofrequency tones shall not exceed 10 percent.

(3) Measures shall be employed to insure that during the periods the telemetric tones are being transmitted the total modulation of the carrier does not exceed 100 percent on negative peaks.

(4) The transmission of data on the operating characteristics of the broadcast transmitter shall not significantly degrade the quality of program transmissions or produce an audible effect that results in public annoyance.

(5) The transmission of data on the operating characteristics of the broadcast transmitter shall not result in emissions that cause harmful interference to other stations greater than that produced by normal program modulation.

[F.R. Doc. 67-13721; Filed, Nov. 21, 1967; 8:49 a.m.]

[47 CFR Part 87]

[Docket No. 17870; FCC 67-1251]

AVIATION SERVICES

Eligibility of Licensee

In the matter of amendment of Part 87 Aviation Services, to broaden the scope of persons eligible for flight test station licenses under § 87.333, Docket No. 17870.

1. Notice of proposed rule making in the above-entitled matter is hereby given.

2. The scope of service provided by flight test stations under § 87.337 of the Commission's rules is restricted in use to the transmission of necessary information or instructions relating directly to test of aircraft or aircraft components. In order to be eligible for a flight test station license under present § 87.333, it is necessary to be either (a) a manufacturer of aircraft or major aircraft components or (b) related to these industries through corporate connections, i.e., parent or subsidiary. Each applicant for a flight test station is expected to submit a statement indicating eligibility under the present rules, or to request waiver thereof in order to obtain necessary flight test radio facilities.

3. Waivers of the eligibility requirements of § 87.333 of the rules have been granted by the Commission where the applicant was (a) engaged in the business of modifying aircraft to the extent that the Federal Aviation Administration required the aircraft to be flight tested prior to its return to operational use, (b) engaged in providing aeronautical engineering expertise to small manufacturers in connection with the design, development, modification, flight test evaluation and FAA certification of their first aircraft or aircraft modification, or (c) a university or other private research and development organization engaged in flight testing of developmental communication systems and other major aircraft components. In addition, the Chief, Safety and Special Radio Services Bureau has granted waivers of this section pursuant to authority delegated under § 0.331(b)(7) of the rules, where such facilities were needed on a temporary basis not in excess of 180 days.

4. Based on information gained from administering flight test stations and the numerous requests for waiver of the eligibility requirements received, it appears that the present scope of persons eligible to hold such licenses is too restrictive. The present proposal takes into account the changed conditions and circumstances affecting the manufacture and flight testing of aircraft or major components thereof to broaden the scope of the present eligibility requirements to permit persons primarily engaged in the design, development, modification and flight test evaluation of aircraft or major aircraft components to qualify as licensees. Under the proposed amendment, the Commission would still be free to refuse to license a flight test station if the applicant failed to submit a statement containing sufficient facts to establish its eligibility under the proposed revised criteria. In addition, the Commission will continue to follow its policy of encouraging cooperative use of such facilities and will still refuse to license multiple test flight stations at an airdrome unless the applicant submits an adequate justification for such additional authorization pursuant to § 87.335(d) of the Commission's rules. The proposed amendment would allow a certain degree of flexibility and should eliminate many of the requests for waiver now directed to the Commission, that have been occasioned by the present rule.

5. The proposed amendments to the rules, as set forth below, are issued pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before December 26, 1967, and reply comments on or before January 5, 1968. All relevant and timely

[1] Commissioners Bartley and Lee absent.

comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

7. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: November 15, 1967.

Released: November 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

Section 87.333 is amended to read as follows:

§ 87.333 Eligibility of licensee.

(a) A flight test station license may be granted only for use by the following persons:

(1) Manufacturers of aircraft or major aircraft components, or

(2) A parent corporation or its subsidiary if either corporation is a manufacturer of aircraft or major aircraft components, or

(3) Educational institutions engaged in the design, development, modification, and flight test evaluation of aircraft or major aircraft components and persons primarily engaged in the design, development, modification, and flight test evaluation of aircraft or major aircraft components.

(b) Each application shall be accompanied by a statement containing facts sufficient to establish the applicant's eligibility for license under the criteria set forth in paragraph (a) of this section.

[F.R. Doc. 67-13722; Filed, Nov. 21, 1967; 8:49 a.m.]

[1] Commissioners Bartley and Lee absent.

[47 CFR Parts 87, 89, 91, 93]

[Docket No. 17791]

MICROWAVE AND OTHER FIXED STATIONS

Filing of Annual Reports; Extension of Time for Filing Comments

In the matter of adoption of FCC Form 402-A on which to file annual reports by licensees of microwave and other fixed stations when such facilities are shared on a cooperative, cost-sharing basis with others; amendment of §§ 87.467(h), 89.14(h), 91.9(h), and 93.4(h), of the Commission's rules to require the use of FCC Form 402-A in filing the annual report prescribed therein, Docket No. 17791.

1. The Chief, Safety and Special Radio Services Bureau, acting under delegated authority, has under consideration a request filed by the Central Committee on Communication Facilities of the American Petroleum Institute for an extension of time for filing comments in the above-entitled proceeding. The prescribed time for filing comments is scheduled to expire on November 13, 1967, and reply comments on November 29, 1967.

2. In support of the request, the petitioner states that an additional period is needed to study the notice of proposed rule making by the petitioner's Operational Fixed Group and Coordinating Committee.

3. In view of the foregoing: *It is ordered*, Pursuant to §§ 0.331(b)(4) and 1.46 of the Commission's rules, that the above-described request for an extension of time is granted, and that the time for filing comments in the above-entitled proceeding is extended to November 22, 1967, and reply comments to December 1, 1967.

Adopted: November 14, 1967.

Released: November 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13723; Filed, Nov. 21, 1967; 8:49 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. AA-818]

ALASKA

Notice of Classification of Public Lands for Multiple-Use Management; Correction

NOVEMBER 9, 1967.

In F.R. Doc. 67-12719, appearing at pages 14971 and 14972 of the issue for Saturday, October 10, 1967, the following changes should be made:

1. Under Chinitna, "T. 4 W., R. 22 W." should read "T. 4 S., R. 22 W."

2. Under Iniskin E., "T. 5 W., R. 24 W." should read "T. 5 S., R. 24 W."

3. Under Pile and Pedro Bays, "T. 5 W., R. 27 W." should read "T. 5 S., R. 27 W."

T. G. BINGHAM,
Acting State Director.

[F.R. Doc. 67-13732; Filed, Nov. 21, 1967; 8:49 a.m.]

[A 1423]

ARIZONA

Order Providing for Opening of Public Lands

In F.R. Doc. 67-12928 appearing on page 15188 of the issue for November 2, 1967, the following change should be made: In item 2, substitute Graham County for Cochise.

RILEY E. FOREMAN,
Acting State Director.

NOVEMBER 16, 1967.

[F.R. Doc. 67-13729; Filed, Nov 21, 1967; 8:49 a.m.]

[Serial No. U-3484]

UTAH

Notice of Proposed Classification of Public Lands for Multiple-Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411-18), and to the regulations in Title 43 CFR Parts 2410 and 2411, it is proposed to classify for multiple-use management the public lands within the area described below, together with any lands therein that may become public lands in the future. Publication of this notice has the effect of segregating the described lands from appropriation under the agricultural land laws (43 U.S.C. Parts 7 and 9; 25 U.S.C. sec. 334), and from sales under section 2455 of the Revised Statutes as amended (43 U.S.C. 1771). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The lands proposed to be classified are those lands administered by the Bureau of Land Management, located in south central Wayne County, eastern Garfield County, and the extreme northeastern tip of Kane County, and further described as follows:

Beginning at a point where the Fremont River intersects the Dirty Devil River, said point being located near the west quarter-corner of sec. 2, T. 28 S., R. 11 E., SLM; thence southeasterly following the Dirty Devil River downstream to its confluence with the Colorado River; thence southwesterly following the Colorado River to a point near the southwest corner of sec. 31, T. 38 S., R. 11 E.; thence northwesterly along the Waterpocket Fold, which is the boundary between Richfield and Kanab BLM districts, to the southeast corner of sec. 21, T. 32 S., R. 7 E.; thence west to Dixie National Forest boundary; thence north to the northwest corner of sec. 6, T. 31 S., R. 7 E.; thence east, northerly, and northwesterly following the eastern boundary of Capitol Reef National Monument to a point on the Fremont River, said point being located near the southwest corner of sec. 16, T. 29 S., R. 7 E.; thence following down the Fremont River to point of beginning.

The area described aggregates approximately 1,068,964 acres of public domain land.

3. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with this proposed classification may present their views in writing to the District Manager, Bureau of Land Management, 850 North Main Street, Richfield, Utah 84701, or to the State Director, Bureau of Land Management, Post Office Box 11505, Salt Lake City, Utah 84111.

4. Maps depicting these lands are on file and may be reviewed at the Bureau of Land Management's district office at Richfield, and the State Office, Federal Building, Salt Lake City, Utah.

5. A public hearing on the proposed classification will be held on December 14, 1967 at 2 p.m. in the courtroom of the Wayne County Courthouse, Loa, Utah. At this time statements in support of or opposition to the proposal may be presented.

EDWARD J. HOFFMANN,
Acting State Director.

[F.R. Doc. 67-13680; Filed, Nov. 21, 1967; 8:46 a.m.]

[Wyoming 6228]

WYOMING

Notice of Classification of Public Lands for Multiple-Use Management

NOVEMBER 14, 1967.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and to the regulations in 43 CFR Parts 2410 and 2411, the public lands within the areas described below, together with any lands therein that may become public lands in the future, are hereby classified for multiple-use management. Publication of this notice segregates: (a) All the described lands from appropriation only under the agricultural land laws (43 U.S.C. Parts 7 and 9; 25 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171); (b) the public lands described in paragraph 4 of this notice from appropriation under the general mining laws (30 U.S.C. 21). Except as provided in (a) and (b) above, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. Several comments in response to the notice of proposed classification were received during the 60-day period provided and at the public hearing held on June 27, 1967. All comments submitted, except one, favored the proposed classification. Additional investigations have been conducted concerning the issues raised in the adverse comment. After careful consideration of all comments and the facts disclosed by the investigation of the adverse comments, it is concluded that no change or modifications are necessary. The record containing the comments and statements submitted is on file and can be examined at either the Lander District Office, 431 Main Street, Lander, Wyo., or the Land Office, Federal Building, Cheyenne, Wyo.

3. Public lands located within the following described areas are shown on maps and status plats on file in the Lander District Office, Lander, Wyo., the Fremont County Courthouse, Lander, Wyo., and the Land Office, Cheyenne, Wyo. The overall description of the areas is as follows:

SIXTH PRINCIPAL MERIDIAN

NATRONA COUNTY, WYO.

Beginning at the junction of the Natrona-Fremont-Carbon County lines, which point is the northwest corner of T. 28 N., R. 89 W.; thence east along the Natrona-Carbon County line, which is also the Lander-Rawlins District boundary, to the southeast corner of T. 29 N., R. 86 W; thence north and east along the Lander-Casper District boundary to the notheast corner of T. 32 N., R. 85 W.; thence west along the township line between T. 32 and 33 N., to a point on the Natrona-Fremont County line at the northwest corner of T. 32 N., R. 89 W.; thence south along the Natrona-Fremont County line to the point of beginning.

FREMONT COUNTY, WYO.

Beginning at the junction of the Fremont-Carbon-Sweetwater County lines, which point is the southeast corner of T. 27 N., R. 90 W.; thence north along the Fremont-Carbon County line to the Natrona County line at the northwest corner of T. 28 N., R.

89 W.; thence continuing north along the Fremont-Natrona County line to its junction with the Washakie County line in T. 41 N., R. 89 W.; thence along the Fremont-Washakie County line to the Fremont-Hot Springs County line at a point on the range line between R. 89 and 90 W.; thence along the Fremont-Hot Springs County line to the Wind River Indian Reservation boundary; thence south and west along the Wind River Indian Reservation boundary to its junction with the Little Popo Agie River in T. 34 N., R. 98 W.; thence southwesterly up the Little Popo Agie River to its junction with the Shoshone National Forest boundary in T. 31 N., R. 99 W.; thence south and west along the Shoshone National Forest boundary to the proposed Lander-Rock Springs District boundary; thence southerly along an irregular line through Tps. 29 and 28 N., Rs. 100 and 99 W., which line is the proposed Lander-Rock Springs District boundary, to a point on the west line of sec. 22, T. 28 N., R. 99 W.; thence south along the west section lines of secs. 22, 27, and 34, T. 28 N., R. 99 W., to the township line between Tps. 27 and 28 N., in R. 99 W.; thence east along the township line between Tps. 27 and 28 N., which line is the Lander-Rawlins District boundary, to the range line between Rs. 94 and 95 W.; thence south along the range line between Rs. 94 and 95 W., which line is the Lander-Rawlins District boundary, to the Fremont-Sweetwater County line; thence east along the Fremont-Sweetwater County line, which line is the Lander-Rawlins District boundary, to the place of beginning.

The total area of the public lands included within the purview of this notice of classification aggregates approximately 2,077,702 acres.

4. As provided in paragraph 1 above, the following lands are further segregated from appropriation under the Mining Laws (aggregating approximately 4,128 acres):

SIXTH PRINCIPAL MERIDIAN

FREMONT COUNTY, WYO.

T. 27 N., R. 90 W.,
Sec. 15, S½NW¼ and N½SW¼.
T. 27 N., R. 91 W.,
Sec. 2, NW¼SE¼;
Sec. 3, SE¼SW¼ and SW¼SE¼;
Sec. 4, S½S½SW¼;
Sec. 9, N½N½NW¼;
Sec. 10, NE¼NW¼ and NW¼NE¼;
Sec. 12, S½NE¼, NW¼SE¼, and E½SW¼;
Sec. 13, N½NW¼.
T. 28 N., R. 91 W.,
Sec. 27, SW¼SE¼, NE¼SW¼, and NW¼SE¼;
Sec. 29, NE¼SW¼;
Sec. 34, NW¼NE¼.
T. 28 N., R. 92 W.,
Sec. 25.
T. 28 N., R. 93 W.,
Sec. 7, S½S½SE¼;
Sec. 18, N½NE¼ and NE¼NW¼.
T. 28 N., R. 100 W.,
Sec. 21, SW¼SW¼;
Sec. 28, NW¼NW¼.
T. 29 N., R. 99 W.,
Sec. 6, lots 4 and 5, W½SW¼SE¼NW¼, NW¼NE¼SW¼, and S½NE¼SW¼.
T. 29 N., R. 100 W.,
Sec. 1, lots 1, 5, 9, and 10;
Sec. 3, lots 6, 7, 8, 10, 11, 12, and 13;
Sec. 9, SE¼NE¼SW¼, NE¼SE¼SW¼, SW¼SE¼, SW¼NW¼SE¼, SE¼NE¼, NE¼SE¼, that portion of the NW¼ lying north and west of State Highway 28;
Sec. 10, NW¼SW¼;
Sec. 12, S½SW¼NW¼;
Sec. 17, S½NW¼NE¼, N½SW¼NE¼;
Sec. 19, SW¼SE¼SW¼ and lot 4;
Sec. 20, lots 1, 2, 3, 4, 5, 6, 7, and 8, NW¼NE¼, N½NW¼, SW¼NW¼, and S½S½;
Sec. 21, E½NW¼NE¼SE¼, W½NE¼NE¼SE¼, SE¼NE¼SE¼, and E½NE¼SE¼SE¼;
Sec. 22, W½NW¼SW¼, NW¼SW¼SW¼, E½SW¼SW¼SW¼, and W½SE¼SW¼SW¼;
Sec. 26, S½NE¼;
Sec. 27, NW¼NW¼;
Sec. 28, NE¼NE¼;
Sec. 30, lot 1 and NW¼NE¼NW¼.
T. 30 N., R. 96 W.,
Sec. 10, SE¼NE¼, NE¼SE¼, and N½SE¼SE¼;
Sec. 11, S½NW¼NW¼, SW¼NW¼, and NW¼NW¼SW¼.
T. 30 N., R. 99 W.,
Sec. 29, SW¼SE¼ and S½SW¼;
Sec. 32, N½SE¼NE¼;
Sec. 33, N½SW¼SW¼NW¼.
T. 31 N., R. 97 W.,
Sec. 27, NE¼NE¼.
T. 34 N., R. 90 W.,
Sec. 9, NE¼SE¼;
Sec. 10, NW¼SW¼.
T. 39 N., R. 90 W.,
Sec. 12, SE¼;
Sec. 13, NE¼.

5. For a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided in 43 CFR 2411.2c.

JOHN R. KILLOUGH,
Acting State Director.

[F.R. Doc. 67-13696; Filed, Nov. 21, 1967; 8:46 a.m.]

Fish and Wildlife Service

MASTER HULL POLICIES

Intent To Request Proposals

NOVEMBER 17, 1967.

Under the terms of the mortgages utilized in connection with loans to commercial fishermen authorized in section 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742c), a mortgagor is required to obtain, among other things hull insurance satisfactory to the Secretary of the Interior. Some of the basic requirements as respects the hull insurance coverage are that (a) the United States of America be the sole loss payee; (b) the vessel be insured for its full commercial value but in no event less than 110 percent of the outstanding balance of the note secured by the mortgage; and (c) the policy contain satisfactory Inchmaree and Breach of Warranty Clauses.

In the past, as a service to our borrowers and to potential borrowers, the Bureau of Commercial Fisheries has notified the interested public that the Commercial Fishermen's Inter-Insurance Exchange had a Master Hull Policy which, both in form and substance, met the requirements of our mortgage. This notice was merely informational and did not require the utilization of said Master Hull Policy. This Master Hull Policy expires on January 1, 1968.

The Bureau of Commercial Fisheries, in fulfilling its obligations under the Fish and Wildlife Act of 1956, as amended, desires to again notify the interested public of the existence of any Master Hull Policies which may be available to commercial fishing vessel owners or operators whose vessels serve as collateral for fisheries loans. The name of any qualifying insurance company submitting a Master Hull Policy, found acceptable for use in connection with the Bureau's lending program, will be placed in an informational release along with the applicable premium charges. While this release will be distributed to the interested public there will be no compulsion that a borrower utilize any Master Hull Policy listed in such release.

Notice is hereby given of the intent to issue a request for such proposals. Interested persons may submit written comments, suggestions, or objections with respect to the proposed request to the Director, Bureau of Commercial Fisheries, Department of the Interior, Washington, D.C. 20240, by December 22, 1967.

J. L. MCHUGH,
Acting Director.

[F.R. Doc. 67-13730; Filed, Nov. 21, 1967; 8:49 a.m.]

Office of the Secretary

[Order 2902]

SECRETARY OF THE INTERIOR OR HIS DELEGATE

Reservation of Authority Regarding Trust Territory

NOVEMBER 15, 1967.

Whereas, pursuant to Articles 6 and 8 of the Trusteeship Agreement between the United States and the Security Council of the United Nations, the United States is obligated to improve and regulate the means of transportation to, from, and within the Trust Territory; and

Whereas, the Congress of the United States has authorized the expenditures of appropriations available for the administration of the Trust Territory for the purchase, charter, maintenance, and operating of aircraft and surface vessels for official and for commercial transportation purposes found by the Secretary of the Interior to be necessary, 43 U.S.C. (1964 Ed.) 1687;

Now, therefore, effective upon the date of publication of this order, the following powers and authorities are hereby reserved to the Secretary of the Interior or his delegate and hereafter may only be exercised by the Secretary or his specifically thereunto authorized delegate:

1. The power and authority, on behalf of the Trust Territory of the Pacific Islands, to enter into contracts for the purchase, charter, maintenance, or operation of aircraft and surface vessels and for services associated therewith, and to grant franchises for such operations and services for both official and commercial transportation purposes found by the Secretary or his delegate to be useful, beneficial, and necessary.

2. The High Commissioner of the Trust Territory of the Pacific Islands is designated as the authorized delegate to

exercise the power and authority reserved hereunder.

KENNETH HOLUM,
Acting Secretary of the Interior.

NOVEMBER 15, 1967.

[F.R. Doc. 67-13681; Filed, Nov. 21, 1967; 8:46 a.m.]

DIRECTORS, NATIONAL PARK SERVICE AND BUREAU OF OUTDOOR RECREATION

Delegations of Authority

The following Delegations of Authority are a part of the Departmental Manual and the numbering followed is that of the Manual.

The Delegation of Authority to the Director, National Park Service, published in the FEDERAL REGISTER of July 6, 1962 (27 F.R. 6395), January 31, 1963 (28 F.R. 915), and January 4, 1967 (32 F.R. 336), is amended by a revision to paragraph 245.1.1C and the addition of a paragraph (245.1.1D), as set forth below:

PART 245—NATIONAL PARK SERVICE

CHAPTER 1—GENERAL PROGRAM DELEGATION DIRECTOR, NATIONAL PARK SERVICE

245.1.1 *Delegation.* * * *

C. Delete the last sentence of this paragraph.

D. The Director, National Park Service, is authorized to cooperate and consult with the Secretary, Department of Transportation in undertaking and coordinating Interior Department participation in the planning of transportation programs and projects which require the use of any land from any historic site to insure that there is no feasible and prudent alternative to the use of such land and that such programs and projects include all possible planning to minimize harm to such lands. In carrying out this delegated authority the Director, National Park Service shall consult and coordinate with the heads of other affected Interior bureaus (section 4(f) of the Act of Oct. 15, 1966 (80 Stat. 931)).

The Delegation of Authority to the Director, Bureau of Outdoor Recreation, appearing in the FEDERAL REGISTER at 30 F.R. 4210, 15598, and 32 F.R. 4030 is amended by deleting from section 248 DM 1.1H the words "or historic site" and by the addition of the following paragraph:

248 DM 1.1I. By serving as the alternate of the Secretary and in his stead on the Advisory Council on Historic Preservation established under Title II of the Act of October 15, 1966, 80 Stat. 915, 917.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 25, 1967.

[F.R. Doc. 67-13697; Filed, Nov. 21, 1967; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

MICHIGAN STATE UNIVERSITY ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00220-33-46500. Applicant: Michigan State University, East Lansing, Mich. 48823. Article: Ultramicrotome, Model LKB 8800A Ultrotome III. Manufacturer: LKB Produkter AB, Stockholm. Intended use of article: Applicant states:

> The ultramicrotome is to be used to prepare ultrathin sections for observation in our electron microscope. The types of materials to be sectioned by the ultramicrotome will be variable depending on the needs of the electron microscopist. However, consistent with our general operation in the electron microscopy department, it can be stated that we must have an ultramicrotome which will cut long series of equal thickness serial sections. The thickness of these sections should be easily operator chosen between the values 50 Angstroms to 2 microns and it should be possible to easily and rapidly change the serial section thickness.

Application received by Commissioner of Customs: November 6, 1967.

Docket No. 68-00219-90-34040. Applicant: University of Pennsylvania, 3231 Walnut Street, Philadelphia, Pa. 19104. Article: Backward Wave Oscillator, Model CO 10 Carcinotron Tube, 290-320 GHz at 5-50 mW (Type O BWO). Manufacturer: Compagnie Generale de Telegraphie Sans Fil (CSF), France. Intended use of article: Applicant states: "Graduate research in solid state physics." Application received by Commissioner of Customs: November 6, 1967.

Docket No. 68-00190-33-46040. Applicant: Auburn University, Auburn, Ala. 36830. Article: Electron Microscope EM 300. Manufacturer: N. V. Philips Gloeilampenfabrieken, Netherlands. Intended use of article: Biological research and some metallurgical studies in several areas as listed in the body of the application. Application received by Commissioner of Customs: October 19, 1967.

Docket No. 68-00193-33-46040. Applicant: University of Houston, Department of Biology, Cullen Boulevard, Houston, Tex. 77004. Article: Electron Microscope EM6B. Manufacturer: Associated Electrical Industries International, Ltd., England. Intended use of article: Biological research and student training in visualization of ultrastructural components of ribosomes for structure and function, morphological investigations of single-stranded RNA (Ribonucleic Acid) and DNA (Deoxyribonucleic Acid) viruses, transfer mechanisms of DNA between bacterial cells, etc. Application received by Commissioner of Customs: October 20, 1967.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 67-13670; Filed, Nov. 21, 1967; 8:45 a.m.]

UTAH STATE UNIVERSITY ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and

Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00177-00-77040. Applicant: Utah State University, Department of Chemistry, Logan, Utah 84321. Article: Fox Type Ion Source, Model MS1030, for use with Hitachi RMU-6D Mass Spectrometer. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: To provide electron beam with very narrow electron energy distribution as an accessory to existing Hitachi RMU-6D Mass Spectrometer. Application received by Commissioner of Customs: October 9, 1967.

Docket No. 68-00186-65-46040. Applicant: North Carolina State University, Post Office Box 5935, Raleigh, N.C. 27607. Article: Electron Microscope, Model JEM-120. Manufacturer: Japan Electron Optical Laboratory Co., Ltd., Japan. Intended use of article: Applicant states: "Basic scientific research and instruction of graduate students in material sciences [will be conducted]." Application received by Commissioner of Customs: October 17, 1967.

Docket No. 68-00189-33-46500. Applicant: City of Hope Medical Center, Department of Parthology, Duarte, Calif. 91010. Article: Ultramicrotome, model LKB 8800 Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The ultramicrotome is to be used to prepare ultrathin sections of subcellular organelles in a search of virus particles. Long series of equal thickness serial sections will be prepared for observation in an electron mircroscope. The thicknesses of these sections are to be between the value of 50 Angstroms to 2 microns as chosen by the operator. Application received by Commissioner of Customs: October 17, 1967.

Docket No. 68-00207-00-61030. Applicant: Columbia University, Department of Civil Engineering and Engineering Mechanics, 120 Street and Amsterdam Avenue, New York, N.Y. 10028. Article: Electronic Dynamometer with Measuring Set Control Unit, Automatic Program Controls and Motor Generator Set. Manufacturer: Carl Schenck Maschinenfabrik, Germany. Intended use of article: These are components that will be used to update the performance of the existing equipment used by the applicant to study fatigue of metals and metal structures. These parts will modify the performance characteristics of present testing appartus to that of a new 60-ton Horizontal Fatigue Testing Constant Amplitude Pulsator manufactured by the Schenck Maschinenfabrik in West Germany. Application received by the Commissioner of Customs: October 26, 1967.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 67-13671; Filed, Nov. 21, 1967; 8:45 a.m.]

