

PART I

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Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3425

UNITED STATES DEPARTMENT OF AGRICULTURE CENTENNIAL YEAR

By the President of the United States of America A Proclamation

WHEREAS May 15, 1962, marks the centennial of the approval by President Lincoln of legislation establishing the United States Department of Agriculture; and

WHEREAS the Department of Agriculture through its research, service, and educational work has enabled our farmers and ranchers, processors, and distributors to provide the food, fiber, and wood products necessary to a healthful, vigorous, and expanding population through increased efficiency in the production, utilization, and marketing of agricultural products; and

WHEREAS an economically sound agriculture and a rewarding rural life are essential to the national well-being; and

WHEREAS our productive agriculture has enabled the Government and many private organizations to initiate programs to alleviate hunger and suffering among peoples throughout the world; and

WHEREAS the emergence of a progressive, efficient, and productive agriculture during the one hundred years since the establishment of the Department of Agriculture has resulted in large measure from the close cooperation between the Department of Agriculture and the national system of land-grant universities and colleges which was founded under the first Morrill Act of July 2, 1862, and this historical anniversary will also be observed during the same year; and

WHEREAS the Congress, by a joint resolution approved August 25, 1961, has requested the President to issue a proclamation designating 1962 as the centennial year of the establishment of the United States Department of Agriculture;

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, do hereby designate the year 1962 as United States Department of Agriculture Centennial Year; and I request the Department of Agriculture to plan and to participate in appropriate activities recognizing the anniversary to the end that the centennial may serve as an occasion to commemo-

rate the contributions of agriculture to the health and welfare of every citizen, to the national well-being, and to the development of emerging nations.

I also request that, in its centennial observances, the Department of Agriculture cooperate with the land-grant universities and colleges in recognition of a century of mutually beneficial cooperative relationships, and with other appropriate organizations and individuals.

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

DONE at the City of Washington this twenty-fifth day of August in the year of our Lord nineteen hundred [SEAL] and sixty-one, and of the Independence of the United States of America the one hundred and eighty-sixth.

JOHN F. KENNEDY

By the President:

DEAN RUSK,
Secretary of State.

[F.R. Doc. 61-8395; Filed, Aug. 29, 1961;
2:36 p.m.]

Proclamation 3426

CENTENNIAL OF THE ESTABLISHMENT OF THE NATIONAL SYSTEM OF LAND-GRANT UNIVERSITIES AND COLLEGES

By the President of the United States of America

A Proclamation

WHEREAS July 2, 1962, marks the centennial of the first Morrill Act, approved by President Abraham Lincoln, granting public lands to States and territories in support of colleges to promote "liberal and practical education . . . in the several pursuits and professions in life"; and

WHEREAS the Act opened the doors of colleges and universities to all with the ability and will to learn, irrespective of heredity, occupation, or economic status; and

WHEREAS the land-grant institutions in the fifty States and the Commonwealth of Puerto Rico carry research and teaching to the citizens of these States and the Commonwealth and to people of other nations, particularly the emerging nations, seeking solutions to economic, social, and physical ills, and enriching the cultural life of the people; and

WHEREAS the land-grant system of higher education is the Nation's largest single source of trained and educated manpower and now contributes more

than one-half of the Nation's trained scientists and nearly one-half of all Regular and Reserve officers entering the armed forces through the military programs conducted at civilian institutions; and

WHEREAS these institutions have historically maintained and currently maintain close cooperative relationships with the United States Department of Agriculture, which marks the centennial of its establishment on May 15, 1962, and also maintain close working relationships with other departments and agencies of the Government, including the Departments of Defense, the Interior, Commerce, Labor, and Health, Education, and Welfare, the United States Information Agency, and the International Cooperation Administration; and

WHEREAS the Congress, by a joint resolution approved August 25, 1961, has requested the President to issue a proclamation recognizing the centennial of the establishment of the land-grant system of universities and colleges:

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, do hereby proclaim that it is fitting and proper to commemorate the centennial of this historic Act of Congress; and I request that the agencies of the Government cooperate with the land-grant universities and colleges throughout the academic year 1961-1962 in recognizing the historical and present close cooperative relationship of such institutions with the departments and establishments of the Government.

I also request that such centennial be otherwise appropriately celebrated to the end that the occasion may serve to commemorate the unparalleled opportunities for higher education provided by these publicly supported institutions and their efforts through teaching, research, and service to improve the economic, social, and cultural lives of the people of this Nation and of other nations.

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

DONE at the City of Washington this twenty-fifth day of August in the year of our Lord nineteen hundred [SEAL] and sixty-one, and of the Independence of the United States of America the one hundred and eighty-sixth.

JOHN F. KENNEDY

By the President:

DEAN RUSK,
Secretary of State.

[F.R. Doc. 61-8396; Filed, Aug. 29, 1961;
2:36 p.m.]

Rules and Regulations

Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER E—DETERMINATION OF SUGAR COMMERCIALY RECOVERABLE

[Sugar Determination 831.4, Amdt. 3]

PART 831—BEET SUGAR AREA

1959 and Subsequent Crops

Pursuant to the provisions of section 302(a) of the Sugar Act of 1948, as amended, paragraph (c) of § 831.4 (24 F.R. 6991, 7499, 25 F.R. 7521) is hereby revised to read as follows:

(c) *Delegation and effectiveness.* Beginning with the 1961 crop the applicable rates of sugar commercially recoverable, as determined herein, shall be established by the Deputy Administrator for Price and Production, Agricultural Stabilization and Conservation Service, and shall become effective for each crop when the specific rates for individual settlement areas, as provided for in paragraph (b) (1) of this section, and directions for computing the rates provided for in paragraph (b) (2) of this section are published in the FEDERAL REGISTER.

Statement of bases and considerations. This amendment to the determination of sugar commercially recoverable for the 1959 and subsequent sugar beet crops revises that portion relating to the delegation of establishing the rates of recoverability for each crop.

The determination formerly provided that the rates of commercially recoverable sugar would be established by the Director of the Sugar Division. This amendment provides for the establishment of such rates by the Deputy Administrator for Price and Production, Agricultural Stabilization and Conservation Service, beginning with the 1961 crop.

Accordingly, I hereby find and conclude that the aforesaid amendment will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Supp. 1153. Interprets or applies secs. 302, 303, 304, 61 Stat. 930, as amended, 931, 7 U.S.C. Supp. 1132, 1133, 1134)

Effective date. Date of publication.

Signed at Washington, D.C., on August 25, 1961.

ORVILLE L. FREEMAN,
Secretary of Agriculture.

[F.R. Doc. 61-8345; Filed, Aug. 30, 1961; 8:50 a.m.]

[Sugar Determination 831.4; Amdt. 3; Supp. 1]

PART 831—BEET SUGAR AREA

Rates of Recoverability; 1961 Crop

§ 831.7 Rates of recoverability; 1961 crop.

The amounts of sugar, raw value, commercially recoverable from sugar beets of the 1961 crop shall be computed by multiplying the net weight thereof in tons at the time of delivery to a processor, by the rate of commercially recoverable sugar, which is applicable under the following provisions of this section.

(a) For sugar beets marketed within a settlement area under any type of agreement other than an "individual test" contract, the rate of commercially recoverable sugar with respect to each settlement area is established as follows:

Settlement areas by factories in States	1954-60 average sugar content	Rate of commercially recoverable sugar
IDAHO, OREGON, WASHINGTON		
	<i>Percent</i>	<i>Hundred-weight</i>
Idaho Falls.....	16.49	3.077
Nyssa, Nampa (Quincy).....	15.44	2.881
Preston.....	16.10	3.004
Rupert, Twin Falls.....	16.68	3.112
Toppenish, Moses Lake.....	15.26	2.848
UTAH		
Centerfield.....	15.91	2.969
Garland.....	16.24	3.030
Layton.....	16.11	3.006
Lewiston (Ogden).....	15.84	2.956
West Jordan.....	15.35	2.864
COLORADO, NEBRASKA, SOUTH DAKOTA		
Delta.....	15.98	2.982
Sugar City.....	14.62	2.728
Grand Island.....	14.31	2.670
Belle Fourche.....	15.98	2.982
WYOMING, MONTANA		
Lovell.....	16.89	3.152
Worland.....	16.44	3.068
Billings.....	16.82	3.139
Hardin.....	16.67	3.092
Missoula.....	16.47	3.073
Sidney.....	16.41	3.062
MINNESOTA, IOWA		
East Grand Forks, Moorhead, Crookston.....	15.88	2.963
Chaska, Mason City.....	14.30	2.668
GREAT LAKES STATES		
Alma.....	14.70	2.743
Bay City.....	14.82	2.765
Findlay, Fremont (Blissfield).....	14.51	2.708
Caro.....	14.83	2.767
Carrollton.....	14.49	2.704
Crowell.....	14.84	2.769
Green Bay.....	14.56	2.717
Ottawa.....	14.35	2.678
Sebewaing.....	14.87	2.775

(b) For sugar beets marketed under "individual test" contracts, the rate of commercially recoverable sugar shall be computed by multiplying the percentage of sugar content of such beets by 20 hundredweight, and then multiplying the result by 89.6 percent (the average extraction rate, as adjusted for shrink,

effective for such beets). This computation can be shortened by the use of the factor of 0.1792. As an example, a percentage of sugar content of 16.37 when multiplied by 0.1792 would result in a rate of commercially recoverable sugar of 2.933 hundredweight.

Statement of bases and considerations. The determination of sugar commercially recoverable for the Beet Sugar Area, as issued August 26, 1959, provides the method of determining and establishing amounts of sugar commercially recoverable from sugar beets of the 1961 crop, and it also provides that the rates shall become effective when public notice thereof is given in the FEDERAL REGISTER.

Pursuant to that determination, this supplement sets forth the rates of recoverability as determined for the 1961 crop. Definitive rates are specified for the various settlement areas where the only tests available for ascertaining the sugar content of the beets are cossette tests. Within these areas, the rates give effect to 1954-60 average percentages of sugar content and the 1955-59 national average extraction rate of beet sugar, raw value, of 93.3 percent.

In lieu of an extensive table of definitive rates applicable to sugar beets of various percentages of sugar content as marketed under individual test contracts, this supplement shows that the rate of recoverability for beets of any given percentage of sugar content so marketed may be computed by multiplying the percentage of sugar content of such beets by the factor of 0.1792. This factor gives effect to the average rate of extraction of sugar, raw value, of 89.6 percent as applicable to individual test beets. The difference between 93.3 and 89.6 percent represents the average "shrink" in percentage of sugar content between the time of delivery and the time of processing for all beets of the crops of 1955-59 marketed under individual test contracts. Listings of the rates applicable to various percentages of such content (expressed in hundredths) will be available for inspection at ASCS County Offices in sugar beet producing counties.

The percentages of 93.3 and 89.6, as determined herein for the 1961 crop, compare with percentages of 93.5 and 90.3, as effective for the 1960 crop.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Supp. 1153. Interprets or applies sec. 302, 303, 304, 61 Stat. 930, as amended, 931; 7 U.S.C. Supp. 1132, 1133, 1134)

Effective date. Date of publication.

Signed at Washington, D.C., on August 25, 1961.

RAPHAEL V. FITZGERALD,
Acting Deputy Administrator
for Price and Production.

[F.R. Doc. 61-8357; Filed, Aug. 30, 1961; 8:52 a.m.]

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

PART 909—ALMONDS GROWN IN CALIFORNIA

Salable and Surplus Percentages for 1961-62 Crop Year

Notice was published in the FEDERAL REGISTER on August 11, 1961 (26 F.R. 7282) that there was under consideration the proposed establishment of certain allocation percentages for California almonds during the 1961-62 crop year which began July 1, 1961. The percentages are based on recommendations of the Almond Control Board and other available information, in accordance with the applicable provisions of Marketing Agreement No. 119, as amended, and Order No. 9, as amended (7 CFR Part 909), regulating the handling of almonds grown in California. Said amended marketing agreement and order are effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

The notice afforded interested persons opportunity to file written data, views or arguments pertaining thereto with the Department for consideration prior to establishment of salable and surplus percentages for the 1961-62 crop year. The prescribed time has elapsed and no such communications have been received.

After consideration of all relevant matters presented, including those in the notice, it is hereby found that to establish salable and surplus percentages as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the salable and surplus percentages for almonds received by handlers for their own accounts during the 1961-62 crop year are hereby designated as follows:

§ 909.211 Salable and surplus percentages for almonds during the crop year beginning July 1, 1961.

The salable and surplus percentages during the crop year beginning July 1, 1961, applicable to the total kernel weight of almonds received by handlers for their own accounts, shall be 80 percent and 20 percent, respectively.

It is hereby found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that: (1) The relevant provisions of said amended marketing agreement and this part require that salable and surplus percentages designated for a particular crop year shall be applicable to all almonds received by handlers for their own accounts during such year; and (2) the current crop year began on July 1, 1961, and the percentages herein designated will automatically apply to all such almonds beginning with such date.

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

Dated: August 28, 1961.

FLOYD F. HEDLUND,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 61-8344; Filed, Aug. 30, 1961; 8:49 a.m.]

[Milk Order No. 15]

PART 915—MILK IN ST. JOSEPH, MO., MARKETING AREA

Order Regulating Handling of Milk

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AUTHORITY: §§ 915.0 to 915.95 issued under secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 915.0 Findings and determinations.

(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 a proposed marketing agreement and a proposed order regulating the handling of milk in the St. Joseph, Missouri, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, 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 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 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;

(4) All milk and milk products handled by handlers, as defined in this order, 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, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (a) producer milk, except producer milk received by a cooperative association as a handler pursuant to § 915.8(c); (b) producer milk received from a cooperative association pursuant to § 915.8(c); and (c) other

source milk allocated to Class I pursuant to § 915.46(a)(2) and the corresponding step of (b). A handler operating a distributing plant which is a nonpool plant shall pay administrative assessment pursuant to § 915.61.

(b) *Additional findings.* It is necessary in the public interest to make this order partially effective not later than September 1, 1961, and fully effective not later than October 1, 1961. Any delay beyond these dates would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Price and Production, Agricultural Stabilization and Conservation Service was issued July 6, 1961, and the decision of the Secretary containing all the provisions of this order was issued August 11, 1961. Since this order will constitute the original imposition of a regulatory program of this nature for the market, the provisions other than those relating to prices and payments, should be put into effect prior to the effective date of the entire order to afford handlers an opportunity to make any necessary changes in their accounting procedure or other adjustments as required to conform with all provisions of the order. Reasonable time will have been afforded interested parties to prepare to comply with the aforesaid provisions. In view of the foregoing, it is hereby found and determined that good cause exists for making this order partially effective September 1, 1961, and fully effective October 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011.)

(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 is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of this order is approved or favored by at least two-thirds of the producers who participated in a referendum and 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 St. Joseph, Missouri, marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 915.1 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.)

§ 915.2 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 and to perform the duties of the Secretary of Agriculture.

§ 915.3 Department.

"Department" means the United States Department of Agriculture.

§ 915.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 915.5 Cooperative association.

"Cooperative association" means any cooperative marketing association or producers as defined in § 915.7, which the Secretary determines:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has its entire activities under the control of its members; and

(c) Has and is exercising full authority in the sale of milk of its members.

§ 915.6 St. Joseph, Missouri, marketing area.

"St. Joseph, Missouri, marketing area" hereinafter called "marketing area" means all the territory included within the perimetric boundaries of Doniphan, Brown, and Nemaha counties, Kansas; Andrew, Atchison, Buchanan, Clinton, Daviess, De Kalb, Gentry, Holt, Nodaway, and Worth counties, Missouri; and those portions of Platte and Clay counties, Missouri, not included in the marketing area of the Greater Kansas City milk order (Part 913 of this chapter).

§ 915.7 Producer.

"Producer" means any person, other than a producer-handler, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is:

(a) Received at a pool plant, or

(b) Diverted as producer milk pursuant to § 915.14.

§ 915.8 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a distributing plant or a supply plant;

(b) Any cooperative association with respect to producers' milk diverted from a pool plant to a nonpool plant for the account of such cooperative association; and

(c) Any cooperative association with respect to the milk of its member producers which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association for the account of such cooperative association if the cooperative association, prior to delivery, notifies the market administrator in writing that it will be the handler for the milk. Milk so delivered shall

be considered to have been received by the cooperative association at the plant to which delivered and then transferred to the handler operating that plant.

§ 915.9 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a distributing plant at which each of the following conditions is met during the month.

(a) The butterfat or skim milk received in the form of fluid milk products at the plant does not exceed the butterfat or skim milk, respectively, received from the dairy farm(s) of such person and from pool plants of other handlers; and

(b) Such person provides proof that:

(1) The maintenance, care and management of the dairy animals and other resources used to produce milk on his farm(s) are the personal enterprise of and at the personal risk of such person; and

(2) The operation of the processing and packaging facilities are the personal enterprise of and at the personal risk of such person.

§ 915.10 Distributing plant.

"Distributing plant" means a plant at which approved milk is processed and packaged and from which approved milk is disposed of during the month as fluid milk products in the marketing area on routes.

§ 915.11 Supply plant.

"Supply plant" means a plant at which approved milk is received from farms and is shipped to and received at a distributing plant which is a pool plant.

§ 915.12 Pool plant.

"Pool plant" means a distributing plant or supply plant except the plant of a producer-handler or a plant exempt pursuant to § 915.62 which meets the conditions set forth in paragraph (a) or (b) of this section:

(a) A distributing plant from which during the month or during the immediately preceding month there is disposed of:

(1) As Class I milk in the marketing area on routes not less than 15 percent of such plants total sales of packaged Class I milk; and

(2) As Class I milk not less than the applicable percentage of such plants receipts of approved milk from dairy farmers and cooperative associations in their capacity as handlers pursuant to § 915.8(c):

(i) September through December, 50 percent;

(ii) January, February, July and August, 45 percent;

(iii) March through June, 35 percent.

(b) A supply plant from which during the month not less than 50 percent of its receipts of approved milk from dairy farmers and from cooperative associations of producers in their capacity as handlers pursuant to § 915.8(c) is shipped to and received at distributing pool plants: *Provided*, That any supply plant which is a pool plant by reason of meeting the required percentages in this paragraph during each of the months of

September through December (in 1961 during each month from the effective date through December) shall be pooled for each of the following months of January through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

§ 915.13 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant.

§ 915.14 Producer milk.

"Producer milk" shall be that skim milk or butterfat for each handler's account in milk received pursuant to paragraphs (a) and (b) and diverted pursuant to paragraph (c) as follows:

(a) Received directly from producers' farms at a pool plant by the operator of the pool plant (except that for which a cooperative association is a handler pursuant to § 915.8(c)) or diverted by the pool plant operator pursuant to paragraph (c) of this section;

(b) Received directly from producers' farms for its account by a cooperative association in its capacity as a handler pursuant to § 915.8(c) or diverted for its account pursuant to paragraph (c) of this section; and

(c) Milk diverted to a pool or nonpool plant shall be considered as received at the plant from which it was diverted for pooling and pricing purposes. During the months of September through December, producer milk shall not include that portion of the milk of a producer which is diverted in excess of 16 days' production.

§ 915.15 Approved milk.

"Approved milk" means any skim milk and butterfat contained in milk, skim milk or cream which is approved by a duly constituted health authority for distribution as Grade A milk.

§ 915.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month of fluid milk products except: (1) Fluid milk products received from pool plants and from cooperative associations in their capacity as handlers pursuant to § 915.8(c), (2) producer milk, and (3) opening inventory; and

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month, and any disappearance of nonfluid milk products not otherwise accounted for.

§ 915.17 Fluid milk product.

"Fluid milk product" means any milk, skim milk, buttermilk, flavored milk, milk drinks (flavored or plain), concentrated milk or skim milk, yogurt, cream (sweet or sour) disposed of as such, and any mixture of milk, skim milk or cream; except sterilized products in hermetically sealed containers, eggnog, frozen

dessert mixes, ice cream mix, aerated cream, and cultured sour mixtures disposed of as other than sour cream.

§ 915.18 Route.

"Route" means any delivery (including delivery through a vendor and sales from a plant or plant store) of a fluid milk product other than a delivery to a pool or a nonpool plant.

MARKET ADMINISTRATOR

§ 915.20 Designation.

The agency for the administration of this part 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 by the Secretary.

§ 915.21 Powers.

The market administrator shall have the following powers with respect to this part:

(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.

§ 915.22 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 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 funds provided by § 915.86 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 915.85) necessary and 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) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

(g) Verify all reports and payments by each handler by audit or such other investigation as may be necessary, of such

handler's records and facilities and of the records and facilities of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends;

(h) 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, within 10 days after the date upon which he is required to perform such acts, has not:

(1) Made reports pursuant to §§ 915.-30 through 915.33;

(2) Maintained adequate records and facilities pursuant to § 915.34; or

(3) Made payments pursuant to § 915.80 through 915.86.

(i) On or before the 14th day after the end of each month report to each cooperative association which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that receipts of all producer milk by such handler were used in each class;

(j) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate the prices determined for each month as follows:

(1) On or before the 5th day of each month, the minimum price for Class I milk pursuant to § 915.51(a) and the Class I butterfat differential pursuant to § 915.52(a), both for the current month; and on or before the 5th day of each month the minimum price for Class II milk, pursuant to § 915.51(b) and the Class II butterfat differential pursuant to § 915.52(b), both for the month immediately preceding; and

(2) On or before the 12th day of each month, the applicable uniform price(s) computed pursuant to § 915.71 and the producer butterfat differential computed pursuant to § 915.72 both applicable to milk delivered during the previous month;

(k) Prepare and disseminate to the public such statistics and other information as he deems advisable and as do not reveal confidential information.

REPORTS, RECORDS, AND FACILITIES

§ 915.30 Reports of receipts and utilization.

On or before the 7th day after the end of each delivery period, each handler for each of his pool plants and each cooperative association which is a handler pursuant to § 915.8 (b) or (c), shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in:

(1) Receipts for his account of producer milk from each producer, the average butterfat test, the pounds of butterfat contained therein and the number of days milk was received from such producer;

(2) Fluid milk products received from other pool plants and from a co-

operative association in its capacity as a handler pursuant to § 915.8(c);

(3) Other source milk;

(4) Inventories on hand at the beginning of the month.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (a) of this Section and inventories of fluid milk products on hand at the end of the month;

(c) The disposition of fluid milk products in the marketing area on routes; and

(d) Such other information with respect to his sources and utilization of butterfat and skim milk as the market administrator may prescribe.

§ 915.31 Payroll reports.

(a) On or before the 23d day of each month; each handler except a producer-handler or a handler making payments pursuant to § 915.61 shall submit to the market administrator in the detail and on forms approved by the market administrator his producer payroll for the preceding month, which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk, the average butterfat test thereof, and the pounds of butterfat received from such producer and the number of days on which milk was received from such producer;

(3) The net amount of payment to producer; and

(4) The nature and amount of any deductions or charged items involved in such payments.

(b) Each handler making payments pursuant to § 915.61(a) shall report the information required pursuant to paragraph (a) of this section substituting receipts from dairy farmers for receipts from producers.

§ 915.32 Other reports.

(a) Each producer-handler, each handler making payments pursuant to § 915.61(b) and each handler exempt pursuant to § 915.62 shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe;

(b) On or before the 7th day after the end of each month each handler making payments pursuant to § 915.61(a) shall report to the market administrator the information required of handlers pursuant to § 915.30 substituting receipts from dairy farmers for receipts from producers; and

(c) Each handler who causes producer milk to be diverted to any plant shall report, prior to such diversion, to the market administrator and to the cooperative association of which such producer is a member, 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.

§ 915.33 Reports to cooperative associations.

Each handler who receives milk from producers for which payment is to be made to a cooperative association pursuant to § 915.80(b) shall report on or before the 7th day after the end of the

month to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(a) The days of delivery, the total pounds of milk, and the average butterfat test of milk received from such producer during the month;

(b) The amount or rate and nature of any deductions; and

(c) The amount of any payments due such producer pursuant to § 15.84.

§ 915.34 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 and such facilities as the market administrator deems necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts of producer milk and other source milk and the utilization of such receipts;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and each milk product on hand at the beginning and at the end of each delivery period.

§ 915.35 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 three years to begin at the end of the calendar 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 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

§ 915.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month for which utilization is required to be reported pursuant to §§ 915.30 through 915.32 shall be classified by the market administrator pursuant to the provisions of §§ 915.41 through 915.46. 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

the water originally associated with such solids.

§ 915.41 Classes of utilization.

Subject to the conditions set forth in §§ 915.43 and 915.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products except:

(i) Fluid milk products classified as Class II pursuant to paragraph (b) (2), (3), and (4) of this section; and

(ii) Fluid milk products which are fortified with nonfat milk solids shall be Class I in an amount equal only to the weight of an equal volume of an unfortified product of the same butterfat content; and

(2) Not specifically accounted for as Class II utilization;

(b) Class II milk shall be all skim milk and butterfat:

(1) Used to produce any products other than fluid milk products;

(2) Disposed of and used for starter churning, wholesale baking and candy making purposes;

(3) Disposed of as livestock feed;

(4) In skim milk:

(i) Dumped after prior notification to and opportunity for verification by the market administrator; and

(ii) The weight of skim milk in fortified fluid milk products which is not classified as Class I pursuant to subparagraph (a) (1) of this section;

(5) In inventory of fluid milk products on hand at the end of the month;

(6) In actual shrinkage of skim milk and butterfat, respectively, allocated pursuant to § 915.42(b) (1) but not in excess of:

(i) Two percent of milk received at a pool plant directly from producers; plus

(ii) Two percent of milk received from a cooperative association handler pursuant to § 915.8(c), if the handler operating the pool plant files with the market administrator notice that he is purchasing such milk on the basis of farm weights determined by farm bulk tank calibrations; plus

(iii) One and one-half percent of milk received in bulk from pool plants of other handlers or received from cooperative associations pursuant to § 915.8(c) unless two percent shrinkage is assigned pursuant to subdivision (ii) of this subparagraph; less

(iv) One and one-half percent of milk disposed of in bulk to other plants; and less

(v) One and one-half percent of milk disposed of to plants by a cooperative association handler pursuant to § 915.8(c) unless two percent shrinkage is assigned pursuant to subdivision (ii) of this subparagraph.

(7) In shrinkage allocated to other source milk pursuant to § 915.42(b) (2).

§ 915.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler; and

(b) Prorate the resulting amounts between:

(1) The maximum pounds of skim milk and butterfat pursuant to § 915.41 (b) (6) divided by 0.02; and

(2) The pounds of skim milk and butterfat in other source milk received in the form of bulk fluid milk products.

§ 915.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can establish to the satisfaction of the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 915.44 Transfers.

Skim milk or butterfat transferred or diverted in bulk fluid form from a pool plant or by a cooperative association in its capacity as a handler pursuant to § 915.8(c) shall be classified:

(a) As Class I milk if transferred or diverted to a pool plant unless:

(1) The transferee and transferor handlers claim Class II utilization in their reports submitted pursuant to § 915.30;

(2) The transferee plant has utilization in Class II of an equivalent amount of skim milk and butterfat, respectively, after the subtractions of other source milk pursuant to § 915.46(a) (5) and the corresponding step of (b): *Provided*, That if either or both plants 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 utilization to producer milk; and

(3) If a specified utilization is not claimed by both handlers, subject to subparagraph (2) of this paragraph, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association which is a handler pursuant to § 915.8(c) shall be classified pro rata to the respective amounts remaining in each class for such month at the pool plant of the receiving handler after the computations pursuant to § 915.46(a) (7) and the corresponding step of (b).

(b) As Class I milk if transferred to the plant of a producer-handler;

(c) As Class I milk if transferred or diverted to a nonpool plant unless the market administrator is permitted to audit the records of receipts and utilization at such nonpool plants, in which case it shall be classified as Class I to the extent of the following pro rata computation:

(1) From the total skim milk and butterfat, respectively, disposed of from such nonpool plant and classified as Class I milk pursuant to the provisions of this part applied to such nonpool plant subtract the skim milk and butterfat in approved milk received at such plant directly from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

(2) Prorate the remaining Class I utilization to receipts of skim milk and butterfat in fluid form which are fully subject to the classification and pooling provisions of this and other Federal milk orders issued pursuant to the Act.

§ 915.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct mathematical and other obvious errors in the report of receipts and utilization submitted by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such handler.

§ 915.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 915.45, the market administrator shall determine the classification of milk received from producers at the pool plants 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 shrinkage of skim milk classified as Class II pursuant to § 915.41 (b) (6);

(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 not subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(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 which are pooled but not priced as Class I under the provisions of another order issued pursuant to the Act;

(4) 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 which are pooled and priced as Class I under the provisions of another order issued pursuant to the Act;

(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;

(7) Subtract from the pounds of skim milk remaining in each class the skim milk received from other pool plants or from a cooperative association in its capacity as a handler pursuant to § 915.8(c) according to its classification as determined pursuant to § 915.44(a) (1) and (2);

(8) Subtract from the pounds of skim milk remaining in each class, the skim milk received from a cooperative association in its capacity as a handler pursuant to § 915.8(c) according to its classification as determined pursuant to § 915.44(a) (3); and

(9) Subtract from the pounds of skim milk remaining in each class any amount by which the pounds of skim milk re-

maining 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 the Class I milk and of the Class II milk computed pursuant to paragraphs (a) and (b) of this section.

§ 915.47 Inventory reclassification.

From any skim milk or butterfat allocated to Class I milk pursuant to § 915.46(a) (5) and the corresponding step in § 915.46(b) subtract in the following sequence the skim milk and butterfat, respectively, allocated to Class II during the preceding month:

(a) That remaining in Class II after the computation pursuant to § 915.46 (a) (5) and the corresponding step of (b); and

(b) That subtracted from Class II pursuant to § 915.46 (a) (4) and the corresponding step of (b).

MINIMUM PRICES

§ 915.50 Basic formula price.

The basic formula price for the month shall be the higher of the prices computed pursuant to paragraph (a) or (b) of this section.

(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 to the Department.

Present Operator and Location.

Carnation Co., Sparta, Mich.
Pet Milk Co., Wayland, Mich.
Borden Co., Orfordville, Wis.
Pet Milk Co., Coopersville, Mich.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph:

(1) To 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) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department during the delivery period, add 20 percent thereof and multiply by 3.5; and

(2) To the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound of nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 7.

§ 915.51 Class prices.

Subject to the provisions of §§ 915.52 and 915.53, the minimum class prices per hundredweight of milk containing 3.5 percent butterfat to be paid by each handler for milk received from producers during the month shall be as follows:

(a) *Class I milk price.* The Class I milk price each month for the first eighteen months beginning with the effective date of this section shall be 10 cents less than the Greater Kansas City Federal milk order (Part 913 of this chapter) Class I price for the same month;

(b) *Class II milk.* The Class II milk price shall be the higher of:

(1) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for ungraded milk of 3.5 percent butterfat content received from farmers during the delivery period at the following plants for which prices have been reported to the market administrator, plus 24 cents.

Present Operator and Location

Carnation Co., Girard, Kans.
Kraft Foods Co., Nevada, Mo.
Pet Milk Co., Iola, Kans.
Swift and Co., Parsons, Kans.; or

(2) The price per hundredweight computed as follows:

(i) Multiply by 4.24 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) of Grade AA (93-score) bulk creamery butter per pound at Chicago as reported by the Department during the delivery period: *Provided*, That, if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding delivery period through the 25th day of the current delivery period, by the Department; and

(iii) From the sum of the results arrived at under subdivisions (i) and (ii) of this subparagraph, subtract 69 cents.

§ 915.52 Butterfat differentials to handlers.

If the average butterfat content of the milk of any handler allocated to either class pursuant to § 915.46(c) is more or less than 3.5 percent, there shall be added to the respective class price computed pursuant to § 915.51 for each one-tenth of 1 percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content is below 3.5 percent, an amount equal to the butterfat differential computed as follows:

(a) For Class I milk, multiply the butter price specified in § 915.50(b) (1) by 1.2, divide the result by 10; and round to the nearest one-tenth of a cent.

(b) For Class II milk, multiply the butter price specified in § 915.50(b) (1)

by 1.15, divide the result by 10, and round to the nearest one-tenth of a cent.

§ 915.53 Location differentials to handlers.

(a) For milk which is received from producers at a pool plant located more than 50 miles by the shortest highway distance, as determined by the market administrator, from the City Hall in either St. Joseph, Missouri, or Sabetha, Kansas, whichever is nearer, and which is classified as Class I milk, the prices computed pursuant to § 915.51(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more than 60 miles from such City Hall, and by an additional one and one-half cents for each 10 miles or fraction thereof that such distance exceeds 60 miles;

(b) Milk moved in bulk from a plant as defined in § 915.12, (a) or (b) to a plant as defined in § 915.12(a) shall be considered to be Class I milk to the extent that the Class I milk disposed of from the transferee plant exceeds receipts of milk from producers' farms: *Provided*, That for the purpose of calculating such location differential, transfers of milk, skim milk and cream between pool plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds receipts from producers and from cooperative associations in their capacity as handlers pursuant to § 915.8(c), such assignment to transferor plants to be made first to plants at which no location credit is applicable and then in sequence beginning with the plant at which the lowest location differential would apply.

§ 915.54 Rate of compensatory payment.

The rate of compensatory payment shall be calculated as follows: Subtract the Class II milk price, adjusted by the Class II butterfat differential, from the Class I milk price adjusted by the Class I butterfat differential and the Class I location differential rates set forth in § 915.53 for the location of the plant at which the milk was received from farmers.

§ 915.55 Use of equivalent prices.

If for any reason a price specified by this part for computing class prices or for other purposes is not available in the manner described in this part, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is specified.

APPLICATION OF PROVISIONS**§ 915.60 Producer-handlers.**

Sections 915.40 through 915.46, 915.50 through 915.53, 915.61, 915.70, 915.71, 915.80 through 915.88 shall not apply to a producer-handler.

§ 915.61 Handlers operating nonpool distributing plants.

In lieu of the payments required pursuant to §§ 915.80 through 915.89, each handler, other than a producer-handler or one exempt pursuant to § 915.62, who operates during the month a nonpool distributing plant, shall pay to the market administrator within 5 days after

his receipt of notice from the market administrator that he is subject to the provisions of this section for the first time and thereafter on or before the 25th day after the end of the month the amounts calculated pursuant to paragraph (a) of this section unless the handler elects, at the time of reporting pursuant to § 915.30, to pay the amounts computed pursuant to paragraph (b) of this section:

(a) An amount:

(1) For deposit in the producer-settlement fund, equal to any plus amount remaining after deducting the amounts paid pursuant to subdivisions (i) and (ii) of this subparagraph from the obligation that would have been computed pursuant to § 915.70 for such nonpool plant had such plant been a pool plant:

(i) The gross payments made on or before the 15th day after the end of the month for milk received at such nonpool plant during the delivery period from dairy farmers who supply approved milk, and

(ii) Any payments to the producer-settlement funds under other orders issued pursuant to the Act applicable to milk handled at such plant during the month as a partially regulated plant under such other orders.

(2) For administrative assessment, equal to the amount which would have been computed pursuant to § 915.86 if such nonpool plant were a pool plant during the month: *Provided*, That such amount shall be reduced by any amount paid as an administrative assessment determined on the basis of Class I milk disposed of on routes in other marketing areas pursuant to the terms of other orders issued pursuant to the Act: *And provided further*, That if an administrative assessment is applied at such nonpool plant as if a fully regulated plant pursuant to another milk order issued pursuant to the Act, no administrative expense assessment shall be applicable under this order; or

(b) An amount:

(1) For deposit in the producer-settlement fund, equal to the hundredweight of skim milk and butterfat disposed of as Class I milk in the marketing area on routes multiplied by the rate of compensatory payment pursuant to § 915.54;

(2) For administrative assessment, equal to the rate specified in § 915.86 multiplied by the hundredweight of Class I milk disposed of in the marketing area, unless an administrative assessment is applied to milk at such nonpool plant pursuant to another order issued pursuant to the Act on the same basis as plants fully regulated by such other order.

§ 915.62 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempted from all the provisions of this part, except that the operator of such plant shall, with respect to 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 and allow verification of such reports by the market administrator:

(a) Any plant qualified pursuant to § 915.12(a) which disposes of a lesser volume of Class I milk in the St. Joseph, Missouri, marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order is exempted;

(b) Any plant qualified pursuant to § 915.12(b) for any portion of the period January through August, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

DETERMINATION OF UNIFORM PRICE

§ 915.70 Computation of the obligation of each pool handler.

For each month the market administrator shall compute the obligation of each pool handler as follows:

(a) Multiply the pounds of milk in each class computed pursuant to § 915.46 (c) by the applicable class price and add together the resulting amounts;

(b) Add an amount computed by multiplying the pounds of overage deducted from each class pursuant to § 915.46 (a)(9) and (b)(9) by the applicable class price;

(c) Add the amounts obtained by multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat:

(1) Subtracted pursuant to § 915.47 (a); and

(2) Any plus amount remaining after the calculation pursuant to § 915.47(b).

(d) Add an amount obtained by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 915.46(a) (2) and (3) and the corresponding steps of § 915.46 (b) by the rate of compensatory payment pursuant to § 915.54: *Provided*, That such calculation shall not apply if the total receipts of producer milk at pool plants during the month are not more than 110 percent of the total net Class I utilization of such plants for the month.

§ 915.71 Computation of the uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content, f.o.b. marketing area, as follows:

(a) Combine into one total the values computed pursuant to § 915.70 for all handlers who submit reports pursuant to § 915.30 and who are not in default of payments pursuant to §§ 915.80 and 915.82;

(b) Subtract for each one-tenth percent by which the average butterfat content of the milk included in these computations is greater than 3.5 percent, or add for each one-tenth percent that such

average butterfat content is less than 3.5 percent, an amount computed by multiplying the butterfat differential computed pursuant to § 915.72 by the total hundredweight of such milk;

(c) Add an amount equal to the sum of deductions to be made from producer payments for location differentials pursuant to § 915.73;

(d) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(e) Divide by the total hundredweight of milk included in these computations; and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 915.72 Butterfat differential to producers.

In making payments pursuant to § 915.80, there shall be added to or subtracted from the uniform price for each one-tenth of one percent that the average butterfat content of the milk received from the producer is above or below 3.5 percent, respectively, an amount computed by multiplying the pounds of butterfat in producer milk allocated to each class by the appropriate butterfat differential for such class as determined pursuant to § 915.52, dividing by the total butterfat in producer milk, and rounding to the nearest tenth of a cent.

§ 915.73 Location differential to producers.

In making payments to producers for milk received at a pool plant located more than 50 miles by the shortest highway distance, as determined by the market administrator, from the City Hall in either St. Joseph, Missouri, or Sabetha, Kansas, whichever is nearer, there shall be deducted 10 cents per hundredweight of milk for distances of more than 50 but not more than 60 miles, plus an additional one and one-half cents for each additional 10 miles or fraction thereof in excess of 60 miles.

PAYMENTS

§ 915.80 Time and method of payment.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, an amount equal to not less than the appropriate uniform price pursuant to § 915.71, adjusted by the butterfat and location differentials to producers pursuant to §§ 915.72 and 915.73 subject to the following adjustments:

(1) Less marketing service deductions made pursuant to § 915.85; and

(2) Less proper deductions authorized in writing by the producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 915.83, he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph

next following receipt of the balance from the market administrator;

(b) On or before the 13th day after the end of the month to each cooperative association which has filed a written request for such payment with such handler with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less any deductions authorized in writing by such cooperative association: *Provided*, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the 13th day after the end of each delivery period, to each cooperative association, with respect to receipts of milk for which such cooperative association is defined as the handler pursuant to § 915.8(c), not less than the value of such milk at applicable class prices; and

(d) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producers;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§ 915.70, 915.71, and 915.72;

(4) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (a) of this section, and § 915.85, together with a description of the respective deductions; and

(5) The net amount of payment to the producer.

§ 915.81 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 §§ 915.61 (a)(1) and (b)(1), 915.82 and 915.84, and out of which he shall make all payments pursuant to §§ 915.83 and 915.84: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

§ 915.82 Payments to the producer-settlement fund.

On or before the 14th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of the milk received from producers by such handler during the month as determined pursuant to § 915.70 is greater than the amount owed by him for such milk at the uniform price adjusted by the producer butterfat and location differentials.

§ 915.83 Payments out of the producer-settlement fund.

On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of the milk received by such handler from producers during such delivery period as determined pursuant to § 915.70 is less than the amount owed by him for such milk at the uniform price adjusted by the producer butterfat and location differentials: *Provided*, That if at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payment and shall complete such payments as soon as the necessary funds are available.

§ 915.84 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date of making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

§ 915.85 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself pursuant to § 915.80(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers 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 administrator to verify weights, samples, and tests of milk received from and to provide market information to such producers;

(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, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 915.80(a), as are authorized by such producers, and, on or before the 12th day after the end of each month, pay over such deductions to the association of which such producers are members, accompanied by a statement showing the amount of the deductions and the quantity of milk for which it was computed for each such producer.

§ 915.86 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler shall pay to the market admin-

istrator on or before the 12th day after the end of each month, 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk, except producer milk received by a cooperative association as a handler pursuant to § 915.8(c);

(b) Milk received from a cooperative association as a handler pursuant to § 915.8(c); and

(c) Other source milk allocated to Class I milk pursuant to § 915.46(a)(2) and the corresponding step of (b).

A handler operating a distributing plant which is a nonpool plant shall pay administrative assessment pursuant to § 915.61.

§ 915.87 Termination of obligation.

The provisions of this section shall apply to any obligation 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 two 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 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 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 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 representatives;

(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; 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 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 608c(15)(A) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 915.90 Effective time.

The provisions of this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 915.91.

§ 915.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 915.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 915.93 Liquidation.

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 over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 915.94 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 part.

§ 915.95 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.

Effective date: §§ 915.0 through 915.47 and §§ 915.90 through 915.95 shall be effective on and after September 1, 1961.

and all of the remaining provisions shall be effective on and after October 1, 1961.

Signed at Washington, D.C., on August 28, 1961.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 61-8358; Filed, Aug. 30, 1961;
8:53 a.m.]

[Milk Order No. 86]

PART 986—MILK IN RED RIVER VALLEY 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 Red River Valley marketing area (7 CFR Part 986), it is hereby found and determined that:

(a) Section 986.63(d) will not tend to effectuate the declared policy of the Act for the period of September 1961 through December 1961.

(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 does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) This suspension order will suspend the diversion limitation of not more than 10 days production of a producer during any month during the months of September through December 1961. This limitation inhibits the movement of existing supplies of surplus milk to non-pool plants. Emergency conditions exist in the marketing area which will make it necessary to divert producer milk on more days during these months than is permitted under the present provision. Failure to suspend the limitation on diversions would result in a number of dairy farmers losing their producer status under the order.

(4) The time available, prior to September 1961, is too short to permit the necessary analysis of the record evidence and the preparation and issuance of a recommended decision, a final decision, and an order on the proposed amendment being considered.

(5) Suspension action is based on evidence presented at a hearing held in Oklahoma City, Oklahoma, May 23-25, 1961, and reopened at Tulsa, Oklahoma, on August 8, 1961. This suspension order was requested by the Central Oklahoma Milk Producers Association which represents a majority of all producers supplying milk to the Red River Valley marketing area.

Therefore, good cause exists for making this order effective September 1, 1961.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the period September 1961 through December 1961.

Effective date: Upon publication in the FEDERAL REGISTER.

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

Signed at Washington, D.C., on August 28, 1961.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 61-8359; Filed, Aug. 30, 1961;
8:53 a.m.]

[Milk Order No. 108]

PART 1008—MILK IN INLAND EMPIRE MARKETING AREA

Order Amending Order

§ 1008.0 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 Inland Empire 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.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than September 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Director, Milk Marketing Orders Division, Agricultural Stabilization and Conservation Service, was issued July 28, 1961, and the decision of the Secretary containing all amendment provisions of this order, was issued August 11, 1961. 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 September 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4 (c), Administrative Procedure Act, 5 U.S.C. 1001-1011).

(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 herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and 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 Inland Empire 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:

§ 1008.12 [Amendment]

1. In the first proviso of § 1008.12 delete the phrase "(or from a producer who previously held such producer's base)."

§§ 1008.17, 1008.18 and 1008.19 [Deletion]

2. Delete §§ 1008.17, 1008.18 and 1008.19.

§ 1008.22 [Amendment]

3. Delete § 1008.22(j) (1) (iii) and substitute therefor the following:

(iii) The uniform price;

§ 1008.22 [Amendment]

4. In § 1008.22(k) (2) change the words "price(s)" and "differential(s)" to "price" and "differential", respectively.

§ 1008.30 [Amendment]

5. Delete paragraph (f) of § 1008.30 and redesignate paragraph (g) as paragraph (f).

§ 1008.31 [Amendment]

6. In § 1008.31(a) delete the phrase "base milk and the total pounds of excess".

§ 1008.32 [Amendment]

7. In § 1008.32 delete paragraph (c) and redesignate paragraph (d) as paragraph (c).

§ 1008.35 [Amendment]

8. In § 1008.35(a) (2) delete the phrase "the pounds of base and excess milk," and in § 1008.35(a) (3) and (4) change "rate(s)" to "rate".

§§ 1008.60 and 1008.61 [Deletion]

9. Delete §§ 1008.60 and 1008.61.

10. Delete § 1008.71 and substitute therefor the following:

§ 1008.71 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight as follows:

(a) Combine into one total the values computed pursuant to § 1008.70 for all handlers who made reports prescribed in § 1008.30 and who made the payments pursuant to § 1008.84 for the preceding month;

(b) Add the aggregate values of the location adjustments pursuant to § 1008.81;

(c) Subtract for each of the months of April, May and June an amount computed by multiplying the total hundredweight of producer milk for such month by 30 cents;

(d) Add for each of the months of September, October and November one-third of the aggregate amount subtracted pursuant to section (c) of this section;

(e) Subtract, if the average butterfat content of the milk represented by the values included under paragraph (a) of this section is greater than 4.0 percent, or add if such average butterfat content is less than 4.0 percent, an amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential computed pursuant to § 1008.82 and multiplying the result by the total hundredweight of producer milk included in these computations;

(f) Add an amount representing not less than one-half the unobligated cash balance in the producer-settlement fund;

(g) Divide the resulting sum by the total hundredweight of milk included in these computations; and

(h) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be known as the "uniform price" for milk received from producers.

§ 1008.80 [Amendment]

11. In § 1008.80 delete that portion of paragraph (a) which precedes the first proviso and substitute therefor the following:

(a) On or before the 17th day after the end of each month, each handler, including a cooperative association which is a handler, shall make payment to each producer for milk received at his plant from such producer during such month at not less than the uni-

form price for the quantity of milk received, adjusted by the location adjustment computed pursuant to § 1008.81 and by the butterfat differential computed pursuant to § 1008.82:

§ 1008.80 [Amendment]

12. In § 1008.80(a) delete subparagraphs (1) and (2).

§ 1008.81 [Amendment]

13. In § 1008.81 delete the word "base."

14. Delete § 1008.82 and substitute therefor the following:

§ 1008.82 Producer butterfat differential.

In making payments pursuant to § 1008.80(a) the uniform price shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 4.0 percent as the case may be, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 1008.52, weighted by the pounds of butterfat in producer milk in each class, the result being rounded to the nearest tenth of a cent.

§ 1008.84 [Amendment]

15. In § 1008.84 change "prices" to "price."

§ 1008.85 [Amendment]

16. In § 1008.85 change "prices" to "price."

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

Effective date: September 1, 1961.

Signed at Washington, D.C., on August 28, 1961.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 61-8360; Filed, Aug. 30, 1961; 8:53 a.m.]

[Milk Order No. 127]

PART 1027—MILK IN UPPER CHESAPEAKE BAY (MARYLAND) MARKETING AREA

Order Amending Order

Sec. 1027.0 Findings and determinations.

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Sec. 1027.1 General definitions.
1027.2 Definitions of persons.
1027.3 Definitions of plants.
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MARKET ADMINISTRATOR

1027.20 Designation.
1027.21 Powers.
1027.22 Duties.

REPORTS, RECORDS AND FACILITIES

1027.30 Reports of receipts and utilization.
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CLASSIFICATION OF MILK

1027.40 Skim milk and butterfat to be classified.
1027.41 Classes of utilization.
1027.42 Shrinkage.

Sec. 1027.43 Responsibility of handlers and the reclassification of milk.
1027.44 Transfers.
1027.45 Computation of skim milk and butterfat in each class.
1027.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

1027.50 Class prices.
1027.51 Butterfat differentials to handlers.
1027.52 Location differentials to handlers.
1027.53 Use of equivalent price or index.

APPLICATION OF PROVISIONS

1027.60 Producer-handler.
1027.61 Plants subject to other Federal orders.
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1027.63 Computation of base for each producer.
1027.64 Base rules.
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1027.71 Computation of the uniform price.
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PAYMENTS

1027.80 Time and method of payment.
1027.81 Producer butterfat differential.
1027.82 Location differential to producers.
1027.83 Producer-settlement fund.
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1027.86 Adjustment of accounts.
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EFFECTIVE TIME, SUSPENSION, OR TERMINATION

1027.90 Effective time.
1027.91 Suspension or termination.
1027.92 Continuing obligations.
1027.93 Liquidation.

MISCELLANEOUS PROVISIONS

1027.100 Agents.
1027.101 Separability of provisions.

AUTHORITY: §§ 1027.0 to 1027.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 1027.0 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 Upper Chesapeake Bay (Maryland) 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 amended, and as hereby further 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 amended, and as hereby further 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 amended, and as hereby further 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.

(4) All milk and milk products handled by handlers, as defined in the order, as amended, and as hereby further 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, 5 cents per hundredweight or such amount not to exceed 5 cents per hundredweight as the Secretary may prescribe, with respect to (i) receipts of producer milk (including such handler's own farm production), (ii) receipts of nonfederally regulated other source milk at a pool plant allocated to Class I, and (iii) receipts of Class I milk at a nonpool plant for which a payment is due pursuant to § 1027.62(d).

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than September 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Price and Production, Agricultural Stabilization and Conservation Service, was issued June 23, 1961, and the decision of the Secretary containing all amendment provisions of this order, was issued August 11, 1961. 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 September 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001-1011.)

(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 herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and 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 Upper Chesapeake Bay (Maryland) marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, and the aforesaid order, as amended, is hereby further amended as follows:

DEFINITIONS

§ 1027.1 General definitions.

(a) "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.).

(b) "Department" means the United States Department of Agriculture.

