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Codification Guide

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Announcement

CFR SUPPLEMENTS

(As of January 1, 1960)

The following Supplement is now available:

Title 14, Parts 40-399..... \$0.75

Previously announced: Title 3 (\$0.60); Titles 4-5 (\$1.00); Title 7, Parts 1-50 (\$0.45); Parts 51-52 (\$0.45); Parts 53-209 (\$0.40); Parts 210-399, Revised (\$4.00); Parts 900-959 (\$1.50); Part 960 to End (\$2.50); Title 8 (\$0.40); Title 9 (\$0.35); Titles 10-13 (\$0.50); Title 14, Parts 1-39 (\$0.65); Title 15 (\$1.25); Title 16, Revised (\$6.50); Title 17 (\$0.75); Title 18 (\$0.55); Title 19 (\$1.00); Title 20 (\$1.25); Title 21 (\$1.50); Titles 22-23 (\$0.45); Title 24 (\$0.45); Title 25 (\$0.45); Title 26 (1939), Parts 1-79 (\$0.40); Parts 80-169 (\$0.35); Parts 170-182 (\$0.35); Parts 300 to End (\$0.40); Title 26, Part 1 (§§ 1.01-1.499) (\$1.75); Parts 1 (§ 1.500 to End)-19 (\$2.25); Parts 20-169 (\$1.75); Parts 170-221 (\$2.25); Part 300 to End (\$1.25); Titles 28-29 (\$1.75); Titles 30-31 (\$0.50); Title 32, Parts 1-399 (\$2.00); Parts 400-699 (\$2.00); Parts 700-799 (\$1.00); Parts 800-999, Revised (\$3.75); Parts 1000-1099, Revised (\$6.50); Part 1100 to End (\$0.60); Title 33 (\$1.75); Title 35, Revised (\$3.50); Title 36, Revised (\$3.00); Title 37, Revised (\$3.50); Title 38 (\$1.00); Title 39 (\$1.50); Title 42, Revised (\$4.00); Title 43 (\$1.00); Title 46, Parts 1-145 (\$1.00); Parts 146-149, Revised (\$6.00); Part 150 to End (\$0.65); Title 47, Parts 1-29 (\$1.00); Part 30 to End (\$0.30); Title 49, Parts 1-70 (\$1.75); Parts 71-90 (\$1.00); Parts 91-164 (\$0.45); Part 165 to End (\$1.00); Title 50 (\$0.70).

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Rules and Regulations

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 6472]

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

On March 23, 1960, notice of proposed rule making with respect to certain administrative regulations of special application to the employment taxes imposed by subtitle C of the Internal Revenue Code of 1954, and with respect to amendments of existing employment tax regulations under sections 6001, 6011(a), and 6051 of such Code, was published in the FEDERAL REGISTER (25 F.R. 57). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the administrative regulations and the amendments as so published are hereby adopted, subject to the change set forth below:

Example (2) of paragraph (a) (1) (ii) of § 31.6413(c)-1 is revised by substituting "1959" for "1955" in the fifth sentence of such example.

[SEAL]

CHARLES I. FOX,
*Acting Commissioner
of Internal Revenue.*

Approved: June 17, 1960.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

PARAGRAPH 1. The employment tax regulations adopted under selected provisions of subtitle F of the Internal Revenue Code of 1954 read as follows:

- Sec.
- 31.6011(b) Statutory provisions; identification of taxpayer.
 - 31.6011(b)-1 Employers' identification numbers.
 - 31.6011(b)-2 Employees' account numbers.
 - 31.6051 Statutory provisions; receipts for employees.
 - 31.6051-1 Statements for employees.
 - 31.6061 Statutory provisions; signing of returns and other documents.
 - 31.6061-1 Signing of returns.
 - 31.6065(a) Statutory provisions; verification of returns.
 - 31.6065(a)-1 Verification of returns and other documents.
 - 31.6091 Statutory provisions; place for filing returns.
 - 31.6091-1 Place for filing returns.
 - 31.6101 Statutory provisions; period covered by returns or other documents.
 - 31.6101-1 Period covered by returns.
 - 31.6161(a) (1) Statutory provisions; extension of time for paying tax.
 - 31.6161(a) (1)-1 Extensions of time for paying tax.
 - 31.6205 Statutory provisions; special rules applicable to certain employment taxes.

Sec.

- 31.6205-1 Adjustments of underpayments.
- 31.6302(b) Statutory provisions; mode or time of collection; discretionary method.
- 31.6302(b)-1 Method of collection.
- 31.6402(a) Statutory provisions; authority to make credits or refunds.
- 31.6402(a)-1 Credits or refunds.
- 31.6402(a)-2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.
- 31.6402(a)-3 Refund of Federal unemployment tax.
- 31.6404(a) Statutory provisions; abatements.
- 31.6404(a)-1 Abatements.
- 31.6413(a) Statutory provisions; special rules applicable to certain employment taxes; adjustment of tax.
- 31.6413(a)-1 Repayment by employer of tax erroneously collected from employee.
- 31.6413(a)-2 Adjustment of overpayments.
- 31.6413(b) Statutory provisions; special rules applicable to certain employment taxes; overpayments of certain employment taxes.
- 31.6413(b)-1 Overpayments of certain employment taxes.
- 31.6413(c) Statutory provisions; special rules applicable to certain employment taxes; special refunds.
- 31.6413(c)-1 Special refunds.
- 31.6413(d) Statutory provisions; special rules applicable to certain employment taxes; refund or credit of Federal unemployment tax.
- 31.6414 Statutory provisions; income tax withheld.
- 31.6414-1 Credit or refund of income tax withheld from wages.
- 31.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.
- 31.6674-1 Penalties for fraudulent receipt or failure to furnish receipt.
- 31.7805 Statutory provisions; rules and regulations.
- 31.7805-1 Promulgation of regulations.

AUTHORITY: §§ 31.6011(b) to 31.7805-1 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

§ 31.6011(b) Statutory provisions; identification of taxpayer.

SEC. 6011. *General requirement of return, statement, or list.* * * *

(b) *Identification of taxpayer.* The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

§ 31.6011(b)-1 Employers' identification numbers.

(a) *Requirement of application*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, every employer who on or after January 1, 1955, has in his employ one or more individuals in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such date has neither secured an identification number nor made application therefor, shall make an application on Form SS-4 for an identification number. Each application,

together with any supplementary statement, shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Copies of Form SS-4 may be obtained from any district director, or any district office of the Social Security Administration. The application shall be filed with the district director with whom the employer will file returns of the taxes imposed by the Federal Insurance Contributions Act, or with the nearest district office of the Social Security Administration. Each application shall be signed by (i) the individual, if the employer is an individual; (ii) the president, vice president, or other principal officer, if the employer is a corporation; (iii) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (iv) the fiduciary, if the employer is a trust or estate. An identification number will be assigned to the employer in due course upon the basis of information reported on the application required under this section.

(2) *Exception.* An employer, other than an employer who is required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico, 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 (see § 31.3121(a)(7)-1) is not required to apply for an identification number.

(3) *Time for filing Form SS-4.* The application for an identification number shall be filed on or before the seventh day after the date on which the first payment of wages, as defined in the Federal Insurance Contributions Act, is made by the employer. For provisions relating to the time when wages are paid, see § 31.3121(a)-2 of Subpart B of the regulations in this part.

(b) *Employers who are assigned identification numbers without application.* An identification number will be assigned by a district director in the case of (1) an employer who is required to make returns of the taxes imposed by the Federal Insurance Contributions Act but who by reason of the provisions of paragraph (a) (2) of this section is not required to apply for an identification number, and (2) an employer who is required to make returns of income tax withheld from wages pursuant to section 3402 but who is not required to make returns of the taxes imposed by the Federal Insurance Contributions Act.

(c) *Crew leaders.* Any person who, as a crew leader within the meaning of section 3121(o), furnishes individuals to perform agricultural labor for another person shall, on or before the first date

on which he furnishes such individuals to perform such labor for such other person, advise such other person of his name; permanent mailing address, or if none, present address; and identification number, if any.

(d) *Use of identification number.* The identification number assigned to an employer (other than a household employer referred to in paragraph (a) (2) of this section) shall be shown in the employer's records, returns, statements for employees, depository receipts, and claims to the extent required by the applicable forms, regulations, and instructions.

§ 31.6011(b)-2 Employees' account numbers.

(a) *Requirement of application—(1) In general.* Every employee who on or after January 1, 1955, is in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such date has neither secured an account number nor made application therefor, shall make an application on Form SS-5 for an account number. Each application shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Such employee shall file the application with any district office of the Social Security Administration or, if the employee is not working within the United States, with the district office of the Social Security Administration at Baltimore, Maryland. Copies of Form SS-5 may be obtained from any district office of the Social Security Administration or from any district director. An account number will be assigned to the employee by the Social Security Administration in due course upon the basis of information reported on the application required under this section. A card showing the name and account number of an employee to whom an account number has been assigned will be furnished to the employee by the Social Security Administration.

(2) *Time for filing Form SS-5.* The application shall be filed on or before the seventh day after the date on which the employee first performs employment for wages, unless the employee leaves the employ of his employer before such seventh day, in which case the application shall be filed on or before the date on which the employee leaves the employ of his employer.

(3) *Changes and corrections.* Any employee may have his account number changed at any time by applying to a district office of the Social Security Administration and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. Any employee whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report such change or correction to a district office of the Social Security Administration. Copies of the form for making such reports may be obtained from any district office of the Administration.

(b) *Duties of employee with respect to his account number—(1) Information to*

be furnished to employer. An employee shall, on the day on which he enters the employ of any employer for wages, comply with the provisions of subdivision (i), (ii), (iii), or (iv) of this subparagraph, except that, if the employee's services for the employer consist solely of agricultural labor, domestic service in a private home of the employer not on a farm operated for profit, or service not in the course of the employer's trade or business, the employee shall comply with such provisions on the first day on which wages are paid to him by such employer, within the meaning of § 31.3121(a)-2 of Subpart B of the regulations in this part:

(i) *Employee who has account number card.* If the employee has been issued an account number card by the Social Security Administration and has the card available, the employee shall show it to the employer.

(ii) *Employee who has number but card not available.* If the employee does not have available the account number card issued to him by the Social Security Administration but knows what his account number is, and what his name is, exactly as shown on such card, the employee shall advise the employer of such number and name. Care must be exercised that the employer is correctly advised of such number and name.

(iii) *Employee who has receipt acknowledging application.* If the employee does not have an account number card but has available a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received, the employee shall show such receipt to the employer.

(iv) *Employee who is unable to furnish number or receipt.* If an employee is unable to comply with the requirement of subdivision (i), (ii), or (iii) of this subparagraph, the employee shall furnish to the employer a statement in writing, signed by the employee, setting forth the date of the statement, the employee's full name, present address, date and place of birth, father's full name, mother's full name before marriage, and the employee's sex, including a statement as to whether the employee has previously filed an application on Form SS-5 and, if so, the date and place of such filing. The information required by this subdivision shall be furnished on Form SS-5, if a copy of Form SS-5 is available. The furnishing of such a Form SS-5 or other statement by the employee to the employer does not relieve the employee of his obligation to make an application on Form SS-5 and file it with a district office of the Social Security Administration as required by paragraph (a) of this section. The foregoing provisions of this subdivision are not applicable to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico.

However, such employee shall advise the employer of his full name and present address.

For provisions relating to the duties of an employer when furnished the information required by subdivision (i), (ii), (iii), or (iv) of this subparagraph, see paragraph (c) of this section.

(2) *Additional information to be furnished by employee to employer.* Every employee who, on the day on which he is required to comply with subdivision (i), (ii), (iii), or (iv) of subparagraph (1) of this paragraph, has an account number card but for any reason does not show such card to the employer on such day shall promptly thereafter show the card to the employer. An employee who does not have an account number card on such day shall, upon receipt of an account number card from the Social Security Administration, promptly show such card to the employer, if he is still in the employ of that employer. If the employee has left the employ of the employer when the employee receives an account number card from the Social Security Administration, he shall promptly advise the employer of his account number and name exactly as shown on such card. The account number originally assigned to an employee (or the number as changed in accordance with paragraph (a) (3) of this section) shall be used by the employee as required by this paragraph even though he enters the employ of other employers.

(c) *Duties of employer with respect to employees' account numbers—(1) Employee who shows account number.* Upon being shown the account number card issued to an employee by the Social Security Administration, the employer shall enter the account number and name, exactly as shown on the card, in the employer's records, returns, statements for employees, and claims to the extent required by the applicable forms, regulations, and instructions.

(2) *Employee who does not show account number card.* With respect to an employee who, on the day on which he is required to comply with subdivision (i), (ii), (iii), or (iv) of paragraph (b) (1) of this section, does not show the employer an account number card issued to the employee by the Social Security Administration, the employer shall request such employee to show him such card. If the card is not shown, the employer shall comply with the applicable provisions of subdivision (i), (ii), (iii), (iv), or (v) of this subparagraph:

(i) *Employee who has not applied for account number.* If the employee has not been assigned an account number and has not made application therefor with a district office of the Social Security Administration, the employer shall inform the employee of his duties under this section.

(ii) *Employee who has account number.* If the employee advises the employer of his number and name as shown on his account number card, as provided in paragraph (b) (1) (ii) of this section, the employer shall enter such number and name in his records.

(iii) *Employee who has receipt for application.* If the employee shows the

employer, as provided in paragraph (b) (1) (iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter in his records with respect to such employee the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office. The receipt shall be retained by the employee.

(iv) *Employee who furnishes Form SS-5 or statement.* If the employee furnishes information to the employer as provided in paragraph (b) (1) (iv) of this section, the employer shall retain such information for use as provided in subparagraph (3) (ii) of this paragraph.

(v) *Household or agricultural employees.* If the employee advises the employer of his full name and present address in accordance with those provisions of paragraph (b) (1) (iv) of this section which are applicable in the case of employees engaged exclusively in the performance of domestic service in a private home of the employer not on a farm operated for profit, or agricultural labor, the employer shall enter such name and address in his records.

(3) *Account number unknown when return is filed.* In any case in which the employee's account number is for any reason unknown to the employer at the time the employer's return is filed for any return period with respect to which the employer is required to report the wages paid to such employee—

(i) *If employee has shown receipt for application.* If the employee has shown to the employer, as provided in paragraph (b) (1) (iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter on the return, with the entry with respect to the employee, the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office.

(ii) *If employee furnished Form SS-5 or statement.* If the employee has furnished information to the employer as provided in paragraph (b) (1) (iv) of this section, the employer shall prepare a copy of the Form SS-5 or statement furnished by the employee and attach the copy to the return.

(iii) *If employee did not furnish receipt, Form SS-5, or statement.* If neither subdivision (i) nor (ii) of this subparagraph is applicable, the employer shall, except as provided in subparagraph (4) of this paragraph, attach to the return a Form SS-5 or statement, signed by the employer, setting forth as fully and clearly as practicable the employee's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the employee's sex, and a statement as to whether an application for an account number has previously been filed by the employee and, if so, the date and place of such filing. The employer shall also insert in such

Form SS-5 or statement an explanation of why he has not secured from the employee the information referred to in paragraph (b) (1) (iv) of this section, and shall insert the word "Employer" as part of his signature.

(4) *Household or agricultural employees.* The provisions of subparagraph (3) (iii) of this paragraph are not applicable with respect to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. If any such employee has not furnished to the employer the information required by paragraph (b) (1) (i), (ii), or (iii) of this section prior to the time the employer's return is filed for any return period with respect to which the employer is required to report wages paid to such employee, the employer shall enter the word "Unknown" in the account number column of the return and (i) file with the return a statement showing the employee's full name and present or last known address, or (ii) enter such address on the return form immediately below the name of the employee.

(5) *Where to obtain Form SS-5.* Employers may obtain copies of Form SS-5 from any district office of the Social Security Administration or from any district director.

(6) *Prospective employees.* While not mandatory, it is suggested that the employer advise any prospective employee who does not have an account number of the requirements of paragraphs (a) and (b) of this section.

§ 31.6051-1 Statements for employees.

(a) *Requirement if wages are subject to withholding of income tax—(1) General rule.* (i) Every employer, as defined in section 3401(d), required to deduct and withhold from an employee a tax under section 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee, in respect of the remuneration paid by such employer to such employee during the calendar year, the tax return copy and the employee's copy of a statement on Form W-2. For example, if the wage bracket method of withholding provided in section 3402 (c) (1) is used, a statement on Form W-2 must be furnished to each employee whose wages during any payroll period are equal to or in excess of the smallest wage from which tax must be withheld in the case of an employee claiming one exemption. If the percentage method is used, a statement on Form W-2 must be furnished to each employee whose wages during any payroll period are in excess of one withholding exemption for such payroll period as shown in the percentage method withholding table contained in section 3402(b) (1). Each

statement on Form W-2 shall show the following:

(a) The name, address, and identification number of the employer,

(b) The name and address of the employee, and, if wages as defined in section 3121(a) have been paid, his social security account number,

(c) The total amount of wages as defined in section 3401(a),

(d) The total amount deducted and withheld as tax under section 3402,

(e) The total amount of wages as defined in section 3121(a), and

(f) The total amount of employee tax under section 3101 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year).

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this subparagraph.

(ii) Payments made in 1955 under a wage continuation plan shall be reported on Form W-2 to the extent, and in the manner, provided in paragraph (b) (8) (i) of § 31.3401(a)-1 of Subpart E of the regulations in this part.

(iii) In the case of statements furnished by the employer for whom services are performed, with respect to wages paid after December 31, 1955, "the total amount of wages as defined in section 3401(a)", as used in section 6051(a) (3), shall include all payments made directly by such employer under a wage continuation plan which constitute wages in accordance with § 31.3401(a)-1(b) (8) (ii) (a), without regard to whether tax has been withheld on such amounts.

(iv) Form W-2 is not required in respect of any wage continuation payment made to an employee by or on behalf of a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 3401(d) (1). See paragraph (b) (8) of § 31.3401(a)-1 of Subpart E of the regulations in this part.

(v) In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, "wages as defined in section 3121(a)", as used in section 6051(a) (2) and (5), shall be determined in accordance with section 3121(i) (2) and section 3122.

(2) *Statements for members of the Armed Forces of the United States.* Section 6051(b) contains certain special provisions which are applicable in the case of members of the Armed Forces of the United States in active service. In such case, Form W-2 shall be furnished to each such member of the Armed Forces if any tax has been withheld under section 3402 during the calendar year from the remuneration of such member or if any of the remuneration paid during the calendar year for such active service is includible under chapter 1 in the gross income of such member. Form W-2, in the case of such member, shall show, as "the total amount of wages as defined in section 3401(a)", as used in section 6051(a) (3), the amount of the

remuneration paid during the calendar year which is not excluded under chapter 1 of the Internal Revenue Code of 1954 from the gross income of such member, whether or not such remuneration constitutes wages as defined in section 3401(a) and whether or not paid for such active service.

(3) *Undelivered Forms W-2.* The tax return copy and the employee's copy of each withholding statement on Form W-2 for the calendar year which the employer is required to furnish to the employee and which after reasonable effort he is unable to deliver to the employee shall be transmitted to the district director with the return on Form 941 filed by the employer for the return period ending June 30 in the next succeeding calendar year or with the employer's final return if filed for a period ending on an earlier date. Thus, the undelivered copies of Forms W-2 ordinarily will be transmitted to the district director on or before July 31 or August 10 of the year following that for which they were issued, depending upon when the return for such return period is required to be filed. In the case of an employer having branch offices, the undelivered copies of Forms W-2 held in such branch offices may be transmitted by the employer with such return or, at the option of the employer, may be transmitted by the branch office directly to the district director for the internal revenue district in which the branch office is located. Such direct transmittal by branch offices shall be made at the time prescribed for the filing of the employer's return for the return period ending June 30 in the calendar year following that for which the Forms W-2 were issued or at the time of the filing of the employer's final return if filed for a period ending on an earlier date. The provisions of this subparagraph are also applicable with respect to any undelivered corrected statements issued for a prior calendar year.

(b) *Requirement if wages are not subject to withholding of income tax—(1) General rule.* If during the calendar year an employer pays to an employee wages subject to the employee tax imposed by section 3101, and the employer is not required by paragraph (a) of this section to furnish to such employee a statement on Form W-2 for such calendar year, the employer shall, in accordance with the provisions of this paragraph, furnish a written statement to the employee with respect to such wages. Such statement shall be in a form suitable for retention by the employee and shall show, with respect to the wages paid by the employer to the employee during the calendar year for employment after 1936, the following:

(i) The name and address of the employer,

(ii) The name, address, and social security account number of the employee,

(iii) The total amount of wages as defined in section 3121(a), and

(iv) The total amount of employee tax deducted and withheld from such wages (increased by any adjustment in such year for overcollection, or decreased by any adjustment in such year for under-

collection, of employee tax during any prior year).

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this paragraph.

(2) *Uniformed services.* In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, "wages as defined in section 3121(a)", as used in section 6051(a) (5), shall be determined in accordance with section 3121(i) (2) and section 3122.

(3) *Form of statement.* No particular form is prescribed for the statement required by this paragraph. For the convenience of employers in complying with the requirements of this paragraph, copies of a form of statement, Form SS-14, will be furnished by district directors upon request.

(c) *Correction of statements—(1) Federal Insurance Contributions Act.* If (i) the amount of employee tax under section 3101 deducted and withheld in the calendar year from the wages, as defined in section 3121(a), paid during such year was less or greater than the tax imposed by section 3101 on such wages by reason of the adjustment in such year of an overcollection or undercollection of the tax in any prior year, or (ii) regardless of the reason for the error or the method of its correction, the amount of wages as defined in section 3121(a), or tax under section 3101, entered on a statement furnished pursuant to this section to an employee for a prior year was incorrect, a corrected statement for such prior year reflecting the adjustment or the correct data shall be furnished to the employee. Such statement shall be marked "Corrected by Employer".

(2) *Income tax withholding.* A corrected statement on Form W-2 shall be furnished to the employee with respect to a prior calendar year (i) to show the correct amount of wages, as defined in section 3401(a), paid during the prior calendar year if the amount of such wages entered on a statement furnished to the employee for such prior year is incorrect, or (ii) to show the amount actually deducted and withheld as tax under section 3402 if such amount is less or greater than the amount entered as tax withheld on the statement furnished to the employee for such prior year. Such statement shall be marked "Corrected by Employer".

(3) *Cross reference.* For provisions relating to the disposition of the district director's copy of a corrected Form W-2, see paragraph (b) (4) of § 31.6011(a)-4.

(d) *Time for furnishing statements—*

(1) *In general.* Each statement required by this section for a calendar year and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made. For provisions relating to the filing of the district director's copies of Form W-2, see paragraph (b) of § 31.6011(a)-4.

(2) *Extensions of time.* (i) For good cause shown upon written application by an employer, the district director may grant an extension of time not exceeding 30 days in which to furnish to employees the statements required by this section. Each application for an extension of time under this subdivision shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer files his returns; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the date prescribed in subparagraph (1) of this paragraph for furnishing the statements required by this section. In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth a reason for a signature other than the employer's and the relationship existing between the employer and the signer. For provisions relating to extensions of time for filing the district director's copies of Form W-2, see paragraph (a) (3) of § 31.6081(a)-1.

(ii) An extension of time, not exceeding 30 days, within which to furnish any statement required by this section upon termination of employment is hereby granted to any employer with respect to any employee whose employment is terminated during the calendar year. In the case of intermittent or interrupted employment where there is reasonable expectation on the part of both employer and employee of further employment, there is no requirement that a written statement be immediately furnished to the employee; but when such expectation ceases to exist, the statement must be furnished within 30 days from that time.

(3) *Cross references.* For provisions relating to the penalties provided for the willful furnishing of a false or fraudulent statement, or for the willful failure to furnish a statement, see § 31.6674-1 and section 7204.

§ 31.6061 *Statutory provisions; signing of returns and other documents.*

SEC. 6061. *Signing of returns and other documents.* * * * any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

§ 31.6061-1 *Signing of returns.*

Each return required under the regulations in this subpart shall, if signature is called for by the form or instructions relating to the return, be signed by (a) the individual, if the person required to make the return is an individual; (b) the president, vice president, or other principal officer, if the person required to make the return is a corporation; (c) a responsible and duly authorized mem-

ber or officer having knowledge of its affairs, if the person required to make the return is a partnership or other unincorporated organization; or (d) the fiduciary, if the person required to make the return is a trust or estate. The return may be signed for the taxpayer by an agent who is duly authorized in accordance with § 31.6011(a)-7 to make such return.

§ 31.6065(a) Statutory provisions; verification of returns.

SEC. 6065. *Verification of returns*—(a) *Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§ 31.6065(a)-1 Verification of returns or other documents.

If a return, statement, or other document made under the regulations in this part is required by the regulations contained in this part, or the form and instructions issued with respect to such return, statement, or other document, to contain or be verified by a written declaration that it is made under the penalties of perjury, such return, statement, or other document shall be so verified by the person signing it.

§ 31.6091 Statutory provisions; place for filing returns.

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Individuals.* Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(2) *Corporations.* Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(4) *Exceptional cases.* Notwithstanding paragraph (1), (2) * * * of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

§ 31.6091-1 Place for filing returns.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of such per-

son. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Return of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C., unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Office of the Director, International Operations Division, United States Internal Revenue Service, Santurce, Puerto Rico.

(d) *Exceptional cases*—(1) *Permission to file in district other than required district.* The Commissioner may permit the filing of any return required to be made under the regulations in this subpart in any internal revenue district, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and paragraphs (a), (b), and (c) of this section.

(2) *Returns of officers and employees of the Internal Revenue Service.* The Commissioner may require any officer or employee of the Internal Revenue Service to file any return required of him under the regulations in this subpart in any internal revenue district selected by the Commissioner, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and paragraphs (a), (b), and (c) of this section.

§ 31.6101 Statutory provisions; period covered by returns or other documents.

SEC. 6101. *Period covered by returns or other documents.* When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

§ 31.6101-1 Period covered by returns.

The period covered by any return required under the regulations in this subpart shall be as provided in those provisions of the regulations under which the return is required to be made. See § 31.6011(a)-1, relating to returns of taxes under the Federal Insurance Contributions Act; § 31.6011(a)-2, relating to returns of taxes under the Railroad Retirement Tax Act; § 31.6011(a)-3, relating to returns of tax under the Federal Unemployment Tax Act; § 31.6011(a)-4,

relating to returns of income tax withheld under section 3402; and § 31.6011(a)-5, relating to monthly returns of taxes under the Federal Insurance Contributions Act and of income tax withheld under section 3402.

§ 31.6161(a)(1) Statutory provisions; extension of time for paying tax.

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

§ 31.6161(a)(1)-1 Extensions of time for paying tax.

No extension of time will be granted for payment of any of the taxes to which the regulations in this part have application.

§ 31.6205 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6205. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Underpayments.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 31.6205-1 Adjustments of underpayments.

(a) *In general.* (1) An employer who makes, or has made, an undercollection or underpayment of—

(i) Employee tax under section 3101, employer tax under section 3111, or the employee or employer tax under corresponding provisions of prior law,

(ii) Employee tax under section 3201, employer tax under section 3221, or the employee or employer tax under corresponding provisions of prior law, or

(iii) Income tax required under section 3402 to be withheld,

with respect to any payment of wages or compensation, shall correct such error as provided in this section. Such correction shall constitute an adjustment

without interest to the extent provided in paragraph (b) or (c) of this section.

(2) Every correction under this section of an underpayment of tax with respect to a payment of wages or compensation shall be made on the return form which is prescribed for use, at the time the correction is made, in reporting tax which corresponds to the tax underpaid.

(3) Every return or supplemental return on which an underpayment is corrected pursuant to this section must have securely attached as a part thereof a statement explaining the correction, designating the return period in which the error was ascertained and the return period to which the error relates, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return.

(4) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(5) If a correction is made under this section with respect to the erroneous reporting on a return, or omission from a return, under the Federal Insurance Contributions Act, as in effect prior to or on and after January 1, 1955, of an amount of wages required to be shown on the return as a separate item in respect of a particular employee, the statement referred to in subparagraph (3) of this paragraph shall include the following information:

(i) The name and account number of each employee whose wages were erroneously reported or omitted from such return,

(ii) The period for which such wages were required to be reported on such return,

(iii) The amount, if any, of wages actually reported on such return for each such employee, and

(iv) The amount of wages which should have been reported on such return for each such employee.

No particular form is prescribed for furnishing the information required by this subparagraph, but if printed forms are desired, the district director will supply Form 941c or Form 941c PR, whichever is appropriate, upon request.

(6) No underpayment shall be reported pursuant to this section after receipt from the district director of notice and demand for payment thereof based upon an assessment, but the amount shall be paid in accordance with such notice and demand.

(7) For provisions relating to correction of erroneous statements furnished to employees in respect of wages subject to withholding of income tax under section 3402, and of wages under the Federal Insurance Contributions Act, see paragraph (c) of § 31.6051-1.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act.*

(1) *Undercollection ascertained before return is filed.* If no employee tax or less than the correct amount of employee tax is deducted from any payment to an employee of wages, as defined in the Federal Insurance Contributions Act, or compensation as defined in the Railroad Retirement Tax Act, and the error is ascertained before the filing of the re-

turn on which the employee tax with respect to such wages or compensation is required to be reported, the employer shall nevertheless report on such return and pay to the district director the correct amount of such employee tax. However, the reporting and payment by the employer of the correct amount of such tax in accordance with this subparagraph do not constitute an adjustment.

(2) *Underpayment ascertained after return is filed.* (i) If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either such tax with respect to any payment to an employee of wages as defined in the Federal Insurance Contributions Act or corresponding provisions of prior law, or compensation as defined in the Railroad Retirement Tax Act or corresponding provisions of prior law, is reported on such return and paid to the district director, the employer shall adjust the underpayment (a) by reporting the additional amount due by reason of the underpayment as an adjustment on a return filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained, or (b) by reporting such additional amount on a supplemental return for the return period in which such payment of wages or compensation is made. The reporting of such underpayment on a supplemental return constitutes an adjustment within the meaning of this section only when the supplemental return is filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained. The amount of each underpayment adjusted in accordance with this subdivision shall be paid to the district director, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subdivision, but the amount thereof is not paid when due, interest thereafter accrues (see section 6601).

(ii) If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either such tax with respect to a payment to an employee of wages or compensation is reported on such return and paid to the district director, and such underpayment is not reported as an adjustment within the time prescribed by subdivision (i) of this subparagraph, the amount of such underpayment shall be (a) reported on the employer's next return, or (b) reported immediately on a supplemental return. For interest accruing on amounts so reported, see section 6601 and corresponding provisions of prior law.

(3) *Deductions from employees.* If an employer collects no employee tax or less than the correct amount of employee tax from an employee with respect to a payment of wages as defined in the Federal Insurance Contributions Act or corresponding provisions of prior law, or compensation as defined in the Railroad Retirement Tax Act or corresponding provisions of prior law, the employer shall collect the amount of the undercollection by deducting such amount from remuneration of the employee, if any, under his control after he ascer-

tains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The amount of an undercollection of employee tax from an employee shall be reported and paid, as provided in subparagraph (1) or (2) of this paragraph, whether or not the undercollection is corrected by a deduction made as prescribed in the foregoing provisions of this subparagraph. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If any employer makes an erroneous collection of employee tax from two or more of his employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee.

(c) *Income tax required to be withheld from wages.*—(1) *Undercollection ascertained before return is filed.* If no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages is deducted from wages paid to an employee in any return period, and if the error is ascertained before the return is filed for the period in which such wages are paid, the employer shall nevertheless report on such return the correct amount of the tax required to be withheld. However, the reporting and payment by an employer of tax in accordance with this subparagraph do not constitute an adjustment.

(2) *Underpayment ascertained after return is filed.* (i) If a return is filed for a return period, and if no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages paid to an employee in such period, is reported on a return and paid to the district director, the employer shall (a) report the additional amount due by reason of the underpayment on a return for any return period in the calendar year in which the wages were paid, or (b) report such additional amount on a supplemental return for the return period in which such wages were paid. Such reporting constitutes an adjustment within the meaning of this section only if the return or supplemental return on which the underpayment is reported is filed on or before the last day on which the return is required to be filed for the return period in which the error was ascertained.

(ii) If a return is filed for a return period, and if no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages paid to an employee in such period is reported on such return and paid to the district director, and such underpayment is not reported as an adjustment within the time prescribed by subdivision (i) of this subparagraph, the amount of such underpayment shall be (a) reported on the employer's next return, if such next return is for any return period in the calendar year in which the wages were paid, or (b) reported immediately on a supplemental return.

(3) *Payment of amounts reported as undercollections or underpayments.* (i) For provisions relating to the employer's liability for an underpayment of tax unless he can show that the income tax against which the tax under section 3402 may be credited has been paid, see § 31.3402(d)-1 of Subpart E of the regulations in this part.

(ii) Except as provided in § 31.3402(d)-1 of Subpart E of the regulations in this part, any amount reported as an adjustment within the meaning of this paragraph shall be paid to the district director, without interest, at the time fixed for reporting the adjustment.

(iii) For interest accruing on amounts which are not paid when due, see section 6601.

(4) *Deductions from employee.* If no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages is deducted from wages paid to an employee in a calendar year, the employer shall collect the amount of the undercollection on or before the last day of such year by deducting such amount from remuneration of the employee, if any, under his control. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. Any undercollection in a calendar year not corrected by a deduction made pursuant to the foregoing provisions of this subparagraph is a matter for settlement between the employee and the employer within such calendar year. For provisions relating to the employer's liability for the tax, whether or not he collects it from the employee, see § 31.3403-1 of Subpart E of the regulations in this part.

§ 31.6302(b) Statutory provisions; mode or time of collection; discretionary method.

SEC. 6302. *Mode or time of collection.* * * *

(b) *Discretionary method.* Whether or not the method of collecting any tax imposed by chapters 21, 31, 32, 33, section 4481 of chapter 36, sections 4501(a) or 4511 of chapter 37, or sections 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

[Sec. 6302(b) as amended by sec. 206(b), Highway Revenue Act 1956 (70 Stat. 391)]

§ 31.6302(b)-1 Method of collection.

For provisions relating to collection by means of returns of the taxes imposed by chapter 21 (Federal Insurance Contributions Act), see §§ 31.6011(a)-1 and 31.6011(a)-5.

§ 31.6402(a) Statutory provisions; authority to make credits or refunds.

SEC. 6402. *Authority to make credits or refunds.*—(a) *General rule.* In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

§ 31.6402(a)-1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§ 31.6402(a)-2, 31.6402(a)-3, and 31.6414-1. For regulations under section 6402 of general application to credits or refunds, see §§ 301.6402-1 and 301.6402-2 of this chapter (Regulations on Procedure and Administration). For provisions relating to credits of employment taxes which constitute adjustments without interest, see §§ 31.6413(a)-1 and 31.6413(a)-2.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6402(a)-2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.

(a) *Claim by person who paid tax to district director.*—(1) *In general.* Any person who pays to the district director more than the correct amount of—

(i) Employee tax under section 3101, or employer tax under section 3111, of the Federal Insurance Contributions Act,

(ii) Employee tax under section 3201, employee representative tax under section 3211, or employer tax under section 3221, of the Railroad Retirement Tax Act,

(iii) Any such tax under a corresponding provision of prior law, or

(iv) Interest, addition to the tax, additional amount, or penalty with respect to any such tax,

may file a claim for refund of the overpayment (except to the extent that the overpayment must be credited pursuant to § 31.3503-1 of Subpart F of the regulations in this part), or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402-2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return filed by the person making the claim. The return on which the credit is claimed must be on a form which is prescribed for use, at the time of the claim, in reporting tax which corresponds to the tax overpaid. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, designating the return period in which the error was ascertained, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return. No refund or credit of employee tax under the Federal Insurance Contributions Act

shall be allowed if for any reason (for example, an overcollection of employee tax having been inadvertently included by the employee in computing a special refund—see § 31.6413(c)-1) the employee has taken the amount of such tax into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected.

(2) *Statements supporting employers' claims for employee tax.* (i) Every claim filed by an employer for refund or credit of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, collected from an employee shall include a statement that the employer has repaid the tax to such employee or has secured the written consent of such employee to allowance of the refund or credit. The employer shall retain as part of his records the written receipt of the employee showing the date and amount of the repayment, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every claim filed by an employer for refund or credit of employee tax under section 3101, or a corresponding provision of prior law, collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also shall include a statement that the employer has obtained from the employee a written statement (a) that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (b) that the employee will not claim refund or credit of such amount. The employer shall retain the employee's written statement as part of the employer's records.

(b) *Claim by employee.*—(1) *In general.* If more than the correct amount of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, is collected by an employer from an employee and paid to the district director, the employee may file a claim for refund of the overpayment if (i) the employee does not receive reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit, (ii) the overcollection cannot be corrected under § 31.3503-1 of Subpart F of the regulations in this part, and (iii) in the case of employee tax under section 3101 or a corresponding provision of prior law, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected. See § 31.6413(c)-1.

(2) *Statements supporting employee's claim.* (i) Each employee who makes a claim under subparagraph (1) of this paragraph shall submit with such claim a statement setting forth (a) the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, and (b) the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in

support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the district director. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer.

(ii) Each individual who makes a claim under subparagraph (1) of this paragraph for refund of employee tax under section 3101, or a corresponding provision of prior law, also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his income tax, and the amount, if any, so claimed (see § 31.6413(c)-1).

(c) *Statements to accompany employers' and employees' claims under the Federal Insurance Contributions Act.* Whenever a claim for credit or refund of employee tax under section 3101, employer tax under section 3111, or either such tax under a corresponding provision of prior law, is made with respect to remuneration which was erroneously reported on a return or schedule as wages paid to an employee, such claim shall include a statement showing (1) the identification number of the employer, if he was required to make application therefor, (2) the name and account number of such employee, (3) the period covered by such return or schedule, (4) the amount of remuneration actually reported as wages for such employee, and (5) the amount of wages which should have been reported for such employee. No particular form is prescribed for making such statement, but if printed forms are desired, the district director will supply copies of Form 941c or Form 941c PR, whichever is appropriate, upon request.

§ 31.6402(a)-3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). See § 31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.

§ 31.6404(a) Statutory provisions; abatements.

Sec. 6404. *Abatements*—(a) *General rule.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

- (1) Is excessive in amount, or
- (2) Is assessed after the expiration of the period of limitation properly applicable thereto, or
- (3) Is erroneously or illegally assessed.

§ 31.6404(a)-1 Abatements.

For regulations under section 6404 of general application to the abatement of taxes, see § 301.6404-1 of this chapter (Regulations on Procedure and Administration). Every claim filed by an employer for abatement of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, shall be made in the manner and subject to the conditions stated in paragraphs (a) (2) and (c) of § 31.6402(a)-2, as if the claim for abatement were a claim for refund.

§ 31.6413(a) Statutory provisions; special rules applicable to certain employment taxes; adjustment of tax.

Sec. 6413. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

§ 31.6413(a)-1 Repayment by employer of tax erroneously collected from employee.

(a) *Before employer files return*—(1) *Employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* (i) If an employer—

(a) During any return period collects from an employee more than the correct amount of tax under section 3101 or section 3201, or a corresponding provision of prior law,

(b) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director, and

(c) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as provided in subdivision (i) of this subparagraph shall be reported and paid to the district director with the return for the return period in which the overcollection was made. Such return shall be accompanied by a statement explaining the overcollection, setting forth the account number (if known) and name of the individual from whom the overcollection was made, and showing the total amount overcollected from and not re-

paid to the individual. If the employer is not required to make a return for such period, the employer nevertheless shall furnish to the district director a statement as described in the preceding sentence, on or before the date fixed for filing a return for such period, and shall pay the amount of the overcollection with such statement.

(2) *Income tax withheld from wages.* (i) If an employer—

(a) During any return period collects from an employee more than the correct amount of tax under section 3402,

(b) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director and before the end of the calendar year in which the overcollection was made, and

(c) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as provided in subdivision (i) of this subparagraph shall be reported and paid to the district director with the return for the return period in which the overcollection was made.

(b) *After employer files return*—(1) *Employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* (i) If an employer

collects from any employee and pays to the district director more than the correct amount of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, and if the error is ascertained within the applicable period of limitation on credit or refund, the employer shall repay or reimburse the employee in the amount thereof prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of such limitation period. This subparagraph has no application in any case in which an overcollection is made the subject of a claim by the employer for refund or credit, and the employer elects to secure the written consent of the employee to the allowance of the refund or credit under the procedure provided in paragraph (a) (2) (i) of § 31.6402(a)-2.

(ii) If the amount of an overcollection is repaid to an employee, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. If, in any calendar year, an employer repays or reimburses an employee in the amount of an overcollection of employee tax under section 3101, or a corresponding provision of prior law, which was collected from the employee in a prior calendar year, the employer shall obtain from the employee and keep as part of his records a written statement (a) that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (b) that the employee will not claim refund or credit of such amount. See § 31.6413(c)-1.

(iii) If the employer does not repay the employee the amount overcollected, the employer shall reimburse the employee by applying the amount of the overcollection against the employee tax which attaches to wages or compensation paid to the employee prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of the applicable period of limitation on credit or refund. If the amount of the overcollection exceeds the amount so applied against such employee tax, the excess amount shall be repaid to the employee as required by this subparagraph.

(iv) For purposes of this subparagraph, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(v) For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

(2) *Income tax withheld from wages.*

(i) If, in any return period in a calendar year, an employer collects from any employee more than the correct amount of tax under section 3402, and the employer pays the amount of such overcollection to the district director, the employer may repay or reimburse the employee in the amount thereof in any subsequent return period in such calendar year.

(ii) If the amount of the overcollection is repaid to the employee, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. If the employer does not repay the amount of the overcollection, the employer may reimburse the employee by applying the amount of the overcollection against the tax under section 3402 which otherwise would be required to be withheld from wages paid by the employer to the employee in the calendar year in which the overcollection is made.

§ 31.6413(a)-2 Adjustment of overpayments.

(a) *Taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act—(1) Employee tax.* After an employer repays or reimburses an employee in the amount of an overcollection, as provided in paragraph (b)(1) of § 31.6413(a)-1, the employer may claim credit for such amount in the manner, and subject to the conditions, stated in § 31.6402(a)-2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on a return for a period ending on or before the last day of the return period following the return period in which the error was ascertained. No credit or adjustment in respect of an overpayment shall be entered on a return after the filing of a claim for refund of such overpayment.

(2) *Employer tax.* If an employer pays more than the correct amount of employer tax under section 3111 or sec-

tion 3221, or a corresponding provision of prior law, the employer may claim credit for the amount of the overpayment in the manner, and subject to the conditions, stated in § 31.6402(a)-2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on the same return on which the employer adjusts, pursuant to subparagraph (1) of this paragraph, a corresponding overpayment of employee tax.

(b) *Income tax withheld from wages.* If, pursuant to paragraph (b)(2) of § 31.6413(a)-1, an employer repays or reimburses an employee in the amount of an overcollection of tax under section 3402, the employer may adjust the overcollection, without interest, by entering the amount thereof as a deduction on a return of tax under section 3402, filed by the employer for any return period in the calendar year in which the employer repays or reimburses the employee. The return on which the adjustment is entered as a deduction shall have attached thereto a statement explaining the adjustment, designating the return period in which the error occurred, and setting forth such other information as is required by the regulations in this subpart and by the instructions relating to the return.

§ 31.6413(b) Statutory provisions; special rules applicable to certain employment taxes; overpayments of certain employment taxes.

Sec. 6413. *Special rules applicable to certain employment taxes.* * * *

(b) *Overpayments of certain employment taxes.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 31.6413(b)-1 Overpayments of certain employment taxes.

For provisions relating to the adjustment of overpayments of tax imposed by section 3101, 3111, 3201, 3221, or 3402, see § 31.6413(a)-2. For provisions relating to refunds of tax imposed by section 3101, 3111, 3201, or 3221, see §§ 31.6402(a)-1 and 31.6402(a)-2. For provisions relating to refunds of tax imposed by section 3402, see §§ 31.6402(a)-1 and 31.6414-1.

§ 31.6413(c) Statutory provisions; special rules applicable to certain employment taxes; special refunds.

Sec. 6413. *Special rules applicable to certain employment taxes.* * * *

(c) *Special refunds—(1) In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed \$3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect

to the first \$3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed \$4,200, or (B) during any calendar year after the calendar year 1958, the wages received by him during such year exceed \$4,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first \$4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first \$4,800 of such wages received in such calendar year after 1958.

(2) *Applicability in case of Federal and State employees and employees of certain foreign corporations—(A) Federal employees.*

In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed \$3,600 for the calendar year 1951, 1952, 1953, or 1954, \$4,200 for the calendar year 1955, 1956, 1957, or 1958, or \$4,800 for any calendar year after 1958, determined by each such head or agent as constituting wages paid to an employee.

(B) *State employees.* For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) *Employees of certain foreign corporations.* For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(1) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(1); the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement entered into pursuant to section 3121(1), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121(1) has been paid to the Secretary or his delegate.

[Sec. 6413(c) as amended by sec. 202(a)(1), Social Security Amendments 1954 (68 Stat. 1089); sec. 402(d), Social Security Amendments 1958 (72 Stat. 1043)]

§ 31.6413(c)-1 Special refunds.

(a) *Who may make claims*—(1) *In general.* (i) If, during any calendar year after 1954 and before 1959, an employee receives wages, as defined in section 3121(a), in excess of \$4,200 from two or more employers, or if during any calendar year after 1958, an employee receives wages, as defined in section 3121(a), in excess of \$4,800 from two or more employers, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed by section 3101 with respect to such wages and deducted therefrom (whether or not paid to the district director) exceeds the employee tax with respect to the first \$4,200 or \$4,800, whichever is appropriate, of such wages. If the employee is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) he may obtain the benefit of the special refund only by claiming credit as provided in § 1.31-2 of this chapter (Income Tax Regulations).

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). Employee A in the calendar year 1959 receives taxable wages in the amount of \$3,000 from each of his employers, B, C, and D, for services performed during such year (or at any time after 1936), or a total of \$9,000. Employee tax (computed at 2½ percent, the employee tax rate in effect in 1959) is deducted from A's wages in the amount of \$75 by B and \$75 by C, or a total of \$150. Employer D pays employee tax in the amount of \$75 to the district director without deducting such tax from A's wages. The employee tax with respect to the first \$4,800 of such wages is \$120. A is entitled to a special refund of \$30 (\$150 minus \$120). The \$3,000 of wages received from employer D and the \$75 of employee tax paid with respect thereto have no bearing in computing A's special refund since such tax was not deducted from his wages.

Example (2). Employee E in the calendar year 1959 performs services for employers F and G, for which E is entitled to wages of \$4,800 from each employer, or a total of \$9,600. On account of such services, E in 1958 received an advance payment of \$600 of wages from F; and in 1959, receives wages in the amount of \$4,200 from F and \$4,800 from G. Employee tax was deducted as follows: In 1958, \$13.50 ($\$600 \times 2\frac{1}{2}\%$), the employee tax rate in effect in 1958) by employer F; and in 1959, \$105 ($\$4,200 \times 2\frac{1}{2}\%$), the employee tax rate in effect in 1959) by employer F, and \$120 ($\$4,800 \times 2\frac{1}{2}\%$) by employer G. Thus, E in the calendar year 1959 received \$9,000 in wages, from which \$225 of employee tax was deducted. The amount of employee tax with respect to the first \$4,800 of such wages received in 1959 is \$120. E is entitled to a special refund of \$105 (\$225 minus \$120). The \$600 advance of wages received in 1958 from F, and the \$13.50 of employee tax with respect thereto, have no bearing in computing E's special refund for 1959, because the wages were not received in 1959. Such amounts could not form the basis for a special refund unless E during 1958 received from F and at least one more employer wages totaling more than \$4,200.

(2) *Federal employees.* For purposes of special refunds of employee tax, each head of a Federal agency or of a wholly owned instrumentality of the United States who makes a return pursuant to section 3122 (and each agent designated by a head of a Federal agency or instru-

mentality who makes a return pursuant to such section) is considered a separate employer. For such purposes, the term "wages" includes the amount which each such head (or agent) determines to constitute wages paid an employee, but not in excess of \$4,200 paid in any calendar year after 1954 and before 1959, or \$4,800 paid in any calendar year after 1958. For example, if wages received by an employee during any calendar year after 1958 are reportable by two or more agents of one or more Federal agencies and the amount of such wages is in excess of \$4,800, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first \$4,800 of such wages. Moreover, if an employee receives wages during any calendar year from an agency or wholly-owned instrumentality of the United States and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(3) *State employees.* For purposes of special refunds of employee tax, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act, relating to voluntary agreements for coverage of employees of State and local governments, as would be wages if such services constituted employment (see § 31.3121(a)-1 of Subpart B of the regulations in this part, relating to wages); the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; and the term "tax" or "tax imposed by section 3101" includes an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of subparagraph (1) of this paragraph are applicable whether or not any amount deducted from an employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid pursuant to such agreement. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by States, political subdivisions, or instrumentalities by reason of agreements made under section 218 of the Social Security Act. Moreover, if during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages from one or more other employers, either private or governmental, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions.

(4) *Employees of certain foreign corporations.* For purposes of special refunds of employee tax, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(l), relating to agreements for coverage of employees of certain foreign corporations, as would be wages if such services constituted employment

(see § 31.3121(a)-1 of Subpart B of the regulations in this part, relating to wages); the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); and the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of subparagraph (1) of this paragraph are applicable whether or not any amount deducted from the employee's remuneration by reason of such agreement has been paid to the district director. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by reason of agreements made under section 3121(l). A domestic corporation which enters into an agreement pursuant to section 3121(l) shall, for purposes of this paragraph, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as an employer employing individuals on its own account (see section 3121(l)(9)). If during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages for services in employment, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions. For provisions relating to agreements entered into under section 3121(l), see the regulations in Part 36 of this chapter (Regulations on Contract Coverage of Employees of Foreign Subsidiaries).