YESHIVA UNIVERSITY ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967 issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00221-00-46040. Applicant: Yeshiva University, Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, N.Y. 10461. Article: Shutter for Siemens Electron Microscope, Model 171048. Manufacturer: Siemens AG, West Germany. Intended use of article: Applicant states: "Accurate preset exposure of photoplates in the Siemens Elmiskop." Application received by Commissioner of Customs: November 7, 1967.

Docket No. 68-00222-33-46040. Applicant: San Jose State College, 125 South Seventh Street, San Jose, Calif. 95114. Article: Electron Microscope, Model HS-7S, with Anticontamination Device. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: Applicant states: "Training and instruction for and investigation of biological fine structure." Application received by Commissioner of Customs: November 7, 1967.

Docket No. 68-00218-33-46040. Applicant: University of New Mexico, University Hill NE., Albuquerque, N. Mex. 87106. Article: Electron Microscope, Model EM 300, with Anticontamination Device. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: Applicant states: "Study of biological tissue specimens for medical research." Application received by Commissioner of Customs: November 3, 1967.

Docket No. 68-00192-33-46040. Applicant: Attending Staff Association of the Los Angeles County General Hospital, Department of Pathology, 1200 North State Street, Los Angeles, Calif. 90033. Article: Electron Microscope, Model HS-7S. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: Investigation of ultrastructure of lymphocytes and malignant lymphomas in a hematopathology training program. Application received by Commissioner of Customs: October 20, 1967.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 67-13672; Filed, Nov. 21, 1967; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

LABELING OF DRUG PREPARATIONS CONTAINING ASPIRIN

Notice Inviting Submission of Scientific Data Regarding Maximum Dose

The policy currently in effect (as prescribed by § 3.509 *Labeling of drug preparations containing salicylates* (21 CFR 3.509)) regarding the maximum dose of aspirin that may be recommended in the labeling of over-the-counter drugs limits such dose of regular aspirin to not more than 10 grains in a 4-hour period with the total dosage in a 24-hour period not to exceed 60 grains.

The Food and Drug Administration has consulted its Medical Advisory Board and has under consideration a proposed revision of the current policy regarding the amount of aspirin that may be recommended in the labeling of articles available to the layman without a prescription. Such revision would permit a recommendation of a usual dose of 10 grains in a 4-hour period, or if needed a maximum of 20 grains taken as a single dose or divided in any 8-hour period, with the total amount in a 24-hour period not to exceed 60 grains.

The Commissioner of Food and Drugs invites interested persons to submit pertinent scientific data for evaluation in determining whether there are adequate data to support such a change. Unless submitted data establish that this dosage schedule would be generally recognized among qualified experts as safe and effective for its intended use, aspirin products recommending more than 10 grains as a single dose will be regarded as new drugs requiring an approved new-drug application under section 505 of the Federal Food, Drug, and Cosmetic Act for shipment in interstate commerce.

Submissions should be made to the Bureau of Medicine, Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, within 60 days

from the date of publication of this notice in the FEDERAL REGISTER.

This notice is issued pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 502(f), 701(a), 52 Stat. 1051, 1055; 21 U.S.C. 352(f), 371(a)) and delegated by him to the Commissioner (21 CFR 2.120).

Dated: November 15, 1967.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 67-13716; Filed, Nov. 21, 1967; 8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-144]

CAROLINAS VIRGINIA NUCLEAR POWER ASSOCIATES, INC.

Order Changing License Expiration Date

By Amendment No. 26 dated October 26, 1967, Carolinas Virginia Nuclear Power Associates, Inc., (CVNPA) has filed a request for a change in the expiration date of Facility License No. DPR-8, as amended, which authorizes CVNPA to possess, but not to operate, the nuclear reactor located at Parr, S.C. CVNPA has stated that additional time beyond the present license expiration date of November 27, 1967, is required to complete the decommissioning and disposition of the facility authorized by the Commission's Order dated June 14, 1967.

Accordingly, it is hereby ordered that the date specified in paragraph 6 for expiration of License No. DPR-8, as amended, is changed to December 31, 1968.

Date of issuance: November 13, 1967.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 67-12612; Filed, Nov. 21, 1967; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 19167]

AMERICAN AIRLINES, INC.

Notice of Proposed Approval

Application of American Airlines, Inc., for approval without hearing pursuant to section 408(b) of the Federal Aviation Act or exemption from section 408, relating to the lease of 27 Boeing Model 727-223 aircraft; Docket 19167.

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the undersigned intends to issue the order set forth below under delegated authority. Interested persons are hereby afforded a period of 15 days from the date of service within which to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., November 16, 1967.

[SEAL] A. M. ANDREWS,
Director, Bureau of Operating Rights.

ORDER OF APPROVAL

Issued under delegated authority.

By application filed October 25, 1967, American Airlines (American) requests approval under, or exemption from, section 408 of the Federal Aviation Act of 1958, as amended (the Act), with respect to the lease of twenty-seven (27) Boeing Model 727-223 aircraft (the aircraft).

American states that its rights under a purchase agreement with The Boeing Co. in relation to the aircraft will be assigned to the Bankers Trust Co., acting as trustee, and that the trustee will pay the purchase price, take title to the aircraft, and lease the aircraft to American for an 18-year term.[1] American will, in turn, pay the trust a quarterly rental of 2.005 percent of the cost of the aircraft or an aggregate rental of 144.360 percent of such cost over the full 18-year term of the lease. According to American approximately 20 percent of the cost of each aircraft will be furnished to the trust by The First National City Bank of New York (the Bank) and the remainder of the cost of each aircraft will be loaned to the trust by thirty-six (36) lending institutions (The Loan Participants). The Bank will have an ownership interest in the aircraft subordinate to the loan participant's loans, which will be payable by the trust over a period of 18 years with interest at 6½ percent per annum. The maximum commitment of the Bank and the Loan Participants will be $5,400,000 for each aircraft and $145,800,000 for all the aircraft.

American asserts that the instant agreement closely parallels other agreements which the Board has either approved under, or exempted from, section 408 of the Act.[2] The carrier also asserts that the instant transaction will enable it to obtain use of the aircraft on a cost basis which reflects the availability to the Bank of the full 7 percent investment credit without reducing the amount of investment credits usable by American pursuant to the Internal Revenue Code. The carrier also states that if approval or exemption is not granted, prior to the delivery date of the first aircraft scheduled for early January 1968, it would be forced to obtain the necessary aircraft on less favorable terms. Such a denial of either approval or exemption, American contends, would cause it an undue burden and would not be in the public interest.

Upon consideration of the proposed transaction, it is found that the lease does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition. Furthermore, no person disclosing a substantial interest is currently requesting a hearing, and it is concluded that a hearing is not required. It appears that the transaction will permit the carrier to acquire equipment on favorable terms. Consequently, it appears that approval of the transaction without a hearing would not be inconsistent with the public interest.

Notice of intent to dispose of the application, without a hearing, has been published in the FEDERAL REGISTER and a copy of such action has been furnished by the Board to the Attorney General not later than the day following the date of such publication, both in accordance with the requirements of section 408(b) of the Act.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.13, it is found that the above-described transaction should be approved under section 408(b) without a hearing.

Accordingly, it is ordered:

1. That the lease of 27 Boeing Model 727-223 aircraft by American as described above be and it hereby is approved;

2. That this action shall not be deemed a determination for ratemaking purposes of the reasonableness of the transaction;

3. That, except to the extent granted herein, the application in Docket 19167 be and it hereby is denied;

4. That conformed copies of the Lease Agreement, Trust Agreement, Participation Agreement, and the Purchase Agreement Assignment, be filed in Docket 19167 within ten (10) days after execution; and

5. That this order may be amended or revoked at any time in the discretion of the Board without hearing.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 5 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 67-13704; Filed, Nov. 21, 1967; 8:47 a.m.]

[Docket No. 19255; Order E-25991]

EAST COAST POINTS-EUROPE SERVICE INVESTIGATION

Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 17th day of November 1967.

Carriers designated by the United States and the United Kingdom will be permitted to commence operations between Miami, Fla., and London, England, on or after January 1, 1970, under the terms of the United States-United Kingdom Bilateral Air Transport Agreement as amended on May 27, 1966, by an Exchange of Notes. British Overseas Airways Corp. has already been designated by the United Kingdom and has applied for an amendment to its foreign air carrier permit in order to be able to conduct services immediately upon the effective date. No U.S. flag carrier has been designated nor does any hold certificate authority to operate directly between Miami and London. To date, Northeast Airlines, Inc. (Northeast), National Airlines, Inc. (National), Braniff Airways, Inc. (Braniff), and Delta Air Lines, Inc. (Delta), have applied for such authority.[1]

[1] The Participation, Trust, and Lease agreements and certain other documents pertaining to the transaction have been filed in draft form pending execution.

[2] Orders E-22442, July 15, 1965, E-23995, July 21, 1966, and E-25251, June 5, 1967.

[1] Northeast's application, Docket 17468, was filed on July 5, 1966; the application of National, Docket 17568, was filed on July 29, 1966; and Delta's application, Docket 19144, was filed on Oct. 20, 1967.

The Board deems it desirable that one or more U.S. flag carriers should be in a position to begin direct service in the Miami-London market on January 1, 1970, contemporaneously with BOAC, if it is found that there is a need for U.S. flag service.

In the Transatlantic Route Renewal Case, Docket 13577, the Board was basically concerned with the question of the renewal of the existing authority of Pan American World Airways, Inc. (Pan American), and Trans World Airlines, Inc. (TWA), across the Atlantic to Europe (including Eastern Europe and the U.S.S.R.), Africa, and points in Asia as far east as India and Ceylon; as well as the U.S.-Europe all-cargo authority of Seaboard World Airlines, Inc. (Seaboard).[2] Based on traffic data for 1962 and the years prior thereto, and the marginal operating results of the U.S. flag carriers serving Europe in that period, the proceeding focused on whether the status quo should be maintained or whether the authority of U.S. flag carriers should be reduced by eliminating point-to-point U.S. flag competition. By and large our basic decision, which was made on January 27, 1965, found for the status quo and the incumbent carriers were authorized to serve only a few additional U.S. coterminals.[3] Because New York serves as the main gateway and coterminal for the three carriers, our decision implicitly involved the finding that New York should continue to be the principal funnel for connecting traffic and through flights originating at or destined to other U.S. points.

The question of the need for Miami-London direct service raises the issue of whether other U.S. cities require improved U.S. flag service to Europe without reference to New York, whose international airport, Kennedy, is rapidly approaching the saturation point. Since 1962, the base year in the Transatlantic Route Renewal Case, a sustained high level of traffic growth in the U.S.-Europe market, the largest intercontinental area market in the world, has been experienced.[4] Much of this overall growth has resulted in the provision of increased schedules at New York. Today over two-thirds of U.S. flag carrier transatlantic schedules originate, terminate, or operate via New York despite the fact that the largest part of the traffic does not originate, terminate, or stop over in New York. Moreover, this situation exists even though present U.S. flag authority between the other East Coast gateways and Europe is not being fully utilized.

[4] Air Passenger Traffic Between the United States and Europe, 1962–1966:

Year	Carrier		Total	Percent increase	U.S. share percent
	U.S. flag	Foreign flag			
1962	986,962	1,528,313	2,515,275		39.2
1963	1,161,477	1,648,899	2,810,376	11.7	41.3
1964	1,408,681	2,081,855	3,490,536	24.6	40.4
1965	1,630,394	2,354,179	3,984,573	14.1	40.9
1966	1,891,072	2,675,287	4,566,359	14.6	41.4

NOTE: Data include scheduled, nonscheduled, and charter traffic (civilian and military).
SOURCE—Immigration and Naturalization Service statistics.

In addition, existing uncertainties with respect to the legal basis for international inclusive tour charter services by U.S. flag supplemental carriers enhance the need to consider whether additional transatlantic service should be authorized.

These considerations compel the conclusion that the question of improved U.S.-Europe service should be explored beyond the confines of the Miami-London route. Accordingly, we have decided to set down for hearing a route case to be known as the East Coast Points-Europe Service Investigation, which will focus on the need for new and improved service between Miami and London, and between the U.S. East Coast cities of Boston, Hartford,[5] Philadelphia, Baltimore, and Washington, on the one hand, and points in certain countries in Western Europe, on the other hand.[6]

We are excluding New York as a terminus or gateway for proposed new services because of the saturation of its airports, already productive of serious and expensive delays. Exclusion of New York will compel applicants to propose direct services from the named East Coast cities to Europe, and will allow applicants having existing domestic routes behind these East Coast cities to propose single-plane services from interior points via these gateways; the authorization of such new services should result in reducing pro tanto the congestion at New York's airports, and thus indirectly benefit that city's travelers. The existing certificate authority of Pan American and TWA will not be in issue for alteration, amendment, modification, or suspension pursuant to section 401(g) of the Act. Issues of granting new or amending existing authorizations limited to the carriage of property and mail only will not be considered because of the pendency of the Domestic Coterminal Points-Europe All-Cargo Service Investigation, Docket 18531.

The Board is particularly interested in determining the need for single-plane and single-carrier U.S. flag service, provided through the named East Coast cities, between U.S. and foreign points not now receiving such service; for nonstop service between the East Coast cities and foreign points not now receiving nonstop service; and for first competitive U.S. flag service in certain markets.

Interested applicants will be directed to file motions to consolidate applications consistent with the scope of this proceeding not later than 30 days from the date of service of this order. Petitions for reconsideration of this order shall be filed not later than 40 days from the date of service of this order.

Accordingly, it is ordered, That:

1. There be and hereby is instituted in Docket Number 19255, a proceeding to be known as the East Coast Points-Europe Service Investigation to determine whether the public convenience and necessity require new and improved service in foreign air transportation between Miami and London; and between Boston, Hartford, Philadelphia, Washington, and Baltimore, on the one hand, and points in Norway, Sweden, Denmark, Finland, the Netherlands, Belgium, Luxembourg, Switzerland, Austria, Yugoslavia, Greece, and Turkey, on the other hand;

2. Motions to consolidate applications consistent with the scope of this proceeding shall be filed not later than 30 days from the service date of this order;

3. Petitions for reconsideration of this order shall be filed not later than 40 days from the service date of this order;

4. This proceeding shall be set down for hearing with separate treatment of the Miami-London issues so that, if it becomes necessary, these issues can be severed for separate decision; and

5. A copy of this order shall be served on the cities of Boston, Hartford, Philadelphia, Washington, Baltimore, and Miami; Pan American, TWA, Seaboard, National, Northeast, and Braniff, who are hereby made parties to the proceeding.

[2] Order E–18301, May 4, 1962. Also at issue were the applications of Pan American, TWA, Seaboard, and certain cities for new or improved authority.

[3] See Attachment to Order E–23230. Certain improved authority for the incumbent carriers was awarded. Washington and Baltimore were added as coterminal points for Pan American; Washington-Baltimore was added as a coterminal for TWA; and Boston for Seaboard. On the other hand, we denied Pan American's application to serve Cleveland as a coterminal; and Dallas, Houston, and New Orleans were not named as coterminals. In the Reopened Transatlantic Route Renewal Case, decided Oct. 6, 1966, Los Angeles, Seattle, San Francisco, Portland, Chicago, Detroit, Washington-Baltimore, Philadelphia, New York, and Boston, were made a single group of coterminal points for Pan American with certain stopover privileges at New York (see Order E–24634, served Jan. 12, 1967).

[5] We are including Hartford because of its proximity to New York, which raises the possibility that some part of the traffic now originating at New York might find it convenient to enplane instead at Hartford, thus reducing pro tanto the congestion at New York's airports.

[6] We shall exclude the United Kingdom (other than Miami-London), France, Italy, the Federal Republic of Germany, Spain, Portugal, and Ireland. These are countries where two U.S. combination carriers now hold authority. Also, the following Eastern European countries shall not be in issue: Poland, Rumania, Czechoslovakia, Hungary, Bulgaria, Albania, the U.S.S.R., and the Eastern portion of Germany.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 67-13705; Filed, Nov. 21, 1967; 8:47 a.m.]

[Docket No. 17828; Order E-25992]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding North/Central Pacific Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 17th day of November 1967.

Agreement adopted by Joint Conference 3-1 of the International Air Transport Association relating to North/Central Pacific fares; Docket Number 17828; Agreement CAB 19887.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Joint Conference 3-1 of the International Air Transport Association (IATA), and adopted by mail vote. The agreement has been assigned the above-designated CAB Agreement number.

The agreement specifies fares to apply via the Pacific between United States points and points beyond Bangkok in Burma, Ceylon, Pakistan, and India. In general, the fares are the same as were heretofore applicable.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the following resolutions, incorporated in Agreement CAB 19887, to be adverse to the public interest or in violation of the Act:

JT31 (Mail 134) 056.
JT31 (Mail 134) 066.
JT31 (Mail 134) 088r.

Accordingly, it is ordered, That:

Agreement CAB 19887 be approved.

Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and nineteen copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 67-13706; Filed, Nov. 21, 1967; 8:47 a.m.]

[Docket Nos. 19115, 19117; Order E-25986]

COMBS-PICKENS

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority November 16, 1967.

By petitions filed on October 12 and 13, 1967, Montana Aircraft Co. doing business as Combs-Pickens requests the Board to establish a final service mail rate of 28.75 cents per aircraft mile for the transportation of mail by aircraft between Spokane, Wash., and Helena, Mont., and return, and between Wolf Point, Miles City, and Billings, Mont., and return.

Petitioner is currently engaged in business as an air taxi under Part 298 of the Board's economic regulations. Petitioner will utilize twin engine Beechcraft Baron aircraft in the proposed service, and states that the proposed rate will cover the fully allocated cost of the service. In its answer, filed October 25, 1967, the Post Office Department supported Combs-Pickens' petition, and stated it believed the proposed rate represents a fair and reasonable rate of compensation for the services which the petitioner will perform.

By Order E-25970, November 14, 1967, in these dockets, the Board determined to permit petitioner to provide the proposed air transportation of mail for the period terminating June 30, 1969. Since no mail rate is presently in effect for this carrier in these markets, it is necessary to fix and determine the fair and reasonable rate of compensation to be paid to Combs-Pickens by the Postmaster General for the air transportation of mail.

Under the circumstances, the Board finds it in the public interest to fix and determine the fair and reasonable rate of compensation to be paid to Combs-Pickens by the Postmaster General for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the petition and other matters officially noticed, the Board proposes to issue an order[1] to include the following findings and conclusions:

1. That the fair and reasonable final service mail rate to be paid to Combs-Pickens, pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith between Spokane, Wash., and Helena, Mont., and return, and between Wolf Point, Miles City, and Billings, Mont., and return, shall be 28.75 cents per aircraft mile;

2. The final service mail rate here fixed and determined is to be paid in its entirety by the Postmaster General.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302 and 14 CFR Part 385.14(f):

It is ordered, That:

1. All interested persons and particularly Combs-Pickens, the Postmaster General, Frontier Airlines, Inc., and Northwest Airlines, Inc., are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above, as the fair and reasonable rate of compensation to be paid to Combs-Pickens for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and if there is any objection to the rate or to the other findings and conclusions proposed herein, notice thereof shall be filed within ten days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after the date of service of this order;

3. If notice of objection is not filed within ten days after service of this order, or if notice is filed and if answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Combs-Pickens, the Postmaster General, Frontier Airlines, Inc., and Northwest Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 67-13707; Filed, Nov. 21, 1967; 8:47 a.m.]

[1] As this order to show cause does not constitute a final action and merely affords interested persons an opportunity to be heard on the matters herein proposed, it is not regarded as subject to the review provisions of Part 385 (14 CFR Part 385). The provisions of that part dealing with petitions for Board review will be applicable to any final action which may be taken by the staff in this matter under authority delegated in § 385.14(g).

[Docket No. 19176]

TRANSAMERICA CORP. AND TRANS INTERNATIONAL AIRLINES CORP.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on November 28, 1967, at

10 a.m., e.s.t., in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., November 16, 1967.

[SEAL] WALTER W. BRYAN,
Hearing Examiner.

[F.R. Doc. 67-13708; Filed, Nov. 21, 1967; 8:47 a.m.]

[Docket No. 9977; Order No. E-26000]

AIRLINES MUTUAL AID AGREEMENT

Order Instituting Investigation Regarding Renewal

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 17th day of November 1967.

Airlines Mutual Aid Agreement (Renewal), Docket 9977, Agreements CAB 12633A–A8.

By application filed on May 2, 1967, the air carrier parties to the Mutual Aid Agreement (Pact)[1] requested that the Board, without further proceedings, pursuant to section 412 of the Federal Aviation Act of 1958 as amended (the Act), renew its approval of the Pact for an indefinite period. By Order E–21044, July 10, 1964, the Pact was approved for a period of 3 years. On June 14, 1967, joint objections to the application were filed by five employee organizations[2] and separate objections were filed by Air Line Pilots Association, International (ALPA). Objections were filed by Allied Pilots Association (APA), representing American's pilots, on June 21, 1967. All of the objecting parties requested that the Board deny the application for renewal of the Board's approval of the Pact. Alternatively, all of these parties, except APA, requested that the matter be set down for public hearing, while APA requested that American's participation in the Pact be terminated. The air carriers filed a reply to the several objections on August 21, 1967.

In support of their objections the unions allege, in effect, that new questions of fact and policy are posed by the renewal application. The unions state that, in light of developments relating to air carrier-union relations since the matter last came before the Board, the Board should reexamine the Pact; that the future of the institution of collective bargaining in the air transportation industry is likely to be directly affected by the disposition made in this proceeding; and that the occurrence of the IAM five-carrier strike of 1966, alone justifies a complete reexamination of the Pact. In addition, APA contends that, as an independent union, it would be unduly disadvantaged in its dealings with American, since the carrier is a party to multicarrier bargaining arrangements which are fostered by the Pact.

In their joint response to the unions' objections, the carrier parties state that there are no new facts or changed circumstances since the Board's approval of the Pact in 1964, to show that the Pact has in any way operated in a manner inconsistent with the public interest. The carriers state, inter alia, that the unions' contentions are the same as previously presented and rejected by a majority of the Board, and that the Pact played no part in the 1966 IAM strike.

The Board has carefully examined the controverted allegations contained in the pleadings and has determined that the most appropriate action to follow is the institution of a formal investigation. The matters presented pose serious and complex factual and policy issues. On the present record it appears that various disputed questions of fact are present. It is also apparent from the applicants' request for approval of the Pact's renewal for an indefinite period that the principle of mutual aid is intended to become a long-term feature of labor-management relations in the industry, thus giving rise to important policy issues.

In these circumstances, the Board believes that it should have the benefit of a record developed through a full evidentiary hearing in order to resolve the issues presented by the carriers' application. The investigation will furnish a means for a complete reexamination of the issues previously considered by the Board in the light of such new matters as may have developed since 1964.

The seven Pact members will be made parties to the investigation, together with the objecting unions and any other organizations designated as collective bargaining representatives of these carriers which desire to intervene. Because of the importance of the issues and its desire to be fully informed as to the views of other Government agencies, the Board will invite such agencies to participate in the case.[3]

Accordingly, it is ordered:

1. That an investigation be and it hereby is instituted in Docket 9977, pursuant to the provisions of sections 204 (a), 412, and 1002(b) of the Act, to determine whether continued approval of the Pact is not adverse to the public interest and not in violation of the Act, and, what terms, conditions and limitations, if any, should be attached to such approval;

2. That the following persons be and they hereby are made parties to the investigation: American, Braniff, Eastern, Northwest, Pan American, TWA, and United: ALDA, ALPA, APA, BRC, FEIA, IAM, and TWU;

3. That each carrier party shall serve a copy of this order upon each employee organization with which the party bargains collectively as representative of its employees, other than the organizations named as parties by paragraph 2 hereof, and file a report of such service with the Board within 10 days of the date of this order; and

4. That the investigation instituted herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 67-13783; Filed, Nov. 21, 1967; 8:49 a.m.]

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[1] American Airlines, Inc. (American); Braniff Airways, Inc. (Braniff); Eastern Air Lines, Inc. (Eastern); Northwest Airlines, Inc. (Northwest); Pan American World Airways, Inc. (Pan American); Trans World Airlines, Inc. (TWA); and United Air Lines, Inc. (United).

[2] Air Line Dispatchers Association (ALDA); Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (BRC); Flight Engineers International Association (FEIA); International Association of Machinists and Aerospace Workers (IAM); and Transport Workers Union of America (TWU).

[3] The Board will send a copy of this order to the Commerce, Justice, and Labor Departments, the National Mediation Board, the National Labor Relations Board and the Department of Transportation.

FEDERAL COMMUNICATIONS COMMISSION

[FCC 67-1274]

UNLIMITED-TIME STANDARD BROADCAST STATIONS

Order Regarding Operation During Hours Before Local Sunrise

1. By report and order adopted June 28 and released July 13, 1967,[1] in the "presunrise" rule making proceeding (Docket 14419) the Commission adopted new rules (principally new § 73.99) concerning use before local sunrise of facilities licensed for daytime-only (local sunrise to local sunset) or limited-time use. The new rules apply to Class III (regional) daytime-only stations and unlimited-time stations operating differently day and night, and to certain daytime-only, limited-time, and unlimited time Class II stations. Briefly, such presunrise use of daytime facilities may take place only pursuant to specific Commission authorization (Presunrise Service Authority, or PSA); it is limited in time to 6 a.m. local standard time and after and, for Class II stations, to sunrise at the location of cochannel Class I station(s) to the east and after;[2] and as far as regional and Class I–B channels are concerned, it is limited to either 500 watts power or whatever lesser power level is necessary to protect foreign unlimited-time stations under applicable international agreements, and U.S. I–B stations located west of the Class II station under the conventional nighttime standards of our rules. The new rules became effective

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[1] 8 FCC 2d 698, 10 Pike & Fischer R.R. 2d 1580.

[2] This restriction of course does not apply during months when local sunrise is earlier than 6 a.m., since daytime facilities may be used as a matter of licensed right starting at local sunrise. This is not "presunrise operation".

October 29, 1967, replacing an earlier "permissive" presunrise rule, § 73.87, which permitted all Class III and some Class II stations to use full daytime facilities starting at 4 a.m., unless and until such operation was ordered terminated because of undue interference to a licensed unlimited-time operation.

2. A number of parties filed petitions for reconsideration of this decision, including Association on Broadcasting Standards, Inc. (ABS), a group of unlimited-time Class II and Class III stations. In a memorandum opinion and order adopted October 11, and released October 17, 1967 (FCC 67-1143, 11 R.R. 2d 1571), the Commission considered these petitions and in general denied them and affirmed the decision and new rules. A number of parties then appealed from the decision to various U.S. Courts of Appeals, ABS filing in the U.S. Court of Appeals for the District of Columbia and later having its appeal transferred to the U.S. Court of Appeals for the Second Circuit (New York City), where another appeal was pending.