(c) "Upper Chesapeake Bay marketing area", hereinafter referred to as the "marketing area", means all territory situated within the corporate limits of the city of Baltimore, the town of Laurel in Prince Georges County; the counties of Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Harford, Howard, Kent, Queen Annes, Somerset, Talbot, Wicomico, Worcester and that portion of Calvert County lying north of a line beginning at the western terminus of Maryland State Highway 507, continuing easterly along said highway to its intersection with Maryland State Highway 2, continuing northerly along said Highway 2, to its intersection with Maryland State Highway 263 and then easterly along said Highway 263 to its terminus at the Chesapeake Bay, and that portion of Frederick County lying north of a line beginning at the intersection of the Washington-Frederick County line with Alternate U.S. Route 40, following Alternate U.S. Route 40 easterly to the western boundary of the corporate limits of the city of Frederick, thence along the western, northern and eastern boundary of the city to its eastern junction with Alternate U.S. Route 40, and then southeasterly along Alternate U.S. Route 40 to the Frederick-Carroll County line, all in the State of Maryland, together with all waterfront facilities connected therewith and including all territory within such boundaries occupied by Government (Federal, State or municipi-

pal) installations, institutions or other similar establishments.

(d) "Route" means a delivery (including any delivery by a vendor or disposition at a plant store or from a vending machine) of any Class I product to a wholesale or retail outlet, including a Federal, State or municipal establishment, but excluding any delivery to a plant.

§ 1027.2 Definitions of persons.

(a) "Person" means any individual, partnership, corporation, association, or other business unit.

(b) "Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

(c) "Dairy farmer" means any person who produces milk which is delivered in bulk (tank or cans) to a plant.

(d) "Dairy farmer for other markets" means:

(1) Any dairy farmer whose milk is received by a pool handler during any month of October through February but whose milk is diverted to a nonpool plant during the month other than within the limitations specified in paragraph (e) of this section, and

(2) Any dairy farmer whose milk is received at a pool plant during the months of March through August from a farm from which the handler, an affiliate of the handler, or any person who controls or is controlled by the handler operating the pool plant received milk other than as producer milk during any of the preceding months of October through February at a plant other than the plant which in the current month of said March-August period is the pool plant at which the farmer's milk is received.

(e) "Producer" means any dairy farmer, except a producer-handler or a dairy farmer for other markets, who produces milk which is received at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1027.2(g) (4) or which is diverted to a nonpool plant pursuant to subparagraphs (1), (2), or (3) of this paragraph: *Provided*, That the milk so diverted shall be deemed to have been received at the pool plant from which diverted if for the account of the handler operating the pool plant, or at the location of the pool plant from which diverted if for the account of a cooperative association:

(1) Diverted to a nonpool plant(s) during any month(s) of March through September or on not more than 10 days (5 days in the case of every-other-day delivery) during any month(s) of October through February;

(2) Diverted to a nonpool plant(s) during any of the months of October through February as the milk of a member of a cooperative association the total milk of whose members is not more than 10 percent so diverted during October, November, January or February or 15 percent so diverted during December (by the cooperative association and other handlers); or

(3) Diverted to a nonpool plant(s) during any of the months of October through February by a handler in his

capacity as an operator of a pool plant from which not more than 10 percent during October, November, January and February or 15 percent during December of the producer milk there received by such handler is so diverted.

(f) "Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(1) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(2) 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.

(g) "Handler" means any person (1) in his capacity as the operator of a pool plant; (2) in his capacity as the operator of a nonpool plant from which (i) Class I milk is disposed of on routes in the marketing area; or (ii) milk is shipped to a pool plant qualified pursuant to § 1027.3(b)(1); (3) a cooperative association with respect to the milk of any producer which it causes to be diverted in accordance with the provisions of paragraph (e) of this section from a pool plant for the account of such cooperative association; and (4) a cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant of another handler in a tank truck owned, operated by, or under contract to such cooperative association for the account of the cooperative association if the cooperative association has notified in writing the market administrator and the handler to whom the milk is delivered that it elects to be the handler for such milk. Such milk shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered.

(h) "Pool handler" means any person in his capacity as the operator of a pool plant, or a cooperative association in its capacity as a handler pursuant to paragraphs (g)(3) and (4) of this section.

(i) "Producer-handler" means any person who operates a dairy farm and operates a plant in which milk from his own-farm production is processed and from which Class I milk is disposed of on a route(s) in the marketing area: *Provided*, That (1) the quantity of fluid milk products he receives during the month from pool plants does not exceed 10,000 pounds; (2) his Class I milk disposition consists only of skim milk and butterfat obtained from pool plants in the form of fluid milk products or from his own-farm production; (3) such person receives no milk from other dairy farmers; and (4) the maintenance, care and management of the herd(s) and other resources necessary to production, processing and packaging of the milk are the personal enterprise and personal risk of such person.

§ 1027.3 Definitions of plants.

(a) "Plant" means the land, buildings, surroundings, facilities and equipment operated by one or more persons, constituting a single operating unit or establishment for the receiving (other than

transfer from one vehicle to another), processing or packaging of milk or milk products.

(b) "Pool plant" means a plant specified in subparagraph (1), (2), (3), or (4) of this paragraph other than that of a producer-handler: *Provided*, That any plant qualified as a pool plant pursuant to subparagraph (2) of this paragraph in each of the months of October through February shall be a pool plant for the immediately following months of March through September unless the handler gives written notice to the market administrator on or before the first day of any such month(s) (March through September) that the plant is a nonpool plant for the remaining months through September: *And provided further*, That any such plant specified in subparagraph (2) of this paragraph which was a nonpool plant during any month of October through February shall not be a pool plant in any of the immediately following months of March through September in which it is operated by the same handler, an affiliate of the handler or by any person who controls or is controlled by the handler.

(1) A plant which during the month disposes of as Class I milk on routes in the marketing area a quantity equal to not less than 10 percent of its total receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1027.2(g)(4)) and which disposes of as Class I milk a quantity equal to not less than 50 percent of such receipts.

(2) A plant in any month of October through February in which a quantity of milk equal to not less than 50 percent, and in any month of March through September in which a quantity of milk equal to not less than 40 percent, of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1027.2(g)(4)) is moved to a plant(s) which disposes of as Class I milk on routes in the marketing area a quantity equal to not less than 10 percent of its receipts of milk from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1027.2(g)(4)) and from other plants and which disposes of as Class I milk a quantity equal to not less than 50 percent of such receipts: *Provided*, That in the case of a handler operating a pool plant qualified pursuant to subparagraph (1) of this paragraph and two or more plants approved by the appropriate health authority in the marketing area as a source of supply for such plant, such supply plants shall be considered as a unit (system) for purposes of plant qualification under this paragraph upon written notice to the market administrator by the handler designating the plants to be included and the period during which such designation shall apply. Such notice or notice of changes in designation shall be given on or before the first day of the first month to which such notice applies.

(3) A manufacturing plant, located in the marketing area, from which any fluid milk product is moved to a plant which is a pool plant pursuant to sub-

paragraphs (1) and (4) of this paragraph if during the month not less than 90 percent of its receipts from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1027.2(g)(4)) are from Baltimore City permit holders who are members of a cooperative association of which 70 percent or more of the members are producers whose milk is received at other pool plants.

(4) A plant which disposes of as Class I milk on routes in the marketing area a quantity equal to not less than 5 percent of its total receipts from dairy farmers (including milk received from a cooperative association in its capacity as a handler pursuant to § 1027.2(g)(4)) and disposes of a quantity of milk equal to not less than 10 percent of such receipts either in such route disposition in the marketing area, or in quantities of skim milk and butterfat in the form of fluid milk products transferred or diverted to nonpool plants which dispose of such skim milk and butterfat on routes in the marketing area as Class I milk (considering such route disposition by each nonpool plant to be supplied out of such fluid milk products transferred or diverted to the nonpool plant to the extent that the skim milk and butterfat in the route disposition could have been so derived): *Provided*, That the plant herein qualified as a pool plant disposes of as Class I milk a quantity equal to not less than 50 percent of its receipts of milk from dairy farmers: *And provided further*, That all plants as described in this subparagraph are operated by the same handler.

(c) "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 1027.4 Definitions of milk and milk products.

(a) "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), concentrated milk, and (except eggnog, milk shake mix, ice cream mix, evaporated and plain or sweetened condensed milk or skim milk and sterilized products in hermetically sealed containers) any mixture in fluid form of cream and milk or skim milk containing less than 12 percent butterfat, and 50 percent of the quantity by weight of any such mixture containing at least 12 percent but less than 18 percent butterfat.

(b) "Producer milk" means all skim milk and butterfat contained in milk (1) received at a pool plant from producers or diverted pursuant to § 1027.2(e), or (2) received by a cooperative association in its capacity as a handler pursuant to § 1027.2(g)(4).

(c) "Other source milk" means all skim milk and butterfat contained in or represented by (1) receipts (including any Class II milk product produced in the handler's plant during a prior month) in a form other than as fluid milk products which are reprocessed, converted or combined with another product during the month, and (2) receipts from any source in the form of fluid milk products other than as: (i) producer milk, (ii) milk received from a cooperative association in its capacity as a handler pursuant to § 1027.2(g)(4),

or (iii) fluid milk products received from other pool plants and opening inventory.

(d) "Base milk" means milk received from a producer by a pool handler during any of the months of March through June which is not in excess of such producer's daily base multiplied by the number of days in such month on which such producer's milk was so received: *Provided*, That with respect to any producer on every-other-day delivery, the days of nondelivery shall be considered as days of delivery for purpose of this paragraph and of § 1027.63.

(e) "Excess milk" means milk received from a producer by a pool handler during any of the months of March through June which is in excess of base milk received from such producer during such month.

MARKET ADMINISTRATOR

§ 1027.20 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, and shall be subject to removal at the discretion of, the Secretary.

§ 1027.21 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; and
- (d) To recommend amendments to the Secretary.

§ 1027.22 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 § 1027.88:
 - (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 § 1027.87, 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 part, and, upon request by the Secretary, surrender the same to such other 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 § 1027.30 or payments pursuant to §§ 1027.80 through 1027.88;

(g) Submit his books and records to examination by the Secretary, and furnish such information and reports as the Secretary may request;

(h) Verify all reports and payments of each handler, by audit, if necessary, of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(i) Prepare and make available for the benefit of producers, consumers, and handlers, such general statistics and information concerning the operation of this part as 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, the following:

(1) The 5th day of each month, the Class I price computed pursuant to § 1027.50(a) for the current month, and the Class II price computed pursuant to § 1027.50(b) and the handler butterfat differentials computed pursuant to § 1027.51, both for the preceding month; and

(2) The 11th day of each month, the uniform price computed pursuant to § 1027.71, or the base and excess prices computed pursuant to § 1027.72 and the producer butterfat differential computed pursuant to § 1027.81, all for the preceding month; and

(k) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the class utilization of milk purchased from such association or delivered to the pool plant(s) of each handler by producers who are members of such cooperative association. For the purpose of this report, the milk so purchased or received shall be allocated to each class in the same ratio as all producer milk received by such handler during such month.

(l) On or before March 1, 1960, and on or before February 20th of each year thereafter notify:

- (1) Each cooperative association of the daily base established by each producer member of such association; and
- (2) Each nonmember producer of the daily base established by such producer.

REPORTS, RECORDS AND FACILITIES

§ 1027.30 Reports of receipts and utilization.

(a) On or before the 7th day after the end of each month, or not later than the

8th day after the end of the month if the report required by this paragraph is delivered in person to the office of the market administrator, each cooperative association in its capacity as a handler and each handler with respect to each of his pool plants shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in, (i) receipts of producer milk (including such handler's own production), (ii) receipts of fluid milk products from other pool plants and milk received from a cooperative association for which it is the handler, and (iii) receipts of other source milk;

(2) Inventories of fluid milk products on hand at the beginning and end of the month; and

(3) The utilization of all skim milk and butterfat required to be reported pursuant to this paragraph.

(b) Each handler operating a nonpool plant from which fluid milk products are disposed of on routes as Class I milk in the marketing area shall, unless otherwise directed by the market administrator, report for such plant at the same time and in the same manner prescribed for a pool handler in paragraph (a) of this section.

(c) Except as provided in paragraph (b) of this section each nonpool handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 1027.31 Other reports.

(a) Each pool handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer (and for each pool plant in the case of those pool handlers operating pool plants): (i) His name and address, (ii) the total pounds of milk received from such producer, (iii) the average butterfat content of such milk, and (iv) the net amount of the handler's payment, together with the price paid and the amount and nature of any deduction;

(2) On or before the first day other source milk is received at his pool plant(s) in the form of any fluid milk product, 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; and

(3) Such other information with respect to receipts and utilization of butterfat and skim milk as the market administrator shall prescribe.

(b) Promptly after a producer moves from one farm to another, or starts or resumes deliveries to a pool handler, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant location involved.

(c) Each pool handler who receives milk during the month from producers for which payment is to be made to a

cooperative association pursuant to § 1027.80(b) shall on or before the 11th day after the end of each month report to such cooperative association concerning each producer-member of such cooperative association from whom he received milk during the month as follows:

- (1) The name, address and code number, if any;
 - (2) The total deliveries and the number of days on which delivery was made;
 - (3) The average butterfat test of the milk delivered; and
 - (4) The nature and amount of any deductions to be made in payments due such producer.
- (d) Each pool handler dumping skim milk pursuant to § 1027.41(b) (3) shall give the market administrator during normal duty hours not less than three hours advance notice of intention to make such disposition and of the quantities of skim milk involved.

§ 1027.32 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 together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect 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 in inventory at the beginning and end of each month required to be reported pursuant to § 1027.30(a) (2); and
- (d) Payments to producers and cooperative associations, including any deductions, and the disbursement of money so deducted.

§ 1027.33 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 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

§ 1027.40 Skim milk and butterfat to be classified.

The skim milk and butterfat to be reported by each handler pursuant to § 1027.30 shall be classified each month by the market administrator pursuant to

the provisions of §§ 1027.41 through 1027.46.

§ 1027.41 Classes of utilization.

Subject to the conditions set forth in §§ 1027.42 to 1027.46 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat:

- (1) Disposed of in the form of fluid milk products except as provided in paragraph (b) (2) and (3) of this section, 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) (1) of this section; (2) disposed of for livestock feed; (3) contained in the skim milk dumped if the conditions of § 1027.31(d) are met by the handler; (4) contained in inventory of fluid milk products on hand at the end of the month; (5) in shrinkage not to exceed the following:

(i) Two percent of skim milk and butterfat, respectively, in producer milk received at a pool plant by the handler operating the plant; plus

(ii) 1.5 percent of skim milk and butterfat, respectively, in milk received at a pool plant by the handler operating the plant from a cooperative association in its capacity as a handler pursuant to § 1027.2(g) (4), except that if the handler files with the market administrator notice that he is purchasing such milk on the basis of weights determined at the farm from farm tank measurements the applicable percentage shall be two percent; plus

(iii) 1.5 percent of skim milk and butterfat, respectively, in fluid milk products received at a pool plant in bulk from pool plants; less

(iv) 1.5 percent of skim milk and butterfat, respectively, in disposition of fluid milk products in bulk from a pool plant to other plants; and plus

(v) 0.5 percent of skim milk and butterfat, respectively, in receipts of producer milk by a cooperative association for which it is a handler pursuant to § 1027.2(g) (4), unless the exception provided in subdivision (ii) of this subparagraph applies; (6) in shrinkage of other source milk; and (7) disposed of in bulk fluid form to manufacturing establishments which do not dispose of fluid milk products from the premises which use such skim milk and butterfat in the manufacture of nondairy commercial food products including soup, candy and bakery products.

§ 1027.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Allocate the resulting amounts pro rata to skim milk and butterfat, respectively, in (1) producer milk and fluid milk products in bulk received from

a cooperative association in its capacity as a handler and from other pool plants, and (2) other source milk.

§ 1027.43 Responsibility of handlers and the reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise; and

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 1027.44 Transfers.

Skim milk and butterfat disposed of during the month by a pool handler, either by transfers or diversions, shall be classified as follows:

(a) As Class I milk if transferred in the form of any fluid milk products to the pool plant of another handler unless utilization as Class II milk is claimed by both handlers (or by the handler if such transfer is between two pool plants of the same handler) in their reports pursuant to § 1027.30(a) for the month: *Provided*, That the skim milk or butterfat so classified as Class II milk shall be limited to the amount of skim milk or butterfat, respectively, remaining in Class II milk in the transferee plant after the allocation of other source milk pursuant to § 1027.46 and any additional amounts of skim milk or butterfat so transferred shall be classified as Class I milk: *And provided further*, That for transfers between pool plants, if either or both pool plants have receipts of 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 utilization to the producer milk at both plants: *And provided also*, That in no case shall the assignment of transferred skim milk and butterfat to Class I in the transferee plant exceed the difference between its total receipts of milk and milk products and the utilization by the transferee plant in Class II.

(b) As Class I milk if transferred in the form of any fluid milk product from a pool plant to a producer-handler.

(c) As Class I milk if transferred in packaged form to a nonpool plant in the form of any fluid milk product.

(d) As Class I milk if transferred or diverted in bulk in the form of any fluid milk product to a nonpool plant (other than the plant of a producer-handler) to the extent of the disposition of skim milk and butterfat, respectively, from such plant on routes as Class I milk in the marketing area: *Provided*, That any remaining amount of such transfer or diversion shall be allocated to the highest utilization remaining in the transferee plant after the prior assignment of receipts at such plant from dairy farmers who the market administrator determines constitute its regular source of supply.

(e) Except as provided in paragraph (d) of this section as Class I milk if transferred or diverted in bulk in the form of any fluid milk product to a nonpool plant located less than 300 miles

from the City Hall in Baltimore, Maryland, unless (1) the handler claims Class II utilization in his report submitted pursuant to § 1027.30(a); (2) the operator of the transferee 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) an equivalent Class II utilization was available in such plant after the assignment of receipts at such plant from other Federal order plants in the class to which assigned under such other order(s): *Provided*, That if upon inspection of the records of such plant it is found that an equivalent utilization of skim milk and butterfat was not available the remaining pounds shall be classified as Class I.

(f) As Class I milk if transferred or diverted in bulk in the form of any fluid milk products to a nonpool plant located more than 300 miles from the City Hall in Baltimore, Maryland.

§ 1027.45 Computation of 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 submitted pursuant to § 1027.30(a) and shall compute the pounds of skim milk and butterfat in Class I milk and Class II milk for such handlers: *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 a quantity equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1027.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1027.45, the market administrator shall determine the classification of producer milk received at each pool plant as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk classified pursuant to § 1027.41(b) (5) (i) through (iv);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received during the month in a form other than fluid milk products;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of any fluid milk product from plants which are not fully subject to the pricing provisions of another order issued pursuant to the Act and in milk received from dairy farmers for other markets;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk in bulk receipts in the form of any fluid

milk product from plants which are fully subject to the pricing provisions of another order issued pursuant to the Act;

(5) Subtract from the pounds of skim milk remaining in Class II milk, in excess of the pounds of skim milk in inventory of fluid milk products on hand at the end of the month, the pounds of skim milk in inventory of such product on hand at the beginning of the month: *Provided*, That if the pounds of skim milk in such beginning inventory is greater than the remaining Class II milk utilization the difference shall be subtracted from the pounds of skim milk remaining in Class I milk;

(6) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in packaged fluid milk products received from fully regulated plants under the provisions of another order issued pursuant to the Act;

(7) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received in the form of fluid milk products from pool plants or from a cooperative association in its capacity as a handler pursuant to § 1027.2(g) (4) according to the classification determined pursuant to § 1027.44(a).

(8) Add to the remaining pounds of skim milk in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(9) 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 each class in series beginning with Class II milk. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section; and

(c) Add the pounds of skim milk and the pounds of butterfat allocated to producer milk in each class computed pursuant to paragraphs (a) and (b) of this section and determine the weighted average butterfat content of each class.

MINIMUM PRICES

§ 1027.50 Class prices.

Subject to the provisions of §§ 1027.51 and 1027.52 each handler shall pay, at the time and in the manner set forth in § 1027.80, for each hundredweight of milk containing 3.5 percent butterfat received at his pool plant(s) during the month from producers or from a cooperative association in its capacity as a handler pursuant to § 1027.2(g) (4) or received by a cooperative association from producers (when such cooperative association is a handler pursuant to § 1027.2(g) (3) or (4)) not less than the following prices per hundredweight for the respective quantities of milk in each class computed pursuant to §§ 1027.40 through 1027.46.

(a) *Class I price*. During the period beginning with August 1961 and through and including September 1962 the price for Class I milk shall be \$5.55 for the months of July through February and \$5.10 for the months of March through June: *Provided*, That such price in any

month shall be adjusted to reflect the deviation of the average of the Federal order Class I prices for the Philadelphia, New York-New Jersey and Chicago markets for such month from such average price in the corresponding month of 1958, as follows:

Three-market average deviation from corresponding month of 1958 (cents), plus or minus:	Class I price adjustment (cents), plus or minus
0-15	0
15.1-35	20
35.1-55	40
55.1-75	60
75.1-95	80

(b) *Class II price*. The price for Class II milk shall be the sum of the values of butterfat and skim milk computed as follows:

(1) *Butterfat*. Add all weekly quotations per 40-quart can of 40 percent sweet cream approved for Pennsylvania and New Jersey in the Philadelphia market as reported each week ending within the month by the Department, divide by the number of quotations, subtract \$2.00, divide by 33.48, multiply by 3.5: *Provided*, That such butterfat value shall not be less than 3.5 times 120 percent of the average Grade A (92-score) butter price at New York as reported by the Department for the month for which payment is to be made less 17 cents.

(2) *Skim milk*. The average of carlot prices per pound for nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as reported for the period from the 26th day of the preceding month through the 25th day of the current month by the Department shall determine the skim values as follows:

Average price per pound of nonfat dry milk (spray and roller process)	Skim value
\$0.0065 or below	
\$0.066-\$0.075	\$0.075
\$0.076-\$0.085	.150
\$0.086-\$0.095	.225
\$0.096-\$0.105	.300
\$0.106-\$0.115	.375
\$0.116-\$0.125	.450
\$0.126-\$0.135	.525
\$0.136-\$0.145	.600
\$0.146-\$0.155	.675
\$0.156-\$0.165	.750
\$0.166-\$0.175	.825
\$0.176-\$0.185	.900
\$0.186-\$0.195	.975

§ 1027.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 1027.50 shall be increased or decreased, respectively, for each one-tenth of one percent butterfat content variation from 3.5 percent, by the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I milk*. Add all weekly quotations per 40-quart can of 40 percent fresh sweet cream, approved for Pennsylvania and New Jersey, in the Philadelphia market as reported each week ending within the month by the Department, divide by the number of quotations and divide the resulting amount by 334.8: *Provided*, That if the result is less than the Class II differential determined pursuant to paragraph (b) in this section,

such Class II differential shall also be applicable to Class I milk; and

(b) *Class II milk.* Divide by 35 the butterfat value determined pursuant to § 1027.50(b) (1).

§ 1027.52 Location differentials to handlers.

For that milk received from producers or from a cooperative association as a handler pursuant to § 1027.2(g) (4) at a pool plant located 75 miles or more from the nearer of the City Hall in Baltimore or the Courthouse in Salisbury, Maryland, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I milk, the price specified in § 1027.50(a) shall be reduced 12 cents per hundredweight plus an additional 1.5 cents for each additional 10 miles or fraction thereof in excess of 75 miles: *Provided*, That for the purpose of calculating such location differential, products designated as Class I milk which are transferred between pool plants shall be assigned first to any remainder of Class II milk in the transferee plant after making the allocations prescribed in § 1027.46(a) (1) through (5) and the corresponding steps in § 1027.46(b) for such plant, such assignment to the transferor plant to be made in sequence beginning with the plant where the largest location differential is applicable.

§ 1027.53 Use of equivalent price or index.

If for any reason a price quotation or index required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price or index which is required.

APPLICATION OF PROVISIONS

§ 1027.60 Producer-handler.

Sections 1027.40 through 1027.46, 1027.50 through 1027.52, 1027.62 through 1027.64, 1027.70 through 1027.72, and 1027.80 through 1027.89 shall not apply to a producer-handler.

§ 1027.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be considered as a nonpool plant except that the operator of such plant 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 and allow verification of such reports by the market administrator.

(a) Any plant qualified pursuant to § 1027.3(b) (1) or (4) which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act unless a greater volume of Class I milk is disposed of from such plant on routes in this marketing area than in a marketing area pursuant to such other order.

(b) Any plant qualified pursuant to § 1027.3(b) (2) which would otherwise be subject to the classification and pricing provisions of another order issued pur-

suant to the Act unless such plant qualified as a pool plant pursuant to the first proviso in § 1027.3(b) for each month during the preceding October through February.

§ 1027.62 Payments on other source milk.

On or before the 13th day after the end of each month, handlers shall make payments to producers through the producer-settlement fund as follows:

(a) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (2) and (b) shall make payment on the quantity so allocated at the difference between the Class II price and the Class I price applicable at the location of his pool plant qualified pursuant to § 1027.3 (b) (1).

(b) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (3) and (b) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at the location of the nearest nonpool plant(s) (as determined by the application of the location differential rate pursuant to § 1027.52) from which an equivalent amount of such other source milk was received.

(c) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1027.46 (a) (4) or (6) and (b), which milk was not classified and priced as Class I milk under such other Federal order, shall make payment on the quantity of such milk at the difference between the Class I price and the Class II price applicable at the location of the nearest other Federal order plant(s) (as determined by the application of the location differential rate presented in § 1027.52) from which an equivalent amount of such other source milk was received.

(d) Each handler operating a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the Act, and from which Class I milk is disposed of on routes in the marketing area during the month, shall make payment on the quantity of skim milk and butterfat so disposed of which is in excess of his receipts of skim milk and butterfat, respectively, classified and priced as Class I milk under this or any other Federal order at the difference between the Class I price and the Class II price applicable at the location of such plant.

(e) Each handler operating a nonpool plant which is subject to the classification and pricing provisions of another order issued pursuant to the Act, and from which Class I milk is disposed of on routes in the marketing area during the month shall make payment on any quantity of skim milk and butterfat so disposed of which was not classified and priced as Class I under such other order, at the difference between the Class I and Class II price applicable at the location of such plant.

§ 1027.63 Computation of base for each producer.

For each of the months of March through June of each year the market

administrator shall compute, subject to the rules set forth in § 1027.64, a base for each producer described in paragraphs (a) through (d) of this section by dividing the applicable quantity of milk receipts specified in such paragraphs by the number of days in the July-December period beginning with the first day of receipt at the plants specified in such paragraphs and continuing through December 31, but not less than 154 days:

(a) For any producer, except as provided in paragraphs (b), (c), and (d) of this section, the quantity of milk receipts shall be the total pounds of producer milk received by all pool handlers from such producer during the preceding months of July through December;

(b) For any producer whose milk was received during the preceding months of July through December at a plant which became a pool plant after the beginning of such base-earning period, the quantity of milk receipts shall be the total pounds of milk received from such dairy farmer during such July-December period by pool handlers as producer milk or at the plant as a nonpool plant;

(c) For any producer who transferred his producer milk deliveries from a pool handler under Federal Milk Order No. 2 (Washington, D.C.) to a pool handler under this order during the base-earning period (July through December of the preceding year) and was a producer under this order during all of the months of October, November and December of the preceding year, the quantity of milk receipts shall be the total pounds of milk received from such farmer during all of each months of July through December by pool handlers under both orders; or

(d) For any producer not described in paragraphs (b) or (c) of this section but whose milk was received by a handler as producer milk during the months of September, October, November, and December of the preceding year at a pool plant at which receipt of his milk in the immediately preceding months of July and August would have qualified or did qualify him as a "dairy farmer for other markets", the quantity of milk receipts shall be the total pounds of milk received from such producer by pool handlers during such months of July through December and verified receipts at the nonpool plant of the handler, affiliate of the handler, or any person who controls or is controlled by the handler during such months of July through September.

§ 1027.64 Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base computed pursuant to § 1027.63 may be transferred in its entirety upon written notice to the market administrator on or before the last day of the month of transfer, but only if a producer sells, leases or otherwise conveys his herd to another producer and it is established to the satisfaction of the market administrator that the conveyance of the herd was bona fide and not for the purpose of evading any provision of this part.

(b) If a producer operates more than one farm, and milk is received from each at a pool plant or by a cooperative asso-

ciation in its capacity as a handler pursuant to § 1027.2(g) (3) or (4), he shall establish a separate base with respect to producer milk delivered from each such farm.

(c) Only one base shall be allotted with respect to milk produced by one or more persons where the herd, land, buildings, and equipment used are jointly owned or operated: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of an application signed by all joint holders or their heirs, or assigns.

§ 1027.70 Computation of the value of producer milk for each handler.

For each month, the market administrator shall compute the value of producer milk for each pool handler as follows:

(a) Multiply the pounds of producer milk in each class computed pursuant to §§ 1027.40 through 1027.46 by the applicable class price and total the resulting amounts.

(b) Add the amount of any payments due from such handler pursuant to § 1027.62 (a), (b) and (c).

(c) Add the amounts computed by multiplying the pounds of "overage" deducted from each class pursuant to § 1027.46 (a) (9) and (b) by the applicable class price.

(d) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month less allowable shrinkage allocated pursuant to § 1027.46 (a) (1) and (b) in such month, or the hundredweight of milk subtracted from Class I pursuant to § 1027.46 (a) (5) and (b) for the current month, whichever is less;

(e) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of milk allocated to Class I pursuant to § 1027.46 (a) (5) and (b) for the current month which is in excess of (1) the hundredweight of milk for which an adjustment was made pursuant to paragraph (d); and (2) the hundredweight of milk assigned to Class II pursuant to § 1027.46 (a) (4) and (b) for the previous month and which was classified and priced as Class I under the other Federal order; and

(f) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1027.71 Computation of the uniform price.

For each of the months of July through February, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content, f.o.b. market as follows:

(a) Combine into one total the net obligations computed pursuant to

§ 1027.70 for all handlers who made reports prescribed in § 1027.30(a) for the month who were not in default of payments pursuant to § 1027.84 for the preceding month;

(b) Subtract, if the weighted average butterfat content of producer milk in paragraph (a) is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the producer butterfat differential computed pursuant to § 1027.81 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount equal to the sum of deductions to be made from producer payments for location differentials pursuant to § 1027.82;

(d) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) in this section; and

(f) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (e) of this section.

§ 1027.72 Computation of uniform prices for base milk and excess milk.

For each of the months of March through June the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk received from producers, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(a) Compute the aggregate value of excess milk for all handlers who made reports prescribed in § 1027.30(a) for the month, and who were not in default of payments pursuant to § 1027.84 for the preceding month, as follows: (1) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II milk price, (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 round to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(c) Subtract the total value of excess milk, determined by multiplying the uniform price obtained in paragraph (b) of this section by the hundredweight of excess milk, from the total value of producer milk for the month as determined according to the calculations set forth in § 1027.71 (a) through (d);

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk for handlers 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.

PAYMENTS

§ 1027.80 Time and method of payment.

(a) Except as provided in paragraph (b) of this section each pool handler on or before the 15th day after the end of each month shall make payment to each producer for milk which was received from such producer during the month at not less than the uniform price computed pursuant to § 1027.71 for the months of July through February and at not less than the price for base milk computed pursuant to § 1027.72 (c) through (e) with respect to base milk received from such producer, and not less than the excess price determined pursuant to § 1027.72 (a) and (b) for excess milk received from such producer for the months of March through June subject to the following adjustments: (1) The butterfat differential computed pursuant to § 1027.81, (2) less the location differential computed pursuant to § 1027.82, and (3) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1027.85 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator, an amount not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) In the case of milk received by a handler from a cooperative association in its capacity as a handler, such handler shall on or before the 12th day after the end of each month pay to such cooperative association for milk so received during the month an amount not less than the value of such milk computed at the applicable class prices for the location of the plant of the buying handler.

§ 1027.81 Producer butterfat differential.

In making payments pursuant to § 1027.80 (a) or (b), the uniform prices and the price for base and for excess milk shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to § 1027.51 (a) and (b) weighted by the pounds of butterfat in

producer milk in each class and rounded to the nearest full cent.

§ 1027.82 Location differential to producers.

In making payments to producers or to a cooperative association pursuant to § 1027.80 (a) or (b) at the uniform price computed pursuant to § 1027.71 for milk received from producers during any month(s) of July through February and at the uniform price for base milk computed pursuant to § 1027.72 for base milk received from producers during any month(s) of March through June, a handler, with respect to all such milk received at a pool plant located 75 miles by the shortest highway distance from the nearer of the City Hall, Baltimore, Maryland, or the Courthouse, Salisbury, Maryland (as determined by the market administrator), and a cooperative association, with respect to all such milk received by it in its capacity as a handler pursuant to § 1027.2(g) (3) and (4), at the location of such plant, shall deduct 12 cents per hundredweight plus an additional 1.5 cents for each additional 10-mile distance, or fraction thereof, which such plant is located from such point.

§ 1027.83 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 §§ 1027.62, 1027.84 and 1027.86 and out of which he shall make all payments pursuant to §§ 1027.85 and 1027.86; *Provided*, That the market administrator shall offset any such payment due to any handler against payment due from such handler.

§ 1027.84 Payments to the producer-settlement fund.

On or before the 13th day after the end of each month, each handler, including a cooperative association which is a handler, shall pay to the market administrator for payment to producers through the producer-settlement fund the amount by which the net pool obligation of such handler is greater than the sum required to be paid producers by such handler pursuant to § 1027.80 (a) and (b).

§ 1027.85 Payments out of the producer-settlement fund.

On or before the 13th day after the end of the month, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid producers by such handler pursuant to § 1027.80 (a) and (b) is greater than the net pool obligations of such handler; *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.

§ 1027.86 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administra-

tor from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such 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.

§ 1027.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers for milk (other than milk of his own production) pursuant to § 1027.80(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 18th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to § 1027.80(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

§ 1027.88 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler, excluding a cooperative association in its capacity as a handler pursuant to § 1027.2(g) (4), shall pay to the market administrator on or before the 18th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe for each hundredweight of skim milk and butterfat contained in (a) producer milk (including such handler's own farm production), (b) milk received from a cooperative association in its capacity as a handler pursuant to § 1027.2(g) (4), (c) other source milk at a pool plant which is allocated to Class I milk pursuant to § 1027.46(a) (2) and (3) and (b), and (d) Class I milk for which a payment is due pursuant to § 1027.62(d).

§ 1027.89 Termination of obligations.

The provisions of this section shall apply to any obligation 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 (a) and (c), terminate two 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 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 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 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 until the first day of the month following the month during which all such books and records pertaining to such obligations are made available to the market administrator or his representatives;

(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 milk involved in the claim was received if an underpayment is claimed, or two years after the end of the 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.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1027.90 Effective time.

The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 1027.91.

§ 1027.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision of this part, whenever he finds that this part or any provision of this part, obstructs, or does not tend to effectuate the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

§ 1027.92 Continuing obligations.

If under the suspension or termination of any or all provisions of this part, 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.

§ 1027.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such 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 accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If the 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 liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS**§ 1027.100 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 part.

§ 1027.101 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.

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

Effective date: September 1, 1961.

Signed at Washington, D.C., on August 28, 1961.

CHARLES S. MURPHY,
Under Secretary.

[F.R. Doc. 61-8361; Filed, Aug. 30, 1961; 8:54 a.m.]

Title 12—BANKS AND BANKING**Chapter II—Federal Reserve System****SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

[Reg. D]

PART 204—RESERVES OF MEMBER BANKS**§ 204.107 Withheld taxes as deposits for reserve purposes.**

(a) In a ruling published in the 1942 Federal Reserve Bulletin, page 532, the

Board stated that deductions of Social Security taxes by a bank from salaries of its employees should be treated as "Other liabilities" in condition reports and not as deposits for reserve purposes.

(b) In a ruling published in the 1944 Bulletin, page 670, the Board applied the same principle with respect to (1) State income taxes withheld from salaries of a bank's own employees who reside outside the State, and (2) Federal income taxes withheld from payments made by a bank as disbursing agent for dividends, bond interest, etc., where withholding at source is required under the Internal Revenue Act.

(c) On the other hand, the Federal Deposit Insurance Corporation has always regarded moneys withheld for these purposes as deposits that should be included in the assessment base for deposit insurance. Its position was upheld in two cases decided by Federal Courts under the Federal Deposit Insurance Act prior to its amendment in 1960 and the regulations of the FDIC in force at the time. In 1955 the United States District Court for the Southern District of New York decided that withheld income and Social Security taxes, and taxes on dividends and interest on securities, payable by the bank as agent for the issuing corporations, should be included as deposits in the assessment base (FDIC v. Irving Trust Co., 137 Fed. Supp. 145, 154). In 1957 the United States Court of Appeals for the Seventh Circuit held that money withheld by the bank for payment of Federal income taxes on its employees' salaries and for payment of employees' share of Federal Social Security taxes were deposits and should be included in the assessment base (FDIC v. Cont. Ill. N. Bk., 245 F. 2d 567, 576).

(d) When the Federal Deposit Insurance Act was amended on July 14, 1960, the definition of the term "deposit" in 12 U.S.C. 1813(1) was expanded to include specifically "withheld taxes." Since one of the primary purposes of the 1960 amendment was to eliminate differences in the definition of deposits for purposes of (1) reports of condition submitted to the three Federal supervisory agencies, (2) reserve requirements, and (3) Federal deposit insurance assessments, and in view of the court decisions referred to above, the Board has decided that the two rulings published in the Federal Reserve Bulletin for 1942 and 1944, referred to above, should be regarded as superseded and that withheld taxes, including withheld income taxes and Social Security taxes of a bank's own employees, should be classified hereafter as deposits in condition reports and in computing required reserves.

(Sec. 11, 38 Stat. 261, as amended; 12 U.S.C. 248. Interprets or applies sec. 19, 38 Stat. 270, as amended; 12 U.S.C. 461, 462, 462b, 464, 465; Public Law 86-114, July 28, 1959)

Dated at Washington, D.C., this 18th day of August, 1961.

[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F.R. Doc. 61-8324; Filed, Aug. 30, 1961; 8:47 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE**Chapter I—Small Business Administration**

[Amdt. 3]

PART 122—BUSINESS LOANS**Limited Loan Participation Plan**

The Small Business Administration Business Loan Regulation (23 F.R. 10520) as amended (26 F.R. 4192, 26 F.R. 5175, and 26 F.R. 5956), is hereby further amended by deleting the last sentence of § 122.7-8 and substituting a new sentence in lieu thereof (the effect of this amendment being to permit loans made under the Limited Loan Participation Plan to be amortized upon a monthly or other repayment schedule). As so amended § 122.7-8 reads as follows:

§ 122.7-8 Limited loan participation plan.

The plan is designed especially to assist small retail, wholesale, and service establishments (other types of business may also be eligible) which are unable to pledge as much tangible collateral as is required for regular business loans, but which have a good earnings record, competent management, and a creditable record with local banks for meeting their obligations. Loans under this plan are made entirely through banks, with the banks participating in them either on a deferred or immediate basis. SBA's share of a loan can be no more than \$25,000, or 75 percent of the total amount of the loan, whichever is the lesser. The maximum maturity of a loan of this type is five years, generally repayable monthly, including interest at a rate as set forth in § 122.7-4 or 122.7-5.

Dated: August 14, 1961.

JOHN E. HORNE,
Administrator.

[F.R. Doc. 61-8342; Filed, Aug. 30, 1961; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE**Chapter III—Federal Aviation Agency****SUBCHAPTER E—AIR NAVIGATION REGULATIONS**

[Airspace Docket No. 61-WA-140]

PART 600—DESIGNATION OF FEDERAL AIRWAYS**Designation of Federal Airway**

The purpose of this amendment to Part 600 of the regulations of the Administrator is to designate low altitude VOR Federal airways Nos. 839 and 881 between Miami, Fla., and Cleveland, Ohio.

The 800 series airways are designated to indicate preferred routes of flight between major terminal areas for the purpose of segregating opposite direction traffic and generally coincide with exist-

ing low altitude VOR Federal airways. It has been determined that 800 series airways are necessary for the segregation of opposite direction traffic between the Miami, Fla., and the Cleveland, Ohio, terminal areas. Therefore, action is taken herein to designate Victor 839 from Miami to Cleveland and Victor 881 from Cleveland to Miami.

Since this amendment imposes no additional burden on any person, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), Part 600 (14 CFR Part 600) is amended by adding the following sections:

§ 600.6839 VOR Federal airway No. 839
(Miami, Fla., Metropolitan Area to the Cleveland, Ohio, Metropolitan Area); normal traffic flow north-bound.

From the Miami, Fla., VORTAC via the LaBelle, Fla., VOR; Lakeland, Fla., VOR; Ocala, Fla., VORTAC; Gainesville, Fla., VOR; Taylor, Fla., VOR; Alma, Ga., VOR; Allendale, S.C., VOR; Columbia, S.C., VOR; Fort Mill, S.C., VOR; Pulaski, Va., VOR; Beckley, W. Va., VOR; Parkersburg, W. Va., VOR; Newcomerstown, Ohio, VORTAC; Navarre, Ohio, VORTAC; INT of the Navarre VORTAC 352° and the Akron, Ohio, VOR 298° radials; INT of the Akron VOR 298° and the Cleveland, Ohio, VORTAC 091° radials; to the Cleveland VORTAC.

§ 600.6881 VOR Federal airway No. 881
(Cleveland, Ohio, Metropolitan Area to the Miami, Fla., Metropolitan Area); normal traffic flow south-bound.

From the Cleveland, Ohio, VORTAC via the INT of the Cleveland VORTAC 138° and the Tiverton, Ohio, VOR 017° radials; Tiverton VOR; Zanesville, Ohio, VOR; Charleston, W. Va., VORTAC; Blackford, Va., VOR; Tri City, Tenn., VOR; Asheville, N.C., VOR; Spartanburg, S.C., VOR; Augusta, Ga., VOR; INT of the Augusta VOR 157° and the Savannah, Ga., VOR 321° radials; INT of the Savannah VOR 321° and the Allendale, S.C., VOR 216° radials; Alma, Ga., VOR; Taylor, Fla., VOR; Gainesville, Fla., VOR; Ocala, Fla., VORTAC; Lakeland, Fla., VOR; Fort Myers, Fla., VOR; INT of the Fort Myers VOR 134° and the Miami, Fla., VORTAC 269° radials; to the Miami VORTAC.

This amendment shall become effective 0001, e.s.t., October 19, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C. on August 24, 1961.

LEE E. WARREN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 61-8318; Filed, Aug. 30, 1961; 8:46 a.m.]

[Airspace Docket No. 61-LA-56]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Alteration of Federal Airway and Control Area Extension

The purpose of these amendments to §§ 600.6008 and 601.1277 of the regulations of the Administrator is to alter low altitude VOR Federal airway No. 8 and the description of the Denver, Colo., control area extension.

On February 4, 1961, Airspace Docket No. 60-WA-53 was published in the FEDERAL REGISTER (26 F.R. 1079) which established a low altitude airway system and an intermediate altitude airway system. Low altitude airways were described therein as extending up to, but not including 14,500 feet MSL.

The segment of Victor 8 from the Kremmling, Colo., VORTAC to the Superior, Colo., intersection and the north alternates to Victor 8 between the Mormon Mesa, Utah, VORTAC and the Bryce Canyon, Utah, VOR and between the Kremmling VORTAC and the Denver VORTAC, have established minimum enroute altitudes in excess of 14,000 feet MSL. These segments of airway are unusable in the low altitude airway system and action is taken herein to revoke them.

Additionally, the segment of Victor 8 from Kremmling to Superior is used in the description of the Denver control area extension. Therefore, the Federal Aviation Agency is altering this description by deleting "VOR Federal airway No. 8" and substituting "a line 5 miles north of and parallel to the Denver VORTAC 292° radial." This action alters the configuration of the Denver control area extension somewhat, but does not result in the designation of additional control area since the newly included airspace is a part of the controlled airspace associated with Victor 8 and Victor 8 N revised herein.

Since these actions impose no additional burden on any person, compliance with section 4 of the Administrative Procedure Act is unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than thirty days after publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following actions are taken:

1. In the text of § 600.6008 (14 CFR 600.6008) "Bryce Canyon, Utah, VOR, including a north alternate via the INT of the Mormon Mesa VOR 032° and the Bryce Canyon VOR 255° radials;" is deleted and "Bryce Canyon, Utah VOR;" is substituted therefor; and "Kremmling, Colo., omnirange station, including a south alternate; Denver, Colo.,

VOR, including a north alternate;" is deleted and "to the Kremmling, Colo., VORTAC, including a south alternate. From the INT of the Denver, Colo., VORTAC 277° and the Gill, Colo., VOR 222° radials via the Denver VORTAC;" is substituted therefor.

2. In the text of § 601.1277 (14 CFR 601.1277) "That airspace SW of Denver lying within a 34-mile radius of the Denver VOR bounded on the N by VOR Federal airway No. 8" is deleted and "That airspace within a 34-mile radius of the Denver VORTAC bounded on the N by a line 5 miles N of and parallel to the Denver VORTAC 292° radial" is substituted therefor.

These amendments shall become effective 0001, e.s.t., October 19, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on August 24, 1961.

LEE E. WARREN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 61-8317; Filed, Aug. 30, 1961; 8:46 a.m.]

[Airspace Docket No. 61-WA-142]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Alteration of the Continental Control Area

The purpose of this amendment to § 601.7101 of the regulations of the Administrator is to alter the description of the continental control area by including the Lake George, Fla., Restricted Area R-2907.

On August 5, 1961, there was published in the FEDERAL REGISTER (26 F.R. 7033) an alteration of the Lake George Restricted Area R-2907 (Airspace Docket No. 60-WA-273) which reflected the joint use status of this restricted area. It has since been determined that to realize full utilization of this special use airspace, R-2907 should be included within the continental control area. Such action is taken herein.

Since this amendment imposes no additional burden on the public, notice and public procedure hereon are unnecessary. However, since it is necessary for this action to become effective concurrently with Airspace Docket No. 60-WA-273, this amendment will become effective on September 21, 1961.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following action is taken:

In § 601.7101 (26 F.R. 1399) the following is added:

R-2907 Lake George, Fla.

This amendment shall become effective 0001, e.s.t., September 21, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on August 24, 1961.

LEE E. WARREN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 61-8316; Filed, Aug. 30, 1961;
8:45 a.m.]

[Airspace Docket No. 60-HO-10]

PART 601—DESIGNATION OF CONTROLLED AIRSPACE, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

PART 608—SPECIAL USE AIRSPACE

Revocation and Alteration of Restricted Areas and Alteration of Control Area Extension

The purpose of these amendments to §§ 608.31 and 601.1423 of the regulations of the Administrator is to revoke Restricted Area R-3110, alter the descriptions of Restricted Areas R-3109 and R-3102, and the Oahu, Hawaii, control area extension.

R-3109 and R-3110 are adjoining areas having the same designated altitudes, times of designation, and using agency. An evaluation of these areas by the Department of the Army has revealed that it is feasible to combine these areas and to reduce their overall size by approximately 8 square miles. Although this modification results in an overall reduction of restricted airspace, the adjustment of the restricted area boundaries entails the inclusion within R-3109 of a small amount of airspace bordering the eastern portion of R-3110. This area constitutes approximately one square mile and would not affect current aeronautical operations. Further, in order to effect more efficient utilization of this special use area, hereinafter identified as Schofield-Makua Restricted Area R-3109, the Army has agreed to the joint use of this area. The designation of the Honolulu, Hawaii, Flight Service Station as the controlling agency for R-3109 will provide a facility which airborne traffic may contact for approval to transit the area. Therefore, the time of designation is changed to "continuous" in lieu of the former "As published in NOTAMS".

Additionally, the Army has agreed to a reduction in the geographical size and designated altitudes, a change in the time of designation, and to the establishment of joint use for R-3102. Therefore, the Honolulu Flight Service Station is designated herein as the controlling agency for this special use area. This will provide a facility which airborne traffic may contact for approval to transit R-3102. Consequently, reference to NOTAMS (Firing Notices) as previously contained in the time of designation is not required. Such actions are taken herein.

In order to further facilitate the efficient utilization of R-3102 and R-3109, the description of the Oahu, Hawaii, control area extension is altered herein so as to designate these areas as controlled airspace.

No. 168—4

Since the changes effected by these amendments impose no additional burden on the public, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following actions are taken:

1. In § 608.31 (26 F.R. 7193), the following changes are made:

(a) R-3110 Schofield, Oahu, Hawaii, is revoked.

(b) R-3109 Makua, Oahu, Hawaii, is amended to read:

R-3109 Schofield-Makua, Oahu, Hawaii.

Boundaries. Beginning at latitude 21°35'30" N., longitude 158°11'30" W.; to latitude 21°35'05" N., longitude 158°10'45" W.; to latitude 21°35'00" N., longitude 158°12'45" W.; to latitude 21°34'45" N., longitude 158°12'45" W.; to latitude 21°31'35" N., longitude 158°07'00" W.; to latitude 21°32'20" N., longitude 158°06'30" W.; to latitude 21°31'36" N., longitude 158°04'45" W.; to latitude 21°30'00" N., longitude 158°04'33" W.; to latitude 21°29'11" N., longitude 158°07'33" W.; to latitude 21°30'30" N., longitude 158°12'30" W.; to latitude 21°31'00" N., longitude 158°14'00" W.; to latitude 21°32'30" N., longitude 158°14'30" W.; to latitude 21°33'30" N., longitude 158°15'30" W.; to latitude 21°34'45" N., longitude 158°17'20" W.; to latitude 21°35'15" N., longitude 158°14'30" W.; to the point of beginning.

Designated altitudes. Surface to 29,000 feet MSL.

Time of designation. Continuous.

Controlling agency. Federal Aviation Agency, Honolulu Flight Service Station.

Using agency. Commanding General, U.S. Army Hawaii, Schofield Barracks, Hawaii.

(c) R-3102 Dillingham, Hawaii, is amended to read:

R-3102 Dillingham, Hawaii.

Boundaries. Beginning at latitude 21°34'45" N., longitude 158°17'20" W.; to latitude 21°35'20" N., longitude 158°19'40" W.; thence 3 miles from and parallel to the shoreline of Oahu to latitude 21°37'45" N., longitude 158°09'25" W.; to latitude 21°35'30" N., longitude 158°11'30" W.; to latitude 21°35'15" N., longitude 158°14'30" W.; to the point of beginning.

Designated altitudes. Surface to 29,000 feet MSL.

Time of designation. 0700 to 1700 Hawaiian standard time. Monday through Friday.

Controlling agency. Federal Aviation Agency, Honolulu Flight Service Station.

Using agency. Commanding General, U.S. Army Hawaii, Schofield Barracks, Hawaii.

2. In the text of § 601.1423 (14 CFR 601.1423) "The portions of this control area extension which lie within the geographic limits of, and between the designated altitudes of, Restricted Areas R-315, R-333 and R-335 are excluded during the restricted areas' times of designation;" is deleted and "The portions of this control area extension which coincide with R-3102 and R-3109 shall be used only after obtaining prior approval from appropriate authority;" is substituted therefor.

These amendments shall become effective 0001, e.s.t., October 19, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on August 24, 1961.