(b) *Claims for special refund*—(1) *In general.* An employee who is entitled to a special refund under section 6413(c) may claim such refund under the provisions of this section only if the employee is not entitled to claim the amount thereof as a credit against income tax as provided in § 1.31-2 of this chapter (Income Tax Regulations). Each claim under this section shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services were performed for which such wages are received), and shall be filed after the close of such year.

(2) *Form of claim.* Each claim for special refund under this section shall be made on Form 843, in accordance with the regulations in this subpart and the instructions relating to such form. The claim shall be filed with the district director for the internal revenue district in which the employee resides or, if the employee does not reside in any internal revenue district, with the District Director at Baltimore, Maryland. However, in the case of an employee who does not reside in any internal revenue district and who is outside the United States, the claim shall be filed with the Director, International Operations Division, United States Internal Revenue Service, Washington 25, D.C., unless the employee resides in Puerto Rico or the Virgin Islands, in which case the claim shall be

filed with the office of the Director, International Operations Division, United States Internal Revenue Service, San-turce, Puerto Rico. The claim shall include the employee's account number and the following information with respect to each employer from whom he received wages during the calendar year: (i) The name and address of such employer, (ii) the amount of wages received during the calendar year to which the claim relates, and (iii) the amount of employee tax collected by the employer from the employee with respect to such wages. Other information may be required but should be submitted only upon request.

(3) *Period of limitation.* For the period of limitation upon special refund of employee tax imposed by section 3101, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration).

§ 31.6413(d) Statutory provisions; special rules applicable to certain employment taxes; refund or credit of Federal unemployment tax.

SEC. 6413. *Special rules applicable to certain employment taxes.* * * *

(d) *Refund or credit of Federal unemployment tax.* Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

§ 31.6414 Statutory provisions; income tax withheld.

SEC. 6414. *Income tax withheld.* In the case of an overpayment of tax imposed by chapter 24, * * * refund or credit shall be made to the employer * * * only to the extent that the amount of such overpayment was not deducted and withheld by the employer * * *.

§ 31.6414-1 Credit or refund of income tax withheld from wages.

(a) *In general.* Any employer who pays to the district director more than the correct amount of—

- (1) Tax under section 3402 or a corresponding provision of prior law, or
- (2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402-2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return of tax under section 3402 filed by the employer. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement, which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, and showing such other information as is required by the regulations in this subpart and by the instructions relating to the return. No refund or credit to the employer shall be allowed under this section for the amount of any overpay-

ment of tax which the employer deducted or withheld from an employee.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.

SEC. 6674. *Fraudulent statement or failure to furnish statement to employee.* In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of \$50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

§ 31.6674-1 Penalties for fraudulent receipt or failure to furnish receipt.

Any person required to furnish a statement to an employee under the provisions of section 6051 is subject to a civil penalty for willful failure to furnish such statement in the manner, at the time, and showing the information required under such section or § 31.6051-1, or for willfully furnishing a false or fraudulent statement to an employee. The penalty for each such violation is \$50, which shall be assessed and collected in the same manner as the tax imposed on employers under the Federal Insurance Contributions Act. See section 7204 for criminal penalty.

§ 31.7805 Statutory provisions; rules and regulations.

SEC. 7805. *Rules and regulations—(a) Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 31.7805-1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 31.0-3 of Subpart A of the regulations in this part relating to the scope of the regulations.)

PAR. 2. The Employment Tax Regulations (26 CFR Part 31) are amended by inserting the following immediately after § 31.6001-5:

§ 31.6001-6 Notice by district director requiring returns, statements, or the keeping of records.

The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for any of the taxes to which the regulations in this part have application.

PAR. 3. Paragraph (c) of § 31.6011(a)-7 of the Employment Tax Regulations (26 CFR Part 31) is amended to read as follows:

§ 31.6011(a)-7 Execution of returns.

* * * * *

(c) *Signing and verification.* For provisions relating to the signing of returns, see § 31.6061-1. For provisions relating to the verifying of returns, see § 31.6065(a)-1.

PAR. 4. Section 31.6051 of the Employment Tax Regulations (26 CFR Part 31) is amended to read as follows:

§ 31.6051 Statutory provisions; receipts for employees.

SEC. 6051. *Receipts for employees—(a) Requirement.* Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

- (1) The name of such person,
- (2) The name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),
- (3) The total amount of wages as defined in section 3401(a),
- (4) The total amount deducted and withheld as tax under section 3402,
- (5) The total amount of wages as defined in section 3121(a), and
- (6) The total amount deducted and withheld as tax under section 3101.

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i) (2).

(b) *Special rule as to compensation of members of Armed Forces.* In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income

under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) *Additional requirements.* The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe.

(d) *Statements to constitute information returns.* A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary or his delegate shall, when required by such regulations, be filed with the Secretary or his delegate.

[Sec. 6051 as amended by sec. 412, Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879)]

(Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 60-5785; Filed, June 22, 1960; 8:51 a.m.]

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

PART 182—INDUSTRIAL ALCOHOL

PART 201—DISTILLED SPIRITS PLANTS

PART 216—DENATURATION OF RUM

PART 220—PRODUCTION OF DISTILLED SPIRITS

PART 221—PRODUCTION OF BRANDY

PART 225—WAREHOUSING OF DISTILLED SPIRITS

PART 240—WINE

PART 245—BEER

PART 253—REMOVALS OF ALCOHOLIC LIQUORS, TOBACCO PRODUCTS, AND OTHER DOMESTIC ARTICLES TO FOREIGN-TRADE ZONES

Partial Supersedure of Parts

CROSS REFERENCE: For partial supersedure of regulations in these parts, see preamble to Part 252 of this chapter, *infra*.

PART 252—EXPORTATION OF LIQUORS

On April 7, 1960, a notice of proposed rule making proposing the revision and reissuance of regulations in 26 CFR Part 252, with respect to the exportation of liquors, was published in the *FEDERAL REGISTER* (25 F.R. 2973).

After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted subject to the changes set forth below:

1. Section 252.99 is changed by striking, in the first sentence, the words "to not less than 90 degrees".

2. Section 252.103 is changed by striking "; and" at the end of paragraph (c), and by inserting in lieu thereof ": *Provided*, That the markings required by this paragraph need not be placed on containers removed for transfer to a contiguous manufacturing bonded warehouse, where the assistant regional commissioner finds that their omission will not constitute a jeopardy to the revenue; and".

3. Section 252.123 is changed by striking "; and" at the end of paragraph (c), and by inserting in lieu thereof ": *Provided*, That the markings required by this paragraph need not be placed on containers removed for transfer to a contiguous manufacturing bonded warehouse, where the assistant regional commissioner finds that their omission will not constitute a jeopardy to the revenue; and".

4. Paragraph (a) of § 252.250 is changed by striking, in subparagraph (4), "numbers of the packages or cases, and", and inserting in lieu thereof "number of the Form 206, 1582, or 1582-A, as the case may be, and".

Because these regulations are a part of an integrated recodification program under Chapter 51, I.R.C., and in order that the entire program may be effective on July 1, 1960, it is found that it is contrary to the public interest to issue these regulations subject to the effective date limitation of section 4(c) of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003). Accordingly, these regulations shall become effective on July 1, 1960.

[SEAL]

CHARLES I. FOX,
Acting Commissioner
of Internal Revenue.
RALPH KELLY,
Commissioner of Customs.

Approved: June 17, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

Preamble. 1. The regulations in this part shall, on and after July 1, 1960, supersede the 1955 edition of 26 CFR Part 252 (20 F.R. 4003), as amended, and the provisions of 26 CFR Part 253 (21 F.R. 3268), as amended, except as Part 253 relates to tobacco products and cigarette papers and tubes. These regulations also supersede all provisions of prior regulations in 26 CFR Parts 182 (19 F.R. 9438), 201 (24 F.R. 4791), 216 (20 F.R. 2366), 220 (19 F.R. 9685), 221 (19 F.R. 9577), 225 (19 F.R. 9737), 240 (19 F.R. 9631), and 245 (21 F.R. 8625), as amended, which pertain to the matters covered in this part.

2. These regulations shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

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AUTHORITY: §§ 252.1 to 252.335 issued under section 7805, I.R.C., 68A Stat. 917; 26 U.S.C. 7805. Statutory provisions interpreted or implied are cited to text in parentheses.

Subpart A—Scope

§ 252.1 General.

The regulations in this part relate to exportation, lading for use on vessels and aircraft, and the transfer to a foreign-trade zone or a manufacturing bonded warehouse, class six, of distilled spirits (including specially denatured spirits), beer, and wine, whether without payment of tax, free of tax, or with benefit of drawback, and includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

§ 252.2 Forms prescribed.

The Director is authorized to prescribe all internal revenue forms required by this part. All of the information called for in each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(72 Stat. 1361; 26 U.S.C. 5207)

§ 252.3 Related regulations.

Procedural and substantive instructions dealing with operations which are related to the regulations in this part will be found in the regulations listed below:

- 19 CFR Chapter I—Customs Regulations
- 26 CFR Part 175—Traffic in Containers of Distilled Spirits
 - 26 CFR Part 186—Gauging Manual
 - 26 CFR Part 194—Liquor Dealers
 - 26 CFR Part 201—Distilled Spirits Plants
- 26 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum
- 26 CFR Part 212—Formulas for Denatured Alcohol and Rum
- 26 CFR Part 231—Taxpaid Wine Bottling Houses
 - 26 CFR Part 240—Wine
 - 26 CFR Part 245—Beer
- 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act
 - 27 CFR Part 4—Wine Labeling and Advertising
- 31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds

Subpart B—Definitions

§ 252.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Assistant regional commissioner. An assistant regional commissioner (alcohol and tobacco tax) who is responsible to, and functions under the direction and supervision of, a regional commissioner.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which operations relating to the production, storage, denaturation, or bottling of spirits prior to payment or determination of tax are authorized to be conducted.

Bonded wine cellar. Premises established under Part 240 of this chapter for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of un taxpaid wine.

Brewer. A proprietor of a brewery.

Brewery. Premises established under Part 245 of this chapter for the production of beer.

CFR. The Code of Federal Regulations.

Collector of customs. The person having charge of a customs collection district, the assistant collector of customs, deputy collector of customs, and any person authorized by law or by regulations approved by the Secretary to perform the duties of a collector of customs.

Commissioner. The Commissioner of Internal Revenue.

Container. Any receptacle, vessel, or any form of package, bottle, can, tank, or pipeline used, or capable of being used, for holding, storing, transferring, or conveying liquors.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary, or appointed in writing by a collector of customs, to perform the duties of an officer of the Customs Service.

(19 U.S.C. 1401(1))

Director. The Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, and all dilutions and mixtures thereof, from whatever source or by whatever process produced, including whisky, brandy, rum, gin, vodka, and products of rectification (other than products classed as wine), but not denatured spirits.

Distilled spirits plant. An establishment qualified under the provisions of Part 201 of this chapter for the production, bonded storage, or bottling of spirits, or for rectification, or for any combination of such operations.

District director. A district director of internal revenue.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration:

I declare under the penalties of perjury that this _____ (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

Exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country. The export character of any shipment shall be determined by the intention with which it is made, and it assumes an export character only when destined for use in a foreign country. For the purposes of this part, shipments to Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Panama Canal Zone shall be treated as exportations. Shipments to Kingman's Reef, the Midway Islands, or Wake Island are not exportations within the meaning of this part.

(68A Stat. 908; 26 U.S.C. 7653)

Foreign-trade zone or zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

(48 Stat. 998-1003, as amended; 19 U.S.C. 81a-81u)

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Internal revenue officer. An officer or employee of the Internal Revenue Service duly authorized to perform any function relating to the administration or enforcement of this chapter.

I.R.C. The Internal Revenue Code of 1954, as amended.

Liquor. Distilled spirits, wines, and/or beer.

Manufacturing bonded warehouse. A manufacturing bonded warehouse, class six, established under the provisions of Customs Regulations (19 CFR Ch. I).

Package. Any cask, keg, barrel, drum, or similar portable container.

Person. An individual, a trust, an estate, a partnership, an association, a company, or a corporation.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person who operates the brewery, distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, manufacturing bonded warehouse, or export storage, as the case may be, referred to in this part.

Rectifier. A proprietor of a distilled spirits plant qualified under Part 201 of this chapter to engage in the business of rectifying spirits or wines on which the tax has been paid or determined.

Region. An internal revenue region.

Regional commissioner. A regional commissioner of internal revenue.

Secretary. The Secretary of the Treasury.

Specially denatured spirits. Alcohol or rum, as defined in Part 212 of this chapter, denatured pursuant to the formulas authorized in Part 212 for specially denatured alcohol or rum.

Tank truck. A tank-equipped semi-trailer, trailer, or truck.

Tax. The distilled spirits tax, the rectification tax (including the taxes imposed by sections 5022 and 5023, I.R.C.), the beer tax, or the applicable wine tax, as the case may be, imposed by chapter 51, I.R.C.

Tax gallon. The unit of measure of spirits for the imposition of tax under section 5001, I.R.C. When spirits are 100 degrees of proof or more when withdrawn from bond, the tax is determined on a proof gallon basis. When spirits are less than 100 degrees of proof when withdrawn from bond, the tax is determined on a wine gallon basis.

U.S.C. The United States Code.

Wine. All kinds and types of wine having not in excess of 24 percent of alcohol by volume.

Zone operator. The person to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

(48 Stat. 998-1003, as amended; 19 U.S.C. 81a-81u)

Subpart C—Miscellaneous Provisions

WITHDRAWAL OR LADING FOR USE ON CERTAIN VESSELS AND AIRCRAFT

§ 252.21 General.

Liquors may be withdrawn without payment of tax for lading, and liquors on which the tax has been paid or determined may be laden with benefit of drawback of tax, subject to this part, for use on vessels and aircraft as follows:

(a) Vessels or aircraft operated by the United States;

(b) Vessels of the United States employed in the fisheries as provided in § 252.22 or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(c) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions;

(d) Vessels of war of any foreign nation;

(e) Foreign vessels employed in the fisheries as provided in § 252.22 or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign vessels is permitted; or

(f) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found such foreign country allows, or will allow, substantially reciprocal privileges in respect to aircraft registered in the United States.

(46 Stat. 690, as amended; 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.22 Vessels employed in the fisheries.

Liquors may be withdrawn or laden under the provisions of paragraphs (b) and (e) of § 252.21 relating to vessels employed in the fisheries, only for use on vessels of the United States documented to engage in the fisheries and foreign fishing vessels of 5 net tons or over if the collector of customs is satisfied by reason of the quantity requested in the light of (a) whether the vessel is employed in substantially continuous fishing activities, and (b) the vessel's complement, that none of the liquors to be withdrawn or laden are intended to be removed from the vessel in, or otherwise returned to, the United States. Such withdrawal or lading shall be conditioned upon compliance with the applicable provisions of this part. Lading of such liquors for use on such vessels shall be subject to approval by the collector of customs of a special written application by the withdrawer

lector of customs of a special written application by the withdrawer

NOTE: As used in this section, the word "withdrawer" shall mean the person executing the application or notice, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be.

or the vessel's master on customs Form 5125 (in duplicate) and a statement by the withdrawer in his application or notice on the required Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, that the liquors are to be laden for use as supplies on a vessel employed in the fisheries. The original application on customs Form 5125, after approval, shall be stamped with the serial number of the Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, and the date thereof, and shall be returned by the collector of customs to the withdrawer or vessel's master for use as prescribed below. Approval of each such application shall be subject to the condition that the original shall be presented thereafter by the withdrawer or the vessel's master to the collector of customs within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the liquors until the collector or customs is satisfied that they have been consumed on board, or landed under customs supervision, and takes up the authorization. The approval of customs Form 5125 shall be subject to the further condition that any such liquors remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the collector of the port or place of arrival shall deem necessary. When such liquors have been accounted for to the satisfaction of the collector of customs, he shall execute his certificate of lading and use on both copies of the Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, and forward the original of the form to the assistant regional commissioner designated thereon. In the event of a failure on the part of the withdrawer or the master of the vessel to comply with the conditions of this section or upon receipt of evidence that the liquors were not lawfully used as supplies on the vessel, the collector of customs shall advise the assistant regional commissioner of all the facts in the case for determination of any liability incurred. In the case of liquors withdrawn without payment of tax, assessment of tax liability found to have been incurred shall be made against the principal on the bond. In the case of taxpaid or tax determined liquors, the assistant regional commissioner shall determine as to whether to make demand upon the principal and the surety on the bond or to disallow the claim as the case may be.

(46 Stat. 690, as amended; 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.23 Reciprocating foreign countries.

Assistant regional commissioners may approve applications relating to the withdrawal or lading of liquors for use on aircraft of those foreign countries which will allow, to aircraft registered

in the United States and engaged in foreign trade, privileges substantially reciprocal to the privileges allowed herein to aircraft of a foreign country. Where application is made to withdraw or lade liquors for use on aircraft of other countries, which it is claimed reciprocate similar privileges to aircraft of the United States, the applicant must first establish the right of such withdrawal or lading. In appropriate cases, the applicant should request the Secretary of Commerce to find and advise the Secretary of the Treasury that such foreign country or countries allow, or will allow, substantially reciprocal privileges to aircraft of the United States.

(46 Stat. 690, as amended; 19 U.S.C. 1309)

MANUFACTURING BONDED WAREHOUSES

§ 252.25 General.

Any manufacturer who manufactures the products designated in section 5522, I.R.C., at a duly constituted manufacturing bonded warehouse, established in accordance with law and the regulations in 19 CFR Ch. I, may withdraw distilled spirits or wines from any distilled spirits plant or bonded wine cellar, as the case may be, without payment of tax, for use in the manufacture of such products for export, or for rectification and export, or shipment in bond to Puerto Rico. The proprietor of the manufacturing bonded warehouse shall furnish bond in accordance with the provisions of §§ 252.63 and 252.64.

(46 Stat. 691, as amended, 72 Stat. 1362, 1380, 1392, 1393, 1394; 19 U.S.C. 1311, 26 U.S.C. 5214, 5362, 5521, 5522, 5523)

FOREIGN-TRADE ZONES

§ 252.30 Export status.

Liquors may be transferred to a foreign-trade zone for the sole purpose of exportation, or storage pending exportation. Liquors of domestic manufacture deposited in a foreign-trade zone under this part shall be considered to be exported for the purpose of the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal revenue taxes and for the purposes of the internal revenue laws generally and the regulations thereunder. Export status is not acquired until application on Zone Form D for admission of the liquors into the zone has been approved by the collector of customs pursuant to the appropriate provisions of 19 CFR Chapter I, and the required certification of deposit of the liquors in the zone has been made on the Internal Revenue Service form prescribed in this part. For the purpose of section 309 of the Tariff Act of 1930, as amended by section 11 of the Customs Simplification Act of 1953 (Pub. Law 243, 83d Congress), liquors removed to foreign-trade zones under the provisions of this part may be removed, pursuant to the provisions of 19 CFR Ch. I, for use as supplies on vessels and aircraft.

(48 Stat. 999, as amended; 19 U.S.C. 81c)

VOLUNTARY DESTRUCTION OF LIQUORS AFTER RECEIPT IN A FOREIGN-TRADE ZONE

§ 252.35 General.

Liquors may not, under the law, be transferred to a foreign-trade zone for

the purpose of destruction. However, liquors transported to and deposited in a foreign-trade zone for exportation or for storage pending exportation may be destroyed under the supervision of the collector of customs, where it is shown to the satisfaction of the assistant regional commissioner of the region in which the zone is located that the liquors, after deposit in a zone, have become unmerchandise or unfit for export.

(48 Stat. 999, as amended; 19 U.S.C. 81c)

§ 252.36 Application.

Application, addressed to the assistant regional commissioner of the region in which the zone is located and filed as hereinafter provided, for authority to destroy domestic distilled spirits (including alcohol), wines, or beer on storage in a foreign-trade zone shall be made by the exporter on letter-size paper, in duplicate, showing the name and address of the claimant and setting forth the following information:

(a) The kind and quantity of the liquor, the serial numbers, if any, of the containers thereof, and identification of the zone in which the liquor is stored;

(b) The name and address of the producer of the liquor, and the name, registry number, if any, and location of the plant, warehouse or other establishment from which such liquors were withdrawn for transportation to and deposit in the foreign-trade zone;

(c) The date, form, and serial number of the Form 206, 1582, 1582-A, 1582-B, 1629, or 1689, as the case may be; and, in the case of liquors on which drawback of internal revenue tax has been allowed, the claim number assigned thereto by the assistant regional commissioner;

(d) Whether the liquor has become unmerchandise or unfit for export after deposit in the zone, together with all the known facts relating thereto; and

(e) Whether the unmerchandise or unfit liquor is covered by valid insurance in excess of the market value thereof, exclusive of tax. If the liquor is insured, the application shall show its market value, the amount and date of each and every policy of insurance, the name and location of the company by which each and every policy was issued, the name and address of the bona fide owner of the liquor, and to the best of the affiant's knowledge, whether any other person or party is indemnified against the loss of the liquor by reason of its spoilage or destruction.

Such application shall be signed by the exporter or his authorized agent and be executed under the penalties of perjury. The assistant regional commissioner may require any further evidence as is deemed necessary. The operator of the foreign-trade zone shall countersign the application or otherwise indicate thereon his knowledge of and concurrence in the application to destroy the liquor. The exporter shall file the application with the collector of customs in whose district the foreign-trade zone is located; at the same time the exporter shall likewise file Zone Form E in accordance with Customs Regulations (19 CFR Ch. I). On receipt of the application the collector of customs shall determine the completeness thereof and shall

report any facts relating to the condition of the liquor of which he may have knowledge. The original application shall be forwarded to the assistant regional commissioner and the collector of customs shall retain the copy for his files.

§ 252.37 Action by assistant regional commissioner.

The assistant regional commissioner shall carefully examine the application to see that all the required information has been furnished and shall cause such investigation to be made or require such additional evidence, including samples, to be submitted as he may deem necessary. If the assistant regional commissioner finds that the domestic distilled spirits (including alcohol), wines, or beer were transported to and deposited in a foreign-trade zone in good faith for the purpose of exportation or storage pending exportation, and that such liquors, after deposit in the zone, have become unmerchandise or unfit for export, he may approve the application and authorize the destruction of the liquor described therein under the supervision of the collector of customs. On approval or disapproval of the application, the assistant regional commissioner shall advise the collector of customs of his action.

§ 252.38 Action by collector of customs.

On receipt of the assistant regional commissioner's authorization for destruction of the liquor, or his disapproval of the application for destruction, the collector of customs shall act upon the exporter's application on Zone Form E and dispose of it in accordance with the applicable provisions of Customs Regulations (19 CFR Ch. I). Where the assistant regional commissioner has authorized the destruction of the liquor, such destruction shall be accomplished under customs supervision.

EVIDENCE OF EXPORTATION AND USE

§ 252.40 Evidence of exportation.

The exportation of any shipment may be evidenced by:

(a) A copy of the export bill of lading (§ 252.250); or

(b) A copy of the railway express receipt (§ 252.251); or

(c) A copy of the air express receipt (§ 252.252); or

(d) A copy of the through bill of lading where exportation is to a contiguous foreign country (§ 252.250); or

(e) A certificate by the export carrier, as provided for in § 252.253.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.41 Evidence of lading for use on vessels or aircraft.

The lading of distilled spirits, wines, or beer for use on vessels or aircraft may be evidenced by submission of a receipt procured under the provisions of § 252.268.

(46 Stat. 690, as amended, 72 Stat. 1335, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5055, 5214, 5362)

§ 252.42 Evidence of deposit.

The deposit of distilled spirits and wines in a foreign-trade zone with benefit of drawback may be evidenced by a copy

of the transportation bill of lading obtained under the provisions of § 252.250. (48 Stat. 999, as amended; 19 U.S.C. 81c)

RETENTION OF RECORDS

§ 252.45 Retention of records.

File copies of forms required by this part to be retained by any proprietor or claimant, and all records, documents, or copies of records and documents supporting such forms, shall be preserved by such proprietor or claimant for a period of not less than two years, and during such period shall be available, during business hours, for inspection and the taking of abstracts therefrom by internal revenue officers.

(72 Stat. 1342, 1361, 1381, 1390, 1395; 26 U.S.C. 5114, 5207, 5367, 5415, 5555)

PENALTIES OF PERJURY

§ 252.48 Execution under penalties of perjury.

When a return, form, or other document called for under this part is required by this part or in the instructions on or with the return, form, or other document to be executed under penalties of perjury, it shall be so executed, as defined in Subpart B of this part, and shall be signed by the proprietor, or other duly authorized person.

(68A Stat. 749; 26 U.S.C. 6065)

Subpart D—Bonds and Consents of Surety

§ 252.51 General.

Every person required by this part to file a bond or consent of surety shall prepare and execute it on the prescribed form and file it with the assistant regional commissioner of the region in which is located the premises from which the withdrawal or removal is made or, in the case of taxpaid or taxdetermined spirits in packages filled in internal revenue bond, with the assistant regional commissioner for the region in which the exporter is located, in accordance with the procedures of this part: *Provided*, That the procedures in Parts 201, 240, or 245 of this chapter shall govern bonds given on Forms 2601, 700, or 1566, respectively.

§ 252.52 Corporate surety.

Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary as set forth in Treasury Department Circular 570. Powers of attorney and other evidence of appointment of agents and officers to execute bonds or to consent to changes in the terms of bonds on behalf of corporate sureties are required to be filed with, and passed on by, the Commissioner of Accounts, Surety Bonds Branch, Treasury Department.

(61 Stat. 648; 26 U.S.C. 6, 7)

§ 252.53 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit, as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United

States, in accordance with the provisions of 31 CFR Part 225.

(61 Stat. 650; 6 U.S.C. 15)

§ 252.54 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 252.55 Authority to approve bonds and consents of surety.

Assistant regional commissioners are authorized to approve all bonds and consents of surety required by this part.

§ 252.56 Disapproval of bonds or consents of surety.

The assistant regional commissioner may disapprove any bond prescribed by this part, or any consent of surety submitted in respect thereto, if the principal or any person owning, controlling, or actively participating in the management of the business of the principal shall have been previously convicted, in a court of competent jurisdiction, of:

(a) Any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of spirits, wines, or beer, or if such offense shall have been compromised with the person on payment of penalties or otherwise; or

(b) Any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(72 Stat. 1336, 1352, 1353, 1393, 1394; 26 U.S.C. 5062, 5175, 5177, 5522, 5551)

§ 252.57 Appeal to Director.

Where a bond or consent of surety is disapproved by the assistant regional commissioner, the person giving the bond may appeal from such disapproval to the Director, who will hear such appeal. The decision of the Director shall be final.

(72 Stat. 1394; 26 U.S.C. 5551)

§ 252.58 Bond, Form 2601.

(a) *Spirits.* Where spirits are withdrawn without payment of tax, as authorized in § 252.91, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the bond, Form 2601, given by the proprietor and approved under the provisions of Part 201 of this chapter, shall cover such withdrawals.

(b) *Wine.* Where, under the provisions of Part 201 of this chapter, bond, Form 2601, has been given and approved to cover the operations of a distilled spirits plant and an adjacent bonded wine cellar, such bond shall cover the withdrawal of wine without payment of tax, as authorized in § 252.121, from such bonded wine cellar on application for such withdrawal by the proprietor.

(c) *Specially denatured spirits.* Where specially denatured spirits are withdrawn free of tax, as authorized in § 252.151, from the bonded premises of

a distilled spirits plant on application of the proprietor thereof, the proprietor shall file consent of surety Form 1533, extending the terms of his bond, Form 2601, which consent shall be in the following form:

The obligors agree to extend the terms of said bond to cover all liability that may be incurred on all specially denatured spirits withdrawn by the principal for exportation or transfer to a foreign-trade zone, for which satisfactory evidence of exportation, or of deposit in a foreign-trade zone, as required by law and regulations, is not submitted to the assistant regional commissioner.

(72 Stat. 1349, 1352, 1362; 26 U.S.C. 5173, 5175, 5214)

§ 252.59 Bond, Form 700.

Where the operations of a bonded wine cellar are covered by bond, Form 700, as provided in Part 240 of this chapter, such bond shall cover the withdrawal of wine without payment of tax, as authorized in § 252.121, from such bonded wine cellar by the proprietor of the bonded wine cellar.

(72 Stat. 1379, 1380; 26 U.S.C. 5354, 5362)

§ 252.60 Brewer's bond, Form 1566.

Where beer is removed from a brewery without payment of tax for any of the purposes authorized in § 252.141, the brewer's bond, Form 1566, furnished under the provisions of Part 245 of this chapter shall cover such removals: *Provided*, That before any such removal is made for transfer to and deposit in a foreign-trade zone, a consent of the surety extending the terms of the bond to such removals shall be filed with the assistant regional commissioner unless such removals are specifically included in the terms of the bond.

(48 Stat. 999, as amended, 72 Stat. 1334, 1388; 19 U.S.C. 81c, 26 U.S.C. 5053, 5401)

§ 252.61 Bond, Form 2734.

If a specific lot of distilled spirits or wines is to be withdrawn without payment of tax, as authorized in §§ 252.91 (a), (b), or (c) or 252.121 (a), (b), or (c), by a person other than the proprietor of the bonded premises, a specific bond on Form 2734 shall be filed by the exporter with the assistant regional commissioner as provided in § 252.51. The penal sum of such bond shall be not less than the tax prescribed by law on the quantity of spirits or wines to be withdrawn: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000.

(72 Stat. 1352, 1362, 1380; 26 U.S.C. 5175, 5214, 5362)

§ 252.62 Bond, Form 2735.

(a) *General.* If distilled spirits and/or wines are to be withdrawn from time to time without payment of tax, as authorized in §§ 252.91 (a), (b), or (c) and 252.121 (a), (b), or (c), by a person other than the proprietor of the bonded premises, a continuing bond on Form 2735 shall be filed by the exporter with the assistant regional commissioner as provided in § 252.51. The bond shall be executed in a penal sum sufficient to cover the tax at the rates prescribed by

law on the maximum quantity of distilled spirits and wines that may remain unaccounted for at any one time: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000. Distilled spirits and wines withdrawn for exportation, use on vessels or aircraft, or transfer to a foreign-trade zone, shall remain unaccounted for until the evidence of exportation, use, transfer, or loss in transit, as required by this part, has been filed with the assistant regional commissioner. The exporter shall, at the time of executing Form 2735, designate the premises from which the withdrawals are to be made, provided that, as to any one bond on Form 2735, such premises shall be located in the same internal revenue region.

(b) *Apportioning bonds.* Where a bond on Form 2735 is given in less than the maximum penal sum to cover withdrawals from more than one premise, the principal, at the time of execution of the bond, shall, if he intends to withdraw both distilled spirits and wine, apportion the coverage under the bond between distilled spirits and wine. Where distilled spirits are to be withdrawn from more than one premise, the principal shall also, as to distilled spirits withdrawals, at the time of execution, either (1) apportion the coverage under the bond among the several premises, or (2) designate one distilled spirits plant to which all applications for withdrawals of distilled spirits shall be submitted. If the distilled spirits bond coverage is apportioned at the time of execution, the amount designated by the principal for any distilled spirits plant becomes the maximum bond coverage for withdrawals from that plant. The principal may reapportion the bond coverage if changing conditions make such action necessary, provided that consent of surety, Form 1533, is filed with, and approved by, the assistant regional commissioner. Where the principal designates that all applications for withdrawals of distilled spirits under the bond shall be submitted to one plant, all such applications shall be submitted to the internal revenue officer at that plant for approval, who, after giving his approval, will then forward all copies of the application to the proprietor of the distilled spirits plant from which the distilled spirits are to be withdrawn.

(72 Stat. 1352, 1362, 1380; 26 U.S.C. 5175, 5214, 5362)

§ 252.63 Bond, Form 2736.

Where the proprietor of a manufacturing bonded warehouse desires to withdraw a specific lot of distilled spirits or wines without payment of tax, as authorized in § 252.25, he shall file with the assistant regional commissioner, as provided in § 252.51, a specific bond, on Form 2736, to cover the transportation of the distilled spirits or wines from the bonded premises from which withdrawn to the manufacturing bonded warehouse. The penal sum of such bond shall be not less than the tax prescribed by law on the quantity of distilled spirits or wines to be withdrawn: *Provided*, That the maximum penal sum of such bond shall

not exceed \$200,000, but in no case shall the penal sum be less than \$1,000.

(72 Stat. 1380, 1393; 26 U.S.C. 5362, 5522)

§ 252.64 Bond, Form 2737.

(a) *General.* Where the proprietor of a manufacturing bonded warehouse desires to withdraw distilled spirits and wines from time to time without payment of tax, as authorized in § 252.25, he shall file with the assistant regional commissioner, as provided in § 252.51, a continuing bond on Form 2737. The bond shall be executed in a penal sum sufficient to cover the tax at the rates prescribed by law on the maximum quantity of distilled spirits and wines which may remain unaccounted for at any one time: *Provided*, That the maximum penal sum of such bond shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000. Distilled spirits and wines withdrawn for transfer to a manufacturing bonded warehouse shall remain unaccounted for until the evidence of deposit in such warehouse, as required by this part, has been filed with the assistant regional commissioner. The proprietor shall, at the time of executing Form 2737, designate the premises from which the withdrawals are to be made, provided that, as to any one bond on Form 2737, such premises shall be located in the same internal revenue region.

(b) *Apportioning bonds.* Where a bond on Form 2737 is given in less than the maximum penal sum, the procedures set forth in § 252.62(b) in respect of Form 2735, shall be followed in respect of Form 2737.

(72 Stat. 1380, 1393; 26 U.S.C. 5362, 5522)

§ 252.65 Bond, Form 2738.

Whenever, under the provisions of this part, the exporter desires drawback of tax on distilled spirits or wines to be exported, laden for use on vessels or aircraft, or transferred to and deposited in a foreign-trade zone, as authorized in §§ 252.171, 252.201, and 252.211, prior to the receipt by the assistant regional commissioner of the certified copy of Form 1582, 1629, or 1582-A, as the case may be, as prescribed by this part, he shall file bond on Form 2738 with the assistant regional commissioner as provided in § 252.51. The penal sum of the bond shall be sufficient to cover the amount of drawback which will at any time constitute a charge against the bond: *Provided*, That the maximum penal sum shall not exceed \$200,000, but in no case shall the penal sum be less than \$1,000.

(46 Stat. 690, 691, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 1311, 81c, 26 U.S.C. 5062)

§ 252.66 Strengthening bonds.

In all cases where the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of any bond to less than

its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

(72 Stat. 1352, 1394; 26 U.S.C. 5175, 5551)

§ 252.67 New or superseding bonds.

New bonds shall be required in case of insolvency or removal of any surety, and may, at the discretion of the assistant regional commissioner, be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, shall execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 252.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business or operations to which such bond relates, he shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. If the principal does not file a new or superseding bond when required, he shall discontinue the operations intended to be covered by such bond forthwith. New or superseding bonds shall show the current date of execution and the effective date.

(72 Stat. 1336, 1362, 1393; 26 U.S.C. 5062, 5214, 5522)

TERMINATION OF BONDS

§ 252.70 Termination of bonds, Forms 2734 and 2736.

Bonds, Forms 2734 and 2736, covering a specific lot of distilled spirits or wines withdrawn without payment of tax under this part, will be canceled by the assistant regional commissioner on receipt by him of Form 206 properly executed by the appropriate customs official or armed services officer, as required by this part, evidencing that the distilled spirits or wines have been duly exported, laden for use on vessels or aircraft, deposited in a foreign-trade zone, or deposited in a manufacturing bonded warehouse, as the case may be, or of evidence satisfactory to him that the distilled spirits or wines have been otherwise lawfully disposed of or accounted for: *Provided*, That all liability under the bond to be canceled has been terminated.

(72 Stat. 1352, 1393; 26 U.S.C. 5175, 5522)

§ 252.71 Termination of bonds, Forms 2735, 2737, and 2738.

Continuing bonds, Forms 2735 and 2737, covering distilled spirits and/or wines withdrawn from time to time without payment of tax under this part and Form 2738 covering allowance of claims for drawback on distilled spirits and/or wines removed as authorized in §§ 252.171, 252.201, and 252.211, may be terminated as to liability for future withdrawals or claims (a) pursuant to application of surety as provided in § 252.72, (b) on approval of a superseding bond, or (c) on written notification to the assistant regional commissioner by the principal of his discontinuance

of withdrawals or claims, as the case may be, under the bond. When no further withdrawals are to be made under a bond on Form 2735 or 2737, or no further claims for drawback are to be filed under bond Form 2738, the bond shall be canceled by the assistant regional commissioner in the manner and subject to the conditions provided in § 252.70.

(72 Stat. 1336, 1349, 1352, 1353, 1393; 26 U.S.C. 5062, 5173, 5175, 5176, 5522)

§ 252.72 Application of surety for relief from bond.

A surety on any bond given on Forms 2735, 2737, or 2738, may at any time in writing notify the principal and the assistant regional commissioner in whose office the bond is on file that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 90 days after the date the notice is received by the assistant regional commissioner. This notice may not be given by an agent of the surety unless it is accompanied by a power of attorney, duly executed by the surety, authorizing him to give such notice, or by a statement, executed under the penalties of perjury, that such power of attorney is on file with the Commissioner of Accounts, Surety Bonds Branch, Treasury Department. The surety shall also file with the assistant regional commissioner an acknowledgment or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved from liability to the extent set forth in § 252.73(b).

(68A Stat. 749, 72 Stat. 1336, 1354, 1362, 1393; 26 U.S.C. 6065, 5062, 5175, 5214, 5522)

§ 252.73 Relief of surety from bond.

(a) *Bonds, Forms 2734 and 2736.* The surety on a bond given on Form 2734 or Form 2736 shall be relieved from his liability under the bond when the bond has been canceled as provided for in § 252.70.

(b) *Bonds, Forms 2735, 2737, and 2738.* Where the surety on a bond given on Form 2735, Form 2737, or on Form 2738 has filed application for relief from liability, as provided in § 252.72, the surety shall be relieved from liability for withdrawals or claims, as the case may be, made wholly subsequent to the date specified in the notice, or on the effective date of a superseding bond, if one is given. Notwithstanding such relief, the liability of the surety shall continue until the spirits and/or wines withdrawn without payment of tax or included in a claim for drawback of tax allowed under the bond have been properly accounted for.

(72 Stat. 1349, 1352, 1353, 1392; 26 U.S.C. 5173, 5175, 5176, 5521)

§ 252.74 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 252.53, shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the assistant regional commissioner until liability under the bond for which they were

pledged has been terminated. When the assistant regional commissioner is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the assistant regional commissioner may extend the date of release for such additional length of time as he deems necessary.

(61 Stat. 650; 6 U.S.C. 15)

CHARGES AND CREDITS

§ 252.80 Charges and credits on bonds.

The withdrawal of liquors without payment of tax or of specially denatured spirits free of tax, under the provisions of this part shall constitute a charge against the bond under which the withdrawal is made of (1) the tax on the liquors withdrawn or (2) of an amount equal to the tax on specially denatured spirits withdrawn that will be due in the event of failure to account for the specially denatured spirits as provided in this part. The tax on liquors so withdrawn, or an amount equal to the tax on specially denatured spirits so withdrawn that would be due as set forth above, shall, on the required accounting for such liquors or specially denatured spirits, constitute a credit to the bond of such tax or amount equal to the tax, as the case may be. Provisions regarding charges and credits on drawback bonds are contained in Subpart P of this part.

Subpart E—Withdrawal of Distilled Spirits Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone, or Transportation to a Manufacturing Bonded Warehouse

§ 252.91 General.

Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to this part, be withdrawn from the bonded premises of a distilled spirits plant without payment of tax for:

- Exportation;
- Use on the vessels or aircraft described in § 252.21;
- Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation; or
- Transportation to and deposit in a manufacturing bonded warehouse.

All such withdrawals shall be made under the applicable bond prescribed in Subpart D of this part.

(48 Stat. 999, as amended, 72 Stat. 1362, 1393; 19 U.S.C. 81c, 26 U.S.C. 5214, 5522)

§ 252.92 Application, Form 206.

(a) *Export, use on vessels and aircraft, and transfer to a foreign-trade zone.* Application for the withdrawal of distilled spirits without payment of tax for exportation from the United States, or for use on vessels and aircraft, or for transfer to a foreign-trade zone, shall be made by the exporter on Form 206, in quadruplicate, except that where the shipment is for use on aircraft, an extra copy, marked "Consignee's Copy", shall be prepared. Where the exporter is not the proprietor of the bonded

premises of the distilled spirits plant from which the spirits are to be withdrawn, he shall forward all copies of the form to such proprietor, except that where the withdrawals are being made under the limitations set forth in § 252.62(b), all copies of Form 206 shall be submitted to the internal revenue officer at the designated distilled spirits plant as provided in that section.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of distilled spirits without payment of tax for transportation to and deposit in a manufacturing-bonded warehouse shall be made by the proprietor of such warehouse on Form 206, in quadruplicate. The proprietor shall forward all copies of the application to the proprietor of the bonded premises of the distilled spirits plant from which the spirits are to be withdrawn, except that where the withdrawals are being made under the limitations set forth in § 252.64(b), all copies of Form 206 shall be submitted to the internal revenue officer at the designated distilled spirits plant as provided in that section and in applicable provisions of § 252.62(b).

(72 Stat. 1362, 1393; 26 U.S.C. 5214, 5522)

§ 252.93 Carrier to be designated.

The name of the carrier or carriers to be used in transporting the distilled spirits from the bonded premises of the distilled spirits plant to the port of export, or to the manufacturing bonded warehouse, or to the foreign-trade zone, as the case may be, shall be shown in the application. If the spirits are shipped on a through bill of lading and all carriers handling the spirits while in transit are not known, the name of the carrier to whom the distilled spirits are to be delivered at the shipping premises shall be shown.

(72 Stat. 1362, 1393; 26 U.S.C. 5214, 5522)

§ 252.94 Containers.

Distilled spirits authorized to be withdrawn without payment of tax from the bonded premises of a distilled spirits plant under the provisions of this subpart may be withdrawn from such establishment in such containers as may be authorized in Part 201 of this chapter. Except as otherwise provided in this part, the gauging, packaging, bottling, casing, marking, stamping, and reporting of distilled spirits prior to withdrawal shall be in accordance with the provisions of Part 201 of this chapter.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1360, 1362, 1366, 1369, 1374, 1393; 19 U.S.C. 1309, 81c, 26 U.S.C. 5206, 5214, 5233, 5235, 5301, 5522)

§ 252.95 Change of packages for exportation.

Whenever the exporter desires to transfer distilled spirits from packages filled in internal revenue bond to such other suitable packages as may be desired for exportation, such change of packages shall be made under the procedures of Part 201 of this chapter relating to consolidation of packages, and prior to the preparation of Form 206 covering the removal of the distilled spirits.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.96 Notice of intention to withdraw; approval of application.

(a) *Bond coverage previously approved.* Where Form 206 has been approved as to bond coverage by an internal revenue officer at another distilled spirits plant, as provided for in §§ 252.62(b) and 252.64(b), the proprietor shall present all copies of the Form 206 to the internal revenue officer at his plant for his information, and notify him of his intention to withdraw distilled spirits without payment of tax pursuant to such Form 206. If the internal revenue officer is satisfied that the spirits described on the form are eligible for withdrawal, he shall return all copies of the form to the proprietor.

(b) *Bond coverage not approved.* Where prior approval of bond coverage has not been obtained, the proprietor shall submit all copies of Form 206 to the internal revenue officer at his plant for approval of the application. If the internal revenue officer is satisfied that the Form 206 has been properly executed, that the required bond has been filed in a sufficient amount, and that the described spirits are eligible for withdrawal, he shall indicate his approval on all copies of the form and return them to the proprietor.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.97 Exportation of spirits after expiration of bonded period not permitted.

Except as to spirits which were 8 years of age, or older, on July 26, 1936, and remained in bonded storage, internal revenue officers shall not permit the withdrawal for exportation of distilled spirits which have remained in bonded storage after the expiration of the 20-year bonded period prescribed by law. In such cases, the internal revenue officer shall note his disapproval across the face of all copies of Form 206 and return them to the proprietor. At the same time he shall (a) inform the proprietor of the distilled spirits plant in which the spirits are stored that the bonded period has expired, (b) determine the tax on the spirits, and (c) forward a report to the assistant regional commissioner in order that tax may be assessed.

(72 Stat. 1320; 26 U.S.C. 5006)

§ 252.98 Inspection and regauge.

The proprietor shall inspect all containers to be withdrawn pursuant to Form 206 and shall regauge all packages: *Provided*, That where distilled spirits are contained in bottles, or in tin, glass, or similar containers, or in sealed metal drums, or where they are to be withdrawn on the filling or original gauge (as authorized in Part 201 of this chapter), a regauge of such spirits need not be made. Any container bearing evidence of tampering, or of unusual loss that cannot be satisfactorily explained, shall be detained pending further investigation in accordance with the applicable provisions of Part 201 of this chapter. Where the withdrawal is to be made subject to regauge, the proprietor shall make such regauge under the direct supervision of the internal revenue of-

ficer and shall make his report of regauge on Form 2630, in quadruplicate. Such direct supervision shall be as defined in Part 201 of this chapter. He shall attach a copy of Form 2630 to each copy of Form 206 and shall enter his report of regauge on all copies of Form 206.

(46 Stat. 690, as amended, 72 Stat. 1358, 1362, 1366, 1369, 1393; 19 U.S.C. 1309, 26 U.S.C. 5204, 5214, 5233, 5235, 5522)

§ 252.99 Reduction in proof.

Distilled spirits contained in packages filled in internal revenue bond may be reduced in proof for exportation or for transfer to a foreign-trade zone, by the addition of pure water only after the packages have been regauged as provided in § 252.98. Only such addition of water may be made to the body of the spirits in any package as the natural wantage of the package will allow, and the transfer of spirits from one package to another for the purpose of reduction is not permitted. The spirits shall be reduced by the proprietor under the direct supervision of the internal revenue officer.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.100 Gauge after reduction.

Where spirits in packages have been reduced in proof under the provisions of § 252.99, the proprietor shall again gauge the packages under the direct supervision of the internal revenue officer and report the details thereof on another set of Forms 2630, in quadruplicate. Any unusual loss ascertained after reduction shall be satisfactorily explained by the proprietor and reported in accordance with the applicable provisions of Part 201 of this chapter. Each such report of gauge shall have noted thereon the statement "Gauge After Reduction", and a copy thereof shall be attached to each copy of Form 206, in addition to the copy of the Form 2630 covering the withdrawal gauge. After the spirits have been reduced and gauged, the proprietor shall also enter his report of such gauge on all copies of Form 206.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.101 Packages to be stamped.

Every package and authorized bulk conveyance of spirits (including tank cars and tank trucks but not pipelines) withdrawn without payment of tax under the provisions of this subpart shall have a distilled spirits stamp, overprinted with the word "Export", affixed thereto at the time of its removal from the bonded premises. Such stamps shall be issued by the internal revenue officer on receipt of the withdrawal form and after completion of any required gauge or regauge of the packages or bulk conveyances, and shall be overprinted, affixed, and canceled, in accordance with the provisions of Part 201 of this chapter.

(72 Stat. 1358; 26 U.S.C. 5205)

§ 252.102 Bottles to be stamped.

Every bottle containing distilled spirits bottled in bond to be withdrawn under the provisions of this subpart shall bear an export strip stamp, procured and affixed in accordance with the provisions of Part 201 of this chapter. Every bottle of alcohol bottled for industrial use on

the bonded premises of a distilled spirits plant to be withdrawn under the provisions of this subpart shall bear an alcohol strip stamp, procured and affixed in accordance with the provisions of Part 201 of this chapter, and such stamps shall be legibly and indelibly overprinted or stamped on the center of the stamp with the word "Export". Export stamps are not required on cases containing bottles of distilled spirits (including industrial alcohol) filled and stamped on bonded premises.

(72 Stat. 1358, 1369; 26 U.S.C. 5205, 5235)

§ 252.103 Marks and brands.

In addition to the marks and brands required to be placed on packages and cases at the time they are filled under the provisions of Part 201 of this chapter, the proprietor shall place additional marks, as herein specified, on each such container before removal from the bonded premises:

(a) "Export—Without Payment of Tax"—where the spirits are to be withdrawn for export from the United States, or for shipment to the Armed Services for export;

(b) "Use on Vessels (or Aircraft)—Without Payment of Tax"—where the spirits are to be withdrawn for use on vessels or aircraft; or

(c) "Deposit in C.M.B.W.—Cl. 6" followed by the name and address (city or town and State) of the consignee proprietor—where the spirits are to be withdrawn for transportation to and deposit in a manufacturing bonded warehouse: *Provided*, That the markings required by this paragraph need not be placed on containers removed to a contiguous manufacturing bonded warehouse, where the assistant regional commissioner finds that their omission will not constitute a jeopardy to the revenue; and

(d) Where the spirits are withdrawn for deposit in a foreign-trade zone, in addition to and immediately following the markings prescribed in paragraph (a) of this section, the words "via F.T.Z. No." followed by the number of the zone.

All such markings shall be placed on the containers in the same area and in the same manner as is prescribed by the regulations in Part 201 of this chapter for the affixing of the original marks.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1362, 1393; 19 U.S.C. 1309, 81c, 26 U.S.C. 5214, 5522)

§ 252.104 Certificates of origin.