3. On October 31, 1967 ABS petitioned the latter Court for a stay of the Commission's decision and the new rules, and on November 13, 1967, that Court granted a stay in part, the pertinent language of its order reading as follows:

> * * * that the Federal Communications Commission be and it hereby is directed to authorize by appropriate means the operation of full time Class II and Class III stations, during the pendency of the appeal herein, with daytime power and antenna as authorized in their respective licenses during presunrise hours, subject only to such limitations in power and hours of operation as may be necessary to conform to international requirements (including the requirement of a 6 a.m. sign-on time) and to court orders on the same subject matter. Such stay is conditioned on petitioner's filing its brief within the period fixed by the rules of this Court.

The hearing on the appeal was ordered expedited, and it is anticipated that decision will come in the fairly near future.

4. The Court's order in substance directs that pending the decision on the merits the Commission authorize "by appropriate means" full-time Class II and Class III stations to use their regular daytime facilities, from 6 a.m. on, subject to the protection requirements of pertinent international agreements. The Commission's construction of the order is that it means that presunrise operation under it shall take place only after and pursuant to authorization by us. Our review, before operation is permitted, is necessary in order to ascertain that foreign protection requirements are met. With respect to Canada, this means the provisions of the new "presunrise" agreement with that country (TIAS 6268, formalized June 12, 1967 and embodied in new § 73.99 and Figure 12 of § 73.190 of the rules); with respect to Mexico and other North American countries it means the provisions of the North American Regional Broadcasting Agreement (NARBA) and the United States-Mexican Agreement concerning protection.

5. In carrying out the Court's mandate, the following procedures will apply:

(a) A number of full-time Class II and Class III stations (approximately 200) have filed PSA requests for use of daytime facilities as contemplated by the June decision and new rules;[2] most of these have been granted (as filed or as modified) and will remain in effect until further authorization by us. The few which are still pending will be processed and go into effect in normal course. These of course are limited to 500 watts (where foreign considerations do not require a lower power level) and these stations may now seek greater power (if foreign considerations permit) and it will be granted on a temporary basis if an appropriate showing as to foreign cochannel stations is made. Such authority will of course apply only after 6 a.m. local standard time, and will be subject to the restrictions mentioned below as to Class II stations and Class III stations on 930 kc/s.

(b) Full-time Class II and Class III stations which have not applied for PSA's may apply for temporary authority to use their daytime modes of operation starting at 6 a.m. local standard time, with whatever power (up to their regularly licensed daytime power) is appropriate taking into account pertinent foreign considerations. A showing in the latter respect must be made. As to Class II stations and Class III stations on 930 kc/s, the authorization will be subject to the restrictions mentioned below.

(c) Presunrise authority issued as provided in this paragraph is not a PSA, and it will be subject to automatic termination 15 days after the U.S. Court of Appeals for the Second Circuit issues its decision in the case of "Association on Broadcasting Standards, Inc. v. FCC," except to the extent that continuance is required by that decision.

6. *930 kc/s.* WBEN, Inc., licensee of fulltime Station WBEN, Buffalo, N.Y., has also appealed our decision, in the same Court, on the grounds of interference which presunrise use of daytime facilities would cause to it. The Court in that case has ordered a stay of authorization of any presunrise operation which would cause that station additional interference under our conventional nighttime rules. The instant stay order in the ABS case states that authorizations by the Commission pursuant to it shall be subject to "court orders on the same subject matter". We assume this qualification includes the stay in the WBEN case. Therefore, fulltime stations on 930 kc/s must show that the operation sought would not increase nighttime interference to WBEN, as well as making the foreign showing generally required.

7. *Class II stations.* Former § 73.87 of the rules, which was broader in terms of permitting presunrise operation than the new rule, precluded presunrise use of daytime facilities by Class II stations in certain circumstances: (1) By any Class II station on a foreign I-A clear channel; (2) by other Class II stations unless they completely protected the 0.5 mv/m groundwave skywave service of cochannel Class I stations or: (i) Were located west of such stations, in which case they could begin at sunrise at the Class I station, or (ii) had an agreement with the Class I station.

8. It is our understanding that it was not the Court's intention to permit presunrise operation which could not have taken place under the former rule. Therefore, with respect to full-time stations in the above situations, the following restrictions will apply in addition to those outlined, in paragraph 5 (the pertinent facts must be shown in the application):

(a) Full-time stations on foreign I-A channels will not be permitted presunrise use of daytime facilities.[3]

(b) Other full-time Class II stations will be permitted to use daytime modes of operation before local sunrise only to the extent that: (1) They protect groundwave and skywave service of all cochannel Class I stations; or (2) with respect to Class I stations located to the east, such operation takes place only after sunrise at the Class I station.

(c) A number of full-time Class II stations on Clear channels are authorized different facilities (usually lesser power) during hours immediately after sunrise and before sunset ("critical hours") than the facilities licensed for regular daytime use during other daytime hours. Former § 73.87 provided that the provision of § 73.187, the "critical hours" rule, applied to presunrise operation. New § 73.99 is to the same effect, providing that the presunrise power of Class II stations shall be no more than "the authorized daytime or critical hours power". As mentioned, we believe the Court did not intend us to permit full-time stations to operate presunrise to a greater extent than they would have been permitted under former § 73.87 in the absence of complaint. Therefore, authority for Class II stations will be limited to the "critical hours" mode of operation (or whatever lesser power is required by foreign considerations), rather than the regular daytime mode where that is different (in many cases this result would also be required

[2] The new rules of course leave full-time Class II and Class III stations a choice; using their regular nighttime facilities during presunrise hours, or applying for PSA and using daytime facilities, subject to the time and power limitations mentioned. Apparently the majority have elected to do the former. Since the 500-watt limitation, as such, will not apply to full-time stations pending the Court's decision, such stations may now choose to apply for temporary authority with whatever power (up to regular daytime power) can be used consistent with foreign considerations. Such temporary operation is of course limited to 6 a.m. and after, as stated in the stay order and required by the Canadian agreement.

[3] In fact this qualification has very little effect. Presunrise use of daytime facilities by stations on Canadian I-A channels is precluded by the new Agreement, as is such operation on Mexican I-A channels by the United States-Mexican Agreement. Thus the only stations affected are a handful of full-time Class II stations on 1540 kc/s, a Bahamian I-A clear channel, which could not use daytime facilities before local sunrise under earlier 73.87.

by our understanding with Canada concerning "daytime-skywave" protection).

9. *Daytime-only and limited-time stations.* The Court's stay order does not refer to daytime-only or limited-time stations; as to them, § 73.99 and the PSA arrangements prescribed therein remain in effect.

10. *Necessity for specific authority.* As mentioned above, the Court's stay mandate directs us to authorize full-time Class II and Class III stations to use daytime modes of operation "by appropriate means", and such operation is specifically made subject to meeting foreign protection requirements. In our judgment, this language means that we must review all proposals, before authorizing such operation, to make sure that they meet foreign protection requirements. Therefore no presunrise use of daytime facilities will be permitted, by full-time stations or daytime stations, except subject to a PSA or temporary authority issued by the Commission. Such operation in the absence of such authority is a serious violation of our rules.

11. In view of the foregoing: *It is ordered*, That, notwithstanding the provisions of § 73.99 of the Commission's rules, unlimited-time Class II and Class III stations may apply for, and if a proper showing is made will receive, temporary presunrise operating authority under the procedures and subject to the qualifications outlined hereinabove.

Approved: November 16, 1967.

Released: November 16, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13724; Filed, Nov. 21, 1967; 8:49 a.m.]

[Docket No. 17817; FCC 67M-1943]

COSMOS CABLEVISION CORP.

Statement and Order After Prehearing Conference

In re petition by Cosmos Cablevision Corp., Darlington, S.C., Docket No. 17817, File No. CATV 100-182; for authority pursuant to § 74.1107 of the rules to serve and operate a CATV system in the Columbia, S.C. television market.

At yesterday's prehearing conference the following schedule was agreed to:

Rovan to furnish any economic studies, list of witnesses and area of their proposed testimony by January 18, 1968.

Receipt of notification of others for cross-examination by January 25, 1968.

Hearing February 1, 1968 (rescheduled from Dec. 13, 1967).

So ordered.

Issued: November 16, 1967.

Released: November 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13725; Filed, Nov. 21, 1967; 8:49 a.m.]

[1] Commissioners Bartley, Lee, and Johnson absent.

[Docket Nos. 17648, 17649; FCC 67M-1929]

EL CAMINO BROADCASTING CORP. AND SOUTH COAST BROADCASTING CO.

Order Continuing Hearing

In re applications of El Camino Broadcasting Corp., San Clemente, Calif., Docket No. 17648, File No. BPH-5566; Leon Hyzen, Charles W. Jobbins, and Leon F. Westendorf, doing business as South Coast Broadcasting Co., San Clemente, Calif., Docket No. 17649, File No. BPH-5756; for construction permits.

Pursuant to agreements reached at the further prehearing conference held on November 14, 1967: *It is ordered*, That the evidentiary hearing now scheduled for November 20, 1967 is continued to February 27, 1968, beginning at 10 a.m., in the offices of the Commission, Washington, D.C.

Issued: November 14, 1967.

Released: November 16, 1967.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13726; Filed, Nov. 21, 1967; 8:49 a.m.]

[Docket Nos. 17853, 17854]

TRIPLE C BROADCASTING CORP. AND COLLINS BROADCASTING CO.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Triple C Broadcasting Corp., Thomasville, Ga., Docket No. 17853, File No. BPH-5739, Requests: 107.1mc, No. 296; 1.55 kw(H), 1.55 kw (V); 389.57 feet; T. O. Collins and Robert P. Singletary, doing business as Collins Broadcasting Co., Thomasville, Ga., Docket No. 17854, File No. BPH-5840, Requests: 107.1mc, No. 296; 3 kw(H), 3 kw(V); 300 feet; for construction permits.

1. The Commission, by the Chief, Broadcast Bureau, under delegated authority considered the above captioned and described applications for construction permits.

2. These applications are mutually exclusive in that operation by the applicants as proposed would cause mutually destructive interference.

3. Each of the applicants is qualified to construct and operate as proposed. However, because of their mutual exclusivity the Commission is unable to make the statutory finding that a grant of the subject applications would serve the public interest, convenience, and necessity, and is of the opinion that they must be designated for hearing in a consolidated proceeding on the issues set forth below.

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine which of the proposals would better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications for construction permit should be granted.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: November 8, 1967.

Released: November 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-13727; Filed, Nov. 21, 1967; 8:49 a.m.]

FEDERAL MARITIME COMMISSION

PACIFIC FAR EAST LINE, INC., AND MITSUI O.S.K. LINES, LTD.

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Howard C. Adams, Vice President, Atlantic Territory, Pacific Far East Line, Inc., 918 16th Street NW., Washington, D.C. 20006.

Agreement No. 9669 between Pacific Far East Line, Inc. (PFEL), and Mitsui O.S.K. Lines, Ltd. (MOL), provides for the transportation of cargo on through bills of lading between ports of call of PFEL in the Ryukyus Islands and ports of call of MOL in the Great Lakes of the United States with transshipment in Japan under terms and conditions as set forth in the agreement.

Dated: November 17, 1967.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 67-13717; Filed, Nov. 21, 1967; 8:49 a.m.]

STATES STEAMSHIP CO. AND KNUTSEN LINE

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. A. L. Hotlen, States Steamship Co., 320 California Street, San Francisco, Calif. 94104.

Agreement 9675, between States Steamship Co. and Knutsen Line, establishes a through billing arrangement for the movement of Frozen Lobster Tails, Frozen Prawns, and Frozen Shrimp, in boxes, from ports in Western Australia to Honolulu, Hawaii, with transshipment at the port of Hong Kong in accordance with terms and conditions set forth in the agreement.

Dated: November 17, 1967.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 67-13718; Filed, Nov. 21, 1967; 8:49 a.m.]

FEDERAL RESERVE SYSTEM

CHARTER NEW YORK CORP.

Order Approving Application Under Bank Holding Company Act

In the matter of the application of Charter New York Corp., New York, N.Y., for approval of acquisition of all of the outstanding voting shares of Dutchess Bank & Trust Co., Poughkeepsie, N.Y.

There has come before the Board of Governors pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.4(a)(3) of Federal Reserve Regulation Y (12 CFR 222.4(a)(3)), an application by Charter New York Corp., New York, N.Y., for the Board's prior approval of the acquisition of all of the outstanding voting shares of Dutchess Bank & Trust Company, Poughkeepsie, N.Y.

As required by section 3(b) of the Act, the Board notified the New York State Superintendent of Banks of the application and requested his views and recommendation. The New York State Banking Board advised the Board of its action, consistent with a recommendation made to it by the Superintendent, approving an application, filed pursuant to the New York Banking Law, with respect to the same transaction.

Notice of receipt of the application was published in the FEDERAL REGISTER on May 19, 1967 (32 F.R. 7480), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that said application be and hereby is approved, provided that the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York pursuant to delegated authority.

Dated at Washington, D.C., this 15th day of November 1967.

By order of the Board of Governors.[2]

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 67-13678; Filed, Nov. 21, 1967; 8:45 a.m.]

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of New York. Dissenting Statement of Governor Robertson also filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Martin, and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Voting against this action: Governor Robertson.

CHARTER NEW YORK CORP.

Order Approving Application Under Bank Holding Company Act

In the matter of the application of Charter New York Corp., New York, N.Y., for approval of acquisition of all of the outstanding voting shares of Endicott Trust Co., Endicott, N.Y.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.4(a)(3) of Federal Reserve Regulation Y (12 CFR 222.4(a)(3)), an application by Charter New York Corp., New York, N.Y., for the Board's prior approval of the acquisition of all of the outstanding voting shares of Endicott Trust Co., Endicott, N.Y.

As required by section 3(b) of the Act, the Board notified the New York State Superintendent of Banks of the application and requested his views and recommendation. The New York State Banking Board advised the Board of its action, consistent with a recommendation made to it by the Superintendent, approving an application, filed pursuant to the New York Banking Law, with respect to the same transaction.

Notice of receipt of the application was published in the FEDERAL REGISTER on May 2, 1967 (32 F.R. 6749), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that said application be and hereby is approved, provided that the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York pursuant to delegated authority.

Dated at Washington, D.C., this 15th day of November 1967.

By order of the Board of Governors.[2]

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 67-13679 Filed, Nov. 21, 1967; 8:45 a.m.]

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of New York. Dissenting Statement of Governor Robertson also filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Martin, and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Voting against this action: Governor Robertson.

FRANKLIN COUNTY TRUST CO.

Order Approving Merger of Banks

In the matter of the application of Franklin County Trust Co. for approval of merger with The Orange National Bank.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by Franklin County Trust Co., Greenfield, Mass., a State member bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and The Orange National Bank, Orange, Mass., under the charter and title of Franklin County Trust Co. As an incident to the merger, the sole office of The Orange National Bank would become a branch of the resulting bank. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the light of the factors set forth in said Act, including reports furnished by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Attorney General on the competitive factors involved in the proposed merger:

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that said application be and hereby is approved, provided that said merger shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order.

Dated at Washington, D.C., this 15th day of November 1967.

By order of the Board of Governors.[2]

[SEAL] MERRITT SHERMAN, *Secretary.*

[F.R. Doc. 67-13728; Filed, Nov. 21, 1967; 8:49 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[812-2174]

AMERICAN REPUBLIC ASSURANCE CO. SEPARATE ACCOUNT B AND AMERICAN REPUBLIC ASSURANCE CO.

Notice of Application for Exemption

NOVEMBER 16, 1967.

Notice is hereby given that American Republic Assurance Co. ("Assurance Company"), 6th and Keosauqua Way, Des Moines, Iowa, and American Republic Assurance Co. Separate Account B ("Separate Account") (herein collectively called "Applicants") have filed an application pursuant to section 6(c) of the Investment Company Act of 1940, 15 U.S.C. section 80a-1 et seq. ("Act") for an order exempting Applicants from the provisions of sections 14(a), 15(a) 16(a), 17(f), 22(e), 27(a)(4), 27(c)(1), 27(c)(2), and 32(a) of the Act and Rule 17f-2 thereunder. Separate Account is an open-end diversifiec management investment company registered under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Assurance Company established Separate Account in order (1) to offer contracts designed for annuity purchase plans adopted by public school systems and certain tax-exempt organizations which contracts qualify as tax-deferred annuities under section 403(b) of the Internal Revenue Code of 1954, as amended ("Code") and (2) to offer contracts which are to be issued with respect to plans initially qualifying under section 401 of the Code.

Section 14(a)(1) provides, in pertinent part, that no registered investment company shall make a public offering of securities of which such company is the issuer, unless such company has a net worth of at least $100,000.

Applicants state that the contracts which will be offered are tax deferred variable annuity contracts which are to be issued with respect to plans initially qualifying under section 401 of the Code and which initially meet the requirements of section 403(b) of the Code. Applicants declare that since Separate Account will only hold assets of tax deferred contracts, it is not feasible to raise the minimum capital requirement through a nonpublic offering because, among other reasons, the limitations under the Code on tax deferred contributions on behalf of a single participant make it unlikely that $100,000 could be raised from, in any instance, fewer than 40 persons which would involve several hundred offers.

Applicants further state that it is not feasible to raise the minimum capital requirement through the sale of nontax deferred contracts since to combine in a single separate account assets pertaining to tax deferred contracts and assets pertaining to nontax deferred contracts could result in the imposition of tax liabilities which might not otherwise be incurred or in the misallocation of tax benefits.

Finally, Applicants state that under Iowa insurance law Separate Account is an integral part of Assurance Company and under said law Separate Account may not be abandoned by Assurance Company but must be continued until the obligations under the contracts are discharged.

Sections 15(a), 16(a), and 32(a), in substance, require shareholder approval of the investment advisory agreement, the election of directors by shareholders, and shareholder ratification of the selection of an independent public accountant, respectively. Since there will be no contract owners, hence no holders of voting securities, until after the registration statement under the Securities Act of 1933 becomes effective, the requirements of the aforesaid sections cannot be complied with. Applicants represent, however, that the first meeting of contract owners will take place on the first Tuesday of March, 1968. Applicants state that by that time it is expected that some variable annuity contracts will have been sold so that the participants therein can then vote on such matters. The Applicants request a temporary exemption from the requirements of sections 15(a), 16(a), and 32(a) to allow Separate Account to operate until the first annual meeting of contract owners, at which time the requirements of those sections can be met.

Section 17(f)(3) provides, in pertinent part, that a registered management investment company may maintain its securities and investments in its own custody in accordance with such rules, regulations and orders as may be adopted by the Commission in the interests of investors. Rule 17f-2 under the Act requires, among other things, that such assets be placed in a bank subject to the other requirements of the rule. One of such other requirements limits the persons who shall have access to such assets to only certain specified individuals. Applicants request an exemption from the provisions of section 17(f)(3) and Rule 17f-2 to the extent necessary to permit not more than five officers or responsible employees of Assurance Company as well as duly authorized representatives of the Insurance Commissioner of Iowa to have access to the assets of Separate Account. Assurance Company is subject to supervision and inspection by the Insurance Commissioner of Iowa.

Sections 22(e) and 27(c)(1) provide, in pertinent part, respectively that (1) a registered investment company may not suspend the right of redemption or postpone the date of payment upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security for redemption and (2) a registered investment company issuing periodic payment plan certificates may not sell such certificates unless such certificates are redeemable securities. Applicants state that prior to their maturity dates the contracts are redeemable and satisfy the redemption provisions of the Act. However, on their respective maturity dates, the then value of the contracts are determined and applied to provide for lifetime annuity payments of either fixed or variable amounts. Applicants state that because the amount of annuity payments under the variable option are calculated actuarially, based upon the life expectancies of the purchasers of the contracts, if a purchaser were permitted to redeem his contract after the maturity date, it would upset the actuarial computations made with respect to the remaining purchasers. Applicants request exemption from sections 22(e) and

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551 or to the Federal Reserve Bank of Boston.

[2] Voting for this action: Chairman Martin, and Governors Robertson, Mitchell, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Daane.

27(c)(1) to the extent that once a purchaser begins to receive annuity payments he cannot redeem the value credited to his contract. Such prohibitions shall only apply after annuity payments to the purchaser commence.

Section 27(a)(4) provides, in pertinent part, that the first payment on a periodic payment plan certificate be not less than $20. In order to minimize the administrative and accounting burdens involved, Applicants request an exemption to permit the first payment to be in an amount of not less than $10 in the case of its group contracts issued with respect to plans initially qualifying under section 401 of the Code.

Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a bank trustee or custodian and held under an indenture, or agreement containing, in substance, the provisions required by sections 26(a) (2) and (3) for a unit investment trust. Section 26(a)(2) requires that the trustee or custodian segregate and hold in trust all securities and cash of the trust and places certain restrictions on charges which may be made against the trust income and corpus and excludes from expenses which the trustee or custodian may charge against the trust any payments to the depositor or principal underwriter, other than a fee not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services delegated to them by the trustee or custodian. Section 26(a)(3) governs the circumstances under which the trustee or custodian may resign.

Applicants state that Assurance Company functions as a regulated insurance company and is subject to extensive and detailed supervision and inspection by the Insurance Commissioner of Iowa in all of its dealings with the contract purchasers. Assurance Company states that such control provides ample assurance against misfeasance and adequately protects the interest of the contract purchasers. Accordingly, Applicants state that such authority and jurisdiction affords the essential protection which the trusteeship or custodianship under section 26(a)(2) is designed to provide. Moreover, in addition to the supervision and inspection by the Insurance Commissioner, Assurance Company states that it will undertake binding commitments to contract owners which it may not legally abrogate. Such supervision, inspection and undertakings will effectively prevent orphanage of Separate Account by Assurance Company which the trusteeship under section 27(c)(2) is designed to protect against.

Applicants have consented to the requested exemption being subject to the condition that the charges under the contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, and that the Commission shall reserve jurisdiction for such purpose.

Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 4, 1967, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally, or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 67-13682; Filed, Nov. 21, 1967; 8:46 a.m.]

[812-2218]

GLEN ALDEN CORP.

Notice of Filing of Application for Order Exempting Transaction Between Affiliated Persons

NOVEMBER 16, 1967.

Notice is hereby given that Glen Alden Corp. ("applicant"), 1740 Broadway, New York, N.Y. 10005, a Delaware corporation, has filed an application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting from the provisions of section 17(a) of the Act a proposed transaction whereby applicant will purchase 399,800 shares of common stock of Stanley Warner Corp. ("Warner") from The Puritan Fund, Inc. ("Puritan") and 105,700 shares of Warner common stock from The Fidelity Trend Fund, Inc. ("Fidelity"), representing 11.8 percent of the total number of shares of Warner outstanding. Puritan and Fidelity are open-end investment companies registered under the Act. The proposed purchase will be at a price of $51 per share. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

For the purposes of the application, applicant has assumed that it is an affiliated person of an affiliated person of both Puritan and Fidelity under section 2(a)(3). Applicant owns approximately 17.5 percent and Puritan owns 9.5 percent of the voting securities of Warner. Fidelity has identical directors, officers and investment advisers to that of Puritan although the stockholders of the two investment companies are not identical. Two directors of applicant are directors of Warner.

Applicant and Warner have agreed, subject to requisite approvals of the stockholders of each corporation, to a merger of Warner into applicant pursuant to a Plan and Agreement of Merger dated as of August 18, 1967. Under the terms of the proposed merger each share of Warner common stock will be converted into not less than 0.50 and not more than 0.55 shares of a new $3 Cumulative Convertible Preference Stock of applicant, the exact ratio to depend upon the average market price of applicant's common stock for the 5 business days immediately preceding the meeting of stockholders of Warner and applicant. Adoption of the Agreement of Merger will require the affirmative vote of the holders of at least two-thirds of the shares of Warner stock outstanding.

It is stated in the application that the purchase price for the proposed sale of Warner Common Stock was negotiated in arms-length bargaining between applicant, on the one hand, and Puritan and Fidelity, on the other. During October 1967, the market price of the Warner stock on the New York Stock Exchange ranged between 50⅝ and 45¾. The purchase price will be payable in cash against delivery of the stock. No brokers are involved in the transaction.

It is further stated in the application that Puritan and Fidelity have advised applicant that the proposed transaction is consistent with the policies of both of them as recited in their registration statements and reports filed under the Act, and applicant represents that the terms of the proposed transaction, including the consideration to be paid to Puritan and Fidelity, are reasonable and fair, and do not involve overreaching on the part of any person concerned and that the transaction is consistent with the general purposes of the Act.

Section 17(a), as here pertinent, makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such a person, to buy

from such company any security or property unless the Commission upon application grants an exemption from such prohibition, after finding that the terms of the proposed transaction are reasonable and fair and do not involve overreaching and that the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act.

Notice is further given that any interested person may, not later than December 8, 1967 at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in the case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 67-13683; Filed, Nov. 21, 1967; 8:46 a.m.]

NORTH AMERICAN RESEARCH & DEVELOPMENT CORP.

Order Suspending Trading

NOVEMBER 16, 1967.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of North American Research & Development Corp., 1935 South Main Street, Salt Lake City, Utah, and all other securities of North American Research & Development Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period November 17, 1967, through November 26, 1967, both dates inclusive.

By the Commission.

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

[F.R. Doc. 67-13684; Filed, Nov. 21, 1967; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 473]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

NOVEMBER 17, 1967.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1(c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1 (d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 2202 (Deviation No. 99) (Cancels Deviation No. 87), ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, Ohio 44309, filed November 7, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Nashville, Tenn., over Interstate Highway 65 to junction Tennessee Highway 7, thence over Tennessee Highway 7 to the Tennessee-Alabama State line, thence over Alabama Highway 53 to Huntsville, Ala., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Nashville, Tenn., over U.S. Highway 31 to junction U.S. Highway 72, thence over U.S. Highway 72 to Huntsville, Ala., and return over the same route.