LEE E. WARREN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 61-8319; Filed, Aug. 30, 1961;
8:46 a.m.]

[Airspace Docket No. 60-WA-159]

PART 626—NOTICE OF CONSTRUCTION OR ALTERATION; CRITERIA, PROCEDURES AND RULES FOR DETERMINATION OF THE EFFECT OF PROPOSED STRUCTURES UPON THE USE OF NAVIGABLE AIRSPACE

Miscellaneous Amendments

Part 626 was adopted on June 12, 1961 (26 F.R. 5287), to establish requirements for notification to the Federal Aviation Agency of proposed structures which would project into the navigable airspace, provide criteria and procedures for determining the effect of such structures on air navigation, and provide for the establishment of antenna farm areas where tall towers could be grouped to lessen their impact on the use by aircraft of the navigable airspace.

The adoption of Part 626 was accompanied and followed by discussions with the Federal Communications Commission to coordinate FAA operations under the new regulations with the activities of the Commission in the issuance of construction permits for antenna towers under the Communications Act of 1934. The amendments which follow implement the conclusions reached in those discussions.

For a number of years the FCC Rules have exempted from their requirements for special aeronautical study all antenna structures of 20 feet or less in height. The Commission advises that operations under this exemption have been advantageous to both Government and industry. An Agency review has disclosed that exclusion of this type of structure from the application of Part 626 should not derogate the performance of the Agency functions under the Federal Aviation Act. Accordingly, Part 626 is amended herein to except antennas not exceeding 20 feet in height. A minor amendment is also being adopted at this time to except certain air navigation aids and related devices.

The FAA-FCC discussions underscored the existence of uncertainty in the broadcast industry with respect to the effect on FCC jurisdiction of the Agency findings made subsequent to the hearings held under Subpart D. These hearings are conducted to determine the effect of proposed structures upon the safety of aircraft and the efficient utilization of the navigable airspace. The findings made form the basis for a determination as to whether a proposed structure would, in fact, result in a hazard to air navigation. While we regard this determination as a final one on the question

of air hazard, our findings should not be construed to prejudice the exercise by the Commission of its statutory jurisdiction, particularly its authority to determine whether a construction permit for such a structure should be issued. Accordingly, we are promulgating an expression of our opinion on this point. This conclusion should not be interpreted as an attempt to settle any justiciable rights which may be the subject of later controversy. Any individual who believes an FAA or FCC action has deprived him of one or more rights may apply, of course, to the appropriate court for a review and decision on the matter.

In the adoption of the regulations providing for the establishment of antenna farm areas, a provision was included under which the views of the Federal Communications Commission would be considered prior to establishment of a particular farm area. In order to remove any doubt regarding the weight which this Agency would give those views, an amendment is made here to state specifically that a proposed antenna farm area will not be established if the FCC advises that the establishment would interfere with its statutory responsibilities. Similarly, while the FAA would consider the establishment of any farm area when proposed by the FCC, Part 626 did not expressly reveal this in its original form. Consequently, it is now being revised to include the Federal Communications Commission in the list of those agencies which may propose the establishment of an antenna farm area.

Since these amendments either reduce a burden on the public or are editorial in nature, notice and public procedure hereon are unnecessary and they may be made effective immediately.

In consideration of the foregoing, Part 626 of the regulations of the Administrator is hereby amended as follows:

Section 626.9(b) is revised to read:

(b) Notice to the Administrator is not required for the proposed construction or alteration of the following:

(1) Any structure to be located where the completed structure would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height; provided that such shielding would result in the proposed structure causing no increase in potential hazard to aircraft operations. In case of doubt as to whether the potential hazard to aircraft would be increased by such proposed construction or alteration, Notice shall be submitted.

(2) Any antenna structure which, upon completion of the construction or alteration, would not exceed 20 feet in height and which would be located on the ground or on any existing structure other than an antenna structure.

(3) Any air navigation aid, airport visual approach or landing aid, or airport ceiling or visibility indicator device, the location and height of which would be fixed by its functional purpose.

Section 626.50 is amended by the addition of the following:

NOTE: Any findings entered hereunder are without prejudice to the jurisdiction of the

Federal Communications Commission to grant or deny applications for construction permits under the Communications Act of 1934, as amended.

Section 626.76(b) is amended by the addition of the following: "If the Commission advises that establishment of the proposed antenna farm area would interfere with its statutory responsibilities, the proposed area will not be established."

Section 626.76(c) is revised to read:

(c) An antenna farm area will be considered for establishment when proposed by the Agency, the Federal Communications Commission, the sponsor of a proposed antenna tower, or any person having a substantial interest in any such proposed tower.

These amendments are effective as of the date of issuance.

(Secs. 104, 307, 313, 1001, and 1101, 72 Stat. 740, 749, 752, 788, and 797; 49 U.S.C. 1304, 1348, 1354, 1481, 1501.)

Issued in Washington, D.C., on August 25, 1961.

N. E. HALABY,
Administrator.

[F.R. Doc. 61-8320; Filed, Aug. 30, 1961; 8:46 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

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

Tolerance for Residues of Terpene Polychlorinates

A petition was filed by Heyden Newport Chemical Corporation, 342 Madison Avenue, New York 17, New York, with the Food and Drug Administration requesting the establishment of a tolerance for residues of terpene polychlorinates in or on cottonseed at 3 parts per million, and a tolerance of 5 parts per million for this pesticide chemical in cottonseed oil resulting from carryover and concentration of residues in this food item processed from such cottonseed.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which a tolerance is being established on cottonseed.

It is not clear from the data presented that this pesticide concentrates in oil from treated cottonseed at a higher level than is present in the undelinted seed. Therefore, action with respect to the tolerance for terpene polychlorinates in cottonseed oil is being deferred pending further evidence that such tolerance is necessary.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will

protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR Part 120) are amended as follows:

§ 120.3 [Amendment]

1. In § 120.3 *Tolerances for related pesticide chemicals*, paragraph (e) (4) is amended by inserting therein, after the item "Sulphenone * * *", the item "Terpene polychlorinates (chlorinated mixture of camphene, pinene, and related terpenes, containing 65%–66% chlorine)."

2. Part 120 is amended by adding thereto the following new section.

§ 120.164 Tolerance for terpene polychlorinates.

A tolerance of 3 parts per million is established for residues of terpene polychlorinates (chlorinated mixture of camphene, pinene, and related terpenes, containing 65%–66% chlorine), calculated as a chlorinated terpene of molecular weight 396.6 containing 67% chlorine in or on cottonseed.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing with be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: August 24, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-8348; Filed, Aug. 30, 1961; 8:50 a.m.]

PART 121—FOOD ADDITIVES

Subpart A—Definitions and Procedural and Interpretative Regulations

FURTHER EXTENSION OF EFFECTIVE DATE OF STATUTE FOR CERTAIN SPECIFIED FOOD ADDITIVES

The Commissioner of Food and Drugs, pursuant to the authority provided in the

Federal Food, Drug, and Cosmetic Act (sec. 6(c), Public Law 85-929, as amended sec. 2, Public Law 87-19; 72 Stat. 1788, as amended 75 Stat. 42; 21 U.S.C., note under sec. 342) and delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625) hereby authorizes the use in foods of certain additives as indirect additives for which tolerances have not yet been established or petitions therefor denied.

Section 121.91 (21 CFR 121.91) is amended by adding thereto the following items:

§ 121.91 Further extensions of effective date of statute for certain specified food additives as indirect additives to food.

* * * * *

SUBSTANCES USED AS COMPONENTS OF COATINGS OF PAPER AND PAPERBOARD FOR FOOD PACKAGING¹

Product	Specified uses or restrictions	Effective date of statute extended to—
Acrylate copolymer of ethyl acrylate, methyl acrylate, and methacrylic acid.....		July 1, 1962
Alkyl benzene sulfonate.....		Do.
Alkylphenyl polyethylene glycol ether.....		Do.
Aluminum stearate.....		Do.
Ammonium persulfate.....		Do.
Ammonium thiosulfate.....		Do.
Animal glue.....		Do.
Azo-bis-isobutyronitrile.....		Do.
Benzoyl peroxide.....		Do.
Borax.....		Do.
Boric acid.....		Do.
Butylbenzyl phthalate.....		Do.
Butyraldehyde.....		Do.
Camphor fatty acid esters.....		Do.
Carbon tetrachloride.....		Do.
Cetyl alcohol.....		Do.
Cetyl alcohol, ethylene oxide condensate.....		Do.
Chloracetamide.....		Do.
Chloral hydrate.....		Do.
Cobaltous acetate.....		Do.
Copper-8 quinolate.....		Do.
Cumene hydroperoxide.....		Do.
Diacetylperoxide.....		Do.
Dibutylphthalate.....		Do.
Dicyclohexylphthalate.....		Do.
Diethylene glycol monobutyl ether.....		Do.
Diethylene glycol monoethyl ether.....		Do.
1,2-Dihydro-2,4-trimethyl-quinoline, polymerized.....		Do.
Dihydroxy dichlorodiphenylmethane.....		Do.
Dimethylpolysiloxane.....		Do.
Di- <i>p</i> -naphthyl- <i>p</i> -phenylenediamine.....		Do.
Dinonylphenol.....		Do.
Disodium hydrogen phosphate.....		Do.
Ethylene diamine tetraacetic acid, sodium, potassium, and calcium salts.....		Do.
<i>N,N</i> -Ethylenebis stearamide.....		Do.
Fish oil, hydrogenated.....		Do.
Glycerol monobutyl ricinoleate.....		Do.
Glyoxal.....		Do.
Hydroabietyl alcohol.....		Do.
Hydrogen methylpolysiloxane (methylhydrogen polysiloxane).....		Do.
Hydroquinone.....		Do.
Isocetylphenylpolyoxyethylene glycol.....		Do.
Isopropyl peroxydicarbonate Japan wax.....		Do.
Kerosene.....		Do.
Kerosene, deodorized.....		Do.
Lauroyl peroxide.....		Do.
Linseed oil.....		Do.
Methyl palmitate-oleate mixture.....		Do.
Monoethyl ether of hydroquinone.....		Do.
Montan wax.....		Do.
Mustardseed oil, sulfated.....		Do.
Naphtha.....		Do.
Nitrocellulose.....		Do.

¹ Progress report for the list of items included under this heading required by Jan. 1, 1962.

SUBSTANCES USED AS COMPONENTS OF COATINGS OF PAPER AND PAPERBOARD FOR FOOD PACKAGING¹—Continued

Product	Specified uses or restrictions	Effective date of statute extended to—
Oleyl alcohol.....		July 1, 1962
Petrolatum.....		Do.
Petroleum polymerization resins obtained from the polymerization of dienes and olefins from low-boiling petroleum stocks.....		Do.
Petroleum sulfonate, made by sulfonating a straight chain aliphatic hydrocarbon of the C ₁₂ to C ₁₈ range.....		Do.
Phthalic, maleic, ethylene-glycol polyester modified with methyl rosin.....		Do.
Polyacrylamide.....		Do.
Polyamide resin obtained by condensation of dimerized vegetable fatty acids and ethylene diamine, molecular weight 6000-9000.....		Do.
Polyalkylene glycol ether.....		Do.
Polyethylene glycol sorbitan monolaurate.....		Do.
Polyethylene glycol sorbitan monostearate.....		Do.
Polyester resin formed by reacting the acid groups in montan wax with ethylene glycol.....		Do.
Polyoxyethylated fatty alcohols.....		Do.
Polyoxyethylene glycol (400) monostearate.....		Do.
Polyoxyethylene nonylphenol.....		Do.
Polyoxyethylene oleate.....		Do.
Polyoxyethylene - polyoxypropylene copolymer polyethers.....		Do.
Polyoxyethylene (20) sorbitan monostearate (polysorbate 60).....		Do.
Polypropylene glycol.....		Do.
Polysorbate 80.....		Do.
Polyvinyl acetate copolymers produced by reaction of vinyl acetate with one or more of the following substances:		Do.
Acrylamide.....		Do.
Acrylic acid.....		Do.
Acrylonitrile.....		Do.
Butyl acrylate.....		Do.
Crotonic acid.....		Do.
Decyl acrylate.....		Do.
Diallyl fumarate.....		Do.
Diallyl maleate.....		Do.
Diallyl phthalate.....		Do.
Dibutyl fumarate.....		Do.
Dibutyl itaconate.....		Do.
Dibutyl maleate.....		Do.
Di(2-ethylhexyl) maleate.....		Do.
Diethyl fumarate.....		Do.
Diethyl maleate.....		Do.
Divinyl benzene.....		Do.
Ethyl acrylate.....		Do.
2-Ethylhexyl acrylate.....		Do.
Fumaric acid.....		Do.
Itaconic acid.....		Do.
Maleic acid.....		Do.
Methacrylic acid.....		Do.
Methyl acrylate.....		Do.
Methyl methacrylate.....		Do.
Mono (2-ethylhexyl)-maleate.....		Do.
Styrene.....		Do.
Vinyl butyrate.....		Do.
Vinyl crotonate.....		Do.
Vinyl hexoate.....		Do.
Vinylidene chloride.....		Do.
Vinyl pelargonate.....		Do.
Vinyl propionate.....		Do.
Vinyl pyrrolidone.....		Do.
Vinyl stearate.....		Do.
Polyvinyl alcohol.....		Do.
Polyvinylidene chloride latex coating.....		Do.
Potassium pentachlorophenate.....		Do.
Potassium persulfate.....		Do.
Potassium trichlorophenate.....		Do.
Propylene glycol monoester of hydrogenated tallow fatty acids.....		Do.
Propylene glycol monoester of soybean oil fatty acids.....		Do.
Ricebran oil.....		Do.
Rubber (natural), smoked sheet and latex solids.....		Do.
Silica, colloidal.....		Do.
Silicone defoamers.....		Do.
Sodium alkyl benzenesulfonate.....		Do.

SUBSTANCES USED AS COMPONENTS OF COATINGS OF PAPER AND PAPERBOARD FOR FOOD PACKAGING¹—Continued

Product	Specified uses or restrictions	Effective date of statute extended to—
Sodium dihexylsulfosuccinate.....		July 1, 1962
Sodium dioctylsulfosuccinate.....		Do.
Sodium ethylene ether of nonylphenol sulfate.....		Do.
Sodium pentachlorophenate.....		Do.
Sodium persulfate.....		Do.
Sodium polyacrylate.....		Do.
Sodium ricinoleate.....		Do.
Sodium trichlorophenate.....		Do.
Sodium-bis-tridecylsulfosuccinate.....		Do.
Sodium xylene sulfonate.....		Do.
Sorbitan trioleate.....		Do.
Styrene-methacrylic copolymer mixed or without copolymers of styrene-maleic anhydride.....		Do.
Sulfonated vegetable oils, potassium salt.....		Do.
Tall oil.....		Do.
Tallow.....		Do.
Tallow alcohol, hydrogenated.....		Do.
Tallow fatty acids, hydrogenated.....		Do.
Tallow, hydrogenated.....		Do.
Tallow, sulfated.....		Do.
Titanium dioxide.....		Do.
Toluene-sulfonamide formaldehyde resin.....		Do.
Vinylidene chloride-acrylate fumarate copolymer.....		Do.
Vinylidene chloride-methyl acrylate-vinylsulfonic acid-acrylamide copolymer.....		Do.
Xylene.....		Do.
Zinc formaldehyde sulfonate.....		Do.
Zinc octoate.....		Do.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since extensions of time, under certain conditions, for the effective date of the Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act were contemplated by Public Law 87-19 as a relief of restrictions on the food-processing industry.

Effective date. This order shall become effective as of the date of signature.

(Sec. 6(c), Public Law 85-929, as amended, sec. 2, Public Law 87-19; 72 Stat. 1788, as amended, 75 Stat. 42; 21 U.S.C., note under sec. 342)

Dated: August 22, 1961.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 61-8247; Filed, Aug. 30, 1961; 8:45 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

On June 7, 1961, a notice of proposed rule making with respect to regulations designated as Part 270 of Title 26 of the Code of Federal Regulations was published in the FEDERAL REGISTER (26 F.R. 5046). The proposed regulations prescribe provisions relating to the production and taxpayment of cigars, ciga-

rettes, and manufactured tobacco in a single part of the regulations and institute the tobacco products factory concept as contemplated by the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, 72 Stat. 1275).

In accordance with the notice, interested persons were afforded an opportunity to submit for consideration any comments or suggestions pertaining thereto. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed and after making editorial, clarifying, and liberalizing changes, the regulations as so published are hereby adopted subject to the changes set forth below.

1. Section 270.1 is changed by inserting after the word "payment" the phrase "by manufacturers of tobacco products".

2. Section 270.11 is changed:

(A) By rewording the definition of "Manufacturer of tobacco" to read "Any manufacturer of tobacco products who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco (other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose."

(B) By rewording the first sentence of the definition of "Tobacco materials" to read "Tobacco (other than manufactured tobacco, cigars, and cigarettes), including tobacco in process, Perique, Black Fat, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, stems, and waste."

(C) By inserting in the definition of "Waste", after the word "Tobacco" the first time it appears, the word "materials".

3. Section 270.44 is changed by rewording the second sentence to read "Where the products are not sold, the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption."

4. Section 270.63 is changed by rewording the second and third sentences to read "The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors, and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the same assistant regional commissioner and such information is currently complete and accurate, a written statement, in duplicate, to that effect by the corporation, will be sufficient for the purpose of this section."

5. The second sentence of § 270.64 is changed to read "Where a partnership or association has previously filed such documents with the same assistant regional commissioner and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association, will be sufficient for the purpose of this section."

6. The second sentence of § 270.65 is changed to read "If no such certificate or other document is so required, a written statement, in duplicate, to that

effect by such person, will be sufficient for the purpose of this section."

7. The first sentence of § 270.68 is changed by striking the words "under this part" and inserting in lieu thereof the words "to be executed".

8. The first sentence of § 270.74 is changed by inserting the word "and" after the word "permit" the first time it appears in the sentence.

9. Section 270.102 is changed by striking the fourth sentence and inserting in lieu thereof new fourth and fifth sentences to read "The predecessor shall make a concluding inventory and concluding report, in accordance with the provisions of § 270.201 and § 270.202, respectively, and surrender his permit with such inventory and report. The successor shall make a commencing inventory and commencing report in accordance with the provisions of § 270.201 and § 270.202, respectively."

10. Section 270.113 is changed by rewording the second sentence to read "The manufacturer shall notify the assistant regional commissioner for the region from which he is removing his factory of his qualification in the new region, giving the address of the new location of his factory and the number of the permit issued to him in the new region, make a concluding inventory and concluding report in accordance with the provisions of § 270.201 and § 270.202, respectively, and surrender the permit for his old location with such inventory and report."

11. Section 270.212 is changed by striking "such factory." and adding the following "the factory from which such products are to be so removed: *Provided*, That the Director may on application authorize a manufacturer to mark packages of tobacco products manufactured in and removed subject to tax from any of his factories with only the name of the manufacturer if the factory of production is identified on the package by a statement (e.g., manufactured in Richmond, Va.), symbol, or other means (other than a permit number), approved by the Director."

12. The first sentence of § 270.251 is changed by striking the phrase "or the extension of coverage of bond".

13. Section 270.252 is changed by striking "§ 270.311." at the end of the third sentence and inserting "§§ 270.311 and 270.313."

14. Section 270.253 is changed by striking "§ 270.311." at the end of the fifth sentence and inserting "§§ 270.311 and 270.313."

Effective date. The regulations in this part shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the *FEDERAL REGISTER*.

These regulations are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: August 28, 1961.

STANLEY S. SURREY,
Assistant Secretary of the
Treasury.

Preamble. 1. These regulations, 26 CFR Part 270, "Manufacture of Tobacco Products," are promulgated to prescribe provisions relating to the production and taxpayment of cigars, cigarettes, and manufactured tobacco in a single part of this chapter, and to implement the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, 72 Stat. 1275). These regulations supersede the existing regulations in 26 CFR Part 270 and Subpart E of 26 CFR Part 296 in their entirety, and prescribe revision of provisions formerly included in 26 CFR Part 270 relating to manufacturers of cigars and cigarettes, prescribe revision of provisions formerly included in 26 CFR Part 275 relating to manufacturers of tobacco, and prescribe revision of provisions formerly included in Subpart E of 26 CFR Part 296 relating to taxpayment of cigars, cigarettes, and manufactured tobacco by manufacturers of tobacco products.

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.

Subpart A—Scope of Regulations

Sec.	
270.1	Manufacture of tobacco products.
270.2	Territorial extent.

Subpart B—Definitions

270.11	Meaning of terms.
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Subpart C—Taxes

270.21	Cigar tax rates.
270.22	Classification of large cigars.
270.23	Cigarette tax rates.
270.24	Classification of cigarettes.
270.25	Manufactured tobacco tax rate.
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270.41	Forms prescribed.
270.42	Authority of internal revenue officers to enter premises.
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270.46	Emergency variations from requirements.
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Subpart E—Qualification Requirements for Manufacturers

270.61	Persons required to qualify.
270.62	Application for permit.
270.63	Corporate documents.
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270.65	Trade name certificate.
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270.69	Factory premises.
270.70	Separation of and access to factory.
270.71	Factories established prior to effective date.
270.72	Use of factory premises.
270.73	Additional information.
270.74	Investigation of applicant.
270.75	Issuance of permit.
270.76	Retention of permit and supporting documents.

Subpart F—Changes After Original Qualification of Manufacturers

CHANGES IN NAME

270.91	Change in individual name.
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- Sec.
270.92 Change in trade name.
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CHANGES IN OWNERSHIP AND CONTROL

- 270.101 Fiduciary successor.
270.102 Transfer of ownership.
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270.104 Change in control of a corporation.

CHANGES IN LOCATION AND FACTORY

- 270.111 Change in location within same region.
270.112 Change in address.
270.113 Change in location to another region.
270.114 Extension or curtailment of factory.

Subpart G—Bonds and Extensions of Coverage of Bonds

- 270.131 Corporate surety.
270.132 Deposit of securities in lieu of corporate surety.
270.133 Amount of individual bond.
270.134 Amount of blanket bond.
270.135 Strengthening bond.
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270.137 Extension of coverage of bond.
270.138 Approval of bond and extension of coverage of bond.
270.139 Termination of surety's liability.
270.140 Release of pledged securities.
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Subpart H—Operations by Manufacturers

DETERMINATION AND PAYMENT OF TAXES ON TOBACCO PRODUCTS

- 270.161 Determination of tax and method of payment.
270.162 Semimonthly tax return.
270.163 Semimonthly tax return periods.
270.164 Adjustments in the semimonthly return.
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RECORDS

- 270.181 General.
270.182 Record of tobacco materials.
270.183 Record of tobacco products.
270.184 Record in support of removals subject to tax.
270.185 Retention of records.

INVENTORIES AND REPORTS

- 270.201 Inventories.
270.202 Reports.

PACKAGES

- 270.211 Package.
270.212 Mark.
270.213 Notice for manufactured tobacco.
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EXEMPTION FROM TAXES ON TOBACCO PRODUCTS

- 270.231 Consumption by employees.
270.232 Experimental purposes.
270.233 Transfer in bond.
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270.235 Removal for export purposes.
270.236 Release from customs custody.

OTHER PROVISIONS RELATING TO TOBACCO PRODUCTS

- 270.251 Emergency storage.
270.252 Reduction to materials.
270.253 Destruction.
270.254 Receipt into factory.

TOBACCO MATERIALS

- 270.261 Storage.
270.262 Shipment or delivery.
270.263 Fumigation.

- Sec.
270.264 Destruction.
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Subpart I—Claims by Manufacturers

GENERAL

- 270.281 Abatement of assessment.
270.282 Allowance of tax.
270.283 Refund of tax.
270.284 Remission of tax liability.
270.285 Redemption of stamps.

TOBACCO PRODUCTS LOST OR DESTROYED

- 270.301 Action by claimant.

TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

- 270.311 Action by claimant.
270.312 Action by assistant regional commissioner.
270.313 Disposition of tobacco products and schedule.

Subpart J—Suspension and Discontinuance of Operations by Manufacturers

- 270.331 Discontinuance of operations.
270.332 Suspension and revocation of permit.

AUTHORITY: §§ 270.1 to 270.332 are issued under section 7805, 68A Stat. 917; 26 U.S.C. 7805. Additional authority is cited in parentheses following the sections affected.

Subpart A—Scope of Regulations

§ 270.1 Manufacture of tobacco products.

This part contains the regulations relating to the manufacture of tobacco products; the payment by manufacturers of tobacco products of internal revenue taxes imposed by Chapter 52 of the Internal Revenue Code; and the qualification of and operations by manufacturers of tobacco products.

§ 270.2 Territorial extent.

The provisions of the regulations in this part shall apply in the several States of the United States and the District of Columbia.

Subpart B—Definitions

§ 270.11 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, each of the following terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, words in the singular form shall include the plural, 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.

CFR. The Code of Federal Regulations.

Cigar. Any roll of tobacco wrapped in tobacco.

Cigarette. Any roll of tobacco, wrapped in paper or any substance other than tobacco.

Commissioner. The Commissioner of Internal Revenue.

Dealer in tobacco materials. Any person who receives and handles tobacco materials for sale, shipment, or delivery to another dealer in such materials, to a manufacturer of tobacco products, or to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or who receives tobacco materials, other than stems and waste, for use by him in the production of fertilizer, insecticide, or nicotine. The term "dealer in tobacco materials" shall not include (a) an operator of a warehouse who stores tobacco materials solely for a qualified dealer in tobacco materials, for a qualified manufacturer of tobacco products, for a farmer or grower of tobacco, or for a bona fide association of farmers or growers of tobacco; (b) a farmer or grower of tobacco with respect to the sale of leaf tobacco of his own growth or raising, or a bona fide association of farmers or growers of tobacco with respect to sales of leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm: *Provided*, That such association maintains records of all leaf tobacco acquired or received and sold or otherwise disposed of by the association, in accordance with Part 280 of this chapter; (c) a person who buys leaf tobacco on the floor of an auction warehouse, or who buys leaf tobacco from a farmer or grower, and places the tobacco on the floor of such a warehouse, or who purchases and sells warehouse receipts without taking physical possession of the tobacco covered thereby; or (d) a qualified manufacturer of tobacco products with respect to tobacco materials received by him under his bond as such a manufacturer.

Determined or determination. When used with respect to the tax on tobacco products, determined or determination shall mean that the quantity, kind, and class if applicable, of cigars, cigarettes, or manufactured tobacco to be removed subject to tax have been established as prescribed by this part so that the tax payable with respect thereto may be calculated.

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

District director. A district director of internal revenue.

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Factory. The premises of a manufacturer of tobacco products as described in his permit issued under Chapter 52, I.R.C.

In bond. The status of tobacco materials, tobacco products, and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by

section 5701 or section 7652, I.R.C., and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such materials and articles in a factory, (b) such materials and articles removed, transferred, or released, pursuant to section 5704, I.R.C., and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

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 part.

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

Large cigarettes. Cigarettes weighing more than three pounds per thousand.

Large cigars. Cigars weighing more than three pounds per thousand.

Manufactured tobacco. Tobacco (other than cigars and cigarettes) prepared, processed, manipulated, or packaged, for removal, or merely removed, for consumption by smoking or for use in the mouth or nose, and any tobacco (other than cigars and cigarettes), not exempt from tax under Chapter 52, I.R.C., sold or delivered to any person contrary to the provisions of such chapter or regulations thereunder.

Manufacturer of tobacco. Any manufacturer of tobacco products who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco (other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose.

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, or who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco (other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose, or who sells or delivers any tobacco (other than cigars and cigarettes) contrary to the provisions of Chapter 52, I.R.C., or regulations thereunder. The term "manufacturer of tobacco products" shall not include (a) a person who in any manner prepares tobacco, or produces cigars or cigarettes, solely for his own personal consumption or use; (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse; (c) a farmer or grower of tobacco with respect to the sale of leaf tobacco of his own growth or raising, if it is in the condition as cured on the farm; or (d) a bona fide association of farmers or growers of tobacco with respect to sales of leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm, and if the association maintains records of all leaf tobacco, acquired or received and sold or otherwise disposed of, in accordance with Part 280 of this chapter.

Package. The container in which tobacco products are put up by the manufacturer and offered for sale or delivery to the consumer.

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

Region. An internal revenue region.

Regional commissioner. A regional commissioner of internal revenue.

Removal or remove. The removal of tobacco products from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States.

Small cigarettes. Cigarettes weighing not more than three pounds per thousand.

Small cigars. Cigars weighing not more than three pounds per thousand.

Stems. The stems or midribs of tobacco.

This chapter. Chapter I, Title 26, Code of Federal Regulations.

Tobacco materials. Tobacco (other than manufactured tobacco, cigars, and cigarettes), including tobacco in process, Perique, Black Fat, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, stems, and waste. Tobacco materials are categorized:

(a) **Unstemmed leaf tobacco.** Leaf tobacco from which the stem or midrib has not been removed.

(b) **Other tobacco materials.** Tobacco materials other than unstemmed leaf tobacco.

Tobacco products. Manufactured tobacco, cigars, and cigarettes.

U.S.C. The United States Code.

Waste. Tobacco materials, including dust, and foreign substances resulting from the handling, manipulation, or processing of tobacco, and which are worthless for use in the manufacture of tobacco products and have no market value for that purpose.

Subpart C—Taxes

§ 270.21 Cigar tax rates.

On cigars, manufactured in or imported into the United States, the following taxes are imposed by law:

(a) **Small cigars.** 75 cents per thousand.

(b) **Large cigars.** (1) If removed to retail at not more than 2½ cents each, \$2.50 per thousand;

(2) If removed to retail at more than 2½ cents each and not more than 4 cents each, \$3 per thousand;

(3) If removed to retail at more than 4 cents each and not more than 6 cents each, \$4 per thousand;

(4) If removed to retail at more than 6 cents each and not more than 8 cents each, \$7 per thousand;

(5) If removed to retail at more than 8 cents each and not more than 15 cents each, \$10 per thousand;

(6) If removed to retail at more than 15 cents each and not more than 20 cents each, \$15 per thousand; and

(7) If removed to retail at more than 20 cents each, \$20 per thousand.

Cigars not exempt from tax under Chapter 52, I.R.C., and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.22 Classification of large cigars.

Large cigars are divided into seven classes, for tax purposes, corresponding with the rates of tax imposed by section 5701(b)(2), I.R.C., and based on the retail price intended by the manufacturer for such cigars. The classes are designated, from the lowest to the highest rate of tax, as Class A, Class B, Class C, Class D, Class E, Class F, and Class G, respectively. In establishing the retail price, for tax purposes, regard shall be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on cigars as a commodity. Where there is more than one price for the same cigar in its principal market, the tax to be paid shall be determined, at the time of removal, according to the price at which the majority are sold therein. Subsequent retail sale at a price in excess of the maximum for the class at which taxpaid will not, in itself, cause the manufacturer to incur any additional tax liability.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.23 Cigarette tax rates.

On cigarettes, manufactured in or imported into the United States, the following taxes are imposed by law:

(a) **Small cigarettes.** \$4 per thousand.

(b) **Large cigarettes.** \$8.40 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is \$4 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.24 Classification of cigarettes.

For tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.25 Manufactured tobacco tax rate.

On tobacco, manufactured in or imported into the United States, a tax of 10 cents per pound is imposed by law.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.26 Persons liable for tax.

The manufacturer of tobacco products shall be liable for the taxes imposed on such products by section 5701, I.R.C.: *Provided*, That when tobacco products are transferred in bond pursuant to section 5704, I.R.C., to the bonded premises of another such manufacturer or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt by him of such products and the transferor shall thereupon be relieved of his liability for the tax. When tobacco products are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products, the transferee shall become liable for the tax on such products upon release from customs custody. Any person who possesses tobacco products in violation of section 5751(a) (1) or (2), I.R.C., shall be liable for a tax equal to the tax on such products.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

§ 270.27 Assessment.

Whenever any person required by law to pay tax on tobacco products fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in section 6501, I.R.C. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

Subpart D—Administrative Provisions

§ 270.41 Forms prescribed.

The Director is authorized to prescribe all 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. When a return, form, claim, or other document called for under this part is required by this part, or by the document itself, to be executed under penalties of perjury, it shall be so executed.

§ 270.42 Authority of internal revenue officers to enter premises.

Any internal revenue officer may enter in the daytime any premises where tobacco products are produced or kept, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any internal revenue officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any internal revenue officer or permit him to examine such products shall be liable to the penalties prescribed by law for the offense.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

§ 270.43 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this part, or endeavors to intimidate or impede any internal revenue officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

§ 270.44 Disposal of forfeited, condemned, and abandoned tobacco products.

When any Federal, State, or local officer having custody of forfeited, condemned, or abandoned tobacco products, upon which the Federal tax has not been

paid, is of the opinion that the sale thereof will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, he shall not sell, nor cause to be sold, such products for consumption in the United States. Where the products are not sold, the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such products are sold, they shall not be released by the officer having custody thereof until they are properly packaged and taxpaid, which tax shall be considered as a portion of the sales price. The payment of tax on such products shall be evidenced by presentation, to the officer having custody of the products, of a receipt from the district director showing such payment. In the case of such products held by or for the Federal Government, the sale thereof shall be subject to the applicable provisions of the Regulations of the General Services Administration, Title 1, Personal Property Management.

(72 Stat. 1425; 26 U.S.C. 5753)

§ 270.45 Alternate methods or procedures.

A manufacturer of tobacco products, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. Where a manufacturer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of

this part is hindered. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

§ 270.46 Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications,

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variations may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

§ 270.47 Other businesses within factory.

The Director may authorize such other businesses within the factory as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law.

§ 270.48 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this part becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

Subpart E—Qualification Requirements for Manufacturers

§ 270.61 Persons required to qualify.

Every person who produces any tobacco products, except for his own personal consumption or use, shall qualify as a manufacturer of tobacco products in accordance with the provisions of this part: *Provided*, That a person who on the effective date of this part holds a valid permit as a manufacturer of cigars and cigarettes or as a manufacturer of tobacco may continue the operations au-

thorized to be performed under such permit, in accordance with the provisions of this part. A person holding a valid permit as a manufacturer of cigars and cigarettes or as a manufacturer of tobacco, or holding a limited permit substituted therefor as provided in § 270.75, who desires to obtain a permit as a manufacturer of tobacco products without limitation as to kind of tobacco product that may be produced in his factory shall make application therefor in accordance with this subpart.

(72 Stat. 1421; 26 U.S.C. 5711, 5712, 5713)

§ 270.62 Application for permit.

Every person, before commencing business as a manufacturer of tobacco products as defined in § 270.11, shall make application for, and obtain, the permit provided in § 270.75, covering operations at each proposed factory. Such application shall be made on Form 2093, in duplicate, to the assistant regional commissioner for the region in which the proposed factory will be located. All documents required under this part to be furnished with such application shall be made a part thereof. Where the applicant for a permit under this section holds a permit or permits authorizing the production of any tobacco products at premises to be covered by the permit applied for, the applicant shall surrender such permit or permits for cancellation, upon the issuance of the permit applied for.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.63 Corporate documents.

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 270.62, a true copy of the corporate charter or a certificate of corporate existence or incorporation, executed by the appropriate officer of the State in which incorporated. The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors, and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the same assistant regional commissioner and such information is currently complete and accurate, a written statement, in duplicate, to that effect by the corporation will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.64 Articles of partnership or association.

Every partnership or association, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 270.62, a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the same assistant regional commissioner and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the part-

nership or association will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.65 Trade name certificate.

Every person, before commencing business under a trade name as a manufacturer of tobacco products, shall furnish with his application for permit, required by § 270.62, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.66 Bond.

Every person, before commencing business as a manufacturer of tobacco products, shall file, in connection with his application for permit, a bond on Form 3070, in duplicate, in accordance with the applicable provisions of Subpart G of this part, conditioned upon compliance with the provisions of Chapter 52, I.R.C., and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which he may become liable to the United States: *Provided*, That any person who, on the effective date of this part, has on file a valid and adequate bond, Form 2100, "Bond—Manufacturer of Cigars and Cigarettes," or Form 2099, "Bond—Manufacturer of Tobacco," as the case may be, may continue, under such bond, the operations with respect to the permit to which that bond relates (including a permit substituted therefor under the provisions of § 270.75), in accordance with the provisions of this part.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.67 Blanket bond.

Where a manufacturer of tobacco products operates more than one factory in the same region he may, in lieu of filing separate bonds, file a blanket bond on Form 3070, in duplicate, in accordance with the provisions of § 270.134, for any or all of the factories in the same region. The total amount of any blanket bond given under this section shall be available for the satisfaction of any liability incurred at any factory covered by the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.68 Power of attorney.

If the application for permit or any other document required to be executed is signed by an attorney in fact for an individual, partnership, association, company, or corporation, or by one of the partners for a partnership, or by one of the members of an association, power of attorney on Form 1534 shall be furnished to the assistant regional commissioner. If such application or other document is signed on behalf of a corporation by an officer thereof, it must be supported by duly authenticated extracts of the stockholders' meeting, bylaws, or direc-

tors' meeting authorizing such officer to execute such document for the corporation. Form 1534 or support of authority does not have to be filed again with an assistant regional commissioner where such form or support has previously been submitted to that assistant regional commissioner and is still in effect.

§ 270.69 Factory premises.

The premises to be used by a manufacturer of tobacco products as his factory may consist of more than one building, or portions of buildings, which need not be contiguous but must be located in the same city, town, or village: Except that, where the assistant regional commissioner determines that a building or portion of a building which is not within the city, town, or village, is so conveniently and closely situated to the general factory premises as to present no jeopardy to the revenue and as to offer no hindrance to the administration of this part, he may authorize the inclusion of such building or portion of building as part of the factory. The buildings or portions of buildings shall be described in the application for permit and the bond by number, street, and city, town, or village, and State. Where the factory consists of a portion of a building, or where portions of buildings are part of the factory, a diagram, in duplicate, shall also be furnished showing the particular floor or floors, or room or rooms, comprising the factory or part thereof. The diagram shall also show any adjoining retail store, operated by such manufacturer, where tobacco products are sold.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.70 Separation of and access to factory.

Where the factory consists of a portion of a building, or where portions of buildings are part of the factory, the factory shall be completely separated by walls from adjoining portions of the building. Such walls shall be securely constructed of substantial materials. The assistant regional commissioner may, wherever he finds that the revenue will not be jeopardized, authorize openings and doors in such walls or means of separation other than walls if such means adequately delineate the factory. The factory shall be accessible directly from a street, yard, common passageway, or other common means of entrance.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.71 Factories established prior to effective date.

Factories established prior to the effective date of this part shall not be subject to the provisions of § 270.70 if, in the opinion of the assistant regional commissioner, the existing premises afford adequate protection to the revenue.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.72 Use of factory premises.

Unless otherwise authorized by the Director as provided in § 270.47, the factory premises shall be used exclusively for the purposes of manufacturing and storing tobacco products; storing materials, equipment, and supplies related thereto or used or useful in the conduct of the

business; and carrying on activities in connection with the business of the manufacturer.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.73 Additional information.

The assistant regional commissioner may require such additional information as he may deem necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant shall, when required by the assistant regional commissioner, furnish as a part of his application for such permit such additional information as may be necessary for the assistant regional commissioner to determine whether the applicant is entitled to a permit.

§ 270.74 Investigation of applicant.

As the assistant regional commissioner deems necessary he will cause inquiry or investigation to be made to verify the information furnished in connection with an application for permit and to ascertain whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with Chapter 52, I.R.C., and regulations thereunder; whether such person has disclosed all material information required or made any material false statement in the application for such permit; and whether the premises on which it is proposed to establish the factory are adequate to protect the revenue. If the assistant regional commissioner has reason to believe that the applicant is not entitled to a permit, he shall promptly give the applicant notice of the contemplated disapproval of his application and opportunity for hearing thereon in accordance with Part 200 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is applicable to such proceedings. If, after such notice and opportunity for hearing, the assistant regional commissioner finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.75 Issuance of permit.

If the application for permit, together with the bond and supporting documents, required under this part is approved by him, the assistant regional commissioner shall issue a permit on Form 2096 to the applicant as a manufacturer of tobacco products: *Provided*, That without the filing of an application therefor, the assistant regional commissioner may substitute a permit on Form 2096 to replace a valid permit as a manufacturer of cigars and cigarettes or as a manufacturer of tobacco. Such substitute permit shall be appropriately limited so as to authorize only the operations which were authorized under the permit being replaced. Upon the issuance of the substitute permit, the replaced permit shall become null and void and shall be surrendered for cancellation.

(72 Stat. 1421; 26 U.S.C. 5713)

§ 270.76 Retention of permit and supporting documents.

The manufacturer shall retain his permit, together with the copy of the application and supporting documents returned to him with the permit, at the same place where the records required by this part are kept and they shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1421, 1423; 26 U.S.C. 5712, 5713, 5741)

Subpart F—Changes After Original Qualification of Manufacturers

CHANGES IN NAME

§ 270.91 Change in individual name.

Where there is a change in the name of an individual operating as a manufacturer of tobacco products he shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.92 Change in trade name.

Where there is a change in the trade name of a manufacturer of tobacco products, the manufacturer shall, within 30 days of the adoption of the new trade name, make application on Form 2098 for an amended permit. The manufacturer shall also furnish a true copy of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 270.65.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.93 Change in corporate name.

Where there is a change in the name of a corporate manufacturer of tobacco products, the manufacturer shall, within 30 days of such change, make application on Form 2098 for an amended permit. The manufacturer shall also furnish such documents as may be necessary to establish that the corporate name has been changed.

(72 Stat. 1421; 26 U.S.C. 5712)

CHANGES IN OWNERSHIP AND CONTROL

§ 270.101 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of a manufacturer of tobacco products, as a continuing operation, such fiduciary shall, before commencing operations, make application for permit and file bond as required by Subpart E, of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary, and make a commencing inventory, in accordance with the provisions of § 270.201: *Provided*, That where a diagram has been furnished by the predecessor, in accordance with the provisions of § 270.69, the successor may adopt such diagram if it is currently complete and accurate. However, where a fiduciary intends only to liquidate the business, qualification as a manufacturer of tobacco products will not be required if he promptly files with the assistant regional commissioner a written statement to that effect, in du-

plicate, together with an extension of coverage of the predecessor's bond, executed by the fiduciary and the surety on such bond, in accordance with the provisions of § 270.137.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5721)

§ 270.102 Transfer of ownership.

If a transfer is to be made in ownership of the business of a manufacturer of tobacco products (including a change of any member of a partnership or association), such manufacturer shall give notice, in writing, to the assistant regional commissioner, naming the proposed successor and the desired effective date of such transfer. The proposed successor shall, before commencing operations, qualify as a manufacturer of tobacco products, in accordance with the applicable provisions of Subpart E of this part: *Provided*, That where a diagram has been furnished by the manufacturer in accordance with the provisions of § 270.69, the proposed successor may adopt such diagram if it is currently complete and accurate. The manufacturer shall give such notice of transfer, and the proposed successor shall make application for permit and file bond, as required, in ample time for examination and approval thereof before the desired date of such change. The predecessor shall make a concluding inventory and concluding report, in accordance with the provisions of § 270.201 and § 270.202, respectively, and surrender his permit with such inventory and report. The successor shall make a commencing inventory and commencing report, in accordance with the provisions of § 270.201 and § 270.202, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 270.103 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of a manufacturer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the manufacturer shall, within 30 days of such action, so notify the assistant regional commissioner in writing, giving the identity of such person.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.104 Change in control of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation, operating as a manufacturer of tobacco products, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate manufacturer shall, within 30 days after the change occurs, make application on Form 2093 for a new permit. Otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the manufacturer shall dispose of all

tobacco materials and tobacco products on hand, in accordance with this part, make a concluding inventory and concluding report, in accordance with the provisions of § 270.201 and § 270.202, respectively, and surrender his permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

(72 Stat. 1421, 1422; 26 U.S.C. 5712, 5713, 5721, 5722)

CHANGES IN LOCATION AND FACTORY

§ 270.111 Change in location within same region.

Whenever a manufacturer of tobacco products intends to relocate his factory within the same region, the manufacturer shall, before commencing operations at the new location, make application on Form 2098 for, and obtain, an amended permit. The application shall be supported by an extension of coverage of bond in accordance with the provisions of § 270.137.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

§ 270.112 Change in address.

Whenever any change occurs in the address, but not the location, of the factory of a manufacturer of tobacco products, as a result of action of local authorities, the manufacturer shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.113 Change in location to another region.

Whenever a manufacturer of tobacco products intends to remove his factory to another region, the manufacturer shall, before commencing operations at the new location, qualify as such a manufacturer in the new region, in accordance with the applicable provisions of Subpart E of this part. The manufacturer shall notify the assistant regional commissioner for the region from which he is removing his factory of his qualification in the new region, giving the address of the new location of his factory and the number of the permit issued to him in the new region, make a concluding inventory and concluding report in accordance with the provisions of § 270.201 and § 270.202, respectively, and surrender the permit for his old location with such inventory and report.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 270.114 Extension or curtailment of factory.

Where a tobacco products factory is to be changed to an extent which will make inaccurate the description of the factory as set forth in the last application by the manufacturer for permit, or the diagram, if any, furnished with such application, the manufacturer shall first make an application on Form 2098 for, and obtain, an amended permit. Such application shall describe the proposed change in the factory and shall be accompanied by a new diagram if required under the provisions of § 270.69.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

Subpart G—Bonds and Extensions of Coverage of Bonds

§ 270.131 Corporate surety.

Surety bonds, required under the provisions of this part, may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Power of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of such corporate sureties shall be filed with, and passed upon by, the Surety Bonds Branch, Division of Deposits and Investments, Bureau of Accounts, Treasury Department. Limitations concerning corporate sureties are prescribed by the Secretary in Treasury Department Circular No. 570, as revised. The surety shall have no interest whatever in the business covered by the bond.

(61 Stat. 648, 72 Stat. 1421; 6 U.S.C. 6, 26 U.S.C. 5711)

§ 270.132 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety the manufacturer of tobacco products may pledge and deposit, as security 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, 72 Stat. 1421; 6 U.S.C. 15, 26 U.S.C. 5711)

§ 270.133 Amount of individual bond.

The amount of the bond of a manufacturer of tobacco products shall be not less than the total amount of tax liability on all tobacco products manufactured in his factory, received in bond from other factories and from export warehouses, and released to him in bond from customs custody, during any calendar month. Where the amount of any bond is no longer sufficient and the bond is in less than the maximum amount, the manufacturer shall immediately file a strengthening or superseding bond as required by this subpart. The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed \$250,000 for a manufacturer producing or receiving cigarettes in bond, need not exceed \$150,000 for a manufacturer producing or receiving cigars in bond, and need not exceed \$25,000 for a manufacturer producing or receiving manufactured tobacco in bond. Except that, if more than one kind of tobacco product is produced or received in bond in a factory, the bond for that factory need not exceed the amount of the largest maximum bond prescribed with respect to any of the kinds of tobacco products produced or received in bond therein. The bond of a manufacturer of tobacco products shall, in no case be less than \$1,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.134 Amount of blanket bond.

In the case of a blanket bond filed under the provisions of § 270.67, where the total amount of individual bonds otherwise required for the factories under § 270.133 does not exceed \$250,000, such blanket bond shall be not less than

the total amount of such individual bonds. Where the total amount of such individual bonds required is in excess of \$250,000 but not in excess of \$500,000, the amount of the blanket bond shall be not less than \$250,000 plus 50 percent of such total amount which is in excess of \$250,000. Where the total amount of such individual bonds required is in excess of \$500,000 the amount of the blanket bond shall be not less than \$375,000 plus 25 percent of such total amount which is in excess of \$500,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.135 Strengthening bond.

Where the amount of any bond is no longer sufficient under the provisions of § 270.133 or § 270.134, the manufacturer shall immediately file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, unless a superseding bond is filed pursuant to § 270.136. 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 either bond to less than its full amount.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.136 Superseding bond.

A manufacturer of tobacco products shall immediately file a new bond to supersede his current bond when (a) the corporate surety on the current bond becomes insolvent, (b) the assistant regional commissioner approves a request from the surety on the current bond to terminate his liability under the bond, (c) payment of any liability under a bond is made by the surety thereon, (d) the amount of the bond is no longer sufficient under the provisions of § 270.133 or § 270.134 and a strengthening bond has not been filed, or (e) the assistant regional commissioner considers such a superseding bond necessary for the protection of the revenue. Where a bond is not filed as required under the provisions of this section the manufacturer shall discontinue forthwith the operations to which such bond relates.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.137 Extension of coverage of bond.

An extension of coverage of bond shall be manifested on Form 2105 by the manufacturer of tobacco products and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.138 Approval of bond and extension of coverage of bond.

No person shall commence operations under any bond, nor extend his operations, until he receives from the assistant regional commissioner notice of his approval of the bond or of an appropriate extension of coverage of the bond required under this part.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.139 Termination of surety's liability.

The liability of a surety on any bond required by this part shall be terminated

only as to operations on and after the effective date of a superseding bond, or the date of discontinuance of operations by the manufacturer under § 270.331 or otherwise in accordance with the termination provisions of the bond. The surety shall remain bound in respect of any liability for unpaid taxes, penalties, and interest, not in excess of the amount of the bond, incurred by the manufacturer while the bond is in force.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.140 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 270.132 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, 72 Stat. 1421; 6 U.S.C. 15, 26 U.S.C. 5711)

§ 270.141 Extension of coverage for bond executed prior to June 24, 1959.

Every manufacturer of tobacco products who desires to remove tobacco products on determination of tax and before payment of tax shall, before such removal, have an approved extension of coverage of bond on Form 2105 on file with the assistant regional commissioner for every bond, Form 2099 or 2100, executed prior to June 24, 1959, under which such removals are to be made. This extension of coverage shall be executed by the principal and the surety and shall be in the following form:

Whereas, the purpose of this extension is to bind the obligors for the payment of the tax on all tobacco products removed by the principal on determination of tax and before payment of the tax notwithstanding that the time for payment of tax may be deferred pursuant to a semimonthly return system as provided for by regulations.

Now, therefore, the above described bond is further specifically conditioned that the principal named therein shall pay all taxes (plus penalties, if any, and interest) for which he may become liable with respect to all tobacco products removed by him on determination of the tax and before payment of the tax thereon, and comply with all provisions of law and regulations with respect thereto.

The aforesaid terms and conditions shall, on and after the effective date, have the same force and effect as the other terms and conditions stated in the bond.

The extension of coverage of bond under this section is not required with respect to any bond executed on or after June 24, 1959.

(72 Stat. 1421; 26 U.S.C. 5711)

Subpart H—Operations by Manufacturers

DETERMINATION AND PAYMENT OF TAXES ON TOBACCO PRODUCTS

§ 270.161 Determination of tax and method of payment.

Except for removals in bond and transfers in bond, as authorized by law, the taxes imposed on tobacco products by section 5701, I.R.C., shall be determined at the time of removal of such products and paid on the basis of a return, in accordance with the provisions of this part.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 270.162 Semimonthly tax return.

Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 3071, in triplicate, with the district director of the internal revenue district in which the factory is located, for each and every return period, including any period during which a manufacturer begins or discontinues business. He shall file such return at the time specified in § 270.165, regardless of whether tobacco products are removed or whether tax is due for that particular return period: *Provided*, That where the manufacturer so requests by letter, in duplicate, and the assistant regional commissioner grants specific authorization, the manufacturer need not, during the term of such authorization, file a tax return for any period for which tax is not due or payable. The manufacturer shall show, on the return, the kinds and quantities, and tax class in the case of large cigars, of tobacco products removed subject to tax during the semimonthly return period and the tax due thereon. Where the return period covers a portion of two successive calendar months this information shall be shown on the return separately for each portion of a month covered. The manufacturer shall serially number each return on Form 3071 commencing with the number "1" on the first return filed in any calendar year, and shall verify by a written declaration that the return is made under penalties of perjury. The manufacturer shall retain the receipted copy of each tax return transmitted to him by the district director. The payment of the tax with respect to tobacco products removed subject to tax may be deferred and paid on the basis of a semimonthly return only if the manufacturer has on file a bond of sufficient amount executed on or after June 24, 1959, or, in the case of a bond of sufficient amount executed prior to such date, only if the manufacturer has filed the extension of coverage of bond as prescribed in § 270.141. Otherwise, the tax with respect to such removals shall be prepaid with return, Form 2617, as provided in § 270.167, and the semimonthly return required in this section shall be filed showing such prepayment and the serial number(s) of the Form(s) 2617 filed during the return period.

(72 Stat. 1417, 1423; 26 U.S.C. 5703, 5741)

§ 270.163 Semimonthly tax return periods.

The periods to be covered in the semimonthly tax returns shall be from the 9th day of each month to the 23d day of that month, inclusive, and from the 24th day of each month to the 8th day of the next succeeding month, inclusive.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 270.164 Adjustments in the semimonthly return.

A manufacturer may make adjustments in Schedules A and B of his semimonthly tax return, Form 3071, as provided in this section. Schedule A of the return will be used where an unintentional error in a previous return resulted in an underpayment of tax. Schedule B of the return will be used where an unintentional error in a previous return resulted in an overpayment of tax, where prepayment of tax has been made during the return period, or where notice has been received from the assistant regional commissioner that a claim for allowance of tax has been approved. In the case of an overpayment, the manufacturer shall have the option of filing a claim (on Form 843) for refund or taking credit in Schedule B of the return, both subject to the period of limitations prescribed in section 6511, I.R.C. In the case of an adjustment based on prepayment of tax, the serial number(s) of the prepayment return(s), Form 2617, shall be shown. Any adjustments made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(68A Stat. 791, 72 Stat. 1417; 26 U.S.C. 6402, 5703)

§ 270.165 Time of filing semimonthly return.

Every semimonthly tax return under this part shall be filed by the manufacturer not later than the third business day succeeding the last calendar day of the return period: *Provided*, That the return for the period ending on the 23d day of June of each year shall be filed not later than the second business day succeeding the last calendar day of the return period: *And provided further*, That where the return and remittance are delivered by United States mail to the office of the district director, the date in the official postmark of the United States Post Office stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of delivery. As used in this section, the term "business day" shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the return is required to be filed.

(72 Stat. 1416; 26 U.S.C. 5703)

§ 270.166 Default, prepayment of tax required.

Where a check or money order tendered with any return, whether semi-

monthly or prepayment, for payment of tax on tobacco products is not paid on presentment, where a manufacturer fails to remit with the return the full amount of tax due thereunder, or where a manufacturer is otherwise in default in payment of tax on tobacco products under the internal revenue laws or this chapter, during the period of such default and until the assistant regional commissioner finds that the revenue will not be jeopardized by the deferred payment of tax pursuant to the provisions of this part, no tobacco products shall be removed subject to tax until the tax thereon has first been paid as provided in § 270.167. Any remittance made during the period of such default shall be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State or possession of the United States, or a United States postal money order or other money order as defined in § 301.6311-1 of this chapter (Procedure and Administration—Payment by check or money order).

(68A Stat. 777, 72 Stat. 1417; 26 U.S.C. 6311, 5703)

§ 270.167 Prepayment tax return.

To prepay the tax on tobacco products, a manufacturer shall file a prepayment tax return on Form 2617, in triplicate, with the district director of the internal revenue district in which the factory is located, showing the tax to be paid on the tobacco products prior to removal. The manufacturer shall serially number each return on Form 2617 commencing with the number "1" on the first return filed in any calendar year, and shall verify by a written declaration that the return is made under penalties of perjury. The return shall be filed with the district director prior to the removal of such products. The manufacturer shall retain the receipted copy of each prepayment return transmitted to him by the district director. A manufacturer prepaying the taxes on tobacco products under the provisions of this section shall continue to file semimonthly returns as required by § 270.162. Such semimonthly returns shall contain a statement, in Schedule B, that taxes have been prepaid by remittance with Form(s) 2617, and the statement shall indicate the serial number of Form(s) 2617 filed and the amount of taxes prepaid.

(72 Stat. 1417, 1423; 26 U.S.C. 5703, 5741)

§ 270.168 Remittance with return.

The tax on tobacco products shown to be due and payable on any return shall be paid by remittance in full with the tax return. Such remittance may be in any form which the district director is authorized to accept under the provisions of § 301.6311-1 of this chapter (Procedure and Administration—Payment by check or money order) and which is acceptable to him, except as is otherwise specified in § 270.166. Checks and money orders shall be made payable to "Internal Revenue Service." In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-

half cent or more, in which case it shall be increased to one cent.

(68A Stat. 778, 72 Stat. 1417; 26 U.S.C. 6313, 5703)

RECORDS

§ 270.181 General.

Every manufacturer of tobacco products shall keep records of his operations and transactions which shall reflect, for each day, the information specified in §§ 270.182 and 270.183. For the aforesaid purpose "day" shall mean calendar day, except that the assistant regional commissioner may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by like application approved by the assistant regional commissioner. A manufacturer who maintains commercial records from which the required information may be readily ascertained may utilize such records for this purpose. Where a manufacturer does not maintain commercial records which adequately reflect the information required by this part, he shall keep a record on Form 3063 with respect to tobacco materials, on Form 3065 with respect to large cigars, on Form 3066 with respect to small cigars and large and small cigarettes, and on Form 3064 with respect to manufactured tobacco. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled, and shall keep a supporting record, as specified in § 270.184, of tobacco products removed subject to tax. Except as provided in § 270.184, the entries in the commercial or form records so maintained or kept shall be made not later than the close of the business day next following that on which the transactions occur. As used in this section, the term "business day" shall mean any day, other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 270.182 Record of tobacco materials.

The record of a manufacturer of tobacco products shall show with respect to tobacco materials, the date and total quantity, in pounds, of all unstemmed leaf tobacco and other tobacco materials:

(a) Received (except samples which are to be consumed, used, or destroyed, for purposes of sampling, testing, or experimenting) —

(1) From a dealer in tobacco materials or manufacturer of tobacco products, together with the number of such dealer's establishment or the permit number of such manufacturer,

(2) From a farmer or grower, or tobacco growers' association, together with the name and address of such farmer, grower, or association,

(3) By reduction of tobacco products to tobacco materials,

(4) By release from customs custody, and

(5) By return to the factory;

(b) Shipped or delivered —

(1) To a dealer in tobacco materials or manufacturer of tobacco products, together with the number of such dealer's establishment or the permit number of such manufacturer,

(2) To a State institution, together with the name and address of such institution, and

(3) For export purposes;

(c) Lost; and

(d) Destroyed.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 270.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show with respect to tobacco products, the date and total quantity of all cigars, cigarettes, and manufactured tobacco, by kind (small cigars—large cigars; small cigarettes—large cigarettes; plug—twist and other forms of leaf—fine-cut chewing—scrap chewing—smoking tobacco—snuff):

(a) Manufactured;

(b) Received in bond by—

(1) Transfer from other factories,

(2) Release from customs custody, and

(3) Transfer from export warehouses;

(c) Received by return to bond;

(d) Disclosed as an overage by inventory;

(e) Removed subject to tax (by class for large cigars);

(f) Removed, in bond, for—

(1) Export purposes,

(2) Use of the United States,

(3) Transfer to other factories,

(4) Experimental purposes off factory premises;

(g) Otherwise disposed of, without determination of tax, by—

(1) Use or consumption by employees on factory premises,

(2) Use or consumption by employees off factory premises, together with the number of employees to whom furnished,

(3) Use for experimental purposes on factory premises,

(4) Loss,

(5) Destruction, and

(6) Reduction to materials;

(h) Disclosed as a shortage by inventory; and

(i) On which the tax has been determined (by class for large cigars) and which are—

(1) Received, and

(2) Disposed of.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 270.184 Record in support of removals subject to tax.

Every manufacturer of tobacco products shall keep a supporting record of tobacco products removed from his factory subject to tax, and shall make the entries therein at the time of removal. Such supporting record shall show, with respect to each removal, the date of removal, the name and address of the person to whom shipped or delivered, the kind and quantity of cigars, cigarettes, or manufactured tobacco, and, in the case of large cigars, the class: *Provided*, That where the tobacco products are delivered within the factory directly to the consumer the name and address of the person to whom delivered

need not be shown. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 270.185 Retention of records.

All records required to be kept under this part, including copies of authorizations, claims, inventories, notices, reports, returns, and schedules, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be kept in the factory or a place convenient thereto, and shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

INVENTORIES AND REPORTS

§ 270.201 Inventories.

Every manufacturer of tobacco products shall make true and accurate inventories on Form 3067, which inventories shall include all tobacco materials and tobacco products on hand required to be accounted for in the records kept under this part. The manufacturer shall make such an inventory at the time of commencing business, which shall be the effective date of the permit issued upon original qualification under this part; at the time of transferring ownership; at the time of changing the location of his factory to a different region; at the time of concluding business; and at such other time as any internal revenue officer may require. Each inventory shall be prepared in duplicate, and shall be subject to verification by an internal revenue officer. The original of each such inventory shall be submitted to the assistant regional commissioner, and the duplicate shall be retained by the manufacturer.

(72 Stat. 1422, 1423; 26 U.S.C. 5721, 5741)

§ 270.202 Reports.

Every manufacturer of tobacco products shall make a report on Form 3068, in duplicate, for each month and for any portion of a month during which he engages in such business. Such report shall be made regardless of whether any operations or transactions occurred during the month or portion of a month covered therein. The report for a month or portion of a month in which business is commenced or is concluded shall be conspicuously marked "Commencing Report" or "Concluding Report", respectively. The original of the report shall be submitted to the assistant regional commissioner not later than the 20th day of the month succeeding the month covered therein, and the duplicate shall be retained by the manufacturer. Each report shall show, for the period covered, the total quantity of cigars, cigarettes, and manufactured tobacco:

(a) Manufactured,

- (b) Received in bond,
- (c) Received by return to bond,
- (d) Removed subject to tax,
- (e) Removed in bond,
- (f) Otherwise disposed of without determination of tax,
- (g) Disclosed by inventory as a net overage or shortage, and
- (h) On hand, in bond, beginning of and end of month.

(72 Stat. 1422; 26 U.S.C. 5722)

PACKAGES

§ 270.211 Package.

All tobacco products shall, before removal subject to tax, be put up by the manufacturer in packages which shall be of such construction as will securely contain the products therein and maintain the mark and the notice thereon as required by this part. No package of tobacco products shall have contained therein, attached thereto, or stamped, marked, written, or printed thereon (a) any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery, (b) any indecent or immoral picture, print, or representation, or (c) any statement or indication that United States tax has been paid.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 270.212 Mark.

Every package of tobacco products packed in a domestic factory shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the name of the manufacturer removing such products subject to tax and the location (by city and State) of the factory from which such products are to be so removed, or the permit number of the factory from which such products are to be so removed: *Provided*, That the Director may on application authorize a manufacturer to mark packages of tobacco products manufactured in and removed subject to tax from any of his factories with only the name of the manufacturer if the factory of production is identified on the package by a statement (e.g., manufactured in Richmond, Va.), symbol, or other means (other than a permit number), approved by the Director.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 270.213 Notice for manufactured tobacco.

Every package of manufactured tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "manufactured tobacco", "tobacco", or "snuff" and the quantity, by weight, of such product contained therein.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 270.214 Notice for cigars.

Every package of cigars shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small

cigars, either "small" or "little", and for large cigars, the appropriate following class designation which corresponds with the rate of tax imposed by section 5701 (b) (2), I.R.C.:

(a) "A. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be not more than 2½ cents each";

(b) "B. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be more than 2½ cents each and not more than 4 cents each";

(c) "C. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be more than 4 cents each and not more than 6 cents each";

(d) "D. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be more than 6 cents each and not more than 8 cents each";

(e) "E. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be more than 8 cents each and not more than 15 cents each";

(f) "F. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be more than 15 cents each and not more than 20 cents each"; or

(g) "G. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be more than 20 cents each".

(72 Stat. 1422; 26 U.S.C. 5723)

§ 270.215 Notice for cigarettes.

Every package of cigarettes shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigarettes", the quantity of such product contained therein, and the classification for tax purposes, i.e., for small cigarettes, either "small" or "Class A", and for large cigarettes, either "large" or "Class B".

(72 Stat. 1422; 26 U.S.C. 5723)

EXEMPTION FROM TAXES ON TOBACCO PRODUCTS

§ 270.231 Consumption by employees.

A manufacturer of tobacco products may furnish such products, without determination and payment of tax, for personal consumption by employees in the factory, in such quantities as desired. Each employee may also be furnished, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or 2 ounces of manufactured tobacco, by the manufacturer, without determination and payment of tax, on each day the employee is at work. For the purpose of this section, the term "employee" shall include all persons who work for and receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer, in the city, town, or village where the tobacco products so furnished to employees are produced. Such products furnished for off-factory consumption shall be taken from the factory by the employee on the day furnished.

Employees shall not sell, offer for sale, or give away products so furnished to them.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.232 Experimental purposes.

A manufacturer of tobacco products may use such products, without determination and payment of tax, for experimental (including testing) purposes in his factory, in such quantities as desired. When authorized by the assistant regional commissioner a manufacturer may also remove tobacco products, in bond, for experimental (including testing) purposes outside his factory. Removal of tobacco products under this section will be authorized only for bona fide experimental purposes, such as for use by producers of machines designed to package such products for testing and experimenting in the operation of these machines, or for use in laboratories, hospitals, medical centers, institutes, colleges, and universities, for scientific, technical, or medical research. Tobacco products may not be removed, under this section, for such purposes as advertising, salesmen's or customers' samples, or for consumer testing. An application to the assistant regional commissioner for authorization to remove tobacco products in bond for experimental purposes shall be by letter, in duplicate, and shall set forth the name and address of the consignee, the kind and quantity of cigars, cigarettes, or manufactured tobacco to be removed, and the intended use of the products. The manufacturer shall retain, as part of his records, each authorization of the assistant regional commissioner for such removal of tobacco products.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.233 Transfer in bond.

A manufacturer of tobacco products may transfer cigars, cigarettes, or manufactured tobacco, in bond, to the factory of any manufacturer of tobacco products. The transfer of tobacco products in bond to the premises of an export warehouse proprietor shall be in accordance with the provisions of Part 290 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.234 Removal for use of the United States.

The removal of tobacco products, in bond, for use of the United States, shall be in accordance with the provisions of Part 295 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.235 Removal for export purposes.

The removal of tobacco products, in bond, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of Part 290 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.236 Release from customs custody.

The release of tobacco products from customs custody, in bond, for transfer to

the premises of a tobacco products factory, shall be in accordance with the provisions of Part 275 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

OTHER PROVISIONS RELATING TO TOBACCO PRODUCTS

§ 270.251 Emergency storage.

In cases of emergency, the assistant regional commissioner may authorize, for a stated period, the temporary storage of tobacco products at a place outside the factory without the application for amended permit required under § 270.114, where such action will not hinder the effective administration of this part, is not contrary to law, and will not jeopardize the revenue. Application for authorization to so store tobacco products shall be submitted to the assistant regional commissioner by letter, in duplicate. All tobacco products so stored outside the factory shall be accounted for in the records and reports required under §§ 270.183 and 270.202 the same as products within the factory.

(72 Stat. 1422, 1423; 26 U.S.C. 5722, 5741)

§ 270.252 Reduction to materials.

A manufacturer may reduce tobacco products to materials without internal revenue supervision. If the products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the kind and quantity of cigars, cigarettes, or manufactured tobacco reduced to material, and of the quantity of tobacco resulting from the reduction. Where the manufacturer intends to file claim for allowance or refund of tax on such products he shall comply with the provisions of §§ 270.311 and 270.313.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 270.253 Destruction.

When a manufacturer of tobacco products desires to destroy such products which have been entered in the factory record as manufactured or received, without salvaging the tobacco materials, he shall notify the assistant regional commissioner by letter, in duplicate, of the kind and quantity of cigars, cigarettes, or manufactured tobacco to be destroyed, the intended method of destruction, and the date on which he desires to destroy such products. The assistant regional commissioner may assign an internal revenue officer to supervise destruction of the products, or he may authorize the manufacturer to destroy such products without supervision by so stating on a copy of the manufacturer's notice returned to the manufacturer. When so authorized by the assistant regional commissioner, the manufacturer shall destroy the tobacco products by burning completely or by rendering them unfit for consumption. Upon completion of the destruction, the manufacturer shall make an entry of such destruction in his factory record, and where destruction without supervision is authorized, shall record the date and method of destruction on the notice returned to him by the assistant regional commissioner, which notice the manufacturer shall retain. Where the manu-

facturer intends to file claim for allowance or refund of tax on such products he shall comply with the provisions of §§ 270.311 and 270.313.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 270.254 Receipt into factory.

A manufacturer of tobacco products may receive in bond into his factory any tobacco products which he is authorized under his permit to produce in that factory, and may also receive any tobacco products on which the tax has been determined (including products on which the tax has been paid). Tobacco products on which the tax has been determined which are so received shall be segregated and identified as products on which the tax has been determined. Where the manufacturer intends to file claim for allowance or refund of tax on such products he shall comply with the provisions of §§ 270.311 and 270.313.

TOBACCO MATERIALS

§ 270.261 Storage.

Tobacco materials may be stored outside the premises of a tobacco products factory, in the same region in which the factory is situated, if an extension of coverage of the bond for such purpose has been approved by the assistant regional commissioner. In cases of emergency, the assistant regional commissioner may authorize, for a stated period, the temporary storage of tobacco materials at a place outside the factory without such extension of coverage, where such action will not hinder the effective administration of this part, is not contrary to law, and will not jeopardize the revenue. Application to so store tobacco materials shall be submitted to the assistant regional commissioner by letter, in duplicate, and where applicable, such application shall be accompanied by an extension of coverage of bond. All tobacco materials so stored outside the factory shall be accounted for in the records required under § 270.182 the same as materials within the factory.

(72 Stat. 1421, 1423; 26 U.S.C. 5711, 5741)

§ 270.262 Shipment or delivery.

A manufacturer of tobacco products may ship or deliver tobacco materials, in bond, to (a) a qualified dealer in tobacco materials; (b) a qualified manufacturer of tobacco products; (c) a State institution; or (d) any person for experimental or display purposes when authorized by the assistant regional commissioner. A manufacturer of tobacco products may ship stems and waste, in bond, to any person for use by him as fertilizer or insecticide or in the production of fertilizer, insecticide, or nicotine. Shipment or delivery of tobacco materials to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, shall be in accordance with the provisions of Part 290 of this chapter. An application to the assistant regional commissioner for authorization to ship or deliver tobacco materials for experimental or display purposes shall be by letter, in duplicate, and shall set forth the name and address of the consignee, the quantity of materials to be shipped or delivered, and the intended

use of the materials or the place where they will be displayed. The manufacturer shall retain each authorization of the assistant regional commissioner for shipment or delivery of tobacco materials for experimental or display purposes.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 270.263 Fumigation.

Tobacco materials held by, released to, or in transit to, a manufacturer of tobacco products may be taken, in bond, to a person who is not qualified as a dealer in tobacco materials or manufacturer of tobacco products, solely for purposes of fumigation by such person and returned or delivered to the manufacturer. Such tobacco materials shall be covered by the bond of the manufacturer and shall not be regarded as having been shipped or delivered by the manufacturer but shall be accounted for in the records required under § 270.182 the same as materials within the factory.

(72 Stat. 1421, 1423; 26 U.S.C. 5711, 5741)

§ 270.264 Destruction.

When a manufacturer of tobacco products desires to destroy tobacco materials other than stems and waste, he shall notify the assistant regional commissioner by letter, in duplicate, of the quantity of tobacco materials to be destroyed, the intended method of destruction, and the date on which he desires to destroy such materials. The assistant regional commissioner may assign an internal revenue officer to supervise the destruction of the materials, or he may authorize the manufacturer to destroy such materials without supervision by so stating on a copy of the manufacturer's notice returned to the manufacturer. When so authorized by the assistant regional commissioner the manufacturer shall destroy the tobacco materials by burning completely or by rendering them unfit for consumption. Upon completion of the destruction the manufacturer shall make an entry of such destruction in his factory record, and where destruction without supervision is authorized shall record the date and method of destruction on the notice returned to him by the assistant regional commissioner, which notice the manufacturer shall retain. A manufacturer of tobacco products who desires to destroy stems and waste may do so in the same manner without notification to the assistant regional commissioner.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 270.265 Loss by theft or casualty.

Every loss of tobacco materials by theft, or destruction by fire, casualty, or act of God, while in the possession or ownership of a manufacturer of tobacco products, shall be reported to the assistant regional commissioner and the facts of such loss shall be established to his satisfaction.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 270.266 Release from customs custody.

The release of tobacco materials from customs custody, in bond, for transfer to the premises of a tobacco products fac-

tory, shall be in accordance with the provisions of Part 275 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

Subpart I—Claims by Manufacturers

GENERAL

§ 270.281 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 843, in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the assistant regional commissioner that the claim is valid, shall be filed with the assistant regional commissioner for the region in which the tax or liability was assessed, and the duplicate of the claim shall be retained by the manufacturer.

(68A Stat. 792; 26 U.S.C. 6404)

§ 270.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a manufacturer by allowance of the tax, where the tobacco products, after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such products, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on Form 2635, in triplicate, with the assistant regional commissioner for the region in which the products were removed, and shall show the date the tobacco products were removed from the factory. A claim relating to products lost or destroyed shall be supported as prescribed in § 270.301. In the case of a claim relating to tobacco products withdrawn from the market, the schedule, as provided in § 270.311, shall be filed with the assistant regional commissioner for the region in which the products are assembled. The manufacturer may not anticipate allowance of his claim by making the adjusting entry in a tax return pending consideration and action on the claim. Tobacco products to which such a claim relates must be shown to have been removed on determination of tax on the return covering the period during which such products were so removed. Upon action on the claim by the assistant regional commissioner he will return a copy of the Form 2635 to the manufacturer as notice of such action, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the tobacco products to which the claim relates is to be filed, the manufacturer may make

an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received subsequent to the filing of the return and taxpayment of the tobacco products to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement on the next subsequent tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 270.283 Refund of tax.

The taxes paid on tobacco products may be refunded (without interest) to a manufacturer on proof satisfactory to the assistant regional commissioner that the claimant manufacturer has paid the tax on tobacco products lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by him from the market. Any claim for refund under this section shall be prepared on Form 843, in duplicate, and shall include a statement that the tax imposed on tobacco products by Chapter 52, I.R.C., has been paid in respect to the tobacco products covered by the claim, and that the products were lost, destroyed, or withdrawn from the market, within six months preceding the date the claim is filed. A claim for refund relating to products lost or destroyed shall be supported as prescribed in § 270.301, and a claim relating to products withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 270.311 and 270.313. The original of the claim shall be filed with the assistant regional commissioner for the region in which the tax was paid, or where the tax was paid in more than one region, with the assistant regional commissioner for any one of the regions in which tax was paid. The duplicate of the claim, with the copy of any verified supporting schedules, shall be retained by the manufacturer.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 270.284 Remission of tax liability.

Remission of the tax liability on tobacco products may be extended to the manufacturer liable for the tax where tobacco products in bond are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where tobacco products are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the assistant regional commissioner for the region in which the factory is located, and shall prepare a claim on Form 2635, in triplicate, setting forth the nature, date, place, and extent of the loss or destruction. All copies of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the assistant regional commissioner that the claim is valid, shall be filed with the assistant regional commissioner for the region in which the factory is located. Upon action on the claim by the assistant regional commissioner he will return a copy of the Form 2635 to the manufacturer as notice

of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 270.285 Claim for redemption of stamps.

Tobacco products tax stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the manufacturer of such products has no use, may be redeemed by such manufacturer. Any claim for redemption of stamps under this section shall be prepared on Form 843, in duplicate, and the original shall be filed with the assistant regional commissioner, for the region in which the stamps were purchased, within three years after the stamps were purchased from the Government. Stamps may be presented with the claim or they may be destroyed under internal revenue supervision, or satisfactory evidence shall be submitted with the claim showing the reason why they cannot be so presented or destroyed. Where the stamps are to be destroyed, the manufacturer shall prepare a schedule on Form 178, in duplicate, for the stamps covered by the claim. When the schedule has been prepared, the manufacturer shall request the assistant regional commissioner to assign an internal revenue officer to verify the schedule and supervise the destruction of the stamps. The original of the verified schedule shall be returned to the manufacturer and be attached to his claim, Form 843, when filed. If required, the manufacturer shall satisfactorily trace the history of the stamps from their issuance to the filing of his claim.

(68A Stat. 830, as amended by 72 Stat. 1313; 26 U.S.C. 6805)

TOBACCO PRODUCTS LOST OR DESTROYED

§ 270.301 Action by claimant.

Where tobacco products are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file a claim for the tax on such products under the provisions of § 270.282 or § 270.283, he shall indicate on the claim the nature, date, place, and extent of such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfaction of the assistant regional commissioner that the claim is valid.

(72 Stat. 1419; 26 U.S.C. 5705)

TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

§ 270.311 Action by claimant.

Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 270.282 or § 270.283, he shall assemble the products in or adjacent to a factory if they are to be returned to bond or reduced to materials and the resultant materials returned to bond, or at any suitable place if they are to be destroyed. The manufacturer shall group the products according to the rate of tax applicable thereto, and shall prepare a schedule of the products, on Form 3069, in triplicate. All copies of the schedule shall be forwarded to the as-

sistant regional commissioner for the region in which the products are assembled.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 270.312 Action by assistant regional commissioner.

Upon receipt of a schedule of tobacco products withdrawn from the market, the assistant regional commissioner may assign an internal revenue officer to verify the schedule and supervise disposition of the tobacco products (and destruction of the stamps, if any), or he may authorize the manufacturer to dispose of the products (and destroy the stamps, if any) without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

§ 270.313 Disposition of tobacco products and schedule.

When so authorized, as evidenced by the assistant regional commissioner's statement on the schedule, the manufacturer shall dispose of the tobacco products (and destroy the stamps, if any) as specified in the schedule. After the manufacturer has disposed of the products (and destroyed the stamps, if any), he shall execute a certificate on both copies of the schedule returned to him by the assistant regional commissioner, to show the disposition and the date of disposition of the products (and stamps, if any). In connection with a claim for allowance the manufacturer then shall return the original of the schedule to the assistant regional commissioner who authorized such disposition, who will cause such schedule to be associated with the claim, Form 2635. In connection with a claim for refund the manufacturer shall attach the original of the schedule to his claim, Form 843, filed under § 270.283. When an internal revenue officer is assigned to verify the schedule and supervise disposition of the tobacco products, such officer shall, upon completion of his assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the products. In connection with a claim for allowance, the officer shall return one copy of the schedule to the manufacturer for his records, and in connection with a claim for refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to his claim, Form 843, filed under § 270.283.

(72 Stat. 1419; 26 U.S.C. 5705)

Subpart J—Suspension and Discontinuance of Operations by Manufacturers

§ 270.331 Discontinuance of operations.

Every manufacturer of tobacco products who desires to discontinue operations under this part shall dispose of all tobacco materials and tobacco products on hand, in accordance with this part, and make a concluding inventory and concluding report in accordance with the provisions of § 270.201 and § 270.202, respectively. The manufacturer shall

surrender his permit, with such inventory and report, to the assistant regional commissioner as notice of such discontinuance. The assistant regional commissioner may then terminate the liability of the surety on the bond of the manufacturer.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

§ 270.332 Suspension and revocation of permit.

Where the assistant regional commissioner has reason to believe that a manufacturer of tobacco products has not in good faith complied with the provisions of Chapter 52, I.R.C., and regulations thereunder, or with any other provision of the I.R.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or has failed to maintain his premises in such manner as to protect the revenue, the assistant regional commissioner shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with Part 200 of this chapter, which part is applicable to such proceedings. If the hearing examiner, or on appeal, the Director, decides the permit should be suspended or revoked, the assistant regional commissioner shall by order give effect to such decision.

(72 Stat. 1421; 26 U.S.C. 5713)

[F.R. Doc. 61-8363; Filed, Aug. 30, 1961; 8:55 a.m.]

PART 275—IMPORTATION OF TOBACCO MATERIALS, TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

On June 7, 1961, a notice of proposed rule making proposing new regulations in Part 275 of Title 26 of the Code of Federal Regulations was published in the FEDERAL REGISTER (26 F.R. 5058). The purposes of the notice were to prescribe provisions relating to the importation and taxpayment of tobacco materials, cigars, cigarettes, manufactured tobacco, and cigarette papers and tubes in a single part of this chapter, and to implement the Internal Revenue Code of 1954, as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, 72 Stat. 1275).

No comments or suggestions pertaining to these regulations were received during the period of 30 days from the date of publication of the notice of proposed rule making. Accordingly, the regulations so published are hereby adopted with the changes set forth below:

1. The Preamble is changed:

(A) By striking from the first sentence the word "and", after the word "cigarettes", and by inserting after the words "manufactured tobacco" the words ", and cigarette papers and tubes"; and

(B) By redesignating paragraph 2 as paragraph 3 and by inserting a new paragraph 2.

2. Section 275.11 is changed:

(A) By rewording the first sentence of the definition of "Tobacco materials".

(B) By inserting in the definition of "Waste", after the word "Tobacco" the first time it appears, the word "materials".

3. Section 275.22 is changed by striking the period at the end of the first sentence and adding the phrase ", or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded."

4. Section 275.25 is changed by rewording the second sentence to read "Where the articles are not sold, the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption."

5. Section 275.37 is changed:

(A) By rewording the first sentence to read: "Large cigars are divided into seven classes, for internal revenue tax purposes, corresponding with the rates of tax imposed by section 5701(b) (2), I.R.C., and based on the retail price intended by the importer for such cigars."; and

(B) By striking in the third sentence the word "determining" and inserting in lieu thereof the word "establishing".

6. Section 275.49 is changed by striking in the last sentence the words "packaged, labeled, and" and inserting in lieu thereof the phrase "in packages which bear the notice and shall be".

7. The heading of Subpart E is changed to read "Subpart E—Packages".

8. Section 275.81 is changed by inserting in the parenthetical phrase at the end thereof, before the word "tax", the words "internal revenue".

9. Section 275.90 is changed by inserting in the parenthetical phrase at the end thereof, before the word "tax", the words "internal revenue".

10. Section 275.106 is changed by adding at the end thereof a new sentence to read "Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the internal revenue officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein."

11. Section 275.107 is changed by striking in the first sentence the word "shall" and inserting in lieu thereof the word "will".

12. Section 275.108 is changed by striking, at the end thereof, the phrase "and be made available for inspection by internal revenue officers".

13. Section 275.117 is changed by striking in the first sentence the word "shall" and inserting in lieu thereof the word "will".

14. Section 275.118 is changed by striking, at the end thereof, the phrase "and be made available for inspection by internal revenue officers".

15. Section 275.121 is changed by striking in the first sentence the proviso

and inserting in lieu thereof new provisos and a new sentence, to read "Provided, That the amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed \$250,000 where payment of tax on cigarettes is deferred; need not exceed \$150,000 where payment of tax on cigars is deferred; and need not exceed \$25,000 where payment of tax on manufactured tobacco is deferred: And provided further, That, where payment of tax is deferred with respect to more than one kind of tobacco product, the bond need not exceed the amount of the largest maximum bond prescribed with respect to any of the kinds of tobacco products on which payment is deferred. The amount of bond shall in no case be less than \$1,000."

16. Section 275.136 is changed by striking from the first sentence the phrase ", prior to obtaining the release of such articles," and inserting after the words "Form 2105 with" the phrase ", and receive a notice of approval from,".

17. Section 275.137 is changed by inserting in paragraph (a) of the last sentence, after the word "shipper", the phrase "for attachment to the bill of lading".

Effective date. The regulations in this part shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the FEDERAL REGISTER.

These regulations are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: August 28, 1961.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

Preamble. 1. These regulations, 26 CFR Part 275, "Importation of Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes," are promulgated to prescribe provisions relating to the importation and taxpayment of tobacco materials, cigars, cigarettes, manufactured tobacco, and cigarette papers and tubes in a single part of this chapter, and to implement the Internal Revenue Code of 1954 as amended by the Excise Tax Technical Changes Act of 1958 (Public Law 85-859, 72 Stat. 1275). These regulations supersede the existing regulations in 26 CFR Part 275 and Subpart F of 26 CFR Part 296 in their entirety; prescribe revision of provisions formerly included in 26 CFR Part 270 relating to the importation of cigars and cigarettes, the release of tobacco materials, cigars, and cigarettes from customs custody, and the manufacture of cigars in customs bonded manufacturing warehouses, class 6; prescribe revision of provisions formerly included in 26 CFR Part 275 relating to the importation of manufactured tobacco and the release of tobacco materials and manufactured tobacco from customs custody; prescribe revision of provisions formerly included in 26 CFR Part 280 relating to the release

of tobacco materials from customs custody; prescribe revision of provisions formerly included in 26 CFR Part 285 relating to the importation of cigarette papers and tubes and the release of cigarette papers and tubes from customs custody; and prescribe revision of provisions formerly included in Subpart E of 26 CFR Part 296 relating to importation of tobacco products and the manufacture of cigars in customs bonded manufacturing warehouses, class 6.

2. The function of collecting internal revenue taxes on tobacco products and cigarette papers and tubes imported or brought into the United States and removed subject to tax from customs custody, heretofore delegated to the Commissioner of Internal Revenue, is transferred on the effective date of these regulations to the Commissioner of Customs by delegation of authority from the Secretary of the Treasury (Treasury Department Order No. 165-12).

3. 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.

Subpart A—Scope of Regulations

Sec. 275.1 Importation of tobacco materials, tobacco products, and cigarette papers and tubes.

Subpart B—Definitions

275.11 Meaning of terms.

Subpart C—General

275.21 Forms prescribed.
275.22 Retention of records.
275.23 Authority of internal revenue officers to enter premises.
275.24 Interference with administration.
275.25 Disposal of forfeited, condemned, and abandoned tobacco materials, tobacco products, and cigarette papers and tubes.
275.26 Alternate methods or procedures.
275.27 Emergency variations from requirements.
275.28 Penalties and forfeitures.

Subpart D—Taxes

TAX RATES

275.31 Cigars.
275.32 Cigarettes.
275.33 Tobacco.
275.34 Cigarette papers.
275.35 Cigarette tubes.

TAX CLASSIFICATION OF LARGE CIGARS AND OF CIGARETTES

275.37 Large cigars.
275.38 Cigarettes.

LIABILITY FOR AND PAYMENT OF TAXES

275.40 Persons liable for tax.
275.41 Determination of tax and method of payment.

EXEMPTIONS FROM TAXES

275.45 Tobacco products and cigarette papers and tubes imported by consular officers and employees of foreign states.
275.46 Samples of cigars and cigarettes.
275.47 Samples of manufactured tobacco.
275.48 Samples of cigarette tubes.
275.49 Tobacco products and cigarette papers and tubes for exhibition at trade fairs.
275.50 Other exemptions.

ASSESSMENT OF TAXES

275.60 Assessment.

CUSTOMS' COLLECTION OF TAXES

Sec.
275.62 Customs' collection of internal revenue taxes on tobacco materials, tobacco products, and cigarette papers and tubes, imported or brought into the United States.

Subpart E—Packages

275.71 Package.
275.72 Notice for manufactured tobacco.
275.73 Notice for cigars.
275.74 Notice for cigarettes.
275.75 Exemptions.

Subpart F—Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes, Imported or Brought Into the United States

275.81 Taxpayment.

RELEASE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

275.85 Release from customs custody authorized.
275.86 Procedure for release.

RELEASE OF TOBACCO MATERIALS FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

275.90 Release from customs custody authorized.
275.91 Procedure for release.

Subpart G—Puerto Rican Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes, Brought Into the United States

275.101 General.

PREPAYMENT OF TAX IN PUERTO RICO ON TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

275.105 Prepayment of tax.
275.106 Inspection of shipment and certification of prepayment by internal revenue officer.
275.107 Procedure at port of entry.
275.108 Disposition of forms by collector of customs.

DEFERRED PAYMENT OF TAX IN PUERTO RICO ON TOBACCO PRODUCTS

275.109 Bond required for deferred taxpayment.
275.110 Computation of tax and execution of agreement to pay tax.
275.111 Inspection of shipment and certification by internal revenue officer.
275.112 Tax return.
275.113 Return periods.
275.114 Time of filing.
275.115 Remittance with return.
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275.119 Corporate surety.
275.120 Deposit of securities in lieu of corporate surety.
275.121 Amount of bond.
275.122 Strengthening bond.
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275.124 Extension of coverage of bond.
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275.126 Termination of bond.
275.127 Application of surety for relief from bond.
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RELEASE OF PUERTO RICAN TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

275.135 Release from customs custody, without payment of tax.
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275.140 Taxpayment in the United States.
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RELEASE OF PUERTO RICAN TOBACCO MATERIALS FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

275.145 Procedure for release.

Subpart H—Taxpayment of Cigars Produced in Customs Bonded Manufacturing Warehouses, Class 6

275.151 Taxpayment.
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Subpart I—Claims

GENERAL

275.161 Abatement of assessment.
275.162 Losses caused by disaster occurring after September 2, 1958.
275.163 Refund of tax.

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES LOST OR DESTROYED

275.165 Action by taxpayer.

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHDRAWN FROM THE MARKET

275.170 Destruction, action by taxpayer.
275.171 Destruction, action by assistant regional commissioner.
275.172 Return to nontaxpaid status or reduction to materials, action by taxpayer.
275.173 Return to nontaxpaid status or reduction to materials, action by assistant regional commissioner.
275.174 Disposition of tobacco products and cigarette papers and tubes, and schedule.

REDEMPTION OF STAMPS

275.180 Claim for redemption of stamps.

AUTHORITY: §§ 275.1 to 275.180 are issued under section 7805, 68A Stat. 917; 26 U.S.C. 7805. Additional authority is cited in parentheses following the sections affected.

Subpart A—Scope of Regulations

§ 275.1 Importation of tobacco materials, tobacco products, and cigarette papers and tubes.

This part contains the regulations relating to tobacco materials, tobacco products, and cigarette papers and tubes, imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of cigars from a customs bonded manufacturing warehouse, class 6; and the release of tobacco materials, tobacco products, and cigarette papers and tubes from customs custody, without payment of internal revenue tax.

Subpart B—Definitions

§ 275.11 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, each of the following terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, words in the singular form shall include the plural, 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.

Bonded manufacturer. A manufacturer of tobacco products in Puerto Rico who has an approved bond, in accordance with the provisions of this part, authorizing him to defer the payment in Puerto Rico of the internal revenue tax imposed on such products by section 7652(a), I.R.C., as provided in this part.

CFR. The Code of Federal Regulations.

Cigar. Any roll of tobacco wrapped in tobacco.

Cigarette. Any roll of tobacco, wrapped in paper or any substance other than tobacco.

Cigarette paper. Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

Cigarette papers. Taxable books or sets of cigarette papers, i.e., books or sets of cigarette papers containing more than 25 papers each.

Cigarette tube. Cigarette paper made into a hollow cylinder for use in making cigarettes.

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

Commissioner. The Commissioner of Internal Revenue.

Computation or computed. When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity, kind, and (if applicable) class, of tobacco products being shipped to the United States, that the payment, in Puerto Rico, of the tax on such products is to be deferred under Subpart G, of this part that the tax imposed on such products by section 7652(a), I.R.C., has been calculated, that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part, and that an internal revenue officer has verified and executed a certification of such calculation.

Dealer in tobacco materials. Any person who receives and handles tobacco materials for sale, shipment, or delivery to another dealer in such materials, to a manufacturer of tobacco products, or to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or who receives tobacco materials, other than stems and waste, for use by him in the production of fertilizer, insecticide, or nicotine. The term "dealer in tobacco materials" shall not include (a) an operator of a warehouse who stores tobacco materials solely for a qualified dealer in tobacco materials, for a qualified manufacturer of tobacco products, for a farmer or grower of tobacco, or for a bona fide association of farmers or growers of tobacco; (b) a farmer or grower of tobacco with respect

to the sale of leaf tobacco of his own growth or raising, or a bona fide association of farmers or growers of tobacco with respect to sales of leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm: *Provided*, That such association maintains records of all leaf tobacco acquired or received and sold or otherwise disposed of by the association, in accordance with Part 28 of this chapter; (c) a person who buys leaf tobacco on the floor of an auction warehouse, or who buys leaf tobacco from a farmer or grower, and places the tobacco on the floor of such a warehouse, or who purchases and sells warehouse receipts without taking physical possession of the tobacco covered thereby; or (d) a qualified manufacturer of tobacco products with respect to tobacco materials received by him under his bond as such a manufacturer.

Determined or determination. When used with respect to the internal revenue tax on tobacco products and cigarette papers and tubes, determined or determination shall mean that the quantity, kind, and (if applicable) class, of tobacco products, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

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

District director. A district director of internal revenue.

Factory. The premises of a manufacturer of tobacco products or cigarette papers and tubes in which he carries on such business.

Importer. Any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

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 part.

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

Large cigarettes. Cigarettes weighing more than three pounds per thousand.

Large cigars. Cigars weighing more than three pounds per thousand.

Manufactured tobacco. Tobacco (other than cigars and cigarettes) prepared, processed, manipulated, or packaged, for removal, or merely removed, for consumption by smoking or for use in the mouth or nose, and any tobacco (other than cigars and cigarettes), not exempt from tax under Chapter 52, I.R.C., sold or delivered to any person

contrary to the provisions of such chapter or regulations thereunder.

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, or who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco (other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose, or who sells or delivers any tobacco (other than cigars and cigarettes) contrary to the provisions of Chapter 52, I.R.C., or regulations thereunder. The term "manufacturer of tobacco products" shall not include (a) a person who in any manner prepares tobacco, or produces cigars or cigarettes, solely for his own personal consumption or use; (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse; (c) a farmer or grower of tobacco with respect to the sale of leaf tobacco of his own growth or raising, if it is in the condition as cured on the farm; or (d) a bona fide association of farmers or growers of tobacco with respect to sales of leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm, and if the association maintains records of all leaf tobacco, acquired or received and sold or otherwise disposed of, in accordance with Part 280 of this chapter.

Officer-in-Charge. The principal revenue officer in Puerto Rico charged with the duty of collecting internal revenue taxes, in Puerto Rico, under the jurisdiction of the Director of the Office of International Operations, Internal Revenue Service, Treasury Department, Washington, D.C.

Package. The container in which tobacco products or cigarette papers or tubes are put up by the manufacturer or the importer and offered for sale or delivery to the consumer.

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

Region. An internal revenue region.

Regional commissioner. A regional commissioner of internal revenue.

Removal or remove. The removal of tobacco products or cigarette papers or tubes from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States.

Small cigarettes. Cigarettes weighing not more than three pounds per thousand.

Small cigars. Cigars weighing not more than three pounds per thousand.

Stems. The stems or midribs of tobacco.

This chapter. Chapter I, Title 26, Code of Federal Regulations.

Tobacco materials. Tobacco (other than manufactured tobacco, cigars, and cigarettes), including tobacco in process, Perique, Black Fat, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, stems, and waste. Tobacco materials are categorized:

(a) *Unstemmed leaf tobacco.* Leaf tobacco from which the stem or midrib has not been removed.

(b) *Other tobacco materials.* Tobacco materials other than unstemmed leaf tobacco.

Tobacco products. Manufactured tobacco, cigars, and cigarettes.

United States. When used in a geographical sense shall include only the States and the District of Columbia.

U.S.C. The United States Code.

Tobacco materials. Tobacco (other than cigarettes), including tobacco in process.

Waste. Tobacco materials, including dust, and foreign substances resulting from the handling, manipulation, or processing of tobacco, and which are worthless for use in the manufacture of tobacco products and have no market value for that purpose.

Subpart C—General

§ 275.21 Forms prescribed.

The Director is authorized to prescribe all 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. When a return, form, claim, or other document called for under this part is required by this part, or by the document itself, to be executed under penalties of perjury, it shall be so executed.

§ 275.22 Retention of records.

All records required to be kept under this part, including copies of claims and schedules, authorizations, notices of release, reports, and returns, shall be retained for three years following the close of the year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 275.23 Authority of internal revenue officers to enter premises.

Any internal revenue officer may enter in the daytime any premises where tobacco products and cigarette papers and tubes are produced or kept, and where tobacco materials are kept, so far as it may be necessary for the purpose of examining such articles. When such premises are open at night, any internal revenue officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any internal revenue officer or permit him to examine such articles shall be liable to the penalties prescribed by law for the offense.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

§ 275.24 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this part, or endeavors to intimidate or impede any

internal revenue officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

§ 275.25 Disposal of forfeited, condemned, and abandoned tobacco materials, tobacco products, and cigarette papers and tubes.

When any Federal, State, or local officer having custody of forfeited, condemned, or abandoned tobacco materials, tobacco products, or cigarette papers or tubes, upon which the Federal tax has not been paid, is of the opinion that the sale thereof will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, he shall not sell, nor cause to be sold, such articles for consumption in the United States. Where the articles are not sold, the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such articles are sold, they shall not be released by the officer having custody thereof until they are properly packaged and taxpaid, which tax shall be considered as a portion of the sales price. Except where the tax is to be paid to collectors of customs in accordance with Part 20, Customs Regulations (19 CFR Part 20), on sales of articles by customs officers, the payment of tax on such articles shall be evidenced by presentation, to the officer having custody of the articles, of a receipt from the district director showing such payment: *Provided*, That tobacco materials may be sold to the highest bidder, without regard to any tax, whether by sealed bid or otherwise, if such bidder is a manufacturer of tobacco products or a dealer in tobacco materials, qualified under Chapter 52, I.R.C., to engage in such business, such materials to be accounted for in records required to be kept by him for internal revenue purposes. In the case of such articles held by or for the Federal Government, the sale thereof shall be subject to the applicable provisions of the Regulations of the General Services Administration, Title 1, Personal Property Management.

(72 Stat. 1425; 26 U.S.C. 5753)

§ 275.26 Alternate methods or procedures.

An importer, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the

specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method of procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. Where an importer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The importer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered. The importer shall retain, as part of his records, any authorization of the Director under this section.

§ 275.27 Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications,

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the importer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variations may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where an importer desires to employ such variation, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The importer shall retain, as part of his records, any authorization of the Director under this section.

§ 275.28 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this part becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

Subpart D—Taxes

TAX RATES

§ 275.31 Cigars.

On cigars imported or brought into the United States, the following internal revenue taxes are imposed by law:

(a) Small cigars. 75 cents per thousand.

(b) Large cigars. (1) If removed to retail at not more than 2½ cents each, \$2.50 per thousand;

(2) If removed to retail at more than 2½ cents each and not more than 4 cents each, \$3 per thousand;

(3) If removed to retail at more than 4 cents each and not more than 6 cents each, \$4 per thousand;

(4) If removed to retail at more than 6 cents each and not more than 8 cents each, \$7 per thousand;

(5) If removed to retail at more than 8 cents each and not more than 15 cents each, \$10 per thousand;

(6) If removed to retail at more than 15 cents each and not more than 20 cents each, \$15 per thousand; and

(7) If removed to retail at more than 20 cents each, \$20 per thousand.

Cigars not exempt from tax under this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(68A Stat. 907, 72 Stat. 1414; 26 U.S.C. 7652, 5701)

§ 275.32 Cigarettes.

On cigarettes imported or brought into the United States, the following internal revenue taxes are imposed by law:

(a) Small cigarettes. \$4 per thousand.

(b) Large cigarettes. \$8.40 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is \$4 per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(68A Stat. 907, 72 Stat. 1414; 26 U.S.C. 7652, 5701)

§ 275.33 Tobacco.

On tobacco, whether in the form of manufactured tobacco or tobacco materials, imported or brought into the United States, an internal revenue tax of 10 cents per pound is imposed by law.

(68A Stat. 907, 72 Stat. 1414; 26 U.S.C. 7652, 5701)

§ 275.34 Cigarette papers.

On each book or set of cigarette papers containing more than 25 papers imported or brought into the United States, the law imposes an internal revenue tax of ½ cent for each 50 papers or fractional part thereof; except that where cigarette papers measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.

(68A Stat. 907, 72 Stat. 1414; 26 U.S.C. 7652, 5701)

§ 275.35 Cigarette tubes.

On cigarette tubes imported or brought into the United States, the law imposes an internal revenue tax of 1 cent for each 50 tubes or fractional part thereof; except that where cigarette tubes measure more than $6\frac{1}{2}$ inches in length, they shall be taxable at the rate prescribed, counting each $2\frac{3}{4}$ inches, or fraction thereof, of the length of each as one cigarette tube.

(68A Stat. 907, 72 Stat. 1414; 26 U.S.C. 7652, 5701)

TAX CLASSIFICATION OF LARGE CIGARS AND OF CIGARETTES

§ 275.37 Large cigars.

Large cigars are divided into seven classes, for internal revenue tax purposes, corresponding with the rates of tax imposed by section 5701(b)(2), I.R.C., and based on the retail price intended by the importer for such cigars. The classes are designated, from the lowest to the highest rate of tax, as Class A, Class B, Class C, Class D, Class E, Class F, and Class G, respectively. In establishing the retail price, for tax purposes, regard shall be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on cigars as a commodity. Where there is more than one price for the same cigar in its principal market, the tax to be paid shall be determined, at the time of removal, according to the price at which the majority are sold therein. Subsequent retail sale at a price in excess of the maximum for the class at which taxpaid will not, in itself, cause the importer to incur any additional tax liability.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 275.38 Cigarettes.

For internal revenue tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

LIABILITY FOR AND PAYMENT OF TAXES

§ 275.40 Persons liable for tax.