Since the entry of distilled spirits at ports in certain foreign countries is permitted only upon the filing by the importer of an official certificate showing the origin and age of such spirits, internal revenue officers in charge of distilled spirits plants from which such spirits are withdrawn, may, on request of the applicant, furnish him with a certificate showing the origin and age of the spirits described in the entry for withdrawal, so far as may be determined from the marks and brands on the packages or cases containing the spirits. Such certificates shall be furnished on Form 2177. Form 2177 may also be issued for distilled spirits removed to a foreign-trade zone, in which case the number and location of the foreign-trade

zone shall be shown on the form in lieu of the name of the foreign country.

§ 252.105 Release of spirits.

When the spirits are ready for shipment, the proprietor shall execute his report of inspection and tax liability on all copies of Form 206 and submit all copies, with attachments (if any) to the internal revenue officer. If the internal revenue officer is satisfied that there has been compliance with all applicable requirements of the regulations, including the stamping and marking requirements, he shall execute his release of the spirits on all copies of Form 206.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.106 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits withdrawn without payment of tax under this subpart shall be made under the provisions of Subpart M.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.107 Disposition of forms.

When the distilled spirits have been removed, the internal revenue officer shall forward one copy of Form 206, with Form(s) 2630, if any, attached, to the assistant regional commissioner, and deliver the original and remaining copies with attachments (if any), to the proprietor of the distilled spirits plant. The proprietor shall retain one copy of each form, and deliver the original and one copy of each form to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M of this part. In the case of shipment by tank truck, the forms should be placed in a properly addressed sealed envelope and handed to the driver of the tank truck for delivery to the officer. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 252.92, shall be forwarded to the airline company at the airport.

(72 Stat. 1362; 26 U.S.C. 5214)

LOSSES

§ 252.110 Losses.

Where there has been a loss of distilled spirits while in transit from the bonded premises of a distilled spirits plant to a port of export, a manufacturing bonded warehouse, a vessel or aircraft, or a foreign-trade zone, the provisions of Subpart O of this part, with respect to losses of spirits after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(72 Stat. 1323; 26 U.S.C. 5008)

RETURN OF SPIRITS TO BONDED PREMISES

§ 252.115 General.

On application of the proprietor of a distilled spirits plant, spirits which have been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for deposit in a foreign-trade zone, or for deposit in a manufacturing bonded warehouse, or for use on vessels and aircraft may, for good cause, be returned:

(a) To the bonded premises of any distilled spirits plant authorized to pro-

duce distilled spirits, for redistillation; or

(b) To the bonded premises from which withdrawn, for storage pending subsequent removal for lawful purposes: *Provided*, That such spirits are returned before they are exported, deposited in a foreign-trade zone, deposited in a manufacturing bonded warehouse, or laden as supplies upon or used on vessels or aircraft, as the case may be.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

§ 252.116 Application for return of spirits withdrawn without payment of tax.

Where a proprietor of a distilled spirits plant desires to return spirits to his plant as provided in § 252.115, he shall submit a written application, in quintuplicate, to the assistant regional commissioner for the region in which his plant is located, for approval of the return of the spirits. The application shall show:

(a) Name, address, and plant number of the distilled spirits plant to which the spirits are to be returned.

(b) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits.

(c) Name, address, and plant number of the distilled spirits plant from which the spirits were withdrawn.

(d) Name and address of the principal on the bond under which the spirits were withdrawn.

(e) Serial number of the Form 206 and the date withdrawn.

(f) Present location of spirits to be returned.

(g) Kind of spirits to be returned.

(h) Number, kind, and serial numbers of the containers to be returned. In case of bottled spirits, the number and size of the bottles in each case.

(i) Total quantity in proof gallons of spirits to be returned.

(j) Reason for return of spirits.

(k) Disposition to be made of returned spirits, i.e., redistillation or return to bonded storage.

The application shall be executed under the penalties of perjury. On approval of the application the assistant regional commissioner shall forward the original and two copies to the internal revenue officer in charge of the plant, and return two copies to the proprietor, who, in turn, shall deliver them to the exporter.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

§ 252.117 Responsibility for return of spirits.

The principal on the bond, under which the spirits were withdrawn without payment of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant authorized to receive them. In case of emergency, the principal on the bond may arrange the return of spirits to bonded premises without an approved application, but such spirits shall be kept separate at the bonded premises and shall not be gauged (if required) or recorded in the records and reports of the proprietor until an approved application for such return has been obtained as provided in § 252.115. Such principal or his agent shall present to the appropriate customs official the

two copies of the approved application authorizing the return unless the spirits are returned before the Form 206 has been filed with the customs official. The customs officer shall, if he finds that the spirits are eligible for return under § 252.115, accept the approved application as authority for the return of the spirits to the distilled spirits plant noted on the application and shall mark each copy of Form 206 "Canceled", note the date thereon, affix a copy of the approved application to each set of the canceled Forms 206, return both sets to such principal, and, where the spirits are in his custody, release them for return. The canceled sets of Form 206, with attachments, shall be delivered by such principal or his agent to the internal revenue officer at the distilled spirits plant. When spirits have been returned before the withdrawal forms were filed with customs officials, the two copies of the approved application shall be submitted, by the principal or his agent, to the internal revenue officer who shall cancel and date each copy of Form 206 and affix copies of the approved application thereto.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

252.118 Disposition of forms.

The receipt, gauge, and disposition of the distilled spirits at the distilled spirits plant shall be in accordance with the applicable provisions of Part 201 of this chapter. On receipt of the report of gauge, Form 2630, from the proprietor, the internal revenue officer shall endorse, on each copy of the approved application to return the spirits, the date received and the total amount in proof gallons, and affix his signature and title. He shall forward the original Form 206, with attachments, to the assistant regional commissioner designated on the form, the original of the endorsed application, with Form 2630 to the assistant regional commissioner of his region, a copy of the endorsed application to the proprietor of the distilled spirits plant from which the spirits were withdrawn, deliver the copy of Form 206 (with attachments) and a copy of Form 2630 to the proprietor of the distilled spirits plant receiving the returned spirits, and retain a copy of the endorsed application and Form 2630 for his files.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

Subpart F—Withdrawal of Wine Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone, or Transportation to a Manufacturing Bonded Warehouse

§ 252.121 General.

Wine may, subject to this part, be withdrawn from a bonded wine cellar, without payment of tax, for:

(a) Exportation;

(b) Use on the vessels and aircraft described in § 252.21;

(c) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation; or

(d) Transportation to and deposit in a manufacturing bonded warehouse.

All such withdrawals shall be made under the applicable bond prescribed in Subpart D.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1380, 1393; 19 U.S.C. 1309, 81c, 26 U.S.C. 5362, 5522)

§ 252.122 Application or notice, Form 206.

(a) *Export, use on vessels and aircraft, and transfer to a foreign-trade zone.* The exporter shall, where he is not the proprietor of the bonded wine cellar from which the wine is to be withdrawn, make application on Form 206, in quadruplicate, to the assistant regional commissioner of the region in which the bonded wine cellar is located, for approval of the withdrawal. Where the exporter is the proprietor of the bonded wine cellar from which the wine is to be withdrawn he shall, at the time of withdrawal of the wine, file a notice of such withdrawal on Form 206, in quadruplicate, with the assistant regional commissioner of the region in which the bonded wine cellar is located. Prior approval by the assistant regional commissioner is not required where the withdrawal is by the proprietor of the bonded wine cellar. In any case, where the withdrawal is for shipment for use on aircraft, an extra copy of Form 206, marked "Consignee's Copy", shall be prepared.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of wine without payment of tax for transportation to and deposit in a manufacturing bonded warehouse, shall be made by the proprietor of such warehouse on Form 206, in quadruplicate. The proprietor shall forward all copies of the application to the assistant regional commissioner, of the region in which is located the bonded wine cellar from which the wine is to be withdrawn, for approval prior to withdrawal of the wine.

(c) *Action by assistant regional commissioner.* Where, under the provisions of paragraphs (a) and (b) of this section, a Form 206 is submitted to the assistant regional commissioner for approval, the assistant regional commissioner shall, if satisfied that the application is in order and that the applicant has on file a good and sufficient bond, approve all copies of the application and forward all copies to the proprietor of the premises from which the wines are to be withdrawn.

(d) *Restriction on shipment.* Where, under the provisions of paragraphs (a) and (b) of this section, prior approval of Form 206 by the assistant regional commissioner is required, the proprietor of the bonded wine cellar may not ship the wine until the approved Forms 206 have been received by him. In such cases, the proprietor of the bonded wine cellar shall, on removal of the wines, execute his certificate of removal on Form 206.

(72 Stat. 1380, 1393; 26 U.S.C. 5362, 5522)

§ 252.123 Marks and brands.

In addition to the marks and brands required to be placed on the containers at the time they are filled under the provisions of Part 240 of this chapter, the proprietor shall place additional marks,

as herein specified, on each container before removal from the bonded premises:

(a) "Export—Without Payment of Tax"—where the wine is to be withdrawn for export from the United States, or for shipment to the Armed Services for export;

(b) "Use on Vessels (or Aircraft)—Without Payment of Tax"—where the wine is to be withdrawn for use on vessels or aircraft; or

(c) "Deposit in C.M.B.W.—Cl. 6" followed by the name and address (city or town and State) of the consignee proprietor—where the wine is withdrawn for transportation to and deposit in a manufacturing bonded warehouse: *Provided*, That the markings required by this paragraph need not be placed on containers removed for transfer to a contiguous manufacturing bonded warehouse, where the assistant regional commissioner finds that their omission will not constitute a jeopardy to the revenue; and

(d) Where the wine is withdrawn for deposit in a foreign-trade zone, in addition to and immediately following the markings prescribed in paragraph (a), the words "via F.T.Z. No." followed by the number of the zone.

All such markings shall be placed on the containers in the same area and in the same manner as is prescribed by the regulations in Part 240 of this chapter for the affixing of the original marks.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1380, 1393; 19 U.S.C. 1309, 81c, 26 U.S.C. 5362, 5522)

§ 252.124 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines withdrawn without payment of tax under this subpart shall be made under the provisions of Subpart M of this part.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.125 Disposition of forms.

On removal of the wines from the premises of the bonded wine cellar, the proprietor shall forward one copy of Form 206 to the assistant regional commissioner, retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 252.122, shall be forwarded to the airline company at the airport.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.126 Proprietor's report.

The records of the proprietor of the bonded wine cellar shall reflect the quantity of wine removed without payment of tax under this subpart, and he shall report the quantity of wine so removed on Form 702.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.127 Losses.

Where there has been a loss of wines while in transit from a bonded wine cellar to a port of export, a foreign-trade

zone, a vessel or aircraft, or a manufacturing bonded warehouse, the provisions of Subpart O of this part, with respect to losses of wines after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(72 Stat. 1381, 1382; 26 U.S.C. 5370, 5371)

RETURN OF WINES TO BONDED WINE CELLAR

§ 252.130 General.

On application of the proprietor of a bonded wine cellar, wines which have been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for use on vessels and aircraft, or for deposit in a foreign-trade zone, or for deposit in a manufacturing bonded warehouse may, for good cause, be returned to the bonded wine cellar from which withdrawn, for storage pending subsequent removal for lawful purposes: *Provided*, That such wines are returned before they are exported, laden as supplies upon or used on vessels or aircraft, deposited in a foreign-trade zone, or deposited in a manufacturing bonded warehouse, as the case may be.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.131 Application for return of wines withdrawn without payment of tax.

Where a proprietor of a bonded wine cellar desires to return wines to his bonded wine cellar as provided in § 252.130, he shall submit a written application, in duplicate, to the assistant regional commissioner for the region in which his premises are located, for approval of the return of the wines. The application shall show:

(a) Name, address, and registry number of the bonded wine cellar.

(b) Name and address of the principal on the bond under which the wines were withdrawn.

(c) Serial number of the Form 206 and the date withdrawn.

(d) Present location of wines to be returned.

(e) Kind of wines to be returned.

(f) Number, kind, and serial numbers of the containers to be returned. In the case of bottled wines, the number and size of the bottles in each case.

(g) Total quantity in wine gallons for each separate tax class of wines to be returned.

(h) Reason for return of the wines.

The application shall be executed under the penalties of perjury. On approval of the application the assistant regional commissioner shall return both copies to the proprietor, who, in turn, shall deliver them to the exporter.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.132 Responsibility for return of wine.

The principal on the bond under which the wines were withdrawn without payment of tax shall be responsible for arranging the return of the wines to the bonded wine cellar from which they were withdrawn. In case of emergency, the principal on the bond may arrange the return of wines to bonded premises

without an approved application, but such wines shall be kept separate at the bonded premises and shall not be recorded in the records and reports of the proprietor until an approved application for such return has been obtained as provided in § 252.131. Such principal or his agent shall present to the appropriate customs official the two copies of the approved application authorizing the return unless the wines are returned before the Form 206 has been filed with the customs official. The customs officer shall, if he finds that the wines are eligible for return under § 252.130, accept the approved application as authority for the return of the wines to the bonded wine cellar noted on the application and shall mark each copy of Form 206 "Canceled", note the date thereon, affix a copy of the approved application to each of the canceled Forms 206, return both Forms 206 to the principal, and, where the wines are in his custody, release them for return. The canceled Forms 206, with attachments, shall be delivered by such principal or his agent to the proprietor of the bonded wine cellar. When wines have been returned before the Forms 206 were filed with customs officials, the two copies of the approved application shall be submitted, by the principal or his agent, to the proprietor of the bonded wine cellar who shall cancel and date each copy of Form 206 and affix copies of the approved application thereto.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.133 Disposition of forms.

On receipt of the wines at the bonded wine cellar, the proprietor shall endorse, on each copy of the approved application to return the wines, the date received, the total amount in wine gallons of each tax class of wine returned, and affix his signature. He shall forward the original Form 206, with attached application, to the assistant regional commissioner of the region in which his premises are located, and retain the remaining copy for his files. The storage, disposition, and records pertaining to such returned wines shall be in accordance with the applicable provisions of Part 240 of this chapter.

(72 Stat. 1380; 26 U.S.C. 5362)

Subpart G—Removal of Beer Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

§ 252.141 General.

Beer may, subject to this part, be removed from the brewery without payment of tax, for:

(a) Export to a foreign country;

(b) Use as supplies on the vessels and aircraft described in § 252.21; or

(c) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

All such removals shall be made under the brewer's bond, Form 1566, as prescribed in § 252.60.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1334; 19 U.S.C. 1309, 81c, 26 U.S.C. 5053)

§ 252.142 Notice, Form 1689.

Whenever a brewer intends to remove beer without payment of tax from the brewery for exportation from the United States or for use as supplies on vessels and aircraft or for transportation to and deposit in a foreign-trade zone, he shall prepare a notice for each such withdrawal on Form 1689, in quadruplicate, except that where the shipment is for use on aircraft, an extra copy, marked "Consignee's Copy", shall be prepared.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1334; 19 U.S.C. 1309, 81c, 26 U.S.C. 5053)

§ 252.143 Marks and brands.

In addition to the marks and brands prescribed in Part 245 of this chapter, each keg, barrel, case, crate, or other package containing beer to be removed without payment of tax under this subpart, shall be marked as specified below:

(a) "Export—Without Payment of Tax"—where the beer is to be removed for export from the United States, or for shipment to the Armed Services for export;

(b) "Use on Vessels (or Aircraft)—Without Payment of Tax"—where the beer is to be removed for use as supplies on vessels or aircraft; and

(c) Where the beer is removed for deposit in a foreign-trade zone, in addition to and immediately following the markings prescribed in paragraph (a) of this section, the words "via F.T.Z. No." followed by the number of the zone.

All such markings shall be placed on the containers in the same manner as is prescribed by the regulations in Part 245 of this chapter for the affixing of the original marks.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1334; 19 U.S.C. 1309, 81c, 26 Stat. 5053)

§ 252.144 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of beer removed from a brewery without payment of tax under this subpart shall be in accordance with the applicable provisions of Subpart M.

(72 Stat. 1334; 26 U.S.C. 5053)

§ 252.145 Disposition of forms.

On removal of the beer withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 to the assistant regional commissioner, retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M of this part. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 252.142, shall be forwarded to the airline company at the airport.

(46 Stat. 690, as amended, 72 Stat. 1334; 19 U.S.C. 1309, 26 U.S.C. 5053)

§ 252.146 Return of beer.

Beer removed without payment of tax under the provisions of this subpart may be returned to the brewery from which removed if lading of the beer is delayed

more than the period provided in § 252.262 or where the brewer has other good cause for such return. The brewer shall request the collector of customs to release the beer for return to the brewery and, on such release, the collector of customs shall endorse both copies of the appropriate Form 1689 to show his release of the beer, and return the forms to the brewer. On return of the beer to the brewery, the brewer shall record the quantity in his daily records, mark the two copies of Form 1689 returned by the collector of customs, "Canceled—returned to brewery", and forward one copy to the assistant regional commissioner. The total quantity of beer involved in all export shipments returned during any calendar month shall be reported as a special entry on Form 103.

(72 Stat. 1334, 1335; 26 U.S.C. 5053, 5056)

§ 252.147 Brewer's report.

The brewer's records shall reflect the quantity of beer removed without payment of tax under this subpart, and he shall report the quantity of beer so removed on Form 103.

(72 Stat. 1334; 26 U.S.C. 5053)

§ 252.148 Losses.

Where there has been a loss of beer while in transit from the brewery to a port for exportation, or for lading as supplies on a vessel or aircraft, or to a foreign-trade zone, the provisions of Subpart O of this part, with respect to losses of beer after removal without payment of tax, shall be applicable.

(72 Stat. 1333, 1334; 26 U.S.C. 5051, 5053)

Subpart H—Withdrawal of Specially Denatured Spirits, Free of Tax, for Exportation or Transfer to a Foreign-Trade Zone**§ 252.151 General.**

Specially denatured spirits may, under this part, be withdrawn from the bonded premises of a distilled spirits plant, free of tax, for:

- (a) Exportation; or
- (b) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

All such withdrawals shall be made under a consent of surety on the proprietor's bond, Form 2601, as prescribed in § 252.58(c).

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 252.152 Application, Form 206.

Application for withdrawal of specially denatured spirits, as authorized in § 252.151, shall be made on Form 206, in quadruplicate, by the proprietor of the distilled spirits plant from which the denatured spirits are to be withdrawn. All copies of the form shall be delivered to the internal revenue officer at the plant.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 252.153 Withdrawal procedure.

The provisions of §§ 252.93, 252.94, 252.98, 252.105, and 252.117 in respect of method of conveyance, authorized containers, gauging, inspection, approval

and release, report of removal, and disposition of forms shall be applicable to specially denatured spirits to be withdrawn under the provisions of this subpart.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 252.154 Marking containers.

In addition to the marks and brands required to be placed on the containers at the time they are filled under the provisions of Part 201 of this chapter, the proprietor shall place additional marks, as herein specified, on each container before removal from the bonded premises:

(a) "Export—Tax-Free"—where the specially denatured spirits are to be withdrawn for export from the United States; and

(b) Where the specially denatured spirits are withdrawn for deposit in a foreign-trade zone, in addition to and immediately following the markings prescribed in paragraph (a) of this section, the words "via F.T.Z. No." followed by the number of the zone.

All such markings shall be placed on the containers in the same area and in the same manner as is prescribed by the regulations in Part 201 of this chapter for the affixing of the original marks.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 252.155 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of specially denatured spirits withdrawn free of tax under this subpart shall be made under the provisions of Subpart M of this part.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 252.156 Losses.

Where there has been a loss of specially denatured spirits while in transit from the bonded premises of a distilled spirits plant to a port of export or a foreign-trade zone, the exporter shall file claim for allowance of the loss in accordance with the provisions of Subpart O of this part.

RETURN OF SPECIALLY DENATURED SPIRITS TO BONDED PREMISES**§ 252.160 General.**

On application of the proprietor of a distilled spirits plant, specially denatured spirits, which have been lawfully withdrawn free of tax under the provisions of this part for exportation, or for deposit in a foreign-trade zone, may be returned—

(a) To the bonded premises of any distilled spirits plant authorized to produce distilled spirits, for redistillation; or

(b) To the bonded premises of any distilled spirits plant for storage pending subsequent lawful withdrawal free of tax: *Provided*, That such specially denatured spirits are returned before they are exported, or deposited in a foreign-trade zone, as the case may be.

Where the specially denatured spirits are to be returned to bonded premises

for storage, without redistillation, the proprietor shall also execute a consent of surety on Form 1533 to extend the terms of his bond, Form 2601, to cover the return and storage of such specially denatured spirits.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

§ 252.161 Application for return of specially denatured spirits.

Where a proprietor of a distilled spirits plant desires to return specially denatured spirits to his plant as provided in § 252.160, he shall submit a written application, in quintuplicate, to the assistant regional commissioner for the region in which his plant is located, for approval of the return of the spirits. The application shall show:

(a) Name, address, and plant number of the distilled spirits plant to which the specially denatured spirits are to be returned.

(b) Name, address, and plant number of the distilled spirits plant from which the specially denatured spirits were withdrawn.

(c) Serial number of the Form 206 and the date withdrawn.

(d) Present location of specially denatured spirits to be returned.

(e) Description of the specially denatured spirits—kind, serial numbers of containers, and quantity in wine gallons.

(f) Reason for return of the specially denatured spirits.

(g) Disposition to be made of returned specially denatured spirits, i.e., redistillation or return to bonded premises for storage.

The application shall be executed under the penalties of perjury. On approval of the application, the assistant regional commissioner shall forward the original and two copies to the internal revenue officer in charge of the plant, and return two copies to the proprietor, who, in turn, shall deliver them to the exporter.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

§ 252.162 Responsibility for return of specially denatured spirits.

The principal on the bond under which the specially denatured spirits were withdrawn free of tax shall be responsible for arranging the return of such spirits to the distilled spirits plants authorized to receive them. In case of emergency, the principal on the bond may arrange the return of the specially denatured spirits to bonded premises without an approved application, but such spirits shall be kept separate at the bonded premises and shall not be gauged or recorded in the records and reports of the proprietor until an approved application for such return has been obtained. Such principal or his agent shall present to the appropriate customs official the two copies of the approved application authorizing the return unless the specially denatured spirits are returned before the Form 206 has been filed with the customs officials. The customs officer shall, if he finds that the specially denatured spirits are eligible for return under § 252.160, accept the approved application as authority for the return of the specially denatured spirits to the distilled spirits plant noted on the appli-

cation and shall mark each copy of Form 206 "Canceled", note the date thereon, affix a copy of the approved application to each set of the canceled Forms 206, return both sets to the principal, and, where the spirits are in his custody, release them for return. The canceled sets of Form 206, with attachments, shall be delivered by the principal or his agent to the internal revenue officer at the distilled spirits plant. When specially denatured spirits have been returned before the Form 206 was filed with customs officials, the two copies of the approved application together with the two sets of Form 206 shall be submitted, by the principal or his agent, to the internal revenue officer who shall cancel and date each copy of Form 206 and affix copies of the approved application thereto.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

§ 252.163 Disposition of forms.

The receipt, gauge, and disposition of the specially denatured spirits at the distilled spirits plant shall be in accordance with the applicable provisions of Part 201 of this chapter. On receipt of the report of gauge from the proprietor, the internal revenue officer shall endorse, on each copy of the approved application to return the specially denatured spirits, the date received and the total amount in wine gallons, and affix his signature and title. He shall forward the original Form 206, with attachments, to the assistant regional commissioner designated on the form, the original of the endorsed application to the assistant regional commissioner of his region, a copy of the endorsed application to the proprietor of the distilled spirits plant from which the specially denatured spirits were withdrawn, deliver the copy of Form 206 (with attachments) to the proprietor of the distilled spirits plant receiving the returned specially denatured spirits, and retain a copy of the endorsed application and the report of gauge for his files.

(72 Stat. 1362, 1365; 26 U.S.C. 5214, 5223)

Subpart I—Exportation of Distilled Spirits Bottled or Packaged, or Restamped and Marked, Especially for Export With Benefit of Drawback

§ 252.171 General.

Distilled spirits manufactured or produced in the United States on which an internal revenue tax has been paid or determined, and which have been bottled or packaged (including stamping and labeling), or restamped and marked, under the applicable provisions of Part 201 of this chapter, especially for export with benefit of drawback may, subject to this part, be:

- (a) Exported;
- (b) Laden for use on the vessels or aircraft described in § 252.21; or
- (c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

On receipt by the assistant regional commissioner of required evidence of such exportation, lading for use, or transfer, there shall be allowed a drawback equal in amount to the tax found

to have been paid or determined on such spirits.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

EVIDENCE OF TAXPAYMENT OF IMPORTED SPIRITS AND WINES

§ 252.175 Customs certification on Form 1583.

Where distilled spirits bottled or packaged, or restamped and marked, especially for export with benefit of drawback are manufactured (rectified) in the United States with the use of imported spirits or wines, the collector of customs at the port where the entry or withdrawal for consumption was made shall, on application in writing by the rectifier, execute a certificate on Form 1583, in triplicate, showing that the internal revenue tax has been collected on the imported spirits or wines described in the application. The collector will forward the original of Form 1583 to the assistant regional commissioner designated in the application, forward one copy to the rectifier, and retain one copy for his files.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.176 Application for certificate.

The rectifier shall set forth in his application for the issuance of the certificate, Form 1583, the address of the assistant regional commissioner to whom the form is to be sent, together with sufficient information to enable the collector of customs to identify the importation, such as:

- (a) The port of entry,
- (b) The entry number,
- (c) The name of the importing vessel or other carrier,
- (d) The date of importation,
- (e) The name of the importer,
- (f) The marks and numbers of packages, and
- (g) A description of the spirits or wines.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.177 Action by assistant regional commissioner.

The assistant regional commissioner will not approve a claim for drawback, Form 1582, or establish a rate of drawback on Form 1656, when the distilled spirits covered thereby are manufactured (rectified) from imported spirits or wines, until the Form 1583 has been received.

(72 Stat. 1336; 26 U.S.C. 5062)

EXPORT STORAGE

§ 252.180 Export storage at distilled spirits plants.

If the proprietor of a distilled spirits plant intends to receive, store, and remove tax determined distilled spirits which have been bottled or packaged, or restamped and marked, especially for export with benefit of drawback, he shall, except as provided in § 252.181, provide for the storage of such articles on the unbonded premises of the distilled spirits plant or on wholesale liquor dealer premises located on the general premises of the distilled spirits plant or contiguous thereto. During the storage of such

distilled spirits they shall be segregated from all articles intended for domestic use, and shall be subject to inspection by internal revenue officers during regular business hours. The records covering export storage transactions at premises provided under the provisions of this section shall be maintained and reports shall be rendered in accordance with the applicable provisions of Part 201 of this chapter.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.181 Noncontiguous off-premises export storage.

The proprietor of a distilled spirits plant may provide storage at any non-contiguous location for the receipt, storage, and removal of tax determined distilled spirits which have been bottled and stamped, or restamped and marked, especially for export with benefit of drawback. The provisions of Part 194 of this chapter shall be applicable to such operation. Records covering export storage transactions at premises established under the provisions of this section shall be kept at each such place of storage. The records shall be kept and reports shall be rendered in accordance with the applicable provisions of Part 194 of this chapter.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.182 Wholesale liquor dealers export storage.

The establishment and the maintenance of export storage by wholesale liquor dealers shall be in accordance with the applicable provisions of Part 194 of this chapter.

(72 Stat. 1336; 26 U.S.C. 5062)

TRANSFER AND STORAGE PENDING EXPORTATION

§ 252.185 Use of export storage.

Export storage established under the provisions of § 252.180, may be used for the storage, pending exportation or transfer to other premises for export storage, of tax determined distilled spirits which have been bottled or packaged, or restamped and marked, especially for export by the proprietor or other qualified persons. Export storage provided by a wholesale liquor dealer under the provisions of Part 194 of this chapter, or by the proprietor of a distilled spirits plant under the provisions of § 252.181, may be used for the storage, pending exportation or transfer to other premises for export storage, of tax determined distilled spirits which have been bottled and stamped, or restamped and marked, especially for export with benefit of drawback and are in immediate containers having a capacity not in excess of 1 wine gallon.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.186 Notice of transfer, Form 1656.

Distilled spirits bottled or packaged, or restamped and marked, especially for export with benefit of drawback may, pursuant to notice on Form 1656, and subject to the limitations set forth in § 252.185, be transferred from any export storage established under the provisions of §§ 252.180 and 252.181 and of

Part 194 of this chapter, to any other export storage established thereunder for storage, pending transfer to other premises for export storage or removal for (a) direct exportation, or (b) for use as supplies on vessels or aircraft, or (c) for transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation. Form 1656 shall be executed in triplicate (or quadruplicate if the consignee is located in another region) by the consignor-proprietor of the export storage.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.187 Transfer from export storage.

On shipment of the cases or packages described on Form 1656, the proprietor shall execute the report of removal on all copies of the form, retain one copy, and, in the case of intraregion shipments, forward the original and one copy to the assistant regional commissioner of the region in which the consignor's premises are located. In the case of interregion shipments, an additional copy shall be forwarded to such assistant regional commissioner.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.188 Establishment of drawback rate.

On receipt of Form 1656, the assistant regional commissioner shall establish the rate of drawback on the distilled spirits described on the application and make notation of such rate on the form. Where imported spirits or wines were used in the manufacture of the spirits bottled or packaged, or restamped and marked, especially for export with benefit of drawback, the assistant regional commissioner shall not establish the rate of drawback on Form 1656 prior to receipt from the collector of customs of Form 1583. The assistant regional commissioner shall, upon notation of the rate of drawback on Form 1656, retain the original when the consignee is located in the same region, and forward the remaining copy to the consignee. In the case of interregion shipments, the original shall be forwarded to the assistant regional commissioner of the consignee's region, a copy shall be retained, and the remaining copy shall be forwarded to the consignee.

(72 Stat. 1336; 26 U.S.C. 5062)

FILING OF NOTICE, AND REMOVAL

§ 252.190 Notice and claim, Form 1582.

Notice of intention to remove distilled spirits from export storage for export, for use as supplies on vessels or aircraft, or for deposit in a foreign-trade zone, shall be prepared by the exporter on Form 1582, in quadruplicate: *Provided*, That where the withdrawal is for use on aircraft, an extra copy, marked "Consignee's Copy", shall be prepared. Each Form 1582 shall be given, by the exporter, a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive. The exporter shall also execute his claim and entry for drawback on all copies of the form and

deliver all copies to the proprietor of the premises from which the distilled spirits are to be removed.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.191 Claim and entry signed by agent.

Where a claim and entry on Form 1582 is signed by an agent, proper power of attorney authorizing the agent to execute the claim for the exporter shall be filed, on Form 1534, with the assistant regional commissioner with whom the claim is filed.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.192 Packages of distilled spirits to be gauged.

Where distilled spirits to be removed have been packaged especially for export with benefit of drawback, the proprietor of the export storage shall gauge the packages prior to preparation of his notice on Form 1582: *Provided*, That where inspection discloses no evidence of loss and removal is made within 30 days from the time of packaging the distilled spirits for export with benefit of drawback, the filling gauge shall be considered the gauge at the time of removal. The internal revenue officer at the distilled spirits plant shall supervise the gauging of the distilled spirits by such proprietor. Report of gauge shall be made by the proprietor on Form 2630, in quadruplicate (appropriately modified), and a copy of the report of gauge shall be attached to each copy of Form 1582 and considered a part thereof. The report of gauge shall be checked by the internal revenue officer by verifying the gauge of a representative number of packages, selected at random.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.193 Export marks.

In addition to the marks and brands required to be placed on the containers at the time they are filled under the provisions of Part 201 of this chapter, the proprietor of the export storage shall place additional marks, as herein specified, on each container before removal from export storage for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone:

(a) "Export—Drawback Claimed"—Where the spirits are to be removed for export from the United States; or

(b) "Use on Vessels (or Aircraft)—Drawback Claimed"—Where the spirits are to be removed for use on vessels or aircraft; and

(c) Where the spirits are removed for deposit in a foreign-trade zone, in addition to and immediately following the markings prescribed in (a) above, the words, "via F.T.Z. No." followed by the number of the zone.

All such markings shall be placed on the containers in the same manner and in the same area as is prescribed in Part 201 of this chapter for the affixing of the original marks.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.194 Removal from export storage.

Where distilled spirits which have been bottled or packaged, or restamped and marked, especially for export with benefit of drawback are to be removed from export storage for export, deposit in a foreign-trade zone, or use as supplies on vessels or aircraft, the cases or packages shall be inspected by the proprietor and removed. When the spirits are shipped, the proprietor shall execute the certificate of removal on Form 1582.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.195 Disposition of Form 1582.

The proprietor shall forward one copy of Form 1582 to the assistant regional commissioner, retain one copy for his files, and deliver the original and remaining copy (copies) to the exporter. On receipt of the Forms 1582 from the proprietor, the exporter shall immediately forward or deliver the original and one copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M of this part. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 252.190, shall be forwarded by the exporter to the airline company at the airport.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.196 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits removed under this subpart for export, use on vessels or aircraft, or for transfer to a foreign-trade zone, shall be in accordance with the applicable provisions of Subpart M of this part.

(72 Stat. 1336; 26 U.S.C. 5062)

Subpart J—Exportation, With Benefit of Drawback, of Distilled Spirits in Casks or Packages Filled in Internal Revenue Bond**§ 252.201 General.**

On the exportation, or deposit in a foreign-trade zone for exportation or for storage pending exportation, of distilled spirits in casks or packages filled in internal revenue bond and containing not less than 20 wine gallons each, on which all taxes have been paid or determined, drawback of the internal revenue tax paid or determined may be allowed, subject to compliance with the provisions of this subpart.

(48 Stat. 999, as amended, 72 Stat. 1327; 19 U.S.C. 81c, 26 U.S.C. 5009)

§ 252.202 Application, Form 1629.

Any person desiring to claim drawback under the provisions of § 252.201, shall make application on Form 1629, in triplicate. Where the spirits are to be exported, all copies of the form shall be presented to the collector of customs for the

port from which the exportation is to be made in sufficient time for inspection, gauge, and supervision of lading to be made by customs officers. Where the spirits are to be deposited in a foreign-trade zone for exportation or for storage pending exportation, all copies of the form shall be presented to the customs officer in charge of the zone.

(48 Stat. 999, as amended, 72 Stat. 1327; 19 U.S.C. 81c, 26 U.S.C. 5009)

§ 252.203 Customs procedure.

(a) *At port of export.* On receipt of Form 1629, the collector of customs shall deliver all copies to a customs officer. The customs officer shall inspect and gauge the packages, prepare a gauge thereof on Form 696, in triplicate, and completely obliterate the stamps affixed thereto. He shall then cause each package to be marked "Export—Drawback Claimed," and permit the lading of the packages aboard the exporting conveyance. The customs officer shall then execute his certificate on all copies of Form 1629, forward one copy of Form 1629 and Form 696 to the exporter, and return the original and remaining copy of each form to the collector of customs. On clearance of the exporting conveyance, the collector of customs shall execute his certificate on both copies of Form 1629, forward the originals of Form 1629 and 696 to the assistant regional commissioner of the region in which the exporter is located and retain the remaining copy of each form for his files.

(b) *At foreign-trade zone.* On receipt of Form 1629, the customs officer in charge of the foreign-trade zone shall inspect and gauge the packages, prepare a gauge thereof on Form 696, in triplicate, and completely obliterate the stamps affixed thereto. He shall then cause each package to be marked "Export—Drawback Claimed—Via F.T.Z. No." followed by the number of the zone. The customs officer shall then execute his certificate on all copies of Form 1629, forward one copy of Form 1629 and Form 696 to the exporter, and forward the originals of Form 1629 and Form 696 to the assistant regional commissioner of the region in which the exporter is located, and shall retain one copy of each form for his own record.

(48 Stat. 999, as amended, 72 Stat. 1327; 19 U.S.C. 81c, 26 U.S.C. 5009)

§ 252.204 Claim.

The exporter, on receipt of the Forms 1629 and 696 from the customs officer, shall, on the basis of the rate of tax paid or determined, and the quantity, in proof gallons, of distilled spirits shown by the customs gauge on Form 696 to be contained in the packages, compute the amount of eligible drawback on the spirits, and execute his claim for drawback of such amount on the Form 1629. He shall then forward the claim, Form 1629, together with the copy of Form 696, to the assistant regional commissioner of the region in which he is located.

(48 Stat. 999, as amended, 72 Stat. 1327; 19 U.S.C. 81c, 26 U.S.C. 5009)

Subpart K—Exportation of Wine With Benefit of Drawback**§ 252.211 General.**

Wines manufactured or produced in the United States on which an internal revenue tax has been paid or determined and contained in packages or unbroken cases, filled on premises qualified under this chapter to package or bottle wines, may, subject to this part, be:

- (a) Exported;
- (b) Laden for use on the vessels or aircraft described in § 252.21; or
- (c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

On receipt by the assistant regional commissioner of required evidence of such exportation, lading for use, or transfer, there shall be allowed a drawback equal in amount to the tax found to have been paid or determined on such wines.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.212 Persons authorized.

Persons who have qualified under this chapter as proprietors of distilled spirits plants, bonded wine cellars, or taxpaid wine bottling houses, and persons who are wholesale liquor dealers as defined in section 5112, I.R.C., and have paid the required tax as a wholesale liquor dealer, are authorized to remove wines under the provisions of this subpart.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.213 Labeling of bottled wines.

Where bottled wines are to be exported with benefit of drawback under the provisions of this subpart, such bottles may be labeled with a label conforming to the provisions of 27 CFR Part 4: *Provided*, That the words "For Export" appear on such label or on a neck label affixed to each bottle. If such bottles are not so labeled, they shall be labeled as follows:

- (a) Kind of wines;
- (b) Name of bottler;
- (c) City or town and State in which bottled;
- (d) Alcohol content by volume, except that if not over 14 percent, either the type designations "table wine" or "light wine," or the alcoholic content, shall be stated;
- (e) The words "For Export"; and
- (f) The net contents of the bottle, unless legibly blown therein.

Such additional information not inconsistent with the foregoing requirements as may be desired by the exporter may also appear on the label.

§ 252.214 Notice and claim, Form 1582-A.

Claim for allowance of drawback of internal revenue taxes on wines removed under the provisions of § 252.211 and § 252.212, shall be prepared by the exporter on Form 1582-A, in quadruplicate: *Provided*, That where the withdrawal is for use on aircraft, an extra copy, marked "Consignee's Copy", shall be prepared. Each Form 1582-A shall be given, by the

exporter, a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(46 Stat. 690, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 26 U.S.C. 5062)

§ 252.215 Certificate of tax determination, Form 2605.

Every claim for drawback of tax on Form 1582-A shall be supported by a certificate, Form 2605, which shall be executed, in duplicate, (a) by the person who withdrew the wine from bond on tax determination, certifying that all taxes have been properly determined on such wine, or (b) where the wine was bottled or packaged after tax determination, by the person who did such bottling or packaging, certifying that the wines so bottled or packaged were received in tax-paid status and specifying from whom they were so received. The assistant regional commissioner may require other evidence of tax payment whenever he deems it necessary. It shall be the responsibility of the exporter to secure Form 2605, properly executed, and to submit the original of such form to the assistant regional commissioner with whom the claim, Form 1582-A, is filed. The exporter shall retain the copy of Form 2605 for his files.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.216 Marking of containers.

In addition to the marks and brands required to be placed on each container under the provisions of Parts 201, 231, or 240, of this chapter, each container removed under the provisions of this subpart shall have stenciled or otherwise marked thereon, in durable and legible letters and figures of not less than three-fourths of an inch in height, additional information, as specified below:

(a) "Export—Drawback Claimed"—where the removal is for export from the United States, or for shipment to the armed services for export; or

(b) "Use on Vessels (or Aircraft)—Drawback Claimed"—where the removal is for use on vessels or aircraft; and

(c) Where the wine is removed for deposit in a foreign-trade zone, in addition to and immediately following the markings prescribed in paragraph (a) of this section, the words "via F.T.Z. No." followed by the number of the zone.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.217 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines removed under this subpart shall be made under the provisions of Subpart M of this part.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.218 Disposition of Forms 1582-A.

On removal of the wines from the premises, the exporter shall forward one copy of Form 1582-A to the assistant regional commissioner, retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by Subpart M

of this part. Where the shipment is for delivery for use on aircraft, the copy marked "Consignee's Copy", provided for in § 252.214, shall be forwarded to the airline company at the airport.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

Subpart L—Exportation of Beer With Benefit of Drawback

§ 252.221 General.

Beer brewed or produced in the United States and on which the internal revenue tax has been paid may, subject to this part, be:

(a) Exported;

(b) Delivered for use as supplies on the vessels and aircraft described in § 252.221; or

(c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

Claim for drawback of taxes found to have been paid may be filed only by the producing brewer or his duly authorized agent. On receipt by the assistant regional commissioner of required evidence of such exportation, delivery for use, or transfer, there shall be allowed a drawback equal in amount to the tax found to have been paid on such beer.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

§ 252.222 Claim, Form 1582-B.

Claim for allowance of drawback of internal revenue taxes on beer brewed or produced in the United States shall be prepared on Form 1582-B, in quadruplicate, as required by this part. Each Form 1582-B shall be given, by the person initiating the form, a serial number beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(72 Stat. 1335; 26 U.S.C. 5055)

§ 252.223 Marking of containers.

In addition to the marks and brands required to be placed on each container under the provisions of Part 245 of this chapter, each container removed under the provisions of this subpart shall have stenciled or otherwise marked thereon, in durable and legible letters and figures of not less than three-fourths of an inch in height, additional information as specified below:

(a) "Export—Drawback Claimed"—where the removal is for export from the United States, or for shipment to the armed services for export; or

(b) "Use on Vessels (or Aircraft)—Drawback Claimed"—where the removal is for use as supplies on vessels or aircraft; and

(c) Where the beer is removed for deposit in a foreign-trade zone, in addition to and immediately following the markings prescribed in paragraph (a) of this section, the words "via F.T.Z. No." followed by the number of the zone.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

EXECUTION OF CLAIMS

§ 252.225 Removals of beer by brewer.

Where a brewer removes taxpaid beer from the brewery or from its place of storage elsewhere for exportation, for lading for use as supplies on vessels or aircraft, or for deposit in a foreign-trade zone, he shall execute the notice and claim on Form 1582-B. On removal of the beer for shipment the brewer shall file one copy of Form 1582-B with the assistant regional commissioner of his region, retain one copy for his files, and immediately forward the original and one copy of the form:

(a) In case of shipments for export or for use as supplies on vessels or aircraft, to the collector of customs at the port of export; or

(b) In the case of shipments to the armed services of the United States for export, to the commanding or supply officer to whom the shipment is consigned; or

(c) In the case of shipments to a foreign-trade zone, to the customs officer in charge of the zone.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

§ 252.226 Removals of beer by agent on behalf of brewer.

Where proper power of attorney authorizing an agent to execute a claim on behalf of the brewer has been filed with the assistant regional commissioner, such agent may, for any of the purposes authorized in § 252.221, remove taxpaid beer from the brewery where produced or from its place of storage elsewhere, and execute the notice and claim on Form 1582-B on behalf of the brewer. On removal of the beer, such agent shall dispose of Form 1582-B in accordance with the applicable procedure set forth in § 252.225.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

§ 252.227 Removals of beer by persons other than the brewer or agent of the brewer.

Where there is a removal of taxpaid beer by a person other than the brewer or the agent of the brewer for any of the purposes authorized in § 252.221, such person shall execute the notice, only, on Form 1582-B. Where the removal consists of the products of more than one brewer, separate Forms 1582-B shall be prepared for the products of each brewer. On removal of the beer for shipment such person shall forward two copies of Form 1582-B to the producing brewer, and immediately forward the original and one copy of the form as prescribed in § 252.225 (a), (b), or (c), as the case may be. On receipt of the two copies of Form 1582-B from the exporter, the brewer shall, if he wishes to claim drawback on the beer covered thereby, execute the claim for drawback on both copies of the form, file one copy of the claim with the assistant regional commissioner of his region, and retain the remaining copy for his files.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

CONSIGNMENT, SHIPMENT, AND DELIVERY

§ 252.230 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of taxpaid beer removed under this subpart shall be made under the provisions of Subpart M of this part.

(72 Stat. 1335; 26 U.S.C. 5055)

Subpart M—Shipment or Delivery for Export

CONSIGNMENT

§ 252.241 Shipment for export, or for use on vessels.

All liquors and specially denatured spirits intended for export or liquors intended for use as supplies on vessels shall be consigned to the collector of customs at the port of exportation, or port of lading for supplies on vessels, except that when the shipment is for export to a contiguous foreign territory it shall be consigned to the foreign consignee at destination in care of the collector of customs or deputy collector of customs at the port of export.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.242 Shipment for use on aircraft.

(a) *Distilled spirits and wine.* All distilled spirits and wines intended for use on aircraft shall be consigned to the airline at the airport from which the aircraft will depart in international travel, in care of the collector of customs. On receipt of the distilled spirits or wines they shall be stored at the airport under customs custody until laden on aircraft.

(b) *Beer.* Beer intended for use on aircraft shall be consigned to the collector of customs at the port of lading.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5214, 5362)

§ 252.243 Shipment to armed services.

On removal of distilled spirits, wines, or beer for export to the armed services of the United States, the shipment shall be consigned to the commanding officer or supply officer at the supply base or other place of delivery.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.244 Shipment to manufacturing bonded warehouse.

Distilled spirits and wines withdrawn for shipment to a manufacturing bonded warehouse shall be consigned to the proprietor of such warehouse in care of the customs officer in charge of the warehouse.

(72 Stat. 1362, 1380, 1393; 26 U.S.C. 5214, 5362, 5522)

§ 252.245 Shipment to foreign-trade zone.

Where distilled spirits (including specially denatured spirits), wines, or beer, are transferred to a foreign-trade zone for exportation or for storage pending exportation, the shipment shall be consigned to the Zone Operator in care

of the customs officer in charge of the zone.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 81c, 26 U.S.C. 5214, 5362)

§ 252.246 Delivery for shipment.

The proprietor or exporter may deliver the shipment directly to the consignees designated in §§ 252.241 through 252.245, or he may deliver it to a carrier for transportation and delivery to such consignees, or, when the exportation is to a contiguous foreign country, to the foreign consignee. Where the shipment is delivered to a carrier for transportation and delivery to such consignee, the proprietor or exporter shall procure a copy of the bill of lading covering such transportation.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.247 Change in consignee.

Where a change of consignee is desired after the liquors (including specially denatured spirits) have been removed from the shipping premises, the exporter shall notify the appropriate officer to whom the shipment is required by §§ 252.241–252.245 to be consigned or in whose care it is required to be shipped, and forward a copy of such notification to the appropriate assistant regional commissioner. Such notice shall identify the withdrawal or claim form, as the case may be, covering the shipment.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

BILLS OF LADING

§ 252.250 Bills of lading required.

A copy of the export bill of lading covering transportation from the port of export to the foreign destination, or a copy of the through bill of lading to the foreign destination, if so shipped, covering the acceptance of the shipment by a carrier for such transportation, shall be obtained by the exporter and filed with the assistant regional commissioner. Where the shipment consists of distilled spirits or wines to be deposited in a foreign-trade zone with benefit of drawback, and the principal has filed bond, Form 2738, the exporter shall obtain a copy of the transportation bill of lading covering the shipment and file it with the assistant regional commissioner: *Provided*, That such transportation bill of lading will not be required when delivery is made directly to the foreign-trade zone by the shipper. Bills of lading shall be signed by the carrier or by an agent of the carrier and shall contain the following minimum information:

(a) As to spirits, specially denatured spirits, and wines:

(1) The name of the exporter (if different from the shipper),

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading),

(3) The number of packages or cases,

(4) The serial number of the Form 206, 1582, or 1582-A, as the case may be, and

(5) The total quantity in wine gallons.

(b) As to beer:

(1) The name of the shipper,

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading), and

(3) The number and size of containers.

Where a copy of an export bill of lading or a copy of the through bill of lading is required and is not obtainable, the exporter or his agent may procure a certificate given by an agent of such carrier, as prescribed in § 252.253, and transmit such certificate to the assistant regional commissioner.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.251 Railway express receipts.

Where the exportation is to a contiguous foreign country and the shipment is by railway express, a receipt issued by the railway express agency may be accepted in lieu of an export bill of lading if the receipt furnishes all of the information required in an export bill of lading.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.252 Air express or freight bills of lading.

Where the exportation is made by air express or air freight, a bill of lading issued by the conveying airline is considered for the purpose of this part to be an export bill of lading if it otherwise conforms to the requirements of § 252.250.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.253 Certificate by export carrier.

A certificate, executed under the penalties of perjury, by an agent or representative of the export carrier, showing actual exportation of the liquors (including specially denatured spirits) may be furnished by an exporter as evidence of exportation. The certificate shall contain a description of the shipment, including the serial number of the withdrawal form, or the claim and entry form, as the case may be, the name of the exporter, the name of the consignee, the date received, the place where received by such carrier, and the name of the carrier from which received.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

Subpart N—Proceedings at Ports of Export

§ 252.261 Notice to collector of customs.

On arrival at the port of exportation, of distilled spirits (including specially denatured spirits), wines, or beer, withdrawn or shipped for exportation or for use on vessels or aircraft, the exporter or his agent shall immediately notify the collector of the port. At the same time, or prior thereto, the exporter or his agent shall file with the collector two copies of the application, claim, or notice, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, covering the shipment: *Provided*, That where the shipment is for direct exportation, such forms shall be filed at least six hours prior to lading.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.262 Delay in lading at port.

If, on arrival of a shipment withdrawn for export without payment of tax or free of tax, the exporting vessel is not prepared to receive the shipment, the collector of customs may permit such shipment to remain in possession of a carrier for a period not exceeding 30 days. Storage elsewhere for a like cause, and not exceeding the same period, may be approved by the collector of customs. In the event of further delay, the facts shall be reported to the assistant regional commissioner of the region from which the shipment was made, who shall issue appropriate instructions concerning the disposition of the shipment.