No. MC 22214 (Deviation No. 7), ACCELERATED TRANSPORT-PONY EXPRESS, INC., Fifth and Vine Streets, Post Office Box 110, Sunbury, Pa. 17801, filed November 9, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction U.S. Highway 15 and the Pennsylvania Turnpike (Interchange No. 17), over the Pennsylvania Turnpike to junction Interstate Highway 70 at or near New Stanton, Pa., thence over Interstate Highway 70 to Wheeling, W. Va., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Harrisburg, Pa., over U.S. Highway 15 to Gettysburg, Pa., thence over Pennsylvania Highway 116 to Zora, Pa., thence over Pennsylvania Highway 16 to Waynesboro, Pa., (2) from Waynesboro, Pa., over Pennsylvania Highway 316 to the Pennsylvania-Maryland State line, thence over Maryland Highway 60 to Hagerstown, Md., (3) from Hagerstown, Md., over U.S. Highway 40 to the Potomac River, thence across the Potomac River to junction U.S. Highway 522, thence over U.S. Highway 522 to Berkeley Springs, W. Va., and (4) from Hancock, Md., over U.S. Highway 40 to Wheeling, W. Va., and return over the same routes.

No. MC 29647 (Deviation No. 3), CHARLTON BROS. TRANSPORTATION CO., INC., Post Office Box 2097, Hagerstown, Md. 21740, filed November 7, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Hancock, Md., over Interstate Highway 70 to the Maryland-Pennsylvania State line, (2) from Breezewood, Pa., over Interstate Highway 70 to junction with the Pennsylvania Turnpike, thence over the Pennsylvania Turnpike to junction U.S. Highway 119, thence over U.S. Highway 119 to Greensburg, Pa., and (3) from Baltimore, Md., over Interstate Highway 83 to Harrisburg, Pa., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Hancock, Md., over U.S. Highway 522 to the Maryland-Pennsylvania State line, thence over Interstate Highway 70 to Breezewood, Pa., (2) from Hancock, Md., over the above-described route to Breezewood, Pa., thence over U.S. Highway 30 to Everett, Pa., (3) from Everett, Pa., over U.S. Highway 30 to Bedford, Pa., (4) from Bedford, Pa., over U.S. Highway 30 to Greensburg, Pa., (5) from junction U.S. Highways 40 and 219 over U.S. Highway 219 to junction U.S. Highway 30, thence over U.S. Highway 30 to Greensburg, Pa., thence over Pennsylvania Highway 130 to Jeannette, Pa., and (6) from Baltimore, Md., over U.S. Highway 140 to junction Maryland Highway 97, thence over Maryland Highway 97 to the Maryland-Pennsylvania State line, thence over Pennsylvania Highway 16 to Greencastle, Pa., thence over U.S. Highway 11 to Harrisburg, Pa. (also from Baltimore over U.S. Highway 140 to Gettysburg, Pa., thence over U.S.

Highway 15 to Harrisburg, Pa.), and return over the same routes.

No. MC 66562 (Deviation No. 19), RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York, N.Y. 10017, filed November 7, 1967. Carrier's representative: William H. Marx, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities* moving in express service, over a deviation route as follows: Between Roanoke, Va., and Bristol, Va., over Interstate Highway 81, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Roanoke, Va., over U.S. Highway 460 to junction Alternate U.S. Highway 460, thence over Alternate U.S. Highway 460 to Salem, Va., thence over U.S. Highway 11 to Bristol, Va., and return over the same route.

No. MC 67646 (Sub-No. 2) (Deviation No. 16), HALL'S MOTOR TRANSIT COMPANY, Fifth and Vine Streets, Sunbury, Pa. 17801 filed November 8, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Baltimore, Md., over Interstate Highway 70 to junction with the Pennsylvania Turnpike at or near Breezewood, Pa., thence over the Pennsylvania Turnpike, to junction with the Ohio Turnpike, thence over the Ohio Turnpike to junction Interstate Highway 71 at or near Ohio Interchange No. 10, thence over Interstate Highway 71 to Cleveland, Ohio, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Baltimore, Md., over U.S. Highway 111 to Harrisburg, Pa., (2) from Harrisburg, Pa., over U.S. Highways 11 and 15 to Amity Hall, Pa., (3) from Amity Hall, Pa., over U.S. Highway 22 to junction U.S. Highway 322, thence over U.S. Highway 322 to Old Fort, Pa., (4) from Duncannon, Pa., over U.S. Highway 11 to junction U.S. Highway 22, thence over U.S. Highway 22 to Lewistown, Pa., (5) from Old Fort, Pa., over Pennsylvania Highway 53 to junction U.S. Highway 322, thence over U.S. Highway 322 to Franklin, Pa., and (6) from Franklin, Pa., over U.S. Highway 62 to Sandy Lake, Pa., thence over Pennsylvania Highway 358 to the Pennsylvania-Ohio State line, thence over Ohio Highway 88 to Parkman, Ohio, thence over U.S. Highway 422 to Chagrin Falls, Ohio, thence over unnumbered highway to Cleveland, Ohio, and return over the same routes.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 410) (Cancels Deviation No. 216 and No. 243) (Correction), GREYHOUND LINES, INC. (Western Division), Market and Fremont Streets, San Francisco, Calif. 94106, filed October 27, 1967, and published in the FEDERAL REGISTER November 8, 1967, should be corrected to No. MC-1515 (Deviation No. 416) (Cancels Deviation No. 216 and No. 243). The purpose of this correction is to show the correct deviation number assigned as Deviation No. 416, erroneously shown as Deviation No. 410 in the issue of the FEDERAL REGISTER of November 8, 1967.

No. MC 1515 (Deviation No. 414) (Cancels Deviation No. 383), GREYHOUND LINES, INC. (Southern Division), 219 East Short Street, Lexington, Ky. 40507, filed November 6, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) From junction Interstate Highway 24 and U.S. Highway 41 at Monteagle, Tenn., over Interstate Highway 24 to junction U.S. Highway 41 northwest of Manchester, Tenn., with the following access route: From junction Interstate Highway 24 and Tennessee Highway 50 over Tennessee Highway 50 to Pelham, Tenn., (2) from Haletown, Tenn., over Tennessee Highway 134 to junction Interstate Highway 24, thence over Interstate Highway 24 to junction U.S. Highway 41 at the foot of Monteagle Mountain, and (3) from Chattanooga, Tenn., over Interstate Highway 24 for a distance of 6 miles to junction of Interstate Highway 24 and U.S. Highways 11 and 41, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Murfreesboro, Tenn., over U.S. Highway 41 to Chattanooga, Tenn., thence over U.S. Highway 11 via Attalla and Springville, Ala., to Birmingham, Ala. (also from Attalla over Alternate U.S. Highway 11 to Springville), and return over the same routes.

No. MC 1515 (Deviation No. 415) (Cancels Deviation No. 298), GREYHOUND LINES, INC. (Southern Division), 219 East Short Street, Lexington, Ky. 40507, filed November 6, 1967. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, over a deviation route as follows: From Nashville, Tenn., over Interstate Highway 40 to junction U.S. Highway 70 (1 mile east of Crab Orchard, Tenn.), with the following access route: From junction Interstate Highway 40 and U.S. Highway 127 over U.S. Highway 127 to Crossville, Tenn., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Nashville, Tenn., over U.S. Highway 41 to Murfreesboro, Tenn., thence over U.S. Highway 70S to Crossville, Tenn., thence over U.S. Highway 70 to Knoxville, Tenn., and return over the same route.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-13700; Filed, Nov. 21, 1967; 8:47 a.m.]

[Notice 1125]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

NOVEMBER 17, 1967.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the aplications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 77129 (Sub-No. 6), filed November 7, 1967. Applicant: RAYMOND H. PUFFER, INC., Vernon Road, Brattleboro, Vt. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in tank vehicles, from Springfield and Holyoke, Mass., to points in Windsor County, Vt., and points in Cheshire, Sullivan, Hillsborough, and Grafton Counties, N.H.

HEARING: December 8, 1967, in Room 2308, John F. Kennedy Federal Building, Government Center, Boston, Mass., before Joint Board No. 189, or if the Joint Board waives its right to participate, before Examiner Francis A. Welch.

No. MC 3700 (Sub-No. 52) (Republication), filed July 13, 1966, published FEDERAL REGISTER issue of August 18, 1966, and republished this issue. Applicant: MANHATTAN TRANSIT COMPANY, a corporation, Route 46, East Paterson, N.J. 07407. Applicant's representative: Robert E. Goldstein, 8 West 40th Street, New York, N.Y. 10018. In the above-entitled proceeding, the examiner recommended the granting to applicant a certificate of public convenience and necessity, authorizing operating in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of passengers and their baggage, in the same vehicle with passengers, in charter operations, in sightseeing or pleasure tours, from Seattle, Wash., and San Francisco, Calif., to New York, N.Y., restricted to the transportation of passengers and their baggage, who have had an immediately prior movement by air from New York, N.Y. A Decision and Order of the Commission, Review Board Number 2, dated October 31, 1967, and served November 8, 1967, as modified, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular route, of

passengers and their baggage, in the same vehicle with passengers, in charter operations, in sightseeing or pleasure tours, from Seattle, Wash., and San Francisco, Calif., to New York, N.Y., restricted to the transportation of passengers and their baggage, who as members of a charter group, have had an immediately prior movement by air from New York, N.Y.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 25798 (Sub-No. 151) (Republication), filed June 19, 1967, published FEDERAL REGISTER issue of July 7, 1967, and republished this issue. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, Post Office Box 1186, Auburndale, Fla. 33823. Applicant's representative: Tony G. Russell (same address as applicant). By application filed June 19, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen foodstuffs, unfit for human consumption (except in bulk, in tank vehicles), from and to the points indicated below. An order of the Commission, Operating Rights Board, dated October 31, 1967, and served November 9, 1967, as amended, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *frozen carnivorous animal feed*, from points in Alabama, Georgia, Mississippi, North Carolina, and South Carolina, to Golder Meadow and New Orleans, La., restricted to the transportation of traffic originating at said origin points; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 95540 (Sub-No. 702) (Republication), filed June 21, 1967, published FEDERAL REGISTER issue of July 7, 1967, and republished this issue. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, Fla. 33802. Applicant's representative: Bill R. Davis, Suite 1600, First Federal Building, Atlanta, Ga. 30303. By application filed June 21, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle over irregular routes, of frozen carnivorous animal foodstuffs, unfit for human consumption (except in bulk in tank vehicles) from and to the points substantially as indicated below. By order of the Commission, Operating Rights Board, dated October 31, 1967 and served November 9, 1967, as amended, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *frozen carnivorous animal feed*, from points in Alabama, Georgia, Mississippi, North Carolina, and South Carolina, to Golden Meadow and New Orleans, La., restricted to the transportation of traffic originating at the said origin points; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 103993 (Sub-No. 284) (Republication), filed May 22, 1967, published FEDERAL REGISTER issue of June 8, 1967, and republished this issue. Applicant: MORGAN DRIVE–AWAY INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Robert G. Tessar (same address as applicant). By application filed May 22, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) Trailers, designed to be drawn by passenger vehicles, initial movements, (a) from Wagoner County, Okla., to points in the United States (except Alaska and Hawaii), and (b) from Creek County, Okla., to points in Texas, Missouri, Kansas, Arkansas, Louisiana, Colorado, Wyoming, Arizona, and New Mexico; and (2) vacation campers in initial movements, from Wagoner County, Okla., to points in the United States (except Alaska and Hawaii). An order of the Commission, Operating Rights Board, dated October 31, 1967, and served November 9, 1967, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) *trailers*, designed to be drawn by passenger vehicles, in initial movements, (a) from points in Wagoner County, Okla., to points in the United States (except Alaska and Hawaii), and (b) from points in Creek County, Okla., to points in Texas, Missouri, Kansas, Arkansas, Louisiana, Colorado, Wyoming, Arizona, and New Mexico, and (2) *campers*, designed for installation on pickup trucks, from points in Wagoner County, Okla., to points in the United States (except Alaska and Hawaii); that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 118292 (Sub No. 15) (Republication), filed May 19, 1966, published FEDERAL REGISTER issue of June 23, 1966, and republished this issue. Applicant: BALLANTINE PRODUCE, INC., Alma, Ark. Applicant's representative: Lester M. Bridgeman, Woodward Building, Washington, D.C. 20005. In the above-entitled proceeding, the examiner recommended the granting to applicant a certificate of public convenience and necessity, authorizing operation in interstate of foreign commerce, as a common carrier by motor vehicle, over irregular routes, of frozen cooked and boned poultry meat; frozen cooked chicken rolls; frozen cooked and breaded poultry products; frozen prefried poultry products; frozen rendered chicken fat; and frozen chicken broth; in mixed loads with frozen poultry or ice-packed poultry, from the plantsites and storage facilities of OK Processors, Inc. (OK), at Fort Smith, Ark., and points in the commercial zone of Fort Smith, to points in the States specified in the amended application except Idaho, Iowa, Montana, New Mexico, Utah, and Wyoming. A report of the Commission, Division 1, decided October 30, 1967, and served November 9, 1967, as amended, finds that the present and future public convenience and necessity

require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (1) *frozen or ice-packed poultry*, and (2) *frozen poultry products*, in mixed loads with *frozen or ice-packed poultry*, originating at the plantsites and storage facilities of OK Processors, Inc., located at or near Fort Smith, Ark., and points in the Fort Smith, Ark., commercial zone, to points in Arizona, California, Colorado, Illinois, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, and Wisconsin; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that a certificate authorizing such operation should be granted, subject to the conditions (1) that applicant's certificated operations shall be conducted separately from its other business activities, and (2) that separate accounts and records for each activity shall be maintained. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 119880 (Sub-No. 21) (republication), filed April 18, 1967, published FEDERAL REGISTER issue of May 4, 1967, and republished this issue. Applicant: DRUM TRANSPORT, INC., Post Office Box 2056, 616 Chicago Street, East Peoria, Ill. Applicant's representative: Donald L. Stern, 630 City National Bank Building, Omaha, Nebr. By application filed April 18, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of alcohol and alcoholic liquors, in bulk, in tank vehicles, (1) from ports of entry into the United States located in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, to Peoria and Pekin, Ill., San Francisco and Union City, Calif., and ports of entry on the international boundary line between the United States and Canada located in Michigan; (2) from Louisville and Lawrenceburg, Ky., and Muscatine, Iowa, to Seattle, Wash., and San Francisco, Calif.; and (3) from Atchison, Kans., to Seattle, Wash.

An order of the Commission, Operating Rights Board, dated October 31, 1967, and served November 9, 1967, as amended, finds that the present and future public convenience and necessity require operation by applicant, as a common carrier by motor vehicle, over irregular routes, of *alcoholic liquors*, in bulk, in tank vehicles, (1) in foreign commerce only, from points in New York, New Jersey, Pennsylvania, and Maryland, to Peoria, Ill., San Francisco, Calif., and Port Huron and Detroit, Mich.; (2) in foreign commerce only, from points in New York, New Jersey, Pennsylvania, Maryland, Virginia, and Delaware, to Pekin, Ill., and Union City, Calif.; (3) in interstate or foreign commerce, from Lawrenceburg, Ky., to Seattle, Wash., and San Francisco, Calif.; and (4) in interstate or foreign commerce, from Atchison, Kans., to Seattle, Wash.; that applicant is fit, willing and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127806 (Sub-No. 5) (Republication), filed July 20, 1967 published FEDERAL REGISTER issue of August 3, 1967, and republished this issue. Applicant: BEER TRANSPORT, INC., 130 Steamboat Road, Great Neck, N.Y. Applicant's representative: Edward F. Bowes, 1060 Broad Street, Newark, N.J. 07102. By application filed July 20, 1967, applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of (1) Malt beverages (other than in bulk in tank vehicles) and advertising materials, between Brooklyn, N.Y., and Orange, N.J., plantsites of Rheingold Breweries, Inc., on the one hand, and, on the other, the plantsite of Jacob Ruppert, Inc., at New Bedford, Mass. (2) hops in bales, yeast in barrels, and brewing supplies, including brewing chemicals in fiber barrels or metal drums and ditamatious earth in bags, from Brooklyn, N.Y., and Orange, N.J., to New Bedford, Mass., under contract with Rheingold Breweries, Inc., in (1) and (2) above; and (3) malt beverages (other than in bulk in tank vehicles), and advertising materials from the plantsite of Jacob Ruppert Brewery, Inc., in New Bedford, Mass., to Weathersfield, Willimantic, and Fairfield, Conn., under contract with C. Carbone and Co., Inc. An order of the Commission, Operating Rights Board dated October 31, 1967, and served November 9, 1967, as amended, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of (1) *malt beverages*, in containers, and *related advertising materials*, between Brooklyn, N.Y., and Orange, N.J., and the plantsites of Rheingold Breweries, Inc., on the one hand, and, on the other, the plantsite of Jacob Ruppert, Inc., located at or near New Bedford, Mass.

(2) *Brewery materials, and supplies* (except in bulk), from Brooklyn, N.Y., and Orange, N.J., to New Bedford, Mass., under a continuing contract with Rheingold Breweries, Inc., in (1) and (2) above; (3) *malt beverages*, in containers, and *related advertising materials*, from the plantsite of Jacob Rupert Brewery, Inc., located at or near New Bedford, Mass., to Weathersfield, Willimantic, and Fairfield, Conn., under a continuing contract with Ramapo Valley Distributors, Inc., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described on the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128912 (Republication), filed March 1, 1967, published FEDERAL REGISTER issue of May 25, 1967, and republished this issue. Applicant: BERNICE DRESBACH, doing business as DRESBACH TRUCKING COMPANY, Route No. 2, Higby Road, Chillicothe, Ohio 45601. Applicant's representative: David M. Phillips, Room 202 Citizens National Bank, Chillicothe, Ohio. By application filed March 1, 1967, as amended, applicant seeks a certificate of public convenience and necessity authorizing operation in interstate or foreign commerce as a common carrier by motor vehicle, of aggregates, loose, dry, or pliable, in bulk, in dump vehicles, from points in Ross County, Ohio, to points in Michigan, West Virginia, Indiana, and Kentucky, except traffic moving in foreign commerce to points in Canada. The application was referred to an examiner for hearing and recommendation of an appropriate order thereon. Hearing was held on September 13, 1967, at Columbus, Ohio. A Report and Order of the Commission, Division 1, dated October 31, 1967, as amended, served November 7, 1967, finds that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of silica sand and silica aggregates, in bulk, in dump vehicles from points in Ross County, Ohio, to points in Michigan, West Virginia, Indiana, and Kentucky, restricted

against the transportation of traffic moving in foreign commerce to points in Canada; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 129418 (Sub-No. 1) (Republication), filed August 1, 1967, published FEDERAL REGISTER issue of August 23, 1967, under State Docket No. MC 20340, and republished this issue. Applicant: M & V EXPRESS, INC., 719 West 23d Place, Tulsa, Okla. Applicant, in accordance with the requirements of section 206(a)(6) of the Interstate Commerce Act, as amended, and the Commission's rules and regulations promulgated thereunder, has made timely application for a certificate of registration as evidence of the right to conduct operations, in interstate or foreign commerce, within limits which do not exceed the scope of the intrastate operations for which applicant holds a State certificate as a common carrier by motor vehicle, solely within a single State. An order of the Commission, Operating Rights Board dated November 13, 1967, and served November 16, 1967, finds that a certificate of registration shall concurrently be issued to applicant, unless otherwise ordered, as evidence of a right to engage in operations in interstate or foreign commerce, as a common carrier by motor vehicle, transporting: *General Commodities*, (1) from Tulsa, Okla., to Vinita, Okla., over U.S. Highway 66, serving no intermediate points; thence U.S. Highway 66 and 69 to the Kansas-Oklahoma State line, serving all intermediate points and return over the same routes, (2) from Miami, Okla., to Welch, Okla., over Oklahoma Highway 10 and return, and (3) from Tulsa, Okla., to Oklahoma-Missouri border and return over U.S. Interstate Highway I44 as an alternate route only, and giving daily service.

Because it is possible that interested parties, who have relied upon the notice of the application as published in the FEDERAL REGISTER, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority granted by this order will be published in the FEDERAL REGISTER and issuance of a certificate of registration in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate pleading.

APPLICATION FOR CERTIFICATE OR PERMIT WHICH IS TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 COVERED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 113974 (Sub-No. 25), filed November 3, 1967. Applicant: PITTSBURGH & NEW ENGLAND TRUCKING CO., a corporation, 211 Washington Avenue, Dravosburg, Pa. Applicant's representative: Jon Howard Marple, Suite 1800, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in Ohio. NOTE: This application is directly related to MC-F 9929 published FEDERAL REGISTER issue of November 15, 1967. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Pittsburgh, Pa.

APPLICATION FOR CERTIFICATE OR PERMIT WHICH IS TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 121555 (Sub-No. 2), filed November 6, 1967. Applicant: PARCEL DISPATCH, INC., 305 North Senate Avenue, Indianapolis, Ind. Applicant's representative: Keith C. Reese, 708 Union Federal Building, Indianapolis, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities as are dealt in by retail stores and mail order houses*, in retail delivery only, from Indianapolis, Ind., to points in Marion, Boone, Hamilton, Madison, Hancock, Shelby, Johnson, Morgan, and Hendricks Counties, Ind., restricted to traffic originating at warehouses and storage facilities of Sears Roebuck and Co., Spiegel, Inc., and Aldens, Inc., at Chicago, Ill. NOTE: This application is directly related to MC-F-9935, published in the FEDERAL REGISTER issue of November 15, 1967. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTORS CARRIERS OF PROPERTY

No. MC-F-9479 (Republication) (MATLACK, INC.—Control—AL ZEFFIRO TRANSFER & STORAGE, INC.), published in the July 27, 1966, and republication September 20, 1967, issues of the FEDERAL REGISTER, on pages 10166 and 13305, respectively. This section 5 application was granted September 1, 1967, by a decision and order, Division 3, and effective October 25, 1967. Petition filed November 8, 1967, by MATLACK, INC., Applicant, MATLACK CORPORATION, a party herein and formerly in control of Applicant, and THE MATLACK CORPORATION, a newly formed corporation which now controls Applicant, seeking to substitute THE MATLACK CORPORATION, in lieu of MATLACK CORPORATION, as the party in control.

No. MC-F-9704 (Republication) MATLACK, INC.—Purchase (Portion)—HEARIN-MILLER TRANSPORTERS, INC. (WESTERN DIVISION), published in the March 29, 1967, issue of the FEDERAL REGISTER, on page 5311. This section 5 application was heard July 31, August 1, and August 2, 1967, at Washington, D.C., before Examiner Collins. Petition filed November 8, 1967, by MATLACK, INC., Applicant, MATLACK CORPORATION, a party herein and formerly in control of Applicant, and THE MATLACK CORPORATION, a newly formed corporation which now controls Applicant, seeking to substitute THE MATLACK CORPORATION, in lieu of MATLACK CORPORATION, as the party in control.

No. MC-F-9937. Authority sought for control by ASSOCIATED TRANSPORT, INC., 380 Madison Avenue, New York, N.Y. 10017, of SCHERER FREIGHT LINES, INC., 424 West Madison Street, Ottawa, Ill. 61350. Applicants' attorneys: Jack R. Turney, Jr., 2001 Massachusetts Avenue NW., Washington, D.C. 20036, and Mortimer A. Sullivan, 530 Walbridge Building, Buffalo 2, N.Y. Operating rights sought to be controlled: *General commodities*, with certain specified exceptions, and numerous other specified commodities, as a *common carrier*, over regular and irregular routes, from, to, and between specified points in the States of Illinois, Missouri, Iowa, Wisconsin, Indiana, Kentucky, Michigan, Minnesota, and Ohio, with certain restrictions, serving various intermediate and off-route points, over numerous alternate routes for operating convenience only, as more specifically described in Docket No. MC-21571 and sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's *common* operating rights, without stating, in full, the entirety, thereof; and *such commodities* as are dealt in by retain department stores and mail-order houses, as a *contract carrier*, over irregular routes, from Rockford, Ill., to points in Rock, Green, and Walworth Counties, Wis., and *damaged, defective, returned, used, traded-in, or repossessed*, shipments of such commodities as are dealt in by retail department stores and mail-order houses, from points in Rock, Green, and Walworth Counties, Wis., to Rockford, Ill. ASSOCIATED TRANSPORT, INC. is authorized to operate as a *common car-*

rier in Massachusetts, Connecticut, New Jersey, Rhode Island, North Carolina, Tennessee, Virginia, Georgia, Ohio, Pennsylvania, Maryland, South Carolina, Delaware, West Virginia, Kentucky, Michigan, Indiana, Missouri, New York, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9938. Authority sought for control and merger by BRALLEY-WILLETT TANK LINES, INC., 200 Stockton Street, Post Office Box 495, Richmond, Va. 23204, of the operating rights and property of TANK LINES, INCORPORATED, Chuckatuck Avenue and Old Midlothian Turnpike, Richmond, Va. 23225, and for acquisition by STEPHEN P. BRALLEY, 200 Stockton Street, Post Office Box 495, Richmond, Va. 23204, of control of such rights and property through the transaction. Applicants' attorneys: Harry C. Ames, Jr., 529 Transportation Building, Washington, D.C. 20006, and Alexander W. Neal, Jr., 1400 Ross Building, Richmond, Va. Operating rights sought to be controlled and merged: *Liquid chemicals*, in bulk, in tank vehicles, as a *common carrier*, over irregular routes, from Hopewell, Va., and points within 5 miles thereof, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia; *inedible animal oils, greases, lard, and tallow*, in bulk, in tank vehicles, from Richmond, Va., to points in North Carolina, Tennessee (except Memphis), Pennsylvania, New Jersey, New York, Maryland (except Baltimore), that part of Delaware within 80 miles of Philadelphia, Pa., and the District of Columbia; *edible animal oils*, in bulk, in tank vehicles, from Richmond, Va., to points in North Carolina, Tennessee (except Memphis), Maryland, Delaware, Pennsylvania, New Jersey, New York, and the District of Columbia; *edible vegetable oils*, in bulk, in tank vehicles, from Richmond and Norfolk, Va., to points in Virginia, from Philadelphia, Pa., to points in Virginia; from Philadelphia, Pa., to points in Georgia, South Carolina, and North Carolina, with restriction; *ammonium nitrate, sodium nitrate, fertilizer, and fertilizer materials*, dry, in bulk, in tank or hopper-type vehicles, from Hopewell, Va., to points in Kentucky, New Jersey, New York (except those in Kings, Queens, Nassau, and Suffolk Counties), Ohio, Pennsylvania, and West Virginia, from Hopewell, Va., to points in Maryland and Delaware.