The importer of tobacco materials, tobacco products, and cigarette papers and tubes, shall be liable for the internal revenue taxes imposed thereon by section 5701 or 7652, I.R.C.: *Provided*, That when tobacco products or cigarette papers or tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or of a manufacturer of cigarette papers and tubes, the transferee shall become liable for the internal revenue tax on such articles upon release from customs custody and the importer shall thereupon be relieved of his liability for such tax.

(68A Stat. 907, 72 Stat. 1417; 26 U.S.C. 7652, 5703)

§ 275.41 Determination of tax and method of payment.

Tobacco materials, tobacco products, and cigarette papers and tubes, imported

or brought into the United States, on which internal revenue taxes are due and payable, shall not be released from customs custody until such taxes have been determined and paid. The taxes on such articles which are determined to be due shall be paid on the basis of a return in accordance with the provisions of this part.

(68A Stat. 907, 72 Stat. 1417; 26 U.S.C. 7652, 5703)

EXEMPTIONS FROM TAXES

§ 275.45 Tobacco products and cigarette papers and tubes imported by consular officers and employees of foreign states.

No internal revenue tax shall be imposed with respect to tobacco products and cigarette papers and tubes imported by a consular officer of a foreign state, or by an employee of a consulate of a foreign state, whether such articles accompany the officer or employee to his post in the United States, or are imported by him at any time during the exercise of his functions therein, if:

(a) Such officer or employee is a national of the state appointing him and is not engaged in any profession, business, or trade within the territory specified in this section;

(b) The tobacco products and cigarette papers and tubes are imported by the officer or employee for his personal or official use; and

(c) The foreign state grants an equivalent exemption to corresponding officers or employees of the Government of the United States stationed in such foreign state, as certified by the Secretary of State.

(68A Stat. 900; 26 U.S.C. 7511)

§ 275.46 Samples of cigars and cigarettes.

Samples of cigars and cigarettes, to be used in the United States by persons importing tobacco products in commercial quantities, are, subject to the limitations in this section, exempt from payment of any internal revenue tax imposed on, or by reason of, importation. This exemption applies only to samples to be used for soliciting orders for products of foreign countries. Only one sample of cigars and cigarettes of the same brand, blend, size, shape, and weight, and having the same kind of wrapper, filter, mouthpiece, etc., shall be so admitted during any calendar quarter for the use of each such person. No such sample shall contain more than 3 cigars or 3 cigarettes.

(71 Stat. 486; 19 U.S.C. 1201)

§ 275.47 Samples of manufactured tobacco.

Samples of manufactured tobacco, to be used in the United States by persons importing tobacco products in commercial quantities, are, subject to the limitations in this section, exempt from payment of any internal revenue tax imposed on, or by reason of, importation. This exemption applies only to samples to be used for soliciting orders for products of foreign countries. Only one sample of manufactured tobacco of the same kind, brand, blend, form, flavor,

cut, grind, etc., shall be so admitted during any calendar quarter for the use of each such person. No such sample shall contain more than one-eighth of an ounce of manufactured tobacco.

(71 Stat. 486; 19 U.S.C. 1201)

§ 275.48 Samples of cigarette tubes.

Samples of cigarette tubes, to be used in the United States by persons importing cigarette papers or tubes in commercial quantities, are, subject to the limitations in this section, exempt from payment of any internal revenue tax imposed on, or by reason of, importation. This exemption applies only to samples to be used for soliciting orders for cigarette tubes manufactured in foreign countries. Only one sample of cigarette tubes of the same brand, size, shape, color, weight, and burning characteristics, and having the same kind of tip, filter, mouthpiece, etc., shall be so admitted during any calendar quarter for the use of each such person. No such sample shall contain more than 3 cigarette tubes.

(71 Stat. 486; 19 U.S.C. 1201)

§ 275.49 Tobacco products and cigarette papers and tubes for exhibition at trade fairs.

Tobacco products and cigarette papers and tubes may be imported into the United States, without payment of internal revenue tax, for the purpose of exhibition at a trade fair, exhibition, or exposition pursuant to the Trade Fair Act of 1959 (73 Stat. 18; 19 U.S.C. 1751), in accordance with Customs Regulations, 19 CFR Part 32. Such tobacco products and cigarette papers, and tubes imported into the United States must be disposed of in accordance with 19 CFR Part 32. However, if such products are sold or otherwise disposed of for consumption within, or removed from, the area of such fairs pursuant to 19 U.S.C. 1753(a), and regulations thereunder, they shall be in packages which bear the notice and shall be taxpaid, in accordance with the applicable provisions of this part, prior to release from customs custody.

§ 275.50 Other exemptions.

Customs Regulations, 19 CFR, Chapter I, provide for certain other exemptions from internal revenue taxes with respect to tobacco products and cigarette papers and tubes imported into the United States.

ASSESSMENT OF TAXES

§ 275.60 Assessment.

Whenever any person required by law to pay internal revenue tax on tobacco materials, tobacco products, or cigarette papers or tubes, fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in section 6501, I.R.C. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to

show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

CUSTOMS' COLLECTION OF TAXES

§ 275.62 Customs' collection of internal revenue taxes on tobacco materials, tobacco products, and cigarette papers and tubes, imported or brought into the United States.

Internal revenue taxes on tobacco materials, tobacco products, and cigarette papers and tubes, imported or brought into the United States, which are to be paid to a collector of customs, in accordance with this part, shall be collected, accounted for, and deposited as internal revenue collections by the collector of customs, in accordance with customs procedures and regulations: *Provided*, That, the collector of customs shall deposit the taxes collected on tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico or the Virgin Islands in the internal revenue account designated for the deposit of taxes collected on articles of Puerto Rican manufacture, or the deposit of taxes collected on articles coming from the Virgin Islands, as the case may be.

Subpart E—Packages

§ 275.71 Package.

All tobacco products and cigarette papers and tubes, except as provided in § 275.75, shall, before removal subject to internal revenue tax, be put up in packages which shall be of such construction as will securely contain the articles therein and maintain the notice thereon as required by this subpart. No package of tobacco products or cigarette papers or tubes shall have contained in, attached to, or stamped, marked, written, or printed thereon (a) any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery, (b) any indecent or immoral picture, print, or representation, or (c) any statement or indication that United States tax has been paid.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 275.72 Notice for manufactured tobacco.

Every package of manufactured tobacco, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "manufactured tobacco," "tobacco," or "snuff," and the quantity, by weight, of such product contained therein.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 275.73 Notice for cigars.

Every package of cigars, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such

product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the appropriate following class designation corresponding with the rate of tax imposed by section 5701(b)(2), I.R.C.:

(a) "A. The ordinary retail price of the cigars herein contained is intended by the importer to be not more than 2½ cents each";

(b) "B. The ordinary retail price of the cigars herein contained is intended by the importer to be more than 2½ cents each and not more than 4 cents each";

(c) "C. The ordinary retail price of the cigars herein contained is intended by the importer to be more than 4 cents each and not more than 6 cents each";

(d) "D. The ordinary retail price of the cigars herein contained is intended by the importer to be more than 6 cents each and not more than 8 cents each";

(e) "E. The ordinary retail price of the cigars herein contained is intended by the importer to be more than 8 cents each and not more than 15 cents each";

(f) "F. The ordinary retail price of the cigars herein contained is intended by the importer to be more than 15 cents each and not more than 20 cents each"; or

(g) "G. The ordinary retail price of the cigars herein contained is intended by the importer to be more than 20 cents each."

(72 Stat. 1422; 26 U.S.C. 5723)

§ 275.74 Notice for cigarettes.

Every package of cigarettes, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigarettes", the quantity of such product contained therein; and the classification for tax purposes, i.e., for small cigarettes either "small" or "Class A", and for large cigarettes, either "large" or "Class B".

(72 Stat. 1422; 26 U.S.C. 5723)

Quantity	Article and tax class	Rate of tax	Amount
20,000	Small cigars	\$0.75 per thousand	\$15.00
5,000	Large cigars—Class D	\$7 per thousand	35.00
1,000	Large cigars—Class E	\$10 per thousand	10.00
500	Large cigars—Class G	\$20 per thousand	10.00
10,000	Small cigarettes	\$4 per thousand	40.00
5,000	Large cigarettes	\$8.40 per thousand	42.00
2,000 sets	Cigarette papers—50 each set	\$0.005 per set	10.00
1,000 sets	Cigarette papers—100 each set	\$0.01 per set	10.00
1,000	Cigarette tubes	\$0.01 per 50 tubes	.20
500 pounds	Manufactured tobacco (including smoking and chewing tobacco, and snuff)	\$0.10 per pound	50.00
500 pounds	Tobacco materials	do	50.00
Total			272.20

An extra copy of the customs form shall be prepared by the importer, marked "For internal revenue purposes", and filed with the collector of customs who will transmit it to the assistant regional commissioner of the region wherein the customs collection headquarters is located. (For provisions relating to the prepayment or deferred payment of internal revenue tax in Puerto Rico on tobacco products and cigarette papers and tubes brought into the United States, see Subpart G of this part.)

§ 275.75 Exemptions.

The provisions of this subpart requiring that tobacco products and cigarette papers and tubes be put up in packages and that proper notice be placed on such packages shall not apply to imported tobacco products and cigarette papers and tubes authorized to be released from customs custody, without payment of internal revenue tax, pursuant to §§ 275.45, 275.46, 275.47, 275.48, and 275.50, and shall not apply to tobacco products imported in passengers' baggage, or by mail where the value does not exceed \$250, where such products are solely for the personal consumption of the importer or for disposition as his bona fide gift.

(72 Stat. 1422; 26 U.S.C. 5723)

Subpart F—Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes, Imported or Brought into the United States

§ 275.81 Taxpayment.

Except as otherwise provided in this part, any internal revenue tax payable on tobacco materials, tobacco products, and cigarette papers and tubes, imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, shall be determined and paid to the collector of customs before removal on the basis of a return made on the customs form by which release from customs custody is to be effected. There shall be set forth on such customs form at the time of entry for consumption or for warehousing and at the time of withdrawal from warehouse for consumption, in addition to any information required for customs purposes, the quantity, kind, and (if applicable) class, of tobacco products, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed on payment of tax, the applicable rate of tax, and the amount of tax due, substantially in the form as shown in the example below:

(68A Stat. 907, 72 Stat. 1417; 26 U.S.C. 7652, 5703)

RELEASE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

§ 275.85 Release from customs custody authorized.

Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the collector of customs from

customs custody, without payment of internal revenue tax, for transfer to the factory of a manufacturer of tobacco products under the bond of such manufacturer. Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the collector of customs from customs custody, without payment of internal revenue tax, for transfer, under the bond of the manufacturer to whom such articles are released, to the factory of (a) a manufacturer of cigarette papers and tubes; or (b) a manufacturer of tobacco products solely for use in the manufacture of cigarettes; or (c) in the case of cigarette papers only, a manufacturer of tobacco products to be put up by him in units of not more than 25 papers each for distribution with packages of manufactured tobacco. Releases under this section shall be in accordance with § 275.86: *Provided, however,* That a manufacturer of tobacco products or a manufacturer of cigarette papers and tubes who desires to obtain the release of Virgin Islands tobacco products or cigarette papers or tubes from customs custody, without payment of internal revenue tax, under his bond, shall, in addition, file an extension of coverage of his bond on Form 2105 in the same manner and form as prescribed for Puerto Rican articles in § 275.136. Articles received into the factory of a manufacturer under the provisions of this section are subject to the provisions of Part 270 and Part 285 of this chapter. (For provisions relating to release of Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, see Subpart G of this part.)

(72 Stat. 1418; 26 U.S.C. 5704)

§ 275.86 Procedure for release.

Every manufacturer of tobacco products and cigarette papers and tubes who desires to obtain the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, as provided in § 275.85, shall prepare a notice of release, Form 2145, in triplicate, and file the three copies of the form with the assistant regional commissioner for the region wherein the manufacturer is located. The assistant regional commissioner will not certify Form 2145 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under Parts 270 and 285 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form. After certification by the assistant regional commissioner, all copies shall be presented by the manufacturer to the collector of customs having custody of the tobacco products and cigarette papers and tubes prior to release thereof. The collector of customs may release such articles upon completion of the notice of release and, after release, he will retain one copy of the form, transmit one copy to the assistant regional commissioner shown thereon, and return one copy to the manufacturer, which shall be retained by the manufacturer.

(72 Stat. 1418, 1423; 26 U.S.C. 5704, 5741)

RELEASE OF TOBACCO MATERIALS FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

§ 275.90 Release from customs custody authorized.

The collector of customs may release tobacco materials grown in a foreign country, the Virgin Islands, or a possession of the United States, from customs custody, without payment of internal revenue tax, for delivery to a dealer in tobacco materials or to a manufacturer of tobacco products, under the bond of such dealer or manufacturer. Such release shall be in accordance with § 275.91. (For provisions relating to release of Puerto Rican tobacco materials from customs custody, without payment of internal revenue tax, see Subpart G of this part.)

(72 Stat. 1418; 26 U.S.C. 5704)

§ 275.91 Procedure for release.

Every dealer in tobacco materials who desires to obtain the release of tobacco materials from customs custody, without payment of internal revenue tax, under his bond, as provided in § 275.90, shall certify on the customs form by which release from customs custody is to be effected that he is a properly bonded dealer in tobacco materials, under Part 280 of this chapter, giving the internal revenue number assigned to his establishment, and that he is authorized, by section 5704(d), I.R.C., to receive tobacco materials without payment of internal revenue tax. Similarly, every manufacturer of tobacco products shall certify on the customs form by which release from customs custody is to be effected that he holds an internal revenue permit as a manufacturer of tobacco products, under Part 270 of this chapter, giving such permit number, and that he is authorized, by section 5704(d), I.R.C., to receive tobacco materials without payment of internal revenue tax. Upon release of the tobacco materials, the collector of customs will return one copy of the customs release form to the dealer or manufacturer, as the case may be, which shall be retained by such dealer or manufacturer.

(72 Stat. 1418, 1423; 26 U.S.C. 5704, 5741)

Subpart G—Puerto Rican Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes, Brought Into the United States

§ 275.101 General.

Tobacco products and cigarette papers and tubes manufactured in Puerto Rico which are brought into the United States and withdrawn for consumption or sale are subject to the tax imposed by section 7652(a), I.R.C., at the rates set forth in section 5701, I.R.C. All United States internal revenue taxes collected on such tobacco products and cigarette papers and tubes are, pursuant to section 7652(a)(3), I.R.C., covered into the Treasury of Puerto Rico. This internal revenue tax on tobacco products and cigarette papers and tubes of Puerto Rican manufacture may be prepaid in Puerto Rico prior to shipment of such articles to the United States in accordance with § 275.105, or in the case of

tobacco products such tax may be paid in Puerto Rico on the basis of a semi-monthly return in accordance with the applicable provisions of this subpart. Tobacco products may also be shipped to the United States and released from customs custody, without payment of internal revenue tax, for transfer to the factory of a manufacturer of tobacco products under the bond of such manufacturer in accordance with § 275.135; and cigarette papers and tubes may be similarly shipped and released from customs custody for transfer to the factory of (a) a manufacturer of cigarette papers and tubes, or (b) a manufacturer of tobacco products solely for use in the manufacture of cigarettes, or (c) in the case of cigarette papers only, a manufacturer of tobacco products to be put up by him in units of not more than 25 papers each for distribution with packages of manufactured tobacco under the bond of the manufacturer to whom such articles are released, in accordance with § 275.135. Tobacco products and cigarette papers and tubes of Puerto Rican manufacture on which the internal revenue tax has not been paid or computed in Puerto Rico and which are not to be released from customs custody, without payment of internal revenue tax, under bond, shall not be withdrawn from customs custody until internal revenue tax thereon has been paid in accordance with § 275.81. Tobacco materials brought in from Puerto Rico may be released from customs custody, without payment of internal revenue tax, for delivery to a dealer in tobacco materials or to a manufacturer of tobacco products under the bond of such dealer or manufacturer in accordance with § 275.145.

(68A Stat. 907, 72 Stat. 1417, 1418; 26 U.S.C. 7652, 5703, 5704)

PREPAYMENT OF TAX IN PUERTO RICO ON TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by section 7652(a), I.R.C., on tobacco products and cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Officer-in-Charge, a tax return, Form 3073, in triplicate, with full remittance of tax which will become due on such tobacco products or cigarette papers or tubes. The Officer-in-Charge will present a receipted copy of the return to the person filing the return and paying the tax, retain one copy, and forward the remaining copy to the Assistant Regional Commissioner, Alcohol and Tobacco Tax, New York, New York. The person who filed the return and prepaid the tax shall present the receipted copy of the return to the internal revenue officer assigned by the Supervisor-in-Charge, Alcohol and Tobacco Tax, Puerto Rico, to inspect the tobacco products or cigarette papers or tubes to be shipped to the United States. Such officer will endorse the receipted copy of the return to show release of the tobacco products or cigarette papers or tubes, or, if less than the quantity of tobacco products or cigarette

papers or tubes covered by the return is released, to show the quantity, kind, and (if applicable) class, of tobacco products, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, in fact released and will return such copy to the taxpayer.

(68A Stat. 907, 72 Stat. 1417; 26 U.S.C. 7652, 5703)

§ 275.106 Inspection of shipment and certification of prepayment by internal revenue officer.

The internal revenue officer, assigned to inspect Puerto Rican tobacco products and cigarette papers and tubes to be shipped to the United States in accordance with § 275.105, will prepare, for each shipping container, a statement on Form 3074 that the tax has been prepaid, and show the name and address of the shipper, date of prepayment, and the quantity, kind, and (if applicable) class, of tobacco products, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes. The shipper shall affix the completed Form 3074 to the outside of each shipping container in which the articles are packed. Such statement, Form 3074, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container. In addition, such officer will prepare Form 3075, in quintuplicate, identifying the tobacco products and cigarette papers and tubes released in each shipment and certifying that the tax has been prepaid thereon, and will (a) present one copy to the taxpayer for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the collector of customs at the port of entry; (b) promptly mail two copies to the collector of customs at the port of entry; (c) mail one copy to the assistant regional commissioner of the region wherein the customs collection headquarters is located; and (d) retain the remaining copy. Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the internal revenue officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

§ 275.107 Procedure at port of entry.

The collector of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075, in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss, the tobacco products or cigarette papers or tubes reported shipped in such container, and the tobacco products or cigarette

papers or tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of tobacco products or cigarette papers or tubes missing or damaged, the quantity, kind, and (if applicable) class, of tobacco products, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes shall be shown. If the collector of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the tobacco products or cigarette papers or tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the collector of customs, the shipment may be released.

§ 275.108 Disposition of forms by collector of customs.

One copy of the Form 3075 will be forwarded to the Assistant Regional Commissioner, Alcohol and Tobacco Tax, New York, New York, one copy will be furnished the consignee, and one copy of this form will be retained by the collector of customs.

DEFERRED PAYMENT OF TAX IN PUERTO RICO ON TOBACCO PRODUCTS

§ 275.109 Bond required for deferred taxpayment.

Where a manufacturer of tobacco products in Puerto Rico desires to defer payment in Puerto Rico of the internal revenue tax imposed by section 7652(a), I.R.C., on tobacco products of Puerto Rican manufacture coming into the United States, he shall file a bond, Form 2986, with the Officer-in-Charge, in accordance with the provisions of this subpart. Such bond shall be conditioned on the payment, at the time and in the manner prescribed in this subpart, of the full amount of tax computed under the provisions of this subpart with respect to tobacco products which are released for shipment to the United States on computation of tax. All taxes which are computed under the provisions of this subpart shall be chargeable against the bond, until such taxes are paid, as provided in § 275.112. The bond shall show the location of the factory from which the tobacco products to which it relates are to be shipped.

§ 275.110 Computation of tax and execution of agreement to pay tax.

Where tobacco products are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred tax payment), the bonded manufacturer shall calculate the tax and shall prepare Form 2987, in septuplicate, shall enter on such form under the penalties of perjury the kind, quantity, and (if applicable) class, of the tobacco products to be shipped to the United States, the amount of the tax to be paid on such products under the provisions of this subpart, and the name and address of the consignee in the United States to whom such products are being shipped, and shall date and execute the agreement to pay the amount of tax

which shall be computed on such products covered by the Form 2987. The Form 2987 shall be serially numbered by the bonded manufacturer beginning with the number "1" on January 1 of each year. The bonded manufacturer shall then request the Supervisor-in-Charge, Alcohol and Tobacco Tax, Puerto Rico, to assign an internal revenue officer to inspect the tobacco products, verify the tax calculation with respect to such products, and release such products for shipment in accordance with § 275.111. The bonded manufacturer shall present all copies of the prepared Form 2987 to the internal revenue officer assigned. The date of certification of Form 2987 by the internal revenue officer shall be treated as the date of computation of tax. Tobacco products may be released for shipment to the United States in accordance with the provisions of this section only after computation of tax.

§ 275.111 Inspection of shipment and certification by internal revenue officer.

On receipt of the original and six copies of the Form 2987 completed and executed by the bonded manufacturer in accordance with § 275.110, an internal revenue officer will inspect the tobacco products covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the tobacco products for shipment to the United States. Such officer will then promptly distribute the certified Form 2987 by (a) mailing the original to the Officer-in-Charge; (b) mailing two copies to the collector of customs at the port of entry; (c) mailing one copy to the assistant regional commissioner of the region wherein the customs collection headquarters is located; (d) returning two copies to the bonded manufacturer who will attach one copy to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the collector of customs at the port of entry; and (e) submitting one copy to the Supervisor-in-Charge, Alcohol and Tobacco Tax, Puerto Rico. Such officer will also prepare, for each shipping container, a statement on Form 2989 that the tax on the tobacco products to be shipped to the United States has been computed and show the name and address of the bonded manufacturer, date of tax computation, and the quantity, kind, and (if applicable) class, of tobacco products. The bonded manufacturer shall affix the completed Form 2989 to the outside of each shipping container in which the products are packed. Such statement, Form 2989, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container.

§ 275.112 Tax return.

The internal revenue taxes imposed by section 7652(a), I.R.C., with respect to tobacco products manufactured in Puerto Rico and shipped to the United States on computation of tax under the provisions of this subpart shall be paid on the basis of a semimonthly tax return.

The bonded manufacturer of such products shall file with the Officer-in-Charge a semimonthly tax return, Form 2988, in triplicate, for each and every return period. The bonded manufacturer shall show on the return the serial numbers of all Forms 2987 certified during the return period, the kind, quantity, and (if applicable) class, of tobacco products upon which the tax has been computed during the semimonthly return period, and the tax due thereon, and shall execute the return, Form 2988, under the penalties of perjury. He shall file a return for each return period at the time specified in § 275.113, regardless of whether tax is due for that return period: *Provided*, That where the Assistant Regional Commissioner, Alcohol and Tobacco Tax, New York, New York, grants specific authorization, the bonded manufacturer need not file a tax return during the term of such authorization for any period in which tax liability was not incurred under the provisions of this subpart.

§ 275.113 Return periods.

The periods to be covered in the semimonthly tax returns shall be from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month.

§ 275.114 Time of filing.

Every semimonthly tax return under this subpart shall be filed by the bonded manufacturer not later than the third business day succeeding the last calendar day of the return period: *Provided*, That where the return and remittance are delivered by United States mail to the Officer-in-Charge, the date in the official postmark of the United States Post Office stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of delivery. The Officer-in-Charge will transmit a receipted copy of the semimonthly tax return to the bonded manufacturer who filed the return and paid the tax, retain one copy, and forward one copy to the Assistant Regional Commissioner, Alcohol and Tobacco Tax, New York, New York. As used in this section, the term "business day" shall mean any day other than Saturday, Sunday, or a legal holiday in the Commonwealth of Puerto Rico.

§ 275.115 Remittance with return.

Remittance for the full amount of internal revenue tax computed during the return period shall accompany the return. Such remittance may be in any form the Officer-in-Charge is authorized to accept under the provisions of § 301.6311-1 of this chapter (Procedure and Administration—Payment by check or money order) and which is acceptable to that officer. In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(68A Stat. 778; 26 U.S.C. 6313)

§ 275.116 Default.

Where a check or money order tendered with a semimonthly return for

payment of internal revenue tax under the provisions of this subpart is not paid on presentment, where a bonded manufacturer fails to remit with the semimonthly return the full amount of tax due thereunder, or where a bonded manufacturer is otherwise in default in payment of tax under the provisions of this subpart, he shall not ship tobacco products to the United States on computation of tax, until the Officer-in-Charge finds that the revenue will not be jeopardized by deferred payment of tax under the provisions of this subpart.

§ 275.117 Procedure at port of entry.

The collector of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 2987 is contained in the shipment. He will then execute his certificate on the three copies of the Form 2987, in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss, the tobacco products reported shipped in such container, and the tobacco products lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of tobacco products missing or damaged, the quantity, kind, and (if applicable) class, of tobacco products shall be shown. If the collector of customs finds that the full amount of tax due has not been computed, he will require the difference due to be paid to him prior to release of the tobacco products. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the collector of customs, the shipment may be released.

§ 275.118 Disposition of forms by collector of customs.

One copy of the Form 2987 will be forwarded to the Assistant Regional Commissioner, Alcohol and Tobacco Tax, New York, New York, one copy will be furnished the consignee, and one copy of this form will be retained by the collector of customs.

§ 275.119 Corporate surety.

Surety bonds, required under the provisions of this subpart, may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury of the United States as acceptable sureties on Federal bonds. Power of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of such corporate sureties shall be filed with, and passed upon by, the Surety Bonds Branch, Division of Deposits and Investments, Bureau of Accounts, Treasury Department. Limitations concerning corporate sureties are prescribed by the Secretary in Treasury Department Circular No. 570, as revised. The surety shall have no interest whatever in the business covered by the bond.

(61 Stat. 648; 6 U.S.C. 6)

§ 275.120 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the manufacturer of tobacco products in Puerto Rico may pledge and deposit, as security for his bond, securities which are transferable and are guaranteed both as to interest and as to principal by the United States, in accordance with the provisions of 31 CFR Part 225.

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

§ 275.121 Amount of bond.

In order that tobacco products may be shipped to the United States on computation of tax under the provisions of this subpart, the total amount of the bond or bonds shall at all times be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond: *Provided*, That the amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed \$250,000 where payment of tax on cigarettes is deferred; need not exceed \$150,000 where payment of tax on cigars is deferred; and need not exceed \$25,000 where payment of tax on manufactured tobacco is deferred: *And Provided Further*, That, where payment of tax is deferred with respect to more than one kind of tobacco product, the bond need not exceed the amount of the largest maximum bond prescribed with respect to any of the kinds of tobacco products on which payment is deferred. The amount of bond shall in no case be less than \$1,000. Where the amount of a bonded manufacturer's bond is less than the maximum prescribed, the bonded manufacturer shall maintain a running account accurately reflecting all outstanding taxes with which his bond is chargeable. He shall charge such account with the amount of tax he agreed to pay on Forms 2987 and shall credit the account for the amount he paid with his return, Form 2988, at the time he files such return.

§ 275.122 Strengthening bond.

Where the amount of any bond is no longer sufficient under the provisions of § 275.121, the bonded manufacturer shall immediately file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, unless a superseding bond is filed pursuant to § 275.123. A strengthening bond 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 either bond to less than its full amount.

§ 275.123 Superseding bond.

A bonded manufacturer shall immediately file a new bond to supersede his current bond when (a) the corporate surety on the current bond becomes insolvent, (b) the Officer-in-Charge approves a request from the surety on the current bond to terminate his liability under the bond, (c) the payment of any liability under a bond is made by the surety thereon, (d) the amount of the bond is no longer sufficient under the provisions of § 275.121 and a strengthening bond has not been filed, or (e) the

Officer-in-Charge considers a superseding bond necessary for the protection of the revenue.

§ 275.124 Extension of coverage of bond.

An extension of coverage of the bond of a bonded manufacturer shall be required in the case of any change in the location of the factory as set forth in the bond. Such extension of coverage of the bond shall be manifested on Form 2105 by the bonded manufacturer and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

§ 275.125 Approval of bond and extension of coverage of bond.

The Officer-in-Charge is authorized to approve all bonds and extensions of coverage of bonds (except under § 275.136) filed under this subpart. No manufacturer of tobacco products in Puerto Rico shall defer taxes under this subpart until he receives from the Officer-in-Charge notice of approval of the bond or of an appropriate extension of coverage of the bond required under this subpart. Upon receipt of the duplicate copy of an approved bond or extension of coverage of bond from the Officer-in-Charge, such copy of the bond or extension of coverage of bond shall be retained by the bonded manufacturer and shall be made available for inspection by any internal revenue officer upon his request.

§ 275.126 Termination of bond.

Any bond given under the provisions of this subpart may be terminated as to future transactions, by the Officer-in-Charge, (a) pursuant to application of surety as provided in § 275.127; (b) on approval of a superseding bond; (c) on notification by the bonded manufacturer to the Officer-in-Charge that he has discontinued the deferral of taxes under the bond; or (d) on notification by the bonded manufacturer to the Officer-in-Charge that he has discontinued business. When any bond is terminated, the Officer-in-Charge shall notify both the bonded manufacturer and surety on such bond, in writing, of such action.

§ 275.127 Application of surety for relief from bond.

A surety on any bond given under the provisions of this subpart may at any time in writing notify the bonded manufacturer and the Officer-in-Charge that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 10 days after the date the notice is received by the Officer-in-Charge. The surety shall also file with the Officer-in-Charge an acknowledgment or other proof of service on the bonded manufacturer. If such notice is not thereafter in writing withdrawn, the rights of the bonded manufacturer 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 § 275.128.

§ 275.128 Relief of surety from bond.

Where the surety on a bond given under the provisions of this subpart has

filed application for relief from liability, as provided in § 275.127, the surety shall be relieved from liability for transactions occurring wholly subsequent to the date specified in the notice, or the effective date of a new bond, if one is given.

§ 275.129 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 275.120, shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the Officer-in-Charge until the liability under the bond for which they were pledged has been terminated. When the Officer-in-Charge 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 Officer-in-Charge may extend the date of release for such additional length of time as he deems necessary.

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

RELEASE OF PUERTO RICAN TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

§ 275.135 Release from customs custody, without payment of tax.

Puerto Rican tobacco products and cigarette papers and tubes may not be released from customs custody, without payment of internal revenue tax, under the provisions of § 275.101, unless the manufacturer in the United States has filed an extension of coverage of his bond in accordance with § 275.136, and obtains the release of such articles as provided in this subpart.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 275.136 Extension of coverage of bond.

Every manufacturer of tobacco products in the United States who desires to obtain the release of Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, and every manufacturer of cigarette papers and tubes who desires to obtain the release of Puerto Rican cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, shall file an extension of coverage of his bond on Form 2105 with, and receive a notice of approval from, the assistant regional commissioner of the region in which his factory is located. This extension of coverage shall be executed by the principal and the surety and shall be in the following form:

Whereas, the purpose of this extension is to bind the obligors for the payment of the tax imposed by section 7652(a), I.R.C., on tobacco products and/or cigarette papers and tubes manufactured in Puerto Rico and released in the United States from customs custody without payment of tax, for delivery to the principal on said bond.

Now, therefore, the said bond is further specifically conditioned that the principal named therein shall pay all taxes imposed by section 7652(a), I.R.C. (plus penalties, if any, and interest) for which he may become liable with respect to tobacco products

and/or cigarette papers and tubes manufactured in Puerto Rico which are released to him in the United States from customs custody without payment of tax thereon, and comply with all provisions of law and regulations with respect thereto.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 275.137 Notice of release.

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who desires under the provisions of this subpart to obtain the release of Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, shall prepare a notice of release, Form 3072, in quintuplicate, and file the five copies of the form with the assistant regional commissioner for the region wherein the manufacturer is located. The assistant regional commissioner will not certify Form 3072 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under Parts 270 and 285 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form. After certification by the assistant regional commissioner, the manufacturer shall forward all five copies of the form to the shipper in Puerto Rico. The shipper in Puerto Rico shall execute Part I on all copies of the form, forward four copies to the Supervisor-in-Charge, Alcohol and Tobacco Tax, Puerto Rico, and retain the remaining copy for his records. The internal revenue officer assigned to inspect the tobacco products and cigarette papers and tubes to be shipped, after determining that the shipment has been correctly described in Part I, will execute Part II on all four copies of the form, and will (a) present one copy to the shipper for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the collector of customs at the port of entry; (b) promptly mail two copies to the collector of customs at the port of entry in the United States; and (c) retain the remaining copy.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 275.138 Action by collector of customs.

The collector of customs at the port of entry will note in Part III, on the three copies of the notice of release, Form 3072, in his possession, any exceptions found, showing the numbers and marks on each shipping container from which a loss was sustained, the quantity of tobacco products or cigarette papers or tubes reported shipped in such shipping container, and the quantity of the articles lost. The collector of customs will execute the Notice of Release on each such copy of the form, release the shipment with one copy to the consignee, mail one copy to the assistant regional commissioner shown on the form, and retain the remaining copy for his records.

§ 275.139 Records.

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who receives tobacco products and cigarette papers and tubes

of Puerto Rican manufacture, without payment of internal revenue tax, under his bond, shall keep a separate record which will show the date and quantity, kind, and (if applicable) class, of tobacco products, and the date and number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes: (a) received, (b) removed subject to tax, (c) removed for tax-exempt purposes, and (d) otherwise disposed of.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 275.140 Taxpayment in the United States.

Every manufacturer of tobacco products in the United States who receives Puerto Rican tobacco products from customs custody, without payment of internal revenue tax, under his bond, and subsequently removes such products, subject to tax, shall pay the tax imposed on such products by section 7652(a) I.R.C., at the rates prescribed in section 5701, I.R.C., on the basis of a return under the provisions of Part 270 of this chapter applicable to the taxpayment of tobacco products. Similarly, every manufacturer of cigarette papers and tubes in the United States who receives Puerto Rican cigarette papers and tubes and subsequently removes such articles, shall pay the tax imposed on such articles by section 7652(a), I.R.C., at the rates prescribed in section 5701, I.R.C., on the basis of a return under the provisions of Part 285 of this chapter applicable to taxpayment of cigarette papers and tubes. Such tobacco products and cigarette papers and tubes shall be separately listed and identified as articles of Puerto Rican manufacture on the returns, Form 3071 and Form 2137, and the amount of tax paid on such articles shall be separately stated on such forms.

§ 275.141 Reports.

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who receives Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, shall report the receipt and disposition of such tobacco products and cigarette papers and tubes on supplemental monthly reports. Such supplemental reports shall be made on Form 3068 or Form 2138 and shall have inserted thereon the heading, "Tobacco Products of Puerto Rican Manufacture" or "Cigarette Papers and Tubes of Puerto Rican Manufacture", as the case may be. The original of such supplemental report shall be attached to the manufacturer's regular monthly report when filed.

(72 Stat. 1422; 26 U.S.C. 5722)

RELEASE OF PUERTO RICAN TOBACCO MATERIALS FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

§ 275.145 Procedure for release.

Every dealer in tobacco materials and manufacturer of tobacco products in the United States who desires to bring tobacco materials from Puerto Rico into the United States, without payment of internal revenue tax, under the provisions of § 275.101, shall have such to-

bacco materials consigned to him in care of the collector of customs at the port of entry in the United States. To obtain release of such tobacco materials from customs custody, without payment of internal revenue tax, the dealer in tobacco materials in the United States shall certify in writing, under the penalties of perjury, to such collector of customs that he is a properly bonded dealer in tobacco materials, under Part 280 of this chapter, giving the internal revenue number assigned to his establishment, and that he is authorized, by section 5704(d), I.R.C., to receive tobacco materials without payment of internal revenue tax. Similarly, a manufacturer of tobacco products in the United States shall certify in writing, under the penalties of perjury, to the collector of customs that he holds an internal revenue permit as a manufacturer of tobacco products under Part 270 of this chapter, giving such permit number, and that he is authorized, by section 5704(d), I.R.C., to receive tobacco materials without payment of internal revenue tax. Upon release of the tobacco materials, the collector of customs will stamp the date of release on the certification and return it to the dealer or manufacturer, as the case may be, which shall be retained by such dealer or manufacturer.

(72 Stat. 1418, 1423; 26 U.S.C. 5704, 5741)

Subpart H—Taxpayment of Cigars Produced in Customs Bonded Manufacturing Warehouses, Class 6

§ 275.151 Taxpayment.

A proprietor of a customs bonded manufacturing warehouse, class 6, who removes cigars for sale or consumption in the United States shall pay the tax on such cigars on the basis of a return to the collector of customs in accordance with customs procedures and regulations. The tax shall be accounted for and deposited as internal revenue collections by the collector of customs.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 275.152 Packaging requirements.

Cigars removed from a customs bonded manufacturing warehouse, class 6, for sale or consumption in the United States shall be put in packages and bear the notice for cigars, in accordance with §§ 275.71 and 275.73.

(72 Stat. 1422; 26 U.S.C. 5723)

Subpart I—Claims

GENERAL

§ 275.161 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco materials, tobacco products, and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 843, in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to estab-

lish to the satisfaction of the assistant regional commissioner that the claim is valid, shall be filed with the assistant regional commissioner for the region in which the tax or liability was assessed, and the duplicate of the claim shall be retained by the claimant.

(68A Stat. 792; 26 U.S.C. 6404)

§ 275.162 Losses caused by disaster occurring after September 2, 1958.

Claims involving internal revenue tax paid or determined and customs duty paid on tobacco products and cigarette papers and tubes removed, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" occurring in the United States after September 2, 1958, shall be filed in accordance with the provisions of Subpart C of Part 296 of this chapter.

(72 Stat. 1420; 26 U.S.C. 5708)

§ 275.163 Refund of tax.

The taxes paid on imported tobacco products and cigarette papers and tubes may be refunded (without interest) to the taxpayer on proof satisfactory to the assistant regional commissioner that the taxpayer has paid the tax on tobacco products and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such taxpayer, or withdrawn by him from the market. Any claim for refund under this section shall be prepared on Form 843, in duplicate, and shall include a statement that the tax imposed on tobacco products and cigarette papers and tubes by Chapter 52, I.R.C., has been paid in respect to the tobacco products and cigarette papers and tubes covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market, within six months preceding the date the claim is filed and shall be executed under the penalties of perjury. A claim for refund relating to articles lost or destroyed shall be supported as prescribed in § 275.165, and a claim relating to articles withdrawn from the market shall include a schedule prepared and verified as prescribed in §§ 275.170 and 275.171 or §§ 275.172 and 275.173. The original of the claim shall be filed with the assistant regional commissioner for the region in which the tax was paid, or, where the tax was paid in more than one region, with the assistant regional commissioner for any one of the regions in which tax was paid. The duplicate of the claim, with the copy of any verified supporting schedule, shall be retained by the claimant.

(72 Stat. 1419; 26 U.S.C. 5705)

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES LOST OR DESTROYED

§ 275.165 Action by taxpayer.

Where imported tobacco products and cigarette papers and tubes are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the taxpayer desires to file claim for refund of the tax on such articles, he shall, in addition to complying with the requirements of § 275.163, indicate on the claim the nature, date, place, and extent of

such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfaction of the assistant regional commissioner that the claim is valid.

(72 Stat. 1419; 26 U.S.C. 5705)

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHDRAWN FROM THE MARKET

§ 275.170 Destruction, action by taxpayer.

Where imported tobacco products and cigarette papers and tubes are withdrawn from the market and the taxpayer desires to file claim for refund of the tax on such articles, he shall, in addition to the requirements of § 275.163, assemble the articles at any suitable place, if they are to be destroyed. The taxpayer shall group the articles according to the rate of tax applicable thereto, and shall prepare a schedule of the articles, on Form 3069, in triplicate. All copies of the schedule shall be forwarded to the assistant regional commissioner for the region in which the tobacco products and cigarette papers and tubes are assembled.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 275.171 Destruction, action by assistant regional commissioner.

Upon receipt of a schedule of imported tobacco products and cigarette papers and tubes withdrawn from the market by a taxpayer who desires to destroy such articles, the assistant regional commissioner may assign an internal revenue officer to verify the schedule and supervise destruction of the articles (and stamps, if any), or the assistant regional commissioner may authorize the taxpayer to destroy the articles (and stamps, if any) without supervision by so stating on the original and one copy of the schedule returned to the taxpayer.

§ 275.172 Return to nontaxpaid status or reduction to materials, action by taxpayer.

Where imported tobacco products and cigarette papers and tubes are withdrawn from the market and the taxpayer desires to file a claim for refund of the tax on such articles and return such articles to a nontaxpaid status or, in the case of tobacco products, reduce such products to tobacco materials, he shall, in addition to the requirements of § 275.163, assemble the articles in or adjacent to the factory in which such articles are to be retained or received in a nontaxpaid status or in which the resultant tobacco materials are to be retained or received. The taxpayer shall group the articles according to the rate of tax applicable thereto, and shall prepare a schedule of the articles, on Form 3069, in triplicate. All copies of the schedule shall be forwarded to the assistant regional commissioner for the region in which the tobacco products and cigarette papers and tubes are assembled.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 275.173 Return to nontaxpaid status or reduction to materials, action by assistant regional commissioner.

Upon receipt of a schedule of imported tobacco products and cigarette papers

and tubes withdrawn from the market by a taxpayer who desires to return such articles to a nontaxpaid status or, in the case of tobacco products, reduce such products to tobacco materials, the assistant regional commissioner may assign an internal revenue officer to verify the schedule and supervise disposition of the articles (and destruction of the stamps, if any) or the assistant regional commissioner may authorize the receiving manufacturer to verify the schedule and disposition of the articles (and destruction of the stamps, if any) covered therein, without supervision, by so stating on the original and one copy of the schedule returned to the manufacturer. Where the receipt in a factory of tobacco products and cigarette papers and tubes has been verified, such articles shall be treated by the receiving manufacturer as nontaxpaid and shall be covered by the manufacturer's bond.

§ 275.174 Disposition of tobacco products and cigarette papers and tubes, and schedule.

When an internal revenue officer is assigned to verify the schedule and supervise destruction or other disposition of imported tobacco products and cigarette papers and tubes, such officer shall, upon completion of his assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of such articles. The internal revenue officer shall return the original and one copy of the certified schedule to the taxpayer. When a taxpayer destroys imported tobacco products and cigarette papers and tubes (and stamps, if any) or a receiving manufacturer verifies the schedule and disposition of imported tobacco products and cigarette papers and tubes (and destruction of stamps, if any), he shall execute a certificate on the original and the copy of the schedule presented to him, to show the disposition and the date of disposition of the articles. The taxpayer shall attach the original of the certified schedule to his claim for refund.

REDEMPTION OF STAMPS

§ 275.180 Claim for redemption of stamps.

Tobacco products tax stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the importer of such products has no use, may be redeemed by such importer. Any claim for redemption of stamps under this section shall be prepared on Form 843, in duplicate, and the original shall be filed with the assistant regional commissioner, for the region in which the stamps were purchased, within three years after the stamps were purchased from the Government. Stamps may be presented with the claim or they may be destroyed under internal revenue supervision, or satisfactory evidence shall be submitted with the claim showing the reason why they cannot be so presented or destroyed. Where the stamps are to be destroyed, the importer shall prepare a schedule on Form 178, in duplicate, for the stamps covered by the claim. When the schedule has been prepared, the importer shall

request the assistant regional commissioner to assign an internal revenue officer to verify the schedule and supervise the destruction of the stamps. The original of the verified schedule shall be returned to the importer and be attached to his claim, Form 843, when filed. If required, the importer shall satisfactorily trace the history of the stamps from their issuance to the filing of his claim.

(68A Stat. 830, as amended by 72 Stat. 1313; 26 U.S.C. 6805)

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[T.D. 6571]

PART 280—DEALERS IN TOBACCO MATERIALS

Importation Procedures

On June 7, 1961, a notice of proposed rule making to amend 26 CFR Part 280 was published in the *FEDERAL REGISTER* (26 F.R. 5070). The purposes of the proposal were to delete provisions relating to the release of imported tobacco materials from customs custody, without payment of tax, for delivery to dealers in tobacco materials, since improved procedures concerning such operations are being concurrently incorporated in proposed regulations in 26 CFR Part 275, and also to make certain editorial and conforming changes.

No data, views or arguments pertaining to these regulations were received during the period of 30 days from the date of publication of the notice of proposed rule making. Accordingly, the regulations so published are hereby adopted without change.

This Treasury decision shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the *FEDERAL REGISTER*.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: August 28, 1961.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to improve the procedures in connection with the release of imported tobacco materials from customs custody, without payment of tax, for delivery to a dealer in tobacco materials, and to make certain editorial and conforming changes, regulations in 26 CFR Part 280 are amended as follows:

§ 280.12 [Deletion]

1. Section 280.12 is deleted.

§ 280.13 [Deletion]

2. Section 280.13 is deleted.

§ 280.15 [Deletion]

3. Section 280.15 is deleted.

§ 280.21 [Deletion]

4. Section 280.21 is deleted.

§ 280.24 [Deletion]

5. Section 280.24 is deleted.

§ 280.29 [Deletion]

6. Section 280.29 is deleted.

§ 280.30 [Deletion]

7. Section 280.30 is deleted.

§ 280.32 [Deletion]

8. Section 280.32 is deleted.

9. Section 280.33 is amended to read:

§ 280.33 Tobacco materials.

"Tobacco materials" shall mean tobacco other than manufactured tobacco, cigars, and cigarettes, and includes tobacco in process, Perique, Black Fat, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, stems, and waste. Tobacco materials are categorized:

(a) *Unstemmed leaf tobacco.* Leaf tobacco from which the stem or midrib has not been removed.

(b) *Other tobacco materials.* Tobacco materials other than unstemmed leaf tobacco.

10. Section 280.43 is amended to read as follows:

§ 280.43 Alternate methods or procedures.

A dealer in tobacco materials, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. Where a dealer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The dealer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered. The dealer shall retain, as part of his

records, any authorization of the Director under this section.

11. A new section, designated § 280.43a, is added to read:

§ 280.43a Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications,

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the dealer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variations may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where a dealer desires to employ such variation, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The dealer shall retain, as part of his records, any authorization of the Director under this section.

12. Section 280.101 is amended to read:

§ 280.101 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety the dealer in tobacco materials may pledge and deposit, as security 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, 72 Stat. 1421; 6 U.S.C. 15, 26 U.S.C. 5711)

13. Section 280.108 and the heading are amended to read:

§ 280.108 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 280.101 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, 72 Stat. 1421; 6 U.S.C. 15, 26 U.S.C. 5711)

14. Section 280.121 is amended to read:

§ 280.121 Tobacco materials released from customs custody.

The release of tobacco materials from customs custody, without payment of tax, for delivery to a dealer in tobacco materials, shall be in accordance with the provisions of Part 275 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

[F.R. Doc. 61-8364; Filed, Aug. 30, 1961; 8:55 a.m.]

[T.D. 6572]

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES**Deletion of Provisions Relating to Importations and Miscellaneous Amendments**

On June 7, 1961, a notice of proposed rule making to amend 26 CFR Part 285 was published in the FEDERAL REGISTER (26 F.R. 5071). The purpose of the proposal was (1) to remove from these regulations all provisions relating to the importation of cigarette papers and tubes, which are being incorporated in the new 26 CFR Part 275 "Importation of Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes," (2) to prescribe the use of certain forms in connection with claims, and (3) to make conforming, clarifying, and editorial changes.

No comments or suggestions pertaining to these regulations were received during the period of 30 days from the date of publication of the notice of proposed rule making. However, it has been determined administratively necessary to make an editorial change in § 285.31 to provide a retention period for authorizations required to be kept under proposed §§ 285.34a and 285.35. Accordingly, the regulations so published are hereby adopted with the change set forth below:

Section 285.31 is amended.

Effective date. This Treasury decision shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the FEDERAL REGISTER.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved August 28, 1961.

STANLEY S. SURREY,
Assistant Secretary of the
Treasury.

1. The title of this part is amended to read as set forth above.

2. Section 285.1 is amended to read as follows:

§ 285.1 Manufacture of cigarette papers and tubes.

This part contains the regulations relating to the manufacture of cigarette papers and tubes; the payment of internal revenue taxes imposed by Chapter 52 of the Internal Revenue Code; and the qualification of and operations by manufacturers of cigarette papers and tubes.

3. A new section, designated § 285.3, is added immediately following § 285.2.

§ 285.3 Territorial extent.

The provisions of the regulations in this part shall apply in the several States of the United States and the District of Columbia.

§ 285.11 [Amendment]

4. Section 285.11 is amended as follows:

(A) By deleting the definition entitled "Importer".

(B) By striking, in the definition entitled "Internal revenue officer", the words "Treasury Department" and inserting, in lieu thereof, the words "Internal Revenue Service".

(C) By deleting the definitions entitled "Manufacturer of cigarettes" and "Manufacturer of tobacco".

(D) By adding, immediately following the definition entitled "Manufacturer of cigarette papers and tubes", a new definition to read:

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, or who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco (other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose, or who sells or delivers any tobacco (other than cigars and cigarettes) contrary to the provisions of Chapter 52, I.R.C., or regulations thereunder. The term "manufacturer of tobacco products" shall not include (a) a person who in any manner prepares tobacco, or produces cigars or cigarettes, solely for his own personal consumption or use; (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse; (c) a farmer or grower of tobacco with respect to the sale of leaf tobacco of his own growth or raising, if it is in the condition as cured on the farm; or (d) a bona fide association of farmers or growers of tobacco with respect to sales of leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm, and if the association maintains records of all leaf tobacco, acquired or received and sold or otherwise disposed of, in accordance with Part 280 of this chapter.

5. Section 285.23 is amended to read as follows:

§ 285.23 Persons liable for tax.

The manufacturer of cigarette papers and tubes shall be liable for the taxes imposed on such articles by section 5701, I.R.C.: *Provided*, That when cigarette papers and tubes are transferred, with-

out payment of tax, pursuant to section 5704, I.R.C., to the bonded premises of another such manufacturer, a manufacturer of tobacco products, or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt by him of such papers and tubes and the transferor shall thereupon be relieved of his liability for the tax. When cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of such papers and tubes or a manufacturer of tobacco products, the transferee shall become liable for the tax on the papers and tubes upon release from customs custody. Any person who possesses cigarette papers and tubes in violation of section 5751(a) (1) or (2), I.R.C., shall be liable for a tax equal to the tax on such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

§ 285.25 [Amendment]

6. Section 285.25 is amended by changing the period at the end of the second sentence to a colon and adding "Provided, That where the manufacturer so requests by letter, in duplicate, and the assistant regional commissioner grants specific authorization, the manufacturer need not, during the term of such authorization, file a tax return for any month for which tax is not due or payable."

§ 285.26 [Amendment]

7. Section 285.26 is amended by changing the period at the end of the fourth sentence to a comma and adding the clause "both subject to the period of limitations prescribed in section 6511, I.R.C."

§ 285.27 [Deletion]

8. Section 285.27 is deleted.

9. Section 285.31 and the heading are amended to read as follows:

§ 285.31 Retention of records.