(72 Stat. 1334, 1362, 1380; 26 U.S.C. 5053, 5214, 5362)

§ 252.263 Duties of customs officer to be performed by an internal revenue officer.

Where authorized by the collector of customs at the interior port of entry in the case of paragraph (a) of this section, or at the port in which is located the manufacturing bonded warehouse in the case of paragraph (b) of this section, the internal revenue officer at a distilled spirits plant shall perform the duties required, by this subpart, to be performed by a customs officer, in the following instances only:

(a) Where distilled spirits withdrawn without payment of tax, or where distilled spirits bottled or packaged for export with benefit of drawback, are laden at an interior port for exportation through another port; and

(b) Where distilled spirits withdrawn without payment of tax are to be transferred for deposit in a manufacturing bonded warehouse which is contiguous to the distilled spirits plant.

(72 Stat. 1336, 1362, 1380; 26 U.S.C. 5062, 5214, 5362)

§ 252.264 Lading for exportation.

On receipt of the notification required in § 252.261, the collector of customs shall deliver both copies of the application, claim, or notice, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, covering the shipment, together with any forms which may be attached thereto, to a customs officer for inspection and supervision of lading. Such shipment shall be subject to the same requirements for inspection and supervision of lading at the port of exportation as may be required by Customs Regulations (19 CFR Ch. I) in the case of similar shipments of imported merchandise to be exported in customs bond. When an inspection of the shipment is made before it is laden on board the exporting carrier and such inspection discloses any discrepancy, the customs officer shall make note of the nature and extent of the discrepancy on each copy of the application, claim, or notice, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, and where the discrepancy involves one or more packages of distilled spirits, he shall make a gauge of each such package on Form 696.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.265 Evidence of fraud.

If the customs inspection discloses evidence of fraud, the customs officer shall detain the merchandise and notify the collector of customs who shall report the facts forthwith to the assistant regional commissioner within whose region the port of export is located. The assistant regional commissioner shall make investigation and take such action as the facts may warrant. Where the detained merchandise has been withdrawn for transfer and deposit in a manufacturing bonded warehouse, the merchandise shall be deemed not to have been deposited in said warehouse, and the designated officer shall hold in abeyance the processing of Form 206 until advised by the collector of customs that the detained merchandise may be entered for deposit. Where the detained merchandise has been withdrawn or entered for deposit in a foreign-trade zone, it shall be deemed not to have been deposited in the zone and the customs officer shall hold in abeyance the processing of the application, notice, or claim, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, and Zone Form D, until advised by the collector of customs that the detained merchandise may be entered for deposit.

(48 Stat. 999, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380, 1393; 19 U.S.C. 81c, 26 U.S.C. 5053, 5055, 5062, 5214, 5362, 5522)

§ 252.266 Release of detained merchandise.

When any merchandise has been detained under the provisions of § 252.265, the collector of customs shall not release such merchandise until he is advised so to do by the assistant regional commissioner.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.267 Exportation from interior port.

Where a shipment made under this part is to be exported to a contiguous foreign country through a frontier port, and it is desired to avoid the delay of customs inspection at such port, the shipment may be entered for exportation at an interior customs port. The inspection and supervision of lading, and the affixing of customs seals, shall be done by a customs officer in accordance with the provisions of Customs Regulations (19 CFR Ch. I): *Provided*, That where, under the provisions of § 252.263, an internal revenue officer has been authorized to perform such duties, the internal revenue officer shall perform the duties of the customs officer. On completion of the lading, the designated officer shall affix the seals, execute the certificate of lading on both copies of the application, notice, or claim, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, and forward them, with attachments (if any), to the collector of customs at the interior port of entry. The collector shall forward both copies of the form, with attachments (if any), to the customs

officer at the frontier port. When the customs officer at the frontier port is satisfied that the shipment as described on the appropriate form has been exported, he shall execute his certificate on both copies of the form and return them with attachments (if any), to the collector of customs at the interior port of entry.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.268 Receipt for liquors for use on vessels or aircraft.

Where liquors are withdrawn or removed for use on vessels or aircraft, the exporter shall procure and forward to the assistant regional commissioner a receipt executed under the penalties of perjury by the master or other authorized officer of the vessel, steamship company, or airline, as the case may be. The receipt shall give the number of containers, the serial numbers of the containers (if any), and the quantity received, and shall show that the liquors are in customs custody and have been or will be laden on board the vessel or aircraft, that they will be lawfully used on board the vessel or aircraft, and that no portion of the shipment has been or will be unladen in the United States or any of its territories or possessions. A receipt is not required, in the case of any shipment for use on vessels, when the liquors are laden on vessels of war, or, in cases other than supplies for vessels employed in the fisheries, where the amount of the tax on the liquors does not exceed \$200. In the case of supplies for vessels employed in the fisheries, compliance with the provisions of § 252.22 is also required.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.269 Certification by collector of customs.

(a) *Exportation.* When the collector of customs is satisfied that merchandise described on the application, notice, or claim, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, has been laden and cleared for export, he shall execute his certificate of lading and clearance on both copies of the form.

(b) *Distilled spirits and wines as supplies on vessels and aircraft.* When the collector of customs is satisfied that the distilled spirits and wines described on Form 206, 1582, or 1582-A, as the case may be, have been duly laden for use on vessels and aircraft, and that proper accounting for such spirits or wines has been submitted to him as required by this part, he shall execute his certificate of lading for use on both copies of the form.

(c) *Disposition of forms.* After executing his certificate, the collector of customs shall forward the original of Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, with attachments (if any), to the assistant regional commissioner designated on the form, and retain the remaining copy, with any attached forms, for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

RECEIPT BY ARMED SERVICES

§ 252.275 Receipt by armed services.

When liquors which have been withdrawn or removed for export to the armed services of the United States are received at the supply base or other designated place of delivery, the officer to whom consigned, or other authorized supply officer, at the supply base or other place of delivery shall enter the quantity of liquors received on both copies of the application, notice, or claim, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be. After signing the form, he shall forward the original with attachments, if any, to the assistant regional commissioner designated on the form, and retain the other copy for his records.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

LADING FOR USE ON AIRCRAFT

§ 252.280 Distilled spirits and wines.

When an airline desires to withdraw distilled spirits or wines from its stock being held at the airport under customs custody, for use on a particular aircraft, a requisition in triplicate shall be prepared for presentation to the customs officer. The requisition shall show the flight number, the registry number of the aircraft on which the distilled spirits or wines are to be laden, the country for which the aircraft is to be cleared, the date of departure of the aircraft, and the brand, kind, and quantity of distilled spirits or wines. Where the distilled spirits or wines are contained in kits which have been previously prepared while under customs custody, the kit number shall also be shown on the requisition. Where the kits are not prepared and the distilled spirits or wines are withdrawn for direct lading on aircraft, the requisition shall be serially numbered in lieu of the insertion of the kit number. When the distilled spirits or wines are withdrawn and laden aboard the aircraft, the lading shall be verified by the customs officer by an appropriate stamp or notation on the requisition. One copy of the requisition shall be retained by the customs officer who certifies to the lading for attachment to the outgoing manifest. The other two copies shall be delivered to the airline which shall retain both copies until the return of the flight. In case any of the distilled spirits or wines are removed from the aircraft on its return, they shall be returned to customs custody, appropriate notation made on both copies of the requisition retained by the airline and one copy shall be delivered to the customs officer for attachment to the incoming manifest. The remaining copy shall be retained by the airline.

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

§ 252.281 Certificate of use for distilled spirits and wines.

When all of the distilled spirits or wines represented by a single application, notice, or claim, Form 206, 1582, or 1582-A, as the case may be, have been

withdrawn from customs custody and laden and used on aircraft, the airline shall prepare a certificate of use on which are itemized all the requisitions pertaining to such distilled spirits or wines. The certificate shall be executed under the penalties of perjury by an officer of the airline and shall show the name of the exporter, the entry number, the brand and kind of distilled spirits or wines, and the number of bottles to be accounted for; and, as to each requisition, the requisition (or kit) number, the date laden, the registry number of the aircraft, the country for which the aircraft was cleared, and the number of bottles used. When completed, the certificate shall be presented to the customs officer at the airport who shall then execute his certificate on both copies of the appropriate application, notice, or claim, Form 206, 1582, or 1582-A, as the case may be, noting thereon any exception, such as shortages or breakage. The customs officer shall then attach the certificate of use to the copy of the appropriate form and forward both copies of the form to the collector of customs.

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

§ 252.282 Beer.

When beer has been laden on board the aircraft for use as supplies, the customs officer shall execute his certificate on both copies of the Form 1582-B or Form 1689, as the case may be, forward the original to the assistant regional commissioner designated on the form, and retain the copy for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055)

RECEIPT IN MANUFACTURING BONDED WAREHOUSE

§ 252.285 Receipt in manufacturing bonded warehouse.

On receipt of the distilled spirits or wines and the related Form 206 (and Form 2630, if any), the customs officer in charge of the manufacturing bonded warehouse shall make such inspection as is necessary to establish to his satisfaction that the shipment corresponds with the description thereof on Form 206 (and Form 2630, if any), and shall make a report of his gauge on Form 696, in duplicate: *Provided*, That where, under the provisions of § 252.263, an internal revenue officer has been authorized to perform the duties of the customs officer, the internal revenue officer shall perform such duties. Where his inspection and gauge discloses any discrepancy, the designated officer shall make note of such discrepancy on each copy of Form 206. Where the officer is satisfied that the shipment corresponds with the description on Form 206 (and Form 2630, if any), he shall execute his certificate of deposit on both copies of Form 206, and forward the original of Forms 206 and 696, and a copy of Form 2630 (if any), to the assistant regional commissioner. He shall retain the remaining copies for his files.

(72 Stat. 1362, 1380, 1393; 26 U.S.C. 5214, 5362, 5522)

RECEIPT IN FOREIGN-TRADE ZONE

§ 252.290 Receipt in foreign-trade zone.

On receipt at the zone, the shipment shall be inspected by the customs officer in charge of the zone who shall determine if the shipment agrees with the description thereof on the application, notice, or claim, Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be. Where, with respect to distilled spirits or wines, the customs officer deems it necessary to make a regauge of such spirits or wines, he shall make such regauge on Form 696, in duplicate. The customs officer shall note on both copies of the Form 206, 1582, 1582-A, 1582-B, or 1689, as the case may be, any deficiency in quantity or discrepancy between the merchandise inspected or gauged and that described in the form. Where the inspection or gauge discloses no loss, or where a loss is disclosed by such inspection or gauge and there is no evidence to indicate fraud, the officer shall execute his certificate on both copies of the form covering the deposit, and forward to the assistant regional commissioner the following:

- (a) Original of the deposit form;
- (b) Original of Form 696, if any; and
- (c) Copy of Form 2630, if any.

The remaining copy of the deposit form, and of any other form, shall be retained by the customs officer for his files.

(48 Stat. 999, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 81c, 26 U.S.C. 5062, 5214, 5362)

Subpart O—Losses

DISTILLED SPIRITS

§ 252.301 Loss of distilled spirits in transit.

The tax on distilled spirits withdrawn without payment of tax under this part and which are lost during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, (b) the manufacturing bonded warehouse, (c) the vessel or aircraft, or (d) the foreign-trade zone, as the case may be, may be remitted if evidence satisfactory to the assistant regional commissioner establishes that such distilled spirits have not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of them: *Provided*, That such remission in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(72 Stat. 1323; 26 U.S.C. 5008)

§ 252.302 Notice to exporter.

If, on examination of the Form 206 (and attached gauge reports, if any) received from the officer required to certify the same under the provisions of Subpart N of this part, the assistant regional commissioner is of the opinion that the distilled spirits reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

- (a) Of the identity of the containers;
- (b) Of the amount of the loss;
- (c) Of the circumstances indicating diversion or theft;

(d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of section 5008 (a) and (f), I.R.C., and (2) claim for remission of the tax on the spirits so lost; and

(e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which distilled spirits are lost during transportation, as described in § 252.301, whether by theft or otherwise, the assistant regional commissioner may require the exporter to file a claim for relief in accordance with § 252.303. When circumstances may warrant, extensions of additional time for submission of the proof and claim may be granted by the assistant regional commissioner. Where such proof and claim are not filed within the 30-day period, or such extensions as the assistant regional commissioner may grant, the tax on the distilled spirits diverted or lost will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(72 Stat. 1323; 26 U.S.C. 5008)

§ 252.303 Filing of claims.

Claims, for remission of tax on the distilled spirits under § 252.301, shall be filed on Form 2635, in duplicate, with the assistant regional commissioner, and shall set forth the following:

- (a) Name, address, and capacity of the claimant;
- (b) Identification (including serial numbers, if any) and location of the container or containers from which the spirits were lost;
- (c) Quantity of spirits lost from each container, and the total quantity of spirits covered by the claim;
- (d) Total amount of tax for which the claim is filed;
- (e) The date, penal sum, and form number of the bond under which withdrawal and shipment were made;
- (f) Name, number, and address of the distilled spirits plant from which withdrawn without payment of tax;
- (g) Date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;
- (h) Name of the carrier;
- (i) If lost by theft, facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;
- (j) In the case of a loss by theft, whether the claimant is indemnified or recompensed in respect of the tax on the spirits lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the spirits, less the tax.

The claim shall be executed by the exporter or his authorized agent under the penalties of perjury, and shall be sup-

ported (whenever possible) by affidavits of persons having personal knowledge of the loss. The assistant regional commissioner may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1323; 26 U.S.C. 6065, 5008)

§ 252.304 Action on claim.

The assistant regional commissioner will allow or disallow claims filed under § 252.303 in accordance with existing law and regulations. If the assistant regional commissioner finds that there has been a diversion or theft of the distilled spirits as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them, the tax on the distilled spirits diverted or lost by theft will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(68A Stat. 867, 72 Stat. 1323; 26 U.S.C. 7302, 5008)

SPECIALLY DENATURED SPIRITS

§ 252.310 Loss of specially denatured spirits in transit.

Losses of specially denatured spirits withdrawn free of tax under this part during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, or (b) the foreign-trade zone, as the case may be, may be allowed if evidence satisfactory to the assistant regional commissioner establishes that such specially denatured spirits have not been unlawfully diverted, or lost by theft as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. The giving of notice to the exporter, filing claims for allowance of loss, and action on the claims shall be, insofar as applicable, in accordance with the procedure prescribed in §§ 252.302 through 252.304.

WINE

§ 252.315 Loss of wine in transit.

The tax on wines withdrawn without payment of tax under this part and which are lost during transportation from the bonded wine cellar from which withdrawn to (a) the port of export, (b) the vessel or aircraft, (c) the foreign-trade zone, or (d) the manufacturing bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the assistant regional commissioner establishes that such wines have not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of them: *Provided*, That the remission of tax on wine withdrawn without payment of tax under this part and which is lost while in transit may be allowed only to the extent that the claimant is not indemnified or recompensed for such tax.

(72 Stat. 1381, 1382; 26 U.S.C. 5370, 5371)

§ 252.316 Notice to exporter.

If, on examination of the Form 206 received from the officer required to certify the same under the provisions of Subpart N, the assistant regional commissioner is of the opinion that wine reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

- (a) Of the identity of the containers;
- (b) Of the amount of the loss;
- (c) Of the circumstances indicating diversion or theft;

(d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of section 5370, I.R.C., and (2) claim for remission of the tax on the wine so lost; and

(e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which wines are lost during transportation, as described in § 252.315, whether by theft or otherwise, the assistant regional commissioner may require the exporter to file a claim for relief in accordance with § 252.317. Where circumstances may warrant, extensions of additional time for submission of the proof and claim may be granted by the assistant regional commissioner. Where such proof and claim are not filed within the 30-day period, or such extensions as the assistant regional commissioner may grant, the tax on the wine diverted or lost will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(72 Stat. 1381; 26 U.S.C. 5370)

§ 252.317 Filing of claims.

Claims, for remission of tax on the wine under § 252.315, shall be filed on Form 2635, in duplicate, with the assistant regional commissioner, and shall set forth the following:

- (a) The name, address, and capacity of the claimant;
- (b) The name, registry number, and location of the bonded wine cellar from which the wine was withdrawn;
- (c) The date, penal sum, and form number of the bond under which withdrawal and shipment was made;
- (d) Identification (including serial numbers, if any) and location of the container or containers from which the wine was lost;
- (e) The quantity of wine lost from each container, and the total quantity of wine covered by the claim;
- (f) The total amount of tax for which the claim is filed;
- (g) The date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;
- (h) Name of the carrier;
- (i) If lost by theft, the facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and

(j) Whether the claimant is indemnified or recompensed in respect of the tax on the wine lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the wine, less the tax.

The claim shall be signed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The assistant regional commissioner may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1381, 1382; 26 U.S.C. 6065, 5370, 5371)

§ 252.318 Action on claim.

Action on claims filed under § 252.317 shall be, insofar as applicable, in accordance with the procedure prescribed in § 252.304.

(72 Stat. 1381; 26 U.S.C. 5370)

BEER

§ 252.320 Loss of beer in transit.

When, on receipt by the assistant regional commissioner of Form 1689 from the officer required to certify it under the provisions of Subpart N, it is disclosed that there has been a loss of beer after removal from the brewery without payment of tax and while in transit to (a) the port of export, (b) the vessel or aircraft, or (c) the foreign-trade zone, as the case may be, and the report of the certifying officer shows that such loss was a normal one caused by casualty, leakage, or spillage, the assistant regional commissioner will allow the loss. Where it is disclosed that the loss is large or unusual, the assistant regional commissioner shall conduct an investigation of the loss. Where the investigation discloses that the loss in transit has occurred by reason of casualty, leakage, or spillage, credit for the loss will be allowed. Where the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the assistant regional commissioner will afford the brewer opportunity to submit a written explanation with respect to the causes of such loss before taking further action.

(72 Stat. 1333, 1334, 1335; 26 U.S.C. 5051, 5053, 5056)

§ 252.321 Tax assessed on loss not accounted for.

Where a loss of beer in transit, as described in § 252.320, has not been explained to the satisfaction of the assistant regional commissioner, an assessment shall be made against the brewer in a sufficient amount to cover the tax on the quantity of beer not satisfactorily accounted for.

(72 Stat. 1333, 1334; 26 U.S.C. 5051, 5053)

Subpart P—Action on Claims

§ 252.331 Claims supported by bond, Form 2738.

On receipt from the proprietor or exporter of a claim for drawback of tax on distilled spirits or wines on which the tax has been determined, and of the evidence of exportation required by

§ 252.40, or of lading for use on vessels or aircraft required by § 252.41, or of deposit in a foreign-trade zone required by § 252.42, as the case may be, the assistant regional commissioner shall, if a good and sufficient bond has been filed as provided in § 252.65, and the notice of removal has been properly completed, allow the claim in accordance with the rate of drawback established in respect of the particular spirits or wines on which claim is based and charge the amount allowed against the bond. On receipt of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, and, in the case of claims on Form 1582-A, the certificate of tax determination, Form 2605, the assistant regional commissioner shall give appropriate credit to the bond.

(46 Stat. 690, 691, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 1311, 81c, 26 U.S.C. 5062)

§ 252.332 Claim against bond.

Where any claim supported by a bond has been allowed and charged against the bond under the provisions of § 252.331, and the original of the claim properly executed by the appropriate customs official or armed services officer as required by this part, is not received by the assistant regional commissioner within three months of the date the claim was allowed, or where the distilled spirits or wines are not otherwise accounted for in accordance with this part, the assistant regional commissioner shall advise the claimant of the facts, and notify him that unless the original of the claim, properly executed as required by this part, is received by the assistant regional commissioner within 30 days of the date of such notice, a written demand will be made upon the principal and the surety for repayment to the United States of the full amount of such drawback, plus interest at the rate of 6 percent from the time the drawback is paid: *Provided*, That the assistant regional commissioner may, where in his opinion the circumstances warrant it, grant the claimant such additional extension of time beyond 30 days as may be necessary to accomplish the required filing.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.333 Where no bond is filed.

Where a claim for drawback of tax on distilled spirits or wines on Form 1582, Form 1582-A, or Form 1629, is not supported by a bond on Form 2738, and in all cases where claim for drawback of tax on beer is made on Form 1582-B, the assistant regional commissioner shall, on receipt by him of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, examine the claim to determine that it has been properly completed. He shall then, on receipt of the evidence of exportation required by § 252.40, or of lading for use on vessels or aircraft required by § 252.41, or of deposit in a foreign-trade zone required by § 252.42, as the case may be, and, in the case of claims on Form 1582-A, the certificate of tax determina-

tion, Form 2605, allow the claim in the amount of the tax paid on the beer or the tax paid or determined on the distilled spirits or wines on which the claim is based and which were exported, laden as supplies on vessels or aircraft, or deposited in a foreign-trade zone, as the case may be.

(46 Stat. 690, 691, as amended, 48 Stat. 999, as amended, 72 Stat. 1327, 1335, 1336; 19 U.S.C. 1309, 1311, 81c, 26 U.S.C. 5009, 5055, 5062)

§ 252.334 Credit allowance.

Where the claimant has indicated that he desires the amount of drawback allowed to be credited against internal revenue taxes determined by him but not yet paid, the assistant regional commissioner shall prepare Form 2639, in triplicate, and forward the original to the claimant. Where the credit relates to tax determined distilled spirits, procedure for taking the credit shall be in accordance with the procedures set forth in Part 201 of this chapter. Where the credit relates to tax-determined wines, procedure for taking the credit shall be in accordance with the procedures set forth in Part 240 of this chapter. No credit may be given for drawback of the tax on beer nor may one class of tax be credited to another.

(72 Stat. 1327, 1336; 26 U.S.C. 5009, 5062)

§ 252.335 Disallowance of claim.

If a claim for drawback of tax is not allowed in full, the assistant regional commissioner shall notify the claimant in writing of the reasons for any disallowance.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1327, 1335, 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5009, 5055, 5062)

[F.R. Doc. 60-5786; Filed, June 22, 1960; 8:51 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 718—DETERMINATION OF ACREAGE AND PERFORMANCE

Methods of Measurement

On pages 3338 and 3339 of the FEDERAL REGISTER of April 16, 1960, there was published a notice of proposed rule making to issue an amendment to the regulations governing the determination of acreage and performance. Interested persons were given 15 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment of the regulations.

No objections have been received and comments submitted do not require a revision of the proposal.

The proposed amendment to the regulations is hereby adopted without change and shall become effective beginning with the determination of acreages for crops planted for harvest in 1961. No allotment or history acreage for any allotment crop or any soil bank base, which was established on the basis of

acres determined prior to the effectiveness of this amendment, would be adjusted because of the amendment.

Issued at Washington, D.C., this 17th day of June 1960.

ANDREW J. MAIR,
Acting Administrator,
Commodity Stabilization Service.

Section 718.5 (e) and (g)(1) is amended to read as follows:

§ 718.5 Methods of measurement.

(e) *Effect of planting pattern on determination of acreage*—(1) *General*. In determining the acreage of any row crop, measurements shall extend beyond the planted area to a point equal to one-half the distance between the rows. All acreage determinations made in accordance with this paragraph (e) are subject to the deductions and adjustment credit prescribed in paragraphs (g) and (h) of this § 718.5. When an allotment row crop other than tobacco and another allotment row crop or an allotment row crop and a competitive row crop are planted in alternate rows or in strips of two or more rows, the acreage shall be considered as intertilled. For the purpose of determining the acreage of tobacco, other intertilled crops shall not be considered competitive with tobacco and the intertilled provisions of this paragraph (e) shall not apply. When an allotment row crop is planted in alternate rows or strips with non-competitive crops or in alternate rows or strips with idle or fallow land, the acreage shall be considered as fallow-stripped. In the application of the provisions of this paragraph (e), deviations from prescribed row width requirements attributable to variations which are normal to the operation of mechanical equipment shall not serve to disqualify a planting pattern or a deductible strip.

(2) *Block or solid planted allotment row crops*. When an allotment row crop is planted in a continuous area and intertilled or fallow-stripped planting is not involved, the acreage of such crop shall be the area devoted to the crop.

(3) *Close-seeded allotment crops*. The acreage of close-seeded allotment crops shall be the acreage in the area devoted to the crop.

(4) *Non-allotment soil bank base crops and other land uses*. The acreage of non-allotment soil bank base crops or other land uses shall be the acreage in the area devoted to the crops or land use except that when non-allotment soil bank base crops are planted in alternate rows, alternate strips, or fallow strips with idle or fallow land or non-soil bank base crops, the entire area shall be considered as planted to the soil bank base crop(s) unless the area composed of idle or fallow land or non-soil bank base crops is as wide as four normal rows of the soil bank base crop(s). If the area composed of idle or fallow land or non-soil bank base crop(s) is as wide as four normal rows of the soil bank base crop(s), only the land actually occupied by the soil bank base crop(s) shall be considered as planted to soil bank base crop(s). Where allotment crops

are intertilled or fallow-stripped with non-allotment soil bank base crops and the entire area is considered as planted to allotment crops, the acreage shall be counted only once in determining the acreage of soil bank base crops.

(5) *Intertilled allotment row crops other than tobacco*—(i) *Intertilled alternate rows*. Acreages of crops intertilled in alternate rows shall be determined as follows:

(a) *Normal rows*. If the distance between each row of the crops planted is not less than the normal row width for the allotment crop (the wider normal row if two allotment crops are involved), only the land actually occupied by the allotment crop shall be considered as planted to the allotment crop.

(b) *Less than normal rows*. If the distance between the rows of the crops planted is less than the normal row width for the allotment crop, the entire intertilled area shall be considered as planted to the allotment crop.

(ii) *Intertilled alternate strips*. Acreages of crops intertilled in alternate strips shall be determined as follows:

(a) *Less than one normal row*. If the distance between the strips of the allotment crop is less than one normal row width, the entire area shall be considered as planted to the allotment crop.

(b) *Less than four normal rows*. If the distance between the strips of the allotment crop is as wide as one but less than four normal rows of the allotment crop, the acreage of the allotment crop shall be the total acreage in the area less the acreage actually occupied by any competitive crop.

(c) *Four normal rows or more*. If the distance between the strips of the allotment crop is as wide as or wider than four normal rows of the allotment crop, only the area occupied by the allotment crop shall be considered as planted to the allotment crop.

(6) *Fallow-stripped allotment row crops including tobacco*. Acreages of fallow-stripped row crops, including tobacco, shall be determined as follows:

(i) *Less than four normal rows*. If the strips of idle land, fallow land, non-competitive crop(s), or a combination thereof are not as wide as four normal rows of the allotment crop, the entire area shall be considered as planted to the allotment crop.

(ii) *Four normal rows or more*. If the strips of idle land, fallow land, non-competitive crop(s), or a combination thereof are at least as wide as four normal rows of the allotment crop, only the land actually occupied by the allotment crop shall be considered as planted to the allotment crop, except that individual strips which are not as wide as four normal rows shall be considered as planted to the allotment crop.

(g) *Deductions*—(1) *General*. In determining the acreage of any field or subdivision, a deduction shall be made for any continuous area not devoted to the crop or land use being determined if it contains three-hundredths (0.03) acre or more and is not less than (i) the smaller of four links or one row in width in case of a deduction around the perim-

eter of the field or (ii) one row in width in case of a deduction within the planted area, except that a deduction shall not be made under this provision for intertilled plantings, fallow-strip arrangements, or unplanted strips, utilized for dusting, irrigating, harvesting, or similar cultural operations, which do not qualify under paragraph (e) of this section. The deductions specified herein are minimum deductions and are subject to the provisions of § 718.15.

[F.R. Doc. 60-5784; Filed, June 22, 1960; 8:51 a.m.]

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

PART 966—MILK IN NORTHERN LOUISIANA MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Northern Louisiana marketing area (7 CFR Part 966), it is hereby found and determined that:

(a) The following provision of § 966.51(a) of the order will not tend to effectuate the declared policy of the Act until the order can be amended on the basis of the evidence presented at a public hearing held April 19 and 20, 1960: "Through June 30, 1960".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order is necessary in view of the order provision which terminates the Class I price as of June 30, 1960. The Class I price was considered at a hearing held at Shreveport, Louisiana, on April 19 and 20, 1960. Evidence on the record indicates that the annual level of Class I prices provided in the order is appropriate in the immediate months ahead and should accordingly be maintained until amendment action can be taken.

(2) The time required for the performance of the several procedural steps which must be followed before an amendment can be issued, precludes the possibility of making an amendment to the order effective before the termination date of June 30, 1960.

(3) There would be no Class I price, and the pricing and pooling provisions of the order would become inoperative, unless this suspension order is made effective July 1, 1960.

(4) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(5) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date. Therefore, good cause exists for making this order effective July 1, 1960.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended effective July 1, 1960.

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

Issued at Washington, D.C., this 20th day of June 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-5757; Filed, June 22, 1960;
8:47 a.m.]

[Milk Order 72]

PART 972—MILK IN TRI-STATE MARKETING AREA

Notice of Correction With Respect to Order Amending Order

In F.R. Doc. 60-3433, filed April 14, 1960, and published on April 15, 1960, there appears in § 972.41(c) (4) and (5) the phrase "pursuant to § 972.42(d)" which should be corrected to read "pursuant to § 972.42(b)".

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

Issued at Washington, D.C., this 20th day of June 1960, to be effective upon publication in the FEDERAL REGISTER.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-5756; Filed, June 22, 1960;
8:47 a.m.]

[Milk Order 118]

PART 1018—MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

Order Amending Order

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AUTHORITY: §§ 1018.0 to 1018.111 issued under secs. 1-19, 49 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1018.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of

milk in the Southeastern Florida marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* (1) It is necessary in the public interest to make this order amending the order effective not later than July 1, 1960.

(2) The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued March 15, 1960, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued June 2, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective July 1, 1960, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER.

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Southeastern Florida marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended:

DEFINITIONS

§ 1018.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1018.2 Secretary.

"Secretary" means the Secretary of Agriculture or any officer or employee of the United States who is authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

§ 1018.3 Department.

"Department" means the United States Department of Agriculture or such other Federal agency as is authorized to perform the price reporting functions specified in this part.

§ 1018.4 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

§ 1018.5 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association: (a) To be qualified under the provisions of the act of Congress of February 19, 1922, as amended, known as the "Capper-Volstead Act"; (b) to have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and (c) to have its entire activities under the control of its members.

§ 1018.6 Southeastern Florida marketing area.

"Southeastern Florida marketing area" hereinafter called the "marketing area" means all territory included within the counties of Dade, Broward, Monroe, and Palm Beach, all in the State of Florida. All government reservations and incorporated municipalities within this territory shall be considered part of the marketing area as herein defined.

§ 1018.7 Producer.

"Producer" means any person, except a producer-handler, who produces milk (as described in § 1018.63) in compliance with the inspection requirements of a duly constituted health authority for fluid consumption (as used in this subpart, compliance with inspection requirements shall include production of milk acceptable to agencies of the United States Government located in the marketing area for fluid consumption), which milk is received at pool plant(s) on eight or more days during the month, or a person who was a producer during the preceding month from whom milk was received at pool plant(s) on eight or more days: *Provided*, That after December 31, 1960 the definition of "producer" shall not mean any person who during the month produces milk on, in, or by the use of the same milking barns or premises from which milk is delivered to a nonpool plant except milk diverted

to such nonpool plant by a handler pursuant to § 1018.13.

§ 1018.8 Producer-handler.

"Producer-handler" means any person who, during the month: (a) produces milk; (b) distributes Class I milk on routes in the marketing area; and (c) receives no milk except from his own dairy farm, and receives no products designated as Class I milk pursuant to § 1018.41(a) from pool plants or other sources.

§ 1018.9 Handler.

"Handler" means:

- (a) Any person in his capacity as the operator of one or more pool plants;
- (b) A producer-handler;
- (c) Any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of in the marketing area on routes;
- (d) Any person in his capacity as the operator of a plant from which milk in the form of products designated as Class I milk pursuant to § 1018.41(a) is shipped to pool plants, and
- (e) A cooperative association with respect to milk diverted to a nonpool plant pursuant to § 1018.7.

§ 1018.10 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor, or a sale from or through a plant store, or by vending machine) of any product in a form designated as Class I milk pursuant to § 1018.41(a), but does not include delivery to a milk receiving or processing plant.

§ 1018.11 Pool plant.

"Pool plant" means a plant described under paragraphs (a) or (b) of this section which is not a plant operated by a dairy farmer in his capacity as a producer-handler, is not determined to be a nonpool plant pursuant to § 1018.61, and is not a facility described in paragraph (c) of this section:

- (a) A plant at which the total Class I milk during the month is equal to not less than 50 percent of the receipts at the plant during the month of milk from dairy farmers who meet the inspection requirements pursuant to § 1018.7 and other receipts in the form of milk products designated as Class I milk pursuant to § 1018.41(a) and from which an amount of Class I milk equal to not less than 20 percent of such receipts is disposed of during the month in the marketing area on routes;

- (b) A plant from which, during the month, a volume of milk and skim milk equal to at least the required percentage (specified herein) of the volume of milk received thereat from dairy farmers who meet the inspection requirements pursuant to § 1018.7 is shipped to plants which are pool plants pursuant to paragraph (a) of this section, such required percentages being 50 percent in each of the months of December through March, and 40 percent in other months; and

- (c) Pool plant as defined in this section shall not be deemed to include any building, premises, facilities, the primary function of which is to hold or store

bottled milk or milk products in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

§ 1018.12 Nonpool plant.

"Nonpool plant" means any milk receiving or processing plant other than a pool plant.

§ 1018.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk received at pool plants directly from producers and milk from producers diverted by a handler to a nonpool plant for his account: *Provided*, That milk so diverted shall be deemed to be received by the diverting handler at the location (except in computing the days of receipt at pool plants pursuant to § 1018.7) of the pool plant from which diverted.

§ 1018.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

- (a) Receipts during the month in a form of products designated as Class I milk pursuant to § 1018.41(a) except (1) receipts from pool plants, (2) inventory at the beginning of the month or accounting period, or (3) producer milk; and
- (b) Milk products in any form other than those designated as Class I milk pursuant to § 1018.41(a) received from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 1018.15 Cream.

"Cream" means the product obtained by the separation of skim milk from whole milk such that the butterfat content of the remaining product exceeds 10 percent, and mixtures of such products with milk and skim milk such that the average butterfat content exceeds 10 percent.

§ 1018.16 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported by the Department for the month.

§ 1018.17 Chicago powder price.

"Chicago powder price" means the carlot price per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month.

§ 1018.18 Base milk.

"Base milk" means producer milk received by a handler from a producer which is not in excess of such producer's daily base determined pursuant to § 1018.90, multiplied by the number of

days of production for which such producer delivered milk during the month.

§ 1018.19 Excess milk.

"Excess milk" means producer milk received by a handler which is in excess of base milk.

MARKET ADMINISTRATOR

§ 1018.20 Designation.

The agency for the administration of this part shall be a "market administrator" selected by the Secretary. He shall be entitled to such compensation as may be determined by the Secretary and shall be subject to removal at his discretion.

§ 1018.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To make rules and regulations to effectuate its terms and provisions;
- (c) To receive, investigate, and report to the Secretary complaints of violations;
- (d) To recommend amendments to the Secretary.

§ 1018.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

- (a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;
- (b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;
- (c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;
- (d) Pay out of the funds received pursuant to § 1018.86:
 - (1) The cost of his bond and the bonds of his employees;
 - (2) His own compensation; and
 - (3) All other expenses, except those incurred under § 1018.85, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;
- (e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;
- (f) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 2 days after the date upon which he is required to perform such acts, has not made reports or made available records and

facilities pursuant to §§ 1018.30 through 1018.32, or payments pursuant to §§ 1018.80 through 1018.86;

(g) Furnish such information and verified reports as the Secretary may request, and submit his books and records to examination by the Secretary at any and all times;

(h) Verify all reports and payments of each handler, by audit of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and by such other means as are necessary;

(i) Prepare and make available for the benefit of producers, consumers, and handlers, general statistics and information which do not reveal confidential information;

(j) On or before the date specified, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, and mail to each handler at his last known address, a notice of each of the following:

(1) The 5th day of each month, the Class I price and the Class I butterfat differential, both for the current month, and the Class II price and the Class II butterfat differential, both for the preceding month; and

(2) The 11th day of each month, the uniform prices computed pursuant to § 1018.72 and the producer butterfat differential, all for the preceding months; and

(k) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

REPORTS, RECORDS AND FACILITIES

§ 1018.30 Reports of sources and utilization.

On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report to the market administrator for each of the plants with respect to which he is a handler for such month, and for each accounting period in each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) The quantities of skim milk and butterfat contained in or represented by receipts of:

- (1) Producer milk;
- (2) Receipts from pool plants in the form of products designated as Class I pursuant to § 1018.41(a);
- (3) Other source milk; and
- (4) Inventories in the form of products designated as Class I milk pursuant to § 1018.41(a) on hand at the beginning and end of the month or accounting period.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this section, including separate statements as

to the disposition of Class I milk on routes entirely outside the marketing area;

(c) Such other information with respect to receipts and utilization as the market administrator may request;

(d) The total quantity of base milk and the total quantity of excess milk received; and

(e) Each handler who submits reports on the basis of accounting periods of less than a month, as described in § 1018.45 (d), shall submit a summary report of the same information for the entire month.

§ 1018.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(b) Each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, for each of his pool plants, his producer payroll for that month, which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including, separately, the pounds of base milk and the pounds of excess milk, (iii) the days for which milk was received from such producer, (iv) the average butterfat content of such milk, and (v) the net amount of the handler's payment with respect to such milk to the producer or cooperative association, together with the price paid and the amount and nature of any deductions;

(2) On or before the first day other source milk as defined pursuant to § 1018.14(a) is received at his pool plants, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product;

(3) Such other information with respect to his sources and utilization of butterfat and skim milk, and at such times as the market administrator shall prescribe.

§ 1018.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to requirements of this part, including, but not limited to:

- (a) The receipt and utilization of all skim milk and butterfat handled in any form;
- (b) The weights and tests for butterfat and other content of all milk and milk products handled;
- (c) The pounds of skim milk and butterfat contained in or represented by all items of products on hand at the beginning and end of each month; and
- (d) Payments to producers and cooperative associations, including any deductions, and the disbursement of money so deducted.

§ 1018.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records or of specified books and records, is necessary in connection with a proceeding under section 8c(15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK**§ 1018.40 Skim milk and butterfat to be classified.**

The skim milk and butterfat required to be reported for pool plants pursuant to § 1018.30(a) shall be classified by the market administrator, pursuant to the provisions of §§ 1018.41 through 1018.45.

§ 1018.41 Classes of utilization.

Subject to the conditions set forth in §§ 1018.42 through 1018.45, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of from the plant in the form of milk, skim milk, frozen milk (whole or concentrated), concentrated milk, reconstituted milk, chocolate milk, fortified skim milk up to the weight of an equal volume of unmodified skim milk, and fortified milk up to the weight of an equal volume of unmodified milk of the same butterfat test, and

(2) Not specifically accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those designated as Class I milk pursuant to paragraph (a) of this section;

(2) Contained in inventories in the form of milk products designated as Class I milk pursuant to paragraph (a) of this section on hand at the end of each month and accounting period;

(3) That portion of fortified milk or skim milk not classified as Class I milk pursuant to subparagraph (a) (1) of this section;

(4) In total shrinkage of skim milk and butterfat, respectively, such shrinkage to be prorated to producer milk and other source milk received in the form of fluid milk or skim milk: *Provided*, That Class II classification of shrinkage prorated to skim milk and butterfat, respectively, in producer milk shall not exceed 2 percent of skim milk and butterfat in producer milk; and

(5) Skim milk which is dumped at the plant after notification to the market administrator which provides adequate

opportunity for him to observe the dumping operation and verify the amount of product dumped.

§ 1018.42 Responsibility of handlers.

All skim milk and butterfat to be classified pursuant to this order shall be classified as Class I milk, unless the handler who received such skim milk and butterfat establishes to the satisfaction of the market administrator that it should be classified as Class II milk.

§ 1018.43 Transfers.

(a) Skim milk and butterfat transferred to a pool plant in the form of milk products designated as Class I milk pursuant to § 1018.41(a) shall be classified so as to result in the maximum assignment of the producer milk of both handlers to Class I milk within the accounting period used by each handler, and skim milk and butterfat so transferred shall be classified as Class I milk unless the operators of both plants claim utilization thereof in Class II milk in their reports submitted pursuant to § 1018.30: *Provided*, That the skim milk or butterfat so assigned, to Class II milk shall be limited to the respective amounts thereof remaining in Class II milk at the pool plants of the receiving handler after the subtraction of other source milk and beginning inventory pursuant to § 1018.45;

(b) Skim milk and butterfat transferred in bulk form as milk or skim milk from a pool plant to a nonpool plant, or diverted from a producer's farm to a nonpool plant for the account of a handler shall be classified as Class I milk unless the conditions pursuant to subparagraphs (1) and (2) of this paragraph are met and classification pursuant to subparagraph (3) or (4) of this paragraph is claimed by the transferring or diverting handler;

(1) The nonpool plant is located less than 500 miles from the location of the main U.S. Post Office in Boca Raton, Florida, by the shortest hard-surfaced highway distance as determined by the market administrator or is a plant fully regulated under another order issued pursuant to the Act;

(2) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in the milk transferred or diverted is classified as Class I milk in an amount not less than the pro rata assignment of such skim milk and butterfat and skim milk and butterfat received at the nonpool plant in milk classified and priced as Class I milk under another Federal order, such pro rata assignment to be to skim milk and butterfat in route disposition from the nonpool plant in forms designated as Class I milk in § 1018.41(a) after subtraction from such disposition of the quantities of skim milk and butterfat, respectively, in milk received at the nonpool plant from dairy farmers who the market administrator determines constitute the regular approved dairy-farmer supply for the nonpool plants, or

(4) If the nonpool plant to which milk is transferred or diverted is a plant fully regulated under another order issued pursuant to the Act, the milk transferred or diverted shall be classified as Class I milk in the same amount as it is classified in the highest price class under such other order, and the remainder shall be Class II milk.

(c) Skim milk and butterfat transferred in bulk form as cream to a nonpool plant shall be classified as Class I milk unless:

(1) The transferring handler claims classification in Class II milk;

(2) The handler gives the market administrator sufficient notice to allow him to verify the shipment;

(3) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification; and

(4) Not less than an equivalent amount of skim milk and butterfat was actually utilized in the nonpool plant in the use indicated in such report: *Provided*, That if it is found that an equivalent amount of skim milk and butterfat was not actually used in such plant during the month in such indicated use, the quantity transferred in excess of such actual use shall be classified as Class I milk.

§ 1018.44 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to § 1018.30(a) and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk at all of the pool plants of such handler: *Provided*, That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 1018.45 Allocation of skim milk and butterfat classified.

(a) For each month or other accounting period as described in paragraph (d) of this section, the pounds of skim milk remaining in each class after making the following computations with respect to the pool plants of each handler, shall be the pounds of skim milk in such class allocated to the producer milk of such handler:

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 1018.41 (b) (4);

(2) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk not priced as Class I milk under another Federal order and received from a plant or dairy farmers located outside the State of Florida: *Provided*, That if the pounds of skim milk to be subtracted

are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(3) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk not priced as Class I milk under another Federal order and received from a plant or dairy farmers located in the State of Florida: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(4) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk which is priced and pooled as Class I milk under another order except any quantities from a nonpool plant equal to or less than the skim milk in milk or skim milk disposed of from such nonpool plant and not priced and pooled under such other order: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(5) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of milk products in the form of products designated as Class I milk pursuant to § 1018.41(a) on hand at the beginning of the month or other accounting period: *Provided*, That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk the balance shall be subtracted from the pounds of skim milk remaining in Class I milk;

(6) Subtract the pounds of skim milk in milk products in the form of products designated as Class I milk pursuant to § 1018.41(a) received from pool plants of other handlers from the pounds of skim milk remaining in the class to which assigned pursuant to § 1018.43(a);

(7) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(8) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in Class II milk, and then subtract any remaining excess from Class I. Any amount so subtracted shall be called "overage".

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk;

(c) Add the pounds of skim milk and the pounds of butterfat in each class calculated pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in the producer milk allocated to each class; and

(d) A handler may account for receipts of milk, utilization of milk and classification of milk, at his plant, for periods within a month if he notifies the market administrator in writing of his intention to use such accounting period not later than the end of every accounting period.

MINIMUM PRICES

§ 1018.50 Class prices.

Subject to the provisions of § 1018.51, the class prices per hundredweight of milk to be paid by each handler shall be as follows:

(a) *Class I milk price.* The price for Class I milk shall be \$7.00 per hundredweight, plus or minus a supply-demand adjustment as provided in paragraph (c) of this section: *Provided*, That the price shall not exceed by more than \$4.00 the price calculated pursuant to paragraph (b) of this section nor be less than the price calculated pursuant to paragraph (b) of this section plus \$2.75.

(b) Calculate the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph:

(1) To the average of the basic field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the preceding month at the following plants or places for which prices have been reported to the market administrator or to the Department:

PRESENT OPERATOR AND LOCATION

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Bellesville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

Add an amount computed by multiplying the Chicago butter price for the preceding month by 0.625; and

(2) The price per hundredweight computed as follows: Multiply the Chicago butter price for the preceding month by 4.0, add 20 percent thereof, and add to such sum 7.5 times the amount by which the Chicago powder price for the preceding month exceeds 5 cents.

(c) The supply-demand adjustment shall be calculated as follows:

(1) The "supply-demand percentage" for a month means the quantity of producer milk during the second and third preceding months expressed as a percent of the gross Class I disposition of all pool plants during the same months, rounded to the nearest whole percent.

(2) The "standard utilization percentage" for each month means the percentage shown in the right-hand column of the following schedule in the same line with the month in the left-hand column:

Month for which price applies	Months for which utilization is computed	Standard utilization percentage
January.....	October-November.....	100
February.....	November-December.....	103
March.....	December-January.....	105
April.....	January-February.....	105
May.....	February-March.....	108
June.....	March-April.....	112
July.....	April-May.....	114
August.....	May-June.....	114
September.....	June-July.....	112
October.....	July-August.....	107
November.....	August-September.....	104
December.....	September-October.....	100

(3) The "deviation percentage" for a month means the difference between the supply-demand percentage for the month and the corresponding standard utilization percentage, the direction of such deviation to depend on whether it is above or below the standard utilization percentage.

(4) Compute the deviation percentages for the current and two preceding months, and after excluding any deviation percentage which is in the opposite direction from the deviation percentage of a more recent month, compute a sum from the remaining deviation percentages which excludes any amount by which any of such deviation percentages exceeds any of such deviation percentages for a more recent month.

(5) If the current month's supply-demand percentage is less than the corresponding standard utilization percentage, increase the Class I price by the number of cents which is $1\frac{1}{2}$ times the sum computed pursuant to subparagraph (4) of this paragraph (rounding any fraction of a cent to a whole cent); and if the current month's supply-demand percentage is more than the corresponding standard utilization percentage, decrease the Class I price by the number of cents which is $1\frac{1}{2}$ times the sum computed pursuant to subparagraph (4) of this paragraph (rounding any fraction of a cent to a whole cent).

(e) *Class II milk price.* The Class II price per hundredweight shall be the sum of the amounts computed pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply the Chicago butter price by 1.25, add 4 cents and multiply the result by 4; and

(2) Add 2.5 cents to the Chicago powder price and multiply the result by 8.5.

§ 1018.51 Location differentials to handlers.

For that milk which is received from producers at a pool plant located 60 miles or more from the location of the main U.S. Post Office in Boca Raton, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I milk pursuant to the proviso of this section, when moved to another pool plant, or classified as Class I milk without such movement, the Class I price specified in § 1018.50 shall be reduced

at the rate set forth in the following schedule:

	Rate per hundred- weight (cents)
Distance (miles):	
60 but not more than 70-----	13.0
For each additional 10 miles or frac- tion thereof over 70 an additional..	1.5

Provided, That for the purpose of calculating such locations differential, milk in the form of any milk product designated as Class I milk pursuant to § 1018.41(a) transferred between pool plants shall be assigned to any remainder of Class II milk in the plant to which transferred after making the calculations prescribed in § 1018.45(a) (1) through (5), and the comparable steps in paragraph (b) for such plant, such assignment to the transferring plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1018.52 Rate of compensatory payment.

(a) Except as provided in paragraph (b) of this section, the rate of compensatory payment per hundredweight to be paid by pool plants, or by nonpool plants pursuant to § 1018.62(a), shall be calculated as follows:

(1) If the milk is received at a pool plant from a nonpool plant located in the State of Florida, or if the nonpool plant described in § 1018.62(a) is located in the State of Florida, subtract the Class II price from the Class I price adjusted by the Class I location differential at the nonpool plant; or

(2) If the milk is received at a pool plant from a nonpool plant located outside the State of Florida, or if the nonpool plant described in § 1018.62(a) is located outside the State of Florida, subtract the price pursuant to § 1018.50(b) (2) from the Class I price adjusted by the Class I location differential at the nonpool plant.

(b) If other source milk is received at a pool plant in a form other than milk or skim milk, the rate of compensatory payment per hundredweight with respect to such receipts shall be computed by subtracting the Class II price from the Class I price at the plant where such other source milk is received.

§ 1018.53 Use of equivalent prices.

If, for any reason, a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1018.60 Producer-handler.

Sections 1018.50 through 1018.53, 1018.61, 1018.62, 1018.70 through 1018.75, and 1018.80 through 1018.86 shall not apply to a producer-handler.

§ 1018.61 Plants where other Federal orders may apply.