Edible and inedible animal oils, in bulk, in tank vehicles, from Richmond, Va., to points in Georgia and South Carolina; from points in King George County, Va., to points in Delaware, Georgia, Maryland, North Carolina, South Carolina, Tennessee, Pennsylvania, and the District of Columbia, from Smithfield, Va., to points in Tennessee, Virginia, Delaware, Georgia, Maryland, New York, Pennsylvania, and the District of Columbia, with restrictions; *vegetable oil and vegetable oil shortenings*, in bulk, in tank vehicles, from Chicago, Ill., to Richmond, Va.; *animal oils*, in bulk, in tank vehicles, from Suffolk, Va., to points in North Carolina, South Carolina, Georgia, Tennessee, Maryland, Delaware, Pennsylvania, New Jersey, New York, and the District of Columbia, from points in King George County, Va., to Norfolk, Newport News, Portsmouth, Chesapeake, and Richmond, Va., from points in the District of Columbia to points in Virginia; *dry fertilizer and fertilizer ingredients*, in bulk, in tank vehicles, from points in Virginia (except Alexandria, Chesapeake, and Hopewell and points in Warren, Clarke, Loudoun, and Frederick Counties), to points in North Carolina and West Virginia; *adhesives*, in bulk, in tank vehicles, from Richmond, Va., to points in Delaware, Maryland, North Carolina, Virginia, West Virginia (except points in Brooke, Hampshire, Hancock, Kanawha, Monongalia, Ohio, and Pleasants Counties), and the District of Columbia; and *animal oils* (except hydrolized or stabilized animal oils), in bulk, in tank vehicles, from Crozet, Va., to Philadelphia, Pa. BRALLEY-WILLETT TANK LINES, INC. is authorized to operate as a *common carrier* in Virginia, West Virginia, and North Carolina. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9939. Authority sought for purchase by C & H TRANSPORTATION CO., INC., 1935 West Commerce, Post Office Box 5976, Dallas, Tex. 75222, of the operating rights of SHEA-MATSON TRUCKING CO., 2053 North 30th Street, Milwaukee, Wis. 53245, and for acquisition by SATURN INDUSTRIES, INC., 3100 Southland Center, Dallas, Tex. 75202, of control of such rights through the purchase. Applicants' attorney and representative: W. T. Brunson, 419 Northwest Sixth Street, Oklahoma City, Okla. 73102, and G. Carl Keulthau, 324 East Wisconsin Avenue, Milwaukee, Wis. 78701. Operating rights sought to be transferred: *Uncrated airplane engines* mounted on steel shipping stands and *uncrated airplane parts* which because of size or weight require special handling and equipment, as a *common carrier* over irregular routes, between Chicago, Ill., on the one hand, and, on the other, Buffalo, N.Y., certain specified points in Ohio, Louisville, Ky., Knoxville and Nashville, Tenn., and Charleston, W. Va., and points within 50 miles of each; *commodities*, the transportation of which because of size or weight requires the use of special equipment, and *related machinery parts and related contractors' materials and supplies* when their transportation is incidental to the transportation by carrier of commodities the transportation of which by reason of size or weight requires the use of special equipment, except that no service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines, between points in Wisconsin, on the one hand, and, on the other, points in Illinois, between points in Wisconsin and Illinois, on the one hand, and, on the other, points in Indiana, Iowa, Missouri, and the Lower Peninsula of Michigan, between points in Illinois and those in that part of Wisconsin on and south of Wisconsin Highway 33, extending between Port Washington and Portage, Wis., and on and east of U.S. Highway 51 extending between Portage and Beloit, Wis., on the one hand, and on the other, points in Minnesota; and *commodities* (except road construction machinery), the transportation of which because of size or weight requires the use of special equipment, and *related machinery parts and related contractors' materials and supplies* when their transportation is incidental to the transportation by carrier of commodities the transportation of which by reason of size or weight requires the use of special equipment, except that no service shall be performed in the stringing or picking up of pipe in connection with oil or gas pipelines, between points in that part of Wisconsin on and south of Wisconsin Highway 33 extending between Port Washington and Portage, Wis., and on and east of U.S. Highway 51 extending between Portage and Beloit, Wis., on the one hand, and, on the other, points in the Upper Peninsula of Michigan. Vendee is authorized to operate as a *common carrier* in all points in the United States (except Hawaii). Application has not been filed for temporary authority under section 210a(b).

No. MC-F-9940. Authority sought for purchase by UNIT TRANSPORTATION, INC., 2255 Penobscott Building, Detroit, Mich., of the operating rights of OLEAN HAULING CORP., Center Street, Glenwood, Erie County, N.Y., and for acquisition by ROBERT J. FREY, and MARGARET E. FREY, both of 147 Gregory, Hamilton, Ohio, of control of such rights through the purchase. Applicants' attorney: Albert J. Tener, Bank of Jamestown Building, Jamestown, N.Y. 14701. Operating rights sought to be transferred: *Pontoon-type boats*, assembled or knocked down, not including any one boat weighing in excess of 5,000 pounds, and *boat parts, boat trailers, boat accessories, blocking and shoring materials, and advertising matter*, all related to, and when moving in mixed shipments with pontoon-type boats, as a *common carrier*, over irregular routes, from points in Blue Earth County, Minn., to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia; *pontoon-type boats*, assembled or knocked down, not including any one boat weighing in excess of 5,000 pounds, *boats*, other than pontoon-type boats, assembled or knocked down, not including any one boat weighing in excess of 5,000 pounds or exceeding 22 feet in length, and *boat parts, boat trailers, boat accessories, blocking and shoring materials, and advertising matter*, all related to and when moving in mixed shipments with, boats as authorized in this commodity description, from Branchport,

and Gibsons Landing, N.Y., and points within 10 miles of Branchport, and Gibsons Landing, and points within 10 miles of Pen Yan, N.Y. (not including Pen Yan), to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia; *returned (reshipped) shipments* of the commodities specified herein above, from the above-described destination points to their respective origin points; *boats, boat parts, boat trailers, boat accessories, and advertising materials* relating thereto when moved in mixed loads with boats, from Marathon and Pen Yan, N.Y., to points in the United States (except Alaska and Hawaii); and *boats and accessories therefor, and related advertising materials* when accompanying the boats, between points in Yates County, N.Y., on the one hand, and, on the other, points in New York, between Peekskill, N.Y., on the one hand, and, on the other, points in New York, from Freeport, N.Y., to certain specified points in New York. Vendee is authorized to operate as a *common carirer* in all points in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a (b).

No. MC–F–9942. Authority sought for control by LEASEWAY TRANSPORTATION CORP., 21111 Chagrin Boulevard, Cleveland, Ohio 44122, of PEP LINES TRUCKING CO., 15120 Third Street, Highland Park, Mich., and for acquisition by H. M. O'NEILL, F. J. O'NEILL, and W. J. O'NEILL, all also of Cleveland, Ohio, of control of PEP LINES TRUCKING CO., through the acquisition by LEASEWAY TRANSPORTATION CORP. Applicants' attorneys and representative: Roland Rice, 618 Perpetual Building, Washington, D.C. 20004, Robert A. Sullivan, 1800 Buhl Building, Detroit, Mich. 48226, and Ewald E. Kundtz, 1050 Union Commerce Building, Cleveland, Ohio 44115. Operating rights sought to be controlled: *Motion picture, still picture, and sound producing films, and recording, reproducing, and amplifying devices, advertising matter, exhibits, tickets, vending machines, supplies, and materials* used in connection with the operation and maintenance of theaters and places of motion picture exhibition when moving to and from such theaters or places of exhibition, as a *common carrier*, over irregular routes, between points in Michigan, *magazines*, from Detroit, Mich., to points in Michigan (except Port Huron and Mount Clemens), from New Buffalo, Mich., to St. Louis and Westbranch, Mich.; and under a certificate of registration, in No. MC–120184 Sub 2, covering the transportation of property, as a common carrier, in intrastate commerce, within the State of Michigan.

LEASEWAY TRANSPORTATION CORP. holds no authority from this Commission. However, it controls ANCHOR MOTOR FREIGHT, INC., 21111 Chagrin Boulevard, Cleveland, Ohio 44122, which is authorized to operate as a *contract carrier* in all points in the United States (except Alaska and Hawaii), MITCHELL TRANSPORT, INC., 21111 Chagrin Boulevard, Cleveland, Ohio 44122, which is authorized to operate as a *common carrier* in Indiana, Ohio, Kentucky, Illinois, Maryland, Pennsylvania, Rhode Island, Connecticut, Massachusetts, New York, Maine, New Hampshire, Vermont, New Jersey, Alabama, Florida, Georgia, Mississippi, Tennessee, Kansas, Arkansas, Missouri, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, Delaware, Virginia, North Carolina, West Virginia, South Carolina, Louisiana, Nebraska, Oklahoma, Texas, Michigan, Washington, Idaho, Montana, Oregon, and the District of Columbia, REFINERS TRANSPORT & TERMINAL CORPORATION, 930 North York Road, Hinsdale, Ill. 60521, which is authorized to operate as a *common carrier* in Ohio, Michigan, Indiana, Illinois, Pennsylvania, West Virginia, Kentucky, Missouri, Wisconsin, New York, Iowa, Minnesota, Connecticut, Delaware, Tennessee, Florida, Georgia, Maryland, Maine, Massachusetts, New Hampshire, New Jersey, North Carolina, Rhode Island, South Carolina, Vermont, Virginia, North Dakota, South Dakota, Nebraska, Kansas, Arkansas, Alabama, Colorado, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, Oregon, and the District of Columbia, SUGAR TRANSPORT, INC., Post Office Box 4063, Port Wentworth, Ga. 31407, which is authorized to operate as a *contract carrier* in Georgia, Tennessee, Florida, North Carolina, South Carolina, Virginia, Alabama, Kentucky, and West Virginia, and SIGNAL DELIVERY SERVICE, INC., 782 Industrial Drive, Elmhurst, Ill. 60126, which is authorized to operate as a *common carrier* in Virginia, Maryland, and the District of Columbia, and as a *contract carrier* in Illinois, Indiana, Michigan, Ohio, Maryland, Delaware, Virginia, New York, Pennsylvania, West Virginia, Wisconsin, Massachusetts, Vermont, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b). NOTE: MC–120184 Sub 3 is a matter directly related.

No. MC–F–9943. Authority sought for (1) control by ENCINAL TERMINALS, Foot of Jay Street, Post Office Drawer A, Alameda, Calif. 94501, of SHIPPERS EXPRESS COMPANY, 280 Martin Avenue, Santa Clara, Calif. 95050; and (2) purchase by SHIPPERS EXPRESS COMPANY, 280 Martin Avenue, Santa Clara, Calif. 95050, of the operating rights of ENCINAL TERMINALS, Foot of Jay Street, Post Office Drawer A, Alameda, Calif. 94501, and for acquisition by DEL MONTE CORPORATION, 215 Fremont Street, San Francisco, Calif. 94119, of control of SHIPPERS EXPRESS COMPANY, through the acquisition by ENCINAL TERMINALS. Applicants' attorneys and representative: Edward D. Ransom and R. Frederic Fisher, 311 California Street, San Francisco, Calif. 94104, and Sanford A. Berliner, 616 Bank of America Building, 12 South First Street, San Jose, Calif. 95113. Operating rights sought to be (1) controlled and (2) purchased: (1) Under a certificate of registration, in No. MC–99127 Sub 2, covering the transportation of general commodities, as a common carrier, in intrastate commerce, within the State of California; and (2) *General commodities* (except automobiles, trucks or buses, classes A and B explosives, commodities of unusual value, household goods as defined by the Commission, petroleum products in bulk, in tank vehicles, metal cans and parts thereof, and fresh fruits and vegetables when moving in mixed loads with the commodities authorized to be transported herein), as a *common carrier*, over irregular routes, between certain specified points in California. Application has not been filed for temporary authority under section 210a(b). NOTE: MC–99127 Sub 3 is a matter directly related.

No. MC–F–9944. Authority sought for purchase by WILSON FREIGHT COMPANY, 3636 Follett Avenue, Cincinnati, Ohio 45223, of the operating rights and certain property of ABBOTT TRANSFER LINE, INC., Fort Pickens Road, La Grange, Ky. 40031, and for acquisition by LEONARD S. SHORE, DAVID M. GANTZ, S. DAVID SHOR, and JOSEPH M. GANTZ, all also of Cincinnati, Ohio, of control of such rights and property through the purchase. Applicants' attorneys: Harry C. Ames, Transportation Building, Washington, D.C. 20406, and Milton H. Bortz, 3636 Follett Avenue, Cincinnati, Ohio 45223. Operating rights sought to be transferred: *General commodities*, excepting, among others, household goods, but not excepting commodities in bulk, as a *common carrier*, over regular routes, between Eminence, Ky., and Louisville, Ky., serving all intermediate points, with restriction, between Eminence, Ky., and Louisville, Ky., serving all intermediate points except those on U.S. Highway 60; and certain off-route points; *general commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes, between Cincinnati, Ohio, on the one hand, and, on the other, La Grange and Eminence, Ky., with restrictions; and *general commodities*, excepting, among others, household goods, but not excepting commodities in bulk, between Cincinnati, Ohio, and Eminence, Ky., with restriction. Vendee is authorized to operate as a *common carrier* in Pennsylvania, Massachusetts, West Virginia, Maryland, North Carolina, Rhode Island, Kentucky, Indiana, Virginia, Wisconsin, Missouri, Iowa, Illinois, Delaware, Michigan, Kansas, Oklahoma, Tennessee, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–9945. Authority sought for purchase by M & M TANK LINES, INC., Post Office Box 4174, North Station, Winston-Salem, N.C., of a portion of the operating rights of BRALLEY-WILLET TANK LINES, INC., 200 Stockton Street,

Richmond, Va., and for acquisition by S. H. MITCHELL, Post Office Box 612, Winston-Salem, N.C. 27102, of control of such rights through the purchase. Applicants' attorney and representative: James E. Wilson, 1735 K Street NW., Washington, D.C. 20006, and B. M. Shirley, Post Office Box 612, Winston-Salem, N.C. 27102. Operating rights sought to be transferred: *Liquefied petroleum gas*, in bulk, in tank vehicles, as a *common carrier*, over irregular routes, from the site of the pipeline terminal of the Dixie Pipe Line Co. near Apex, N.C., to points in that part of Virginia on and west of U.S. Highway 29 and south of U.S. Highway 60. Vendee is authorized to operate as a *common carrier* in South Carolina, Virginia, North Carolina, Georgia, Tennessee, New Jersey, Florida, West Virginia, Kentucky, New York, Maryland, Ohio, Pennsylvania, Illinois, Michigan, Missouri, Texas, Alabama, Arkansas, Indiana, Louisiana, Mississippi, Kansas, Minnesota, Nebraska, Oklahoma, Wisconsin, and Iowa. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9946. Authority sought for purchase by MINNESOTA-WISCONSIN TRUCK LINES, INCORPORATED, 965 Eustis Street, St. Paul, Minn. 55114, of the operating rights of LESTER W. FUCHS, doing business as SANDERSON FREIGHT LINE, Benson, Minn. Applicants' attorney: Jack R. Turney, Jr., 2001 Massachusetts Avenue NW., Washington, D.C. 20036. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-96768 Sub-1, covering the transportation of freight, as a common carrier, in intrastate commerce, within the State of Minnesota. Vendee is authorized to operate as a *common carrier* in Wisconsin, Minnesota, and South Dakota. Application has not been filed for temporary authority under section 210a(b). NOTE: MC-119914 Sub-11 is a matter directly related.

No. MC-F-9947. Authority sought for purchase by PACIFIC NORTHWEST MOTOR FREIGHT LINES, INC., 3635 Dowamish South, Seattle, Wash. 98134, of a portion of the operating rights of DON PAFFILE, doing business as PAFFILE TRUCK LINES, 2906 29th Street North, Lewiston, Idaho 83501, and for acquisition by L. H. DOOLITTLE and HELEN DOOLITTLE, both also of Seattle, Wash., of control of such rights through the purchase. Applicants' attorney: James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101. Operating rights sought to be transferred: *Mining equipment, supplies, and mine ores*, not including coal, as a *common carrier*, over irregular routes, between points in Idaho, Washington, Oregon, and that part of Montana west of a line extending in a northerly direction from Monida Pass, Mont., to the boundary of the United States and Canada, near Babb, Mont. Vendee is authorized to operate as a *common carrier* in the State of Washington. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-9948. Authority sought for control and merger by BROWNING FREIGHT LINES, INC., 244 South Fourth West, Salt Lake City, Utah 84101, of the operating rights and property of BOISE DELIVERY & TRANSFER, INC., 2523 Ark Street, Boise, Idaho 83706, and for acquisition by GEO. A. BROWNING, SR., THYRA BROWNING, G. ALLEN BROWNING, CLIFTON M. BROWNING, all also of Salt Lake City, Utah, and LOWELL D. BROWNING, 1027 Royal Boulevard, Boise, Idaho, of control of such rights and property through the transaction. Applicants' attorney: Ben D. Browning, Post Office Box 8195, Foothill Station, Salt Lake City, Utah 84108. Operating rights sought to be controlled and merged: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between Boise, Idaho, and Lucky Peak Dam Site, Idaho, between Mountain Home, Idaho, and Mountain Home Airbase, Idaho, serving all intermediate points; *general commodities*, except classes A and B explosives, livestock, highly inflammable materials, commodities of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Mountain Home, Idaho, and C. J. Strike Dam Site, Idaho, located approximately 20 miles west of Mountain Home, serving no intermediate points; *general commodities*, except heavy machinery, dangerous explosives, livestock, highly inflammable materials, and commodities of unusual value, in shipments not in excess of 20,000 pounds, between Boise, Idaho, and Rocky Bar, Idaho, serving certain intermediate points; *general commodities*, except dangerous explosives, and articles of unusual value, between Boise, Idaho, and Murphy, Idaho, serving all intermediate points and the off-route points of Bowmont and Melba, Idaho, except no traffic shall be transported from Boise to Meridian to Boise; and under certificates of registration, in No. MC-111167 Subs 7 and 8, covering the transportation of general commodities, as a common carrier, in intrastate commerce, within the State of Idaho. BROWNING FREIGHT LINES, INC. is authorized to operate as a *common carrier* in Utah and Idaho. Application has been filed for temporary authority under section 210a(b).

No. MC-F-9949. Authority sought for purchase by J. J. WILLIS TRUCKING COMPANY, 306 East Second Street, Post Office Box 2112, Odessa, Tex. 79760, of a portion of the operating rights of B. F. WALKER, INC., 650 17th Street, Denver, Colo. 80202, and for acquisition by MARY ADELE WILLIS and JOHN JEROME WILLIS, JR., both also of Odessa, Tex., of control of such rights through the purchase. Applicants' attorneys: J. G. Dail, Jr., Federal Bar Building, 1815 H Street NW., Washington, D.C. 20006, and Jerry Prestridge, Post Office Box 1148, Austin, Tex. 78767. Operating rights sought to be transferred: *Commodities*, the transportation of which because of their size or weight requires the use of special equipment or special handling, and *parts thereof*, as a *common carrier*, over irregular routes, between points in Texas, on the one hand, and, on the other, points in Oklahoma; *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products; and *machinery, equipment, materials, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up of pipe in connection with main pipelines, between points in Texas, on the one hand, and, on the other, points in Colorado. Vendee is authorized to operate as a *common carrier* in Louisiana, Texas, New Mexico, Arizona, Kansas, and Oklahoma. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 67-13701; Filed, Nov. 21, 1967; 8:47 a.m.]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

NOVEMBER 17, 1967.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. M-4490, filed November 8, 1967. Applicant: MIDWAY MOTOR FREIGHT LINES, INC., 822 East Sixth Street, Little Rock, Ark. Applicant's representative: C. J. Lincoln/Don F. Hamilton, 1550 Tower Building, Little Rock, Ark. Certificate of public convenience and necessity sought to operate a freight service over regular routes, as follows: *General commodities*, (1) between Lockesburg, Ark., and Ashdown, Ark.: From Lockesburg to Ashdown on U.S. Highway No. 71 and return, service authorized at all intermediate points, (2) between the junction of State Highways No. 355 and No. 27 to the junction of State Highway No. 27 and U.S. Highway No. 71; from the junction of State Highways No. 355 and 27 near

Mineral Springs over State Highway No. 27 to the junction of State Highway No. 27 and U.S. Highway No. 71 and return over the same route; service authorized at all intermediate points, and (3) between the junction of State Highways No. 355 and 32 to the junction of State Highway No. 32 and U.S. Highway No. 71; from the junction of State Highways No. 355 and 32 near Saratoga over State Highway No. 32 to the junction of State Highway No. 32 and U.S. Highway No. 71 and return; service authorized at all intermediate points. Both intrastate and interstate authority is sought.

HEARING: Monday, December 18, 1967, at 10 a.m., Justice Building, Little Rock, Ark. Requests for procedural information, including the time for filing protests, concerning this application, should be addressed to the Arkansas State Commerce Commission, Justice Building, Little Rock, Ark. 72201, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-13702; Filed, Nov. 21, 1967; 8:47 a.m.]

[Notice 54]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 17, 1967.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 279), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-35410. By order of November 14, 1967, the Transfer Board approved the lease to Gene Lane, doing business as Texas Tank Transport, Houston, Tex.; of certificate of registration in No. MC-120302 (Sub-No. 1), issued June 30, 1965, to Mid-West Transport, Inc.; lessee from Fisher Dorsey, Mable Dorsey Independent Executrix, Houston, Tex.; authorizing the transportation of: A wide variety of specified commodities, between all points in Texas. Albert G. Walker, Jr., 304 Capital National Bank Building, Austin, Tex. 78701, attorney for applicants.

No. MC-FC-69738. By order of October 30, 1967, the Transfer Board approved the transfer to Logan Valley Transfer, Inc., Lyons, Nebr., of certificate in No. MC-223, issued October 12, 1967, to Leslie B. Swanson, doing business as Logan Valley Transfer, Lyons, Nebr., authorizing the transportation of: General commodities, with the usual exceptions including household goods and commodities, in bulk from, to, or between specified points in Nebraska and Iowa. Donald E. Leonard, Box 2028, 605 South 14th, Lincoln, Nebr. 68038, attorney for applicants.

No. MC-FC-69876. By order of October 31, 1967, the Transfer Board approved the transfer to Paramount Movers, Inc., Dallas, Tex., of the operating rights of Gay Hudson Moving and Storage Co., a corporation, St. Louis, Mo., in certificates Nos. MC-93652, MC-93652 (Sub-No. 2), MC-93652 (Sub-No. 3), MC-93652 (Sub-No. 4), MC-93652 (Sub-No. 6), and MC-93652 (Sub-No. 7), issued February 6, 1950, August 31, 1960, February 2, 1961, April 26, 1962, August 10, 1962, and April 12, 1967, respectively, authorizing the transportation, over irregular routes of household goods, between St. Louis, Mo., and East St. Louis, Ill., and points within 50 miles of St. Louis and East St. Louis, respectively, on the one hand, and on the other, points in Illinois and Missouri; between Cairo, Ill., and points within 25 miles of Cairo, on the one hand, and on the other, points in Indiana, Ohio, Kentucky, Tennessee, Arkansas, Mississippi, and Missouri; from Clinton, Ind., to points in Illinois, Kentucky, Ohio, and the lower peninsula of Michigan; from points in Illinois, Kentucky, Ohio, and the Lower Peninsula of Michigan, to points in Indiana; between specified points in Minnesota and Iowa; between points in North Dakota within 200 miles of Williston, N. Dak., on the one hand, and, on the other, points in Montana within 450 miles of Williston; between points in Arkansas, Kansas, Missouri, and Oklahoma, and emigrant movables, between Alden, Minn., and points in Minnesota within 35 miles of Alden, on the one hand, and, on the other, points in Iowa, North Dakota, South Dakota, and Wisconsin. Allen Melton, Rio Grande National Building, Dallas, Tex. 75202, attorney for transferee. Meyer M. Kahn, 915 Olive Street, St. Louis, Mo. 63101, attorney for transferor.

No. MC-FC-69919. By order of October 31, 1967, the Transfer Board approved the transfer to Engel Trucking, Inc., Greenville, Pa., of certificate No. MC-100857, issued August 10, 1967, to Kolb Trucking, Inc., Mount Carmel, Ill., authorizing the transportation of: Machinery, materials, supplies, and equipment used in the drilling of water wells, and in the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between points in a specified Indiana, Illinois, and Kentucky territory; and hydraulic pressure and shearing machinery, requiring special equipment, and parts thereof, from Mount Carmel, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia. A. Charles Tell, 100 East Broad Street, Columbus, Ohio 43215, attorney for applicants.

No. MC-FC-69923. By order of October 30, 1967, the Transfer Board approved the transfer to Shifflet Bros., Inc., Gridley, Calif. of certificates in Nos. MC-96629 and MC-96629 (Sub-No. 1) each issued September 5, 1963, to Earl F. Anders and Clifton Shifflet, a partnership, doing business as Shifflet Brothers, Gridley, Calif., authorizing the transportation of: Milled rice, rice, and rice products, and canned goods, from and to specified points in California. Bertram S. Silver, 140 Montgomery Street, San Francisco, Calif. 94104, attorney for applicants.

No. MC-FC-69958. By order of October 30, 1967, the Transfer Board approved the transfer to Michael Mesday, doing business as Mesday Trucking Service, Trenton, N.J., of the operating rights set forth in certificates Nos. MC-72464 and MC-72464 (Sub-No. 1), issued June 9, 1960, and April 13, 1960, respectively, to Harry F. McDermott, doing business as Murphy-McDermott Trucking Co., Trenton, N.J., and authorizing the transportation of: General commodities, over irregular routes, between Trenton, N.J., on the one hand, and, on the other, points in the New York, N.Y., commercial zone, as defined by the Commission; and over a regular route from Philadelphia, Pa., to Trenton, N.J.; wire cable, from Trenton, N.J., to points in Pennsylvania; and cotton uniforms, from Trenton, N.J., to Philadelphia, Pa. James J. McLaughlin, 28 West State Street, Trenton, N.J. 08608, attorney for applicants.

No. MC-FC-70003. By order of October 31, 1967, the Transfer Board approved the transfer to Shields Motor Lines, Inc., Pittsburgh, Pa., of the operating rights in certificate No. MC-79984 issued July 6, 1964, to William A. Shields and Robert H. Riley, doing business as Shields Motor Lines, Pittsburgh, Pa., authorizing the transportation of: Petroleum products, water softening compounds, and electrical equipment, from Pittsburgh, Pa., to specified points in West Virginia and Ohio. Edward M. Larkin, 901 Grant Building, Pittsburgh, Pa. 15219, attorney for applicants.