All records required to be kept under this part, including copies of authorizations, inventories, reports, and returns, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

10. A new section, designated § 285.34a, is added immediately following § 285.34.

§ 285.34a Alternate methods or procedures.

A manufacturer of cigarette papers and tubes, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. Where a manufacturer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

11. Section 285.35 is amended to read as follows:

§ 285.35 Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications,

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variations may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for transmittal

to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

12. Section 285.72 is amended to read as follows:

§ 285.72 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the manufacturer of cigarette papers and tubes may pledge and deposit, as security 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, 72 Stat. 1421; 6 U.S.C. 15, 26 U.S.C. 5711)

13. Section 285.79 and the heading are amended to read as follows:

§ 285.79 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 285.72 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, 72 Stat. 1421; 6 U.S.C. 15, 26 U.S.C. 5711)

14. Section 285.131 is amended to read as follows:

§ 285.131 Transfer in bond.

A manufacturer of cigarette papers and tubes may transfer such papers and tubes, under his bond, without payment of tax, to the bonded premises of any manufacturer of cigarette papers and tubes, or to the bonded premises of any manufacturer of tobacco products solely for use in the manufacture of cigarettes, or, in the case of cigarette papers only, to be put up by him in units of not more than 25 papers each for distribution with packages of manufactured tobacco. The transfer of cigarette papers and tubes, without payment of tax, to the bonded premises of an export warehouse proprietor shall be in accordance with the provisions of Part 290 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

15. Section 285.132 is amended to read as follows:

§ 285.132 Release from customs custody.

The release of cigarette papers and tubes from customs custody, without payment of tax, for transfer to the premises of a cigarette papers and tubes factory or a tobacco products factory, shall

be in accordance with the provisions of Part 275 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

16. Section 285.134 and the heading are amended to read as follows:

§ 285.134 Removal for export purposes.

The removal of cigarette papers and tubes, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of Part 290 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§§ 285.151, 285.161, 285.162 [Deletion]

17. Subpart J—Operations by Importers, consisting of §§ 285.151, 285.161, and 285.162, is deleted.

18. Section 285.172 is amended to read as follows:

§ 285.172 Allowance.

Relief from the payment of tax on cigarette papers and tubes may be extended to a manufacturer by allowance of the tax, where the cigarette papers and tubes, after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on Form 2635, in triplicate, with the assistant regional commissioner for the region in which the articles were removed, shall be executed under penalties of perjury and shall show the date the cigarette papers and tubes were removed from the factory. A claim relating to articles lost or destroyed shall be supported as prescribed in § 285.181. In the case of a claim relating to cigarette papers and tubes withdrawn from the market, the schedule, as provided in § 285.191, shall be filed with the assistant regional commissioner for the region in which the articles are assembled. The manufacturer may not anticipate allowance of his claim by making the adjusting entry in a tax return pending consideration and action on the claim. Cigarette papers and tubes to which such a claim relates must be shown to have been removed on determination of tax on the return covering the period during which such papers and tubes were so removed. Upon action on the claim by the assistant regional commissioner he will return a copy of the Form 2635 to the manufacturer as notice of such action, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the cigarette papers and tubes to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax

return. Where the notice of allowance is received subsequent to the filing of the return and taxpayment of the cigarette papers and tubes to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement on the next subsequent tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 285.173 [Amendment]

19. Section 285.173 is amended by striking in the first sentence the words "or importer" wherever they appear.

20. Section 285.174 is amended to read as follows:

§ 285.174 Remission.

Remission of the tax liability on cigarette papers and tubes may be extended to the manufacturer liable for the tax where cigarette papers and tubes, before removal or after removal for tax-exempt purposes (including transfers in bond), are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where cigarette papers and tubes are so lost or destroyed, the manufacturer shall report promptly such fact, and the circumstances, to the assistant regional commissioner for the region in which the factory is located, and shall prepare a claim on Form 2635, in triplicate, setting forth the nature, date, place, and extent of the loss or destruction. All copies of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the assistant regional commissioner that the claim is valid, shall be filed with the assistant regional commissioner for the region in which the factory is located. Upon action on the claim by the assistant regional commissioner he will return a copy of the Form 2635 to the manufacturer as notice of such action.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 285.175 [Amendment]

21. Section 285.175 is amended by striking the words "or importer".

§ 285.181 [Amendment]

22. Section 285.181 is amended by striking from the first sentence the words "or importer".

23. Section 285.191 is amended to read as follows:

§ 285.191 Action by claimant.

Where cigarette papers and tubes are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 285.172 or § 285.173, he shall assemble the articles in or adjacent to a factory if they are to be retained in or received into such factory, or at any suitable place if they are to be destroyed. The manufacturer shall group the articles according to the rate of tax applicable thereto, and shall prepare a schedule of the articles on Form 3069, in triplicate. All copies of the schedule shall be forwarded to the assistant regional commissioner for the region in which the articles are assembled.

(72 Stat. 1419; 26 U.S.C. 5705)

24. Section 285.192 is amended to read as follows:

§ 285.192 Action by assistant regional commissioner.

Upon receipt of a schedule of cigarette papers and tubes withdrawn from the market, the assistant regional commissioner may assign an internal revenue officer to verify the schedule and supervise disposition of the cigarette papers and tubes, or he may authorize the manufacturer to dispose of the articles without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

(72 Stat. 1419; 26 U.S.C. 5705)

25. Section 285.193 is amended to read as follows:

§ 285.193 Disposition of cigarette papers and tubes and schedule.

When so authorized, as evidenced by the assistant regional commissioner's statement on the schedule, the manufacturer shall dispose of the cigarette papers and tubes as specified in the schedule. After the manufacturer has disposed of the articles, he shall execute a certificate on both copies of the schedule returned to him by the assistant regional commissioner, to show the disposition and the date of disposition of the articles. In connection with a claim for allowance, the manufacturer then shall return the original of the schedule to the assistant regional commissioner who authorized such disposition, who will cause such schedule to be associated with the claim, Form 2635. In connection with a claim for refund, the manufacturer shall attach the original of the schedule to his claim, Form 843, filed under § 285.173. When an internal revenue officer is assigned to verify the schedule and supervise disposition of the cigarette papers and tubes, such officer shall, upon completion of his assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the articles. In connection with a claim for allowance, the officer shall return one copy of the schedule to the manufacturer for his records, and in connection with a claim for refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to his claim, Form 843, filed under § 285.173.

(72 Stat. 1419; 26 U.S.C. 5705)

[F.R. Doc. 61-8365; Filed, Aug. 30, 1961; 8:55 a.m.]

[T. D. 6573]

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO MATERIALS, TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

Provisions Relating to Dealers in Tobacco Products

On June 7, 1961, a notice of proposed rule making to amend 26 CFR Part 296 was published in the FEDERAL REGISTER (26 F.R. 5073). The purposes of the

proposal were to make conforming amendments in Subparts A, B, and C of 26 CFR Part 296, and to revise and incorporate in one subpart, designated as Subpart G of the regulations in 26 CFR Part 296, the provisions relating to dealers in tobacco products which were formerly contained in 26 CFR Parts 270 and 275.

No comments or suggestions pertaining to these regulations were received during the period of 30 days from the date of publication of the notice of proposed rule making. Accordingly, with the exception of an editorial change striking “, labels”, from § 296.167, the regulations so published are hereby adopted.

Effective date. This Treasury decision shall be effective on the first day of the first month which begins not less than 30 days following the date of publication in the FEDERAL REGISTER.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: August 28, 1961.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

§ 296.11 [Amendment]

1. Section 296.11 of Subpart A is amended by striking, in the first sentence, the words “Form 356—Revised” and inserting, in lieu thereof, the words “Circular No. 570, as revised”.

§ 296.51 [Amendment]

2. Section 296.51 of Subpart B is amended, in the definition of the United States, by striking “, the Territories of Alaska and Hawaii,”.

§ 296.72 [Amendment]

3. Section 296.72 of Subpart C is amended, in the definition of the United States, by striking “, the Territory of Hawaii,”.

4. A new Subpart G is added to read as follows:

Subpart G—Dealers in Tobacco Products

Preamble. The regulations in this subpart 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 the regulations in this subpart.

Sec.

- 296.161 Scope of subpart.
- 296.162 Territorial extent.
- 296.163 Meaning of terms.
- 296.164 Authority of internal revenue officers to enter premises.
- 296.165 Interference with administration.
- 296.166 Dealing in tobacco products.
- 296.167 Liability to tax.
- 296.168 Liability to penalties and forfeitures.

AUTHORITY: §§ 296.161 to 296.168 are issued under sec. 7805, 68A Stat. 917; 26 U.S.C. 7805. Additional authority is cited in parentheses following the sections affected.

§ 296.161 Scope of subpart.

The regulations in this subpart relate to the purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

§ 296.162 Territorial extent.

The provisions of the regulations in this subpart shall apply in the several States of the United States and the District of Columbia.

§ 296.163 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, each of the following terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, words in the singular form shall include the plural, 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.

Dealer. Any person who sells, or offers for sale, at wholesale or retail levels, any tobacco products after removal.

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 subpart.

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

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, or who prepares, processes, manipulates, or packages, for removal, or merely removes, tobacco (other than cigars and cigarettes) for consumption by smoking or for use in the mouth or nose, or who sells or delivers any tobacco (other than cigars and cigarettes) contrary to the provisions of Chapter 52, I.R.C., or regulations thereunder. The term “manufacturer of tobacco products” shall not include (a) a person who in any manner prepares tobacco, or produces cigars or cigarettes, solely for his own personal consumption or use; (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse; (c) a farmer or grower of tobacco with respect to the sale of leaf tobacco of his own growth or raising, if it is in the condition as cured on the farm; or (d) a bona fide association of farmers or growers of tobacco with respect to sales of leaf tobacco grown by farmer or grower members, if the tobacco so sold is in the condition as cured on the farm, and if the association maintains records of all leaf tobacco, acquired or received and sold or otherwise disposed of, in accordance with Part 280 of this chapter.

Package. The container in which tobacco products are put up by the manufacturer or the importer and offered for sale or delivery to the consumer.

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

Removal or remove. The removal of tobacco products from the factory or release from customs custody, including the smuggling or other unlawful impor-

tation of such articles into the United States.

Tobacco products. Manufactured tobacco, cigars, and cigarettes.
U.S.C. The United States Code.

§ 296.164 Authority of internal revenue officers to enter premises.

Any internal revenue officer may enter in the daytime any premises where tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any internal revenue officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any internal revenue officer or permit him to examine such products shall be liable to the penalties prescribed by law for the offense. Operators of vending machines shall make the tobacco products in their machines available for inspection upon the request of any internal revenue officer.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

§ 296.165 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any internal revenue officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

§ 296.166 Dealing in tobacco products.

All tobacco products purchased, received, possessed, offered for sale, sold or otherwise disposed of, by any dealer must be in proper packages which bear the mark and notice as prescribed in Parts 270 and 275 of this chapter. Tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer. Where a vending machine is used, tobacco products must similarly be vended in proper packages or directly from such packages.

(72 Stat. 1424; 26 U.S.C. 5751)

§ 296.167 Liability to tax.

Any dealer who, with intent to defraud the United States, possesses tobacco products (1) upon which the tax has not been paid or determined in the manner and at the time prescribed in Parts 270 and 275 of this chapter or (2) which, after removal without payment of tax pursuant to section 5704, I.R.C., and regulations issued thereunder, have been diverted from the applicable purpose or use specified in that section or (3) which are not put up in packages prescribed in Parts 270 and 275 of this chapter or are put up in packages not bearing the marks and notices prescribed in such

regulations shall be liable for a tax equal to the tax on such products.

(72 Stat. 1424; 26 U.S.C. 5751)

§ 296.168 Liability to penalties and forfeitures.

Any dealer who fails to comply with the provisions of this subpart becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

[F.R. Doc. 61-8366; Filed, Aug. 30, 1961; 8:55 a.m.]

Title 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

PART 21—PUBLIC LANDS; MILITARY AND NAVAL RESERVATIONS

Fort Clayton Army Reservation, Corozal Army Reservation, and Albrook Air Force Base, Canal Zone

CROSS REFERENCE: For amendment to the tabulation in § 21.3 as it relates to the above reservations, *See* Canal Zone Order 56 in Appendix to this chapter, *infra*.

APPENDIX—CANAL ZONE ORDERS

[Order No. 56]

FORT CLAYTON ARMY RESERVATION, COROZAL ARMY REGULATIONS, AND ALBROOK AIR FORCE BASE, CANAL ZONE

By virtue of the authority vested in the President of the United States by section 5 of title 2 of the Canal Zone Code, as amended by section 1 of the Act of September 26, 1950, 64 Stat. 1038, and delegated to me by Executive Order No. 9746 of July 1, 1946 (11 F.R. 7329), as amended by Executive Order No. 10595 of February 7, 1955 (20 F.R. 819), and after consultation with the Secretary of the Air Force in the case of Albrook Air Force Base, Canal Zone Order No. 29 of September 26, 1952 (17 F.R. 9036), as amended by Canal Zone Order No. 33 of April 16, 1954 (19 F.R. 2451) and Canal Zone Order No. 53 of January 20, 1960 (25 F.R. 680), is further amended as follows:

1. The first paragraph of section 1 of Canal Zone Order No. 29 is amended to read as follows:

SECTION 1. *Setting apart of reservations; boundaries.* The areas of land in the Canal Zone hereinafter described as Fort Clayton Army Reservation (two parcels), Corozal Army Reservation (three parcels), Curundu Army Reservation (one parcel), and Albrook Air Force Base (five parcels), are hereby set apart and assigned as follows: Fort Clayton, Corozal, and Curundu Army Reservation to the uses and purposes of Army Reservations, and to be under the control and jurisdiction of the Secretary of the Army, subject to the provisions of section 2 of this order; and Albrook Air Force Base to the uses and purposes of an Air Force reservation, and to be under

the control and jurisdiction of the Secretary of the Air Force, subject to the provisions of section 2 of this order.

2. The caption "Fort Clayton Army Reservation" in section 1 of Canal Zone Order No. 29 is amended to read as follows:

FORT CLAYTON ARMY RESERVATION Parcel No. 1

3. Section 1 of Canal Zone Order No. 29 is amended by incorporating, immediately under the description of aforesaid Parcel No. 1, the following description of Parcel No. 2 of Fort Clayton Army Reservation:

Parcel No. 2

Beginning at monument "U", which is a 3-inch iron pipe set in concrete, located southwesterly from the southerly corner of the hangar situated southwesterly from the Civil Affairs Building, Ancon, C.Z. The geodetic position of monument "U" is in latitude 8°57' N. plus 5,895.3 feet and longitude 79°33' W. plus 2,413.0 feet and is on the southerly boundary of Parcel No. 2, Albrook Air Force Base.

Thence from said initial point by metes and bounds:

N. 58°14'06" W., 227.6 feet, along the southwesterly edge of the concrete apron, southwesterly from the above mentioned hangar, to monument No. 75-9, which is an iron rod set in concrete, located at the southwesterly edge of the above mentioned apron;

N. 24°57'39" E., 146.2 feet, to monument No. 75-8, which is an iron rod set in concrete, located 15.0 feet westerly from the westerly corner of the above mentioned hangar;

N. 32°22'09" E., 199.9 feet, along a line parallel to and 15.0 feet northwesterly from the northwesterly face of the above mentioned hangar, to monument No. 75-7, which is a monel metal plug, located in a concrete sidewalk, and is 15.0 feet northwesterly from the northerly corner of the above mentioned hangar;

N. 38°19'54" E., 157.2 feet, to monument No. 75-6, which is an iron rod set in concrete, located 5.0 feet northerly from the northerly edge of the northerly concrete apron of the above mentioned hangar;

S. 58°18'51" E., 53.6 feet, to monument No. 75-5, which is an iron rod set in concrete, located 5.0 feet northerly from the northerly edge of the above mentioned apron;

S. 84°11'06" E., 49.2 feet, to monument No. 75-4, which is an iron rod set in concrete, located 5.0 feet northerly from the northerly edge of the above mentioned apron and is 250.0 feet southeasterly from the northwesterly edge of a concrete taxiway;

N. 39°47'24" E., 210.7 feet, along a line parallel to and 250.0 feet southeasterly from the above mentioned taxiway to monument No. 75-3, which is a 1½-inch iron pipe set in concrete, located 250.0 feet southeasterly from the above mentioned taxiway;

S. 20°18'10" E., 187.1 feet, to monument "Y", which is a 3-inch iron pipe set in concrete, located southwesterly from the Civil Affairs Building, Ancon;

S. 20°18'10" E., 254.1 feet, to monument "X", which is a 2½-inch iron pipe set in concrete, located 15.0 feet northerly from the north edge of the Gaillard Highway pavement;

S. 67°02'00" W., 308.7 feet, to monument "W", which is a 3-inch iron pipe set in concrete, located on the outside of a cyclone fence near the southeast corner of the above mentioned hangar;

S. 54°38'10" W., 65.7 feet, along the above mentioned cyclone fence, to monument "V", which is a 3-inch iron pipe set in concrete;

S. 49°14'20" W., 154.6 feet, along the above mentioned cyclone fence, to monument "U", the point of beginning.

4. The last paragraph of that part of Canal Zone Order No. 29 describing Fort Clayton Army Reservation, as amended by section 3 of Canal Zone Order No. 33, is further amended to read as follows:

The directions of the lines refer to the true meridian. The area of Fort Clayton Army Reservation is 4,985.2 acres, more or less (Parcel No. 1 is 4,980.3 acres, more or less; and Parcel No. 2 is 4.9 acres, more or less) as is shown on Canal Zone Government Drawing No. 6116-34 (Revision No. 4, dated March 22, 1961) entitled "Map Showing U.S. Army and U.S. Air Force Reservations—Fort Clayton, Corozal, Curundu, and Albrook Air Force Base, Canal Zone", scale 1:10,000, dated May 29, 1952, on file in the Office of the Governor of the Canal Zone, Balboa Heights, C.Z.

5. That part of Canal Zone Order No. 29 describing Corozal Army Reservation, Parcel No. 1 (East of Gaillard Highway), is amended to read as follows:

COROZAL ARMY RESERVATION

Parcel No. 1 (East of Gaillard Highway)

Beginning at monument No. 19, which is a 2-inch iron pipe, located on a hillside, easterly from the Army Finance Office in the Post of Corozal, the geodetic position of which is in latitude 8°59' N. plus 390.9 feet and longitude 79°34' W. plus 580.9 feet. Monument No. 19 is on the westerly boundary of Albrook Air Force Base (Parcel No. 2).

Thence from said initial point by metes and bounds:

N. 01°26'30" W., 1,563.8 feet, along the westerly boundary of Albrook Air Force Base (Parcel No. 2), through monuments Nos. 20, 21, and 22, which are 2-inch iron pipes to monument No. 23, which is an 8-inch square concrete post, further described as old Curundu Military Reservation boundary monument No. 33, on top of Corozal Hill, the distances being 384.3 feet, 583.5 feet, 360.2 feet and 235.8 feet successively, from beginning of the course;

S. 60°09'30" W., 2,524.3 feet, through monuments Nos. 33-1 and 33-2, which are 2-inch iron pipes, located on opposite sides of the C-8 Road, 33-3 and 33-4 which are 2½-inch iron pipes, to monument No. 37, which is an 8-inch square concrete post, the distances being 1,044.3 feet, 64.6 feet, 598.5 feet, 391.8 feet and 425.1 feet, successively, from beginning of the course;

S. 47°58'20" W., 178.8 feet, to monument "A," which is an 8-inch square concrete monument, located on the southwesterly side of the short street in front of the Chapel in the Post of Corozal;

N. 43°04'30" W., 42.4 feet, to monument B-1, which is a brass plug, located in the southwesterly curb of the short street in front of the Chapel in the Post of Corozal;

N. 76°19'20" W., 23.8 feet, to monument A-3, which is a brass plug in the curb on the southeasterly side of Hospital Road;

S. 48°20'50" W., 189.9 feet, to monument A-2, which is a brass plug in the southeasterly curb of Hospital Road;

S. 09°01'50" W., 5.2 feet, to monument A-1, which is a brass plug in the easterly curb of Gaillard Highway;

S. 43°53'30" E., 70.8 feet, to monument "B," which is a 3-inch iron pipe set in concrete, located on the easterly side of Gaillard Highway, northwesterly from the Army Telephone Exchange building;

S. 40°55'30" E., 307.9 feet, along the easterly side of Gaillard Highway to monument 47-B, which is a monel metal plug in a retaining wall;

N. 46°28'30" E., 390.1 feet, to monument 47-C, which is a 3-inch iron pipe;

N. 60°07'52" E., 1,179.4 feet, to monument 47-D, which is a 3-inch iron pipe;

S. 25°43'38" E., 215.9 feet, to monument 47-F, which is a 3-inch iron pipe;

S. 36°34'00" E., 145.2 feet, to monument 47-G, which is a 3-inch iron pipe;

N. 46°26'20" E., 26.0 feet, to monument 47-H, which is a 3-inch iron pipe located 39.0 feet southwesterly from the centerline of the concrete pavement of the 26 foot wide street extending from the Post of Corozal Theater to the Army Finance Building;

Southeasterly along a line parallel to, and 39.0 feet southwesterly from the centerline of the pavement of the above mentioned street, to monument No. 17-A, which is a 3-inch iron pipe, located on the southerly side of a cyclone fence, on the westerly boundary of Albrook Air Force Base (Parcel No. 2), the geodetic position of which is in latitude 8°59' N. plus 247.0 feet and longitude 79°34' W. plus 838.5 feet;

N. 73°51'30" E., 51.8 feet, along the above mentioned cyclone fence, to monument No. 18, which is a brass plug in a concrete road pavement near the Army Finance Office;

N. 58°02'30" E., 244.7 feet, along the above mentioned cyclone fence and its prolongation, to monument No. 19, the point of beginning.

6. The last paragraph of that part of Canal Zone Order No. 29 describing Corozal Army Reservation, as amended by section 2 of Canal Zone Order No. 33, is further amended to read as follows:

The total area of Corozal Army Reservation is 296.3 acres, more or less (Parcel No. 1, East of Gaillard Highway is 37.4 acres, more or less; Parcel No. 1-A, Revised, East of Gaillard Highway is 35.48 acres, more or less; and Parcel No. 2, West of Gaillard Highway is 223.4 acres, more or less), as is shown on Canal Zone Government Drawing No. 6116-34 (Revision No. 3, dated December 15, 1960) entitled "Map Showing U.S. Army and U.S. Air Force Reservations—Fort Clayton, Corozal, Curundu, and Albrook Air Force Base, Canal Zone," scale 1:10,000 dated May 29, 1952, as modified by Canal Zone Government Drawing No. M-6116-89, entitled "Map Showing Boundary of Parcel No. 1-A, Revised Corozal Army Reservation, Canal Zone, to Include Former Parcel Nos. 1-A, 1-B, and Adjacent Land," scale 1:2,000, dated August 12, 1953. Such maps are on file in the office of the Governor of the Canal Zone, Balboa Heights, C.Z.

7. That part of Canal Zone Order No. 29 describing Parcel No. 2 of Albrook Air Force Base, as amended by section 2 of Canal Zone Order No. 53, is further amended to read as follows:

ALBROOK AIR FORCE BASE

Parcel No. 2

Beginning at monument No. 2, which is a 1½-inch iron pipe located on the northeasterly side of Gaillard Highway, opposite Diablo crossing, the geodetic position of which is in latitude 8°58' N. plus 3,010.7 feet and longitude 79°34' W. plus 663.5 feet.

Thence from said initial point by metes and bounds:

S. 64°22'50" E., 483.6 feet, through monument No. 3, which is a 1½-inch iron pipe, to monument No. 4, which is a 1½-inch iron pipe, the distances being 177.2 feet and 306.4 feet, successively, from beginning of the course;

N. 44°36' E., 102.3 feet, to monument No. 5, which is a 1½-inch iron pipe;

N. 09°44'20" W., 1,883.2 feet, through monuments Nos. 6, 7, 8, and 9, which are 1½-inch iron pipes, to monument No. 10, which is a 1½-inch iron pipe, located inside the cyclone fence surrounding the water tanks northerly from Diablo crossing, the distances being 523.9 feet, 442.9 feet, 410.2 feet, 297.7 feet, and

208.5 feet, successively, from beginning of the course;

N. 49°31'30" E., 117.1 feet, to monument No. 11, which is a 1½-inch iron pipe, located on the outside of the above mentioned cyclone fence;

N. 31°47' W., 307.1 feet, along the above mentioned cyclone fence and its prolongation to monument No. 12 which is a 2-inch iron pipe;

N. 22°19'50" W., 257.5 feet, through monument No. 13, which is a 2-inch iron pipe, to monument No. 14, which is a 2-inch iron pipe, the distances being 33.0 feet and 224.5 feet, successively, from beginning of the course;

N. 21°28' W., 296.9 feet, to monument No. 15, which is a 2-inch iron pipe;

N. 10°10'00" W., 261.1 feet, to monument No. 16, which is a 2-inch iron pipe;

N. 26°10'20" W., 455.5 feet, to monument No. 17, which is a 2-inch iron pipe, located on the prolongation of a cyclone fence;

N. 73°51'30" E., 219.8 feet, along the prolongation of, and along the face of the above mentioned cyclone fence, through monument No. 17-A, which is a 3-inch iron pipe, located on the southerly boundary of Corozal Army Reservation (Parcel No. 1) to monument No. 18, which is a brass plug in a concrete road pavement near the Army Finance Office, the distances being 168.0 and 51.8 feet, successively, from beginning of the course;

N. 58°02'30" E., 244.7 feet, along the above mentioned cyclone fence and its prolongation to monument No. 19, which is a 2-inch iron pipe;

N. 01°26'30" W., 1,563.8 feet, through monuments Nos. 20, 21, and 22, which are 2-inch iron pipes, to monument No. 23, which is an 8-inch square concrete post, further described as old Curundu Military Reservation boundary monument No. 33, located on top of Corozal Hill, the distances being 384.3 feet, 583.5 feet, 360.2 feet and 235.8 feet, successively, from beginning of the course;

The above described boundary line from monument No. 17-A to monument No. 23 inclusive, is common with the easterly boundary of Corozal Army Reservation (Parcel No. 1);

N. 60°03'20" E., 1,485.1 feet, through monuments Nos. 24, 25, 26, and 27, which are 2-inch iron pipes, to monument No. 28, which is a 2-inch iron pipe, the distances being 497.2 feet, 202.0 feet, 229.1 feet, 225.5 feet and 331.3 feet, successively from beginning of the course;

N. 33°39'20" E., 1,623.6 feet, through monuments Nos. 29, 30, and 31, which are 2-inch iron pipes, to monument No. 32, which is a 2-inch iron pipe, the distances being 265.5 feet, 249.1 feet, 299.9 feet, and 809.1 feet, successively, from beginning of the course;

N. 33°38'50" E., 708.1 feet, through monument No. 32A, which is a 3-inch iron pipe set in concrete, located on the westerly boundary of Curundu Army Reservation, to monument No. 33, which is a 2-inch iron pipe, located at right angles to, and 50 feet southwesterly from the centerline of the C-12 Road, the distances being 656.4 feet and 51.7 feet, successively from beginning of the course;

Southeasterly along a line parallel to, and 50 feet southwesterly from the centerline of the C-12 Road, through monument No. 33-A, which is a 3-inch iron pipe set in concrete, the geodetic position of which is in latitude 8°59' N. plus 4,317.7 feet and longitude 79°33' W. plus 3,512.1 feet, and monument No. 33-D, which is a 3-inch iron pipe set in concrete the geodetic position of which is in latitude 8°59' N. plus 4,107.6 feet and longitude 79°33' W. plus 3,028.1 feet to monument No. 34, which is a 2½-inch iron pipe located southeasterly from Albrook Air Force Base Gate No. 13, the geodetic position of which is in latitude 8°59' N. plus 3,350.6 feet and longitude 79°33' W. plus 2,189.4 feet;

S. 70°02'20" W., 70.1 feet, to monument No. 35, which is a 2½-inch iron pipe, located near the northeast corner of the Deer Park;

S. 15°28'20" E., 127.4 feet, along the eastern fence line of the Deer Park to monument No. 36, which is a 1½-inch iron pipe, located at the southeast corner of the Deer Park;

S. 45°43'50" W., 149.8 feet, along the southerly fence line of the Deer Park, to monument No. 37, which is a 1½-inch iron pipe, located at the southwesterly corner of the Deer Park;

S. 39°15'30" E., 171.9 feet, to monument No. 38, which is a 1½-inch iron pipe;

S. 39°15'10" E., 111.9 feet, to monument No. 39, which is a 1½-inch iron pipe;

S. 39°15'30" E., 50.7 feet, to monument No. 40, which is a 1½-inch iron pipe;

S. 15°28'50" W., 739.4 feet, through monuments Nos. 41, 42 and 43, which are 1½-inch iron pipes, to monument No. 44, which is a 1½-inch iron pipe, the distances being 215.5 feet, 117.0 feet, 192.2 feet and 214.7 feet, successively from beginning of the course;

S. 15°28'40" W., 972.1 feet, through monument No. 45, which is a 1½-inch iron pipe; to monument No. 46, which is a 1½-inch iron pipe, the distances being 669.0 feet and 303.1 feet, successively, from beginning of the course;

S. 28°47'50" E., 1,149.0 feet, through monument No. 47, which is a 1½-inch iron pipe, to monument No. 48, which is a 1½-inch iron pipe, the distances being 692.4 feet and 456.6 feet, successively from beginning of the course;

S. 24°35'30" E., 104.3 feet, to monument No. 49, which is a 1½-inch iron pipe;

S. 14°00'20" E., 350.3 feet, along the westerly side of an improved drain, through monument No. 50, which is a 1½-inch iron pipe, to monument No. 51, which is a 1½-inch iron pipe, the distances being 238.2 feet and 112.1 feet, successively, from beginning of the course;

S. 02°25'30" E., 303.4 feet, along the westerly side of the above mentioned improved drain, to monument No. 52, which is a 1½-inch iron pipe;

S. 21°38'00" E., 171.3 feet, along the westerly side of the above mentioned improved drain, to monument No. 53, which is a 1½-inch iron pipe;

S. 34°12'30" E., 326.6 feet, along the westerly side of the above mentioned improved drain, to monument No. 54, which is a brass plug in a concrete road pavement;

S. 17°11'50" W., 451.3 feet, along the westerly side of the above mentioned improved drain, to monument No. 55, which is a 1½-inch iron pipe;

S. 66°17'30" W., 77.1 feet, along the northerly side of the above mentioned improved drain, to monument No. 56, which is a 1½-inch iron pipe, located at the intersection of two improved drains;

S. 73°27'50" E., 148.1 feet, along the northerly side of an improved drain, to monument No. 57, which is a 1½-inch iron pipe, located at the intersection of two improved drains;

N. 48°48'20" E., 67.3 feet, along the southeasterly side of an improved drain, to monument No. 58, which is a 1½-inch iron pipe;

N. 64°44'40" E., 444.5 feet, along the above mentioned improved drain, to monument No. 59, which is a 1½-inch iron pipe;

N. 80°37'20" E., 631.5 feet, along the above mentioned improved drain and its prolongation, to monument No. 60, which is a 2-inch iron pipe, located on the southerly side of an improved drain at its head;

N. 48°30'00" E., 342.4 feet, along the above mentioned improved drain, to monument No. 61, which is a 2-inch iron pipe;

N. 72°13'40" E., 145.4 feet, along the above mentioned improved drain, to monument No. 62, which is a 2-inch iron pipe, located at the intersection of two improved drains;

S. 06°52'50" W., 541.3 feet, along the easterly side of an improved drain, to monument No. 63, which is a 1½-inch iron pipe;

S. 09°14'30" W., 241.4 feet, along the easterly side of the above mentioned improved drain, to monument No. 64, which is a 1½-inch iron pipe, located at the intersection of two improved drains;

N. 61°37'40" E., 262.2 feet, along the northerly side of an improved drain, to monument No. 65, which is a 1½-inch iron pipe, located at the intersection of two improved drains;

S. 68°53'50" E., 859.8 feet, along the northerly side of an improved drain, to monument No. 66, which is a 1½-inch iron pipe;

S. 11°09'00" W., 247.5 feet, along the easterly side of the above mentioned improved drain to monument No. 67, which is a 1½-inch iron pipe;

S. 64°55'30" E., 47.7 feet, to monument No. 68, which is a brass plug set in the westerly edge of the concrete pavement of Curundu Road;

S. 20°49'00" W., 676.2 feet, to monument No. 69, which is a 2-inch iron pipe, located at the corner of a cyclone fence on the westerly side of Curundu Road;

Along the above mentioned cyclone fence, with the following courses, to monument No. 75-1:

S. 20°48'10" W., 587.0 feet, to monument No. 70, which is a 2-inch iron pipe;

S. 15°51'10" W., 1,319.8 feet, to monument No. 71, which is a 1½-inch iron pipe;

S. 19°23'30" W., 116.0 feet, to monument No. 72, which is a 2-inch iron pipe;

S. 26°28'20" W., 86.8 feet, to monument No. 73, which is a 1½-inch iron pipe, located at the corner of the above mentioned cyclone fence;

N. 52°01'20" W., 192.3 feet, to monument No. 74, which is a brass plug in a concrete road pavement;

N. 49°48'50" W., 445.3 feet, to monument No. 75, which is a 1½-inch iron pipe, located at the corner of the above mentioned cyclone fence;

N. 50°56'10" W., 561.9 feet, along the southwesterly side of the above mentioned cyclone fence, to monument No. 75-1, which is a 1½-inch iron pipe set in concrete, located 1.5 feet southwesterly from the above mentioned cyclone fence;

S. 20°28'30" W., 670.3 feet, along a line parallel to and 250.0 feet southeasterly from the northwesterly edge of a concrete taxiway, to monument No. 75-2, which is a 1½-inch iron pipe set in concrete;

S. 39°46'25" W., 1,192.3 feet, along a line parallel to and 250.0 feet southeasterly from the above mentioned taxiway, to monument No. 75-3, which is a 1½-inch iron pipe set in concrete;

The above described boundary line, from monument No. 75 to monument No. 75-3 inclusive, is common with the northerly and westerly boundary of Canal Zone Government Land License No. 1509, Federal Aviation Agency.

S. 39°47'24" W., 210.7 feet, along a line parallel to and 250.0 feet southeasterly from the above mentioned taxiway, to monument No. 75-4, which is an iron rod set in concrete.

N. 84°11'06" W., 49.2 feet, to monument No. 75-5, which is an iron rod set in concrete, located 5.0 feet northerly from the northerly edge of a hangar apron;

N. 58°18'51" W., 53.6 feet, to monument No. 75-6, which is an iron rod set in concrete, located 5.0 feet northerly from the above mentioned hangar apron;

S. 38°19'54" W., 157.2 feet, to monument No. 75-7, which is a monel metal plug, located in a concrete sidewalk, and is 15.0 feet northwesterly from the northwesterly edge of a hangar;

S. 32°22'09" W., 199.9 feet, along a line parallel to and 15.0 feet northwesterly from the above mentioned hangar, to monument No. 75-8, which is an iron rod set in concrete;

S. 24°57'39" W., 146.2 feet, to monument No. 75-9, which is an iron rod set in concrete, located at the southwesterly edge of

the concrete apron of the above mentioned hangar;

S. 58°14'06" E., 227.6 feet, along the southwesterly edge of the above mentioned concrete hangar apron to monument "U", which is a 3-inch pipe set in concrete;

S. 85°23'00" W., 57.4 feet, along the above mentioned cyclone fence, to monument "T", which is a 3-inch iron pipe set in concrete;

S. 39°04'50" W., 836.2 feet, along the above mentioned cyclone fence, to monument "S", which is a 3-inch iron pipe set in concrete;

S. 05°12'40" E., 20.4 feet, along the above mentioned cyclone fence, to monument "R", which is a 3-inch iron pipe set in concrete.

S. 40°17'50" W., 378.4 feet, through the above mentioned cyclone fence, to monument "Q", which is a 3-inch iron pipe set in concrete, located inside the above mentioned cyclone fence, and 30 feet northwesterly from the northwesterly edge of the Gaillard Highway pavement;

Southwesterly, along a line parallel to, and 30 feet from the northwesterly edge of Gaillard Highway pavement, passing through to the outside of the above mentioned cyclone fence, to monument "P", which is a 3-inch iron pipe set in concrete, located 1.5 feet from outside of the above mentioned cyclone fence, the geodetic position of which is in latitude 8°57' N. plus 4,796.5 feet and longitude 79°33' W. plus 3,406.7 feet;

Westerly, parallel to, and 1.5 feet from the face of the above mentioned cyclone fence, to monument "M", which is a 3-inch iron pipe set in concrete, the geodetic position of which is in latitude 8°57' N. plus 4,887.1 feet and longitude 79°33' W. plus 4,153.0 feet;

N. 45°40'40" W., 265.2 feet, along the above mentioned cyclone fence, to monument "L", which is a 3-inch iron pipe set in concrete;

N. 34°35'40" W., 305.1 feet, along the above mentioned cyclone fence, to monument "K", which is a 3-inch pipe set in concrete;

N. 26°57'30" W., 300.2 feet, along the above mentioned cyclone fence, to monument "J", which is a 3-inch iron pipe set in concrete;

N. 20°14'30" W., 791.0 feet, along the above mentioned cyclone fence, to monument "I", which is a 3-inch iron pipe set in concrete;

N. 32°45'40" W., 507.7 feet, to monument "H", which is a 3-inch iron pipe set in concrete, located beside the above mentioned cyclone fence, northwesterly from Albrook Air Force Gate No. 2;

N. 32°46'20" W., 995.4 feet, along the above mentioned cyclone fence, through monument "G", which is a 3-inch iron pipe set in concrete, to monument "F", which is a 3-inch iron pipe set in concrete, the distances being 254.6 feet and 740.8 feet, successively, from beginning of the course;

N. 87°49'10" W., 29.2 feet, along the above mentioned cyclone fence, to monument D-2, which is a round iron corner post of the above mentioned cyclone fence;

N. 32°43'50" W., 647.3 feet, along the face of the above mentioned cyclone fence, to monument D-1, which is the first iron "I" post in the above mentioned cyclone fence, located southeasterly from Gate No. 1, of Albrook Air Force Base;

N. 41°33'40" W., 158.8 feet, to monument "D", which is a 3-inch iron pipe set in concrete, located on the northeasterly side of Gaillard Highway and is old Curundu Military Reservation boundary monument No. 51;

N. 32°49'50" W., 514.0 feet, to monument "C", which is a brass plug in the edge of the Gaillard Highway third lane widening strip, southeasterly from the Diablo crossing;

N. 25°35'50" W., 39.0 feet along the edge of the pavement widening strip, to monument "B", which is an iron rod set in concrete, located at an angle in the above mentioned widening strip;

N. 32°49'50" W., 362.7 feet, along the edge of the pavement widening strip and its

prolongation, to monument "A", which is a brass plug set in the pavement on the east side of Diablo crossing;

N. 57°53'30" E., 46.4 feet, to monument No. 2, the point of beginning.

8. The last paragraph of that part of Canal Zone Order No. 29 describing Albrook Air Force Base, as amended by section 3 of Canal Zone Order No. 53, is further amended to read as follows:

The total area of Albrook Air Force Base is 2,675.1 acres, more or less; Parcel No. 1 is 1,403.9 acres, more or less; Parcel No. 2 is 1,136.1 acres, more or less; Parcel No. 3 is 31.8 acres, more or less; Parcel No. 4 is 98.6 acres, more or less, and Parcel No. 5 is 4.7 acres, more or less; and is as shown on Canal Zone Government Drawing No. 6116-34 (Revision No. 4, dated March 22, 1961) entitled "Map Showing U.S. Army and U.S. Air Force Reservations—Fort Clayton, Corozal, Curundu, and Albrook Air Force Base, Canal Zone," scale 1:10,000 dated May 29, 1952, on file in the Office of the Governor of the Canal Zone, Balboa Heights, Canal Zone.

9. The last paragraph of section 1 of Canal Zone Order 29, as amended by section 4 of Canal Zone Order No. 53, is further amended to read as follows:

GENERAL

The surveys over the boundaries of Fort Clayton, Corozal, and Curundu Army Reservations and Albrook Air Force Base, were made in January 1946, November and December 1950, January, August, September, and December 1951, March and April 1952, August 1959, December 1960, and March 1961, and are recorded in Field Books numbered M-384, M-425, M-426, M-463, M-476, M-477, M-480, M-483, M-485, M-488, M-492, M-567, M-603, and CS-81, and the geodetic positions of all points, referred to the Panama-Colon datum of the Canal Zone triangulation system, are on file in the office of the Surveys Branch, Engineering and Construction Bureau, the Panama Canal Company. Any change in geodetic position of monuments describing the boundary of the old Curundu Military Reservation is due to recomputation of positions based on better controlled network and is not to be construed as the movement of monuments to new positions, with the exception of revisions agreed to by all concerned.

ELVIS J. STAHR, Jr.,
Secretary of the Army.

AUGUST 24, 1961.

[F.R. Doc. 61-8335; Filed, Aug. 30, 1961; 8:49 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service,
Department of the Interior

PART 1—GENERAL RULES AND REGULATIONS

Portable Engines and Motors

On page 4430 of the FEDERAL REGISTER of May 23, 1961, there was published a notice and text of a proposed amendment to Part 1 of Title 36 Code of Federal Regulations. The purpose of the amendment is to control and regulate the use of portable engines and motors in the national parks and monuments.

Interested persons were given 30 days within which to submit written comments, suggestions or objections with respect to the proposed amendment. No objections have been received. The proposed regulation has been modified to authorize the superintendent to designate specific areas where written permission for the use of portable engines and motors is unnecessary. With this minor change, the proposed regulation is hereby adopted and is set forth below. This amendment shall become effective at the beginning of the 30th calendar day following the date of this publication in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

AUGUST 24, 1961.

A new section is added to Part 1 to read as follows:

§ 1.65 Portable engines and motors.

Written permission is required from the Superintendent for the use of motor-driven chain saws, portable motor-driven electric light plants, portable motor-driven pumps, and other implements driven by portable engines or motors in the national parks and monuments, except in areas specifically designated by the superintendent. The superintendent may issue the permit if he determines that the applicant has submitted satisfactory justification for the permit and that important resource values would not be injured nor the public enjoyment of the park or monument impaired. An applicant for chain saw use must state clearly in his justification where, when, how, and what is to be cut and the plans for the disposal of the slash. This regulation does not apply to outboard motors in areas where outboard motorboating is permitted.

(39 Stat. 535; 16 U.S.C. 1958 ed., 3)

[F.R. Doc. 61-8333; Filed, Aug. 30, 1961; 8:48 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Kentucky Woodlands National Wildlife Refuge, Kentucky

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.22 Special regulations; Upland Game; for individual wildlife refuge areas.

KENTUCKY

KENTUCKY WOODLANDS NATIONAL WILDLIFE REFUGE

Public hunting of upland game on the Kentucky Woodlands National Wildlife Refuge, Kentucky, is permitted only on

the area designated by signs as open to hunting. This open area, comprising 65,000 acres or 98% of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Raccoons.

(b) Open season: November 1 through November 10, 1961. Daylight hours only.

(c) Daily bag limits: No limit.

(d) Methods of hunting:

(1) Taking of raccoons, alive only, is permitted employing "shake-out" techniques.

(2) Tree climbing devices may be used.

(3) No dogs allowed.

(4) Use of firearms, axes and saws prohibited.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

(2) A special State permit is required and is obtainable from the Commissioner, Department of Fish and Wildlife Resources, Frankfort, Kentucky. Groups may be covered by a single permit, both State and Federal.

(3) Hunters must check in and check out at Kentucky Woodlands National Wildlife Refuge headquarters.

(4) A Federal permit is required to enter the public hunting area. Permit may be obtained from the Refuge Manager, Kentucky Woodlands National Wildlife Refuge, Golden Pond, Kentucky.

(5) The provisions of this special regulation are effective to November 11, 1961.

WALTER C. GRESH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 24, 1961.

[F.R. Doc. 61-8326; Filed, Aug. 30, 1961; 8:47 a.m.]

PART 32—HUNTING

Charles Sheldon Antelope Range, Nevada; Correction

AUGUST 21, 1961.

In Federal Register Document 61-7864, appearing at page 7704 of the issue for August 17, 1961, the language presently reading either "Sheldon National Antelope Refuge and Charles Sheldon Antelope Range (Nevada)", or "Sheldon Refuge and Range, Nevada," is corrected to read "Charles Sheldon Antelope Range, Nevada" wherever that language appears in the document.

PAUL T. QUICK,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 61-8325; Filed, Aug. 30, 1961; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

1 50 CFR Parts 10, 16 1

MIGRATORY BIRDS AND MIGRATORY BIRD PERMITS

Miscellaneous Amendments

Notice is hereby given that pursuant to authority vested in the Secretary of the Interior by section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 704), it is proposed to amend Part 10 and establish a new Part 16 under Title 50, Code of Federal Regulations, as set forth below. These amendments will revise the regulations governing issuance of permits to acquire, possess, transport, and dispose of migratory birds and their increase, parts, pests, or eggs for certain specified purposes. Final adoption of these amendments is proposed on or about November 1, 1961, to become effective January 1, 1962.

The purposes of these amendments are as follows:

1. To separate the permit regulations from the hunting regulations under Part 10 and establish the permit regulations in a new Part 16;

2. To establish a user's charge or fee for the issuance of certain types of permits; and

3. To provide more effective control over the acquisition, possession, transportation, and disposition of wild migratory birds and their increase, parts, nests, or eggs by (1) making all migratory birds, whether raised in captivity or not, subject to regulations under permit; (2) limiting the traffic in such birds; (3) making commercial taxidermists subject to regulation under permit; (4) authorizing the exportation of such birds; (5) prescribing regulations governing the revocation of permits; and (6) prescribing regulations governing the disposal of birds possessed after the expiration or revocation of a permit.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments set forth below to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., any time between the date of publication of this notice in the FEDERAL REGISTER and October 15, 1961.

1. Paragraph (c) of § 10.3 is amended to read as follows:

§ 10.3 Hunting methods.

* * * * *

(c) Exceptions. Nothing contained in this section shall be construed to apply to the taking of migratory birds as permitted in § 10.5, or to apply to propagating, scientific, depredation-control, or

other operations in accordance with the terms of permits or other authorizations issued pursuant to Part 16 of this subchapter.

§§ 10.15, 10.16, 10.21-10.23, 10.31, 10.61-10.65, 10.81-10.87 [Revocation]

2. Sections 10.15, 10.16, 10.21 through 10.23, 10.31, 10.61 through 10.65, and 10.81 through 10.87 are revoked.

3. A new Part 16 is adopted to read as follows:

PART 16—MIGRATORY BIRD PERMITS

- Sec.
- 16.1 Meaning of terms.
- 16.2 Permits required.
- 16.3 Exceptions to permit requirement.
- 16.4 General permit authorization.
- 16.5 General permit provisions.
- 16.6 Transportation and shipping requirements.
- 16.7 Applicability of State laws.
- 16.8 Revocation of permits.
- 16.9 Import and export permits.
- 16.10 Jurisdiction and address of regional offices.
- 16.11 Scientific collecting and special purpose permits.
- 16.12 Taxidermist permits.
- 16.13 Propagating permits.
- 16.14 Banding permits.

CONTROL OF DEPREDATING BIRDS

- 16.21 Depredation permits.
- 16.22 Depredating blackbirds, cowbirds, and grackles.
- 16.23 Designated species of depredating birds in California.
- 16.24 Depredating purple gallinules in Louisiana.
- 16.25 Authority to issue depredation orders to permit the killing of migratory game birds.

FEEDING OF DEPREDATING WATERFOWL

- 16.31 Statutory provisions.
- 16.32 Interpretation.
- 16.33 Policy.
- 16.34 Waterfowl depredation complaints; where filed.
- 16.35 Criteria to govern approval of applications.
- 16.36 Action following investigation.
- 16.37 Compliance with other regulations.

AUTHORITY: §§ 16.1 through 16.14 and 16.21 through 16.25 issued under sec. 3, 40 Stat. 755, as amended; 16 U.S.C. 704. Interpret or apply E.O. 10250, 16 F.R. 5385, 3 CFR 1949-1953 Comp. p. 757.

§ 16.1 Meaning of terms.

As used in this part, terms shall have the meaning ascribed in this section.

(a) "Wild migratory birds" refers to those species of migratory birds listed under § 10.1 of Part 10 of this subchapter, including all migratory birds which, whether raised in captivity or not, cannot be readily distinguished by general coloration or size from wild birds of the same species.

(b) "Migratory waterfowl" refers to wild ducks, geese, brant, and swans.

(c) "Public" as used in referring to museums, zoological parks and societies, and scientific or educational institutions refers to such as are open to the general

public and established, maintained, and operated as a governmental service or are privately endowed and incorporated but not operated for profit.

(d) "Take" means to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

§ 16.2 Permits required.

Except as permitted by regulations under this part or under Part 10 of this subchapter (the hunting regulations), a permit is required for any person to import, export, take, sell, purchase, otherwise acquire, possess, transport, or dispose of wild migratory birds or their increase, parts, nests, or eggs.

§ 16.3 Exceptions to permit requirement.

The following exceptions to the permit requirement are allowed in addition to those allowed under Part 10 of this subchapter:

(a) Certain species of wild migratory birds may, without a permit, be taken and disposed of to control depredations as provided in §§ 16.21 through 16.25.

(b) State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may acquire by gift or purchase, possess, transport, and by gift or sale dispose of lawfully acquired wild migratory birds or their increase, parts, nests, or eggs without a permit: *Provided*, That such birds may be acquired only from persons authorized by this paragraph or by a permit issued pursuant to this part to possess and dispose of such birds, or from Federal or State game authorities by the gift of seized, condemned, or sick or injured birds. Any such birds, acquired without a permit, may be disposed of only to persons authorized by this paragraph to acquire such birds without a permit. Any person exercising a privilege granted by this paragraph must keep records of such operations showing the species and number of birds acquired, possessed, and disposed of; the names and addresses of the persons from whom such birds were acquired or to whom such birds were donated or sold; and the dates of such transactions. These records shall be maintained on a calendar year basis and shall be retained for a period of one year following the end of the calendar year covered by the records.

(c) The carcasses of migratory waterfowl lawfully acquired from the holder of a propagating permit may, without a permit, be possessed for certain purposes as provided in § 16.13(f).

§ 16.4 General permit authorizations.

(a) Migratory bird permits may be issued to authorize: (1) The importation, exportation, taking, sale, purchase, other acquisition, possession, transportation, and disposal of live wild migratory birds and their increase or eggs for propagating purposes in order to increase the food

supply; (2) the taking and disposal of wild migratory birds or their eggs for depredation control purposes; (3) the importation, exportation, taking, sale, purchase, other acquisition, possession, transportation, and disposal of wild migratory birds or their increase, parts, nests, or eggs for scientific, educational, and other special purposes; and (4) the possession, transportation, and mounting or other preparation by a taxidermist for any person other than himself of wild migratory birds or their parts, nests, or eggs.