Upon determination by the Secretary pursuant to this section, any plant speci-

fied in paragraphs (a), (b) and (c) of this section shall be a nonpool plant, except that the operator of such plant shall, with respect to the total receipts and disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator:

(a) Any plant meeting the requirements of a pool plant pursuant to § 1018.11(b) but not pursuant to § 1018.11 (a) which, if it were not a pool plant under this part, would be fully subject to the classification and pooling provisions of another order issued pursuant to the Act;

(b) Any plant meeting the requirements of a pool plant pursuant to § 1018.11(b) but not pursuant to § 1018.11(a) at which all receipts of skim milk and butterfat during the month would be priced and pooled under the terms of another order(s) issued pursuant to the Act if such plant were not a pool plant under this order: *Provided*, That such pricing and pooling results in all skim milk and butterfat disposed of from the plant in the form of milk and skim milk during the month being Class I milk under the terms of another order(s) issued pursuant to the Act; and

(c) Any plant which does not dispose of a greater volume of Class I milk on routes in the southeastern Florida marketing area than in the marketing area regulated pursuant to such other order.

§ 1018.62 Handlers operating nonpool plants.

On or before the 25th day after the end of each month, each handler (except as provided in § 1018.60) operating a nonpool plant from which Class I milk is disposed of on routes in the marketing area shall pay to the market administrator for deposit into the producer-settlement fund the amount calculated pursuant to paragraph (a) of this section unless the handler elects to pay the amount computed pursuant to paragraph (b) of this section:

(a) Multiply the quantity of milk received by such handler which was disposed of in the marketing area on routes as Class I milk during the month by the rate of compensatory payment pursuant to § 1018.52; or

(b) Any plus amount resulting from the following computation: from an amount equal to the value of milk which would be computed pursuant to § 1018.70 for such month if the plant were a pool plant, adjusted by the butterfat differential pursuant to § 1018.73, deduct the gross payments made by such handler to dairy farmers for milk approved by a duly constituted health authority as described in § 1018.7.

§ 1018.63 Person producing milk.

The person who produces milk shall be considered to be the person who is responsible for the milk production enterprise on a continuing basis as to management and risk.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 1018.70 Computation of the obligation of each handler.

For each month, the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 1018.45 by the applicable class price as adjusted by the location differentials pursuant to § 1018.51, and total the resulting amounts;

(b) Add an amount computed by multiplying the pounds of any overage deducted from either class pursuant to § 1018.45 (a) (8) and (b) by the applicable class price adjusted by the butterfat differential specified in § 1018.73;

(c) Add the amounts computed pursuant to subparagraph (1) and (2) of this paragraph:

(1) Multiply the difference between the Class II price for the preceding accounting period and the Class I price for the month by the hundredweight of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1018.45(a) (6) and the corresponding step of § 1018.45(b) for the preceding accounting period, or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1018.45(a) (5) and the corresponding step of § 1018.45(b) for the current accounting period, whichever is less; and

(2) Amounts computed as follows:

(i) Multiply the rate of compensatory payment pursuant to § 1018.52(a) (1) by the quantity of skim milk and butterfat computed pursuant to subdivision (iii) of this subparagraph which does not exceed the quantity of skim milk and butterfat, respectively, subtracted from Class II milk pursuant to § 1018.45(a) (3) and the corresponding step of (b) for the preceding accounting period; (ii) multiply the rate of compensatory payment pursuant to § 1018.52(a) (2) by any remainder of the quantity computed pursuant to subdivision (iii) of this subparagraph which does not exceed the quantity of skim milk and butterfat respectively, subtracted from Class II milk pursuant to § 1018.45(a) (2) for the preceding accounting period; and (iii) calculate the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1018.45(a) (5) and the corresponding step of (b), which are in excess of the sum of the quantity of skim milk and butterfat, respectively, on which a payment is applicable pursuant to subparagraph (1) of this paragraph and the quantity of skim milk and butterfat assigned in the preceding accounting period to Class II milk pursuant to § 1018.45(a) (4) and the corresponding step of (b); and

(d) Add an amount computed by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1018.45(a) (2) and (3) by the applicable rate determined by § 1018.52: *Provided*, That this provision shall not apply in any month in which more than 95 percent of producer milk in all handlers' plants is classified as Class I milk.

§ 1018.71 Aggregate value used to determine producer prices.

For each month, the market administrator shall compute an aggregate value from which to determine the uniform prices for base milk and excess milk of 4.0 percent butterfat content, at the market, as follows:

(a) Combine into one total the values computed pursuant to § 1018.70 for the producer milk of all handlers who submitted reports prescribed in § 1018.30 and who are not in default of payments pursuant to § 1018.80 and § 1018.82;

(b) Add an amount equal to the sum of the deductions to be made from producer payments for location differentials pursuant to § 1018.74; and

(c) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund.

§ 1018.72 Computation of uniform base and excess prices.

For each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk, each of 4.0 percent butterfat content, at the market, as follows:

(a) Compute the total value, on a 4.0 percent butterfat basis, of excess milk for all handlers whose receipts are included in the computation pursuant to § 1018.71 as follows: (1) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the applicable Class II price plus 4 cents, (2) multiply the remaining hundredweight quantity of excess milk by the Class I milk price, and (3) add together the resulting amounts;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk, and subtract not less than 4 cents nor more than 5 cents. The resulting figure shall be the uniform price for excess milk of 4.0 percent butterfat content at the market;

(c) Subtract the value of excess milk obtained in paragraph (a) of this section from the aggregate value of producer milk computed pursuant to § 1018.71;

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The resulting figure shall be the uniform price for base milk of 4.0 percent butterfat content at the market.

§ 1018.73 Butterfat differential to producers.

The applicable uniform prices to be paid each producer shall be increased or decreased 7.5 cents for each one-tenth of one percent which the average butterfat content of his milk is above or below 4.0 percent, respectively.

§ 1018.74 Location differential to producers.

The applicable uniform prices computed pursuant to § 1018.72 to be paid

for base milk and excess milk received at a pool plant located 60 miles or more from the location of the main U.S. Post Office in Boca Raton by the shortest hard-surfaced highway distance, as determined by the market administrator, shall be reduced according to the location of the pool plant where such milk was received, at the rates set forth in § 1018.51.

§ 1018.75 Notification of handlers.

On or before the 11th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the total thereof;

(b) The uniform prices for base and excess milk computed pursuant to § 1018.72, and the butterfat differentials;

(c) The amount and value of his base milk and excess milk, respectively, and the totals thereof; and

(d) The amounts to be paid by such handler pursuant to §§ 1018.82, 1018.85, and 1018.86, and the amount due such handler pursuant to § 1018.83.

PAYMENTS

§ 1018.80 Time and method of payment for producer milk.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(1) On or before the 20th day of each month to each producer who did not discontinue shipping milk to such handler before the 15th day of the month, an amount equal to not less than the base price for the preceding month less 20 percent, multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 5th day of the following month to each producer who did not discontinue shipping milk to such handler before the last day of the month, an amount equal to not less than the base price for the preceding month less 20 percent, multiplied by the hundredweight of milk received from such producer after the 15th and through the last day of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(3) On or before the 15th day of the following month, to each producer an amount equal to not less than the uniform prices for base milk and excess milk pursuant to § 1018.72, adjusted by the butterfat and location differentials to producers, multiplied by the respective hundredweight of base milk and excess milk received from such producer, subject to the following adjustment: (i) Less payments made to such producer pursuant to subparagraphs (1) and (2) of this paragraph, (ii) less marketing service deductions made pursuant to § 1018.85, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing

by such producer: *Provided*, That if by the date specified, such handler has not received full payment from the market administrator pursuant to § 1018.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment and payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall on or before the second day prior to each date on which payments are due individual producers, pay the cooperative association for milk received from the producer-members of such association as determined by the market administrator during the period for which payment is made, an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of the month;

(2) On or before the 10th day of the following month: (i) The total pounds of milk received during the month, (ii) the pounds of milk received each day, together with the butterfat content of such milk, (iii) the total pounds of base milk and excess milk, (iv) the amount or rate and nature of any authorized deductions to be made from payments, and (v) the amount and nature of payments due pursuant to § 1018.84.

§ 1018.81 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to § 1018.82 and out of which he shall make all payments pursuant to § 1018.83: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1018.82 Payments to the producer-settlement fund.

On or before the 12th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of his producer milk as computed pursuant to § 1018.70 is greater than the amount owed by him for such milk at the uniform prices determined pursuant to § 1018.72, adjusted by the producer location differentials: *Provided*, That to this

amount shall be added one-half of one percent of any amount due the market administrator pursuant to this section for each month or portion thereof that such payment is overdue: *And provided further*, That the requirement as to date of payment pursuant to this section shall be considered to have been met if the payment is made by mail postmarked not later than the required payment date.

§ 1018.83 Payments out of the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler any amount by which the total value of his producer milk, computed pursuant to § 1018.70, is less than the amount owed by him for such milk at the uniform prices determined pursuant to § 1018.72, adjusted by the producer location differentials. If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1018.84 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1018.85 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk pursuant to § 1018.80, shall deduct 4 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association pursuant to paragraph (b) of this section; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members. On or before the 15th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative associa-

tion, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed for each producer.

§ 1018.86 Expense of administration.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator, 4 cents or such lesser amount as the Secretary may prescribe, for each hundredweight of butterfat and skim milk contained in (a) producer milk, and (b) other source milk allocated to Class I milk pursuant to § 1018.45(a) (2) and (3) and the corresponding step in § 1018.45(b), or

(c) Class I milk disposed of on routes in the marketing area from a nonpool plant for which the obligation to the producer-settlement fund is determined pursuant to § 1018.62(a);

(d) Receipts of milk from dairy farmers, or total Class I milk, whichever is greater, at a nonpool plant which elects to have its obligation computed pursuant to § 1018.62(b); and

(e) With respect to payments pursuant to paragraphs (a), (b), (c), and (d) of this section, if a handler uses more than one accounting period in a month, the rate of payment per hundredweight for such handler shall be the rate for monthly accounting periods multiplied by the number of accounting periods in the month, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.

§ 1018.87 Termination of obligations.

The provisions of this section shall apply to any obligations under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The months during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the names of such producers or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writ-

ing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period, with respect to such obligation, shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler, if a refund on such payment is claimed unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the act, a petition claiming such money.

BASE RATING

§ 1018.90 Computation of daily base for each producer.

Subject to the rules set forth in § 1018.91, a daily base, effective for 12 months beginning February 1 of each year, shall be computed for each producer by dividing the total pounds of milk received from such producer at all pool plants during the base earning months of August through December immediately preceding by the number of days beginning with the first day of delivery by such producer during such months through the last day of December, inclusive, or by 120, whichever is greater: *Provided*, That any producer who, during the preceding months of August through December, delivered his milk to a nonpool plant which subsequently became a pool plant shall be assigned a base in the same manner calculated from his deliveries during such August-December period to such plant: *And provided further*, That for the period beginning with March 1, 1960, and through January 31, 1961, the daily base for each producer shall be computed by dividing the total pounds of milk received from such producer at all pool plants during the base earning months of August 1959 through January 1960, inclusive, by the number of days from the first day of delivery during such months through the last day of January, or by 150, whichever is greater, subject also to the first proviso of this section applied to the August 1959 through January 1960 period instead of the August-December period.

§ 1018.91 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base as

calculated pursuant to § 1018.90 to each person for whose account milk was delivered to plants as described in § 1018.90 during the months of August through December (August through January for bases effective March 1, 1960): *Provided*, That any producer who has not earned a base pursuant to § 1018.90 or any producer who elects to relinquish such base by giving written notice to the market administrator, shall be assigned a base each month equal to the percentage of his deliveries specified in the following schedule:

	Percentage
February -----	50
March -----	50
April -----	50
May -----	55
June -----	55
July -----	60
August -----	70
September -----	70
October -----	65
November -----	60
December -----	55
January -----	55

(b) Assignment and transfer of any base shall be subject to the following rules:

(1) An entire base (except one computed pursuant to the proviso of paragraph (a) of this section) may be transferred from a person holding such base to any other person, effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders, or their heirs, and by the person to whom such base is to be transferred.

(2) If milk received as producer milk under the name of more than one person is produced on, in, or by use of the same milking barns or premises, the base or bases assigned to such persons as producers shall not exceed the base assignable if such milk were produced by one person using the same facilities.

(3) A base may be divided among members of a partnership, among members of the immediate family of the baseholder, or among stockholders of a corporation at dissolution of the corporation, such division to be effective as of the end of any month during which an application for such division is received by the market administrator on forms approved by the market administrator and signed by persons making such division.

(4) A person who has transferred a base computed from milk deliveries to pool plants during a base earning period may not have a base assigned to him on a percentage of his deliveries pursuant to the proviso of paragraph (a) of this section until after the end of the period to which the transferred base applies.

(5) A producer who has made milk deliveries to pool plants during the immediately preceding base earning period may elect to have his base computed

from his milk deliveries to pool plants in the second preceding base earning period, if he so notifies the market administrator prior to the month in which such election will apply.

§ 1018.92 Announcement of established bases.

On or before January 25th of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the producer's daily base to be effective for the 12-month period, beginning February 1 of such year: *Provided*, That for the period March 1960 through January 1961, each producer's base shall be announced on or before February 25, 1960.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1018.100 Effective time.

The provisions of the part, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1018.101 Suspension or termination.

The Secretary shall, whenever he finds that any or all provisions of this part, or any amendment thereto, obstruct or do not tend to effectuate the declared policy of the act, terminate or suspend the operation of any or all provisions of this order or any amendment thereto.

§ 1018.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 1018.103 Liquidation.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including account receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1018.110 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and representative in connection with any of the provisions of this part.

§ 1018.111 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C., this 20th day of June 1960, to be effective on and after the 1st day of July, 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-5758; Filed, June 22, 1960; 8:47 a.m.]

Title 20—EMPLOYEES BENEFITS

Chapter II—Railroad Retirement Board

PART 208—ELIGIBILITY FOR AN ANNUITY

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

Current Connection With Railroad Industry

Pursuant to the general authority contained in section 10 of the act of June 24, 1937 (50 Stat. 314, 45 U.S.C. 228j), § 208.5 of Part 208 (20 C.F.R. 208.5) and § 237.102(c) of Part 237 (20 CFR 237.102(c)) of the Regulations under such act are amended by Board Order 60-99, dated June 8, 1960, to read as follows:

§ 208.5 Current connection with the railroad industry.

(a) An individual will have had a current connection with the railroad industry at the time an annuity begins to accrue to him if he will have had a period of 30 consecutive calendar months which meets the following requirements: First, that period must have ended before an annuity begins to accrue to him in accordance with Part 214 of this chapter. Second, during that period he must have been in service as an employee in at least 12 calendar months. Third, if there was any interval between the end of the 30-month period and the month in which an annuity begins to accrue to him, he must not, in that interval, have been engaged in any regular employment other than service for an employer. (For statutory provisions, see § 237.101 of this chapter.)

(b) For the purposes of this part and § 225.5 of this chapter, "regular employment" shall mean full- or part-time employment for remuneration by an individual for a person (as defined in § 201.1 (j) of this chapter) on a continuing or recurring basis. Self-employment shall not be considered "regular employment." An individual performing employment for remuneration, whether or not under a contract, shall be deemed to be in the employ of a person unless such employment is performed as a part of his independently established trade, business or occupation. An individual shall be deemed to have been engaged in "regular

employment" in the interval between the end of the last 30-month period in which he had been in service as an employee in 12 calendar months and the month in which an annuity begins to accrue to him if he worked for one or more persons in any three consecutive calendar quarters wholly or partially within such interval and earned wages of at least \$300 for work in each of any two consecutive calendar quarters wholly or partially within such interval even though such two quarters do not fall within a three-consecutive-calendar-quarter period of work.

(c) A determination as to whether or not an individual will have had a current connection with the railroad industry made on or after June 8, 1960, shall be made under the provisions of this section. In any case in which a disability annuity under § 208.7(a)(3), a minimum annuity under § 225.5 of this chapter, or a spouse's annuity under § 232.202(c) of this chapter has previously been denied because the individual did not have a current connection with the railroad industry under the provisions of this section as in effect prior to June 8, 1960, the decision denying the claim in whole or in part may be reopened and reconsidered under the provisions of this section: *Provided, however,* That any annuity or increase in annuity for which an individual may be found entitled shall not be retroactive more than 12 months before the date of such reopening.

§ 237.102 Completely insured status.

(c) *Current connection with the railroad industry.*

(1) A deceased individual will have had a current connection with the railroad industry at the time of his death if he will have had a period of 30 consecutive calendar months which meets the following requirements: First, that period must have ended before an annuity had begun to accrue to him in accordance with Part 214 of this chapter, or before the month in which he died if that occurred first. Second, during that period he must have been in service as an employee in at least 12 calendar months.

Third, if there was any interval between the end of the 30-month period and the month in which an annuity began to accrue to him, or the month in which he died if that occurred first, he must not, in that interval, have been engaged in any regular employment other than service for an employer. For the purposes of this paragraph, "regular employment" shall mean full- or part-time employment for remuneration by an individual for a person (as defined in § 201.1(j) of this chapter) on a continuing or recurring basis. Self-employment shall not be considered "regular employment." An individual performing employment for remuneration, whether or not under a contract, shall be deemed to be in the employ of a person unless such employment is performed as a part of his independently established trade, business or occupation. An individual shall be deemed to have been engaged in "regular employment" in the interval between the end of the last 30-month period in which he had been in service as an employee in 12 calendar months and the month in which an annuity had begun to accrue to him, or the month in which he died if that occurred first, if he worked for one or more persons in any three consecutive calendar quarters wholly or partially within such interval and earned wages of at least \$300 for work in each of any two consecutive calendar quarters wholly or partially within such interval even though such two quarters do not fall within a three-consecutive-calendar-quarter period of work.

(2) A deceased individual will have also had a current connection with the railroad industry at the time of his death for the purposes of this part if:

(i) He was neither fully nor currently insured under the Social Security Act, but would otherwise have a completely or partially insured status under the Railroad Retirement Act; or

(ii) He had no wage quarters of coverage.

(3) A determination as to whether or not a deceased individual will have had a current connection with the railroad industry made on or after June 8, 1960

shall be made under the provisions of this paragraph.

(Sec. 10, 50 Stat. 314, 45 U.S.C. 228j)

Dated: June 17, 1960.

By authority of the Board.

MARY B. LINKINS,
Secretary of the Board.

[F.R. Doc. 60-5751; Filed, June 22, 1960;
8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2131]

[NM-032449]

NEW MEXICO

Withdrawing Lands for Use of Federal Aviation Agency in the Maintenance of Air Navigation Facilities

By virtue of the authority vested in the Secretary of the Interior by section 4 of the act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands in New Mexico are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, and reserved for use of the Federal Aviation Agency in the maintenance of air navigation facilities:

NEW MEXICO PRINCIPAL MERIDIAN

T. 30 N., R. 13 W.,
Sec. 27, SE¼SE¼.

The area described contains 40 acres.

ROGER ERNST,
Assistant Secretary of the Interior.

JUNE 17, 1960.

[F.R. Doc. 60-5767; Filed, June 22, 1960;
8:49 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 16]

EXCESS PROFITS ON ARMY CONTRACTS FOR AIRCRAFT

Setoffs of Deficiencies in Profit Against Excess Profits

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate, of the Secretary of the Army or his delegate, and the Secretary of the Air Force or his delegate. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 3791 of the Internal Revenue Code of 1939 (53 Stat. 467; 26 U.S.C. 3791).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to conform the Excess Profits Regulations (26 CFR (1939) Part 16), relating to excess profits on Army contracts for aircraft, to the decision in Emerson Electric Manufacturing Company (1957) 28 T.C. 1090, and to make certain clarifying changes, such regulations are amended as follows:

PARAGRAPH 1. Section 16.5 is amended by revising paragraph (c) (2) and (3) to read as follows:

(2) The amount of any net loss allowable as a credit in determining the excess profit for the income-taxable year (see § 16.9); and

(3) The amount of any deficiency in profit allowable as a credit in determining the excess profit for the income-taxable year (see § 16.9). The amount remaining after such subtraction is the amount of excess profit for the income-taxable year.

PAR. 2. Section 16.6 is amended by revising the example to read as follows:

Example. On September 1, 1939, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into a contract for the construction of Army aircraft coming within the scope of the act, the total contract price of which was \$200,000. On March 10, 1940, the corporation entered into another such contract, the total contract price of which was \$40,000. Both contracts were completed within the calendar year 1940, the first at a cost of \$155,000 and the second at a cost of \$45,000. During the year 1940, the B Corporation also completed at a deficiency in profit of \$2,000 a contract entered into after April 3, 1939, for the construction of naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)). For the year 1939, the B Corporation sustained a net loss of \$1,500 and a deficiency in profit of \$1,000 on all contracts and subcontracts entered into after April 3, 1939, for Army aircraft coming within the scope of the act and completed within the calendar year 1939. For the year 1939, the B Corporation also sustained a net loss of \$1,000 on a contract, entered into after April 3, 1939, and completed within the calendar year 1939, for naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)). For purposes of the Federal income tax, the net income of the B Corporation for the year 1940, on which the tax was paid, amounted to \$96,000, which included the total net profit of \$40,000 upon the two contracts entered into on September 1, 1939, and March 10, 1940. The excess profit liability is \$4,332, computed as follows:

Total contract prices:		
Contract No. 1-----	\$200,000	
Contract No. 2-----	40,000	
		\$240,000
Less: Cost of performing contracts:		
Contract No. 1-----	\$155,000	
Contract No. 2-----	45,000	
		200,000
Net profit on contracts-----	40,000	
Less:		
12 percent of total contract prices (12 percent of \$240,000)-----	\$28,800	
Deficiency in profit (in naval aircraft contracts) in 1940-----	2,000	
Net loss (in Army aircraft contracts) from 1939-----	1,500	
Net loss (in naval aircraft contracts) from 1939-----	1,000	
Deficiency in profit (in Army aircraft contracts) from 1939-----	1,000	
		34,300
Excess profit for year 1940-----	5,700	
Less: Credit for Federal income taxes (Federal income tax on \$5,700 at rates for 1940)-----	1,368	
Amount of excess profit payable to the United States-----	4,332	

PAR. 3. Section 16.9 is amended:

(A) By revising paragraphs (a) and (b) to read as follows:

(a) The term "net loss" as used in the act and as applied to contracts and subcontracts for aircraft or portions thereof coming within the regulations prescribed under the act or under 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) means the amount by which the total cost of performing all such contracts and subcontracts for aircraft entered into after April 3, 1939, and completed by a particular contracting party within the income-taxable year exceeds the total contract prices of such contracts and subcontracts. As to the meaning of income-taxable year, see § 16.1.

(b) The term "deficiency in profit", as used in the act and as applied to contracts and subcontracts for aircraft or portions thereof coming within the regulations prescribed under the act or under 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)), means the amount by which 12 percent of the total contract prices of all such contracts and subcontracts for aircraft entered into after April 3, 1939, and completed by a particular contracting party within the income-taxable year exceeds the net profit upon all such contracts and subcontracts.

(B) By revising the first sentence of paragraph (c) to read as follows:

(c) A net loss or a deficiency in profit sustained by a contracting party for an income-taxable year is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for aircraft coming within the regulations prescribed under the act or under 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) and completed during the four next succeeding income-taxable years.

(C) By revising the example in paragraph (e) to read as follows:

Example. For the calendar year 1939, the A Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, sustained a net loss of \$30,000 on the contracts and subcontracts for Army aircraft and portions thereof coming within the scope of the act and completed within that year. During the year 1939, the A Corporation also completed contracts for naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) at a deficiency in profit of \$10,000. In 1940, the A Corporation completed similar contracts for Army aircraft totaling \$175,000 at a cost of \$155,000, whereby the A Corporation realized a net profit of \$20,000 but sustained a deficiency in profit of \$1,000 (i.e., 12 percent of \$175,000, or \$21,000, less \$20,000). During the year 1940, the A Corporation also completed contracts for naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) at a net loss of \$2,000. In 1941, the A Corporation completed contracts for Army aircraft coming within the scope of the act totaling \$400,000 at a cost of \$300,000, or at a net profit of \$100,000. After deducting from the net

profit of \$100,000 for the year 1941 the amount of \$48,000 (i.e., 12 percent of the total contract price of \$400,000), there remains \$52,000 in excess profit on the contracts completed in the year 1941. The A Corporation may deduct from such \$52,000, in determining the amount of excess profit it must pay for the year 1941 with respect to the contracts completed in such year, the net loss of \$30,000 and the deficiency in profit of \$10,000 sustained in 1939 on Army and naval aircraft contracts, respectively, and the net loss of \$2,000 and the deficiency in profit of \$1,000 sustained in 1940 on naval and Army aircraft contracts, respectively.

[F.R. Doc. 60-5788; Filed, June 22, 1960; 8:51 a.m.]

[26 CFR Part 17]

EXCESS PROFITS ON NAVY CONTRACTS

Setoffs of Deficiencies in Profit Against Excess Profits

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate and of the Secretary of the Navy or his delegate. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 3791 of the Internal Revenue Code of 1939 (53 Stat. 467; 26 U.S.C. 3791).

[SEAL]

DANA LATHAM,
Commissioner of Internal Revenue.

In order to conform the Excess Profits Regulations (26 CFR (1939) Part 17), relating to excess profits on Navy contracts for vessels and aircraft, to the decision in *Emerson Electric Manufacturing Company* (1957) 28 T.C. 1090, and to make certain clarifying changes, such regulations are amended as follows:

PARAGRAPH 1. Section 17.7 is amended:

(A) By revising paragraph (c) (2) and (3) to read as follows:

(2) The amount of any net loss which was sustained in the same or a prior income-taxable year with respect to contracts or subcontracts for the construction or manufacture of any complete aircraft or any portion thereof, and which is allowable as a credit in determining the excess profit for the income-taxable year with respect to contracts and subcontracts entered into for the

construction or manufacture of complete aircraft or any portion thereof (see § 17.10(b)); and

(3) The amount of any deficiency in profit which was sustained in the same or a prior income-taxable year with respect to contracts or subcontracts for the construction or manufacture of any complete aircraft or any portion thereof, and which is allowable as a credit in determining the excess profit for the income-taxable year with respect to contracts and subcontracts entered into for the construction or manufacture of complete aircraft or any portion thereof (see § 17.10(c)).

(B) By revising the example in paragraph (e) to read as follows:

Example. On September 1, 1939, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into a contract with the Secretary of the Navy for the construction of naval aircraft coming within the scope of the act, the total contract price of which was \$200,000. On March 10, 1940, the B Corporation entered into another such contract, the total contract price of which was \$40,000. Both contracts were completed within the calendar year 1940, the first at a cost of \$155,000 and the second at a cost of \$45,000. During the year 1940, the B Corporation also completed at a deficiency in profit of \$2,000 a contract entered into for the construction of Army aircraft coming within the scope of the act. During the year 1940, the B Corporation also completed at a loss of \$10,000 two contracts entered into for the construction or manufacture of portions of a naval vessel coming within the scope of the act. For the year 1939, the B Corporation sustained a net loss of \$2,500 and a deficiency in profit of \$1,000 on all contracts and subcontracts for naval aircraft coming within the scope of the act and completed within the calendar year 1939. For the year 1939, the B Corporation also sustained a net loss of \$1,800 on a contract for the construction of Army aircraft coming within the scope of the act which was completed within the calendar year 1939. For the purposes of the Federal income tax, the net income of the B Corporation for the year 1940, on which the tax was paid, amounted to \$96,000, which included the net profit of \$40,000 upon the contracts entered into on September 1, 1939, and March 10, 1940. The excess profit liability of the B Corporation for 1940 is payable with respect to the contracts for naval aircraft which were completed in 1940. The loss of \$10,000 on the contracts for portions of a naval vessel completed in 1940 does not enter into the computation of such liability. Accordingly, the excess profit liability of the B Corporation for 1940 is \$2,964 computed as follows:

Total contract prices:	
Contract No. 1.....	\$200, 000
Contract No. 2.....	40, 000
	\$240, 000
Less: Cost of performing contracts:	
Contract No. 1.....	155, 000
Contract No. 2.....	45, 000
	200, 000
Net profit on contracts.....	40, 000
Less:	
12 percent of total contract prices (12 percent of \$240,000).....	\$28, 800
Deficiency in profit (in Army aircraft contracts) in 1940.....	2, 000
Net loss (in naval aircraft contracts) from 1939	2, 500

Less—Continued

Net loss (in Army aircraft contracts) from 1939	\$1, 800
Deficiency in profit (in naval aircraft contracts) from 1939.....	1, 000
	\$36, 100
Excess profit for year 1940.....	3, 900
Less: Credit for Federal income taxes (Federal income tax on \$3,900 at rates for 1940).....	936
	2, 964
Amount of excess profit payable to the United States.....	2, 964

PAR. 2. Section 17.10 is amended—

(A) By revising paragraphs (b) and (c) to read as follows:

(b) *Net loss on contracts and subcontracts for aircraft or portions thereof.* In the case of contracts or subcontracts for the construction or manufacture of any complete aircraft or any portion thereof coming within the scope of the act which are completed within an income-taxable year ending after April 3, 1939, the term "net loss" as used in the act and in these regulations means the amount by which the total costs of performing all such contracts and subcontracts completed within such income-taxable year exceeds the total contract prices of such contracts and subcontracts. Such net loss sustained by a contracting party for an income-taxable year ending after April 3, 1939, is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for the construction or manufacture of any complete aircraft or any portion thereof which are completed within the four next succeeding income-taxable years.

(c) *Deficiency in profit.* The term "deficiency in profit" as used in the act and in this part relates to contracts and subcontracts coming within the scope of the act which are for the construction or manufacture of any complete aircraft or any portion thereof and are completed within an income-taxable year ending after April 3, 1939. As so used, the term "deficiency in profit" means the amount by which 12 percent of the total contract prices of such contracts and subcontracts which are completed by a particular contracting party within the income-taxable year exceeds the net profit upon such contracts and subcontracts. A deficiency in profit sustained by a contracting party with respect to such contracts and subcontracts for the construction or manufacture of complete aircraft or any portion thereof and completed within any income-taxable year ending after April 3, 1939, is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for the construction or manufacture of complete aircraft or any portion thereof which are completed within the same or the four next succeeding income-taxable years.

(B) By revising example (2) in paragraph (e) to read as follows:

Example (2). For the calendar year 1939, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, sustained a net loss of \$10,000 and a deficiency in profit of \$35,000

upon all contracts and subcontracts for naval aircraft and portions thereof coming within the scope of the act and completed within that year. During the year 1939, the B Corporation also completed contracts for Army aircraft coming within the scope of the Act at a net profit which was \$15,000 in excess of 12 percent of the total contract prices of such contracts. On all contracts and subcontracts for naval aircraft coming within the scope of the act and completed within the calendar year 1940, the B Corporation realized a net profit which was \$25,000 in excess of 12 percent of the total contract prices of such contracts and subcontracts while sustaining a deficiency in profit of \$10,000 on like contracts and subcontracts for Army aircraft. On all contracts and subcontracts for naval aircraft coming within the scope of the act and completed within the calendar year 1941, the B Corporation realized a net profit which was \$20,000 in excess of 12 percent of the total contract prices of such contracts. The net loss of \$10,000 and deficiency in profit of \$35,000 (or a total of \$45,000) sustained in 1939 with respect to contracts and subcontracts for naval aircraft completed within that year may be taken as a credit to the extent of \$15,000 in computing the excess profit on the contracts and subcontracts for Army aircraft completed in 1939. The remainder of such net loss and such deficiency in profit (\$45,000 minus \$15,000, or \$30,000) may be combined with the deficiency in profit of \$10,000 sustained in 1940 on contracts for Army aircraft and taken as a credit to the extent of \$25,000 in computing the excess profit on the contracts and subcontracts for aircraft completed during 1940. The sum of such net loss and such deficiency in profit then remaining (\$40,000 minus \$25,000, or \$15,000) may be taken as a credit in computing the excess profit realized on the contracts and subcontracts for aircraft completed in the year 1941.

[F.R. Doc. 60-5787; Filed, June 22, 1960; 8:51 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 968]

[Docket No. AO-173-A11]

MILK IN WICHITA, KANSAS, MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Wichita, Kansas, on October 6, 1959, pursuant to notice thereof issued on September 24, 1959 (24 F.R. 7876).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on May 4, 1959 (25 F.R. 4089; F.R. Doc. 60-4158) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice

of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. Need for emergency suspension of a portion of the supply-demand adjustment to Class I price;
2. Revision of the supply-demand adjustment to the Class I price;
3. Cooperative standby plant definition;
4. Standards for qualifying a distributing plant as a pool plant;
5. Revising the method of accounting for the skim milk equivalent of dried or concentrated products;
6. Revision of the Class II (cottage cheese) definition;
7. Inventory accounting;
8. Provisions with respect to unpriced milk; and
9. Administrative provisions.

A proposal to review the level of the Class II (cottage cheese) price was not supported at the hearing and no further reference to it is made herein.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. **Suspension action.** In a decision signed October 22, 1959, it was determined that conditions were not so acute as to require the requested suspension of § 968.51(a) (3) (ii) pending the complete revision of the supply-demand adjustment to the Class I price. The suspension request was, therefore, denied.

SUPPLY-DEMAND FINDINGS—WICHITA

2. **Supply-demand adjustment.** Based on evidence of record presented at a hearing held October 6, 1959, the following action should be taken with re-

spect to the supply-demand adjustment to the Class I price:

(1) The seasonality of the norms should be revised.

(2) The present supply-demand limits should be replaced by an upper and lower limit based on the Greater Kansas City Class I price.

(3) The third cumulative step of the rate of adjustment, suspended September 1, 1959, should be reinstated.

(4) The rate of adjustment should continue to be one cent per point of net deviation.

(5) The annual average reserve supply on which the norms are based should continue to be 135 percent of Class I sales.

(6) A ten-point path of zero adjustment should continue to be provided between the maximum and minimum standard utilization percentages in each month.

Seasonality of the standard utilization percentages should be revised to better accommodate changes in the seasonality of production which have occurred in recent years. The seasonal pattern of the norms proposed by the major cooperative serving the market appears to appropriately reflect the recent experience of the market and should therefore be adopted. The proposed standard utilization percentages were developed by graphic observation of the distribution of actual utilization percentages during the period January-February 1954 through July-August 1959. Adoption of the proposed seasonal pattern will provide less minus supply-demand adjustment during the fall months of September, October, November and December. A table comparing the present norms with those recommended herein is as follows:

Delivery period for which price applies	Delivery period used in computation	Recommended percentages		Present order percentages	
		Minimum	Maximum	Minimum	Maximum
January.....	October-November.....	125	135	126	136
February.....	November-December.....	124	134	130	140
March.....	December-January.....	125	135	128	138
April.....	January-February.....	125	135	126	136
May.....	February-March.....	132	142	130	140
June.....	March-April.....	136	146	135	145
July.....	April-May.....	143	153	141	151
August.....	May-June.....	137	147	138	148
September.....	June-July.....	131	141	130	140
October.....	July-August.....	131	141	130	140
November.....	August-September.....	130	140	128	138
December.....	September-October.....	126	136	123	133

Handlers proposed that the upper and lower limits of the supply-demand norms be established at plus and minus one standard deviation of the average of the actual utilization of a recent five-year period. This concept of determining norms should not be adopted. The plan would limit supply-demand price adjustments in many cases to periods when supplies relative to sales were further from the norms as now provided in the order and from those recommended herein. If the actual utilization of the five years of data were normally distributed about the average, norms based on plus and minus one standard deviation would result in zero supply-demand ad-

justment to the Class I price in 68 percent of the cases.

The present limits of plus and minus 45 cents should be replaced with a schedule of minimum and maximum differences from the Class I price established under the order regulating the handling of milk in the Greater Kansas City market. The change in the limits recommended herein is based on the extensive competition between the two markets in both the procurement and sale of milk. One cooperative association of producers operates a distributing plant under the Wichita order and a supply plant under the Greater Kansas City order. Another Greater Kansas City handler has ex-

tensive sales in the recently expanded Wichita market. There is also an extensive overlapping of the two milksheds. The stated Class I differential in the Wichita order is \$1.65 in all 12 months of the year. The Kansas City Class I differential is \$1.15 in the months of April, May, June, and July and \$1.45 in the other 8 months of the year for an average of \$1.35. Appropriate limits to the Wichita supply-demand, subject to further variation depending on the action of the Kansas City supply-demand adjustment, can be accomplished by setting the limits of the Wichita Class I price at the Kansas City Class I price plus 25 cents as a floor and plus 85 cents as a ceiling during the months of April, May, June, and July. During the months of August through March, the floor should be the Kansas City price minus 10 cents and the ceiling the Kansas City price plus 50 cents. Establishing this upper and lower limit on the Wichita supply-demand adjustment would have provided an average lower limit Class I price of \$4.59 and an average upper limit Class I price of \$5.19 during the year 1959 on a 3.8 percent butterfat basis. Official notice is hereby taken of the Wichita and Kansas City Class I prices for October, November, and December 1959.

Another issue considered at the hearing related to the average level of producer receipts which are needed to meet Class I sales and provide an adequate level of reserve supply. The standard utilization percentages in the present order reflect actual experience during the period December 1957 through November 1958. Testimony was received to the effect that the utilization percentages of 125, 125, and 135 for the months of September, October, and November, 1958, respectively were not an accurate indication of the supply-sales relationships in the market since out-of-area sales of bulk milk were substantial during this period. While it may be true that greater reserve supplies are now needed to meet the Class I requirements of local plants because of their 5- and 6-day bottling operations and that it is not therefore feasible to utilize week end surpluses for out-of-area sales, evidence shows that at the level of prices which prevailed during the period since 1958, supplies have been more than adequate to fill the Class I requirements of the market. In these circumstances, it appears appropriate to maintain the same annual average level of reserve supply as is presently provided for in the order. This can be achieved by adjusting the mid-points of the proposed norms to incorporate their seasonality at the same time keeping the annual average reserve equal to 135.4 percent of Class I sales.

Another variable in the supply-demand adjustment is the rate of adjustment per point of indicated oversupply or undersupply. The adjustment should continue to exert an active influence on the Class I price level. Only an active supply-demand adjustment will appropriately reflect changes in the supply and demand conditions in the market. The rate of adjustment should therefore continue at one cent per point of net deviation and be cumulative to the extent

that adjustments in the same direction occur for a period not to exceed three months.

Consideration was also given at the hearing to the use of the ratio of producer receipts to Class I sales in the first and second months preceding the pricing month as an indicator of actual market utilization. The present order uses the second and third month preceding the pricing month as an indication of market over or under-supply in relation to the standards. Use of the second and third months experience as presently contained in the order appears more appropriate than the use of the first and second months experience since the supply-demand adjustment can be announced.¹ It is concluded that the utilization of the second and third month preceding the pricing month should continue to be used to indicate the current supply-demand situation.

The supply-demand adjustment to the Wichita Class I price became effective for the first time on May 1, 1959. Without the suspension of the third cumulative step of the rate of adjustment, the reduction would have averaged minus 18 cents per month for the 12-month period May 1959 through April 1960. With the suspension of the third step made effective September 1, 1959, the average per month for the 12-month period was minus 13 cents. With the modifications provided herein the supply-demand adjustment for the same 12 months would have averaged minus 17 cents per month. During this period the Greater Kansas City floor and ceiling would not have acted to limit the supply-demand adjustment as recommended. Official notice is hereby taken of the Wichita and Kansas City supply-demand adjustments and Class I prices as announced for October 1959 through April 1960.

3. Cooperative standby plant. The present Wichita order defines two different types of dairy plant operations which may become pooled. The first would be a fluid milk processing and distributing plant from which a requisite proportion of the total receipts from approved dairy farmers are distributed on routes. The second operation described is that of a country or supply plant. This operation may be designated as a pool plant through the shipment of a required percentage of total receipts to approved processing and distributing plants which serve the market.

It was proposed that a third pool plant provision be written in the order to allow a standby plant, operated by a cooperative association, to be pooled on the basis of the over-all performance of the association rather than on the basis of specific shipments from the plant.

Such a standby plant was being constructed by the Wichita Milk Producers Association at the time of the hearing. When completed, the plant will be operated as an auxiliary supply and surplus disposal operation which supplements the principal function of the cooperative in supplying the needs of other handlers serving the Wichita market.

¹Before the beginning of the pricing month, thereby furnishing advance notice to both producers and handlers.

It appears that special consideration should be given to an operation which functions to equalize the supply and demand for milk and therefore tends to promote the orderly marketing of milk in Wichita. It should be noted that the standby plant will be handling member producer milk already associated with the market. To the extent that the new cooperative facilities can also be used to develop Class I sales out of the Wichita area, all producers in the market will benefit therefrom.

To accommodate a standby plant as described above, the order should be amended to provide that a plant operated by a cooperative association be pooled during any month in which 60 percent or more of the milk delivered during the month by approved dairy farmers who are members of such an association is delivered directly or is transferred by the association to pooled distributing plants of other handlers.

4. Pool plant standards. Testimony was received regarding the need to modify present pooling requirements of the order with respect to distributing plants. It was proposed that the month of July be included as one of the flush production months in which a plant be pooled if 25 percent of the total receipts were disposed of as Class I and 10 percent of the total receipts were disposed of on routes in the marketing area. The present order specifies these minimum percentages of association with the market during the months of March through June inclusive. In the months of lower supply, presently specified as July through February, the requirements are that 35 percent of receipts be utilized as Class I and 15 percent be disposed of on routes in the marketing area.

It was pointed out that July is typically a month when Class I sales decline and production varies greatly from year to year. In July 1959, one plant failed to qualify because Class I sales were less than 35 percent of Grade A receipts. The producers delivering at such a plant were not pooled for that month.

A further proposal was received to change the percent of a plant's receipts which must be sold in the marketing area from 15 percent to 10 percent during the months of August through February. This change was deemed necessary to reduce the danger that the Arkansas City Cooperative Association should fail to be pooled. This cooperative has long established route sales outside the present market and could have difficulty meeting the 15 percent in-area requirement. This would be particularly true if the bulk tank receipts should continue to increase at the association plant. It should be noted that a plant would still be required to dispose of 35 percent of its total receipts from approved dairy farmers as Class I during the months of August through February in order to be pooled.

It is concluded that the order should be amended to include the month of July in the period when lower pooling requirements apply and to reduce the percent of in-area route sales from 15 to 10 percent during the months of August through February.

Handlers proposed that if a plant met the pool requirements in any one month it should also be pooled in the next month following. This proposal should not be adopted for two reasons: Firstly, a plant not regularly associated with the market could be pooled for one additional month after the termination of a military contract or some other sales situation of short duration. Secondly, this proposal violates the concept that a plant should demonstrate current association with the market on an objective basis from month to month.

5. *Classification and accounting.* It was proposed that if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of, the pounds of skim milk used or disposed of in such a product should be an amount equivalent to the nonfat solids contained in such a product plus all of the water originally associated with such solids.

The present order provides for the skim milk equivalent of concentrated products used to produce cottage cheese. Skim equivalent accounting also occurs with reconstituted or recombined Class I products by virtue of water actually being added back to the solids. On the other hand, solids used in the fortification of any Class I fluid product are presently accounted for on the basis of the actual number of pounds of solids used.

These two methods of accounting result in different costs for identical solids which cannot be distinguished as to their ultimate use. The order should be amended to provide for the accounting of all receipts and disposition on the same basis. The skim milk equivalent provides the basis upon which uniform accounting may be accomplished and insure local producer milk the priority of Class I utilization.

6. *Cottage cheese.* Under present order provisions, cottage cheese is considered as Class II utilization only if it is made in plants from which distribution is made in those portions of the marketing area where cottage cheese is required to be made from Grade A milk. Such area presently includes the City of Wichita, where a city ordinance with respect to milk and milk products is now in effect, and the territory within three miles of the city limits, which is covered by a resolution of the Sedgwick County Board of County Commissioners. The Class II price is 80 cents per hundredweight above the Class III price.

It was proposed that Class II include only that milk used to produce cottage cheese actually sold within the territories requiring cottage cheese to be made from Grade A sources. This would involve a substantial reduction in Class II use since the handlers involved sell a sizeable proportion of the cottage cheese they make outside of Wichita and the 3-mile limit. The proposal was based on the fact that outside the 3-mile limit, the cottage cheese must be sold in competition with cottage cheese made from cheaper sources of milk. Such competition would include those plants regulated under the Wichita order which do not sell cottage cheese within the 3-mile limit, and handlers regulated under other Federal orders.

The original decision to provide a separate classification for milk used to produce cottage cheese was based in large part on the fact that Grade A milk was required for the production of cottage cheese sold in and around Wichita. In practice, the handlers made their cheese for sale in territories beyond the 3-mile limit in the same facilities and so required Grade A milk for that portion of their output as well as for the portion sold within the 3-mile limit.

Apparently this has continued to be the case even though it involves classification as Class II at a price 80 cents over the Class III price. Data of record show that Class II use in August 1959 (the latest data available at the time of the hearing) was 1,553,777 product pounds. This compares with 1,581,243 in August 1958 and 1,354,500 in August 1957. The latter figure reflects the production of cottage cheese by the same group of handlers prior to amendment of the order, effective June 1, 1958, to provide a separate class for cottage cheese.

In view of the continued reliance of this group of handlers upon Grade A milk for their entire output of cottage cheese, no changes should be made in the classification or pricing of milk so used. All the milk used to produce cottage cheese in facilities approved for the sale of cottage cheese in jurisdictions where it is required to be made from Grade A milk should continue to be Class II.

7. *Inventory accounting.* Provisions of the present Wichita order classify month-end inventories of fluid milk products (products which either usually become Class I upon disposition or are unprocessed milk, skim milk or cream) as Class III utilization subject to a further charge if allocated to a higher utilization the following month. The reclassification charge, however, is applicable to only that portion of inventory which was allocated as producer milk in Class III the month preceding. In these circumstances, some month-end inventory representing other source receipts can be used in a higher class the following month without incurring a reclassification charge.

In order to maintain uniformity of minimum prices to all handlers it is concluded that the order should be amended to equalize prices with those which apply to current receipts of producer milk or other source milk when opening inventory of other source milk is allocated to a higher class of utilization.

The reclassification charge, however, should apply only to other source inventories of fluid milk products which were not previously priced under another Federal order.

8. *Provisions with respect to unpriced milk.* Evidence presented at the hearing indicated the need for an objective basis to be used in determining the extent to which producer milk is available in the market. The present order requires that the market administrator determine the availability of producer milk and the conditions under which a handler should be charged for the use in Class I of other source milk not subject to the pricing provisions of another Federal order.

In view of the expanded market and the increased difficulty in determining the needs of the market, the market administrator should be relieved from making the decision with respect to the availability of producer milk.

The order should be amended to provide that no charge be made on unpriced, other source milk used in Class I in any month in which the supply of producer milk is less than 120 percent of the Class I utilization in the market.

9. *Administrative provisions.* Certain sections of the order should be redrafted to incorporate conforming and clarifying changes and to facilitate application of its various provisions.

The market administrator should be allowed to reduce any amount due a handler from the producer settlement fund by the amount of any unpaid balances due the market administrator from such a handler to avoid unnecessary administrative inconvenience.

The marketing service charge should be changed to provide a maximum of six cents per hundredweight. The present order provides for a maximum of four cents which is not adequate in view of the current cost of performing the sample testing and weight verification program in the expanded marketing area. Should the proposed rate exceed the actual cost of performing these services, the Secretary may provide for a lesser amount.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to Section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and

wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Wichita, Kansas Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Wichita, Kansas Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of April 1960, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order regulating the handling of milk in the Wichita, Kansas, marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington, D.C., this 17th day of June 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order Amending the Order Regulating the Handling of Milk in the Wichita, Kansas, Marketing Area

§ 968.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) **Findings upon the basis of the hearing record.** Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Wichita, Kansas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Wichita, Kansas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 968.10 [Amendment]

1. Revise § 968.10(a) to read as follows:

(a) During any of the months of March, April, May, June or July within which such plant disposes of as Class I milk an amount equal to 25 percent or more of such plant's total receipts of milk from approved dairy farmers and disposes of as Class I milk on routes in the marketing area an amount equal to 10 percent or more of such plant's total receipts from approved dairy farmers;

2. Revise § 968.10(b) to read as follows:

(b) During any of the other months within which such plant disposes of as Class I milk an amount equal to 35 percent or more of such plant's total receipts of milk from approved dairy farmers and disposes of as Class I milk on routes in the marketing area an amount equal to 10 percent or more of

such plant's total receipts from approved dairy farmers;

3. Renumber present § 968.10(d) to § 968.10(e).

4. Insert a new § 968.10(d) to read as follows:

(d) Which is operated by a cooperative association and 60 percent or more of the milk delivered during the current month by approved dairy farmers who are members of such association, is delivered directly or is transferred by the association to pool plants as described in paragraphs (a) and (b) of this section.

§ 968.45 [Amendment]

4a. Change the period at the end of the first paragraph in § 968.45 to a colon and add the following proviso: "Provided, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids."

§ 968.51 [Amendment]

5. Revise § 968.51(a) to read as follows:

(a) **Class I milk.** The price per hundredweight shall be the basic formula price for the preceding month plus \$1.65 during all months of the year, plus or minus a supply-demand adjustment computed as follows: *Provided*, That the Class I price so computed shall be not less than the Class I price computed for the same period pursuant to Federal Order No. 13 (Greater Kansas City) minus ten cents during each month of the period August through March and plus twenty-five cents for each of the months of April through July nor more than the Kansas City Class I price plus fifty cents during each of the months of the period August through March and plus eighty-five cents for each of the months of April through July.