No. MC-FC-70026. By order of November 15, 1967, the Transfer Board approved the transfer to Andreas Truck and Warehouse Corp., doing business as Star Truck & Warehouse Co., Los Angeles, Calif., of certificate No. MC-119286 and certificate of registration No. MC-119286 (Sub-No. 2) issued February 12, 1960, and April 16, 1964, respectively, to Star Truck & Warehouse Co., a corporation, doing business as Star Truck & Transfer Co., and Star Truck & Warehouse Co., and Poineer Truck Co., Los Angeles, Calif., the certificate authorizing the transportation of general commodities, except those of unusual value, explosives or dangerous substances, uncrated household goods or office furniture, liquids in bulk, perishable foodstuffs, livestock, live animals, live poultry, and commodities in bulk, between points in Los Angeles, Calif., harbor; between points in the Los Angeles, Calif., commercial zone, as defined by the Commission; and between points in Los Angeles, Calif., harbor, on the one hand, and on the other, points

in the Los Angeles, Calif., commercial zone, as defined by the Commission, and machinery, safes, vaults, and parts thereof, from Los Angeles harbor and Los Angeles, Calif., to points in southern California within 300 miles of Los Angeles; and, the certificate of registration covering the transportation of general commodities between points in the Los Angeles Basin Territory as described in Decision No. 54860 dated April 16, 1960, issued by the California Public Utilities Commission. J. Max Harding, Box 2028, 605 South 14th, Lincoln, Nebr. 68501, attorney for applicants.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-13703; Filed, Nov. 21, 1967; 8:47 a.m.]

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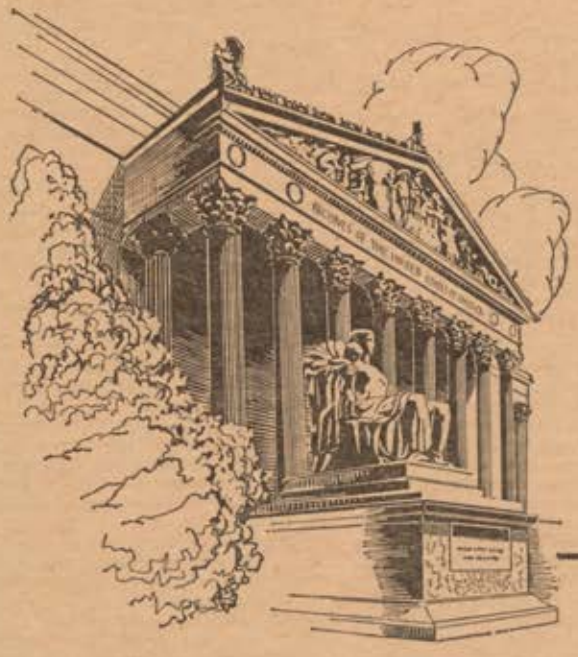
PART II

Interstate Commerce Commission



Guide to Restrictions and Descriptions in Motor Carrier Operating Rights

INTERSTATE COMMERCE COMMISSION

GUIDE TO RESTRICTIONS AND DESCRIPTIONS IN MOTOR CARRIER OPERATING RIGHTS

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 23d day of October 1967, a report and order was issued in No. MC–114284 (Sub-No. 29), "Fox-Smythe Transportation Co., Extension—Oklahoma," 106 M.C.C. 1. The report, among other things, (1) summarizes the Commission's policy with respect to the imposition of restrictions and the use of commodity, territorial, and service descriptions in motor carrier authorities, and (2) establishes guidelines for the drafting of proper and workable motor carrier property applications. Appended to that report (Appendix II) was a representative list of proposed limitations and descriptions that have been either modified or eliminated from requested motor carrier operating rights by Commission action. The list is here published so that all interested persons will be informed of the more recent and current trends in this area of regulation.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

Restrictions

The following list of restrictions and descriptions is representative of proposed limitations and descriptions that have been either modified or eliminated from requested motor-carrier operating rights by Commission action. It has been compiled in the belief that it will be of benefit to all persons involved in motor carrier operating rights proceedings before the Commission. In view of the myriad of different types of restrictions considered by us since the inception of Federal regulation of motor carriers, a complete listing of all restrictions rejected or modified in the past would plainly be impractical, if not impossible. We believe, however, that the most common types of proposed restrictions are represented here, and that adherence to the guidelines which these examples connote should simplify and expedite our handling of application proceedings considerably. Although the body of this report categorizes restrictions in a more general vein, it is hoped that the more detailed classification presented here will provide a useful and more practical reference tool for all interested persons.

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A. COMMODITY DESCRIPTIONS

1. *Implied commodity authority.* No specific authority is required for the movement of the following commodities when moving under the circumstances described below:

a. *Containers and other incidental facilities.* No specific authority is required for the transportation of empty containers, pallets, similar shipping devices, or shipper-owned vehicles used in transporting the basic commodity, on return, 49 CFR 165a.10. Interpretation, Operating Rights—Returned Containers, 82 M.C.C. 677; Maas Transport, Inc., Ext.—North Dakota Missile Sites, 92 M.C.C. 581 (returned cable reels); P. B. Mutrie Motor Transp. Inc., Ext.—Benzyle Chloride, 83 M.C.C. 123; and National Trailer Convoy, Inc., Ext.—Portable Buildings, 91 M.C.C. 301 (returned shipper-owned undercarriages).

b. *Mail.* No specific authority is required for the transportation of mail. Blau Common Carrier Application, 61 M.C.C. 705.

c. *Returned, refused, and rejected shipments.* No specific authority is needed for the return transportation of shipments which have been rejected by consignee because damaged in transit, or for any other reason, provided such service is covered by an appropriate tariff provision. Western Auto Transports, Inc., Ext.—Hydraulic Hammers, 72 M.C.C. 249, 252. Shipments which have been accepted by a consignee and subsequently returned, however, do require specific authorization.

d. *Parts, accessories, tools, and equipment.* No specific authority is required for the transportation of component parts or accessories of an authorized commodity, when shipped in conjunction, and at the same time, with such commodity, in amounts consistent with their being of an incidental nature. East Texas M. Frt. Lines—Interpretation of Certificate, 62 M.C.C. 727.

No specific authority is required for the transportation of couplings, rings, and fittings which are shipped with, and as a part of, the basic equipment (pipe). No. MC–118959 (Sub-No. 14), Jerry Lipps, Inc., Extension—Pipe (not printed), decided November 10, 1964, citing Dallas & Mavis Forwarding Co., Inc., Ext.—South Bend, Ind., 84 M.C.C. 731, 739 (specific authority not required for attachments and replacement parts when shipped with, and as part of, the basic commodity).

Specific authority is not required for the good-faith transportation of shipper-owned parts, attachments, materials, tools, and equipment incidental to the authorized commodity when transported with the authorized commodity. Dealers Transit, Inc., Extension—Missiles, 86 M.C.C. 327.

As stated in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, at page 239, however, authority to transport "automobiles, trucks, and buses" shall specify that it includes authority to transport parts and accessories at the same time and with the vehicle of which they are a part and on which they are to be installed.

2. *Restrictions serving no useful purpose.* The following proposed commodity descriptions or restrictions were eliminated or modified because they serve no useful purpose as drafted:

a. *Commodities not embraced in the basic commodity description.*—"Not including chemicals" deleted following the commodity description "slag and slag aggregates." Dreyer Extension—Slag and Slag Aggregates, 96 M.C.C. 343.

Restriction against the transportation of "sand, stone, gravel and fly ash, in bulk, in tank or hopper vehicles" refused when applied to a grant of authority to transport "plumbing, heating, and electrical supplies." No. MC–125432 (Sub-No. 1), Longstreth Contract Carrier Application (not printed) decided August 31, 1964.

"Except acids and chemicals" deleted from authority to transport "dry animal and poultry feed." Stearns Common Carrier Application, 96 M.C.C. 627.

"Other than those fertilizers which are * * * sulphuric acid" deleted following the commodity description "fertilizer." No. MC–124417, Hinderman Brothers Common Carrier Applicaton (not printed), decided March 15, 1963.

"Other than metals of all types and metal products" deleted following the commondity description "general commodities, except * * * commodities in bulk * * *" inasmuch as the proposed restriction would wrongly imply that the description "commodities in bulk" embraces metals and metal products. No. MC–125113, Christman Common Carrier

Application (not printed), decided February 4, 1964.

"Canned goods, except canned, fresh and cured meats" changed to read "canned goods, except cured meats" citing Bird Trucking Co.—Modification of Certificate, 61 M.C.C. 311, No. MC-114045 (Sub-No. 116), Trans-Cold Express, Inc., Extension—Canned Goods (not printed), decided March 31, 1964.

"Except clay and fly ash" deleted from authority to transport "building materials," No. MC-125626 (Sub-No. 1), Williams Trucking, Inc., Extension—Pennsylvania and Four W. Va. Counties (not printed), decided August 11, 1966.

"Except plant removals" deleted from authority to transport "checks, business papers, records, and audit and accounting media," No. MC-111729 (Sub-No. 154), American Courier Corporation Extension—Alexandria, Va. (not printed), decided February 9, 1967.

b. *Redundant restrictions.* "In bulk and in containers" deleted, No. MC-123061 (Sub-No. 27), Leathan Brothers, Inc., Extension—Animal Meals (not printed), decided January 17, 1966.

"In bulk, in bags, and in containers" deleted, No. MC-59117 (Sub-No. 17), Elliott Truck Lines, Inc., Extension—Fertilizer from Texas (not printed), decided September 6, 1963.

"In bags bulk, or packages" deleted, No. MC-117574 (Sub-No. 91), Daily Express, Inc., Extension—Twenty-two States (not printed), decided February 15, 1965.

A proposed restriction against transportation in bags or containers, including "sealdbin container" was deleted from the commodity description 'alumina, in bulk." No. MC-116077 (Sub-No. 179), Robertson Tank Lines, Inc., Extension—Alumina (not printed), decided November 30, 1965.

"Palletized and unpalletized" deleted, No. MC-126281, Czub Common Carrier Application (not printed), decided October 14, 1964.

Proposed authority to transport "lumber (except plywood, built-up wood, and veneer)" changed to read "lumber, except plywood and veneer" since the built-up wood referred to was merely thick plywood. No. MC-111545 (Sub-No. 65), Home Transportation Company, Inc., Extension—Lumber, Etc. (not printed), decided May 28, 1965.

"Insulated or not insulated, and either jacketed or not jacketed" deleted from authority to transport "pipe and tubing," No. MC-84737 (Sub-No. 73), Nilson Motor Express Extension—Pipe (not printed), decided February 19, 1964.

"Scrap commodities containing scrap metal, and metal processed therefrom" deleted from authority to transport "scrap metal," No. MC-78042 (Sub-No. 17), Bearoff Brothers, Inc., Extension—Four States (not printed), decided November 21, 1966.

"Including insecticides, herbicides, and fungicides" deleted from authority to transport "agricultural pesticides," No. MC-105424 (Sub-No. 5), Plagge Truck Lines, Inc., Extension—Agricultural Pesticides (not printed), decided August 31, 1966.

"Including motors and parts thereof" deleted from authority to transport "dust collectors and precipitators," No. MC-49567 (Sub-No. 6), Roy R. Golden and Leonard E. Golden, Extension of Contract Carrier Authority—Dust Collectors (not printed), decided December 16, 1965.

"And blends thereof" deleted from authority to transport "corn syrup," No. MC-116063 (Sub-No. 84), Western-Commercial Transport, Inc., Extension—Wichita, Kans. (not printed), decided August 9, 1966.

Commodity description "new furniture, crated, and/or in cartons" modified to "new furniture, crated" inasmuch as the term "crated" includes the right to transport new furniture in cartons. No. MC-64994 (Sub-No. 49), Hennis Freight Lines, Inc., Extension—New Furniture (not printed), decided September 18, 1963.

"Green and/or processed," being all-inclusive, was deleted from the commodity description "salted hides and pelts." No. MC-126822 (Sub-No. 2), Passaic Grain & Wholesale Co., Inc., Common Carrier Application (not printed), decided May 10, 1965.

"Including cast iron pipe and fittings" deleted from authority to transport "plumbing materials and supplies," No. MC-73165 (Sub-No. 223), Eagle Motor Lines, Inc., Extension—Iron and Steel Articles (not printed), decided July 17, 1967.

Enumeration of items "such as refrigerators, washing machines, dryers, dishwashers * * *" found to be unnecessary following the commodity description "household appliances," No. MC-124856, Trio Trucking Corp. Contract Carrier Application (not printed), decided March 29, 1963. See also No. MC-20110 (Sub-No. 5), Messinger Trucking & Warehouse Corp. Extension—Connecticut and New Jersey (not printed), decided March 10, 1964.

"Toilet and drug preparations, drugs, medicines, chemicals, prescription items and ingredients and drug store displays" modified to authorize "toilet and drug preparations, medicines, prescriptions, and ingredients thereof and drug store displays," No. MC-124688, Independent Delivery, Inc., Common Carrier Application (not printed), decided February 12, 1963.

3. *Ambiguous or confusing commodity descriptions or restrictions.* "Mineral mixtures" modified to read "animal and poultry mineral feed mixtures," Monkem Co., Inc., Extension—Mineral Mixtures, Salt, 92 M.C.C. 235.

"Brick and other clay products" modified to read "brick and clay products" in accordance with the evidence of record. No. MC-128650, John B. Joy, Inc., Common Carrier Application (not printed), decided April 24, 1967.

"Liquid stock feed supplement" modified to read "liquid animal feed supplements," No. MC-107496 (Sub-No. 396), Ruan Transport Corporation Extension—Morrill, Nebr., et al. (not printed), decided June 29, 1966.

"Juices, beverages, and drinks (other than citrus juices, citrus beverages, and citrus drinks), not requiring refrigeration" modified to read "unfrozen juices and beverages other than citrus," No. MC-12053 (Sub-No. 43), Florida Refrigerated Service, Inc., Extension—Non-Citrus Beverages (not printed), decided August 31, 1966.

"Boards, composed of wood flakes, adhesive, and preservative, combined" modified to read "composition board," No. MC-100666 (Sub-No. 42), Melton Truck Lines, Inc., Extension—Crossett, Ark. (not printed), decided October 31, 1962.

"Cooked frozen vegetables" modified to read "frozen prepared vegetable foods," No. MC-117766 (Sub-No. 5), Sam Blair Extension—Cooked Frozen Vegetables (not printed), decided January 12, 1965.

"Yeast, compressed, other than dry and not in bulk" modified to read "compressed moist yeast, in containers," No. MC-113267 (Sub-No. 151), Central & Southern Truck Lines, Inc., Extension—Yeast (not printed), decided January 28, 1966.

"Fertilizer, in bulk, except such fertilizer as may be considered petroleum products" modified to read "fertilizer, in bulk, except such fertilizer as may be derived from petroleum," No. MC-119778 (Sub-No. 79), Redwing Carriers, Inc., Extension—Americus, Ga. (not printed), decided August 18, 1965.

"Fertilizer, not liquid" modified to read "dry fertilizer," No. MC-56167 (Sub-No. 5), Hershey Extension—Fertilizer (not printed), decided April 26, 1965.

"Brick, except those loaded and unloaded by dumping" modified by the elimination of the indicated exception. No. MC-102401 (Sub-No. 6), Taylor Heavy Hauling, Inc., Extension—Danville, Ill. (not printed), decided July 1, 1964.

4. *Unduly detailed commodity descriptions.* "Animal and poultry feed consisting of at least 40 percent of grain or grain products and noncarnivorous, and mineral mixtures for animal and poultry feed and protein blocks for animal feeding and corn, linseed meal, soybean meal and other basic ingredients, namely, mineral and poultry vitamins, meat scraps, tankage, bone meal, dicalcium phosphate, wheat middling, oat feed, feeding oatmeal, and rolled oats, used in manufacture of animal and poultry feed," modified to read "animal and poultry feed, animal and poultry feed ingredients, and protein blocks for animal feeding," No. MC-126100 (Sub-No. 2), Steward Contract Carrier Application (not printed), decided April 28, 1965.

"With or without emulsifiers, preservatives, coloring, or additives" deleted from authority to transport certain animal and vegetable oils and fats. No. MC-114457 (Sub-No. 24), Dart Transit Company, Extension—Bradley, Ill. (not printed), decided January 20, 1966.

"Clay or sand, granulated or pulverized with not over 3.5 percent other ingredients, admixed but not processed for decolorization, filtering, or water softening," modified to read "filtration clay and filtration sand." No. MC-115523 (Sub-No. 104), Clark Tank Lines Company Extension—Salt Lake City, Utah (not printed), decided October 19, 1962.

"Liquid commodities, in bulk, in tank vehicles (except petroleum and petroleum products, corn syrup, corn products, liquid sugar, edible oils, vegetable oils, tallow, animal oils, animal fats, animal greases and blends of the aforesaid commodities)" modified to read "liquid chemicals (except petrochemicals), in bulk, in tank vehicles." Modification based on the actual need established by the evidence of record. No. MC-118831 (Sub-No. 44), Central Transport, Incorporated, Extension—Liquid Commodities from South Carolina (not printed), decided July 27, 1966.

"Houses, barns, sheds, farms buildings, granaries, storage elevators, tool sheds, boxcars, and buildings (except buildings, in sections, moving on their own or removable carriages with hitch-ball connectors, and commodities not specifically described above which, because of size or weight require the use of special equipment)" modified to read "buidings (except buildings in sections and trailers designed to be drawn by passenger automobiles)," No. MC-128199 (Sub-No. 1), Rolland F. Williams and Gary L. Williams Common Carrier Application (not printed), decided April 28, 1967.

In recent years proposals to restrict general-commodity authority against the transportation of "commodities injurious or contaminating to other lading" have generally been rejected as superfluous. Herr's Motor Exp., Extension—Paulsboro, N.J., 95 M.C.C. 696.

Requested authority to transport "glass container, one (1) gallon or less in capacity" modified to read "glass containers." No. MC-123934 (Sub-No. 5), Krevda Bros. Express, Inc., Extension—Glass Containers (not printed), decided January 6, 1965.

Commodity description "vitamin fortification products used as animal and poultry feed ingredients" changed to "animal and poultry feed ingredients." G. G. Parsons Trucking Co. Ext.—Lumber, Feed Ingredients, 86 M.C.C. 288.

5. *"Intended use" restrictions.*[1] "When shipped as sawmill waste products" elim-

[1] For a discussion of the intended use descriptions generally, see W. T. Mayfield Sons Trucking Co.—Interpretations, 92 M.C.C. 167; and C & H Transp. Co., Inc., Interpretation of Certificate, 62 M.C.C. 586.

inated following the commodity description "debarked wooden slabs and edgings." No. MC-125122 (Sub-No. 1), Gerald W. Davis Common Carrier Application (not printed), decided December 18, 1963.

Except salt intended for use in foodstuffs, or for general sale in grocery stores" deleted following the commodity description "salt." No. MC-124083 (Sub-No. 15), Skinner Motor Express, Inc., Extension—Louisville, Ky. (not printed), decided March 22, 1965.

"When for emergency installations or emergency repairs only * * *" deleted following the commodity description "equipment and materials used in the construction, installation, maintenance, and repair of telephone systems." No. MC-94170 (Sub-No. 4), William F. Madden, Extension—Telephone Equipment (not printed), decided December 10, 1964.

"Used in the manufacture of storm windows and doors" deleted following the commodity description "glass." No. MC-117310 (Sub-No. 4), Frank C. Cicioni, Extension—Mount Carmel, Pa. (not printed), decided December 14, 1966.

"* * * and farm supplies which are used primarily in farm operations (not including household commodities and supplies or appliances)" modified to read "* * * and farm supplies." No. MC-124917, Ralph Chandler Common Carrier Application (not printed), decided August 23, 1965.

6. *"Related articles," "trade-ins," trade names.* "And related articles" deleted following the description "floor tiles." No. MC-125694 (Sub-No. 3), Otto Feldt, Inc., Extension—Floor Tiles (not printed), decided July 27, 1965.

"And related articles" deleted following the description "bituminized fiber pipe and conduit." No. MC-126457, Anthony W. Daulto Contract Carrier Application (not printed), decided February 15, 1965.

"And trade-ins" deleted following the description "such commodities as are sold by mail order houses." No. MC-126978, Robert Dube Contract Carrier Application (not printed), decided May 27, 1965.

Requested authority to transport a product described by trade name "Nisol 80" modified to authorize the transportation on "nitrogen fertilizer solutions." No. MC-114890 (Sub-No. 3), C. E. Reynolds Extension—Fertilizer Solutions embraced in Rogers Cartage Co. Extension—Urea Solutions, 72 M.C.C. 329.

Requested authority to transport products described by trade name "Gradalls" modified to authorize the transportation of "grading and excavating equipment." Curtis Keal Transport Co., Inc., Ext.—New Philadelphia, 73 M.C.C. 249.

Requested authority to transport "such commodities as are manufactured by or dealt in by American Rock Wool Corp. * * *" modified to authorize the transportation of "mineral wool, rock wool, and glass rovings, and products thereof; glass filters; glass reinforcements and materials and supplies used in the installation of such commodities. Central Dispatch, Inc., Extension—Vermont, 79 M.C.C. 97.

Requested authority to transport a product described by trade name "Sonotube" modified to authorize the transportation of "fiber tubes." No. MC-61592 (Sub-No. 67), Jenkins Truck Line, Inc., Extension—Sono Tubes and Plastic Products (not printed), decided November 28, 1966.

7. *Restrictions relating to motor vehicles.* Section 203(a)(13) of the Interstate Commerce Act defines the term "motor vehicle" as "any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Commission * * *." In Western Auto Transports, Inc., Extension—Oregon, 49 M.C.C. 1, it was determined that the term "motor vehicles" as used in grants of authority to motor common and contract carriers has the same meaning and is as inclusive as the quoted statutory definition. Restrictions peculiar to the transportation of motor vehicles concern (1) truckaway and driveaway service, and (2) initial and secondary movements:

Truckaway and driveaway service.—Danbury Extension of Operations—Charlotte, N.C., 46 M.C.C. 147, establishes the test of determining whether a movement is by the driveaway or truckaway method: Namely, whether the vehicles being transported are being moved with motive power furnished by one or more of such vehicles. If so, the service is driveaway; otherwise, it is truckaway. This test has been made applicable to the transportation of all motor vehicles, including trailers. See Dealers Transport Co. Extension—Trailer and Truck Bodies, 49 M.C.C. 63.

Initial and secondary movements. Initial movements embrace the transportation of new motor vehicles from a place of manufacture or assembly, specifically authorized to be served as a point of origin by the originating carrier's certificate or permit, to any point upon the authorized route or within the defined territory for delivery to consignees or connecting carriers. Secondary movements include the transportation of motor vehicles, except the transportation of new motor vehicles from a place of manufacture or assembly, by a carrier to, from, and between all points upon its authorized route or routes or within its authorized territory for delivery to consignees or connecting carriers. See Whitehouse Common Carrier Application, 47 M.C.C. 529; and Western Auto Transports, Inc., v. Maughan Transport, Inc., 61 M.C.C. 414, and cases cited therein.

a. *Commodities not considered as motor vehicles.* The following representative list of commodities were found to be motor vehicles because they were neither designed nor intended for use upon the highways in the transportation of passengers or property or any combination thereof (see Western Auto Transport, Inc., Extension—Oregon, 49 M.C.C. 1):

"Automobile and truck bodies." Inasmuch as automobile bodies or truck bodies are in fact only parts of a vehicle to which they will be attached, it is unnecessary to restrict such transportation to initial or secondary movements or to truckaway or driveaway service.[2] Whitehouse Common Carrier Application, 47 M.C.C. 529; Dealer's Transport Co. Extension—Willow Run, 48 M.C.C. 199; and No. MC-60470 (Sub-No. 17), Motorcar Transport Company, Extension—New England (not printed), decided May 28, 1965.

"Trailer bodies." It is unnecessary to restrict to initial or secondary movements or to truckaway or driveaway service for the same reasons as apply to automobile and truck bodies. Dealer's Transport Co. Ext.—Trailer and Truck Bodies, 49 M.C.C. 63.

"Automobile-show equipment and paraphernalia." It is unnecessary to restrict to initial or secondary movements or to truckaway or driveaway service for the same reasons as apply to automobile and truck bodies. Dealer's Transport Co., Extension—Willow Run, 48 M.C.C. 199.

"Farm tractors." Authority to transport farm tractors "restricted to secondary movements, in truckaway service" modified to delete the quoted restriction inasmuch as (a) the initial or secondary movements restrictions are applicable only to grants of authority to transport motor vehicles, and (b) because of the impracticability of transporting farm tractors in driveaway service, no useful purpose would be served by restricting the operation to shipments moving in truckaway service.[3] No. MC-22182 (Sub-No. 16), Nu-Car Carriers, Inc., Extension—Farm Tractors (not printed), decided May 6, 1963. See also No. MC-117206 (Sub-No. 4), National Trucking Company Extension—Tractors (not printed), decided May 6, 1963; and No. MC-112391 (Sub-No. 27), Hadley Auto Transport Extension—Farm Tractors (not printed), decided May 8, 1963, cases which both cite the Nu-Car decision.

"Self-propelled vehicles (self-propelled cranes, excavators, back hoes, power shovels, and crane carriers)." Authority to transport the parenthesized commodities "in initial movements, in driveaway service" modified to exclude the "in initial movements" restriction as such a limitation is inappropriate where the considered commodities are not considered "motor vehicles." Inasmuch as the evidence showed only a need for driveaway service and in order to protect existing carriers against truckaway competition, the driveaway restriction was included in the grant of authority. No. MC-117557 (Sub-No. 13), Matson, Inc., Extension—Waverly, Iowa (not printed), decided January 12, 1967.

"Self-propelled street sweepers." Authority to transport self-propelled street sweepers "in initial driveaway service" modified to read "self-propelled street sweepers, in driveaway service" as "initial movements" limitation is applicable only to grants of authority to transport motor vehicles. No. MC-4405 (Sub-No. 417), Dealers Transit, Inc., Extension—New Holstein, Wis. (not printed), decided June 30, 1966.

"Pickup coaches." Authority to transport pickup coaches in "initial movements, in truckaway service" modified by deleting the quoted restrictions as such commodities are not motor vehicles. No. MC-123846 (Sub-No. 3), Myron H. Curtis and Betty L. Curtis Extension—Montana (not printed), Myron H. Curtis and Betty L. Curtis Extension—Washington (not printed), decided March 30, 1964, which involved the same supporting shippers and the same commodity (pickup coaches).