(b) Consistent with the preservation of migratory birds and with the purposes of this part, applications for migratory bird permits may be disapproved, or approved and permits issued pursuant to the regulations in this part. Activities authorized under permit may be limited by any special terms, conditions, or restrictions incorporated into the permit.

§ 16.5 General permit requirements.

Permits issued pursuant to this part are subject to the following provisions:

(a) Permittees must comply with any special terms, conditions, or restrictions prescribed in the permit.

(b) Importations from Mexico must be accompanied by Mexican export permits.

(c) Permits are not transferable.

(d) Permittees may not dispose of migratory birds on their increase, parts, nests, or eggs to any person not authorized by this part to acquire such migratory birds or their parts, nests, or eggs; nor may a permittee acquire migratory birds or their increase, parts, nests, or eggs from any person not authorized by this part to dispose of migratory birds or their increase, parts, nests, or eggs.

(e) All permittees must keep accurate records¹ of their operations; and shall file a report of such operations, negative or otherwise, on a form furnished for that purpose, on or before January 10 of each calendar year following the year of issue unless a different date is stated in the permit. All persons authorized to enforce this part shall be allowed to enter the premises where such operations are being carried on at all reasonable hours and inspect these premises and the records of such operations. The records required to be maintained for the purpose of making these reports shall be retained by the permittees for a period of one year following the date on which these reports are submitted.

§ 16.6 Transportation and shipping requirements.

Every package or container, in which migratory birds or their parts, nests, or eggs are shipped by common carrier wholly within a State or are transported by any means whatsoever from one State, territory, or district to or through another State, territory, or district, or to a foreign country, shall be clearly marked, labeled, or tagged on the outside thereof. These labels or tags shall show the name and address of the consignor and consignee; an accurate statement

of the species and number of birds or their parts, nests, or eggs contained therein; and the permit number under authority of which the birds or their parts, nests, or eggs are being shipped or transported if one is required.

§ 16.7 Applicability of State laws.

Nothing in this part or in any permit issued thereunder shall be construed to authorize the taking, possession, sale, purchase, exchange, or transportation of wild migratory birds or their parts, nests, or eggs in any State contrary to the laws and regulations of that State: *Provided*, Such laws and regulations are for the purpose of giving further protection to such birds and are not inconsistent with the conventions between the United States and any foreign country for the protection of migratory birds or with the Migratory Bird Treaty Act. Further, no permit issued under this part shall authorize the taking, possession, purchase, sale, exchange, or transportation of migratory birds or their parts, nests, or eggs unless the permittee also possesses whatever permit may be required for such activities by the State concerned.

§ 16.8 Revocation of permits.

(a) Permits issued pursuant to this part may be revoked and the privileges granted thereunder withdrawn:

(1) If the permittee violates any regulation prescribed in this part; or

(2) When the activities of the permittee, involving live migratory birds or feed on the premises of the permittee, are an element in a violation by the permittee or other person of the migratory bird hunting regulations governing the use of live decoys or bait in the taking of migratory game birds (§ 10.3 of this chapter).

(b) Any person whose permit has been revoked shall not be issued a like permit until one year after the date of revocation.

§ 16.9 Import and export permits.

Applications for permits to import or export wild migratory birds or their parts, nests, or eggs for purposes provided in this part shall be made by letter addressed to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., and shall contain the following information:

(a) Name and address of the applicant and the purpose for which importation or exportation is being made;

(b) Species and number of migratory birds or their parts, nests, or eggs to be imported or exported;

(c) Name and address of the person from whom such birds are being imported or to whom they are being exported;

(d) Estimated date of arrival of any shipment of imported or exported migratory birds or their parts, nests, or eggs, and the port of entry or exit through which the shipment will be imported or exported;

(e) Federal permit number and type of permit authorizing possession, acquisition, or disposition of such birds or their parts, nests, or eggs, where such a permit is required.

§ 16.10 Jurisdiction and address of regional offices.

The geographic jurisdictions and addresses of the Bureau of Sport Fisheries and Wildlife regional offices are as follows:

(a) Pacific Region (Region 1—comprising the States of California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) P.O. Box 3737, Portland 8, Oregon.

(b) Southwest Region (Region 2—comprising the States of Arizona, Colorado, Kansas, New Mexico, Oklahoma, Texas, Utah, and Wyoming) P.O. Box 1306, Albuquerque, New Mexico.

(c) North Central Region (Region 3—comprising the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin) 1006 West Lake Street, Minneapolis 8, Minnesota.

(d) Southeast Region (Region 4—comprising the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) Peachtree-Seventh Building, Atlanta 23, Georgia.

(e) Northeast Region (Region 5—comprising the States of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia) 59 Temple Place, Boston 11, Massachusetts.

(f) Alaska Region (Region 6—comprising the State of Alaska) P.O. Box 2021, Juneau, Alaska.

§ 16.11 Scientific collecting and special purpose permits.

(a) Applications for scientific collecting or other special purpose permits shall be made by letter addressed to the Regional Director at the regional office having administrative jurisdiction over Bureau functions in the State where permit activities are proposed. (See § 16.10 for geographical jurisdiction and addresses of regional offices.) Such applications shall contain the following information:

(1) Name, address, and age of applicant;

(2) Species and number of migratory birds or their parts, nests, or eggs proposed to be taken or acquired;

(3) Statement of the purpose and a justification for granting such a permit; and

(4) In the case of scientific collecting permits, the name and address of the public scientific or educational institution to which all specimens will ultimately be donated.

(b) The tenure of scientific collecting or other special purpose permits shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue unless a shorter period of time is prescribed in the permit.

(c) All specimens taken and possessed under authority of a scientific collecting permit must be donated and transferred to the public scientific or educational institution designated in the permit application within 60 days following the date such permit expires or is revoked,

¹ The record-keeping requirements contained in this part have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

unless the permittee has been issued a special permit authorizing possession for a longer period of time.

§ 16.12 Taxidermist permits.

(a) Original requests for a taxidermist permit shall be made by letter addressed to the Regional Director at the regional office having administrative jurisdiction over Bureau functions in the State where permit activities are proposed. (See § 16.10 for geographical jurisdiction and addresses of regional offices.) The applicant will then be furnished an application form to be completed and returned to the regional office accompanied by the prescribed fee.

(b) Requests for renewals of existing permits shall be made by letter to the regional office issuing the permit not later than 30 days preceding the expiration date of the permit and shall be accompanied by the prescribed fee.

(c) The tenure of taxidermist permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

(d) Effective January 1, 1962, and thereafter, a fee of \$15, in the form of a check or money order payable to the Bureau of Sport Fisheries and Wildlife, will be charged for the issuance of a taxidermist permit or for a renewal thereof. This fee shall accompany each completed application form as it is returned to the regional office, or in the case of renewals, shall accompany the letter requesting the renewal.

§ 16.13 Propagating permits.

(a) Original requests for a propagating permit shall be made by letter addressed to the Regional Director at the regional office having administrative jurisdiction over Bureau functions in the State where permit activities are proposed. (See § 16.10 for geographical jurisdiction and addresses of regional offices.) The applicant will then be furnished an application form to be completed and returned to the regional office accompanied by the prescribed fee.

(b) Requests for renewals of existing permits shall be made by letter to the regional office issuing the permit not later than 30 days preceding the expiration date of the permit and shall be accompanied by the prescribed fee.

(c) The tenure of propagating permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

(d) Effective January 1, 1962, and thereafter, a fee of \$15, in the form of a check or money order payable to the Bureau of Sport Fisheries and Wildlife, will be charged for the issuance of a propagating permit or for a renewal thereof. This fee shall accompany each completed application form as it is returned to the regional office, or in the case of renewals, shall accompany the letter requesting the renewal.

(e) Any person whose propagating permit expires and who does not request a renewal thereof, or whose permit is revoked for any reason whatsoever, shall dispose of all live migratory birds and their eggs not later than 60 days follow-

ing the date of expiration or revocation by one or more of the following means:

(1) By sale or donation to another permittee not in the immediate family of the seller or donor;

(2) By sale or donation to a public zoological or municipal park, public museum, or public scientific or educational institution;

(3) By release to the wild on premises other than those of the permittee and over which he has no degree of control; or

(4) Live migratory birds may be killed and preserved for use as food by the permittee.

If at the end of 60 days the permittee has not disposed of all live migratory birds and their eggs, as provided in this section, he must relinquish such birds and their eggs to an agent of the Bureau of Sport Fisheries and Wildlife for release to the wild; or for use in management programs conducted on wildlife refuges or management areas; or for donation to such public institutions as the Bureau shall determine.

(f) Live migratory waterfowl possessed under authority of a propagating permit may be killed at any time and in any manner by the permittee or any person authorized to do so by the permittee, except that the killing of such birds by shooting shall be restricted to the premises covered by the permit. The permittee may dispose of the carcasses of such birds, provided the head and feet are attached thereto, to any individual for consumption as food; or to a club, hotel restaurant, boarding house, or dealer in meat or game for sale or service to patrons; and all such persons may possess these carcasses without a permit.

§ 16.14 Banding permits.

This section governs the issuance of permits authorizing the capture of wild migratory birds for banding purposes.

(a) Applications for banding permits shall be made by letter addressed to the Director, Patuxent Wildlife Research Center, Laurel, Maryland.

(b) The tenure of banding permits shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue unless a different tenure is stated in the permit.

(c) The banding of migratory birds shall be by official numbered leg bands issued by the Bureau of Sport Fisheries and Wildlife. The use of any other band, clip, or other method of marking is prohibited unless specifically authorized in the permit.

(d) All traps or nets used to capture migratory birds for the purposes of banding shall either bear a tag or label clearly showing the name and address of the permittee and the permit number, or the area in which such traps or nets are located must be posted with Notice of Banding Operations posters (form 3-1155, available upon request from Patuxent Wildlife Research Center) which shall bear the name and address of the permittee and the number of his permit.

(e) Banding permits may be revoked for violation of any provision of the

Migratory Bird Treaty Act or the regulations issued thereunder, or for failure to comply with any special terms, conditions, or restrictions incorporated in the banding permit.

CONTROL OF DEPREDATING BIRDS

§ 16.21 Depredation permits.

Upon receipt of information from the owner, tenant, sharecropper, or other person that migratory birds are injuring his crops or other property on the land on which he resides, or over which he exercises control, together with a statement of the location of the area; the nature of the crops or other interests being injured; the extent of such injury; and the particular species of birds committing the injury, an investigation will be made. If it is then determined that the injury complained of is substantial and can be abated, a permit to frighten, herd, or kill such birds may be issued. The permit shall specify the person, the time, and the method by which such birds may be frightened, herded, or killed. The permit shall further provide that all dead birds shall be disposed of as prescribed therein; that a report shall be made of the operations; and shall include such other conditions as may be appropriate in each case.

§ 16.22 Depredating blackbirds, cowbirds and grackles.

A permit shall not be required to kill yellow-headed, red-winged, bi-colored red-winged, tri-colored red-winged, and Brewer's blackbirds, cowbirds, and all grackles when found committing or about to commit serious depredations upon ornamental or shade trees or agricultural crops; *Provided:*

(a) That none of the birds killed pursuant to this section, nor their plumage, shall be sold or offered for sale.

(b) That any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

That nothing in this section shall be construed to authorize the killing of such birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the State concerned.

§ 16.23 Designated species of depredating birds in California.

In any county in California in which meadowlarks, horned larks, golden-crowned, white-crowned, and other crowned sparrows, goldfinches, house finches, acorn woodpeckers, Lewis woodpeckers, and flickers are, under extraordinary conditions, seriously injurious to agricultural or other interests, the Commissioner of Agriculture may, without a permit, kill or cause to be killed

under his general supervision such of the above migratory birds as may be necessary to safeguard any agricultural or horticultural crop in the county, provided:

(a) That such migratory birds shall be killed only when necessary to protect agricultural or horticultural crops from depredation; that none of the above migratory birds killed, or the parts thereof, or the plumage of such birds, shall be sold or removed from the area where killed; but that all such dead migratory birds shall be buried or otherwise destroyed within this area, except that any specimens needed for scientific purposes, as determined by the State or the Secretary, shall not be destroyed.

(b) That any Commissioner of Agriculture exercising the privileges granted by this section shall keep records of the persons authorized by the Commissioner to kill such migratory birds, and the estimated number of such birds killed pursuant to the exercise of his authority, and the Commissioner shall submit a report thereof to the Secretary on or before December 31 of each year or whenever the Secretary so requests.

§ 16.24 Depredating purple gallinules in Louisiana.

Landowners, sharecroppers, tenants, or their employees or agents, actually engaged in the production of rice in Louisiana, may, without a permit, shoot purple gallinules (*Ionornis martinica*) when found committing or about to commit serious depredations to growing rice crops on the premises owned or occupied by such persons: *Provided*:

(a) That purple gallinules may only be killed pursuant to this section between May 1 and August 15 in any year.

(b) That purple gallinules killed pursuant to this section shall not be transported or sold or offered for sale except that, such transportation within the area, as may be necessary to bury or otherwise destroy the carcasses of such birds is permitted: *Provided*, That the Secretary, or the State agricultural department, college, or other public institution may requisition such purple gallinules killed as may be needed for scientific investigations: *Provided further*, That any purple gallinules killed under authority of this section may also be donated to charitable institutions for food purposes.

(c) That any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

(d) That nothing in this section shall be construed to authorize the killing of such migratory birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the State of Louisiana.

(e) That any person authorized by this section to exercise the privileges granted therein shall maintain records of the number of birds killed on the premises and shall submit a report thereof, on or before December 31 of each year, to the Secretary.

§ 16.25 Authority to issue depredation orders to permit the killing of migratory game birds.

Upon the receipt of evidence clearly showing that migratory game birds have accumulated in such numbers in a particular area as to cause or about to cause serious damage to agricultural, horticultural, and fish cultural interests, the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., is authorized to issue by publication in the FEDERAL REGISTER a depredation order to permit the killing of such birds under the following conditions:

(a) That such birds may only be killed by shooting with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or areas;

(b) That shooting shall be limited to such time as may be fixed by the Director on the basis of all circumstances involved. If prior to termination of the period fixed for such shooting, the Director receives information that there no longer exists a serious threat to the area or areas involved, he shall without delay cause to be published in the FEDERAL REGISTER an order of revocation;

(c) That such migratory birds as are killed under the provisions of any depredation order may be used for food or donated to public museums or public scientific and educational institutions for exhibitions, scientific, or educational purposes, but shall not be sold, offered for sale, bartered, or shipped for purpose of sale or barter, or be wantonly wasted or destroyed: *Provided*, That any migratory game birds which cannot be so utilized shall be disposed of as prescribed by the Director;

(d) That any order issued pursuant to this section shall not authorize the killing of the designated species of depredating birds contrary to any State laws or regulations. The order shall specify that it is issued as an emergency measure designed to relieve depredations only and shall not be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated pursuant to section 3 of the Migratory Bird Treaty Act.

FEEDING OF DEPREDATING WATERFOWL

AUTHORITY: §§ 16.31 through 16.37 issued under sec. 2, 70 Stat. 492; 7 U.S.C. 443.

§ 16.31 Statutory Provisions.

Section 1 of the Act of July 3, 1956, as amended (7 U.S.C. 442 et seq.) provides that the Commodity Credit Corporation shall make available to the Secretary of the Interior such wheat, corn, or other grains, acquired through price support operations and certified by the Corporation to be available for purposes of the Act or in such condition through spoilage or deterioration as not to be desirable for human consumption, as the Secretary shall requisition for the pur-

pose of preventing crop damage by migratory waterfowl. Section 2 of the Act provides that, upon a finding that any area in the United States is threatened with damage to farmers' crops by migratory waterfowl, the Secretary is authorized and directed to requisition from the Commodity Credit Corporation and to make available to Federal, State, or local governmental bodies or officials, or to private organizations or persons, such grain acquired by the Corporation through price support operations in such quantities and subject to such regulations as the Secretary determines will most effectively lure migratory waterfowl away from crop depredations and at the same time not expose such migratory waterfowl to shooting over areas to which the waterfowl have been lured by such feeding programs.

§ 16.32 Interpretation.

The authorization contained in the Act limits the availability of grain acquired through price support operations to the prevention of crop damage by migratory waterfowl (brant, wild ducks, geese, and swans) and such grain may not be made available for the feeding of any other species of migratory birds, whether or not such other species of migratory birds are committing or threatening to commit crop damage. Further, the Act does not authorize the use of such grain to conduct a migratory waterfowl feeding program for the purpose of augmenting natural sources of food available to migratory waterfowl, nor for any purpose incident to migratory waterfowl management not related to the prevention of crop damage. Accordingly, such grain shall not be made available pursuant to this part to augment or to substitute for natural sources of migratory waterfowl food except as may be determined by the Secretary to be necessary to aid in the prevention of crop damage by such birds.

§ 16.33 Policy.

Whenever it is found necessary to conduct feeding programs under this section for the purposes of preventing crop damage by migratory waterfowl, it shall be the policy of the Secretary for the purposes of economy and efficiency to accord preference to feeding programs proposed to be executed through the placement of grain upon wildlife management areas or other lands or waters owned, leased, or otherwise controlled by an agency of the United States or a State.

§ 16.34 Waterfowl depredation complaints; where filed.

Any person having an interest in crops being damaged or threatened with damage by migratory waterfowl in circumstances meeting the criteria prescribed in § 16.35 may make application for grain for use in luring such waterfowl away from such crops by submitting a written request to the Regional Director of the Bureau of Sport Fisheries and Wildlife regional office having administrative jurisdiction over the wildlife activities in the State where the affected crops are located. (See § 16.10 for geographical jurisdiction and

addresses of regional offices.) Such applications may be in letter form but must contain information disclosing the location, nature, condition and extent of the crops being damaged or threatened, and the particular species of migratory waterfowl committing or threatening to commit damage. For the purposes of this section any authorized official of Federal, State, or local governmental body shall be deemed to be a "person" and to have such an interest in crops threatened with damage as to qualify him as an applicant.

§ 16.35 Criteria to govern approval of applications.

Upon receipt of a written application for such grain for use in preventing crop depredations, the Regional Director shall promptly cause an investigation to be made, when necessary, to determine whether the applicant is in fact entitled to have such grain made available for such purposes. Whenever feasible the required investigation shall be made jointly by a representative of the game department of the State in which the affected crops are located and a representative of the Regional Director. When conducting such investigations, each of the factors set forth in paragraphs (a) to (d) of this section shall be considered separately. An application for grain shall not be approved if it is determined that one or more of these factors minimizes the extent of crop damage or provides another effective method of preventing the complained of damage.

(a) The migratory waterfowl committing or threatening to submit crop damage must be predominantly of a species which are susceptible of being effectively lured away from the crops by the use of such grain.

(b) The crop damage or threatened crop damage must be substantial in nature (when measured by the extent and potential value of the crops involved and the number of birds threatening damage); and must affect growing crops or mature unharvested crops that are in such condition as to be marketable or have value as feed for livestock or other purposes of material value to the applicant.

(c) It must be shown that the damage or threat of damage cannot be abated through the exercise of any of the privileges granted in permits authorized by § 16.21 to frighten or otherwise herd migratory waterfowl away from affected crops.

(d) During an open hunting season, it must be shown that the area affected by crop damage has been and is now open to public hunting and there has been a clear demonstration that such hunting is ineffective, and cannot be made effective, to prevent crop damage on such area.

§ 16.36 Action following investigation.

Upon receipt of a report and recommendations based upon an investigation conducted under § 16.34, the Secretary shall make a determination that the applicant meets the qualifications for receiving grain. He shall then determine the quantity of grain, either bagged or

in bulk, to be made available; the means of transportation; and the point of delivery in the vicinity of the crop damage. Before receiving delivery of such grain the applicant shall execute and deliver to any officer authorized to enforce this part written assurances as follows:

(a) That grain made available to him under this part will be used exclusively for the prevention and abatement of crop damage by migratory waterfowl and that no portion of such grain will be sold, donated, exchanged, or used as feed for livestock or other domestic animals or for any other purpose;

(b) That consent is granted to any officer authorized to enforce this part, to inspect, supervise or direct the placement and distribution of grain made available under this part for the prevention of crop damage at all reasonable times;

(c) That free and unrestricted access over the premises on which feeding operations have been or are to be conducted shall be permitted at all reasonable times, by any officer authorized to enforce this part and that such information as may be required by the officer will be promptly furnished; and

(d) That the applicant will not take, nor permit his agents, employees, invitees, or other persons under his control to take migratory game birds on or over any lands or waters subject to his control, during the time such grain is placed, exposed, deposited, distributed, scattered, or present upon such lands or waters, nor for a period of 10 days immediately following the consumption or removal of such grain from such lands or waters.

§ 16.37 Compliance with other regulations.

Nothing in §§ 16.31 to 16.36 shall be construed to supersede or modify any regulation under § 10.3 of this subchapter, nor shall anything in said sections be construed to permit the transportation, distribution, or use of grain contrary to any applicable Federal, State, or local laws or regulations.

STEWART L. UDALL,
Secretary of the Interior.

AUGUST 24, 1961.

[F.R. Doc. 61-8327; Filed, Aug. 30, 1961;
8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

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

Notice of Filing of Petitions

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

tions have been filed by Hercules Powder Company, Inc., 910 Market Street, Wilmington 99, Delaware, proposing the establishment of tolerances for residues of DDT at 4 parts per million and for residues of toxaphene at 5 parts per million in or on lint-bearing cottonseed.

The analytical methods proposed in the petitions for determining residues of DDT and toxaphene utilize the sodium-liquid anhydrous ammonia reduction technique of Beckman et al., Journal of Agricultural and Food Chemistry, Volume 6, Pages 104-105 (1958), to determine total organic chlorine. Reversed phase radial arc paper chromatography was used as the method for identification of residues. Special cleanup procedures were used before applying these methods.

Dated: August 24, 1961.

[SEAL] ROBERT S. ROE,
Director, Bureau of
Biological and Physical Sciences.

[F.R. Doc. 61-8349; Filed, Aug. 30, 1961;
8:51 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 535) has been filed by Commercial Solvents Corporation, Terre Haute, Indiana, proposing the issuance of a regulation to provide for the safe use in chicken feed of a 3:1 combination of zinc bacitracin and procaine penicillin for growth promotion, with levels of the combination per ton of finished feed not less than 4 grams nor more than 50 grams.

Dated: August 24, 1961.

[SEAL] J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 61-8350; Filed, Aug. 30, 1961;
8:51 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 601]

[Airspace Docket No. 61-FW-71]

CONTROLLED AIRSPACE

Designation of Control Zone

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below:

The Federal Aviation Agency has under consideration the designation of a control zone within a 5-mile radius of the Lake Charles, La., Municipal Airport (latitude 30°07'30" N., longitude 93°13'20" W.), excluding the portion which would coincide with the Lake Charles (Chennault AFB) control zone. This proposed control zone would provide pro-

PROPOSED RULE MAKING

tection for aircraft executing instrument approach and departure procedures at the new Lake Charles Municipal Airport which is expected to begin operations during the latter part of October, 1961. Communications and weather reporting service for the control zone would be provided by a Federal Aviation Agency control tower, and a United States Weather Bureau office, respectively. These facilities are expected to begin operations approximately October 25, 1961.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Manager, Southwest Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1,

Tex. All communications received within forty-five days after publication of this notice in the **FEDERAL REGISTER** will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room C-226, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on August 25, 1961.

J. R. BAILEY,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 61-8315; Filed, Aug. 30, 1961;
8:45 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Coast Guard

[CGFR 61-34]

EQUIPMENT, INSTALLATIONS, OR MATERIALS

Approval and Termination of Approval Notice

1. Various items of lifesaving, fire-fighting, and miscellaneous equipment, installations, and materials used on merchant vessels subject to Coast Guard inspection or on certain motorboats and other pleasure craft are required by law and various regulations in 46 CFR Chapter I to be of types approved by the Commandant, United States Coast Guard. The procedures governing the granting of approvals, and cancellation, termination, or withdrawal of approvals are set forth in 46 CFR 2.75-1 to 2.75-50, inclusive. For certain types of equipment, installations, and materials, specific specifications have been prescribed by the Commandant and are published in 46 CFR Parts 160 to 164, inclusive (Subchapter Q—Specifications), and detailed procedures for obtaining approvals are also described therein.

2. The Commandant's approval of a specific item is intended to provide a control over its quality. Therefore, such approval applies only to the item constructed or installed in accordance with the applicable requirements and the details described in the specific approval. If a specific item when manufactured does not comply with the details in the approval, then such item is not considered to have the Commandant's approval, and the certificate of approval issued to the manufacturer does not apply to such modified item. For example, if an item is manufactured with changes in design or material not previously approved, the approval does not apply to such modified item.

3. After a manufacturer has submitted satisfactory evidence that a particular item complies with the applicable laws and regulations, a Certificate of Approval (Form CGHQ-10030) will be issued to the manufacturer certifying that the item specified complies with the applicable laws and regulations and approval is given, which will be in effect for a period of 5 years from the date given unless sooner canceled or suspended by proper authority.

4. The purpose of this document is to notify all concerned that certain approvals were granted and terminations of approvals were made, as described in this document, during the period from July 7, 1961, to July 24, 1961, inclusive. These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50, inclusive.

5. The delegations of authority for the Coast Guard's actions with respect to approvals may be found in Treasury De-

partment Orders 120, dated July 31, 1950 (15 F.R. 6521), 167-14, dated November 26, 1954 (19 F.R. 8026), 167-15, dated January 3, 1955 (20 F.R. 840), 167-20, dated June 18, 1956 (21 F.R. 4894), CGFR 56-28, dated July 24, 1956 (21 F.R. 5659), or 167-38, dated October 26, 1959 (24 F.R. 8857), and the statutory authority may be found in R.S. 4405, as amended, 4462, as amended, 4488, as amended, 4491, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 54 Stat. 346, as amended, sec. 3, 70 Stat. 152 (46 U.S.C. 375, 416, 481, 489, 367, 526p, 1333, 390b), sec. 4(e), 67 Stat. 462 (43 U.S.C. 1333 (e)), or sec. 3(c), 68 Stat. 675 (50 U.S.C. 198), and implementing regulations in 46 CFR Chapter I or 33 CFR Chapter I.

6. In Part I of this document is listed the approvals granted which shall be in effect for a period of 5 years from the dates granted, unless sooner canceled or suspended by proper authority.

7. In Part II of this document is listed the approvals which have been terminated. Notwithstanding this termination of approvals of the items of equipment as listed in Part II such equipment in service may be continued in use so long as such equipment is in good and serviceable condition.

PART I—APPROVALS OF EQUIPMENT, INSTALLATIONS, OR MATERIALS

LIFE PRESERVERS: REPAIRING AND CLEANING

Approval No. 160.006/25/0, New Richmond cleaning process for kapok life preservers without vinyl covered pad inserts, as outlined in description of cleaning process dated April 23, 1956, submitted by New Richmond Laundries & Cleaners, approval limited to kapok life preservers without vinyl covered pad inserts, issued to New Richmond Laundries & Cleaners—Plant No. 2, 1265 Republican Street, Seattle 9, Washington, effective July 17, 1961. (It is an extension of Approval No. 160.006/25/0 dated July 17, 1956.)

LIFEBOATS

Approval No. 160.035/204/2, 20.0' x 6.0' x 2.5' steel, oar-propelled lifeboat, 18-person capacity, identified by construction and arrangement dwg. No. 20-1 dated October 29, 1947, revised April 10, 1956; if mechanical disengaging apparatus is fitted, it shall be of an approved type and the installation in this particular lifeboat shall be approved by the Commandant, manufactured by Marine Safety Equipment Corp., Point Pleasant Beach, New Jersey, effective July 17, 1961. (It is an extension of Approval No. 160.035/204/2 dated July 17, 1956.)

Approval No. 160.035/208/3, 12.0' x 4.42' x 1.92' steel, oar-propelled lifeboat, 6-person capacity, identified by construction and arrangement dwg. No. 12-1 dated November 5, 1947, revised April 23, 1956, approved for use on vessels in Great Lakes, Bays, Sounds, and Lakes; and River service, as well as for use on certain Coastwise tank barges; if me-

chanical disengaging apparatus is fitted, it shall be of an approved type and the installation in this particular lifeboat shall be approved by the Commandant, manufactured by Marine Safety Equipment Corp., Point Pleasant Beach, New Jersey, effective July 17, 1961. (It is an extension of Approval No. 160.035/208/3 dated July 17, 1956.)

Approval No. 160.035/211/2, 22.0' x 7.5' x 3.17' steel, oar-propelled lifeboat, 31-person capacity, identified by construction and arrangement dwg. No. 22-2 dated April 17, 1946, and revised May 22, 1956, manufactured by Marine Safety Equipment Corp., Point Pleasant Beach, New Jersey, effective July 17, 1961. (It is an extension of Approval No. 160.035/211/2 dated July 17, 1956.)

Approval No. 160.035/220/1, 26.0' x 9.0' x 3.83' aluminum, motor-propelled lifeboat without radio cabin (Class B), 48-person capacity, identified by construction and arrangement dwg. No. 3208-R Rev. B dated May 15, 1961, manufactured by Welin Davit and Boat Division of Continental Copper & Steel Industries, Inc., Perth Amboy, New Jersey, effective July 17, 1961. (It reinstates and supercedes Approval No. 160.035/220/0 published in the FEDERAL REGISTER August 6, 1948.)

Approval No. 160.035/338/0, 28.0' x 9.0' x 3.96' aluminum, oar-propelled lifeboat, 59-person capacity, identified by construction and arrangement drawing No. 28-1E dated June 30, 1955, revised April 26, 1956, manufactured by Marine Safety Equipment Corp., Point Pleasant Beach, New Jersey, effective July 17, 1961. (It is an extension of Approval No. 160.035/338/0 dated July 17, 1956.)

Approval No. 160.035/341/0, 22.0' x 7.5' x 3.17' steel, oar-propelled lifeboat with steel thwarts, 31-person capacity, identified by construction and arrangement dwg. No. 80047 dated September 3, 1955, and revised March 6, 1956, manufactured by Welin Davit and Boat Division of Continental Copper & Steel Industries, Inc., Perth Amboy, New Jersey, effective July 17, 1961. (It is an extension of Approval No. 160.035/341/0 dated July 17, 1956.)

Approval No. 160.035/349/0, 24.0' x 8.63' x 3.88' steel, motor-propelled lifeboat without radio cabin (Class B), 43-person capacity, identified by construction and arrangement drawing No. 80070, dated December 9, 1955, and revised April 13, 1956, manufactured by Welin Davit and Boat Division of Continental Copper & Steel Industries, Inc., Perth Amboy, New Jersey, effective July 17, 1961. (It is an extension of Approval No. 160.035/349/0 dated July 17, 1956.)

BUOYANT VESTS, KAPOK OR FIBROUS GLASS, ADULT AND CHILD

NOTE: Approved for use on motorboats of Classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.047/408/0, Type I, Model AK-1, adult kapok buoyant vest,

U.S.C.G. Specification Subpart 160.047, manufactured by SAF-T-MATE Division, The Gunn Company, Inc., 420 Alabama Avenue NW., Grand Rapids 4, Michigan, effective July 12, 1961. (It supersedes Approval No. 160.047/408/0 dated June 21, 1960, to show change of address.)

Approval No. 160.047/409/0, Type I, Model CKM-1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by SAF-T-MATE Division, The Gunn Company, Inc., 420 Alabama Avenue NW., Grand Rapids 4, Michigan, effective July 12, 1961. (It supersedes Approval No. 160.047/409/0 dated June 21, 1960, to show change of address.)

Approval No. 160.047/410/0, Type I, Model KKS-1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by SAF-T-MATE Division, The Gunn Company, Inc., 420 Alabama Avenue NW., Grand Rapids 4, Michigan, effective July 12, 1961. (It supersedes Approval No. 160.047/410/0 dated June 21, 1960, to show change of address.)

BUOYANT CUSHIONS, KAPOK OR FIBROUS GLASS

NOTE: Approved for use on motorboats of Classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.048/72/1, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048-4(c)(1)(i), manufactured by The Comfort Cushion Co., 5062-84 Lorraine, Detroit 8, Michigan, effective July 17, 1961. (It is an extension of Approval No. 160.048/72/1 dated July 17, 1956.)

Approval No. 160.048/78/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048-4(c)(1)(i), manufactured by Stearns Manufacturing Co., West Division Street at 30th, St. Cloud, Minn., for Herter's, Inc., Waseca, Minnesota, effective July 17, 1961. (It is an extension of Approval No. 160.048/78/0 dated July 17, 1956.)

Approval No. 160.048/79/0, special approval for 13" x 18" x 2" rectangular ribbed-type kapok buoyant cushion, 21-oz. kapok, Stearns Manufacturing Co. dwg. No. 6, dated December 5, 1955, manufactured by Stearns Manufacturing Co., West Division Street at 30th, St. Cloud, Minn., for Herter's, Inc., Waseca, Minnesota, effective July 17, 1961. (It is an extension of Approval No. 160.048/79/0 dated July 17, 1956.)

Approval No. 160.048/87/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048-4(c)(1)(i), manufactured by SAF-T-MATE Division, The Gunn Company, Inc., 420 Alabama Avenue NW., Grand Rapids 4, Michigan, effective July 12, 1961. (It supersedes Approval No. 160.048/87/0 dated April 10, 1957, to show change of address of manufacturer.)

BUOYANT CUSHIONS, UNICELLULAR PLASTIC FOAM

NOTE: Approved for use on motorboats of Classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.049/27/0, group approval for rectangular and trapezoidal unicellular plastic foam buoyant cushions, U.S.C.G. Specification Subpart 160.049, sizes to be as per Table 160.049-4(c)(1), manufactured by SAF-T-MATE Division, The Gunn Company, Inc., 420 Alabama Avenue NW., Grand Rapids 4, Michigan, effective July 12, 1961. (It supersedes Approval No. 160.049/27/0 dated June 20, 1959, to show change of address.)

Approval No. 160.049/32/0, group approval for rectangular and trapezoidal unicellular plastic foam buoyant cushions, U.S.C.G. Specification Subpart 160.049, sizes to be as per Table 160.049-4(c)(1), manufactured by Fortier Upholstering Co., Manistee, Michigan, effective July 24, 1961. (It supersedes Approval No. 160.049/32/0 dated August 16, 1960, to show correct name of company.)

BUOYANT CUSHIONS, UNICELLULAR PLASTIC FOAM, ADULT AND CHILD

Approval No. 160.052/128/0, Type II, Model FM-300, adult unicellular plastic foam buoyant vest, dwg. S.C. 160.052 (sheets 1 to 4) dated March 3, 1961, and Bill of Materials: Type II P.V.C. Foam Jacket, manufactured by Style-Crafters, Inc., P.O. Box 3277, Station A, Greenville, South Carolina, effective July 13, 1961.

Approval No. 160.052/129/0, Type II, Model FM-320, child unicellular plastic foam buoyant vest, dwg. S.C. 160.052 (sheets 1 to 4) dated March 3, 1961, and Bill of Materials: Type II, P.V.C. Foam Jacket, manufactured by Style-Crafters, Inc., P.O. Box 3277, Station A, Greenville, South Carolina, effective July 21, 1961.

Approval No. 160.052/130/0, Type II, Model FM-310, child unicellular plastic foam buoyant vest, dwg. S.C. 160.052 (sheets 1 to 4) dated March 3, 1961, and Bill of Materials: Type II P.V.C. Foam Jacket, manufactured by Style-Crafters, Inc., P.O. Box 3277, Station A, Greenville, South Carolina, effective July 12, 1961.

Approval No. 160.052/131/0, Type II, Model "A", adult unicellular plastic foam buoyant vest, dwgs. 11 to 14, dated March 3, 1961, and Bill of Materials dated June 28, 1961, manufactured by Crawford Manufacturing Co., Inc., Third and Decatur Streets, Richmond 12, Va., effective July 12, 1961.

Approval No. 160.052/132/0, Type II, Model "M", child unicellular plastic foam buoyant vest, dwgs. 11 to 14, dated March 3, 1961, and Bill of Materials dated June 28, 1961, manufactured by Crawford Manufacturing Co., Inc., Third and Decatur Streets, Richmond 12, Va., effective July 12, 1961.

Approval No. 160.052/133/0, Type II, Model "S", child unicellular plastic foam buoyant vest, dwgs. 11 to 14, dated March 3, 1961, and Bill of Materials dated June 28, 1961, manufactured by Crawford Manufacturing Co., Inc., Third and Decatur Streets, Richmond 12, Va., effective July 12, 1961.

WORK VESTS, UNICELLULAR PLASTIC FOAM

Approval No. 160.053/12/0, Models 211-SF-17.5 and 231-SF-17.5 unicellular plastic foam work vests, dwgs. 61D821 and 61D823 with Bills of Material dated June 21, 1961, manufactured by Gentex Corporation, Carbondale, Pennsylvania, effective July 24, 1961.

FIRE EXTINGUISHERS, PORTABLE, HAND, CARBON-DIOXIDE TYPE

Approval No. 162.005/84/0, American LaFrance Model 15, Series 2, 15-lb. carbon dioxide type hand portable fire extinguisher, assembly dwg. No. 28X-5008 dated March 8, 1954, Rev. E dated May 13, 1954, name plate dwg. No. 28X-2645 dated January 6, 1955, Rev. F, dated April 12, 1956, Coast Guard classification: Type B, Size II; and Type C, Size II, manufactured by American LaFrance, Div. of Sterling Precision Corp., Elmira, New York, effective July 17, 1961. (It is an extension of Approval No. 160.053/84/0 dated July 17, 1956.)

Approval No. 162.005/85/0, American LaFrance Model 5, Series 2, 5-lb. carbon dioxide type hand portable fire extinguisher, assembly dwg. No. 28X-1998 dated April 23, 1954, Rev. F dated June 17, 1954, name plate dwg. No. 28X-2642 dated January 6, 1955, Rev. A dated June 10, 1955 (Coast Guard classification: Type B, Size I, and Type C, Size I), manufactured by American LaFrance, Div. of Sterling Precision Corp., Elmira, New York, effective July 17, 1961. (It is an extension of Approval No. 162.005/85/0 dated July 17, 1956.)

FIRE EXTINGUISHERS, PORTABLE, HAND, SODA-ACID TYPE

Approval No. 162.007/1/1, First Aid, 2½-gal. soda-acid type hand portable fire extinguisher, assembly dwg. No. EX-1 dated April 3, 1928, Rev. October 14, 1955, name plate dwg. No. EX-52 dated November 11, 1952 (Coast Guard classification: Type A, Size II), manufactured by W. D. ALLEN MANUFACTURING CO., 566-570 West Lake Street, Chicago 6, Illinois, effective July 17, 1961. (It is an extension of Approval No. 162.007/1/1 dated July 17, 1956.)

FIRE EXTINGUISHERS, PORTABLE, HAND, WATER, CARTRIDGE OPERATED OR STORED PRESSURE TYPE

Approval No. 162.009/5/1, Instant Loaded Stream Anti-Freeze Model No. 70-5, 1¾-gal. cartridge-operated type hand portable fire extinguisher, assembly dwg. No. 70-5 dated October 13, 1949, Rev. D dated September 15, 1954, name plate dwg. No. 5564 dated December 29, 1953, Rev. B dated March 26, 1956 (Coast Guard classification: Type A, Size II), manufactured by The Fyr-Fyter Co., 221 Crane Street, Dayton 1, Ohio, effective July 17, 1961. (It is an extension of Approval No. 162.009/5/1 dated July 17, 1956.)

FIRE EXTINGUISHERS, PORTABLE, HAND, DRY-CHEMICAL TYPE

Approval No. 162.010/196/0, Sierra Model SP-25 (Symbol GEN), 2½-lb. dry chemical stored pressure type hand portable fire extinguisher, assembly dwg. No. CP2½-20470 dated June 13, 1961,

name plate dwg. No. CP2½-20468 dated June 19, 1961 (Coast Guard classification: Type B, Size I; and Type C, Size I), manufactured by The Fire Guard Corp., 1685 Shermer Road., Northbrook, Illinois, for Sierra Fire Equipment Co., 1355 South Flower Street, Los Angeles 15, California, effective July 14, 1961.

FLAME ARRESTERS, BACKFIRE (FOR CARBURETORS)

Approval No. 162.015/49/0, Model No. 9304355 backfire flame arrester for carburetors, Dwg. No. 9304355 change 1, flame arrester assembly, dated 11-25-60, manufactured by Purolator Products, Inc., 3927 Fourth Street, Wayne, Michigan, effective July 7, 1961.

INCOMBUSTIBLE MATERIALS

Approval No. 164.009/37/0, "Fiberseal" composition type incombustible material consisting solely of Foster 31X26 Non-combustible Coating and Sealfas Open Weave Glass Cloth, identical to that referred to in National Bureau of Standards Test Report No. TG10210-1974: FP3363, dated April 30, 1956, manufactured by Benjamin Foster Co., 4635-37 W. Girard Avenue, Philadelphia 11, Pennsylvania, effective July 17, 1961. (It is an extension of Approval No. 164.009/37/0 dated July 17, 1956.)

PART II—TERMINATIONS OF APPROVALS OF EQUIPMENT, INSTALLATIONS OF MATERIALS

LIFEBOATS

Termination of Approval No. 160.035/343/0, 26.0' x 7.88' x 3.54' aluminum, oar-propelled lifeboat, 48-person capacity, identified by construction and arrangement dwg. No. 26-11 dated September 26, 1955, revised April 11, 1956, manufactured by Marine Safety Equipment Corp., Point Pleasant Beach, New Jersey, effective July 17, 1961. (Approved in FEDERAL REGISTER July 17, 1956. Expired and terminated July 17, 1961.)

BUOYANT CUSHIONS, KAPOK OR FIBROUS GLASS

NOTE: Approved for use on motorboats of Classes A, 1, or 2 not carrying passengers or hire.

Termination of Approval No. 160.048/84/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048-4(c) (1) (i), manufactured by Style-Crafters, Inc., P.O. Box 3277, Station A, Greenville, South Carolina, for Bowman Manufacturers, Inc., 1823 Woodrow, Little Rock, Arkansas, effective July 12, 1961. (Approved in FEDERAL REGISTER January 30, 1957. Terminated July 12, 1961. Item no longer distributed.)

APPLIANCES, LIQUEFIED PETROLEUM GAS CONSUMING

Termination of Approval No. 162.020/45/0, Garland Range Model A38, approved by the American Gas Association, Inc., under Certificate No. 11-53-1.001 dated August 28, 1950, for liquefied

petroleum gas service, formerly Detroit-Michigan Stove Co., manufactured by Welbilt Corp., Garland Division, Welbilt Square, Maspeth, New York, effective June 1, 1961. (Expiration and termination of Approval No. 162.020/45/0 dated June 1, 1956.)

Dated: August 24, 1961.

[SEAL] A. C. RICHMOND,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 61-8354; Filed, Aug. 30, 1961;
8:51 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

MONTANA

Notice of Proposed Withdrawal and Reservation of Lands

AUGUST 24, 1961.

The Bureau of Sport Fisheries and Wildlife, United States Department of the Interior, has filed an application, Serial Number M-033460 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws including the general mining laws but not the mineral leasing laws, subject to valid existing rights. The applicant desires the land for a winter game range for elk.

For a period of 30 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, 1245 North 29th Street, Billings, Montana.

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:

PRINCIPAL MERIDIAN MONTANA

T. 10 N., R. 12 E.,

Sec. 21: Lot 8;

Sec. 28: Lots 1 and 5.

Total area: 92.84 acres.

GEORGE L. TURCOTT,
Acting State Director.

[F.R. Doc. 61-8328; Filed, Aug. 30, 1961;
8:47 a.m.]

[New Mexico 094303]

NEW MEXICO

Notice of Proposed Withdrawal and Reservation of Lands; Correction

AUGUST 23, 1961.

In F.R. Doc. 61-7795, appearing at pages 7613 and 7614 of the issue of Wednesday, August 16, 1961, the second line of the land description under "Cibola National Forest, Cienega Recrea-

tion Area, T. 11 N., R. 5 E.", is corrected to read as follows:

SW¼SE¼NW¼, S½NE¼SE¼NW¼, NW¼.

CHESLEY P. SEELY,
State Director.

[F.R. Doc. 61-8329; Filed, Aug. 30, 1961;
8:47 a.m.]

NEVADA

Notice of Filing of Plats of Survey and Order Providing for Opening of Lands

The plat of survey of the land described below will be officially filed at the Land Office, Reno, Nevada, effective 10 a.m., September 25, 1961.

MOUNT DIABLO MERIDIAN

1. T. 26 N., R. 42 E. (group 279),
Secs. 1, 2, 3, 10 thru 15, 22 thru 27, 31
thru 36.

The area described aggregates 13,537.46 acres. The plat was accepted June 21, 1961.

(a) Available data indicates the lands in this plat vary from rough steep mountains with shallow rocky soils to benches with deep medium to fine textured soils.

2. The public lands affected by this notice are hereby restored to the operation of the public land laws, subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, rules, and regulations.

3. All inquiries relating to the lands should be directed to the Manager, Nevada Land Office, Bureau of Land Management, Department of the Interior, Post Office Box No. 1551, Reno, Nevada.

R. M. ZUNDEL,
Acting Manager,
Nevada Land Office.

[F.R. Doc. 61-8330; Filed, Aug. 30, 1961;
8:48 a.m.]

[Classification No. 51]

NEVADA

Small Tract Classification; Modification

1. Effective August 23, 1961, F.R. Doc. 50-1698 appearing on page 1167 of the issue for March 2, 1950, is revoked as to the following described lands:

MOUNT DIABLO MERIDIAN, NEVADA

T. 21 S., R. 61 E.,
Sec. 24, E½NW¼NW¼NW¼, W½SW¼
NW¼NW¼.

Containing 10 acres.

2. The land is situated 3 miles south of the city limits of Las Vegas, Nevada, at an elevation of approximately 2,400 feet above sea level. The climate is dry and the area is used extensively for health and recreation. The topography of the land is nearly level, having soils which vary from sand to sandy gravels underlain with caliche.

3. The public lands affected by this order are hereby restored as of 10:00

a.m., on September 28, 1961, to the operation of the public land laws, subject to any valid existing rights, the provisions of the existing withdrawals and the requirements of applicable law, rules and regulations.

J. R. PENNY,
State Director, Nevada.

AUGUST 23, 1961.

[F.R. Doc. 61-8331; Filed, Aug. 30, 1961;
8:48 a.m.]

[Bureau Order No. 684]

LANDS AND RESOURCES¹

Redelegations of Authorities

AUGUST 28, 1961.

PART I—REDELEGATIONS OF AUTHORITY IN STATE DIRECTORS

AUTHORITY IN GENERAL

Redelegations of authorities concerned with lands and resources.

SECTION 1.0 Functions of the State Director. (a) The State Directors of the Bureau of Land Management are authorized to perform in their respective states² and in accordance with existing policies, regulations, and procedures of this Department, the functions of the Director, Bureau of Land Management, listed in Part I of this order, including all types of actions in the matters listed, unless specifically limited.

(b) **Limitations.** In addition to limitations on authority in specified matters, the authority delegated to the State Director shall not include:

(1) The issuance of documents which are amendments of or additions to the Code of Federal Regulations.

(2) The exercise of the supervisory powers of the Secretary, whether by way of appeal to the Secretary or otherwise.

(3) The issuance of patents or their equivalent.

(4) Approval of exchanges of land or of timber for land if the selected lands exceed either 2,000 acres in area or \$50,000 in value unless prior clearance is obtained from the Director's office.

Sec. 1.1 Authority to redelegate.

(a) Each State Director may redelegate or authorize the re delegation of any authority vested in him by this order to any qualified employee under his jurisdiction, except the authority to appoint acting State Directors. Any order of re delegation of authority pursuant to this section must be approved by the Director, Bureau of Land Management and published in the FEDERAL REGISTER, except that:

(1) The State Director may without such approval redelegate to any qualified employee on his immediate staff authority to take actions on behalf of the

¹ Authority source—Department Order as amended.

² The State Director for Montana shall also have jurisdiction in the States of North and South Dakota. The State Director for Wyoming shall also have jurisdiction in the States of Nebraska and Kansas. The State Director for New Mexico shall also have jurisdiction in the States of Oklahoma and Texas. The State Director for Oregon shall also have jurisdiction in the State of Washington.

State Director in matters listed in sections 1.2 through 1.9 of Part I (according to the staff member's functional responsibilities).

(b) Any authority redelegated by the State Director may, in his discretion, be exercised personally by him notwithstanding the redelegation of authority.

AUTHORITY IN SPECIFIED MATTERS

SEC. 1.2 General and miscellaneous matters. The State Director may take the following actions, where he has authority in matters listed under other sections of this order:

(a) **Oaths.** Authorize any employee designated to make investigations of matters under the jurisdiction of the Bureau to administer any oath, affirmation, affidavit or deposition provided under the act of October 14, 1940 (5 U.S.C. 498), whenever necessary in the performance of such employee's official duties.

(b) **Cancellations or surrenders of contracts, leases, and permits.** Make partial or complete cancellations or accept surrenders of contracts, leases, and permits.

(c) **Copies of records.** Furnish copies and exemplifications of patents, plats, and other records.

(d) **Gifts.** Accept on behalf of the United States any lands within or without a grazing district as a gift, where such action will promote the purposes of the district or facilitate the administration of the public lands, pursuant to section 8a of the Taylor Grazing Act, as amended (43 U.S.C. section 315g).

(e) **Government contests.** Initiate Government contests against claims asserted to public lands, and take all necessary actions involving the prosecution of such contests except the presentation of the Government's case at the hearing.

(f) **Reports and certifications in connection with Federal land highway projects.** Make reports and certifications as to public lands, in connection with Federal land highway projects, required by (23 U.S.C. 202c).

(g) **Pro-rata road use and maintenance deposits.** Require a user or users of roads or trails to maintain such roads or trails on a pro-rata basis or to accept deposits to provide for such maintenance and to expend such deposited funds for the maintenance of any road or trail under the jurisdiction of the Bureau (43 U.S.C. 1382).

(h) **Cooperative agreements.** May enter into cooperative agreements involving the improvement, management, use and protection of the public lands and their resources under his jurisdiction as provided in the Public Land Administration Act (43 U.S.C. 1363). May enter into Cooperative Agreements under sections 2, 9 and 12 of the June 28, 1934 act (43 U.S.C. 315 et seq.) and under the Act of March 29, 1928 (45 Stat. 380).

Cooperative agreements not clearly within the scope of existing Bureau policies and procedures shall have advance clearance of the Director's office.

(i) **Studies.** May conduct studies, investigations, and experiments, on his own initiative or in cooperation with others, involving the improvement, management, use and protection of the public

lands and their resources under his jurisdiction as provided in the Public Land Administration Act (43 U.S.C. 1362).