6. In § 968.51(a)(2)(iii), revise the tabulation to read as follows:

Delivery period for which price applies	Delivery period used in computation	Percentages	
		Minimum	Maximum
January.....	October-November.....	125	135
February.....	November-December.....	124	134
March.....	December-January.....	125	135
April.....	January-February.....	125	135
May.....	February-March.....	132	142
June.....	March-April.....	136	146
July.....	April-May.....	143	153
August.....	May-June.....	137	147
September.....	June-July.....	131	141
October.....	July-August.....	131	141
November.....	August-September.....	130	140
December.....	September-October.....	126	136

7. Revise § 968.51(a)(3) to read as follows:

(3) For a minus "net deviation percentage" the Class I price shall be increased and for a plus "net deviation percentage" the Class I price shall be decreased as follows:

(i) One cent times each such percentage point of net deviation; plus

(ii) One cent times the lesser of:

(a) Each such percentage point of net deviation, or

(b) Each percentage point of net deviation of like direction (plus or minus, with any net deviation percentage of opposite direction considered to be zero for purposes of computations of this subparagraph) computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding; plus

(iii) One cent times the least of:

(a) Each such percentage point of net deviation;

(b) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the month immediately preceding, or

(c) Each percentage point of net deviation of like direction computed pursuant to subparagraph (2) of this paragraph for the second preceding month.

§ 968.61 [Amendment]

8. Revise § 968.61(b) to read as follows:

(b) Any plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualifies as a pool plant pursuant to the provisions of § 968.10(c) or § 968.10(d).

9. Revise § 968.70 to read as follows:

§ 968.70 Net pool obligations of handlers.

The net pool obligation for milk received during each month by each handler shall be computed as follows:

(a) Multiply the pounds of milk in each class computed pursuant to § 968.46(c) by the applicable respective class prices and add together the resulting amounts;

(b) Add an amount computed by multiplying the pounds of overage deducted from each class pursuant to § 968.46(a)(7) and the corresponding step of § 968.46(b) by the applicable respective class prices;

(c) Add any amount obtained through multiplying by the difference between the Class III price for the preceding month and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 968.46(a)(4) and the corresponding step of § 968.46(b); or

(2) The hundredweight of producer milk classified as Class III utilization (except as shrinkage) for the preceding month;

(d) Add an amount obtained through multiplying by the difference between the Class III price for the preceding month and the Class II price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class II pursuant to § 968.46(a)(4) and the corresponding step of § 968.46(b); or

(2) The hundredweight of producer milk classified as Class III utilization (except as shrinkage) for the preceding month less the hundredweight of milk subtracted from Class I pursuant to § 968.46(a)(4) and the corresponding step of § 968.46(b).

(e) During any month in which the total receipts of producer milk are more than 120 percent of the total Class I utilization at all pool plants, add an amount equal to the difference between the values (subject to butterfat and location differentials) at the Class I price and the Class III price with respect to:

(1) Other source milk subtracted from Class I pursuant to § 968.46(a)(2) and the corresponding step of § 968.46(b).

(2) Milk in inventory subtracted from Class I pursuant to § 968.46(a)(4) and the corresponding step of § 968.46(b) which is in excess of the sum of:

(i) The quantity of milk for which a payment is computed pursuant to paragraph (c) of this section; and

(ii) The quantity of milk subtracted from Class III pursuant to § 968.46(a)(3) and the corresponding step of § 968.46(b) for the month preceding.

(f) During any month in which the total receipts of producer milk are more than 120 percent of the total Class I utilization at all pool plants, add an amount equal to the difference between the values (subject to butterfat and location differentials) at the Class II price and the Class III price with respect to:

(1) Other source milk subtracted from Class II pursuant to § 968.46(a)(2) and the corresponding step of § 968.46(b).

(2) Milk in inventory subtracted from Class II pursuant to § 968.46(a)(4) and the corresponding step of § 968.46(b) which is in excess of the sum of:

(i) The quantity of milk for which a payment is computed pursuant to paragraph (d) of this section; and

(ii) The quantity of milk subtracted from Class III pursuant to § 968.46(a)(3) and the corresponding step of § 968.46(b) for the month preceding.

§ 968.82 [Amendment]

10. In § 968.82, substitute a period for the colon and delete the proviso which reads as follows: "Provided, That the market administrator shall offset any such payment due to any handler against payments due from such handler."

§ 968.84 [Amendment]

11. Add new paragraph (c) to § 968.84 to read as follows:

(c) Any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator from such handlers pursuant to §§ 968.82, 968.83, 968.85, 968.86 or 968.87.

§ 968.86 [Amendment]

12. Revise § 968.86(a) to read as follows:

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 968.80(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 12th day after the end of such month. Such moneys shall be used by the market administra-

tor to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services.

[F.R. Doc. 60-5762; Filed, June 22, 1960; 8:48 a.m.]

17 CFR Part 975 I

[Docket No. AO-179-A19]

MILK IN NORTHEASTERN OHIO MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Mansfield, Ohio, on March 29, 1960, pursuant to notice thereof issued on March 9, 1960 (25 F.R. 2106).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on May 20, 1960 (25 F.R. 4538), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of opportunity to file written exceptions thereto.

The material issue on the record of the hearing related to the supply-demand adjustment of the Class I price.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The supply-demand adjustment of the Class I price.

The supply-sales relationship used as a basis for adjustment of the Class I price should be that of the combined receipts and sales of the North Central Ohio and Northeastern Ohio markets. The standard utilization percentages, deviations from which result in price adjustments, should be revised to reflect the changed seasonal patterns of utilization and the level of reserve supply required by present marketing practices.

The North Central Ohio Class I price is now maintained in a fixed alignment with that of Northeastern Ohio and it is concluded that such alignment should be maintained. North Central Ohio handlers make substantial route sales in the Northeastern Ohio marketing area.

While Northeastern Ohio handlers do not have any substantial amount of route sales in the North Central Ohio marketing area, they do supply supplemental milk in many months. The North Central Ohio procurement area lies entirely within the procurement area of the Northeastern Ohio market and producers can readily shift from one area to the other. Presently supplies of milk associated with the Northeastern Ohio pool and sales by handlers regulated

under the Northeastern Ohio order determine the supply-demand adjustment of the Class I price for both orders. Intermarket competition for supplies or sales may readily affect the Class I price in both markets without any change in the overall supply or sales volumes merely by transfer of supply or sales from one market to the other. A number of handlers operating multiple plants have plants regulated under each order. The decision of such a handler to transfer sales from one of his plants to another can affect the Class I price in both markets. Since the competition is such as to require fixed alignment of Class I prices, it is appropriate that the ratio of total producer receipts to gross Class I sales should be the basis for adjustment of Class I prices to supply-demand conditions in both orders.

The inclusion of the receipts and sales of the North Central Ohio area in the computation of the supply-demand adjustment for the Northeastern Ohio order requires an adjustment in the annual level and the seasonal pattern of the standard utilization percentages. The addition of the North Central Ohio receipts and sales in the computation of the Northeastern Ohio supply-demand adjuster would have decreased the annual level of the ratio of supply to sales from 139 to 136 in both 1958 and 1959 which would have increased the Class I price in both markets. Milk supplies in the area have increased faster than Class I sales. The Northeastern Ohio supplies were 132 percent of sales in 1957, 139.2 in 1958 and 139.7 in 1959. The supplies of milk have also been ample for the North Central Ohio area. Under these circumstances an increase in the annual average of the Class I price is not appropriate under the standards of the Act. Therefore, the annual average of the standard utilization percentages should be reduced from 132 to 129. This reduction of the annual average will approximately reflect the change in the utilization percentages caused by the addition of the North Central Ohio receipts and sales. The seasonal pattern also has been slightly modified to reflect the pattern of utilization of the combined markets. The following table shows the present and revised standard utilization percentages:

	Present standard	Revised standard
January.....	128	125
February.....	128	125
March.....	128	126
April.....	129	127
May.....	130	128
June.....	140	137
July.....	148	145
August.....	141	138
September.....	127	124
October.....	126	122
November.....	128	124
December.....	130	126

It was proposed that the North Central Ohio Class I price be further adjusted by the average adjustment of the supply-demand adjustment of the Columbus, Ohio, and Dayton-Springfield, Ohio, markets or that the North Central Ohio order provide for an independent supply-demand adjuster. These proposals would disrupt the fixed alignment of the

Class I prices between the Northeastern Ohio and North Central Ohio markets which is essential in maintaining orderly marketing conditions. Therefore, any adjustment to the North Central Ohio Class I price which would not maintain the fixed alignment between the markets is denied.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order as hereby proposed to be amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act.

(b) The parity prices of milk as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Northeastern Ohio Marketing Area" and "Order

Amending the Order Regulating the Handling of Milk in the Northeastern Ohio Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be further amended by the attached order which will be published with this decision.

Determination of representative period. The month of April 1960 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order, regulating the handling of milk in the Northeastern Ohio, marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington, D.C., this 20th day of June 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Milk in the Northeastern Ohio Marketing Area

§ 975.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) **Findings upon the basis of the hearing record.** Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Northeastern Ohio, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the

¹This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Northeastern Ohio, marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended:

1. Delete § 975.51(a) (1) and (2) and substitute therefor the following:

(1) Divide the total quantity of milk received from producers defined in § 975.10 and in § 995.12 of the order regulating the handling of milk in the North Central Ohio marketing area during the first and second months preceding by the gross quantity of milk utilized as Class I (adjusted for intermarket and interhandler transfers) at pool plants defined in § 975.8 and in § 995.9 of the order regulating the handling of milk in the North Central Ohio marketing area, in the same two months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "current utilization percentage."

(2) Compute a "deviation percentage" by subtracting from the current utilization percentage as computed in subparagraph (1) of this paragraph, the "standard utilization percentage" shown below:

Months for which the price is being computed:	Standard utilization percentage
January	125
February	125
March	126
April	127
May	128
June	137
July	145
August	138
September	124
October	122
November	124
December	126

[F.R. Doc. 60-5761; Filed, June 22, 1960; 8:48 a.m.]

[7 CFR Part 980]

[Docket No. AO-301-A1]

MILK IN WESTERN COLORADO MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.),

and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the Western Colorado marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., not later than the close of business the 3d day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Grand Junction, Colorado, on May 16, 1960, pursuant to notice thereof which was issued April 15, 1960 (25 F.R. 3422).

The material issues on the record of the hearing relate to:

1. Class I price.
2. The classification and pricing of other milk.

On the basis of the record of this hearing a provision under which all class prices would have expired May 31, 1960, has been suspended, effective June 1, 1960, pending completion of amendment action on the record.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The method of determining the Class I price should be continued unchanged at this time.

The Western Colorado Class I price is determined by adding \$2.05 each month to the basic formula price for the preceding month. The order provided that this price be effective for the first 18 months of order operation (December 1958 through May 1960) in order to afford a review of the pricing provisions after the order had been in operation a full year.

Producers proposed that these Class I pricing provisions be continued. A handler witness supported their continuation and no testimony was offered in opposition to their continuation.

For an early three months of operation of the order, January, February and March 1959, from 86.5 to 91.7 percent of producer milk was used as Class I milk, the weighted three-month average being 89.2 percent. For the same months of 1960 Class I utilization ranged from 88.6 to 90.2 percent, with a weighted average of 89.3 percent. The ratio of milk supplies to fluid sales has thus maintained a very stable relationship.

Since promulgation of the Western Colorado order, Federal milk marketing orders have been issued for the Great Basin (Salt Lake City) and Colorado Springs-Pueblo areas. Substantially

larger volumes of milk are priced under these orders than under the Western Colorado order. The 1959 average Class I price of the Western Colorado order was \$5.077, as compared to the \$5.25 initial Class I price of the Great Basin order. The Colorado Springs-Pueblo order adds a \$2.20 Class I differential to a basic formula price identical with that in the Western Colorado order, so that the Class I price under that order exceeds the Western Colorado price by 15 cents per hundredweight. These orders have not been in effect sufficient time to evaluate their effect on the Western Colorado market.

The question of providing a new expiration date was raised at the hearing, but such action does not appear necessary. Should a significant change occur in the relationship of milk supplies to Class I sales in this market it is evident that there will be opportunity to reconsider pricing provisions at a future hearing. It is therefore concluded that the Class I pricing provisions may be continued without a fixed expiration date.

2. Class II milk should include all of the skim milk and butterfat heretofore defined as Class II milk and Class III milk. The Class II price should be the basic formula price for the current month.

Class II milk now includes all skim milk and butterfat used to produce ice cream, frozen desserts, ice cream mix, frozen dessert mix, yogurt, eggnog, aerated cream, skim condensed milk, whole condensed milk and cottage cheese. Class III is skim milk and butterfat: (1) Used to produce any product other than a fluid milk product or products designated as Class II; (2) in inventory of fluid milk products on hand at the end of the month; (3) accounted for as livestock feeds; (4) in skim milk dumped after prior notification to and opportunity for verification by the market administrator; (5) in shrinkage not to exceed 2 percent of skim milk and butterfat received directly from producers; and (6) in shrinkage of other source milk.

The Class II price under the order is now the basic formula price plus 20 cents. The basic formula price is the higher of (1) the midwest condensery pay price for milk received from dairy farmers during the month, or (2) a butter-powder formula price. The Class III price is the butter-powder formula price minus 13 cents.

The Western Colorado Milk Producers Association proposed that Class II milk and Class III milk be combined into one use class to be designated as Class II and priced at the basic formula level. In support of this proposal producer and handler witnesses stated that it would encourage the use of more Grade A milk by local plants in the manufacturing of ice cream and cottage cheese.

There has been a very substantial reduction during the past year in the amount of milk utilized by pool plants in the manufacture of ice cream. Milk not utilized in fluid milk products, ice cream or cottage cheese must be transported substantial distances to be manufactured into those products now designated as Class III.

In the marketing area there are three nonpool plants making ice cream, two of which also make cottage cheese. The only manufacture of Class III products in the marketing area is butter. However, butter plants buy only cream. Consequently, there is no market for Class III milk as such in the marketing area. In view of the limited outlets for excess milk in this market it is important that handlers accept and utilize the maximum quantities of producer milk for cottage cheese and ice cream.

Health authorities in the marketing area do not require that milk utilized in other than Class I products be obtained from approved Grade A sources. Milk from any source may be used in the various dispositions heretofore contained in Class II or Class III. Grade A milk not needed for fluid disposition in the Western Colorado market must compete for sales with milk from ungraded sources. Lowering the price to the level herein provided will price producer milk at a competitive level for use in these products. It is concluded, therefore, that the price of milk in all such dispositions should be fixed at the same level and be classified as Class II at the basic formula price. Such pricing of milk for manufacturing uses approximates that in the nearby Federal order markets of Great Basin and Colorado Springs-Pueblo.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the Western Colorado marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

§ 980.22 [Amendment]

1. Amend § 980.22(i) (2) to read as follows:

(2) On or before the 6th day of each month the minimum price for Class II milk computed pursuant to § 980.51(b) and the Class II butterfat differential computed pursuant to § 980.52(b) each for the previous month; and

2. Amend § 980.41 to read as follows:

§ 980.41 Classes of utilization.

Subject to the conditions set forth in §§ 980.43 and 980.44, the classes of utilization shall be as follows:

(a) **Class I milk.** Class I milk shall be all skim milk and butterfat (1) disposed of in the form of fluid milk products except those classified pursuant to paragraph (b) (3) and (4) of this section, or (2) not specifically accounted for as Class II utilization.

(b) **Class II milk.** Class II milk shall be all the skim milk and butterfat: (1) used to produce any product other than a fluid milk product, (2) in inventory of fluid milk products on hand at the end of the month, (3) accounted for as live-stock feed, (4) in skim milk dumped after prior notification to and opportunity for verification by the market administrator, (5) in shrinkage not to exceed 2 percent of skim milk and butterfat received directly from producers, and (6) in shrinkage of other source milk.

3. Amend § 980.43 to read as follows:

§ 980.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified as Class II milk.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

4. Amend § 980.44(a) to read as follows:

§ 980.44 Transfers.

Skim milk and butterfat disposed of each month from a fluid milk plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to a fluid milk plant of another handler, except a producer-handler, unless utilization in another class is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 980.30 subject in either event to the following conditions:

(1) The receiving plant has utilized in such class an equivalent amount of skim milk and butterfat, respectively; and

(2) Such skim milk and butterfat shall be classified so as to allocate to producer milk the greatest possible total Class I utilization in the two plants;

5. Amend § 980.44(d) (1) and (3) to read as follows:

(1) The transferring-handler claims Class II utilization in a product specified in § 980.41(b);

(3) Not less than an equivalent amount of skim milk and butterfat was actually used as Class II in such transferor's plant;

6. Amend § 980.45 to read as follows:

§ 980.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the fluid milk plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk, and Class II milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat dry milk solids contained in such product, plus all of the water originally associated with such solids.

7. Amend § 980.46 to read as follows:

§ 980.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 980.45 the market administrator shall determine the classification of milk received from producers of fluid milk plant(s) of each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk allocated to shrinkage in skim milk received from producers pursuant to § 980.41(b) (5);

(2) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk other than that subtracted pursuant to subparagraph (3) of this paragraph;

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement and order issued pursuant to the Act;

(4) Subtract from the pounds of skim milk remaining in each class, the pounds of skim milk received from other fluid milk plants according to its classification as determined pursuant to § 980.44(a);

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) Subtract from the pounds of skim milk remaining in each class any amount by which the pounds of skim milk remaining in both classes exceed the pounds of skim milk in milk received from producers in series beginning with Class II. Such excess shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of each class of milk computed pursuant to paragraphs (a) and (b) of this section.

8. Amend § 980.51 to read as follows:

§ 980.51 Class prices.

Subject to the provisions of §§ 980.52 and 980.53 the minimum prices per hundredweight to be paid by each handler for milk received at his fluid milk plant from producers during the month shall be as follows:

(a) *Class I milk.* The basic formula price for the preceding month plus \$2.05.

(b) *Class II milk.* The basic formula price for the current month.

§ 980.52 [Amendment]

9. Amend § 980.52 to read as follows:

(b) *Class II milk.* Multiply such price for the current month by 0.120.

§ 980.70 [Amendment]

10. Amend § 980.70(c) to read as follows:

(c) Add a reclassification charge equal to the difference between the Class I price value for the current month and the price value applicable to closing inventory for the preceding month for the skim milk and butterfat subtracted from Class I pursuant to § 980.46(a)(5) and the corresponding step of § 980.46(b) which is not in excess of the skim milk and butterfat remaining in Class II in the previous month pursuant to § 980.46(a)(5) and the corresponding step of § 980.46(b); and

Issued at Washington, D.C., this 20th day of June 1960.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 60-5783; Filed, June 22, 1960; 8:51 a.m.]

[7 CFR Part 995]

[Docket No. AO-197-A6]

**MILK IN NORTH CENTRAL OHIO
MARKETING AREA**

**Decision on Proposed Amendments
to Tentative Marketing Agreement
and to Order**

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Mansfield, Ohio, on March 29, 1960, pursuant to notice thereof issued on March 9, 1960 (25 F.R. 2106).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on May 20, 1960 (25 F.R. 4588), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of opportunity to file written exceptions thereto.

The material issues on the record of the hearing related to:

1. The supply-demand adjustment of the Class I price;
2. The Class II milk price and the need for emergency action with respect thereto;
3. The rules for regulation of plants doing business in other marketing areas;
4. The quota forming months;
5. Expansion of the marketing area; and
6. The shrinkage allowance on bulk tank deliveries.

Issue number 2 was decided by the Assistant Secretary in his decision of April 12, 1960 (25 F.R. 3337), and this decision is restricted to the remaining issues.

Finding and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The supply-demand adjustment of the Class I price. The supply-sales relationship used as a basis for adjustment of the Class I price should be that of the combined receipts and sales of the North Central Ohio and Northeastern Ohio markets.

The North Central Ohio Class I price is now maintained in a fixed alignment with that of Northeastern Ohio and it is concluded that such alignment should be maintained. North Central Ohio handlers make substantial route sales in the Northeastern Ohio marketing area. While Northeastern Ohio handlers do not have any substantial amount of route sales in the North Central Ohio marketing area, they do supply the North Central Ohio handlers with supplemental milk in many months. The North Central Ohio procurement area lies entirely within the procurement area of the Northeastern Ohio market and producers can readily shift from one area to the

other. Presently supplies of milk associated with the Northeastern Ohio pool and sales by handlers regulated under the Northeastern Ohio order determine the supply-demand adjustment of the Class I price for both orders. Inter-market competition for supplies or sales may readily affect the Class I price in both markets without any change in the overall supply or sales volumes merely by transfer of supply or sales from one market to the other. A number of handlers operating multiple plants have plants regulated under each order. The decision of such a handler to transfer sales from one of his plants to another can affect the Class I price in both markets. Since the competition is such as to require fixed alignment of Class I prices, it is appropriate that the ratio of total producer receipts to gross Class I sales should be the basis for adjustment of Class I prices to supply-demand conditions in both orders.

It was proposed that the North Central Ohio Class I price be further adjusted by the average adjustment of the supply-demand adjustment of the Columbus, Ohio, and Dayton-Springfield, Ohio, markets or that the North Central Ohio order provide for an independent supply-demand adjuster. These proposals would disrupt the fixed alignment of the Class I prices between the Northeastern Ohio and North Central Ohio markets which is essential in maintaining orderly marketing conditions. Therefore, any adjustment to the North Central Ohio Class I price which would not maintain the fixed alignment between the markets is denied.

3. Regulation of plants doing business in other marketing areas. Provision should be included that the Secretary, by a determination, may retain under regulation of the North Central Ohio order a plant disposing of a greater volume of fluid milk products in the marketing area of another order than in the North Central Ohio area.

The order presently requires that any plant which would be subject to regulation under another order be exempt (except for reporting) from the North Central Ohio order unless such plant has disposed of more fluid milk products in the North Central Ohio area than in the area of the other order in the current month and each of the three preceding months.

The North Central Ohio marketing area is comprised of five political subdivisions which are geographically separated. The marketing area includes only territory in which Grade A milk ordinances are in effect. As a consequence there is considerable intervening territory not included in the marketing area, but in which certain regulated handlers do a substantial proportion of their business.

One plant now regulated under the North Central Ohio order has substantial disposition of fluid milk products in the Northeastern Ohio marketing area. Prior to January 1959 this plant was regulated under Order 75 (then applicable to the Cleveland, Ohio, marketing

area) as a supply plant. It was proposed that this plant be permitted to credit to its sales in the North Central Ohio area substantial dock sales to vendors who operate routes in the adjacent area not included in the marketing area so that its identity with the North Central Ohio area might be maintained.

A simple method of handling the matter is to provide that regulation of plants doing business in other marketing areas be as presently provided unless the Secretary determines that the applicable order should more appropriately be determined on some other basis. A provision to this effect is included in the Northeastern Ohio order. It provides greater opportunity for review of the circumstances in individual cases than would otherwise be provided. It is concluded that such a provision should be included in this order.

4. The quota forming months should be advanced one month to September through November.

Handlers proposed that the quota forming months should be August or September through November rather than October through December.

A review of the order data shows that in 1957 September was the second shortest month of production in relation to Class I sales (November was 95.1 percent and September was 94.1 percent). In 1958 and 1959 September has been the shortest in relationship to sales. The general upward trend in production during this period makes the shortest months appear somewhat earlier than seasonal influences alone would account for. However, it is plain that producers have responded to the incentive of the quota plan and that at least one month earlier quota forming period should be adopted in order to encourage larger production in September and less in December. August should not be included as a quota forming month because the relationship of producer receipts to Class I sales during this month have been adequate.

The importance of advance planning by producers in conforming to the seasonal incentives provided by the quota plan should be recognized. Accordingly, the use of September through November as quota forming months should be delayed until September 1, 1961.

5. Expansion of the marketing area. The marketing area should be expanded to include the Marion Correctional Institution at Marion, Ohio.

The present marketing area is defined to include all the territory in the counties of Allen and Richland and the cities of Findlay, Marion and Tiffin. It was proposed that the Marion Correctional Institute, located just outside the city limits of Marion, Ohio, be included in the marketing area.

This institution is under the direction of the Department of Mental Hygiene and Correction of the State of Ohio which requires that the fluid milk products that it purchases must be from Grade A sources. The present marketing area is covered by health regulations patterned after the U.S. Public Health Services Code for Grade A milk. The health requirements that cover the

Marion Correctional Institute are the same as those that now apply throughout the marketing area.

The Marion Correctional Institute presently purchases its supply of milk on contracts awarded for a period of three months. In the past year North Central Ohio handlers have held the contract for six months. The other six months the contract was awarded to handlers regulated under the Columbus, Ohio, order. Prior to the past year North Central Ohio handlers served the institution in nearly all months.

In view of the health requirements of the Marion Correctional Institute, its location adjacent to a city of the marketing area, and the past history of sales by regulated handlers it is concluded that the North Central Ohio marketing area should be expanded to include the Marion Correctional Institute. Such action will prevent loss of sales historically associated with the market to handlers not subject to regulation of any order.

6. The shrinkage allowance on bulk tank deliveries. There should be no increase in the present shrinkage allowance for plants having all their milk supplies delivered in bulk tank trucks.

It was proposed that plants having their entire receipts of producer milk delivered by bulk tank trucks should have a shrinkage allowance of three percent. The present order provides for a two percent shrinkage allowance to all plants.

Handlers proposed the increase in the shrinkage allowance because there is sometimes a difference between the stick measurement at the farm and the actual weight of the milk taken in at the plant. However, the regulated plants under the North Central Ohio order receiving all their milk in bulk have not experienced more shrinkage on the average than plants receiving their milk in cans or in a combination of cans and bulk. In 1959 plants receiving their milk supplies in bulk experienced an average shrinkage of 1.42 percent of skim milk and 2.36 percent of butterfat; plants receiving their entire supply in cans had a shrinkage of 1.25 percent of skim milk and 2.41 percent of butterfat, and plants receiving both can and bulk milk experienced shrinkage of 1.41 percent of skim milk and 1.25 percent of butterfat. The market showed an average of a 1.37 percent loss on skim milk and 2.09 percent loss on butterfat during 1959. Past market experience has shown that the two percent allowance now provided in the order is appropriate. Therefore, it is concluded that the proposed increase in the shrinkage allowance should be denied.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied for

the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order as hereby proposed to be amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the North Central Ohio Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the North Central Ohio Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be further amended by the attached order which will be published with this decision.

Determination of representative period. The month of April 1960 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached

order amending the order, regulating the handling of milk in the North Central Ohio marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington, D.C., this 20th day of June 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Milk in the North Central Ohio Marketing Area

§ 995.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the North Central Ohio marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundred-weight or such amount not to exceed 3 cents per hundredweight as the Secretary may prescribe, with respect to (a) producer milk (including milk of handlers own production), (b) other source milk allocated to Class I, and (c) Class I milk disposed of in the marketing area by a distributing plant not a pool plant.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the North Central Ohio marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended:

1. Delete § 995.5 and substitute therefor the following:

§ 995.5 North Central Ohio marketing area.

"North Central Ohio marketing area" hereinafter referred to as "marketing area" means all the territory within the corporate limits of the cities of Findlay, Marion and Tiffin, and territory within the boundaries of the counties of Allen and Richland and the Marion Correctional Institution, all in the State of Ohio.

§ 995.64 [Amendment]

2. In § 995.64 delete the phrase "October through December" and substitute therefor "September through November" (to be made effective on September 1, 1961).

3. Delete § 995.80 and substitute therefor the following:

§ 995.80 Plants subject to other Federal orders.

The provisions of this part except §§ 995.30, 995.31, 995.32, and 995.33 shall not apply to a distributing plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant pursuant to § 995.9 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Ohio marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months immediately preceding, unless the Secretary determines that the applicable order should more appropriately be determined on some other basis.

[F.R. Doc. 60-5760; Filed, June 22, 1960; 8:48 a.m.]

[7 CFR Part 1035]

[Docket No. AO-324]

MILK IN MINNESOTA-NORTH DAKOTA MARKETING AREA

Notice of Hearing on Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Gardner Hotel, 26 Roberts Street, Fargo, North Dakota, beginning at 10:00 a.m., central daylight time, on July 12, 1960, and in the Clarence Parker Hotel, 100 First Avenue, S.E., Minot, North Dakota, beginning at 10:00 a.m., central standard time, on July 18, 1960, with respect to a proposed marketing agreement and order, regulating the handling of milk in the Minnesota-North Dakota marketing area.

The public hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof; and for the purpose of determining (1) whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce, (2) whether there is need for a marketing agreement or order regulating the handling of milk in the area, and (3) whether provisions specified in the proposals or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the Act.

The proposals, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Cass-Clay Creamery, Inc., Central Minnesota Dairymen's Association, Jamestown Milk Producers Association, Minot Milk Producers Association, Red River Valley Milk Producers Association, Rolette County Dairymen's Association, Southern Valley Milk Producers Association, Thief River Falls Milk Producers Association, and Upper Missouri Milk Producers Association:

Proposal No. 1.

DEFINITIONS

§ 1035.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1035.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers or to

perform the duties of the said Secretary of Agriculture.

§ 1035.3 Department.

"Department" means the United States Department of Agriculture or any other Federal Agency authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 1035.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 1035.5 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members.

§ 1035.6 Minnesota-North Dakota marketing area.

"The Minnesota-North Dakota marketing area", hereinafter called the "marketing area", means all the territory within the counties of Becker, Clay, Marshall, Norman, Pennington, Polk, and Wilkin, in the State of Minnesota; the counties of Barnes, Benson, Bottineau, Burleigh, Cass, Cavalier, Eddy, Foster, Grand Forks, Griggs, Kidder, La Moure, Logan, McHenry, Nelson, Pambina, Pierce, Ramsey, Ransom, Richland, Rollette, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, Ward, and Wells, and the territory within the corporate limits of the cities of Mandan and Williston, all in the State of North Dakota.

§ 1035.7 Approved dairy farmer.

"Approved dairy farmer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is received at an approved plant.

§ 1035.8 Producer.

"Producer" means an approved dairy farmer whose milk is received at a pool plant.

§ 1035.9 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1035.10 Supply plant.

"Supply plant" means a plant from which milk, skim milk or cream, which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label, is shipped during the month to a pool plant qualified pursuant to § 1035.12.

§ 1035.11 Approved plant.

"Approved plant" means a pool plant or a distributing plant which is not a pool plant.

§ 1035.12 Pool plant.

"Pool plant" means:

(a) A distributing plant from which a volume of Class I milk equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area: *Provided*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of fluid milk products shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year: *And provided further*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

§ 1035.13 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 1035.14 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants, or (b) any cooperative association with respect to the milk from producers diverted by the association for the account of such association from an approved plant to a nonpool plant.

§ 1035.15 Producer-handler.

"Producer-handler" means any person who produces milk and who operates a distributing plant but who receives no milk from approved dairy farmers or from sources other than approved plants.

§ 1035.16 Approved milk.

"Approved milk" means the skim milk and butterfat contained in the milk re-

ceived at an approved plant from an approved dairy farmer: *Provided*, That milk diverted from an approved plant to a nonpool plant for the account of either the operator of an approved plant or a cooperative association shall be deemed to have been received by the diverting handler at the plant from which diverted: *And provided further*, That in any of the months of July through March milk diverted from the farm of an approved dairy farmer on more than the number of days that milk was delivered to an approved plant from such farm during the month shall not be deemed to have been received by the diverting handler at the plant from which diverted on such days.

§ 1035.17 Producer milk.

"Producer milk" means approved milk which is received at a pool plant.

§ 1035.18 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream or any mixture in fluid form of skim milk and cream (except aerated cream products, sour cream, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

§ 1035.19 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products and cottage cheese, ice cream and ice cream mix except (1) such products received from pool plants; or (2) approved milk; or (3) inventory at the beginning of the month; and

(b) Products other than fluid milk products from any source (including those from a plant's own production), which are reprocessed or converted to another product in the plant during the month.

§ 1035.20 Base milk.

"Base milk" means producer milk received by a pool plant during any of the months of January through June which is not in excess of such producer's daily average base computed pursuant to § 1035.95 multiplied by the number of days in such month for which such producer delivered milk to such pool plant.

§ 1035.21 Excess milk.

"Excess milk" means producer milk received by a pool plant during any of the months of January through June which is in excess of base milk received from such producer during such month.

§ 1035.22 Base zone.

"Base zone" means all the territory east of North Dakota State Highway No. 3.

§ 1035.23 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

§ 1035.25 Designation.

The agency for the administration of this order shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1035.26 Powers.

The market administrator shall have the following powers with respect to this order:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 1035.27 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this order, including but not limited to, the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1035.88, (1) the cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1035.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties.

(e) Keep such books and records as will clearly reflect the transactions provided for in this order, and, upon request by the Secretary, surrender the same to such person as the Secretary may designate;

(f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1035.30 and 1035.31 or payments pursuant to §§ 1035.80, 1035.81, 1035.82, 1035.84, 1035.86, 1035.87 and 1035.88;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Prepare and disseminate publicly such statistics and information as he deems advisable and as do not reveal confidential information;

(i) Verify all reports and payments by each handler by audit, if necessary, of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends, or by such investigation as the market administrator deems necessary, and

(j) Publicly announce and notify each handler in writing on or before: (1) The 5th day of each month, the minimum price for Class I milk pursuant to § 1035.51(a) and the Class I butterfat differential pursuant to § 1035.52(a), both for the current month; and the minimum prices for Class II and Class III milk pursuant to § 1035.51 (b) and (c) and the Class II and Class III butterfat differentials pursuant to § 1035.52 (b) and (c) both for the preceding month; and (2) the 10th day after the end of each month, the uniform price pursuant to § 1035.72, the price for base milk pursuant to § 1035.72 and the butterfat differential to be paid pursuant to § 1035.81.

(k) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

REPORTS, RECORDS AND FACILITIES

§ 1035.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month each handler, except a producer-handler, shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of approved milk;

(b) The quantities of skim milk and butterfat contained in or represented by fluid milk products received from pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 1035.16;

(e) Inventories of fluid milk products on hand at the beginning and end of the month; and

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area.

§ 1035.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at

such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month for each of his pool plants his producer payroll for such month which shall show for each producer; (i) His name and address, (ii) the total pounds of milk received from such producer, (iii) the number of days, if less than the entire month, for which milk was received from such producer, (iv) the average butterfat content of such milk and (v) the net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(2) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product;

(3) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted; and

(4) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

§ 1035.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream, and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

(d) Payments to approved dairy farmers and cooperative associations including the amount and nature of any deductions authorized by producers, and the disbursement of money so deducted.

§ 1035.33 Retention of records.

All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records until further written notification from

the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1035.40 Skim milk and butterfat to be classified.

The skim milk and butterfat which are required to be reported pursuant to § 1035.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 1035.41 through 1035.46.

§ 1035.41 Classes of utilization.

Subject to the conditions set forth in § 1035.44 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of in the form of fluid milk products and (2) not accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk (including the skim milk equivalent of concentrated products) and butterfat used to produce cottage cheese, ice cream and ice cream mix.

(c) *Class III milk.* Class III milk shall be (1) skim milk and butterfat used to produce any product other than those products designated as Class I or Class II pursuant to paragraphs (a) and (b) of this section; (2) skim milk and butterfat contained in inventory of fluid milk products on hand at the end of the month, and (3) skim milk and butterfat in shrinkage allocated to receipts of approved milk and other source milk (except milk diverted to a nonpool plant pursuant to § 1035.16) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively.

§ 1035.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat at each approved plant; and,

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat in approved milk and other source milk.

§ 1035.43 Responsibility of handlers and reclassification of milk.

All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1035.44 Transfers.

Skim milk or butterfat disposed of from a pool plant shall be classified:

(a) As Class I milk, if transferred in the form of fluid milk product to a pool plant of another handler, except a producer-handler, unless lower classification is claimed by both handlers in the reports submitted by them to the market administrator pursuant to § 1035.30:

Provided, That the receiving handler has utilization in such class of an equivalent amount of skim milk and butterfat respectively: *And provided further*, That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I milk utilization to the producer milk of both handlers.

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product;

(c) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant more than 150 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area;

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located not more than 150 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area unless:

(1) The transferring or diverting handler claims a lower classification in his report submitted to the market administrator pursuant to § 1035.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available, if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in the fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply from such plant: *Provided*, That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to the fluid milk products so transferred or diverted and classifies as Class I milk: *And provided further*, That if the total skim milk and butterfat in fluid milk products which were transferred by all handlers to such nonpool plant from plants subject to the classification and pricing provisions of this order and other orders issued pursuant to the Act, during the month is more than the skim milk and butterfat available for assignment to Class I milk pursuant to the preceding proviso hereof, assigned to Class I milk at an approved plant shall be not less than that obtained by prorating the assignable Class I milk at the transferee plant over the receipts at such plant from all plants subject to the classification and pricing provisions of this and other orders issued pursuant to this Act.

§ 1035.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports

of receipts and utilization for each pool plant and shall compute the pounds of butterfat and skim milk in each class at such plant: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids in the form of whole milk.

§ 1035.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1035.45, the market administrator shall determine the classification of producer milk at the pool plants of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk assigned to producer milk pursuant to § 1035.41(c)(2):

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with the lowest priced utilization, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing provisions of an order issued pursuant to the Act;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with the lowest priced utilization, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;

(4) Subtract from the remaining pounds of skim milk in Class III milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class III milk, the pounds of skim milk in other source milk received in the form of fluid milk products which are subject to the Class I pricing provisions of another order issued pursuant to the Act;

(6) Add to the pounds of skim milk remaining in Class III milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 1035.44(a);

(8) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class III milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(9) Add to the pounds of skim milk remaining in Class III milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining

pounds of skim milk in series beginning with Class III. Any amount of excess so subtracted shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 1035.50 Basic formula price.

The higher of the prices computed pursuant to paragraphs (a) or (b) of this section, rounded to the nearest whole cent, shall be known as the basic formula price.

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or the Department:

PRESENT OPERATOR AND LOCATION

Borden Co., Mt. Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price computed pursuant to § 1035.51(c).

§ 1035.51 Class prices.

Subject to the provisions of § 1035.52 the class prices per hundredweight shall be as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price for the preceding month, plus \$1.40: *Provided*, That for milk received from dairy farmers to an approved plant outside the base zone the price shall be the basic formula for the preceding month, plus \$1.90.

(b) *Class II milk price.* The Class II milk price shall be the Class III price for the month, plus 40 cents.

(c) *Class III milk.* The Class III price shall be determined by the market administrator as follows:

(1) Multiply the Chicago butter price by 4.24;

(2) Multiply by 8.2 the weighted average of carlot prices for nonfat dry milk solids for human consumption, spray process, f.o.b. manufacturing plants in the Chicago area as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month;

(3) Add into one sum the amounts obtained in subparagraphs (1) and (2) of this paragraph; and

(4) Subtract 75.2 cents therefrom.

§ 1035.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices

for the month calculated pursuant to § 1035.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the Chicago butter price for the current month by 0.120.

(b) *Class II milk.* Multiply the Chicago butter price for the current month by 0.115.

(c) *Class III milk.* Multiply the Chicago butter price for the current month by 0.110.

§ 1035.53 Location differentials to handlers.

For approved milk which is received at an approved plant located 60 miles or more from the Post Offices of Detroit Lakes and Thief River Falls, Minnesota, and Bismarck, Breckenridge, Grafton, Minot and Williston, North Dakota, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1035.51 shall be reduced by 10 cents for the first 75 miles or less and by 1.5 cents for each additional 10 miles or fraction thereof that such plant is from the nearest of the Post Offices of Detroit Lakes and Thief River Falls, Minnesota, and Bismarck, Breckenridge, Grafton, Minot and Williston, North Dakota: *Provided*, That for the purpose of calculating such location differential, fluid milk products which are transferred between approved plants shall be assigned to any remainder of Class III milk in the transferee-plant after making the calculations prescribed in § 1035.46(a) (4), and the comparable steps in § 1035.46(b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 1035.54 Use of equivalent price.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISION

§ 1035.60 Producer-handlers.

Sections 1035.40 through 1035.46, 1035.50 through 1035.54, 1035.70 through 1035.73, and 1035.80 through 1035.89, shall not apply to a producer-handler.

§ 1035.61 Plants subject to other Federal orders.

The provisions of this order shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless: Such plant is qualified as a pool plant pursuant to § 1035.12(a) and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets (excluding pool plants) in the Minnesota-North Dakota marketing area than in the marketing area regulated

pursuant to such other order: *Provided*, That the operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 1035.30) and allow verification of such reports by the market administrator.

§ 1035.62 Handler operating an approved plant which is not a pool plant.

Each handler who operates an approved plant which is not a pool plant during a month, shall in lieu of the payments required pursuant to §§ 1035.80 to 1035.85, pay to the market administrator, for the producer-settlement fund, on or before the 25th day after the end of such month, the amount resulting from the computation of paragraph (a) of this section unless the handler elects the computation specified in paragraph (b) of this section.

(a) The product of the quantity of milk received by such handler which was (1) disposed of during the month in the marketing area on routes as Class I milk by the difference between the applicable Class I and the Class III prices or (2) used to produce cottage cheese, ice cream and ice cream mix so disposed of as Class II by the difference between the Class II and Class III prices.

(b) Any plus amount resulting from the following computation: From an amount equal to the net pool obligation which would be computed pursuant to § 1035.70 for such handler for such month if such handler operated a pool plant deduct the gross payments made by such handler to approved dairy farmers for milk received during such month.

§ 1035.63 Rate of payment on unpriced milk.

The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk or Class II milk shall be any plus amount obtained by subtracting from the Class I price and the Class II price, adjusted by the Class I and Class II butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk;

(a) During the months of April, May and June the Class III price adjusted by the Class III butterfat differentials, and

(b) During the months of July through March, the uniform price adjusted by butterfat and location differentials.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 1035.70 Computation of value of milk for each handler.

The value of approved milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 1035.46(a)(9) and the corresponding step of (b) by the applicable class prices;

(c) Add the amount equal to the difference between the Class I and Class III prices or the Class II and Class III prices, respectively for the current month, for skim milk and butterfat in inventory which is subtracted from Class I or Class II pursuant to § 1035.46(a)(8) and the corresponding step of § 1035.46(b) which is not in excess of the skim milk and butterfat remaining in Class III milk in the previous month pursuant to § 1035.46(a)(5) and the corresponding step of § 1035.46(b).

(d) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 1035.46(a)(2) and (3) and the corresponding step of (b), by the rate of payment on unpriced milk determined pursuant to § 1035.63 at the nearest nonpool plant from which an equivalent amount of other source skim milk or butterfat was received: *Provided*, That if the source of any Class I products at a pool plant is not clearly established or if such skim milk is in the form of nonfat dry milk solids they shall be considered to have been received from a source at the location of the pool plant where it is classified.

§ 1035.71 Computation of aggregate value used to determine uniform prices.

For each month the market administrator shall compute an aggregate value from which to determine uniform prices per hundredweight for producer milk of 3.5 percent butterfat content, as follows:

(a) Combine into one total the values computed pursuant to § 1035.70 for all handlers who made the reports prescribed in § 1035.30 for such month, except those in default of payments required pursuant to § 1035.84 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 3.5 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and multiplying the result of the total hundredweight of producer milk;

(c) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 1035.82; and

(d) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund.

§ 1035.72 Computation of uniform price.

For each of the months of July through December the market administrator shall compute a uniform price for producer milk of 3.5 percent butterfat content, as follows:

(a) Divide the aggregate value computed pursuant to § 1035.71 by the total

hundredweight of producer milk included in such computations; and

(b) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (a) of this section. The resulting figure shall be the uniform price for producer milk.

§ 1035.73 Computation of price for base milk.

For each of the months of January through June the market administrator shall compute a price per hundredweight for base milk received from producers as follows:

(a) From the aggregate value computed pursuant to § 1035.71 subtract an amount computed by multiplying the total pounds of excess milk included in these computations by the price for Class III milk of 3.5 percent butterfat content computed pursuant to § 1035.51(b);

(b) Divide the resulting sum by the total hundredweight of base milk included in these computations; and

(c) Subtract not less than 4 cents nor more than 5 cents per hundredweight from the price computed pursuant to paragraph (a) of this section. The result shall be known as the "price for base milk" of 3.5 percent butterfat content.

PAYMENT FOR MILK

§ 1035.80 Time and method of payment.

On or before the 12th day after the end of each month, each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) For each of the months of July through December, both inclusive, to each producer for milk, for which payment is not made to a cooperative association pursuant to paragraph (c) of this section, at not less than the uniform price computed in accordance with § 1035.72 adjusted pursuant to §§ 1035.81, 1035.82, and 1035.87.

(b) For each of the months of January through June, both inclusive, to each producer for milk, for which payment is not made to a cooperative association pursuant to paragraph (c) of this section, at not less than the price for base milk computed in accordance with § 1035.73 with respect to base milk received from such producer, and at not less than the Class III price computed pursuant to § 1035.51(b) with respect to excess milk received from such producer, adjusted pursuant to §§ 1035.81, 1035.82 and 1035.87.

(c) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk, each handler shall pay to the cooperative association on or before the 13th and 26th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable for such producer milk. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar

month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(d) In making the payments to producers pursuant to paragraphs (a) and (b) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(3) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(4) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(5) The net amount of payment to such producer or cooperative association.

§ 1035.81 Butterfat differentials to producers.

The applicable uniform prices to be paid each producer pursuant to § 1035.80 shall be adjusted for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I, Class II, and Class III milk during the month pursuant to § 1035.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resulting figure to the nearest one-tenth of a cent.

§ 1035.82 Location differentials to producers.

(a) The uniform price for producer milk received at a pool plant located 60 miles or more from the Post Offices of Detroit Lakes and Thief River Falls, Minnesota, and Bismarck, Breckenridge, Grafton, Minot and Williston, North Dakota, by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced by 10 cents for the first 75 miles or less and 1.5 cents for each additional 10 miles or fraction thereof that such plant is from the nearest of the Post Offices of Detroit Lakes and Thief River Falls, Minnesota, and Bismarck, Breckenridge, Grafton, Minot and Williston, North Dakota; and

(b) The uniform price for producer milk received at a pool plant outside the base zone shall be increased 40 cents.

§ 1035.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1035.84 and 1035.86 and out of which he shall make all payments to handlers pursuant to §§ 1035.85 and 1035.86: *Provided*, That the market administrator shall offset any

payment due any handler against payments due from such handler.

§ 1035.84 Payments to the producer-settlement fund.

On or before the 12th day after the end of each month each handler shall pay to the market administrator the amount by which the obligation pursuant to § 1035.80 of such handler to producers for milk received at a pool plant is less than the value of such producer milk pursuant to § 1035.70: *Provided*, That to this amount shall be added one-half of one percent of any amount due the market administrator pursuant to this section for each month or any portion thereof that such payment is overdue.

§ 1035.85 Payments out of the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount by which the obligation pursuant to § 1035.80 of such handler for producer milk received during the month exceeds the value of such producer milk pursuant to § 1035.70: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1035.80 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1035.86 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to or from the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days of such billing, make payments to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or to a cooperative association discloses payment of an amount less than is required by § 1035.80, the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

§ 1035.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payment to producers pursuant to § 1035.80 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the

end of such month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received from producers and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and on or before the 15th day after the end of such month pay over such deductions to the cooperative association rendering such services.

§ 1035.88 Expenses of administration.

As his prorata share of the expense of administration hereof, each handler shall pay to the market administrator on or before the 15th day after the end of the month for such month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to butterfat and skim milk contained in (a) producer milk, including such handler's own production, (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1035.46, and (c) approved milk received at a nonpool plant: *Provided*, That if payment for such milk is not made pursuant to § 1035.80 (b) the expense of administration payable pursuant to this section shall be applicable only to the Class I milk disposed of in the marketing area (except to a pool plant) from such plant.

§ 1035.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this order for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this order, to make available to the market administrator or his representative all books and records required by this order

to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15) (a) of the Act, a petition claiming such money.

DETERMINATION OF BASE

§ 1035.95 Daily base.

The daily base for each producer shall be the amount obtained by dividing the total pounds of producer milk received from such producer by all handlers during the months of August through November immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of November inclusive, less the number of days for which no deliveries are made, but not less than 100 days.

§ 1035.96 Base rules.

The following rules shall apply in connection with the establishment of bases.

(a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the months of August through November:

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the first day of any month following receipt by the market administrator of an application for such transfer. Such application shall be on a form approved by the market administrator and shall be signed by the baseholder and by the person to whom such base is transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon receipt of such application signed by all joint holders.

(c) For each producer from whom milk was received by a handler on less than 100 days during the months of August to November, both inclusive, or who

commences the delivery of milk to a handler during the months of January to June, the daily base shall be computed by multiplying his average daily deliveries during each of the months of January to June, both inclusive by the following percentages: January and February, 60 percent; March and April, 50 percent; and May and June, 40 percent.

(d) Any producer for whom a base has been established pursuant to paragraph (a) of this section, may relinquish such base for the following base period by notifying the market administrator prior to January 31 of each year. The daily base of such producers shall then be determined pursuant to paragraph (b) of this section.

§ 1035.97 Announcement of established bases.

On or before January 1 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer, of the daily base established by such producer.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1035.100 Effective time.

The provisions of this order or any amendment to this order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1035.101 Suspension or termination.

The Secretary may suspend or terminate this order or any provision of this order whenever he finds this order or any provision of this order obstructs or does not tend to effectuate the declared policy of the Act. This order shall terminate in any event whenever the provisions of the Act authorizing it cease to be in effect.

§ 1035.102 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property, and

claims vested in the market administrator or such person pursuant thereto.

§ 1035.103 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1035.105 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this order.

§ 1035.106 Separability of provisions.

If any provision of this order, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this order, to other persons or circumstances shall not be affected thereby.

Proposed by the Land O'Lakes Creameries, Inc.:

Proposal No. 2. Amend § 1035.6 of the proposed order to read as follows:

§ 1035.6 Minnesota-North Dakota Marketing Area.

The Minnesota-North Dakota Marketing Area hereinafter called the "marketing area" means all territory within the counties of Becker, Clay, Kittson, Marshall, Norman, Otter Tail, Pennington, Red Lake, Wilkin, and Polk (except that portion of Polk county lying East of U.S. Highway #59), all in the State of Minnesota and Barnes, Benson, Bottineau, Burke, Burleigh, Cass, Cavalier, Dickey, Divide, Eddy, Foster, Grand Forks, Griggs, Kidder, La Moure, Logan, McHenry, McKenzie, McLean, Mountrail, Nelson, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, Ward, Williams, and Wells in North Dakota.