"Asphalt plants." Authority to transport portable asphalt plants in "secondary movements, in truckaway service" modified by deleting the quoted restrictions as (a) "secondary movements" are applicable only to grants of authority to transport motor vehicles, and (b) because no useful purpose would be served by restricting the operation in shipments moving in truckaway service. No. MC-103191 (Sub-No. 18), The George A. Rheman Co., Inc., Extension—Asphalt Plants (not printed), decided September 23, 1966.

b. *Miscellaneous motor vehicle restrictions necessitating modification.* In "tow-away" service restriction deleted from authority to transport "trailers * * *, in initial move-

[2] In Matson, Inc., Ext.—Self-Unloading Material Bodies, 96 M.C.C. 648, those carriers who in the early days of regulation had imposed in their existing authority similar restrictions were invited to file with the Commission a petition for removal from their operating rights of such restrictions pertaining to the transportation of "bodies." Many such filings were made.

[3] Clearly, restrictions to "initial" or "secondary" movements are, by definition, applicable only to grants of authority to transport motor vehicles. Western Auto-Transports, Inc., v. Maughan Transport, Inc., 61 M.C.C. 414. However, restrictions concerning "truckaway" or "driveaway" service may be appropriate even if the considered commodity is not by definition a "motor vehicle" provided such commodity is capable of moving under its own power.

ments, in truckaway service" as such restrictions is redundant and confusing. No. MC-115022 (Sub-No. 8), Chamberlain Mobilehome Transport, Inc., Extension—Alfred, Maine (not printed), decided September 22, 1964, citing Danbury Extension of Operations—Charlotte, N.C., 46 M.C.C. 147 (where it was concluded that both driveaway and truckaway include "tow-away").

"Accessories and equipment therefor" deleted from authority to transport trailers, inasmuch as trailer accessories and equipment when transported with the vehicle in which they are to be installed or in another vehicle being transported at the same time and in the same manner may be transported under the authority to transport "trailers." No. MC-21684 (Sub-No. 19), Charles E. Danbury, Inc., Extension—Montgomery County, Pa. (not printed), decided June 17, 1964.

Proposed commodity descriptions (a) "trailers and mobilehomes designed to be drawn by passenger automobiles, in initial movements, in truckaway service," and (b) "sectionalized buildings, mounted on wheeled undercarriages, equipped with hitchball couplers," modified to read, respectively, (a) "trailers designed to be drawn by passenger automobiles, in initial movements, in truckaway service," and (b) "prefabricate buildings, in sections," inasmuch as the proposed commodity descriptions were unduly detailed and the modified descriptions more accurately and better described the authority requested. No. MC-115022 (Sub-No. 11), Chamberlain Mobilehome Transport, Inc., Extension—Sections (not printed), decided June 28, 1966.

Some difficulty has been encountered recently in clearly describing a new type of portable structure known in the industry as a "double-wide." These commodities cannot be transported by mobile-home carriers. In Morgan Drive-Away, Inc., Extension—Double-Wides, 105 M.C.C. 380, Appellate Division 1 described these commodities as "buildings, in sections mounted on wheeled undercarriages with hitch-ball connector;" and the adoption of this description should resolve some of the semantic problems heretofore found in this area of regulation.

Proposed commodity description "trailers and semitrailers" modified to read "trailers," inasmuch as the commodity description "trailers" includes "semitrailers." No. MC-83539 (Sub-No. 89), C & H Transportation Co., Inc., Extension—Rockwall, Tex. (not printed), decided April 6, 1964.

Commodity description "used passenger automobiles and used station wagons" modified to read "used passengers automobiles" inasmuch as authority to transport "passenger automobiles" includes the right to transport "station wagons." No. MC-125978 (Sub-No. 4), Dependable Car Travel Service, Inc., Extension—Forty-Nine States (not printed), decided August 10, 1966, citing Kenosha Auto Transport Corp. Ext.—Foreign Cars, 76 M.C.C. 38, 47.

Commodity description "* * * motor vehicles, including but not limited to trucks, tractors, trailers, semitrailers, automobiles, and buses * * * modified to read "* * * motor vehicles * * *" inasmuch as the enumerated commodities are embraced in the term "motor vehicles." No. MC-125388, Popular White Truck, Inc., Common Carrier Application (not printed), decided September 4, 1963, citing Cousino Common Carrier Application, 78 M.C.C. 797.

A limitation which read "restricted to traffic of the General Motor Corp. which has had an immediately prior movement by rail" modified to read "restricted to traffic originating at General Motors Corporation plants which has an immediately prior movement by rail" when applied to a grant of authority to transport new automobiles inasmuch as the deleted restriction contravened the public service obligations of a common carrier by motor vehicle and the same results are achieved by the substituted language. No. MC-3468 (Sub-No. 147), F. J. Boutell Driveaway Co., Inc., Extension—Baltimore, Md. (not printed), decided November 21, 1962.

B. EQUIPMENT RESTRICTIONS

1. *General.* Equipment restrictions may be either positively or negatively framed; suggested restrictions of both types have been rejected depending upon their ultimate result. Acceptable equipment restrictions, as explained more fully in the report to which this is an appendix, usually tend to achieve the positive "purpose" of describing the service authorized, the transportation characteristics of the commodity to be transported, and/or of protecting the legitimate interests of existing carriers.

2. *Unacceptable negatively framed vehicle restrictions.* Dry animal and poultry feed * * * (but not in tank or hopper-type vehicles)" modified to read "dry animal and poultry feed." Stearns Common Carrier Application, 96 M.C.C. 627. This Commission's general policy with respect to this type of equipment restriction is stated on page 628 of that decision, as follows:

Qualifying phrases in operating authorities issued by the Commission ought normally be confined to those which described the service authorized or the transportation characteristics of the commodity to be transported. Limitations which serve these positive purposes are often imposed and include such descriptions as "in bulk, in tank vehicles." Conversely, negative restrictions designed solely to keep a carrier from using a particular kind of equipment to the asserted benefit of existing operators prevent the rendition of needed service with optimum efficiency. The restriction recommended by the joint board which would ban the use of tank or hopper-type vehicles for the transportation of commodities in bulk is of the latter type and is, therefore, unacceptable.

"Restriction against the use of tank or hopper vehicles" not imposed in granting authority to transport "fertilizer." No. MC-123819 (Sub-No. 4), Ace Freight Lines, Inc., Extension—Urea (not printed), decided March 31, 1965.

Restriction against transportation "in pneumatic trailers" not imposed in granting authority to transport "fertilizer." No. MC-115331 (Sub-No. 104), Truck Transport, Incorporated, Extension—Fertilizer (not printed), decided February 8, 1966.

Restriction against transportation "in bulk, in dump vehicles" not imposed in granting authority to transport "carbon black, ground pitch" and other named related commodities. No. MC-53978 (Sub-No. 1), James E. Depeau Extension—Pennsylvania (not printed), decided May 4, 1966.

Restriction against "the use of dump vehicles or pneumatic trailers" not imposed in granting authority to transport "fertilizer." No. MC-106674 (Sub-No. 11), Osborne Trucking Co., Inc., Extension—Fertilizer (not printed), decided January 28, 1966.

Restriction against transportation "in tank vehicles" not imposed in granting authority to transport "ammonium nitrate fertilizer." No. MC-124632 (Sub-No. 4), Wilkerson Extension—West Virginia (not printed), decided May 10, 1963.

Restriction against transportation "in tank or hopper-type vehicles" not imposed in granting authority to transport general commodities. No. MC-120449 (Sub-No. 2), Peter P. De Casper, Jr., and Herman De Casper Common Carrier Application (not printed), decided November 30, 1965.

Restriction against transportation in "van-type equipment" not imposed in granting authority to transport "building boards." No. MC-11207 (Sub-No. 228), Deaton Truck Lines, Inc., Extension—Composition Building Boards (not printed), decided August 23, 1965.

3. *Unacceptable positively framed vehicle restrictions.* Restrictions to "on flat-bed trailers" or "on flat-bed equipment" are not ordinarily imposed. See No. MC-114098, Lowther Trucking Company Extension—Hartford, Conn. (not printed), decided February 18, 1963 (lumber products); No. MC-125997 (Sub-No. 1), L. C. Foesch Contract Carrier Application (not printed), decided April 30, 1965 (lumber and lumber products); No. MC-110878 (Sub-No. 8), Argo Trucking Company, Inc., Extension—Shells (not printed), decided April 29, 1963 (oyster shells); No. MC-117165 (Sub-No. 13), C. J. Davis Extension—Wallboard (not printed), decided March 15, 1965 (wallboard and building material); and No. MC-108341 (Sub-No. 5), Moss Trucking Company, Inc., Extension—Piasterco, Va. (not printed), decided March 16, 1965 (building materials).

Proposal to restrict service to "palletized on flatbed trailers only" not accepted in granting authority to transport "glass containers and closures." No. MC-111201 (Sub-No. 4), J. N. Zellner & Son Transfer Company Extension—Glass Containers (not printed), decided October 26, 1966.

Proposal to limit service to "in pneumatic tank motor vehicles" rejected in granting authority to transport fertilizers. No. MC-31600 (Sub-No. 565), P. B. Mutrie Motor Transportation, Inc., Extension—Ontario (not printed), decided February 10, 1965.

Request to restrict service to "in bulk, in dump vehicles and pneumatic tank trailers and in bags on pallets" not accepted in granting authority to transport "dolomite and binding mortar." No. MC-125201, L. Smith Cartage, Inc., Contract Carrier Application (not printed), decided February 4, 1966.

Restriction to "in bulk on flat-bed trailers, in hopper-type containers on flat-bed trailers, and in dump vehicles" not imposed in granting authority to transport various metals, No. MC-119777 (Sub-No. 3), Ligon Specialized Hauler, Inc., Petition to Modify Certificate (not printed), decided February 8, 1965.

Proposal to restrict operations to "in open trailers" found to be an unnecessary limitation on authority to transport specified fertilizers, and not imposed. No. MC-123061 (Sub-No. 27), Leatham Brothers, Inc., Extension—Animal Meals (not printed), decided January 17, 1966.

Restriction to service "in tank or closed-hopper vehicles" not imposed in granting authority to transport fertilizer and fertilizer materials, in bulk. No. MC-124584 (Sub-No. 1), Chemical Carriers Corporation Extension—Chesapeake, Va. (not printed), decided December 12, 1963.

Limitation to movements "in low-bed semitrailers" not imposed in granting authority to transport "boats." No. MC-124494 (Sub-No. 1), C. E. McNeil and Ward Alfred Sherman Common Carrier Application (not printed), decided May 1, 1963.

Limitation to movements on "flat-bed semitrailer equipment" not imposed in granting authority to transport "asphalt roofing" and related named commodities. No. MC-123407 (Sub-No. 22), Sawyer Transport, Inc., Extension—Wisconsin (not printed), decided February 6, 1967.

Limitation "when moving in van-type vehicles" not imposed in granting authority to transport "animal or poultry feed * * *." No. MC-127067 (Sub-No. 1), McLee Trucking Company, Inc., Contract Carrier Application (not printed), decided March 10, 1966.

A proposal to restrict service to "in dump trucks" not accepted in granting authority to transport "pig iron," as such commodity is not a bulk commodity and such a restriction

would be meaningless. McFeeley Extension—Coke, 92 M.C.C. 769.

4. *Proposed equipment restrictions necessitating modification.* Authority to transport fertilizer and fertilizer ingredients "except in bulk, in tank and hopper vehicles" modified to restrict against all "bulk" transportation as no specific need had been shown for the transportation of any of the involved commodities in bulk. No. MC-116254 (Sub-No. 51), Chem-Haulers, Inc., Extension—Arizona (not printed), decided January 25, 1966.

Authority to transport paint, paint materials, groceries, and grocery store supplies "restricted against the transportation of commodities in bulk, in tank or dump vehicles" modified to restrict against all "bulk" transportation as considered commodities do not appear to be susceptible to handling in bulk quantities and no need has been shown for bulk transportation. No. MC-2593 (Sub-No. 12), Baumann Bros. Transportation, Inc., Extension—Nebraska (not printed), decided November 23, 1966.

Authority to transport chocolate candy, confectionery, chocolate coating, and ice cream coating restricted against the use "of tank vehicles" modified to restrict against all "bulk" transportation as the modified restriction achieved the same intent and conformed to the evidence. No. MC-906 (Sub-No. 73), Consolidated Forwarding Co., Inc., Extension—Chocolate Coating from Milwaukee, Wis. (not printed), decided April 25, 1967.

Proposed restriction ("except in bulk or tank vehicles)" modified to except "in bulk" inasmuch as the deleted portion is unnecessary, No. MC-115841 (Sub-No. 259), Colonial Refrigerated Transportation, Inc., Extension—Kent County, Del. (not printed), decided May 16, 1966.

Proposed restriction against the transportation of "commodities in bulk, in tank, dump, or hopper-type vehicles" modified to read "against the transportation of commodities in bulk" as the modified restriction on the record achieved the same intent. No. MC-6446 (Sub-No. 2), W. H. Fitzgerald, Inc., Extension—Titusville, Pa. (not printed), decided January 31, 1967.

Proposal to transport "fertilizer and fertilizer materials (except in dump vehicles)" modified to read "fertilizer and fertilizer materials, in bags, or in bulk, in tank or hopper-type vehicles" as the purpose of the restriction is more appropriately framed in a positive manner. No. MC-110988 (Sub-No. 106), Kampo Transit, Inc., Extension—Fertilizer (not printed), decided June 11, 1965.

Authority to transport certain bulk commodities "in end dump vehicles" modified to "in dump vehicles." No. MC-123299 (Sub-No. 3), J. H. Oldham Concrete Co., Extension—Jackson County, Mo. (not printed), decided February 17, 1964.

Authority to transport petroleum products "in tank trailers" modified to conform with usual practice to describe such service "in tank vehicles." No. MC-104675 (Sub-No. 19), Frontier Delivery, Inc., Extension—Elk (not printed), decided January 18, 1965.

5. *Refrigerated equipment.* Restrictions which propose to limit the transportation to "commodities requiring refrigeration" or limitations to movements in either "refrigerated equipment" or "vehicles equipped for temperature control" are ambiguous and difficult to apply. Such authorizations generally are rephrased so as to limit service to movements in "vehicles equipped with mechanical refrigeration." Houff Transfer, Inc., Extension—Commodity Description, 72 M.C.C. 563, modified on other grounds, 78 M.C.C. 145; Rathbun Cartage Co. Extension—Meats, 64 M.C.C. 559; and Refrigerated Transport Co., Inc., Extension—Foodstuffs, 88 M.C.C. 71.

6. *Vehicle restrictions requiring additional equipment.* "Equipped with automatic hoists" deleted in No. MC-15167 (Sub-No. 30), Paul F. Cullum Extension—Baltimore (not printed), decided May 15, 1963.

"Vehicles equipped with mechanical loading and unloading devices" deleted in M. Pascale Trucking, Inc., Extension—Gray, Maine, 99 M.C.C. 542.

"In vehicles with pneumatic unloaders" deleted in No. MC-123972 (Sub-No. 4), Leo J. Umerley, Inc., Extension—Salt (not printed), decided January 21, 1966.

"Special unloading equipment (except dump trucks)" deleted in No. MC-125247, William G. Beck Contract Carrier Application (not printed), decided March 10, 1964.

"On skids, in vehicles equipped with hydraulic or mechanical loading and unloading devices" deleted in No. MC-126037, Joseph Rose Contract Carrier Application (not printed), decided May 14, 1965.

C. WEIGHT AND LOAD RESTRICTIONS

1. *General.* The Commission has been reluctant to impose load or weight restrictions because such restrictions generally are impractical, difficult to enforce, and administratively undesirable, and because carriers should ordinarily be able to render a complete service for their shippers regardless of the size or weight of the individual load. See, for example, Nowlin Common Carrier Application, 78 M.C.C. 357; and Beatty Motor Exp., Inc., Extension—Medina, Ohio, 79 M.C.C. 1.

2. *Truckload and less-than-truckload restrictions.*[4] Truckload restrictions. In recent years the Commission has refused to impose in motor carrier operating authority "truckload lot" restrictions, as such restrictions permit a carrier to skim off the cream of the traffic, to offer less than a complete service, and are impractical. Navajo Freight Lines, Inc., Alternate Route, 73 M.C.C. 103; No. MC-124988 (Sub-No. 9), H. H. Hocker Contract Carrier Application (not printed), decided February 17, 1964; and No. MC-56167 (Sub-No. 5), David K. Hershey Extension—Fertilizer (not printed), decided April 26, 1965.

Less-than-truckload restrictions. Restrictions limiting service to the handling of less-than-truckload shipments are indefinite and impractical, and would be difficult to enforce, and they will not be imposed by this Commission. For example, in Colonial Refrigerated Transp. Inc., Ext.—Delaware, 74 M.C.C. 13, 22, it was found that even though "the evidence pertains to a substantial extent to the shippers' need for the transportation of less-than-truckload shipments, the imposition upon the service found to be required of a restriction limiting such service to the handling of less-than-truckload shipments would be indefinite, impractical, and difficult to police and would deprive the shippers of a complete service which is not now available." See also Colonial Refrigerated Transp., Inc., Ext.—Bakery Goods, 72 M.C.C. 733.

3. *Mixed loads.* The Commission will not impose a percentage or other quantity limitation on the amount of each commodity which may be hauled in each vehicle, although in appropriate cases grants of authority have been restricted to the movement of specified commodities or classes of commodities in mixed loads.

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[4] As of the date of this report there is pending a proceeding in Ex Parte No. MC-68, Removal of Truckload Lot Restrictions, the sole purpose of which is to determine whether the removal of "truckload lot" restrictions from all existing certificates issued pursuant to section 206 or 207 of the Interstate Commerce Act is required by the present or future public convenience and necessity.

a. *Percentage allocations.* In Merscheim and Robertson Extension—Kansas, 49 M.C.C. 689, a suggested 25-percent condition to be used in defining authority to transport "emigrant movables" was not accepted. Percentage allocations were also proposed and rejected in Wm. Herbert & Son Co. Extension—North Carolina, 67 M.C.C. 12 ("subject to the restriction that the weight of the chairs and filing cabinets, in fiberboard cartons, shall not exceed 40 percent of the total weight of any shipment was not imposed"); and in Showalter Common Carrier Application, 81 M.C.C. 68 ("restricted to a service wherein not less than 50 percent by weight of any one shipment consists of personal property such as livestock, live poultry, bees, * * *" was not imposed). See also Barsh Truck Lines, Inc., Extension—Bartow, Fla., 92 M.C.C. 254.

b. *Acceptable mixed-load restrictions.* In Barsh Truck Lines, Inc., Extension—Bartow, Fla., 92 M.C.C. 254, affirmed Refrigerated Transport Co. v. United States, 227 F. Supp. 1021 (N.D. Ga. 1964), the application was premised on a need for a mixed-load service; and in order to protect existing carriers, this Commission granted applicant authority to transport frozen commodities "in mixed loads" with unfrozen commodities and specifically rejected the imposition of an arbitrary quantity or percentage mixing requirement. See also Wilson Bros. Truck Line Ext.—Frozen Food Concentrates, 92 M.C.C. 497; and No. MC-118196 (Sub-No. 23), Raye & Company Transports, Inc., Extension—Green Bay, Wis. (not printed), decided December 22, 1965 (authority to transport "food and foodstuffs * * * not more than 90 percent of the movement under a single bill of lading to consist of cheese was modified to grant a "mixed loads" limitation).

Authority to transport "commodity A in mixed loads with commodity B" authorizes only the transportation of commodity A; if commodities A and B are both sought to be transported in mixed loads with each other, the authority requested should read "commodity A in mixed loads with commodity B and commodity B in mixed loads with commodity A."

c. *Unacceptable mixed-load restrictions.* In No. MC-95540 (Sub-No. 399), Watkins Motor Lines, Inc. Extension—Frozen Foods From Points in Florida to Points in Washington (not printed), decided January 14, 1964, a proposal to restrict authority to the transportation of certain commodity "in mixed shipments" was not imposed where the supporting shipper was found to need a complete service to effect adequate distribution, and the imposition of the restriction would hinder such distribution.

In No. MC-109689 (Sub-No. 138), W. S. Hatch Co., Extension—Ammonium Nitrate (not printed), decided May 9, 1966, a limitation "in mixed shipments" in connection with applicant's present authority to transport ammonium nitrate, in bulk, was not imposed on a grant of authority to transport "ammonium nitrate, in bags or containers," inasmuch as such restriction would prevent applicant from meeting shippers' established transportation requirements. See also No. MC-123440 (Sub-No. 2), Causley Extension—Canned Fruit Juice (not printed), decided April 30, 1963.

4. *Weight Restrictions.*—a. *Acceptable weight restrictions.* A restriction "in packages not to exceed 200 pounds in weight" was retained in applicant's authority, inasmuch as its removal would change the character of applicants' service which was essentially a "package-delivery" service. Film Transport Co. Ext.—Elimination of Restriction, 71 M.C.C. 734.

A weight restriction has been imposed where the essential nature of the proposed

service was the handling of small packages—service restricted to no "article weighing more than 50 pounds or exceeding 108 inches in length and girth combined." United Parcel Service of New York, Inc., Com. Car. Applic., 79 M.C.C. 629. See also Frank Extension—Mail Order, 95 M.C.C. 383; No. MC-99284 (Sub-No. 3), Sullivan's Motor Delivery Inc., Extension—Graphic Arts (not printed), decided December 30, 1965; and No. MC-123738, Package Delivery, Inc., Contract Carrier Application (not printed), decided November 20, 1961.

Where the intent is to confine an operation to a package-delivery service, the weight restriction should be phrased substantially as follows: "restricted against the transportation of packages or articles weighing in the aggregate more than (50) pounds from one consignor to one consignee on any one day." See, for example, No. MC-111729 (Sub-No. 152), American Courier Corporation Extension—Pharmaceuticals (not printed), decided December 29, 1966.

b. *Unacceptable weight restrictions.* A restriction against the transportation of shipments weighing over 7,000 pounds was eliminated as being difficult to police and unnecessary inasmuch as applicant did not desire to transport such shipments and its operating vehicles were adapted to handling only relatively small shipments. Nowlin Common Carrier Application, 78 M.C.C. 357. See also No. MC-124627, G. W. Duke Common Carrier Application (not printed), decided January 30, 1963, where, citing the Nowlin case, "restricted to shipments weighing 1,500 pounds or less each" was deleted.

"In single units not in excess of 15,000 pounds," was deleted from authority to transport "concrete conduits." No. MC-124078 (Sub-No. 8), Schwerman Trucking Co., Extension—Conduit (not printed), decided October 19, 1962.

"No single article exceeding 500 pounds" has been deleted from authority to transport specified agricultural implements, inasmuch as applicant could transport articles in excess of 500 pounds in sections weighing less than 500 pounds and the restriction appeared ambiguous. Kindsvater Extension—Western States, 92 M.C.C. 131.

A restriction which would limit the weight of authorized shipments to 1,000 pounds and which would require service to be conducted in vehicles not larger than 7-ton trucks has been rejected, inasmuch as the evidence failed to establish that the weight limitation would satisfy the supporting shipper's needs since applicant might be called upon to intercept a shipment exceeding that weight. Paschall Extension—Stove Parts and Materials, 96 M.C.C. 652.

"Limited to packages not exceeding 60 pounds" has been eliminated from authority to transport flowers, florist supplies, and other specified commodities, inasmuch as the authority to be granted was limited to specified commodities and such restriction would be unnecessary and administratively undesirable. No. MC-85621 (Sub-No. 3), G. H. Vann Extension—Cut Flowers (not printed), decided March 31, 1965.

"Restriction against shipments of soda ash, salt, and ammonium nitrate in quantities of more than 15,000 pounds" was deleted from general-commodity authority as it was difficult to enforce, administratively undesirable, and no specific showing was made that the supporting shippers require the transportation of the above commodities with or without the weight limitation. No. MC-60012 (Sub-No. 72), Rio Grande Motor Way, Inc., Extension—San Juan County, N. Mex. (not printed), decided February 16, 1966.

D. Restrictions Concerning Identification of Origin and Destination Points and Consignor-Consignee Limitations

1. *Mileage Radii.* Describing operating authority in terms of mileage radii from central points (within 100 miles of New York, N.Y.) is to be avoided whenever possible, as it may give rise to interpretive problems and future litigation. Glennon Transports, Inc., Extension—New York, N.Y., 78 M.C.C. 157, 159.

Requested authority to serve points in Pennsylvania, Maryland, and Delaware "within 100 miles of Swedesboro" modified to describe the destination territory in terms of named counties. No. MC-125432 (Sub-No. 1), Longstreth Contract Carrier Application (not printed), decided August 31, 1964.

Except "* * * all points within 50 miles of Houston" modified by accepting named counties. No. MC-59117 (Sub-No. 17), Elliot Truck Lines, Inc., Extension—Fertilizer from Texas (not printed), decided September 6, 1963.

"* * * and points in Pennsylvania within 50 miles of Philadelphia" modified by describing certain counties in Pennsylvania. No. MC-124522, Drogo Contract Carrier Application (not printed), decided April 23, 1963.

"To, from, and between points within a 7-mile radius of Jackson, Tenn., including Jackson," modified by describing the particular plantsite which was inteded to be served. No. MC-78632 (Sub-No. 120), Hoover Motor Express, Co., Inc., Extension—Jackson, Tenn. (not printed), decided February 12, 1965.

Service to Chicago "restricted against the pickup or delivery of traffic at points in Indiana within the Chicago, Ill., commercial zone" modified to read "to points in Cook County, Ill." Johnson Extension—Irregular Routes, 68 M.C.C. 437.

2. *Plantsite restrictions.* Plantsite restrictions, for the most part, are included in a grant of authority only where the exact location of a particular plant is not known or where they are shown, or conceded, to be necessary in order properly to protect the established interests of existing carriers.

Plantsite restrictions have been imposed in grants of authority to preclude applicants from serving a vast public far exceeding the limited proof of a need for service shown by a single shipper, and hence to protect the established interests of existing carriers. Kreider Truck Service, Inc., Extension—Lard Oils, 82 M.C.C. 565; M. I. O'Boyle & Son, Inc., Extension—Fluorspar, 88 M.C.C. 559; and No. MC-31600 (Sub-No. 526), P. B. Mutrie Motor Transportation, Inc., Extension—Dry Plastic Materials (not printed), decided December 7, 1962.

A plantsite restriction was imposed where the origin point could not otherwise be identified with certainty. No. MC-119573 (Sub-No. 5), Watkins Trucking, Inc., Extension—Plastic Pipe (not printed), decided December 31, 1963.