Proposal No. 3. Amend § 1035.22 of the proposed order to read as follows:

§ 1035.22 Price zones.

(a) Price zone A means all territory within an arc of 175 but less than 275 airline miles from the Courthouse, Duluth, Minnesota.

(b) Price zone B means all territory within an arc of 275 but less than 375 airline miles from the Courthouse, Duluth, Minnesota.

(c) Price zone C means all territory 375 or more airline miles from the Courthouse, Duluth, Minnesota.

Proposal No. 4. Add a new § 1035.24 to the proposed order to read as follows:

§ 1035.24 Plant.

"Plant" means the buildings, facilities, and equipment constituting a single operating unit or establishment whether owned or operated by one or more persons at which are maintained stationary holding tanks for milk, facilities and other equipment used during the month for the receiving, handling, or processing of milk or milk products provided that this definition shall not include any distribution point or any building, facilities, and equipment are used exclusively to transfer milk from one road vehicle to another.

Proposal No. 5. Amend § 1035.41 of the proposed order to read as follows:

§ 1035.41 Classes of utilization.

Subject to conditions set forth in § 1035.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products and

(2) Not accounted for as Class II milk.

(b) Class II milk shall be all:

(1) Skim milk (including skim milk equivalents of concentrated products) and butterfat used to produce cottage cheese, ice cream, ice cream mix and any other product other than those designated as Class I milk pursuant to paragraph (a) of this section.

(2) Skim milk and butterfat contained in inventory of fluid milk products on hand at the end of the month and;

(3) Skim milk and butterfat in shrinkage allocated to receipts of approved milk and other source milk (except milk diverted to a nonpool plant pursuant to § 1035.16 but not in excess of 2 percent such receipts of skim milk and butterfat respectively.

Proposal No. 6. Amend § 1035.50 of the proposed order to read as follows:

§ 1035.50 Class prices.

Subject to the provisions of § 1035.51, the class price per hundredweight shall be as follows for each respective price zone:

(a) *Class I milk prices.* (1) The price of Class I milk received f.o.b. plants in price zone A shall be the minimum announced price as determined for the month pursuant to Order #73 regulating the handling of milk in the Minneapolis, Minnesota, marketing area plus \$----- (amount to be developed at hearing).

(2) The price of Class I milk received f.o.b. plants in price zone B shall be the minimum announced price as determined for the month pursuant to Order #73 regulating the handling of milk in the Minneapolis, Minnesota, marketing area plus \$----- (amount to be developed at hearing).

(3) The price of Class I milk received f.o.b. plants in price zone C shall be the minimum announced price as determined for the month pursuant to Order #73 regulating the handling of milk in the Minneapolis, Minnesota, marketing area plus \$----- (amount to be developed at hearing).

(b) *Class II milk prices.* (1) The price for Class II milk received f.o.b. plants in price zone A shall be determined by the market administrator as follows:

(i) Multiply the Chicago butter price by 4.24.

(ii) Multiply by 8.2 the weighted average of car-lot price for nonfat dry milk for human consumption, spray process, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month, by the Department; and

(iii) Add the amounts computed pursuant to sub-divisions (i) and (ii) of this subparagraph and

(iv) Subtract 78.2 cents therefrom, provided that the Class II price for milk received at plants in price zone B and C respectively, shall be determined by deducting 80.2 cents and 82.2 cents respectively, in lieu of 78.2 cents.

Proposal No. 7. Eliminate §§ 1035.51 and 1035.53 of the proposed order; and renumber §§ 1035.52 and 1035.54 as §§ 1035.51 and 1035.52 respectively.

Proposal No. 8. Amend paragraph (c) in § 1035.71 of the proposed order to read as follows:

(c) Subtract an amount equal to the sum obtained by multiplying the producer's milk received at plants in price zone C by \$----- (amount to be developed at hearing) and the sum obtained by multiplying the producer's milk received at plants in price zone B by \$----- (amount to be developed at hearing).

Proposal No. 9. Amend paragraph (b) in § 1035.72 of the proposed order to read as follows:

(b) Subtract not less than \$0.04 nor more than \$0.05 from the price computed pursuant to paragraph (a) of this section. The resulting figure shall be the uniform price for producer milk received at plants in zone A. The uniform price for producer milk received at plant in zone B shall be such price plus \$----- (amount to be developed at hearing) and in zone C such price plus \$----- (amount to be developed at hearing).

Proposal No. 10. Eliminate § 1035.82 of the proposed order.

Proposed by the Lake Region Milk Producers Association:

Proposal No. 11. Amend § 1035.22 of the proposed order to read as follows:

§ 1035.22 *Base zone.*

"Base zone" means all the territory east of North Dakota State Highway No. 1.

Proposed by the Rugby Creamery Company:

Proposal No. 12. Include in the marketing area the North Dakota counties of Bottineau, Rolette, and Towner.

Proposed by the Fairmont Foods Company:

Proposal No. 13. Include in the marketing area Bottineau, Rolette, and Towner counties in North Dakota; and Mahnomen, Otter Tail, Red Lake, and Wadena counties in Minnesota.

Proposed by the Fergus Dairy:

Proposal No. 14. Include in the marketing area the counties of Otter Tail, Traverse, Big Stone, Grant, Stevens, Douglas, and Pope in Minnesota.

Proposed by Todd County Dairy Cooperative:

Proposal No. 15. Include Todd County, Minnesota, in the marketing area.

Copies of this notice may be procured from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 20th day of June 1960.

ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F.R. Doc. 60-5759; Filed, June 22, 1960;
8:47 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 426]

AIRWORTHINESS DIRECTIVES

Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (sec. 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator by amending Amendment 132, 25 F.R. 3207. It has been determined that Amendment 132 should also be made applicable to Lockheed Model 1049E aircraft, the only Lockheed Model 1049 Series aircraft to which the amendment does not presently apply. The proposed amendment will accomplish this.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before July 25, 1960, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) (14

CFR Part 507), by adding the following: Amendment 132, Lockheed Model 1049, 1049C, 1049D, 1049F, 1049G, 1049H and 1649A aircraft, as it appeared in 25 F.R. 3207, is amended by revising the applicability statement to read as follows:

Applies to all Lockheed 1049 Series and 1649A aircraft.

Issued in Washington, D.C., on June 16, 1960.

B. PUTNAM,
Acting Director, Bureau of
Flight Standards.

[F.R. Doc. 60-5741; Filed, June 22, 1960;
8:45 a.m.]

[14 CFR Part 507]

[Reg. Docket No. 427]

AIRWORTHINESS DIRECTIVES

Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (§ 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive requiring a crankshaft modification to North American T-28A aircraft R-1300-1B engines.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before July 25, 1960, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) (14 CFR Part 507), by adding the following:

NORTH AMERICAN. Applies to all T-28A aircraft certificated in the restricted category.

Compliance required as indicated.

In order to further safeguard against failure of crankshafts in flight, at the next engine overhaul but not later than July 1, 1961, steel torsional vibration damper crankshaft counterweights must be installed in all R-1300-1B engines and the crankshafts rebalanced in accordance with Wright Aeronautical Division Service Bulletin No. C7-75 (Change 63 of T.O. 2R-R1300-5).

Issued in Washington, D.C., on June 16, 1960.

B. PUTNAM,
Acting Director, Bureau of
Flight Standards.

[F.R. Doc. 60-5742; Filed, June 22, 1960;
8:45 a.m.]

[14 CFR Part 507]

[Reg. Docket No. 428]

AIRWORTHINESS DIRECTIVES

Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (§ 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive covering requirements for inspection and balancing of Aeroproducts A6441FN-606 propeller blades installed on Lockheed 188 Series aircraft to minimize possible occurrence of propeller roughness or failure.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before July 25, 1960, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a), (14 CFR Part 507), by adding the following:

AEROPRODUCTS. Applies to A6441FN-606 propellers installed on Lockheed 188 Series aircraft.

Compliance required as indicated.

As a result of investigations, it has been determined that the following must be accomplished to minimize the possible occurrence of propeller roughness and/or failures:

Not later than November 1, 1960, the thrust member thickness must be determined per Allison Propeller Bulletin 63-127. All blades that do not meet thrust member thickness as prescribed in Allison Propeller Bulletin 63-127 must be removed from service prior to further flight. Concurrently with this inspection all blades shall be classified aerodynamically per Allison Propeller Bulletin 63-125.

(Allison telegram to all operators dated May 19, 1960, and Allison Propeller Bulletins Nos. 63-125 and 63-127 cover this same subject.)

Issued in Washington, D.C., on June 17, 1960.

OSCAR BAKKE,
Director, Bureau of
Flight Standards.

[F.R. Doc. 60-5740; Filed, June 22, 1960; 8:45 a.m.]

FEDERAL COMMUNICATIONS
COMMISSION

[47 CFR Part 3]

[Docket No. 13596; FCC 60-699]

STANDARD BROADCAST STATIONS

Notice of Inquiry

In the matter of inquiry into amendment of Part 3 of the Commission's rules and technical standards to permit standard broadcast stations to operate with full carrier and single sideband, Docket No. 13596 (RM-156).

1. On December 31, 1959, Kahn Research Laboratories, Inc., Freeport, Long Island, filed a petition for rule making (RM-156) requesting an amendment of Part 3 of the Commission's rules to permit standard broadcast stations to operate with a "compatible single-sideband system of modulation" known as CSSB.

2. In support of the request, petitioner urges that the adoption of its proposal would benefit both broadcasters and the public; that the single sideband transmission system will permit reception on existing receivers without any modification; that the resulting signal will be more listenable; and that the improvement over the present system has "been foreshadowed through voluminous data compiled by means of developmental broadcasting." Petitioner claims that the proposed mode of operation will result in improved high frequency response, increased signal to noise ratio, reduction in co-channel and adjacent channel interference, reduction in television receiver radiation interference, and reduction of certain types of fading distortion.

3. Several standard broadcast stations¹ have in the past been authorized to conduct experiments in order to test the CSSB system and to gather data regarding this type of operation in the standard broadcast band. This data and the information made available by the petitioner indicate that the proposal has sufficient merit to warrant further inquiry. However, they are not conclusive with regard to establishing the advantages claimed for the system and in some very important respects do not throw any light on the problems involved. For example, little information is available with respect to the advantage claimed in the reduction of selective fading. No information or data is available with respect to the potential of interference to other stations.

4. Before deciding upon the desirability of instituting rule making and in order to provide time in which parties may gather data and information necessary for such a proceeding, we believe that it would be appropriate and useful to afford all interested parties an opportunity to submit such data and views as they feel should be taken into account.

5. Written comments may be filed on or before September 30, 1960.

¹ KDKA, Pittsburgh, WSM, Nashville, WGBB, Freeport, L.I., WABC, New York, N.Y., and WMGM, New York, N.Y.

6. Authority for the institution of this proceeding is found in sections 303(e) and 403 of the Communications Act of 1934, as amended.

7. In accordance with the provisions of § 1.54 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

8. Data and views are desired, in particular, on the following issues:

(a) Is there a sufficient interest in single sideband operation in the broadcast band by the public and broadcasters to warrant the institution of rule making?

(b) What are the methods available for obtaining single sideband operation which are compatible with present operation, and what are the advantages and disadvantages of each?

(c) Are there any supporting data or measurements to support the claimed advantages and to evaluate the disadvantages of the methods?

(d) Is there a potential of greater interference to existing stations from such operation? If so, what means may be taken to reduce this interference to the level encountered by the present assignments and method of transmission, and with such reductions what are the advantages to these systems?

(e) What burdens are placed on existing receivers relative to tuning, bandwidth, quality, etc., in order to receive signals equal in quality to that possible under the present method of transmission?

(f) What parameters should be adopted in order to derive the maximum benefit of the proposed operation and to insure no greater level of interference to existing stations?

(g) What would be the effect on the coverage of a station operating under the proposed system and proposed standards?

(h) What co-channel and adjacent channel ratios of desired to undesired signals should be applied in the evaluation of proposals to utilize this system to insure that other stations will receive protection from interference equivalent to that afforded such stations by conventionally modulated stations under § 3.182(w) of the Commission's rules?

(i) In what respects is the proposed operation contrary to the terms of the North American Regional Broadcasting Agreement (NARBA)?

9. The comments should be in the form of technical data and measurements which in general may be obtained in a laboratory without the need for radiation through space. In the event radiation is necessary, consideration will be given to requests for experimentation for limited periods of time.

Adopted: June 15, 1960.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-5782; Filed, June 22, 1960; 8:51 a.m.]

Notices

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

[BDSA Delegation 1 as amended
May 31, 1960]

DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

1. *Authority.* This amended delegation of authority to the Secretary of Defense is issued pursuant to the Defense Production Act of 1950, as amended, Executive Order 10480 (18 F.R. 4939) as amended, Defense Mobilization Order I-7 (18 F.R. 5366) as amended, and Department of Commerce Order 152 (18 F.R. 6503) as amended.

2. *General.* The Secretary of Defense is delegated the authority to make allotments of controlled materials and to apply or assign to others the right to apply DO ratings and allotment numbers with respect to contracts and delivery orders to meet programs authorized by the Office of Civil and Defense Mobilization for or through the Department of Defense.

3. *Production and construction equipment.* (a) With respect to production equipment and construction equipment, the authority delegated to the Secretary of Defense to assign to others the right to apply DO ratings and allotment numbers is limited to: (1) Prime or subcontractors on orders for delivery of production equipment required to support authorized procurement programs of the Department of Defense or its delegate agencies, and (2) prime or subcontractors on orders for delivery of construction equipment for use on construction in Alaska and Hawaii and outside the other 48 States and the District of Columbia.

(b) The authority delegated by paragraph 3(a)(1) of this delegation for delivery of production equipment may be assigned to prime or subcontractors only where it is determined that they cannot otherwise obtain such equipment when needed to produce items to be delivered on rated orders.

(c) The authority delegated by paragraph 3(a)(2) of this delegation for delivery of construction equipment may be assigned to prime or subcontractors only where such equipment is to be used for construction projects and only if the following conditions are satisfied:

(1) Department of Defense reserve equipment is not available for the work;

(2) Construction by troops is not practical;

(3) The contractor is fully utilizing existing available equipment in the area;

(4) The equipment cannot be obtained in time without use of ratings; and

(5) Title to the equipment would vest in the United States, either at the time of purchase, at some time during the

life of the contract, or upon completion of the contract.

(d) As used in this delegation, the term "construction equipment" means any item (exclusive of parts thereof) listed in List A of BDSA Order M-43A.

4. *Delivery scheduling.* The Secretary of Defense is also delegated the authority to reschedule deliveries of materials which are required in support of the following Department of Defense programs: Aircraft Program (A1), Missiles Program (A2), Ships Program (A3), Tank-Automotive Program (A4), Weapons Program (A5) and Ammunition Program (A6): *Provided*, That such authority shall be applicable (1) only to rescheduling of deliveries among rated orders or authorized controlled material orders bearing such program identifications, and (2) only to the extent that such rescheduling of deliveries requires no change in production schedules of the person making the deliveries.

5. *DX authority.* (a) The Secretary of Defense is also delegated the authority to apply or assign to others the right to apply DX ratings and DX allotment numbers to contracts and delivery orders to meet those programs designated as eligible for DX program rating by the Office of Civil and Defense Mobilization, including but not limited to research and development, construction and production under such programs.

(b) Subject to the following conditions, the Secretary of Defense is also delegated the authority to apply or assign to others the right to apply DX ratings and DX allotment numbers to contracts and delivery orders to meet programs other than those designated as eligible for DX program rating by the Office of Civil and Defense Mobilization:

(1) The Secretary of Defense will redelegate such authority to only the Assistant Secretary of Defense (Supply and Logistics) and the Assistant Secretary of Defense (Supply and Logistics) will redelegate such authority for use by only one other delegate within the Department of Defense.

(2) The use of DX ratings and DX allotment numbers will be limited to those cases in which the following determinations have been made: (i) The necessity for obtaining the materials or products is of such a compelling and urgent nature that failure to use a DX rating or a DX allotment number will result in serious dislocation of military programs; and (ii) the extreme urgency for materials or products does not permit utilization of coordinated authorization procedures for the issuance of DX ratings and DX allotment numbers established within BDSA; and (iii) the materials or products cannot be obtained when needed by the use of DO ratings and non-DX allotment numbers.

(3) The Department of Defense will furnish to the Office of Industrial Mobilization, BDSA, immediately after issu-

ance, a copy of each action authorizing the use of a DX rating or a DX allotment number.

6. *Limitations of authority.* (a) This delegation shall not be used for (1) direct procurement or contractors' purchase of construction equipment for use on construction within the United States and the District of Columbia except in Alaska or Hawaii; (2) civilian type items for resale in Military Exchanges or packaging for such items other than packaging for export of such items; or (3) material purchased from exclusively retail establishments except in emergency situations to prevent imminent stoppage.

(b) This delegation shall be exercised within the limits (1) of such program determinations or other quantitative restrictions as may be established by the Office of Civil and Defense Mobilization, (2) in accordance with regulations and orders of BDSA, and (3) in accordance with such instructions (including instructions to forms), record-keeping and reporting requirements and directives as may be issued from time to time by BDSA or, subject to the approval of BDSA, by the Secretary of Defense or the Assistant Secretary of Defense (Supply and Logistics).

7. *Certifications.* In making allotments of controlled materials and in applying ratings and allotment numbers, as the case may be, the certification prescribed by the appropriate regulation or order of BDSA shall be used. In assigning to others the right to exercise this authority, the following certification shall be used:

By authority of the Business and Defense Services Administration, the right is hereby assigned to (description of scope of assignment).

This certification shall be authenticated with the signature of an authorized official of the Department of Defense or its delegate agency.

8. *Redelegations.* Subject to the specific limitations provided in this delegation, the authority granted by this delegation may be redelegated (a) within the Department of Defense, and (b) to agencies of the United States administering programs authorized by the Office of Civil and Defense Mobilization for or through the Department of Defense. No other redelegations of such authority shall be made without the prior written approval of the Business and Defense Services Administration. Any redelegations of such authority outside of the Department of Defense shall be made in writing and a copy thereof furnished to the Business and Defense Services Administration.

9. *Revocation.* All published supplements and all unpublished policy memoranda which were issued by the National Production Authority under NPA Delegation 1 or by the Business and Defense Services Administration under BDSA

Delegation 1 are hereby revoked and superseded by this amended delegation.

This amended delegation shall take effect May 31, 1960.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
WILLIAM A. WHITE, Sr.,
Administrator.

[F.R. Doc. 60-5763; Filed, June 22, 1960;
8:49 a.m.]

[BDSA Delegation 2 as amended May 31, 1960]

DELEGATION OF AUTHORITY TO ATOMIC ENERGY COMMISSION

1. *Authority.* This amended delegation of authority to the Atomic Energy Commission is issued pursuant to the Defense Production Act of 1950, as amended, Executive Order 10480 (18 F.R. 4939) as amended, Defense Mobilization Order I-7 (18 F.R. 5366) as amended, and Department of Commerce Order 152 (18 F.R. 6503) as amended.

2. *General.* The Atomic Energy Commission is delegated the authority to make allotments of controlled materials and to apply or assign to others the right to apply DO ratings and allotment numbers with respect to contracts and delivery orders to meet programs authorized by the Office of Civil and Defense Mobilization for or through the Atomic Energy Commission.

3. *Construction equipment and materials and capital equipment.* With respect to construction equipment, construction materials and capital equipment, the authority delegated to the Atomic Energy Commission to assign to others the right to apply DO ratings and allotment numbers is limited to:

(a) Prime or subcontractors on orders for delivery of construction equipment specifically required to support authorized programs of the Atomic Energy Commission (1) where such equipment will be the property of the Atomic Energy Commission, (2) when there has been a determination that the contractor is fully utilizing his existing construction equipment to meet rated orders for construction and (3) when there has been a determination that the construction equipment cannot be obtained from Atomic Energy Commission reserves and that the contractor has exhausted all reasonable efforts to obtain new or used construction equipment on an unrated basis;

(b) Prime or subcontractors (except suppliers of electric power service) on orders for delivery of construction materials and capital equipment, except construction equipment, required by the contractor (1) for use in the construction (including maintenance, repair and operating supplies required for on-site construction operations) of a plant or facility or addition thereto which, upon completion, will be operated exclusively or primarily for Atomic Energy Commission purposes, or (2) for use in the operation of a plant or facility which is operated exclusively for Atomic Energy Commission purposes;

(c) Persons other than prime or subcontractors (except suppliers of elec-

tric power service) on orders for delivery of construction materials and capital equipment, except construction equipment, where the Atomic Energy Commission has determined in each case that the delivery of such materials or equipment on schedule is necessary and provides the only reasonable and practical means to meet authorized programs of the Atomic Energy Commission, and that such persons are making maximum use of plants or facilities otherwise available to meet Atomic Energy Commission requirements.

(d) As used in this delegation, the term "construction equipment" means any item (exclusive of parts thereof) listed in List A of BDSA Order M-43A.

4. *DX authority.* (a) The Atomic Energy Commission is also delegated the authority to apply or assign to others the right to apply DX ratings and DX allotment numbers to contracts and delivery orders to meet those programs designated as eligible for DX program rating by the Office of Civil and Defense Mobilization, including but not limited to research and development, construction and production under such programs.

(b) Subject to the following conditions, the Atomic Energy Commission is also delegated the authority to apply or assign to others the right to apply DX ratings and DX allotment numbers to contracts and delivery orders to meet programs other than those designated as eligible for DX program rating by the Office of Civil and Defense Mobilization:

(1) The Atomic Energy Commission will redelegate such authority to only its General Manager who will redelegate such authority to only the Director, Division of Construction and Supply, Atomic Energy Commission, and the Director, Division of Construction and Supply, Atomic Energy Commission, will redelegate such authority for use by only one other delegate within the Atomic Energy Commission.

(2) The use of DX ratings and DX allotment numbers will be limited to those cases in which the following determinations have been made: (i) The necessity for obtaining the materials or products is of such a compelling or urgent nature that failure to use a DX rating or a DX allotment number will result in serious dislocation of construction or operating programs; and (ii) the extreme urgency for materials or products does not permit utilization of coordinated authorization procedures for the issuance of DX ratings and DX allotment numbers established within BDSA; and (iii) the materials or products cannot be obtained when needed by the use of DO ratings and non-DX allotment numbers.

(3) The Atomic Energy Commission will furnish to the Office of Industrial Mobilization, BDSA, immediately after issuance, a copy of each action authorizing the use of a DX rating or a DX allotment number.

5. *Limitations of authority.* (a) This delegation shall not be used for material purchased from exclusively retail establishments except in emergency situations to prevent imminent stoppage.

(b) This delegation shall be exercised within the limits of such program determinations or other quantitative restrictions as may be established by the Office of Civil and Defense Mobilization, in accordance with regulations and orders of BDSA, and in accordance with such instructions (including instructions to forms), record-keeping and reporting requirements, and directives as may be issued from time to time by BDSA.

6. *Certifications.* In making allotments of controlled materials and in applying ratings and allotment numbers, as the case may be, the certification prescribed by the appropriate regulation or order of BDSA shall be used. In assigning to others the right to exercise this authority, the following certification shall be used:

By authority of the Business and Defense Services Administration, the right is hereby assigned to (description of scope of assignment).

This certification shall be authenticated with the signature of an authorized official of the Atomic Energy Commission or its delegate agency.

7. *Redelegations.* Subject to the specific limitations provided in this delegation, the authority granted by this delegation may be redelegated (a) within the Atomic Energy Commission, and (b) to agencies of the United States administering programs authorized by the Office of Civil and Defense Mobilization for or through the Atomic Energy Commission. No other redelegations of such authority shall be made without the prior written approval of the Business and Defense Services Administration. Any redelegations of such authority outside of the Atomic Energy Commission shall be made in writing and a copy thereof furnished to the Business and Defense Services Administration.

8. *Revocation.* All published supplements and all unpublished policy memoranda which were issued by the National Production Authority under NPA Delegation 1 or by the Business and Defense Services Administration under BDSA Delegation 1 are hereby revoked and superseded by this amended delegation.

This amended delegation shall take effect May 31, 1960.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
WILLIAM A. WHITE, Sr.,
Administrator.

[F.R. Doc. 60-5764; Filed, June 22, 1960;
8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-11495 etc.]

**SOUTHWESTERN OIL & REFINING
CO. ET AL.**

Notice of Severance

JUNE 17, 1960.

Southwestern Oil & Refining Company, (Operator), et al., Docket No. G-11495, etc.; Western Natural Gas Company, et al., Docket No. G-16760; Reese E. Carter (Operator), et al., Docket No. G-17298; Arkansas Fuel Corporation (Operator),

et al., Docket No. G-17403; Argo Oil Corporation, Docket No. G-17411; The Superior Oil Company, Docket No. G-17412; Francis A. Callery, Docket No. G-17416; Union Oil Company of California, Docket No. G-17456; Trice Production Company (Operator), et al., Docket No. G-17467; Petroleum, Inc. (Operator), et al., Docket No. G-17468; Pan American Petroleum Corporation, Docket No. G-17511; Delta Drilling Company (Operator), et al., Docket No. G-18135; Robert B. Prentice, et al., Docket No. G-18710; Shell Oil Company, Docket No. G-19044; Kerr-McGee Oil Industries, Inc., Docket No. G-19307; Union Oil Company of California, Docket No. G-19333; Standard Oil Company of California, Docket No. CI60-333.

Notice is hereby given that the applications filed by the respective Applicants, as listed above, beginning with Western Natural Gas Company, et al., Docket No. G-16760 and ending with Standard Oil Company of California, Docket No. CI60-333, heretofore scheduled for hearing to be held on June 30, 1960, at 9:30 a.m., e.d.s.t., in the above-entitled consolidated proceedings, are severed therefrom, for such disposition as may be appropriate.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-5744; Filed, June 22, 1960;
8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Notice 6]

ALASKA

Notice of Filing of Alaska Protraction Diagrams, Fairbanks Land District

JUNE 16, 1960.

Notice is hereby given that the following protraction diagrams have been officially filed of record in the Fairbanks Land Office, 516 Second Avenue, Fairbanks, Alaska. In accordance with 43 CFR 192.42a(c) (24 F.R. 4140, May 22, 1959) oil and gas offers to lease lands shown in these protracted surveys, filed 30 days after publication of this notice in the FEDERAL REGISTER, must describe the lands only according to the Section, Township and Range shown on the approved protracted surveys. The protraction diagrams are also applicable for all other authorized uses.

ALASKA PROTRACTION DIAGRAMS (UNSURVEYED)

COPPER RIVER MERIDIAN—FOLIO NO. 4

Sheet
No.

4. Ts. 9 through 12 N., Rs. 9 through 10 W.
 5. Ts. 9 through 12 N., Rs. 5 through 8 W.
 6. Ts. 9 through 12 N., Rs. 1 through 4 W.
 7. Ts. 5 through 8 N., Rs. 1 through 4 W.
 8. Ts. 5 through 8 N., Rs. 5 through 8 W.
 9. Ts. 5 through 8 N., Rs. 9 through 11 W.
 10. Ts. 1 through 4 N., Rs. 9 through 11 W.
 11. Ts. 1 through 4 N., Rs. 5 through 8 W.
 12. Ts. 1 through 4 N., Rs. 1 through 4 W.
- Cover sheet showing location map and index.

FAIRBANKS MERIDIAN—FOLIO NO. 4

Sheet
No.

1. Ts. 37 N., Rs. 17 through 20 W.
 2. Ts. 37 N., Rs. 21 through 24 W.
 3. Ts. 33 through 36 N., Rs. 21 through 24 W.
 4. Ts. 33 through 36 N., Rs. 17 through 20 W.
 5. Ts. 29 through 32 N., Rs. 17 through 20 W.
 6. Ts. 29 through 32 N., Rs. 21 through 24 W.
 7. Ts. 25 through 28 N., R. 25 W.
 8. Ts. 25 through 28 N., Rs. 21 through 24 W.
 9. Ts. 25 through 28 N., Rs. 17 through 20 W.
 10. Ts. 21 through 24 N., Rs. 17 through 20 W.
 11. Ts. 21 through 24 N., Rs. 21 through 24 W.
 12. Ts. 21 through 24 N., R. 25 W.
 13. Ts. 17 through 20 N., R. 25 W.
 14. Ts. 17 through 20 N., Rs. 21 through 24 W.
 15. Ts. 17 through 20 N., Rs. 17 through 20 W.
- Cover sheet showing location map and index.

FAIRBANKS MERIDIAN—FOLIO NO. 6

Sheet
No.

1. Ts. 13 through 16 N., Rs. 1 through 4 W.
 2. Ts. 13 through 16 N., Rs. 5 through 8 W.
 3. Ts. 13 through 16 N., Rs. 9 through 12 W.
 4. Ts. 13 through 16 N., Rs. 13 through 16 W.
 5. Ts. 9 through 12 N., Rs. 13 through 16 W.
 6. Ts. 9 through 12 N., Rs. 9 through 12 W.
 7. Ts. 9 through 12 N., Rs. 5 through 8 W.
 8. Ts. 9 through 12 N., Rs. 1 through 4 W.
 9. Ts. 5 through 8 N., Rs. 1 through 4 W.
 10. Ts. 5 through 8 N., Rs. 5 through 8 W.
 11. Ts. 5 through 8 N., Rs. 9 through 12 W.
 12. Ts. 5 through 8 N., Rs. 13 through 16 W.
 13. Ts. 1 through 4 N., Rs. 13 through 16 W.
 14. Ts. 1 through 4 N., Rs. 9 through 12 W.
 15. Ts. 1 through 4 N., Rs. 5 through 8 W.
 16. Ts. 1 through 4 N., Rs. 1 through 4 W.
- Cover sheet showing location map and index.

Copies of these diagrams are for sale at one dollar (\$1.00) per sheet and may be obtained from the Fairbanks Land Office, Bureau of Land Management, mailing address: 516 Second Avenue, Fairbanks, Alaska.

DANIEL A. JONES,
Manager,
Fairbanks Land Office.

[F.R. Doc. 60-5765; Filed, June 22, 1960;
8:49 a.m.]

[Notice 8]

ALASKA

Notice of Filing of Alaska Protraction Diagrams, Fairbanks Land District

JUNE 1, 1960.

Notice is hereby given that the following protraction diagrams have been officially filed of record in the Fairbanks Land Office, 516 Second Avenue, Fairbanks, Alaska. In accordance with 43 CFR 192.42a(c) (24 F.R. 4140, May 22, 1959) oil and gas offers to lease lands shown in these protracted surveys, filed 30 days after publication of this notice in the FEDERAL REGISTER, must describe the lands only according to the Section, Township and Range shown on the approved protracted surveys. The protraction diagrams are also applicable for all other authorized uses.

ALASKA PROTRACTION DIAGRAMS (UNSURVEYED)

FAIRBANKS MERIDIAN—FOLIO NO. 8

Sheet
No.

1. Ts. 13 through 16 N., Rs. 29 through 32 E.
 2. Ts. 13 through 16 N., Rs. 25 through 28 E.
 3. Ts. 13 through 16 N., Rs. 21 through 24 E.
 4. Ts. 13 through 16 N., Rs. 17 through 20 E.
 5. Ts. 9 through 12 N., Rs. 17 through 20 E.
 6. Ts. 9 through 12 N., Rs. 21 through 24 E.
 7. Ts. 9 through 12 N., Rs. 25 through 28 E.
 8. Ts. 9 through 12 N., Rs. 29 through 32 E.
 9. Ts. 5 through 8 N., R. 33 E.
 10. Ts. 5 through 8 N., Rs. 29 through 32 E.
 11. Ts. 5 through 8 N., Rs. 25 through 28 E.
 12. Ts. 5 through 8 N., Rs. 21 through 24 E.
 13. Ts. 5 through 8 N., Rs. 17 through 20 E.
 14. Ts. 1 through 4 N., Rs. 17 through 20 E.
 15. Ts. 1 through 4 N., Rs. 21 through 24 E.
 16. Ts. 1 through 4 N., Rs. 25 through 28 E.
 17. Ts. 1 through 4 N., Rs. 29 through 32 E.
 18. Ts. 1 through 4 N., R. 33 E.
 19. Ts. 1 through 4 S., R. 33 E.
 20. Ts. 1 through 4 S., Rs. 29 through 32 E.
 21. Ts. 1 through 4 S., Rs. 25 through 28 E.
 22. Ts. 1 through 4 S., Rs. 21 through 24 E.
 23. Ts. 1 through 4 S., Rs. 17 through 20 E.
 24. Ts. 5 through 8 S., Rs. 17 through 20 E.
 25. Ts. 5 through 8 S., Rs. 21 through 24 E.
 26. Ts. 5 through 8 S., Rs. 25 through 28 E.
 27. Ts. 5 through 8 S., Rs. 29 through 32 E.
 28. Ts. 5 through 8 S., Rs. 33 through 34 E.
- Cover sheet showing location map and index.

FAIRBANKS MERIDIAN—FOLIO NO. 9

Sheet
No.

1. Ts. 1 through 4 S., Rs. 13 through 16 E.
 2. Ts. 1 through 4 S., Rs. 9 through 12 E.
 3. Ts. 1 through 4 S., Rs. 5 through 8 E.
 4. Ts. 5 through 8 S., Rs. 13 through 16 E.
 5. Ts. 9 through 12 S., Rs. 13 through 16 E.
 6. Ts. 9 through 12 S., Rs. 5 through 8 E.
 7. Ts. 9 through 12 S., Rs. 1 through 4 E.
 8. Ts. 13 through 16 S., Rs. 1 through 4 E.
 9. Ts. 13 through 16 S., Rs. 5 through 8 E.
 10. Ts. 13 through 16 S., Rs. 9 through 12 E.
 11. Ts. 13 through 16 S., Rs. 13 through 16 E.
 12. Ts. 17 through 20 S., Rs. 13 through 16 E.
 13. Ts. 17 through 20 S., Rs. 9 through 12 E.
 14. Ts. 17 through 20 S., Rs. 5 through 8 E.
 15. Ts. 17 through 20 S., Rs. 1 through 4 E.
 16. Ts. 21 through 22 S., Rs. 1 through 4 E.
 17. Ts. 21 through 22 S., Rs. 5 through 8 E.
 18. Ts. 21 through 22 S., Rs. 9 through 12 E.
 19. Ts. 21 through 22 S., Rs. 13 through 16 E.
- Cover sheet showing location map and index.

Copies of these diagrams are for sale at one dollar (\$1.00) per sheet and may be obtained from the Fairbanks Land Office, Bureau of Land Management, mailing address: 516 Second Avenue, Fairbanks, Alaska.

DANIEL A. JONES,
Manager,
Fairbanks Land Office.

[F.R. Doc. 60-5746; Filed, June 22, 1960;
8:45 a.m.]

ALASKA

Notice of Filing of Plat of Survey for Administrative Needs in Future Disposition

JUNE 17, 1960.

1. Plat of extension survey of the lands described below will be officially filed in the Anchorage Land Office, Anchorage, Alaska, effective at 10:00 a.m. July 1, 1960.

SEWARD MERIDIAN

T. 1 N., R. 1 W.,
Sec. 11: E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 28: E $\frac{1}{2}$.

Containing 330 acres.

2. The land is located in the Chugach National Forest near Seward, Alaska. The East $\frac{1}{2}$ of Section 28 lies on the steep east slope of Iron Mountain, except a narrow portion along the east boundary, which is nearly level delta land. The Resurrection River crosses the northeastern portion of the section. The cover is spruce timber on the mountain slope, cottonwood and alder undergrowth on the low land. The soil varies from silt, sand and gravel to shale.

In section 11, the portion surveyed is the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ which is patented land and crossed from northeast to southwest by Salmon Creek. The land is level to gently rolling, and is covered with spruce and hemlock, alder and berrybush undergrowth. The soil is brown loam.

3. This survey was made to serve certain administrative needs in connection with the future disposition of lands under public land laws.

IRVING W. ANDERSON,
Manager,
Anchorage Land Office.

[F.R. Doc. 60-5747; Filed, June 22, 1960;
8:45 a.m.]

ALASKA

Notice of Proposed Withdrawal and Reservation of Lands

The Department of the Army has filed an application, Serial Number A. 052010 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and reserved for the Department of the Army. The applicant desires the land for construction of a small-boat basin at Dillingham.

For a period of 60 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Anchorage Operations Office, Cordova Building, Anchorage, Alaska.

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

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

The lands involved in the application are: The land is located in the Third Judicial Division, State of Alaska, and is bounded and described as follows:

Beginning at Corner No. 3 of U.S. Survey No. 2874; thence north along the boundary of said survey 379.50 feet, more or less, to Corner No. 4 of said Survey, being on the south right-of-way line of a public road; thence tracing said right-of-way line in a northwesterly direction 14 feet; thence S. 28°01' W., 110 feet; thence S. 82°36' W., 450 feet, more or less, to a point on the mean

high water line of Scandinavian Slough; thence southeasterly tracing said mean high water line 278 feet, more or less, to M.C. No. 2 of U.S. Survey No. 2874; thence east along the boundary of U.S. Survey No. 2874 347.16 feet, more or less, to the Point of Beginning.

Containing 2.67 acres, more or less.

L. T. MAIN,
Operations Supervisor.

[F.R. Doc. 60-5748; Filed, June 22, 1960;
8:45 a.m.]

[Classification 106]

NEVADA

Small Tract Classification;
Amendment

1. Effective June 16, 1960, Federal Register Document 55-2285 appearing on pages 1704 thru 1706 of the issue for March 11, 1955, is revoked as to the following described public lands:

MOUNT DIABLO MERIDIAN, NEVADA

T. 23 S., R. 61 E.,
Sec. 6, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$.

Containing 20 acres.

2. The lands are located in the Las Vegas Valley approximately 12 miles due south of Las Vegas in Clark County, Nevada. Elevation of these lands approximates 2,500 feet above sea level. The climate is dry. The area receives from 5 to 7 inches of rainfall annually. Topography ranges from level to rolling with soils varying from sands to gravel.

3. The land has been determined to be appropriated under the United States mining laws.

E. J. PALMER,
State Supervisor.

JUNE 16, 1960.

[F.R. Doc. 60-5749; Filed, June 22, 1960;
8:46 a.m.]

[Washington 03920]

WASHINGTON

Notice of Proposed Withdrawal and Reservation of Lands; Correction

JUNE 14, 1960.

In Federal Register Document 60-4948, June 2, 1960, at page 4889, the description of the land involved is corrected as follows:

The tract described as "T. 17 N., R. 10 E., W.M. Sec. 26, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ", is corrected to read "T. 17 N., R. 10 E., W.M. Sec. 26, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ".

FRED J. WEILER,
State Supervisor.

[F.R. Doc. 60-5766; Filed, June 22, 1960;
8:49 a.m.]

DEPARTMENT OF DEFENSE

Department of the Navy

[No. 22]

CERTAIN CLASSES AND TYPES
OF NAVAL VESSELS

Navigational Light Waivers

Certificate of the Secretary of the Navy under sections 143a and 360, Title 33 of United States Code.

All ships are warned that, if U.S. naval vessels are met on the high seas or on navigable waters of the United States during periods when navigational lights may be displayed, they may expect that certain navigational lights of some naval vessels may vary from the requirements of the Regulations for Preventing Collisions at Sea, 1948, 33 U.S. Code sections 144 to 147d, and rules applicable to the navigable waters of the United States, as to number, position, range of visibility or arc of visibility. These differences are necessitated by reasons of military function or special construction of the naval ships. An example is the aircraft carrier where the two white lights are in most instances on the island superstructure considerably displaced from the center or keel line of the vessel when viewed from ahead. Certain other naval vessels cannot comply with the horizontal separation requirements of the white lights, and the two white lights on even large naval vessels, such as some cruisers, will thus appear to be crowded together when viewed from a distance. Other naval vessels may also have unorthodox navigational light arrangements or characteristics when seen either underway or at anchor.

Naval vessels may also be expected to display certain other lights. These lights include, but are not limited to, different colored recognition light signals, landing lights on carriers, pulsating red lights to indicate speed to other naval ships, and green lights to indicate minesweeping operations. These lights may sometimes be shown in combination with navigational lights.

During peacetime naval maneuvers, naval ships, alone or in company, may also dispense with showing any lights, though efforts will be made to display lights on the approach of shipping.

33 U.S. Code, section 143a and 360, provides that the requirements of the Regulations for Preventing Collisions at Sea, 1948, the Inland Rules, the Great Lakes Rules, and the Western River Rules, as to the number, position, range of visibility, or arc of visibility of lights required to be displayed by vessels, shall not apply to any vessel or class of vessels of the Navy where the Secretary of the Navy shall find or certify that, by reason of special construction or purpose, it is not possible for such vessel or class of vessels to comply with the statutory provisions as to lights.

This waiver certificate consolidates and supersedes all previously approved waivers and includes additional information on waivers. It has been determined that, because of their construction, it is not possible for the classes or types of naval vessels, as hereinafter listed in the attached tabulation, which is made a part hereof, to comply with all of the requirements of the statutes enumerated in sections 143a and 360, Title 33, United States Code.

Now, therefore, I, Fred A. Bantz, Acting Secretary of the Navy, do hereby find and certify that these classes or types of vessels are naval vessels of special construction and that with respect to

NOTICES

the position of those certain navigation lights listed on such classes or types of vessels, it is not possible to comply with the requirements of the statutes enumerated in sections 143a and 360, Title 33, United States Code.

Further, I do find and certify that the aforesaid navigation lights where listed conform as closely as feasible to the applicable statutory requirements.

I withdraw herewith all previous certifications issued by me prior to the effective date of this certificate.

I do specify that the effective date of this certificate is June 9, 1960.

Dated at Washington, D.C., this June 9, 1960.

[SEAL]

F. A. BANTZ,

Acting Secretary of the Navy.

TABLE ONE

Vessel class or type	Distance in feet of the forward 20-point white light below minimum required height (based on requirements of International Rule 2(a)(iii))	Distance in feet below minimum required vertical separation between forward and after 20-point white lights (based on requirements of International Rule 2(a)(iii))	Ratio of horizontal to vertical separation of the two 20-point white lights (based on International Rule 2(a)(iii) which requires ratio of 3.0 to 1)	Minimum distance horizontally in feet between forward and after 20-point white lights								
CRUISERS												
CA (Heavy Cruiser)..... CAG (Guided Missile Heavy Cruiser). CG(N) (Guided Missile Cruiser). CL (Light Cruiser)..... CLG (Guided Missile Light Cruiser).	None.....	None.....	0.9 or greater to 1..	29 or greater.								
AIRCRAFT CARRIERS												
T-AKV (MSTS Auxiliary Cargo Ship). LPH (Amphibious Assault Ship). CVA (Attack Aircraft Carrier). CVS (ASW Support Aircraft Carrier).					11 or less.....	2 or less.....	0.7 or greater to 1..	20 or greater.				
AUXILIARIES												
ADG (Degaussing Vessel)..... AG (Miscellaneous)..... AGB (Icebreaker)..... AGS (Surveying Ship)..... AKS (General Stores Issue Ship). AN (Net Laying Ship)..... APB (Self-Propelled Barracks Ship). ARSD (Salvage Lifting Vessel).. AVB (Advanced Aviation Base Ship). AVM (Guided Missile Ship)..... AVP (Small Seaplane Tender)...									40 or less.....	3 or less.....	0.9 or greater to 1..	19 or greater.
DESTROYERS												
DD (Destroyer)..... DDE (Escort Destroyer)..... DDG (Guided Missile Destroyer). DDR (Radar Picket Destroyer). DL (Frigate)..... DLG (Guided Missile Frigate)...	18 or less.....	3 or less.....	0.9 or greater to 1..	17 or greater.								
AMPHIBIOUS WARFARE VESSELS												
APD (High Speed Transport)..... IFS (Inshore Fire Support Ship). LSD (Dock Landing Ship)..... LST (Tank Landing Ship)..... LSM (Medium Landing Ship)...					40 or less.....	5 or less.....	1.0 or greater to 1..	21 or greater.				
PATROL VESSELS												
DE (Escort Vessel)..... DER (Radar Picket Escort Vessel). PC (Submarine Chaser)..... PCE (Escort)..... PCER (Rescue Escort).....									17 or less.....	5 or less.....	1.0 or greater to 1..	19 or greater.
MINE VESSELS												
MHC (Minehunter Coastal)..... MSF (Minesweeper Fleet)..... MSO (Minesweeper Ocean).....	16 or less.....	3 or less.....	0.6 or greater to 1..	8 or greater.								
SERVICE VESSELS												
YG (Garbage Lighter Self-Propelled). YV (Drone Aircraft Catapult Control Craft). Self-Propelled Crane (No hull classification).					16 or less.....	5 or less.....	0.6 or greater to 1..	12 or greater.				

TABLE TWO

SUBMARINES

(a) One, twenty-point white light is generally carried in the forward part of the vessel and will not be less than 15 feet above the hull. This light is visible over a maximum arc of 27 points, that is from right ahead to 5½ points (62 degrees) abaft the beam on either side.

(b) A second, twenty-point or other white light is not installed.

(c) Side lights may be visible simultaneously across the bow. The side lights may also be visible 30 degrees abaft the beam.

(d) Not-under-command lights are not installed.

(e) The white light showing to the stern will be visible over a maximum arc of 23 points of the compass, that is from right astern to 11½ points (approximately 126 degrees) to either side. This light is not installed at the stern but may be located from 20 to 190 feet forward of the stern.

(f) The forward anchor light is installed at a height not less than six feet above the hull, and the after anchor light is installed at a height of not less than five feet lower than the forward anchor light; however, it is not installed at the extreme stern of the ship.

NOTES

1. The after range light when carried by naval vessels is a 20-point white light as required by International Rule 2(a)(ii).

2. The arc of visibility of the after 20-point white light on certain heavy cruisers (CA) may be obstructed by as much as one point when viewed from ahead.

3. On aircraft carriers (CVA and CVS) and aircraft carrier types (LPH and T-AKV), the following additional variations exist:

a. The two 20-point white lights are located at a maximum distance of 89 feet to the left of the keel line when viewed from ahead. (This distance is measured perpendicularly from the keel line to the two white lights.)

b. The forward anchor lights are located at a maximum of 8 feet vertically below the uppermost continuous deck (two lights at the same level). These lights are located forward and on either side of the vessel.

c. The after anchor lights are located a maximum of 31 feet vertically below the uppermost continuous deck (two lights at the same level). These lights are located aft and on either side of the vessel.

4. On certain utility landing craft (LCU) only one 20-point white light is installed and is located in the afterpart of the ship. Also in certain of these ships, the 20-point white light is located 11 feet or less to the left of the keel line when viewed from ahead.

5. On 94-foot aircraft rescue boats (no hull classification) and motor-torpedo boats (PT), the 20-point white light is located at a maximum of 14 feet below the required height (based on International Rule 2(a)(iii)).

6. On motor-torpedo boats (PT) the lower towing light is located at a maximum of 4 feet below the required height (based on International Rule 3(a)).

7. 57-foot minesweeping boats (MSB), 50-foot minesweepers (MS) and 36-foot minesweeping launches (MSL) when engaged in mine operations will carry the required day signals and underwater task lights (based on International Rule 4 (a) and (c)). However, the underwater task lights will be carried at a 3-foot separation on 36-foot minesweeping launches (MSL). Day shapes will be carried as follows:

36' MSL—15" diameter shape—1 foot separation of shapes.

50' MS—15" diameter shape—1 foot separation of shapes.

57' MSB—18" diameter shape—4 feet separation of shapes.

8. On self-propelled crane (no hull classification) considerable reduction in the all around visibility of anchor lights exists. Two sets of "not under command" lights are installed, one set on either side of the superstructure (based on International Rule 4(a)).

9. Great Lakes—Naval vessels operating on the Great Lakes shall carry their navigational lights and shapes at the positions complying with the Regulations for Preventing Collisions at Sea, 1948, except as follows. For naval vessels under 150 feet in length requiring only one white light under the Regulations for Preventing Collisions at Sea, 1948, an additional all around white light will be carried which in some cases may be carried less than 50 feet abaft the forward light. In addition, the after white range light required by Rule 3(c), Great Lakes Rules, is a 20-point white light, so fixed as to show the light 10 points on each side of the vessel, that is, from right ahead to two points abaft the beam on either side. These vessels will, however, carry the white light stern light required by Rule 10, Regulations for Preventing Collisions at Sea, 1948, to light the vessels aft. At anchor these vessels will display in lieu of the two lights forward and two lights aft, Rule 9, Great Lakes Rule, a single all around white anchor light forward and a single all around white anchor light aft located in accordance with Rule 11 (a) and (b), Regulations for Preventing Collisions at Sea, 1948, as modified for aircraft carriers and aircraft carrier types by Note 3 above. Submarines will be lighted as provided by Table Two.

[F.R. Doc. 60-5681; Filed, June 21, 1960; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13593; FCC 60-692]

MARK TWAIN BROADCASTING CO.

Order Designating Application for Hearing on Stated Issues

In re application of Mark Twain Broadcasting Co., Hannibal, Missouri, Docket No. 13593, File No. BR-1141; for renewal of license of station KHMO.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 15th day of June 1960;

The Commission having under consideration (1) the above-entitled application; (2) the Commission's letters of May 7 and December 9, 1959, sent to the above-named applicant pursuant to section 309(b) of the Communications Act of 1934, as amended; and (3) the reply filed by the above applicant on February 15, 1960; and

It appearing that in its letters dated May 7 and December 9, 1959, the Commission notified the applicant of the grounds and reasons for the Commission's inability to make a finding that a grant of the above renewal application would serve the public interest, convenience or necessity; that the applicant was being afforded the opportunity

to reply; and that in said reply, the applicant set forth the facts and reasons why it believed that said application should be granted; and

It further appearing that upon due consideration of the above application, Commission letters and licensee's reply, the Commission is unable to find that a grant of said application for renewal of license would serve the public interest, convenience or necessity; that, therefore, a hearing is required; and that no questions exist as to the qualifications of the applicant except as to the matters involved in the issues set forth below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the above application for renewal of license is designated for hearing, at a time and place to be specified in a subsequent order upon the following issues:

1. To determine whether the above-captioned applicant prepared and maintained its transmitter logs for Station KHMO in violation of the provisions of §§ 3.111 to 3.115, of the Commission's rules.

2. To determine whether, in connection with the above-captioned application (BR-1141) and its remote control application (BRC-1281) filed on September 2, 1958, the applicant herein submitted falsified and forged transmitter logs and other false and misleading information to the Commission.

3. To determine whether the applicant exercised reasonable licensee responsibility with respect to the maintenance of transmitter logs and, more particularly, in responding to the Commission's inquiry of May 7, 1959, relative to such log.

4. To determine whether, in light of the evidence adduced under the foregoing issues, the above-captioned applicant is qualified to be a broadcast licensee.

5. To determine whether, in light of the evidence adduced under the foregoing issues, a grant of the above-captioned application would serve the public interest, convenience or necessity.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-5777; Filed, June 22, 1960; 8:51 a.m.]

[Docket No. 13461; FCC 60M-1057]

J. P. BEACOM ET AL.

Order Continuing Hearing

In re application of J. P. Beacom (Transferor), and Thomas P. Johnson and George W. Eby (Transferee), Docket No. 13461, File No. BTC-3360; for consent to the relinquishment of positive control of WJPB-TV, Inc., permittee of station WJPB-TV, Weston, Virginia.

On the oral request of counsel for protestant WSTV, Inc. and without objection by counsel for the other parties: It is ordered, This 17th day of June 1960, that the hearing now scheduled for June 20, 1960, is rescheduled for Tuesday,

July 5, 1960, at 10 a.m., in the offices of the Commission, Washington, D.C.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-5773; Filed, June 22, 1960; 8:50 a.m.]

[Docket No. 13594; FCC 60M-1050]

COLLEGE PARK BROADCASTING CO., INC.

Order Scheduling Hearing

In re matter of assignment of call letters WEAS to College Park Broadcasting Company, Inc., for its standard broadcast station at College Park, Georgia, Docket No. 13594.

It is ordered, This 17th day of June 1960, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on September 12, 1960, in Washington, D.C.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-5775; Filed, June 22, 1960; 8:50 a.m.]

[Docket No. 13594; FCC 60-695]

COLLEGE PARK BROADCASTING CO., INC.

Memorandum Opinion and Order Designating Matter for Evidentiary Hearing

In re matter of assignment of call letters WEAS to College Park Broadcasting Company, Inc., for its standard broadcast station at College Park, Georgia, Docket No. 13594.

1. The Commission has before it for consideration (1) a Petition For Reconsideration, filed on April 1, 1960, pursuant to section 405 of the Communications Act of 1934, as amended, by WEAS, Inc. (petitioner hereinafter), licensee of standard broadcast Station WGUN, Decatur, Georgia (1010 kc, 50 kw, 10 kw (CR), D), directed against the Commission's action of March 3, 1960, in assigning the call letters WEAS to College Park Broadcasting Company, Inc. (College Park hereinafter), licensee of standard broadcast Station WEAS, College Park, Georgia (1570 kc, 1 kw, D); and (2) a reply thereto, filed by College Park on April 18, 1960.

2. Certain background information is helpful to an understanding of the instant matter. From 1947 to November 1959, WEAS, Inc. (petitioner herein) was the licensee of Station WEAS, Decatur, Georgia. In November 1959, at petitioner's request, the call letters were changed to WGUN. In March 1959, College Park began operation of its new station, WCPK at College Park, Georgia.

On March 3, 1960, pursuant to the request of College Park, the Commission assigned the call letters WEAS to replace the then existing call letters WCPK.

3. Petitioner alleges that the call letters "WEAS" should not have been assigned to College Park since the service areas of Stations WGUN and WEAS overlap; that both stations are in competition with each other, deriving their revenues from the same advertisers in Decatur, Atlanta, College Park, East Point, and other communities making up the metropolitan area of Atlanta; that although petitioner changed its call letters to WGUN, its corporate name remains the same, (WEAS, Inc.); that during the past 12 years, it has spent thousands of dollars building up the good will and audience rating of its station in the Atlanta market; that the assignment of its former call letters to another station in the same market within so short a period of time after it relinquished them will cause injury to it; that the confusion in the minds of the listeners in the area will seriously damage its audience rating and diminish its advertising revenues; that the mail of WEAS, Inc. and Station WEAS in College Park, is already becoming confused and involved; that further, since petitioner's legal corporate name still remains WEAS, Inc., any use of that name in a competitive business is a violation of the laws of the State of Georgia, of the United States of America, and is in conflict with Federal decisions; and that the Commission upon reconsideration vacate or stay the effective date of its action of March 3, 1960, in assigning the call letters "WEAS" to College Park and for such other relief as may be appropriate under the circumstances.

4. In reply to the above petition, College Park contends that there is no competition between WEAS and WGUN since WGUN primarily serves Atlanta listeners while WEAS serves College Park, East Point and Hapeville, Georgia; that the 2 mv/m contour of WEAS covers only a minor portion of the city of Atlanta; that the majority of the WEAS revenue comes from College Park, East Point and Hapeville; that there is believed to be no firm in these cities served by WEAS, which advertises over WGUN, nor any active soliciting for advertising in said cities, by WGUN; that petitioner, when it used the call letters "WEAS", specialized in what is known as the three R's in programming (rural, race and religion); that when petitioner changed its programming format drastically, it also changed its call letters to WGUN; that, on the other hand, WEAS, College Park is basically a popular music and news station, which is an entirely different type of programming; that accordingly, there cannot be any confusion in the minds of the listeners as to what station is being heard; that the difference in the city of identification also precludes confusion; that the mail of the two stations became confused only once and even then it was merely misdirected by the Post Office; that, moreover, the corporate name of WEAS, Inc. is not

being infringed upon by the use of the call letters "WEAS" by College Park; that there is no property right in call letters once they have been discarded by a licensee; that an attempt to preserve two sets of call letters by using one corporate name and a different set of call letters should be precluded by the Commission; that the principal reason for changing the call letters from WCPK to WEAS was that "between the call letters and the city identification, at least two of these three communities [East Point and College Park] could be included"; that in view of the foregoing, the instant request of WGUN must be considered improper.

5. We first consider whether petitioner has standing pursuant to section 405 of the Communications Act of 1934, as amended, to seek reconsideration of the Commission's action of March 3, 1960. College Park contends that the assignment of call letters is not a "decision, order or requirement * * * made by the Commission in any proceeding" and accordingly, petitioner, as a matter of law, has no standing to file this petition. This contention is without merit for the Commission in the case of *In re Matter of Valley Broadcasting Co. (KWOW)*, 13 Pike and Fischer RR 208a, 208d, stated " * * * We are prepared to assume for the purposes of the case before us, that the issuance of call letters is a 'decision, order or requirement' within the meaning of section 405 of the Act and that such action may be the subject of a petition for reconsideration." Moreover, in view of the facts that WGUN is an existing station contending that there is an overlap of the primary service areas of Stations WGUN and WEAS and since petitioner has made a sufficient showing to establish that it is a "person aggrieved or whose interests are adversely affected" by said call letter assignment, within the meaning of section 405 of the Communications Act of 1934, as amended, we find that petitioner has the requisite standing to file the instant Petition for Reconsideration pursuant to said section. *In re Matter of Valley Broadcasting Co. (KWOW)*, supra; See also *Intercontinental Broadcasting Corp.*, 17 Pike and Fischer RR 588 (1958).

6. Commission records indicate that the 2 mv/m contour of Station WEAS, College Park, lies entirely within the 2 mv/m contour of Station WGUN, Decatur; that, accordingly, the area being primarily served by WEAS is also within the primary service area of WGUN; and that said area includes College Park, East Point, and Hapeville as well as the southernmost portion of the metropolitan district of Atlanta, Georgia. In view of the fact that WGUN operated within the area which is presently being served by the College Park station for approximately 12 years, under the call letters WEAS, the Commission is of the opinion that a substantial question obtains as to whether WEAS should change its call letters to avoid confusion. Accordingly, we believe that the matter should be designated for hearing on the issue specified below and that the burden of pro-

ceeding on said issue, with respect to the introduction of evidence and proof will rest upon the College Park Broadcasting Company, Inc., licensee of Station WEAS, College Park, Georgia. We do not, however, believe that we should stay the effective date of our action of March 3, 1960, in assigning the call letters "WEAS" to College Park.

7. In view of the foregoing: *It is ordered*, That, pursuant to section 405 of the Communications Act of 1934, as amended, petitioner's instant petition for reconsideration of the above-referenced assignment of call letters "WEAS" is granted to the extent provided for below and is denied in all other respects; that said assignment of call letters is designated for evidentiary hearing at the offices of the Commission in Washington, D.C., on the following issue: To determine whether the call letters WEAS, used by Station WGUN, at Decatur, Georgia, until November 1959, and assigned to College Park Broadcasting Company, Inc., on March 3, 1960, for its standard broadcast station at College Park, Georgia, results in confusion, and if so, whether the public interest requires that the College Park Broadcasting Company, Inc., select new call letters.

It is further ordered, That, the burden of proceeding with the introduction of evidence and the burden of proof on the issue shall be on College Park Broadcasting Company, Inc.

It is further ordered, That WEAS, Inc., is hereby made a party to the proceeding herein and that:

1. The appearances by the parties intending to participate in the hearing shall be filed not later than July 12, 1960.

2. The hearing on the above issue is to commence at a time and place and before an examiner to be specified in a subsequent order.

3. The parties to the proceeding herein shall have fifteen (15) days after the issuance of the Examiner's decision to file exceptions thereto and seven (7) days thereafter to file replies to any such exceptions.

Adopted: June 15, 1960.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-5776; Filed, June 22, 1960;
8:50 a.m.]

[Docket No. 13593; FCC 60M-1049]

MARK TWAIN BROADCASTING CO.

Order Scheduling Hearing

In re application of Mark Twain Broadcasting Company, Hannibal, Missouri, Docket No. 13593, File No. BR-1141; for renewal of license of station KHMO.

It is ordered, This 17th day of June 1960, that Herbert Sharfman will preside at the hearing in the above-entitled proceeding which is hereby scheduled to

commence on September 7, 1960, in Washington, D.C.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,

Acting Secretary.

[F.R. Doc. 60-5778; Filed, June 22, 1960;
8:51 a.m.]

[Docket No. 13595; FCC 60-697]

PACIFIC BROADCASTERS CORP.

Order Designating Application for
Hearing on Stated Issues

In re application of Pacific Broadcasters Corporation, Bakersfield, California, Docket No. 13595, File No. BMPCT-5448; for extension of time to complete construction of television station KBFL.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 15th day of June 1960;

The Commission having under consideration the above-captioned application of Pacific Broadcasters Corporation for an extension of time to complete construction of Television Station KBFL, Channel 39, Bakersfield, California; and

It appearing that on December 10, 1958, the Commission granted the application (BPCT-2492) of Pacific Broadcasters Corporation for a permit to construct a new television broadcast station on Channel 39 at Bakersfield; that said action was protested on January 12, 1959; that as a result the application was designated for Oral Argument (Docket No. 12785) and the effective date of the grant postponed; that the Commission's decision denying the protest and affirming the grant was released on August 4, 1959; that the construction permit specified March 30, 1960, as the completion date; that no construction has been commenced; that on February 29, 1960, the applicant filed the above-captioned application; that on May 11, 1960, the applicant was notified by letter that the Commission was unable to find that the applicant had been diligent in proceeding with the construction of its station or that it had been prevented from commencing construction by causes not under its control; and that applicant was given an opportunity to reply to said letter and to request a hearing on its application; and

It further appearing that the applicant replied to the Commission's letter on May 19, 1960, requesting a hearing on its application; that upon due consideration of the above-entitled application and the above correspondence the Commission is unable to determine that a grant of said application would be in the public interest; and

It further appearing, that Bakersfield Broadcasting Company, licensee of Station KBAK-TV, Channel 29, Bakersfield, filed objections to a grant of the above-captioned application requesting that it be designated for hearing and that it be made a party thereto; and

It further appearing, that Bakersfield Broadcasting Company has not shown

that it is a party in interest, and that the public interest would be better served and Bakersfield Broadcasting Company's interests would at the same time be adequately safeguarded, by restricting its participation to the presentation of evidence as provided in § 1.105 of the Commission's rules.

It is ordered, That the above-captioned application is designated for hearing at the Commission's offices in Washington, D.C., at a time to be specified in a subsequent order, upon the following issues:

1. To determine whether Pacific Broadcasters Corporation has been diligent in proceeding with the construction of Television Station KBFL as authorized in its construction permit, File No. BPCT-2492.

2. To determine whether Pacific Broadcasters Corporation has been prevented from completing construction of Television Broadcast Station KBFL by causes not under its control within the meaning of section 319(b) of the Communications Act of 1934, as amended.

3. To determine whether a grant of the above-captioned application would serve the public interest, convenience and necessity.

It is further ordered, That the request of Bakersfield Broadcasting Company be made a party is denied.

It is further ordered, That to avail itself of the opportunity to be heard, Pacific Broadcasters Corporation, pursuant to § 1.140(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 to present evidence in the issues specified in this order.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,

Acting Secretary.

[F.R. Doc. 60-5780; Filed, June 22, 1960;
8:51 a.m.]

[Docket No. 13595; FCC 60M-1048]

PACIFIC BROADCASTERS CORP.

Order Scheduling Hearing

In re application of Pacific Broadcasters Corporation, Bakersfield, California, Docket No. 13595, File No. BMPCT-5448; for extension of time to complete construction of television station KBFL.

It is ordered, This 17th day of June 1960, that Elizabeth C. Smith will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on September 14, 1960, in Washington, D.C.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,

Acting Secretary.

[F.R. Doc. 60-5781; Filed, June 22, 1960;
8:51 a.m.]

[Docket No. 13597; FCC 60-701]

MICROWAVE SERVICE CO.

Order Designating Applications for
Consolidated Hearing on Stated
Issues

In re applications of Frank K. Spain, d/b as Microwave Service Company, Docket No. 13597; for a construction permit to establish a common carrier point-to-point microwave station at Jackson, Mississippi, File No. 86-C1-P-60; for a construction permit to establish a common carrier point-to-point microwave station 1 mile NW. of Mechanicsburg, Mississippi, File No. 87-C1-P-60; for a construction permit to establish a common carrier point-to-point microwave station 3.5 miles SW. of Tolarsville, Mississippi, File No. 88-C1-P-60.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 15th day of June 1960;

The Commission having under consideration the above-entitled applications for construction permits to construct a three-hop point-to-point common carrier microwave system originating at Jackson, Mississippi and terminating at a point near Greenwood, Mississippi, which will enable the proposed customer, Mississippi Telecasting Company, Incorporated, licensee of WABG-TV, Channel 6, Greenwood, to receive live network programming; and

It appearing that the proposed customer has requested applicant herein to provide a common carrier transmission service which will directly interconnect with the American Telephone and Telegraph Company terminal at Jackson, Mississippi, and that applicant has proposed such interconnection; and

It further appearing that the applicant has been unable to obtain an interconnection agreement with AT & T and that the latter has advised the Commission that it is not willing to interconnect with applicant's facilities proposed herein; and

It further appearing that the applicant and the American Telephone and Telegraph Company were advised, by letter dated January 29, 1960, pursuant to the provisions of section 309(b) of the Communications Act of 1934, as amended, as to the reasons why the captioned applications cannot be granted without hearing, which letter was replied to by applicant, and that reply having been considered; and

It further appearing that applicant is legally, technically and financially qualified to be a licensee in this service;

It is ordered, That, pursuant to the provisions of sections 309(b) and 201(a) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing at the Commission's offices in Washington, D.C., on a date to be hereafter specified, upon the following issues:

1. To determine the nature and extent of the service proposed by Microwave Service Company, including charges, practices, classifications, regulations, personnel, and facilities pertaining thereto.

2. To determine the quality, availability and adequacy of audio and video network television program transmission service provided by the American Telephone and Telegraph Company in the Mississippi area generally, and in the vicinity of Jackson and Greenwood specifically, and the charges, classifications, regulations and practices therefor.

3. To determine whether it is necessary or desirable, in the public interest, that physical connection be established between the proposed facilities of Microwave Service Company and the existing audio and video transmission channels and facilities of American Telephone and Telegraph Company at Jackson, Mississippi.

4. To determine, in the event issue 3 above is resolved in the affirmative, whether it is necessary or desirable in the public interest that a through route be established to Greenwood, Mississippi, by means of the facilities proposed by Microwave Service Company and the existing intercity audio and video transmission channels and facilities of American Telephone and Telegraph Company at Jackson, Mississippi.

5. To determine whether the Commission should require the establishment of the charges and division of charges applicable to such through route and, if so, the nature of the charges and divisions which should be established.

6. To determine whether the Commission should require the establishment and provision of facilities and regulations for operating such through route and, if so, the kind of facilities and regulations which should be established or provided.

7. To determine, in the light of the evidence adduced on all the foregoing issues, whether the public interest, convenience or necessity would be served by a grant of the applications.

It is further ordered, That the American Telephone and Telegraph Company is made a party respondent to the proceedings herein; and

It is further ordered, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Released: June 20, 1960.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-5779; Filed, June 22, 1960;
8:51 a.m.]

[Canadian List No. 148]

CANADIAN BROADCAST STATIONS

List of Changes, Proposed Changes and Corrections in Assignments

JUNE 6, 1960.

Notification under the provisions of Part III section 2 of the North American Regional Broadcasting Agreement. List of changes, proposed changes, and corrections in Assignments of Canadian Broadcast Stations Modifying Appendix containing assignments of Canadian Broadcast Stations (Mimeograph No. 47214-3) attached to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting.

Call letters	Location	Power	Antenna	Schedule	Class	Expected date of commencement of operation
CJOR (PO: 600 kc 5 kw DA-1).	Vancouver, British Columbia.	600 kilocycles 10 kw	DA-1	U	III	EIO 6-1-61.
CJSP	Leamington, Ontario	710 kilocycles 1 kw	DA-D	D	II	NIO with inc. power.
CKCV (PO: 1280 kc 5 kw DA-1).	Quebec, Province of Quebec.	1280 kilocycles 10 kw D/5 kw N.	DA-2	U	III	EIO 6-1-61.
CFOX	Pointe Claire, Province of Quebec.	1470 kilocycles 1 kw	DA-2	U	III	NIO.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-5774; Filed, June 22, 1960; 8:50 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1305]

ATLAS CORP. ET AL.

Notice of Filing of Application for Order Exempting Certain Transactions Between Affiliates

JUNE 16, 1960.

Notice is hereby given that Atlas Corporation ("Atlas"), a registered closed-

end non-diversified management investment company, Petro-Atlas, Inc. ("Petro"), a wholly-owned subsidiary and affiliate of Atlas, and The Hidden Splendor Mining Company ("Hidden Splendor"), an affiliate of Atlas, have filed a joint application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of section 17(a) of the Act the proposed sale by Petro to Hidden Splendor of certain oil, gas and mineral leasehold interests located in the States of Utah, New Mexico and Kansas

for an aggregate consideration of \$1,300,000.

Petro, a Delaware corporation was organized in April 1958 to engage in the acquisition and development of oil and gas properties and property interests. Atlas is the owner of 1,000 shares of common stock, par value of \$1.00 per share, of Petro, constituting all the issued and outstanding stock of Petro. In addition, Atlas holds 5 percent demand notes of Petro aggregating \$650,000 in principal amount. Petro's producing leasehold interests ("the Properties") are located in the Horseshoe Canyon, Southeast Bisti and North Bisti areas in San Juan County, New Mexico, the Aneth area in San Juan County, Utah, and in Harper County, Kansas. Based upon an estimate of an independent petroleum engineer employed by Petro, the Properties have estimated net proven reserves of 768,950 barrels of crude oil and 4,495,957 Mcf of natural gas. In addition, 2,455,711 net barrels of oil are estimated to be recoverable when secondary recovery methods are applied, and it appears that operators are well on their way toward unitization for this purpose.

Hidden Splendor, a Delaware corporation, was organized to acquire, explore and develop uranium mining properties and property interests and to engage in the general business of a mining company. Atlas is the owner of 3,955,696 shares of common stock, par value of \$0.50 per share, of Hidden Splendor, constituting 91.62 percent of the approximately 4,317,465 outstanding shares of such stock on April 20, 1960, and 140,745 shares of preferred stock, par value of \$11.00 per share, of Hidden Splendor, constituting 22.06 percent of the approximately 637,690 outstanding shares of such stock on April 20, 1960. In addition, Atlas holds (a) 5½ percent promissory notes of Hidden Splendor aggregating \$300,000 in principal amount due October 19, 1962, (b) warrants covering the purchase of 100,000 shares of common stock of Hidden Splendor at \$3.00 per share and (c) warrants covering the purchase of 16,464 shares of common stock of Hidden Splendor at \$4.45 per share.

Petro proposes to sell the Properties to Hidden Splendor in consideration of the payment to Petro by Hidden Splendor the sum of \$1,300,000, payable \$1,200,000 in cash and \$100,000 by Hidden Splendor's promissory note without interest payable on or before December 1, 1960. Petro will except and exclude from the conveyance of the Properties as a production payment an undivided 35 percent of all the oil, gas and liquid hydrocarbons in and under and that may be produced, saved and sold from the Properties until Petro shall have received the sum of \$2,000,000, plus an amount equal to all gross production, severance and other taxes, except Federal and State income taxes, imposed with respect to the production or sale of hydrocarbons allocable to the production payment and paid by Petro. The production payment shall commence only after Hidden Splendor shall have recovered 750,000 barrels of oil from the Properties. Petro will also exclude from the conveyance interests in the Properties insofar as the

[File No. 812-1300]

CENTURY INVESTORS, INC. ET AL.**Notice and Order for Hearing on Application for Order Exempting Transactions Between Affiliates Incident to Merger and for Order of Exemption**

JUNE 16, 1960.

Properties apply to depths below present producing horizons. The conveyance will include certain equipment, materials and minor supplies owned by Petro in connection with the Properties. Applicants state that the cash consideration payable by Hidden Splendor has been computed as the fair value of the proven drilled and undrilled primary oil and gas reserves of the Properties. The production payment retained by Petro is intended to give Petro a share of any reserves recoverable from certain of the Properties when secondary recovery methods are applied. The assets to be conveyed to Hidden Splendor, including the Properties and the equipment located thereon, had, as of March 31, 1960, an aggregate cost for Federal income tax purposes of \$3,467,004 and an aggregate cost for accounting purposes of \$2,007,368.

Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to or purchasing from such registered investment company or any company controlled by such registered investment company, any security or other property, subject to certain exceptions, unless the Commission upon application pursuant to section 17(b) grants an exemption from the provision of section 17(a), after finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act.

Notice is hereby given that any interested person may, not later than June 30, 1960 at 12:30 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, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. 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 showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-5752; Filed, June 22, 1960;
8:46 a.m.]

Notice is hereby given that Century Investors, Inc. ("Century") and Webster Investors, Inc. ("Webster"), both Delaware Corporations, registered under the Investment Company Act of 1940 ("Act") as closed-end, non-diversified management investment companies, and American Manufacturing Company, Inc. ("American"), have filed a joint application pursuant to section 17(b) of the Act for an order of the Commission exempting from the provisions of section 17(a) of the Act certain transactions incident to a merger of Century, Webster and American, with American as the surviving corporation under the same name, and that American has filed an application pursuant to section 3(b)(2) of the Act for an order declaring that American is not and will not be an investment company upon consummation of the merger.

Description of constituent companies. Century owns 8.6 percent of the capital stock of American and 37.9 percent of the capital stock of Webster. Webster owns 29.6 percent of the capital stock of American. Gurdon W. Wattles, President and a director of Century, Webster and American, owns 59.3 percent of the capital stock of Century, 28.6 percent of the capital stock of Webster and 11.9 percent of the capital stock of American, and a trust of which he is co-trustee and in which he has no beneficial interest owns 13 percent, 1.2 percent and .4 percent of the capital stock of these companies, respectively. The capital stock constitutes the voting securities of the respective companies. Under the definition of an affiliated person contained in section 2(a)(3) of the Act, Wattles, Century, Webster, and American are affiliated persons of each other.

The portfolio of Century consists solely of common stocks of Webster, American and Mergenthaler Linotype Company ("Mergenthaler"). Total assets of Century as of December 31, 1959 adjusted to reflect its common stock investments at market values were approximately \$4,823,692.

A major part of Webster's portfolio consists of shares of Class A stock and common stock of American and common stock of Mergenthaler. Webster's assets also include certain short-term corporate debt obligations, mortgage receivables on property sold, a cigar manufacturing plant which is under lease to a cigar manufacturer and receivables from said manufacturer representing the purchase price of a cigar brand sold to it. Webster also owns a contingent asset of an undetermined amount as a result of certain unsettled tax questions. Total assets of Webster as of December 31, 1959 adjusted to re-

fect its common stock investments at market values were approximately \$9,940,898.

American is engaged in the manufacture of natural and synthetic ropes, cords and twines, as well as oakum and packing for the marine, construction and building trades. It is also engaged directly, and through wholly-owned subsidiary companies, in the manufacture and sale of industrial scales and weighers, industrial timers and controls, processing equipment for chemical milling and general process industries, and, to a lesser degree, in furnishing maintenance services for railway passenger cars of certain railroads.

American owns approximately 18 percent of the outstanding capital stock of Mergenthaler. Century and Webster also own approximately 1 percent and 12 percent, respectively, of the capital stock of Mergenthaler. Mergenthaler's principal business is the manufacture and sale of linotype casting machines for printing. American also owns approximately 28 percent of the common stock of Vapor Heating Corporation which is engaged in the manufacture of railroad and industrial steam generators and other industrial products. Total assets of American as of December 31, 1959, adjusted to reflect its investments at market values were approximately \$34,286,115. Of this amount 20.8 percent represented market value of the investment in Mergenthaler, 19.2 percent in Vapor Heating Corporation, and 2 percent in Vapor Heating (Canada) Ltd.

The capitalizations of the constituent companies are set forth in the following table:

Title of class	April 21, 1960	
	Authorized	Outstanding
Century:		
Common stock.....	Shares	Shares
\$2 par value.....	180,000	150,050
Webster:		
Common stock.....	300,000	266,520
\$5 par value.....		
American:		
Class A stock.....	450,000	*225,184
\$25 par value.....		
Common stock.....	900,000	**468,290
\$12.50 par value.....		

*Options to purchase 9,950 shares of Class A stock at prices ranging from \$16.63 to \$27.79 per share are held by officers and employees.

**Options to purchase 11,700 shares of common stock at prices ranging from \$14.37 to \$20.42 per share are held by officers and employees.

The proposed merger. It is proposed that each share of common stock of Century will be converted into one-tenth share of Class A stock and one and fifteen one-hundredths shares of common stock of American. Each share of common stock of Webster will be converted into one-half share of Class A stock and seventy-two one-hundredths share of common stock of American. Each share of Class A stock and common stock and options to purchase stock of American will remain outstanding. All treasury stock and intercompany holdings of the constituent companies will be cancelled.

The Class A stock of the surviving corporation will be entitled to preferential cumulative dividends at the rate of \$1.10 per share per annum; will have one vote per share; will have a par value of \$25 per share; will be redeemable at the option of the corporation at any time (after January 1, 1961) upon 30 days' prior notice at \$26.50 per share plus accrued dividends; and will be convertible into common stock at specified ratios,¹ but will have no liquidation preference on dissolution.

American will issue to the stockholders of Century and Webster, certificates of contingent interest with respect to 12,821 escrowed shares of common stock of American to represent enhancement in the asset value of the common stock of Webster which may result from a settlement of the tax liabilities relating to certain prior capital losses of Webster. Using a relative asset comparison for the conversion of this contingent asset into shares of common stock of American, a maximum of 12,821 shares of common stock of American would be issued in escrow for delivery, in whole or in part, depending upon the outcome of the tax settlement. Upon the effectiveness of the merger a certificate of contingent interest in 0.04811 of a share of common stock of American will be issued to the holder of each share of common stock of Webster. Since Century is a substantial holder of common stock of Webster and the corporate existence of Century will end upon the merger, certificates of contingent interest in these shares of common stock of American are proposed to be issued directly to the stockholders of Century in the appropriate amount which they would have received had they been direct stockholders of Webster. This will amount to a contingent interest in 0.03236 of a share of common stock of American for each share of Century.

American will not issue to the stockholders of Century and Webster fractional shares. Each holder of a share or shares of stock of Century and Webster entitled to receive a fraction of a share of Class A stock or common stock of American will be afforded an opportunity, during a limited period of time (not less than 90 nor more than 180 days following the merger) to consolidate his fractional share interest into one full share of such common stock by purchasing the additional fractional interest required or to sell his fractional interest.

The Boards of Directors of the constituent companies have each adopted the agreement of merger pursuant to the laws of Delaware. The affirmative vote of the holders of record of at least two-thirds of the outstanding shares of stock of Century, Webster and American is required for approval of the proposed merger.

The Delaware statutes, which govern the constituent companies, confer upon the shareholders of corporations proposing to merge or consolidate the right,

¹ Each share will be convertible into one share of common stock until December 31, 1960; from then until December 31, 1961, into $\frac{1}{10}$ ths of a share of common stock; and following December 31, 1961, into $\frac{1}{10}$ ths of a share of common stock.

upon compliance with certain statutory formalities, to require the appraisal of their shares and the payment of the appraised value in cash.

The application states that the proposed basis of exchange was determined after consideration of asset values, earnings and dividends. Various adjustments in asset values and earnings were computed. Applicants state that the proposed basis of exchange gives weight to the adjusted asset values and earnings, dividends, the termination of certain corporate expenses and taxes upon the conclusion of the proposed merger and the present position of each constituent company vis-a-vis the underlying assets and earnings of the combined enterprise.

Statutory standards—section 17. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to, or purchasing from such registered investment company, or any company controlled by such registered company, any securities or other property, subject to certain exceptions not here pertinent. The Commission, upon application pursuant to section 17(b), shall grant an exemption from the provisions of section 17(a) if it finds that the terms of the proposed transactions, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transactions are consistent with the policy of any registered investment company concerned, as recited in its registration statement and reports filed under the Act, and are consistent with the general purposes of the Act.

Application to be deemed not an investment company. The application contains the following representations in support of American's request for an order pursuant to section 3(b)(2) of the Act for an order declaring that it is not now and will not be after the proposed merger an investment company as defined in section 3 of the Act.

American is and always has been engaged in the business of manufacturing cordage, fibers, oakum and packing. Since its merger with Safety Industries, Inc. (Safety), American has expanded its manufacturing to include the additional products mentioned above in connection with the description of the constituent companies. American did not purchase or own securities subsequent to 1939 and prior to 1954 other than those of a subsidiary textile company in the South which was liquidated in 1944. In 1954, due to excess plant capacity and unprofitable operations, American sold certain properties, and in order to diversify its business through direct control of other industrial operations, it began to acquire stocks and to increase its interest in the operations of two industrial companies, Safety and Mergenthaler. Effective January 22, 1960, Safety was merged into American.

American states that its holdings in Mergenthaler should not be viewed as an investment but rather as a means of permitting American to control and engage in the business of that company. Gurdon Wattles, who is President, direc-

tor and owner of the majority of the outstanding voting stock of Century and the controlling stockholder of Webster and American, spends substantially more than 50 percent of his time on the operations of Mergenthaler and its affiliated interests, and Dante E. Broggi, a director of American, also devotes a considerable portion of his time to the affairs of Mergenthaler and its affiliates. At the present time, American contemplates using its resources beyond the requirements of its industrial business for further purchases of Mergenthaler stock.

Mergenthaler and its subsidiaries are engaged in the manufacture and sale of linotype and duplicating machines and linofilm. Mergenthaler owns approximately 28 percent of the outstanding common stock of The Electric Autolite Company which is principally engaged in the manufacture and sale of automotive electrical equipment and automotive parts.

Century, Webster and American together own a total of about 31 percent of the Mergenthaler capital stock. It is claimed that all three of such companies control Mergenthaler, either directly or indirectly. American has six representatives on the Mergenthaler board of directors which consist of eleven members; three of the five remaining directors are operating men and the other two directors are independent. Consequently, American claims that it not only controls Mergenthaler but that through its own officers and directors, it takes an active and important part in the operations of that company.

As a result of the merger of Safety into American, the latter company acquired Safety's holdings in Vapor Heating Corporation ("Vapor (Delaware)"), a Delaware corporation, and Vapor Heating Ltd., a Canadian corporation, which amount to 28 percent and 30 percent of the outstanding stock of these respective companies. An integrated group of other interests owns a larger percentage of the Vapor (Delaware) stock than American owns.

The application states that the value of investment securities of American, represented by the market value at May 20, 1960 of the Mergenthaler and Vapor stocks owned by American, was approximately 46 percent of the book value of American's total assets (excluding Government securities and cash items) as of December 31, 1959, as adjusted to reflect the market value of such investments. American also owns prime commercial paper and installment notes receivable which, if considered to be investment securities, would increase the foregoing ratio of investment securities to approximately 56 percent.

The application further states that the value of investment securities of American, represented by its holdings of the Mergenthaler and Vapor stocks, on the same basis as above but after giving effect to the proposed merger, would be approximately 52 percent of total assets. The prime commercial paper and installment notes receivable, if considered to be investment securities, would increase the ratio of investment securities of American after the merger to approximately 61 percent.

The application also states that a study of the sources of American's present income and of its income on a pro forma basis, giving effect to the proposed merger, is significant. It is stated that for the year ended December 31, 1959, dividends after taxes received by American on the Mergenthaler and Vapor stocks were approximately 38 percent of total net income after taxes of American. The comparable figure pro forma to reflect the merger would be approximately 44 percent.

It appears that the percentages represented by the ratio of investment securities to total assets of American, both before and after the proposed merger, exceed 40 percent, and consequently American is an investment company under the definition contained in section 3(a)(3) of the Act. American asserts, however, that it is entitled to an exemption from the status of an investment company, both before and after the proposed merger, because it is primarily engaged and will after the merger be engaged, in a business or businesses other than that of "investing, reinvesting, owning, holding, or trading in securities" within the meaning of both sections 3(b)(1) and 3(b)(2) of the Act, for the reason that American is primarily and actively engaged in the industrial businesses in which American itself, Safety and Mergenthaler have been engaged over a period of many years. American states it has no intention, after the completion of the proposed merger, to acquire any investment securities other than additional shares of Mergenthaler stock. American has also stated its intention to dispose of its holdings of Vapor (Delaware).

Statutory standards—section 3(b)(2). Section 3(a)(3) of the Act defines an investment company as one which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of the company's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. For purposes of this section, "investment securities" are defined as including all securities except Government securities, securities issued by employees' securities companies and securities issued by majority-owned subsidiaries which are not investment companies.

Section 3(b)(2) of the Act provides, that, notwithstanding section 3(a)(3), the term "investment company" does not include a person whom the Commission upon application finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of businesses.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application pursuant to sections 17(b) and 3(b)(2);

It is ordered. Pursuant to section 40(a) of the Act, that a hearing on the aforesaid application under the applicable provisions of the Act and of the rules of the Commission thereunder be held on the 7th day of July 1960, at 10:00 a.m., in the offices of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D.C. At such time the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in the proceedings is directed to file with the Secretary of the Commission his application as provided by Rule XVII of the Commission's rules of practice, on or before the date provided in that Rule setting forth any issues of law or fact which he desires to controvert or any additional issues which he deems raised by this Notice and Order or by such application.

It is further ordered. That James G. Ewell, or any officer or officers of the Commission, designated by it for that purpose, shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under sections 41 and 42(b) of the Investment Company Act of 1940 and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation having advised the Commission that it has made a preliminary examination of the application, and that upon the basis thereof the following matters and questions are presented for consideration, without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether the application filed by Century, Webster and American pursuant to section 17(b) of the Act to exempt the proposed merger of Century, Webster and American (with American as the surviving corporation) from the provisions of section 17(a) of the Act meets the prescribed standards of section 17(b);

(2) Whether American at the present time is and after the proposed merger will be, an investment company within the definition of section 3(a)(3) of the Act;

(3) Whether American is primarily engaged, and will after the merger be primarily engaged, in a business or businesses other than that of an investment company either directly or through majority owned subsidiaries or through controlled companies conducting similar types of businesses.

It is further ordered. That at the aforesaid hearing attention be given to the foregoing matters and questions.

It is further ordered. That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this notice and order by registered mail to Century, Webster and American; that applicants shall cause a copy of this notice to be mailed to the stockholders of Century, Webster and American at their last known address on or before June 24, 1960; and that notice to all other persons be given by publication of this Notice and Order in the

FEDERAL REGISTER and that a general release of this Commission in respect of this Notice and Order be distributed to the press and mailed to the mailing list for releases.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F.R. Doc. 60-5753; Filed, June 22, 1960;
8:46 a.m.]

[File No. 24NY-4605]

FREEMAN ELECTRIC CONSTRUCTION CO., INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JUNE 17, 1960.

I. Freeman Electric Construction Co., Inc. (issuer), a Delaware corporation, 45 West 45th Street, New York 36, New York, filed with the Commission on November 27, 1957 a notification on Form 1-A and an offering circular relating to a proposed public offering of 100,000 shares of its 10 cents par value common stock at \$3 per share for an aggregate of \$300,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with in that:

1. A report of sales on Form 2-A has not been filed pursuant to the requirements of Rule 260;

2. A revised offering circular has not been filed pursuant to the requirements of Rule 256(e).

B. The offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The statement that Harris Securities is the underwriter whereas such firm withdrew as underwriter on July 29, 1958;

2. The failure to disclose a Federal Tax lien against the company of \$36,944 recorded in New York City on or about June 12, 1959;

3. The failure to disclose a judgment filed in New York County on or about March 16, 1959 against the company in favor of 45 West 45th St. Corp. in an amount of \$1,397;

4. The failure to disclose a judgment filed in New York County against the company on or about May 26, 1959 in favor of the State Tax Commission in an amount of \$1,852.

C. The offering is being and would be made in violation of section 17 of the Securities Act of 1933.

III. *It is ordered.* Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, as

amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

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

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-5754; Filed, June 22, 1960;
8:46 a.m.]

[File Nos. 812-817, 812-947]

INSTITUTIONAL INVESTORS MUTUAL FUND, INC.

Notice of Filing of Application To Modify Orders of Exemption

JUNE 17, 1960.

Notice is hereby given that Institutional Investors Mutual Fund, Inc. ("Applicant"), a registered open-end investment company, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") requesting the modification of existing orders of the Commission to permit Applicant to sell its shares to bank trustees of pension funds for savings bank employees.

Applicant, a New York corporation, was organized as an investment medium for New York State mutual savings banks. Its board of directors consists of trustees and officers of such savings banks. The funds of the Applicant may be invested only in investments eligible for savings banks under the New York State Banking Law, and Applicant is subject to the supervision of, and periodic examinations by, the New York State Banking Department. Applicant has entered into a contract for investment, advisory, custodian, transfer agent, and registrar services with Savings Banks Trust Company, a corporation organized under the Banking Law of the State of New York, all of whose stock is owned by savings banks in New York. Because of the special nature of Applicant's organization and method of operation, the Commission by orders dated April 14, 1953 and August 8, 1955 (Investment Company Act Release Nos. 1856 and 2213) exempted Applicant from the provisions of sections 10(a), 15(c), 17(a)(1), 20(a), 22(d), 22(e) and 24(d) of the Act and Rule 20a-1 promulgated thereunder.

Among the grounds upon which the Commission based its orders was the fact that the stock of Applicant could be owned only by mutual savings banks or-

ganized and subject to supervision under the Banking Law of New York. A recent amendment to the New York Banking Law now permits the stock of Applicant to be owned by trustees, other than savings banks, of pension trusts, funds, plans or agreements participated in by one or more savings banks to provide retirement benefits, death benefits or disability benefits for such savings banks' employees. Accordingly, Applicant seeks modification of the existing orders to the extent necessary to permit the sale of its shares to such trustees, as well as to savings banks.

In support of the application, Applicant states that so far as can be foreseen the only eligible shareholders will continue to be institutional investors, subject to supervision by the New York State Banking Department.

Section 6(c) of the Act authorizes the Commission to exempt by order, among other things, any class of transactions from any provision or provisions of the Act if it finds 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 July 1, 1960, 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, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-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 showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-5755; Filed, June 22, 1960;
8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 20, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the **FEDERAL REGISTER**.

LONG-AND-SHORT HAUL

FSA No. 36333: *Iron and steel scrap—Memphis, Tenn., to Huntington, W. Va.* Filed by O. W. South, Jr., Agent (SFA

No. A3969), for interested rail carriers. Rates on iron or steel, scrap or pieces, in carloads from Memphis, Tenn., to Huntington, W. Va.

Grounds for relief: Barge-truck competition.

Tariff: Supplement 44 to Southern Freight Association tariff I.C.C. S-14.

FSA No. 36334: *Iron or steel bars—Gulf ports to Nashville, Tenn.* Filed by O. W. South, Jr., Agent (SFA No. A3971), for interested rail carriers. Rates on iron or steel reinforcement bars, in carloads from New Orleans, La., Mobile, Ala., and Pensacola, Fla. (import), to Nashville, Tenn.

Grounds for relief: Barge and market competition.

Tariff: Supplement 33 to Southern Freight Association tariff I.C.C. S-87.

By the Commission.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-5768; Filed, June 22, 1960;
8:49 a.m.]

[Notice 334]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 20, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), 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 63191. By order of June 17, 1960, the Transfer Board approved the transfer to Utah Pacific Lumber Transport Co., a Corporation, Clackamas, Oregon, of a Certificate in No. MC 7155 Sub 1 issued February 20, 1959, to George Williams, Roy Williams, Warren Littlejohn, and Warren Higgenbotham, a partnership, doing business as Williams Trucking Service, Clackamas, Oregon, authorizing the transportation of specific commodities from, to, and between specified points in Oregon, Washington, Idaho, and Utah. Ralf H. Erlandson, 1108 Main Street, Milwaukee, Oreg., for applicants.

No. MC-FC 63197. By order of June 16, 1960, the Transfer Board approved the transfer to M & O Trucking Corp., Meriden, Connecticut, of a Certificate in No. MC 29875 issued March 12, 1957 to O & M Trucking Corp., Meriden, Connecticut, authorizing the transportation of road building materials, from Springfield, Mass., and points in Massachusetts within 10 miles of Springfield to points in Litchfield, Hartford, and Tolland Counties, Conn., and from Granby, Conn., to points in Hampden, and Berk-

shire Counties, Mass. Reubin Kamin-sky, Suite 223, 410 Asylum Street, Hart-ford 3, Conn., for applicants.

No. MC-FC 63202. By order of June 17, 1960, the Transfer Board approved the transfer to Firlin Fast Freight, Inc., doing business as Valley Motor Freight, Markley & Washington Streets, Norristown, Pennsylvania, of a certificate in No. MC 26404 Sub 1, issued February 23, 1956, to George J. Deal, acquired by Ro-sario Puleio and Rocco Mammucari, a partnership, doing business as R & R Trucking Co., Waterford Road, Blue An-chor, New Jersey, pursuant to proceed-ings in No. MC-FC 62843, which author-izes the transportation of metal furniture, over irregular routes, from Philadelphia, Pa., to points in Delaware, New York, New Jersey, and the District of Columbia, and specified points in Maryland and Virginia, and metal cab-inets and metal wardrobes, uncrated, over irregular routes, from Philadelphia, Pa., to points in Connecticut, Massa-chusetts, Rhode Island, North Carolina, West Virginia, and specified points in Maryland and Virginia.

No. MC-FC 63255. By order of June 16, 1960, the Transfer Board approved the transfer to Boat Hauling Corpora-tion, Boston, Mass., of Certificate in No. MC 98953 Sub 1, issued June 20, 1958, to John S. Player and Gordon C. Player, a partnership, doing business as Elliott Boat Transportation Company, Ipswich, Mass., authorizing the transportation of: Boats and boat accessories, between points in Massachusetts, Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New York, and New Jersey. James G. Lane, 190 Mystic Avenue, Med-ford, Mass., for applicants.

No. MC-FC 63262. By order of June 16, 1960, the Transfer Board approved the transfer to Lester C. Newton Truck-ing Co., Bridgeville, Del., of Certificate in No. MC 115136, issued September 5, 1956, to George Edward Gail, Jr., 710 Shore Road, Northfield, N.J., authorizing the transportation of: Meats, meat prod-ucts, and meat by-products, dairy prod-ucts, and articles distributed by meat packinghouses, between Philadelphia, Pa., and Pleasantville, N.J., from Phila-delphia, Pa., to Germania, N.J.

No. MC-FC 63290. By order of June 17, 1960, the Transfer Board approved the transfer to Harlan L. Jamison, doing business as Tri-State Transfer, New-burgh, Indiana, of Permit in No. MC 106519, issued July 22, 1947, to Maurice H. Boles, doing business as Henderson Transfer Company, authorizing the transportation of: Such commodities as are dealt in by chain, retail, and mail order department stores, over irregular routes, from Vincennes, Ind., to points in Illinois within 35 miles of Vincennes; and returned, rejected or undelivered shipments of the above-specified com-modities, over irregular routes, from points in Illinois within 35 miles of Vin-cennes, to Vincennes. Glen W. Funk, 5410 East Washington Street, Indianap-olis, Ind., for applicants.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-5769; Filed, June 22, 1960;
8:50 a.m.]

No. 122—11

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

REGIONAL ADMINISTRATORS

Delegation of Authority With Respect to Housing for Educational Institu- tions

Each Regional Administrator of the Housing and Home Finance Agency, in carrying out the program of loans for housing for educational institutions on behalf of the Housing and Home Finance Administrator through the Com-munity Facilities Administration, is hereby authorized, under Title IV of the Housing Act of 1950, as amended (64 Stat. 77, as amended, 12 U.S.C. 1749-1749c):

1. To approve applications, authorize loans, and execute loan agreements, in-volving loans for student and/or faculty housing and for other educational facilities;

2. To amend or modify any such loan agreement;

3. To redelegate to the Regional Di-rector of Community Facilities Activities the authority delegated herein except the authority to approve applications, au-thorize loans and amend or modify the terms thereof; and

4. In the case of the Regional Admin-istrator, Region VI (San Francisco), to redelegate to the Director for North-west Operations, Region VI, at Seattle, Washington, any of the authority dele-gated herein.

This delegation supersedes the dele-gation effective April 9, 1960 (25 F.R. 3090, April 9, 1960).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 1st day of July 1960.

[SEAL]

NORMAN P. MASON,
Housing and Home Finance
Administrator.

[F.R. Doc. 60-5770; Filed, June 22, 1960;
8:50 a.m.]

REGIONAL ADMINISTRATORS

Delegation of Authority With Respect to Public Facility Loans

Each Regional Administrator of the Housing and Home Finance Agency, in carrying out the public facility loans program on behalf of the Housing and Home Finance Administrator through the Community Facilities Administra-tion, is hereby authorized, under section 202 of Public Law 345, 84th Congress, as amended (69 Stat. 643, as amended, 42 U.S.C. 1492):

1. To approve applications from, au-thorize loans to, and enter into con-tracts with, public agencies, involving loans for essential public works or facilities;

2. To amend or modify any such contract;

3. To redelegate to the Regional Di-rector of Community Facilities Activities the authority delegated herein except the authority to approve applications, authorize loans and amend or modify the terms thereof; and

4. In the case of the Regional Admin-istrator, Region VI (San Francisco), to redelegate to the Director for Northwest Operations, Region VI, at Seattle, Wash-ington, any of the authority delegated herein.

This delegation supersedes the dele-gation effective April 9, 1960 (25 F.R. 3090, April 9, 1960).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 1st day of July 1960.

[SEAL]

NORMAN P. MASON,
Housing and Home Finance
Administrator.

[F.R. Doc. 60-5771; Filed, June 22, 1960;
8:50 a.m.]

REGIONAL ADMINISTRATORS

Delegation of Authority With Respect to Public Works Planning

Each Regional Administrator of the Housing and Home Finance Agency, in carrying out the program of advances for public works planning on behalf of the Housing and Home Finance Admin-istrator through the Community Facili-ties Administration, is hereby author-ized, under section 702 of the Housing Act of 1954 (68 Stat. 641), as amended by section 112 of the Housing Amend-ments of 1955 (69 Stat. 641), 40 U.S.C. 462:

1. To approve applications, authorize advances, and execute offers to public agencies, involving advances to aid in planning proposed public works;

2. To amend or modify contracts re-sulting from the acceptance of such offers;

3. To determine the amount of par-tial repayment due if the public agency undertakes construction of only a por-tion of the planned public work;

4. To redelegate to the Regional Di-rector of Community Facilities Activities the authority delegated herein except the authority to approve applications, authorize advances, and amend or mod-ify contracts resulting from the accept-ance of offers;

5. In the case of the Regional Admin-istrator, Region VI (San Francisco), to redelegate to the Director for Northwest Operations, Region VI, at Seattle, Wash-ington, any of the authority delegated herein.

This delegation of authority super-sedes the delegation effective April 9, 1960 (25 F.R. 3090, April 9, 1960).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 1st day of July 1960.

[SEAL]

NORMAN P. MASON,
Housing and Home Finance
Administrator.

[F.R. Doc. 60-5772; Filed, June 22, 1960;
8:50 a.m.]

CUMULATIVE CODIFICATION GUIDE—JUNE

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