Inasmuch as the term "Cockpit Point" appeared to be an unofficial description employed by area residents, a plantsite description was substituted to facilitate more accurate identification of the origin to be served. No. MC-102616 (Sub-No. 805), Coastal Tank Lines, Inc., Extension—Cockpit Point, Va. (not printed), decided July 11, 1967.

3. *Ambiguous restrictions.* The following origin and destination restrictions were modified or eliminated because the proposed limitations were indefinite, ambiguous, and difficult to interpret:

"Airports." No. MC-120624 (Sub-No. 1), Dean's Moving and Delivery, Inc., Common Carrier Application (not printed), decided June 1, 1965 ("sites of all airports" deleted).

"Construction sites." No. MC-984333 (Sub-No. 1), L. S. Griffin and Sons, Inc., Common Carrier Application (not printed), decided April 28, 1964, ("construction sites" deleted).

"Construction Jobsites" No. MC-125124, Thomas E. Beamon Contract Carrier Application (not printed), decided May 27, 1964 ("construction jobsites" deleted).

"Farm Sites." No. MC-125489, Robert Pashen Common Carrier Application (not printed), decided March 5, 1964 ("to Britton, Hecla, and Claremont, S. Dak., including farm sites located in the area of Britton, Hecla, and Claremont, S. Dak." modified to read "to Britton, Hecla, and Claremont, S. Dak.").

"Jobsites" Beal Transfer Co., Extension—Ohio, Ind. & Ky. Points, 68 M.C.C. 14 ("Jobsites" modified by authorizing service to all points in the described destination territory).

"Marine Docks." A. & E. Trucking Company Common Carrier Application (not printed), decided February 16, 1965 ("restricted against the origination of shipments at marine docks" eliminated).

"Natural Gas and Petroleum Drilling and Production Sites." No. MC-117169 (Sub-No. 3), B. Beasley Extension—Five States (not printed), decided September 13, 1963 ("natural gas and petroleum drilling and production sites" modified by authorizing service to all points in the described destination territory).

"Off-rail Points". No. MC-124755 (Sub-No. 4), Homer Hoag Extension—Aggregates (not printed), decided September 19, 1966 (limitation of service to" "off-rail" points eliminated).

"Piers, Wharves * * *." No. MC-127754, Rolinthony Trucking, Inc., Common Carrier Application (not printed), decided October 28, 1966 ("between piers, wharves, freight forwarders and consolidators" modified by authorizing service between all points in the described territory).

"Port Cities". No. MC-113488 (Sub-No. 1), L. H. Sims Extension—Agri-Cultural Chemicals (not printed), decided June 21, 1966, ("port cities in Florida" modified by authorizing service to all points in Florida).

"Rail Heads." Southwestern Transp. Co., Inc., Extension—Colorado, 68 M.C.C. 259, ("restricted to movements which originate or terminate on a rail head" deleted).

"Sawmill Sites." Doty Contract Carrier Application, 71 M.C.C. 787 ("Sawmill sites" modified by authorizing service from all points in the named origin counties).

"Storage Facilities." No. MC-56167 (Sub-No. 6), David K. Hershey Extension—Plant Site (not printed), decided March 28, 1967 ("restricted against transportation of shipments to dealers, warehouses, and storage facilities" deleted).

"Terminals." No. MC-107871 (Sub-No. 38), Bonded Freightways, Inc., Extension—Massachusetts (not printed), decided March 8, 1966 (amendment to limit proposed service "from New York Central Railroad Co. terminals in Massachusetts" not allowed—service authorized from all points in Massachusetts).

4. *Class of consignor or consignee.*—The following restrictions proposing to confine service to a class of shippers or to a specific type of consignor or consignee were modified or eliminated because the proposed restrictions were indefinite, ambiguous, and difficult to interpret.

Limiting the destination area to be served "to all present and future business locations" of two named consignees in Delaware was modified to authorize operations to all points in Delaware, No. MC-119950 (Sub-No. 2), James P. Wood, Jr., Extension—Baltimore, Md. (not printed), decided May 20, 1965.

Authority limiting service to and from "Shop Rite Supermarkets" eliminated. No. MC-123408 (Sub-No. 11), Food Haulers, Inc., Extension—Three States (not printed), decided November 25, 1964.

Restriction to traffic moving to "wholesale and retail newsdealers and agents" eliminated. Exhibitors Film Delivery & Service Co., Inc., Extension, 67 M.C.C. 613.

Restriction "to traffic moving to authorized Watkins Products retail dealers" eliminated. No. MC-124914 (Sub-No 1), Sprecher Brothers Common Carrier Application (not printed), decided December 18, 1963.

Limitation of service "to shipments moving to retail gasoline service stations or to warehouses, and other facilities for distribution to retail gasoline service stations" eliminated. No. MC-105461 (Sub-No. 62), Herr's Motor Express, Inc., Extension—Marcus Hook, Pa. (not printed), decided August 23, 1965.

"When moving to a store, restaurant, bar, institution, hotel, motel, church, bank, military installation, office, or laboratory for installation" deleted. No. MC-126372, Milton M. Rabin Common Carrier Application (not printed), decided October 7, 1965.

"Consigned to or from newspapers, theaters, magazines, periodicals, and monthly publications" eliminated. No. MC-85621 (Sub-No. 3), G. H. Vann Extension—Cut Flowers (not printed), decided March 31, 1965.

E. Multiple Pickup or Delivery, and Peddle Service Restrictions

1. *General.* Restrictions confining the proposed service to the partial unloading of shipments having a final destination elsewhere or which require a stop at named points for the completion of loading are difficult to enforce as well as ambiguous and impractical and have been repeatedly rejected by this Commission. Colonial Refrigerated Transp., Inc., Ext.—Partial Del., 86 M.C.C. 601; Alterman Transport Lines, Inc., Ext.—Hastings, Nebr., 94 M.C.C. 421; and No. MC-118196 (Sub-No. 17), Raye & Company Transport, Inc., Extension—Neosho, Mo. (not printed), decided June 25, 1965. But see Trans-Cold Express, Inc., Extension—Prepared Dough, 103 M.C.C. 717. Similarly, limiting a proposed service to such restrictions as in "peddle service" only is unacceptable because of the imprecise meaning of such term and the resultant difficulty of enforcing it. Fox-Smythe Transp. Co. Extension—Peddle Service, 88 M.C.C. 57.

2. *Unacceptable pickup and delivery restrictions.* "That no complete shipment may be fully delivered within the destination States of Illinois, Indiana, and Ohio" eliminated in the Colonial case, supra.

Restricted "(1) on traffic destined to points in Arkansas, Mississippi, and to Memphis, Tenn., to the partial unloading of volume or truckload shipment, the balance of which is delivered elsewhere and (2) on service at Carthage, Mo., to the final loading by the shipper of vehicles which have been partially loaded at origins in Nebraska" eliminated in the Alterman case, supra.

"Restricted to traffic requiring a stop at points in Nebraska or Iowa for completion of loading" eliminated in the Raye case, supra.

"Except that service to points in California, Arizona, and New Mexico shall be restricted to delivery of a part only of aggregate shipments the remainder of which is destined to points in the other destination States" eliminated in No. MC-52709 (Sub-No. 144), Ringsby Truck Lines, Inc., Extension—Banqurt, (not printed), decided September 19, 1962.

Restricted "against tacking except on shipments originating at either of two-named plantsites and moving to the other plantsite to complete loading for movement beyond," eliminated in No. MC-38320 (Sub-No. 10), Central Motor Express, Inc., Extension—Bowling Green, Ky. (not printed), decided March 22, 1965.

Limiting service to "shipments involving partial delivery to points in West Virginia, with final delivery to points beyond" eliminated in No. MC-87720 (Sub-No. 29), Bass Transportation Co., Inc., Extension—Hamilton Township, N.J. (not printed), decided August 31, 1965.

Limiting service to other States "when moving in the same vehicle destined to points in Florida" eliminated in No. MC-114569 (Sub-No. 65), Shaffer Trucking Inc., Extension—Parsons, W. Va., and Burnside, Ky. (not printed), decided February 5, 1965.

"That any shipments transported shall be stopoffs for partial unloading, with final destination at a point in Florida" eliminated in No. MC-115491 (Sub-No. 38), Commercial Carrier Corporation Extension—Plastic Pipe (not printed), decided January 18, 1965.

Limiting service to "four or more deliveries from each truck" eliminated in No. MC-113267 (Sub-No. 121), Central & Southern Truck Lines, Inc., Extension—Three States (not printed), decided September 9, 1964.

Limiting service at plantsite origins to "the pickup of partial loads" for handling with other shipments of the shipper transported by applicant eliminated in No. MC-112582 (Sub-No. 24), T. M. Zimmerman Company Extension—Allentown, Pa. (not printed), decided April 12, 1965.

Limiting service to "partial loading with stopoffs to complete loading at the seven Pennsylvania origins" eliminated in No. MC-114019 (Sub-No. 97), Midwest Emery Freight System, Inc., Extension—Rouseville, Pa. (not printed), decided October 29, 1963.

Limiting service "to shipments originating at Buffalo as part loads and completing loads" at designated points was eliminated in No. MC-111812 (Sub-No. 171), Midwest Emery Freight System, Inc., Extension—Rouseville, Pa. (not printed), decided August 23, 1965.

Limiting service to "in peddle service only" eliminated in the Fox-Smythe case, supra. See also No. MC-118561 (Sub-No. 11), Herbert B. Fuller Extension—Georgia (not printed), decided March 27, 1967, where a limitation restricting the service to "peddle distribution service" was not imposed, citing Fox-Smythe. A restriction "against the performance of pool car and pool truck distribution services" was eliminated in a grant of authority to transport general commodities. No. MC-59868 (Sub-No. 2), Cargo Distribution Corporation Extension—Suffolk County, N.Y. (not printed), decided July 5, 1967, citing Robinson Extension—Chippewa County, 52 M.C.C. 155.

F. Territorial Descriptions and Restrictions

1. *Territorial descriptions.* For the general distinction between regular- and irregular-route service, see Classification of Motor Carriers of Property, 2 M.C.C. 703; Transportation Activities, Brady Transfer & Storage Co., 47 M.C.C. 23; and Ex Parte MC-55, Motor Common Carriers of Property—Routes and Service, 88 M.C.C. 415. If regular-route authority is sought, the route description should be accurate and complete, the new route should not duplicate any part of any route already authorized for the same service, and the intermediate points sought to be served should be named unless authority is sought to serve all intermediate points in which case that terminology can be used. With respect to irregular-route operating right, the requested authority should be described only by one of the following methods: (1) "from * * * to * * *," (2) "between * * * and * * * (nonradial), or (3) "between * * *, on the one hand, and, on the other, * * * "(radial)." "From and to" movements are self-explanatory in that traffic is authorized to move in only one direction, i.e., from a particular origin or origins to a particular destination or destinations, and operations are not authorized in the reverse direction. Radial operations depict operations between a base point and other points in a described area, as distinguished from an unlimited nonradial operation between described points or all points within described areas. For example, a nonradial description "between points in New York, Ohio, and Pennsylvania" would authorize service in interstate or foreign commerce between any point within the described area; while a radial description "between points in New York, on the one hand, and, on the other, points in Pennsylvania and Ohio" would authorize service only between points in New York (the base territory) and Pennsylvania or between points in New York and Ohio. Operating between points in Pennsylvania and Ohio, even though performed through points in New York are precluded as an illegal "cross-hand." It should be noted that because each of these three irregular-route authorizations has a separate and distinct meaning, they are mutually exclusive and should never be combined in the same request. As, for example, "from * * *, on the one hand, and, on the other, * * *. Regular-route service should, of course, ordinarily be confined to the transportation of general commodities or a wide range of specific commodities. Motor Common Carries of Property—Routes and Service, supra, at page 430.

2. *Tacking restrictions.* Grants of authority will not be encumbered with restrictions against tacking or joinder unless protesting carriers show (or it is conceded) that, absent such restrictions, they would be materially and adversely affected by the unwarranted institution of a new competitive service. Rawlings Extension—Emporia, 78 M.C.C. 636, 637; and No. MC-31367 (Sub-No. 21), H. Cambell & Son, Inc., Extension—Frozen Vegetables (not printed), decided November 7, 1962.

No tacking restrictions on grants of contract carrier authority will be imposed as contract carriers, unlike common carriers, are not permitted to tack or join separate segments of their operating authorities at common service points in order to perform a through service. See Service of Contract Carriers, 49 M.C.C. 103; and T. T. Brooks Trucking Co., Inc., Conversion Application, 81 M.C.C. 561, 572, and cases cited therein.

Even more compelling reasons exist with respect to restrictions against interchange. In order that common carriers may fulfill their public obligation, expressed in section 216(b) of the Interstate Commerce Act, to provide adequate service and facilities for the transportation of property in interstate commerce, the act itself encourages interchange by providing, in section 216(c), a correlative privilege of establishing through routes with other common carriers by motor, rail, and water. Hogan Storage & Transfer Co., Ext.—Williamson, W. Va., 92 M.C.C. 63, 67; and Tompkins Motor Lines, Inc., Extension—Louisville, 95 M.C.C. 472, 481.

In No. MC-59271 (Sub-No. 10), Boston Truck Co., Inc., Extension—Uncrated Furniture (not printed), decided September 19, 1963, a restriction against the tacking or joinder thereof "directly or indirectly with any other authority held by applicant for the purpose of performing through service" was rejected as the evidence failed to show that failure to impose such restriction would have a material adverse effect on opposing carriers.

No. MC-94201 (Sub-No. 51), Bowman Transportation, Inc., Extension—Scottsville, Va. (not printed), decided May 16, 1963 ("restricted against the tacking or joinder with any operating rights held by applicant, which would enable applicant to transport such commodities through Cedartown, Lindale,

Mount Berry, Rome, or Summerville, Ga., to points in Alabama, and Tennessee" was eliminated);

In No. MC-84737 (Sub-No. 77), Nilson Motor Express, Extension—Duval County, Fla. (not printed), decided April 29, 1966, a restriction "against tacking or joinder with respect to traffic originating in Baltimore, Md., and Washington, D.C." was eliminated as being difficult to enforce and administratively undesirable when granting authority from Charleston, S.C., and points within 15 miles thereof to points in Duval County, Fla.

No. MC-112696 (Sub-No. 27), Hartmans Incorporated, Extension—Matrinsburg, W. Va. (not printed), decided January 24, 1966 (a restriction "that except for traffic originating at public warehouses in Martinsburg, W. Va., the authority granted herein may not be tacked or joined with any other authority held by applicant for the purpose of providing through service to points in Georgia, North Carolina, and South Carolina" was rejected as being indefinite and was modified to read "subject to the restriction that shipments destined to points in Georgia, North Carolina, and South Carolina are limited to those originating at the plantsite and warehouse of the Casco-Berkeley Corp., at Martinsburg, W. Va."

3. *Interchange restrictions.* In the Tompkins case, supra, an interchange restriction was not imposed where the purpose of such restriction was to protect protestants from a risk of indirect competition from applicant and other unnamed carriers.

In No. MC-124211 (Sub-No. 89), Hilt Truck Lines, Inc., Extension—Inedible Offal (not printed), decided December 30, 1966, the destination proposed "to points in Nebraska (except Crete and Omaha), restricted against the interline of traffic destined to points in Colorado, Utah and Wyoming" was modified to read "to points in Nebraska (except Crete and Omaha), restricted to the transportation of traffic destined to points in Nebraska (except Crete and Omaha)" inasmuch as the partial no-interlining restriction proposed could be difficult to enforce.

4. *Restrictions against both tacking and interchange.* In appropriate circumstances usually involving multiple applications for competing rights, restrictions against interchange (or interline) and tacking at origin and/or destination points have been allowed. These instances evolve when grants of authority are tied closely to applicants' existing operations and when tacking and interchange would result in additional competitive operations which are not contemplated and which would materially and adversely affect other authorized carriers. Riss & Co., Ext.—Dakota County, Nebr., 102 M.C.C. 336, 343. Occasionally, these restrictions are allowed for such compelling reasons as agreement of the parties that protestants would be materially adversely affected by their omission. No. MC-61755 (Sub-No. 20), Northern Haulers Corporation Extension—St. Lawrence County, N.Y. (not printed), decided January 30, 1967. These restrictions should be proposed in the form favored by this Commission, i.e., "from X to Y restricted to the transportation of traffic (without specific reference to named commodities) originating at the named origins" and/or "destined to the indicated destinations." A description which reads "Coal originating at X to Y" not acceptable and ought never be proposed. The following is a list of improperly proposed restrictions of this type and their subsequent modification by this Commission.

"Restricted against tacking or interchange at origin" modified to read "restricted to the transportation of traffic originating at such plant, terminal, or warehouse facilities." No. MC-64112 (Sub-No. 24), Northeastern Trucking Company Extension—Charleston, S.C. (not printed), decided February 18, 1966.

Restriction that reads "This authority shall not be tacked, joined, or interlined, directly or indirectly for performing any through service" modified to read "restricted to the transportation of traffic originating at the indicated origin point and destined to the indicated destination points." No. MC-113908 (Sub-No. 180), Erickson Transport Corporation Extension—Choline Chloride (not printed), decided February 23, 1966.

"Restricted against joinder, interline, transfer or export" modified to read "restricted to traffic originating at" the named origin point "and destined to" the named destination points, No. MC-61755 (Sub-No. 20), Northern Haulers Corporation Extension—St. Lawrence County, N.Y. (not printed), decided January 30, 1967.

"Restricted against traffic requiring tacking of applicant's authority and traffic that would be moving in interline service with other carriers" modified to read "restricted to the transportation of shipments both originating at and destined to points in the above-described territory." No. MC-123885 (Sub-No. 3), C and R Transfer Co., Common Carrier Application (not printed), decided April 27, 1967.

"Restricted against tacking or interlining so as to provide a through service to points west of the Mississippi River" modified to read "restricted to the transportation of traffic originating at the above-indicated plantsites and destined to the above-indicated destination points" inasmuch as the evidence failed to indicate any need for applicant to tack or interline the authority sought. No. MC-64932 (Sub-No. 404), Rogers Cartage Co., Extension—Western, Mich. (not printed), decided April 28, 1967.

Inasmuch as the grants of authority were restricted "to the transportation of traffic originating at or destined to points within the States described above" an additional limitation against the transportation of rubber-tired tractors "which have an immediate prior movement by rail" was considered unnecessary and omitted. No. MC-59150 (Sub-No. 16), Ploof Transfer Company, Inc., Extension—Tractors (embracing six other proceedings) (not printed), decided June 30, 1966.

The restriction that "carrier is precluded from interlining traffic with other carriers and from combining or tacking the authority granted herein with any authority now held by carrier for the purpose of providing service from and to points other than those authorized to be served herein" modified to read "restricted, in each instance, to the transportation of shipments originating at the plantsites * * *, and destined to points in the named destination territory." No. MC-10761 (Sub-No. 189), Transamerican Freight Lines, Inc., Extension—Cleveland, Ohio (embracing seven other proceedings) (not printed), decided August 31, 1966.

Inasmuch as the grants of authority were restricted "to the transportation of traffic which originates at the plantsite of * * *, and is destined to the described destination points * * *," an additional limitation that would prevent the authorities "from being tacked or joined indirectly with any other authority held by the respective applicants for the purpose of performing through transportation" was considered superfluous and omitted. No. MC-102616 (Sub-No. 759), Coastal Tank Lines, Inc., Extension—Point Pleasant, W. Va. (embracing nine other proceedings) (not printed), decided January 26, 1966.

"That no service is authorized having an origin or destination in Canada" modified to read "restricted against the transportation of shipments originating at or destined to points in Canada." No. MC-42487 (Sub-No. 629), Consolidated Freightways Corporation of Delaware Extension—Fertilizer (not printed), decided May 11, 1966.

"Restricted to the transportation of vehicles manufactured in Allentown, Pa.," modified to read "restricted to the transportation of shipments originating at Allentown, Pa." No. MC-29886 (Sub-No. 212), Davis & Mavis Forwarding Co., Inc., Extension—Oregon (not printed), decided May 3, 1966.

G. MISCELLANEOUS RESTRICTIONS

1. *Restrictions that serve no useful purpose.* A restriction that "the authority herein granted should not be construed to enlarge other previous grants of authority, nor to diminish restrictions imposed upon such grants" was eliminated from a grant of authority to transport passengers between certain points in New York and New Jersey as it placed no effective limitation on applicant's operation. No. MC-668 (Sub-No. 79), Inter-City Transportation Co., Inc., Extension—Union Avenue (not printed), decided November 9, 1962.

A limitation to traffic having a prior movement by applicant was eliminated from authority to transport wax beans from Meadville to Lewistown, Pa. No. MC-48957 (Sub-No. 23), Crown Motor Freight Co., Extension—Lewistown, Pa. (not printed), decided April 18, 1963.

A limitation to traffic "having a subsequent interstate movement" was eliminated from authority to transport rock and related commodities between six named counties in New Mexico. No. MC-111401 (Sub-No. 169), Groendyke Transport, Inc., Extension—Rock and Ore (not printed), decided July 18, 1966.

2. *Confusing restrictions.* A restriction on the method of operation by a household goods carrier ("goods only when packed in accordance with western—classification packing requirements") was removed because of uncertainty, the requirement being weight to change from time to time. Pacific Motor Trucking Co. Extension—Feedsport, Oreg., 41 M.C.C. 469, 471.

A restriction "having a prior movement by barge" was modified to read "restricted to shipments having a prior for-hire movement by water from points in another State or another country." No. MC-127803 B. Garcia Trucking Co., Common Carrier Application (not printed), decided October 5, 1966.

"In bags when transported in conjunction with a bulk load and as part of the same shipment," modified to read "in bags, when transported in the same vehicle and at the same time as such commodities in bulk." No. MC-80428 (Sub-No. 55), McBride Transportation, Inc., Extension—Feeds (not printed), decided April 28, 1967.

Restrictions limiting the transportation service relating to the stringing of pipe "on feeder lines" or to "projects not exceeding 30 miles in length" or to "stringing pipe for repairs" were not allowed as these restrictions were indefinite, impractical, and unworkable. Dawson and Corbett Extension—Northwest Territory, 44 M.C.C. 293.

3. *Limitations that are unduly restrictive.* Those that prevent rendition of a needed or complete service.

A restriction limiting the grant of authority to the transportation of a particular type of trailer produced by the shipper was deleted. Dealers Transit, Inc., Extension—Fresno, Calif., 79 M.C.C. 26.

A restriction against the "transportation of commodities which because of size or weight require the use of special equipment" was not imposed on a grant of authority to transport farm machinery. Tractor Transport, Inc., Extension—Tractors, 77 M.C.C. 359.

A restriction against the "transportation of trailers and trailer chassis requiring special equipment for loading and unloading" was not imposed inasmuch as the interest of protestant heavy hauler was, at best, one of loss of potential traffic. Dealers Transit, Inc., Extension—Augusta, Kans., 86, M.C.C. 571.

Authority to transport sand and lithium ore from points in Morgan County, W. Va., to points in New York was not impeded by a restriction which reads "except that shipments of sand and lithium ore used in the manufacture of glass products to Buffalo, Corning, Elmira, and Horseheads, N.Y., shall be restricted to transportation in bulk." No. MC-3114 (Sub-No. 21), T. H. Compton Inc., Extension—New York (not printed), decided July 10, 1964.

A restriction which read "and the authority from Onondago and Monroe Counties to Linden and Newark, N.J., shall not include frozen foods except as the same shall be shipped by the shipper from its own stores" was not imposed on a grant of authority to transport such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses. No. MC-59759 (Sub-No. 24), Jones Trucking Co., a Corporation, Contract Carrier Application (not printed), decided March 28, 1966.

4. *Restrictions that are impractical or difficult to enforce.*—a. *Ancillary nontransportation services.* Ancillary nontransportation services have no bearing on the issue of public convenience and necessity and must be disregarded in determining whether a need exists for additional transportation service. Kenosha Auto Transport Corp. Extension—Foreign Cars, 83 M.C.C. 527.

In Sweeton Common Carrier Application, 47 M.C.C. 418, a restriction that limestone and hydrate of lime "shall be unloaded by spreading on the soil" was not imposed, inasmuch as a carrier cannot be compelled to perform any service separate and distinct from that of transportation. See also Clark Common Carrier Application, 78 M.C.C. 121.

In No. MC-127999 (Sub-No. 1), Dun Rite Trucking Service, Inc., Contract Carrier Application (not printed), decided September 28, 1966, a restriction limiting the transportation service "to the transportation of shipments on which applicant performs inside delivery and placement" was not imposed.

In No. MC-2796 (Sub-No. 4), Pullington Auto Bus Company, Inc., Extension—Phillipsburg (not printed), decided June 11, 1965, authority to transport passengers in special operations in round trip, all-expense tours "which include services in addition to transportation" was modified by deletion of the quoted language.

b. Restrictions requiring excessive knowledge on part of the carrier. In Eldon Miller, Inc., Extension—Terre Haute, Inc., 77 M.C.C. 339, a condition which would limit the transportation of alcohol to that used in the production of alcoholic beverages, and to the transportation of alcohol upon which the Federal tax has been paid was rejected.

In No. MC-118831 (Sub-No. 23), Central Transport, Inc., Extension—Cement (not printed), decided July 15, 1963, a restriction which attempted to limit the transportation of cement between points in North Carolina "to shipments moving in a continuous rail-motor movement from Cowan and Nashville, Tenn., Rockmart, Ga., or Security, Md." was modified to read "limited to shipments having an immediately prior movement by rail."

In No. MC-128530, Robert D. Bowen, Extension—Watertown, S. Dak. (not printed), decided February 28, 1967, a restriction which attempted to limit the transportation of commodities to those "manufactured and/or distributed from Watertown, S. Dak.," was rejected.

c. *Restrictions that serve only to render the operation difficult.* Lenthe Extension—Livestock and Petroleum Products, 47 M.C.C. 295 (a restriction that each of two commodities must be transported consecutively in the same equipment was eliminated as impracticable).

Belyea Truck Co. Extension—Litchfield Park, Ariz., 86 M.C.C. 101 (a restriction limiting service to movements "requiring special handling, accompanied by escorts and escort vehicles" was not imposed).

No. MC-126283, Bergen—Passaic Air Express, Inc., Contract Carrier Application (not printed), decided December 14, 1964 (a restriction limiting the operation to "in same day service" not imposed).

No. MC-125561, Sunnyside Transfer, Inc., Common Carrier Application (not printed), decided March 19, 1964 (a restriction limiting service "to the transportation of shipments moving in pickup and delivery service for the account of and on the billing of line-haul motor carriers" was not imposed).

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