(j) **Fire protection.** Make contracts and cooperative agreements with Federal, State, County, Municipal and private fire-control organizations for the protection from fire (prevention, pre-suppression, and suppression) of the public lands under the jurisdiction of the Bureau of Land Management.

SEC. 1.3 Fiscal affairs. The State Director may take the following actions:

(a) **Bonds and forfeitures.** (1) Take all actions on bonds required in connection with matters pertaining to the lands or the resources thereof under his jurisdiction.

(2) Expend funds made available as a result of the forfeiture of a bond or deposit by a timber purchaser or permittee or of a compromise under the Public Land Administration Act (43 U.S.C. 1381).

(b) **Contributions, donations, and re-funds.** (1) Accept contributions or donations of money, services and property for the improvement, management, use and protection of the public lands and their resources under his jurisdiction. Also accept contributions for cadastral surveying performed on federally controlled or intermingled lands under the Public Land Administration Act (43 U.S.C. 1364).

(2) Accept contributions toward the administration, protection and improvements of lands within or without grazing districts and remit or refund any unappropriated balances of such contributions pursuant to section 9 of the Taylor Grazing Act (43 U.S.C. section 315h).

(c) **Repayment.** Make repayment or refund from applicable funds in any case where payment has been made that is not required or is in excess of the amount required under the Public Land Administration Act (43 U.S.C. 1374); and repayments under 43 CFR Part 217.

(d) **Trespass.** Determine liability and accept damages for trespass on the public lands, and dispose of resources recovered in trespass cases for not less than the appraised value thereof; recommend to the United States Attorney:

(1) Institution of suits arising out of trespass where the money judgment sought is not in excess of \$1,000, and

(2) compromise of such suits where the amount is not in excess of \$500.

Sec. 1.4 Cadastral engineering. The State Director may take the following actions:

(a) **Survey.** (1) Perform all functions pertaining to the survey and resurvey of the public lands under his jurisdiction pursuant to section 453 of the Revised Statutes (43 U.S.C. section 2) except the acceptance of plats of survey, resurvey and the approval of protracted survey diagrams.

(2) Recommend to the Director for appointment mineral surveyors found to be competent pursuant to section 2334 of the Revised Statutes (30 U.S.C. section 39).

(3) Approve plats and field notes of mineral surveys and certification as to expenditures pursuant to 43 CFR 185.43.

(4) Prepare and publish in the FEDERAL REGISTER notices of the official filing of accepted plats of survey, resurvey and approved protracted survey diagrams.

SEC. 1.5 *Classifications and withdrawals.* The State Director may take the following actions:

(a) *Classification of lands.* Classify public lands under section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315f), or pursuant to other laws.

(b) *Orders of withdrawal and restoration.* (1) Issue orders of restoration, where revocations or modification of a withdrawal or reservation is not involved and where an order of revocation provides for opening of the lands by an authorized officer of the Bureau. All such orders shall be published in the FEDERAL REGISTER.

(2) Determine, pursuant to 43 CFR Part 295, with the concurrence of the Administrator of General Services or his delegate, when required, that specified lands withdrawn or reserved from the public domain, and subsequently declared excess to the needs of the agency for which withdrawn or reserved are suitable or not suitable for return to the public domain for disposition under the general public land laws.

(c) *Public Land Orders.* Act on matters relating to the issuance of public land orders, pursuant to 43 CFR 295.9 to 295.11, except actions required by 43 CFR 295.11 (b) and (c) to be taken by the Secretary of the Interior or his delegate.

SEC. 1.6 *Minerals.* The State Director may take the following actions:

(a) *Oil and gas leases.* Act on oil and gas leases pursuant to the Act of February 25, 1920 (30 U.S.C. section 221 et seq.), as amended and supplemented, the Act of August 7, 1947 (30 U.S.C. sections 351-359), and the Act of May 21, 1930 (30 U.S.C. sections 301-305), and oil and gas leases issued pursuant to the Act of August 21, 1916 (39 Stat. 519), embracing lands restored to the public domain pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 592). Also leases of oil and gas deposits transferred to this Department for measures to protect the deposits from drainage. This authority does not include any function pertaining to oil and gas deposits that involve approval or execution of unit or cooperative agreements, communication agreements, operating, drilling or development contracts without regard to acreage limitation or the sale of royalty oil taken in account of production.

(b) *Coal permits, leases, and licenses, asphalt leases.* (1) Act on all matters involving coal permits, leases, and licenses under sections 2 to 8 inclusive, of the Act of February 25, 1920, as amended and supplemented (30 U.S.C. sections 201-208), including coal permits and leases under the Act of August 7, 1947 (30 U.S.C. section 351-359), and coal permits and leases and asphalt leases under the Acts of June 26, 1944 (58 Stat. 483-485), June 24, 1948 (62 Stat. 596), and May 24, 1949 (63 Stat. 75).

(2) The authority delegated by this section shall not include any function

relating to the grant, approval or termination of the waiver, suspension, or reduction of rental or minimum royalty, the reduction of royalty, or this suspension of operations and production under a lease.

(c) *Oil shale leases.* Take all actions on oil shale leases under section 21 of the Act of February 25, 1920 (30 U.S.C. section 241), and under the Act of August 7, 1947 (30 U.S.C. section 351-359). The authority delegated by this section shall not include any function relating to the grant, approval or termination of the waiver, suspension or reduction of rental or minimum royalty, the reduction of royalty, or the suspension of operations and production under a lease.

(d) *Phosphate permit and leases.* Take all actions on matters related to phosphate permits and leases under sections 9 to 12 inclusive, of the Act of February 25, 1920 (30 U.S.C. 211-214), as amended, and phosphate permits and leases under the Act of August 7, 1947 (30 U.S.C. 351-359).

(e) *Potassium permits and leases.* Take all actions on matters related to potassium permits and leases under the Act of February 7, 1927 (30 U.S.C. sections 281-285), as amended and potassium permits and leases under the Act of August 7, 1947 (30 U.S.C. 351-359).

(f) *Sodium permits and leases.* Take all actions on sodium permits, leases and use permits under sections 23 to 25 inclusive, of the Act of February 25, 1920, as amended (30 U.S.C. sections 261-263), and under the Act of August 7, 1947 (30 U.S.C. sections 351-359).

(g) *Sulphur permits and leases.* Take all actions on sulphur permits and leases under the Act of April 17, 1926, as amended (30 U.S.C. section 271), and under the Act of August 7, 1947 (30 U.S.C. sections 351-359).

(h) *Agreements to compensate for drainage of oil or gas.* Execute agreements for payment of compensatory royalties because of drainage of oil or gas.

(i) *Gold, silver, and quicksilver leases.* Take all actions on leases of gold, silver, and quicksilver to the owners of confirmed private land claims, pursuant to 43 CFR Part 187.

(j) *Minerals subject to lease under special laws.* Take all actions on permits and leases for sand, gravel, and other minerals under special laws, pursuant to 43 CFR Part 199; also permits and leases for certain mineral deposits in acquired lands, pursuant to 43 CFR 200.31, et seq.

(k) *Mining claims.* Take all actions on claims pursuant to the general mining laws and laws supplemental thereto and 43 CFR Parts 69, 185, and 186.

SEC. 1.7 *Range management.* The State Director may exercise the following authority:

(a) *Grazing district administration.* Act on matters pertaining to the administration of grazing districts pursuant to the Act of June 28, 1934, as amended and supplemented (43 U.S.C. section 315 et seq., 16 U.S.C. section 715i), and 43 CFR Parts 161, 163, and 165 as follows:

(1) Licenses or permits to graze or trail livestock.

(2) Permits or cooperative agreements to construct and maintain range improvements and determine the value of such improvements.

(3) The expenditure of funds appropriated by the Congress, or contributed by individuals, associations, advisory boards, or others, for the construction, purchase or maintenance of range improvements.

(4) Leases under the Pierce Act (43 U.S.C. sections 315m-1 to 315m-4 inclusive).

(5) Requirements of field employees to furnish horses and miscellaneous equipment necessary for the performance of their official duties, pursuant to the Act of December 10, 1942 (43 U.S.C. section 315o-2), and make payments in connection therewith as authorized by the act.

(6) Hold hearings when necessary in connection with the modification of grazing district boundaries.

(7) Approve articles of incorporation, constitutions, and bylaws for local associations of stockmen pursuant to 43 CFR Part 161.

(b) *Grazing leases.* (1) Grazing leases of public lands, under section 15 of the Act of June 28, 1934, as amended (43 U.S.C. section 315m), and the permits or cooperative agreements to construct and maintain improvements on lands so leased, and to determine the value of such improvements.

(2) Grazing leases of the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road grant lands in Oregon, and crossing permits for such lands, in accordance with 43 CFR Part 115.

(3) Grazing leases of public lands in Alaska, under the Act of March 4, 1927 (43 U.S.C. sections 471, 471a-471c); leases and permits for grazing of reindeer pursuant to section 14 of the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250m).

(c) *Appropriation of water.* Applications under State laws to appropriate water on lands under the administration of the Bureau of Land Management where required in connection with projects for the development, control or utilization of water; and procurement of easements or rights-of-way upon or over private lands, and also upon or over federally-owned lands not under the administration of the Bureau and upon or over State, county, and municipally owned lands where improvements are installed.

(d) *Soil and moisture conservation; control of Halogeton glomeratus.* (1) Soil and moisture conservation on the public lands, pursuant to the National Soil Conservation Act of April 27, 1935 (16 U.S.C. section 590a, et seq.).

(2) Surveys and other operations and the expenditure of appropriated funds and contributions, under the Halogeton Glomeratus Control Act of July 14, 1952 (66 Stat. 597), and Departmental Order No. 2835 of October 2, 1958.

(3) The authority granted by paragraphs (1) and (2) shall include authority to enter into cooperative agreements in the matters listed and shall be subject to the coordination and general supervision of the Office of the Secretary.

(e) *Controlled brush burning.* Issue permits for the controlled burning of brush, as a means of improving the range by the replacement of the brush with grass and other desirable species.

SEC. 1.8 *Forest management.* The State Director may take the following actions:

(a) *Disposition of forest products.* (1) Dispose of or permit the free use of forest products when authorized by law on lands under the jurisdiction of the Bureau of Land Management. This authority shall not include the approval of any sale of timber in excess of 25,000,000 feet, board measure.

(2) Sell timber on lands under the jurisdiction of the Bureau of Reclamation, in accordance with Department Order No. 2533 of September 7, 1949.

(b) *Hearings in connection with sustained-yield forest units.* Schedule and hold public hearings on master forest units and their appurtenant marketing areas, and on sustained-yield forest units, comprising reversioned Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon, and lands in private ownership or controlled by other public agencies, under authority of the Act of August 28, 1937 (50 Stat. 874), and (16 U.S.C. sections 383a-388i). The notice of hearing may designate any qualified employee in the area to holding the hearing. This shall not include the approval of sustained-yield timber units.

(c) *Cutting of timber on certain mining claims in Oregon.* Approve applications from owners of mining claims located since August 28, 1937, on reversioned Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon, to cut and use so much of the timber on the mining claims as is necessary in the development and operation of the mines until such time as the timber is otherwise disposed of by the United States pursuant to the Act of April 8, 1948 (62 Stat. 162).

(d) *Roads.* Act on matters involving the acquisition of rights-of-way and roads under the Act of July 26, 1955 (69 Stat. 374), including purchases after clearance with the Department of Justice but not including recommendations to the Attorney General for condemnation proceedings; also the approval of projects for the construction of roads to provide access to the timber on public lands subject to that act.

SEC. 1.9 *Land use.* The State Director may take the following actions:

(a) *Airports and air navigation facilities.* (1) Issue leases of public lands for public airports and permits for air navigation facilities under the Act of May 24, 1928 (49 U.S.C. section 211-214).

(2) Take all actions under the Federal Airport Act (49 U.S.C. section 1101).

(b) *Cemetery sites.* Take all actions relating to cemetery sites pursuant to 43 CFR Parts 72 and 253.

(c) *Color-of-title and riparian claims.* Take all actions relating to color-of-title and riparian claims, under 43 CFR Parts 140 and 141.

(d) *Exchanges.* Take actions subject to the title opinion of the field solicitor, in all matters relating to exchanges of

lands and of timber for lands, except where the value of the selected lands or timber exceeds \$250,000, and issue quitclaim deeds authorized by section 6 of the Act of April 28, 1930 (46 Stat. 257).

(e) *Homesteads.* Take all actions on homesteads pursuant to 43 CFR Parts 65, 66 and 166 to 170 inclusive.

(f) *Indian allotments.* Take all actions relating to Indian allotments with the concurrence of the Commissioner of Indian Affairs, pursuant to 43 CFR Parts 176 and 67.

(g) *Material other than forest products.* Take all actions relating to any sale or contract for the sale of material other than forest products, or the free use of materials other than forest products, under 43 CFR Part 259.

(h) *Mineral or medicinal springs.* Take all actions relating to leases of lands adjacent to mineral or medicinal springs, under the Act of March 3, 1925 (43 U.S.C. section 971).

(i) *Sites for recreational or any public purpose.* Take all actions with respect to conveyances and leases to Federal, State, Territory and local government units and to non-profit associations and corporations pursuant to 43 CFR Part 254, and to other applicable regulations and all actions in connection with the construction maintenance and disposition of recreational facilities in Alaska pursuant to the Act of May 4, 1956 (70 Stat. 130).

(j) *Public sales.* (1) Take all actions on public sales pursuant to 43 CFR Part 250, and other sales of land by competitive bidding when authorized by law.

(2) Applications by and sales to aliens, associations having an appreciable number of alien members, and corporations whose stock to an appreciable extent is held by aliens, are subject to approval by the Secretary of the Interior.

(k) *Railroad grants.* Adjust railroad grants and claims within such grants, pursuant to 43 CFR Part 273, subject to approval of the validity of the grant rights.

(l) *Reclamation and irrigation.* Take all actions on reclamation and desert-land entries, State irrigation districts, and Nevada underground water permits and entries, pursuant to 43 CFR Parts 230 to 234, inclusive; also entries, sales, and exchanges of lands in reclamation projects, pursuant to 43 CFR Chapter II, Bureau of Reclamation, or special instructions of the Secretary of the Interior, to the extent that action by the Bureau of Land Management is required.

(m) *Rights-of-way.* (1) Grant rights-of-way permits and easements over public and acquired lands, including reversioned Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon and over reservations other than Indian reservations, when authorized by law, and rights-of-way over the Outer Continental Shelf pursuant to 43 CFR Part 202. However, only the Secretary of the Interior may issue an order, pursuant to 43 CFR 244.9 (m), requiring the discontinuance, without liability or expense to the United States, of the use of a right-of-way for the purpose granted.

(2) Consent to the appropriation of Federal agencies under the principles of

the instructions of January 13, 1916 (44 Id 513; 43 CFR 205.13-205.15) of rights-of-way over unreserved or withdrawn lands. (See 43 CFR Part 244, footnote 1).

(n) *Small tracts.* Take all actions with respect to small tracts, under the Act of June 1, 1938 (43 U.S.C. section 682e), as amended.

(o) *Special land-use permits.* Take all actions in issuing:

(1) Special land-use permits for public lands, pursuant to 43 CFR Part 258.

(2) Special land-use permits for reversioned Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon pursuant to 43 CFR Part 115.

(3) Special land-use permits for acquired lands under the administration of the Bureau of Land Management, under the principles embodied in 43 CFR Part 258.

(4) Permits to use areas below the high-water mark of navigable waters in Alaska for occupancy purposes under the principles embodied in 43 CFR Part 258, subject to rules, regulations, and requirements of the Department of the Army respecting the navigation of such streams.

(5) Every such permit issued to a Federal agency or to a State agency or political subdivision shall be restricted to the smallest area needed for the proposed use. Not more than 50,000 acres may be included in any such permit, except that in Alaska permits may be issued to the Department of Defense for maneuver purposes for such acreages in excess of 50,000 acres and for such periods as may be deemed warranted in the circumstances. No permit may be issued under this authority where a withdrawal or a class which the Director is not authorized to make is requested.

(p) *State grants.* Take all actions on State grants and selections when authorized by law, but not including the approval of clear lists pursuant to section 2449 of the Revised Statutes (43 U.S.C. section 859).

(q) *Surface rights.* Take all actions on nonmineral applications for lands embraced in mineral permits or leases, or in applications for such permits or leases, or classified, withdrawn, or reported as valuable for any leaseable mineral or lying within the geologic structure of a field, in accordance with 43 CFR Parts 102 and 66.

(r) *Townsites.* Take all actions on all townsite matters except withdrawals, including the designation of townsite trustees as provided in 43 CFR 80.2 under authority of section 11 of the Act of March 3, 1891 (26 Stat. 1099, 48 U.S.C. 355) and as provided in 43 CFR 80.19 under authority of the Act of May 25, 1926 (44 Stat. 629, 48 U.S.C. 355a-355d). Provided, that reclamation townsite matters shall be handled jointly with the Commissioner of Reclamation, pursuant to 43 CFR 255.42 to 255.45 inclusive, and 255.47.

(s) *Water wells.* Take all actions on water-well leases, pursuant to section 40 of the Mineral Leasing Act (30 U.S.C. section 229a) and 30 CFR 241.6.

(t) *Matters pertaining to Alaska only.* (1) Alaska—furfarms. Take all actions

on leases of public lands in Alaska for furfarms, under the Act of July 3, 1926 (48 U.S.C. section 360, 361).

(2) Alaska, homesites or headquarters. Take all actions on homesites or headquarters in Alaska, pursuant to 43 CFR Part 64.

(3) Alaska Housing Authority. Transfer to the Alaska Housing Authority lands above high-water mark and under the jurisdiction of the Department of the Interior pursuant to section 6 of the Alaska Housing Act of April 23, 1949 (48 U.S.C. section 484c).

(4) Alaska, Matanuska Valley. Dispose of lands in the Matanuska Valley, Alaska, under the Act of October 17, 1940 (48 U.S.C. section 353 Note).

(5) Alaska Public Works. Take all actions on transfers in accordance with section 7 of the Act of August 24, 1949 (48 U.S.C. section 486e), of any interest in public lands in Alaska for any public works project which has been approved under section 4 of the act.

(6) Alaska, trade and manufacturing sites. Take all actions on trade and manufacturing sites in Alaska, pursuant to 43 CFR Part 81.

(7) Alaska missions claims. Take all actions pursuant to section 27 of the Act of June 6, 1900 (31 Stat. 330) and 50 L.D. 55.

(8) Shore space restrictions. Take all actions in connection with the waiver, pursuant to the Act of June 5, 1920, as amended (48 U.S.C. 372), and 43 CFR Part 77, of the 160 rod restriction as to the length of claims along the shores of navigable waters in Alaska.

(u) *Certificates, scrip and lieu selections.* Take all actions in connection with certificates and scrip under 43 CFR Parts 61 and 130 to 133, inclusive and also forest lieu selections, in accordance with footnote 1, to Part 130, subject to approval of the validity of the scrip or other rights.

(v) *Choctaw-Chickasaw lands.* Take all actions on matters pertaining to the management and disposition of the Choctaw-Chickasaw lands pursuant to 43 CFR Part 19.

SEC. 1.10 *Designation of Acting Officials.* The State Director may designate:

(a) *Acting State Director.* By written order, any Chief of Division or operations Supervisor in his State to perform the functions of the State Director, in case of death, resignation, absence, or sickness, of the State Director.

(b) *Acting Chief of Division.* By written order, any qualified employee of the various staff offices to perform the functions of the Chief of Division, in case of death, resignation, absence, or sickness of the Chief of Division.

(c) *Acting Land Office Manager.* By written order, any qualified employee of the land office to perform the functions of the Land Office Manager in case of death, resignation, absence, or sickness of the Land Office Manager.

(d) *Acting District Manager.* By written order, any qualified employee of the district office to perform the functions of the District Manager, in case of death, resignation, absence, or sickness of the District Manager.

(e) No other employee may be designated by the State Director to serve as Acting State Director except with the prior approval of the Director, and each employee who serves in such capacity in (a), (b), (c), or (d) above shall prepare a memorandum to be kept in the State Office showing the date and hour of the commencement and termination of each period of his service in that capacity.

PART I-A—REDELEGATION OF AUTHORITY TO ALASKA OPERATIONS SUPERVISORS

The Alaska Operations Supervisors are authorized to perform in their respective areas and in accordance with the existing policies, regulations and procedures of this Department and under the direct supervision of the State Director, the functions of the Director, Bureau of Land Management as listed in Part I of this order.

PART II—REDELEGATION TO LAND OFFICE MANAGERS

AUTHORITY IN GENERAL

SEC. 2.0 *Functions of Land Office Manager.* (a) The land office managers are authorized to perform in their respective areas of responsibility³ and in accordance with the existing policies, regulations and procedures of this Department and under the direct supervision of the State Director,⁴ the functions of the Director, Bureau of Land Management, as listed below, subject to the limitations listed in Part I together with any limitations specified below.

SEC. 2.1 *Authority to redelegate.* The land office manager may redelegate to the Chief, Minerals Section, authority to take action for the manager in matters listed in section 2.6 of Part II, and to the Chief, Lands Section, authority to take action for the manager in matters listed in section 2.9 of Part II. He may also redelegate to the Operations Manager authority to take action for the manager in matters within the Operations Manager's specified responsibility. Any order of redelegation must be approved by the State Director and published in the FEDERAL REGISTER.

AUTHORITY IN SPECIFIED MATTERS

SEC. 2.2 *General and miscellaneous matters.* The land office manager may take all actions on:

- (b) Cancellations or surrenders of contracts and leases.
- (c) Copies of records.
- (d) Government contests.

SEC. 2.3 *Fiscal affairs.* The land office manager may take all actions on:

- (a) *Bonds.* Authority limited to section 1.3(a) (1) of Part I of this order.
- (c) *Repayments.*

³ The land office manager at Billings shall also have jurisdiction in North and South Dakota. The land office manager at Cheyenne shall also have jurisdiction in Nebraska and Kansas. The land office manager at Santa Fe shall also have jurisdiction in Oklahoma and Texas.

⁴ The land office manager at Spokane is under the direct supervision of the State Director of Oregon.

SEC. 2.4 *Cadastral engineering.* The land office manager may take the following action:

- (a) (4) Preparation and publication in the FEDERAL REGISTER of notices of the official filing of accepted plats of survey, resurvey and approved protracted survey diagrams.

SEC. 2.5 *Classifications and withdrawals.* Subject to receipt of a report from the State Director, the land office manager may take all the listed actions on:

- (b) Orders of withdrawal and restoration.
- (c) Public land orders.

SEC. 2.6 *Minerals.* The land office manager may take all the listed actions on:

- (a) Oil and gas leases.
- (b) Coal permits, leases, and licenses; asphalt leases.
- (c) Oil shale leases.
- (d) Phosphate leases.
- (e) Potassium permits and leases.
- (f) Sodium permits and leases.
- (g) Sulphur permits and leases.
- (h) Agreements to compensate for drainage of oil and gas.
- (i) Gold, silver, and quicksilver leases.
- (j) Minerals subject to lease under special laws.
- (k) Mining claims.

SEC. 2.7 *Range management.* The land office manager may take all actions on:

- (b) (3) Grazing leases of public lands in Alaska under the act of March 4, 1927 (48 U.S.C. secs. 471, 471a-471c).

SEC. 2.9 *Land use.* Subject to classification action by the State Director where necessary, the land office manager may take all actions on:

- (a) Airports and air navigation facilities.
- (b) Cemetery sites.
- (c) Color-of-title and riparian claims. Subject to approval of color-of-title or claim of right by the Field Solicitor.
- (d) Exchanges.
- (1) Authority subject to title approval of offered lands by the Field Solicitor and limited to exchanges in which the value of the selected lands does not exceed \$50,000.

- (e) Homesteads.
- (f) Indian allotments.
- (g) Material other than forest products.
- (h) Mineral or medicinal springs.
- (i) Sites for recreational or any public purposes.

- (j) Public sales.
- (k) Railroad grants.
- (l) Reclamation and irrigation.
- (m) Rights-of-way. Authority does not include logging road rights-of-way on public lands west of Range 8 East, Willamette Meridian, Oregon.

- (n) Small tracts.
- (o) Special land-use permits, except:
- (1) Special land-use permits within grazing or forest districts.

- (2) Special land-use permits for re-vested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon.

- (p) State grants.

- (q) Surface rights.
- (r) Townsites. Except designation of townsite trustees.
- (s) Water wells.
- (t) Matters pertaining to Alaska only. The land office manager may take all the listed actions on:
 - (1) Alaska, fur farms.
 - (2) Alaska, homesites or headquarters.
 - (3) Alaska, housing authority.
 - (4) Alaska, Matanuska Valley.
 - (5) Alaska public works.
 - (6) Alaska, trade and manufacturing sites.
 - (7) Alaska mission claims.
 - (8) Shore space restrictions.
 - (u) Certificates, scrip and lieu selections.
 - (v) Choctaw-Chickasaw lands.

PART III—REDELEGATION TO DISTRICT MANAGERS

AUTHORITY IN GENERAL

SEC. 3.0 *Functions of District Manager.* (a) The district managers are authorized to perform in their respective areas of responsibility and in accordance with the existing policies, regulations and procedures of this Department, and under the direct supervision of the State Director, the functions of the Director, Bureau of Land Management, as listed below, subject to the limitations listed in Part I together with any limitations specified below.

AUTHORITY IN SPECIFIED MATTERS

SEC. 3.2 *General and miscellaneous matters.* On matters in which he is authorized to act, the district manager may take all actions on:

- (b) Cancellations or surrenders of contracts.
- (c) Copies of records.

SEC. 3.3 *Fiscal affairs.* On matters in which he is authorized to act, the district manager may take all actions on:

- (a) Bonds. Authority limited to section 1.3(a)(1) of Part I of this order.
- (b) Contributions, donations and refunds.
- (c) Repayments.
- (d) Trespass. Determine liability and accept damages for trespass on the public lands and dispose of resources recovered in trespass cases for not less than the appraised value thereof when the amount involved does not exceed \$2,000.

SEC. 3.7 *Range management.* The district manager may take all the listed actions on:

- (a) Licenses and permits to graze or trail livestock.
- (3) Permits or cooperative agreements to construct and maintain range improvements and determine the value of such improvements.
- (4) The expenditure of funds appropriated by Congress, or contributed by individuals, associations, advisory boards, or others for the construction, purchase or maintenance of range improvements.
- (b) Grazing leases.
- (c) Appropriation of water.
- (d) Soil and moisture conservation; control of halogeton glomeratus.

(e) Controlled brush burning. In accordance with plans and specifications approved by the State Director.

SEC. 3.8 *Forest management.* The district manager may take all the actions on:

- (a) Disposition of forest products except sales of timber in excess of 10,000,000 feet board measure must be approved by State Directors or their delegates prior to advertisement.
- (c) In Oregon, cutting of timber on certain mining claims.
- (d) Roads.

SEC. 3.9 *Land use.* The district manager may take all the listed action on:

- (g) Material other than forest products except sales in excess of \$1,000 must be approved by the State Directors or their delegates.
- (m) Rights-of-way. Grant logging road rights-of-way over public land west of Range 8 East, Willamette Meridian, Oregon, and rights-of-way over public and acquired land pursuant to 43 CFR 244.53.

- (o) Special land-use permits.
 - (1) Issue special land-use permits for public lands within the grazing and forest districts.
 - (2) Special land-use permits for re-vested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon.
 - (3) Special land-use permits for lands outside established grazing and forest districts when specifically authorized by the State Director.

PART IV—REDELEGATIONS OF AUTHORITY TO THE CHIEF, DIVISION OF FIELD SERVICES.

AUTHORITY IN GENERAL

SEC. 4.0 *Functions of Chief, Division of Field Services.* (a) In accordance with the existing policies, regulations and procedures of this Department, and under the direct supervision of the Assistant Director—Operating Services, the Chief, Division of Field Services of the Bureau of Land Management and the Chiefs of Branches of this Division are authorized to perform in their geographical areas of jurisdiction, the functions of the Director, Bureau of Land Management, as listed in Part I of this order and irrespective of geographical limitations all authority of the Director in the matters listed in section 4.10 of Part IV of this order unless specifically limited.

(b) Limitations. In addition to limitations on authority in specified matters, the authority delegated to the Chief, Division of Field Services shall not include:

- (1) The issuance of documents which are amendments of or additions to the Code of Federal Regulations.
- (2) The exercise of the supervisory powers of the Secretary, whether by way of appeal to the Secretary or otherwise.
- (3) Approval of exchanges of land or of timber for land if the selected lands exceed either 2,000 acres in area or \$50,000 in value unless prior clearance is obtained from the Office of the Assistant Director—Operating Services.

SEC. 4.1 *Authority to redelegate.* (a) The Chief, Division of Field Services may redelegate any authority vested in him by this order to any qualified employee in his area of jurisdiction, except the authority to appoint the acting Chief, Division of Field Services. Any order of re-delegation of authority pursuant to this section must be approved by the Assistant Director—Operating Services and published in the FEDERAL REGISTER.

(b) Any authority redelegated by the Chief, Division of Field Services may, in his discretion, be exercised personally by him, notwithstanding the redelegation of authority.

AUTHORITY IN SPECIFIED MATTERS

The Chief, Division of Field Services may take all actions on matters listed in sections 1.2 through 1.9 of Part I of this order and section 4.10 subject to the limitations listed in Part I, together with any specific limitations listed below.

SEC. 4.2 *General and miscellaneous matters.* The Chief, Division of Field Services may take all actions listed under this section of Part I of this order, except:

(e) Government contests. The presentation of the Government's case at the hearing.

SEC. 4.3 *Fiscal affairs.* The Chief, Division of Field Services may take all actions listed under this section of Part I of this order, except:

(a) (2) Expend funds made available as a result of the forfeiture of a bond or deposit by a timber purchaser or permittee or of a compromise under the Public Land Administration Act (43 U.S.C. 1381).

(d) (1) Make recommendations to the U.S. Attorney for institution or compromise of suits arising out of trespass.

SEC. 4.4 *Cadastral engineering.* The Chief, Division of Field Services may take all actions listed under this section of Part I.

SEC. 4.5 *Classifications and withdrawals.* The Chief, Division of Field Services may take all actions listed under this section of Part I.

SEC. 4.6 *Minerals.* The Chief, Division of Field Services may take all actions listed under this section of Part I.

SEC. 4.7 *Range management.* The Chief, Division of Field Services may take all actions listed under this section of Part I.

SEC. 4.8 *Forest management.* The Chief, Division of Field Services may take all actions listed under this section of Part I.

SEC. 4.9 *Land use.* The Chief, Division of Field Services may take all actions on matters listed under this section of Part I except:

(d) *Exchanges.* Subject to title opinion of the Field Solicitor.

SEC. 4.10 *Miscellaneous matters.* The Chief, Division of Field Services may take the following actions:

- (a) *Drainage entries.* Take all actions on Arkansas and Minnesota drainage entries, in accordance with 43 CFR Parts 117 and 118, respectively.

(b) *Amendments of entries and patents.*

(c) *Patents.* Issue patents or their equivalent for grants of land under the authority of the Government to be issued in the name of the United States, other than patents or other conveyances which require the approval or signature of the President. Patents may be signed by the Chief of the Patent Section, or in his absence, by the Acting Chief of that section.

(d) *Cash and credit system.* Take all actions on cash and credit system and preemption entries when full payment has been made.

(e) *Private land and small holding claims.* Take all actions on:

(1) Confirmed private land claims.

(2) Small holding claims.

(f) *Railroad grants.* Approve the validity of the grant rights in regard to railroad grants and claims within such grants pursuant to 43 CFR, Part 273.

(g) *Certificates, scrip and lieu selections.* Approve the validity of scrip or other rights pursuant to 43 CFR, Parts 130 to 133, inclusive.

(h) *Disposal of specified tracts.* Take all actions in regard to the disposal of specified tracts of public lands when authorized by law.

SEC. 4.11 *Designation of acting officials.* The Chief, Division of Field Services may designate:

(a) Acting Chief, Division of Field Services. By written order, any qualified employee in his office to perform the functions of the Chief, Division of Field Services, in case of death, resignation, absence, or sickness of the Chief, Division of Field Services.

(b) Each employee who serves in such capacity in (a) above, shall prepare a memorandum to be kept in the office of the Division of Field Services, showing the date and hour of the commencement and termination of each period of his service in that capacity.

PART V—REDELEGATIONS OF AUTHORITY TO THE CHIEF, DIVISION OF ENGINEERING

AUTHORITY IN GENERAL

SEC. 5.0 *Functions of Chief, Division of Engineering.* (a) In accordance with existing policies, regulations and procedures of this Department, and under the direct supervision of the Assistant Director—Operating Services, the Chief, Division of Engineering of the Bureau of Land Management is authorized to perform all functions and sign for and on behalf of the Director all documents relating to (1) appointment of mineral surveyors, (2) acceptance of all types of surveys, and (3) approval of all types of protracted surveys.

PART VI—AUTHORITY OF HEARING EXAMINERS

AUTHORITY IN GENERAL

SEC. 6.0 *Functions of hearing examiners.* (a) Hearing examiners in cases before them for hearing and decision are authorized to exercise the powers and authority enumerated in the Federal Range Code (43 CFR Part 161) or the general rules of practice (43 CFR Part 221), whichever may be applicable, or

as specified in an order or decision of the Director or Secretary in any case.^a

AUTHORITY IN SPECIFIED MATTERS

SEC. 6.1 *Reporter's fees.* Hearing examiners in accordance with 43 CFR 221.17 and 221.75, are authorized to take all actions on payments for reporter's fees required of parties to hearings, including action upon requests of parties to be relieved of such payments.

SEC. 6.2 *Copies of records.* Hearing examiners, in accordance with existing policies, regulations and procedures of this Department, are authorized to furnish copies and exemplifications of records, including their decisions and orders.

SEC. 6.3 *Bonds.* Hearing examiners are authorized to determine the amount of any bond required pursuant to 43 CFR 185.178.

PART VII—APPEALS

SEC. 7.1 *Right of Appeal.* Any person aggrieved by the action of a State Director, Chief, Division of Field Services, hearing examiner, land office manager, district manager or their delegate may appeal to the Director, Bureau of Land Management, and from his decision to the Secretary of the Interior, pursuant to 43 CFR, Parts 161 and 221.

PART VIII—REVOCATION

Bureau of Land Management Orders No. 541, 638, and 645, as amended, are hereby revoked. Redelegations of authority pursuant to Order No. 541, not inconsistent with the delegations herein made, shall continue in force until revoked or superseded.

H. R. HOCHMUTH,
Associate Director.

[F.R. Doc. 61-8351; Filed, Aug. 30, 1961;
8:51 a.m.]

Bureau of Mines HELIUM ACTIVITY

Redelegations of Contracting Authority

Pursuant to the authority delegated in subparagraph 205.2.4A, Bureau of Mines Manual, Helium Activity Instructions, the following redelegations are hereby made:

(1) The following officials of the Helium Activity are authorized to execute and approve contracts and purchase orders up to the amounts listed, subject to the special provisions and limitations in subparagraph 205.2.4A, Bureau of Mines Manual, Helium Activity Instructions, Release No. 7, dated April 21, 1961 (26 F.R. 3759):

Division Chiefs.....	\$100,000
Chief, Branch of Property Management.....	100,000
Plant Superintendents.....	500
Assistant Chief, Division of Administration.....	500

^a The powers enumerated in Sec. 7(b) of the Administrative Procedure Act (5 U.S.C. 1001-1011) are by the terms thereof vested in the hearing examiner in any case in which the parties must be afforded opportunity for a hearing conforming with the Act.

(2) The authority contained in paragraph (1) above may not be redelegated without the approval of the Assistant Director—Helium.

(3) Helium Activity Administrative Order No. 6, dated April 30, 1959 (24 F.R. 3960), is hereby rescinded.

Dated: July 18, 1961.

P. V. MULLINS,
General Manager,
Helium Operations.

Approved:

JOE H. COOLEY,
Acting Assistant Director, Helium.

[F.R. Doc. 61-8332; Filed, Aug. 30, 1961;
8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION, INC.

Notice of Hearing on Application for Authorization To Make Charges for Inspection of Cattle

On June 4, 1943, the Texas and Southwestern Cattle Raisers Association, Inc., was issued an authorization under section 317 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 217a), to charge and collect reasonable and nondiscriminatory fees, to be paid by the owners of livestock inspected, for the inspection of brands, marks, and other identifying characteristics of livestock sold or offered for sale at those markets at which the said Texas and Southwestern Cattle Raisers Association, Inc., is registered as a market agency to determine the ownership of the livestock. The Judicial Officer of the Department, on June 28, 1961, after notice and public hearing, issued an order revoking the authorization to, and the registrations of, the Texas and Southwestern Cattle Raisers Association, effective September 1, 1961. By further order, the effective date of such revocation was postponed to November 1, 1961. The Judicial Officer, in his Decision and Order, stated that such Order does not prevent the Texas and Southwestern Cattle Raisers Association, Inc., from applying for another authorization of a limited nature.

The Texas and Southwestern Cattle Raisers Association, Inc., pursuant to the provisions of said section 317 of the Packers and Stockyards Act, 1921, has made written application to the Secretary of Agriculture for a new authorization to charge and collect at posted stockyards a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of cattle, exclusive of baby calves of dairy breeds less than one month of age, originating in or shipped from the State of Texas, for the purpose of determining the ownership of such cattle.

Notice is hereby given that a hearing will be held in The Lower Colorado River Authority Building, 3600 Lake Drive, Austin, Texas, on September 18, 19, and

20 at 10:00 a.m., central standard time, for the purpose of obtaining information to enable the Department to determine whether the requested authorization or some modification thereof should be granted to Texas and Southwestern Cattle Raisers Association, Inc.

At the hearing all interested persons will be given the opportunity to present any data, views, or arguments concerning this matter, either in person or by attorney. Any persons who desire to be heard should notify the Director, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., on or before September 13, 1961, so that arrangements may be made for the scheduling of witnesses. Written statements or briefs may be submitted at the hearing or to said Director on or before September 27, 1961. Any written statements or briefs should be filed in quadruplicate.

Done at Washington, D.C., this 25th day of August 1961.

S. R. SMITH,
Administrator,
Agricultural Marketing Service.

[F.R. Doc. 61-8343; Filed, Aug. 30, 1961;
8:49 a.m.]

Office of the Secretary TEXAS

Designation of Area for Production Emergency Loans

For the purpose of making production emergency loans pursuant to section 2(a) of Public Law 38, 81st Congress (12 U.S.C. 1148a-2(a)), as amended, it has been determined that in the following counties in the State of Texas a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

TEXAS

Cameron. Starr.
Hidalgo. Willacy.

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after June 30, 1962, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D.C. this 25th day of August 1961.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 61-8347; Filed, Aug. 30, 1961;
8:50 a.m.]

ARKANSAS AND IDAHO

Designation of Areas for Production Emergency Loans

For the purpose of making production emergency loans pursuant to section 2(a) of Public Law 38, 81st Congress (12 U.S.C. 1148a-2(a)), as amended, it has been determined that in the following counties in the States of Arkansas

and Idaho a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

ARKANSAS

Clay.

IDAHO

Adams.
Valley.

Washington.

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after June 30, 1962, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 25th day of August 1961.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 61-8346, Filed, Aug. 30, 1961;
8:50 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-3]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to December 15, 1961, the latest completion date specified in Construction Permit No. CPPR-1 for the construction of the 163,000 kilowatt (electrical) pressurized water nuclear reactor to be located at Indian Point, New York.

Copies of the Commission's order and of the application by Consolidated Edison Company of New York, Inc., are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 24th day of August 1961.

For the Atomic Energy Commission.

R. LOWENSTEIN,
Acting Director, Division of
Licensing and Regulation.

[F.R. Doc. 61-8313; Filed, Aug. 30, 1961;
8:45 a.m.]

[Docket No. 70-154]

GENERAL ELECTRIC CO.

Notice of Issuance of Amendment to License SNM-130

By application dated December 23, 1960, as supplemented December 28, 1960, March 6, June 2, and June 28, 1961, the General Electric Company, Vallecitos Atomic Laboratory, San Jose, California, applied for an amendment to its Special Nuclear Material License SNM-130 which would authorize transportation of irradiated fuel elements principally from the Vallecitos Boiling Water Reactor and General Electric Test Reactor in a specified type of cask. The initial shipments

will be from the Vallecitos Atomic Laboratory to the Commission's Idaho Chemical Reprocessing Plant.

The Commission has completed an evaluation of the shipping cask and related transportation procedures submitted by the applicant, and has found that, based upon the information and data submitted, the proposed transportation of irradiated fuel elements of the type described can be conducted without undue risk to the health and safety of the public. In making its evaluation the Commission used as criteria the standards contained in a draft of revised proposed 10 CFR Part 72, "Regulations to Protect Against Radiation in the Shipment of Irradiated Fuel Elements." These proposed regulations include requirements which cover general packaging, structural integrity, materials and methods of cask construction, shielding, criticality, heat removal, and operational testing.

Notice is hereby given that the Atomic Energy Commission has this date amended License SNM-130 to authorize the General Electric Company to ship irradiated VBWR and GETR fuel elements from the Company's Vallecitos Atomic Laboratory to the Commission's Idaho Chemical Processing Plant in the type of cask and in accordance with the procedures described in the Company's application and amendments thereto identified above, subject to the following conditions:

1. Prior to the transport of any fuel element having any break or defect in its cladding, the licensee shall completely enclose the fuel element in an internal fuel container, unless the fuel element can be carried in the cask without significant reaction or contamination of the primary coolant in excess of one-tenth of the permissible limits described in condition (8) below.

2. The licensee shall not transport or cause to be transported irradiated fuel elements in any cask which the licensee knows or has reason to believe is defective in any respect having a potentially significant adverse effect on the efficiency of the cask.

3. The licensee shall not transport irradiated fuel elements until the tests described herein have been completed and the licensee has determined that the loaded cask complies with the conditions of the license.

4. Prior to the first use of the cask the licensee shall experimentally verify the calculated heat transfer characteristics under normal conditions of transport, shall determine the effectiveness of the cask shielding and shall establish the absence of cracks, pinholes, uncontrolled voids or other defects.

5. Prior to each shipment of any cask, the licensee shall determine that the external radiation levels of the loaded cask do not exceed 200 mr/hour at the accessible surface of the cask and 10 mr/hour at 1 meter from the accessible surface.

6. Prior to each shipment of any cask the licensee shall survey representative areas of the surface of the loaded cask for external contamination. Surface contamination shall not exceed 4000 disintegrations per minute per 100 square

centimeters of beta-gamma activity or 500 disintegrations per minute per 100 square centimeters of alpha activity.

7. Prior to each shipment the licensee shall test the loaded cask with primary coolant in place for leaktightness using an internal pressure at least 50 percent higher than the maximum anticipated internal gauge pressure and in any event, not less than 5 pounds per square inch.

8. The licensee shall take a representative sample of the coolant prior to each shipment and at least 4 hours after the fuel elements have been loaded and the primary coolant is in place in the cask. The activity shall not exceed 10^{-7} curies of beta or gamma activity and 10^{-7} curies of alpha activity per milliliter.

9. The licensee shall perform periodic tests to establish that any built-in neutron poisons are effective in accordance with the approved cask design.

10. The licensee shall not transport or cause to be transported any cask containing irradiated fuel elements until the temperature of the cask and contents will comply with these maximum temperature limits: Accessible cask surface 180°F ; liquid coolant 20°F below the boiling point; fuel element surface temperature no higher than the highest of the following: (a) 300°F ; (b) The maximum temperature which the type of fuel element has maintained during at least 30 days of irradiation in an operating reactor, without failure of any portion of the fuel element, as measured directly or calculated from experimental data; or, if the type of fuel element has not been irradiated for at least 30 days, than the average temperature which the type of fuel element has maintained during the maximum period of irradiation and not less than two days; (c) 300°F below the failure temperature of the type of fuel elements, with due consideration for the irradiation and decay history of the fuel elements to be shipped in the cask. For the purpose of this section, failure temperature shall be considered to be the minimum temperature at which initially sound fuel elements of the character and amount being considered as the cask load will, within 48 hours, release to the primary coolant 100 curies of beta-gamma radioactivity or one curie of alpha radioactivity; In no case may failure temperature be taken as higher than the melting point of the fuel or cladding, whichever is lower. The cask shall be so loaded that, in the event liquid coolant should be lost, the maximum surface temperature of any fuel element will not exceed a temperature of 100°F above the temperature specified in (c) above.

11. The licensee shall determine that the internal pressure of the cask will not exceed 50 pounds per square inch gauge or 50 percent of the design pressure, whichever is less, under normal conditions of transport. The pressure relief valve shall be set to prevent exceeding 75 percent of the design pressure.

12. At least 20 days prior to the date each shipment or series of shipments is scheduled to be made, the licensee shall forward in writing the following information concerning the intended shipment or series of shipments, to the Director, Division of Licensing and Reg-

ulation, Washington 25, D.C., and to the Director, Division of Compliance, San Francisco Operations Office, Berkeley, California: Date of the proposed shipments, the proposed route, mode of transport and destination; type of cask and AEC license number under which the shipment is authorized; description of the irradiated fuel to be carried, including the type of fuel element, irradiation and cooling time, estimated maximum fission product content and estimated maximum heat output; any special conditions of shipments, such as any ruptured or leaking fuel elements, with special precautions to be taken.

In accordance with the Commission's "Rules of Practice" (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervenor within thirty days after the issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street NW., Washington, D.C. For further details see (1) the application for license amendment dated December 23, 1960, and supplements thereto dated December 28, 1960, March 6, June 2, and June 28, 1961, submitted by General Electric Company, and (2) a hazards analysis of the proposed shipping cask and related transportation procedures, prepared by the Source and Special Nuclear Materials Branch of the Division of Licensing and Regulation, both on file at the AEC's Public Document Room. A copy of item (2) above may be obtained at the AEC's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 24th day of August 1961.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of
Licensing and Regulation.

[F.R. Doc. 61-8314; Filed, Aug. 30, 1961;
8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket Nos. 11879, 12197; Order No. E-17365]

CARGO RATE MATTERS

Agreement Adopted by Joint Conference of International Air Transport Association

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of August 1961.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regu-

lations, an agreement between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conference 1-2 of the International Air Transport Association (IATA), at a meeting held in Montreal May 1-15, 1961, and designated as Agreement C.A.B. 15384. This agreement establishes the cargo rate structure to be applicable on the Atlantic for the period September 1, 1961 through March 31, 1963.¹ In addition, an agreement between the three United States flag transatlantic carriers, Agreement C.A.B. 15057, is here before the Board for disposition.²

The agreement adopted in Montreal proposes on the North Atlantic five weight break points in both directions up to the 1,000 kilogram level, and an additional weight break at 7,500 kilograms in the eastbound direction only. The rates reflect discounts from the under 45 kilogram rate ranging from 31 percent at 45 kilograms to 67 percent at 1,000 kilograms, and 69 percent for the high eastbound break point. The network of specific commodity rates now offered is to be curtailed by a substantial reduction in the number of commodity descriptions, although those descriptions which are retained appear to include certain commodities now moving in major volume and, in some instances, have been expanded to encompass one or more commodities now carried under descriptions to be eliminated. Rates for specific items at the minimum weight requirement of 45 kilograms are generally maintained at present levels, and range between 70 cents and 110 cents per kilogram, or 18.4 to 29 cents per ton-mile. In addition, high volume discounts are to be offered in a number of instances within the commodity rate structure itself, particularly in the westbound direction, at levels as low as 66 cents per kilogram or 17.4 cents per ton-mile.

The three United States transatlantic carriers, the Air Freight Forwarders Association, as well as a number of individual forwarders³ have submitted comments on the agreement and on the question of whether or not it forms an appropriate basis for permitting the direct carriers to prohibit chartering of aircraft to forwarders in westbound

¹ The proposed rate structure for application of the mid Atlantic route follows generally the pattern of North Atlantic rates and is not discussed herein in view of the Board's limited interest in this area.

² Agreement C.A.B. 15057, Docket 12197, was filed by the three United States transatlantic carriers for effect from Apr. 10, 1961, the then anticipated expiry date of the North Atlantic cargo rate resolutions. This agreement was superseded by IATA agreements extending the validity of existing resolutions through Aug. 31, 1961, approved in Orders E-16635 of Apr. 10, 1961, and E-16871 of May 31, 1961, and subsequently by the agreement adopted in Montreal, and the application for approval thereof will be dismissed as moot.

³ Additionally, comments were received from the Commerce & Industry Association of New York and several individual shippers and these comments have been considered by the Board in its analysis of the agreement.

transatlantic transportation.⁴ Both Pan American and TWA believe the rate structure has a potential for generating a substantial increase in traffic volume, in the range of 35 to 50 percent, whereas Seaboard and the forwarders anticipate little stimulation of new cargo volume. On the question of distribution of traffic, Pan American anticipates that approximately 70 percent of total volume will move under the general cargo rate scale, Seaboard a lesser proportion in the range of 57 percent, and TWA makes no estimate in this regard. The forwarders, on the other hand, expect only a limited shift in traffic, no more than 10 percent, to the general cargo rates. They generally share the view, based essentially upon the lack of high volume discounts and the retention of specific commodity rates in allegedly major traffic markets, that the agreement is not responsive to the immediate need for greatly increased cargo volume. The forwarders contend further that the spread in rates of 2 cents per pound between the eastbound 1,000 and 7,500 kilogram weight breaks is inadequate as an incentive to the development of truly large volume business.

With respect to the matter of a prohibition against chartering aircraft to forwarders, Pan American believes the agreement warrants such action in the westbound direction and TWA in the eastbound direction as well. Seaboard and the forwarders, on the other hand, are opposed and urge retention of condition (d) as now attached to Resolution 045. The forwarders further express the opinion that approval of the agreement should be restricted to a limited period, at most no longer than one year, and request that the Board undertake a continuing study of the effect of the rate structure on traffic and yields to serve as a basis for evaluating the appropriateness of subsequently extending approval for the intended duration of the agreement.

In the Board's opinion, the proposed rate structure warrants approval as a significant step toward its ultimate objective which should contribute materially toward broadening the cargo market on the North Atlantic, although it admittedly falls short of the Board's announced criteria in certain respects.⁵

⁴ Prior to the Conference and in an effort to avert a then-threatening open rate situation and facilitate an agreement, the Board announced its willingness to remove condition (d) attached to its approval of the IATA charter resolution, as it applies in the westbound direction, if the carriers concluded an agreement which would so warrant. Essentially, the Board contemplated the introduction of a number of weight break points between the 45- and 1,000-kilogram levels, representing the lighter volume shipments, and similarly break points between 1,000- and 7,500/10,000-kilogram levels, the limits of heavier volume shipments. The Board emphasized that primary reliance should be placed upon such a scale of volume discounts from the general cargo rates and that specific commodity rates should be limited to those clearly required for promotional or developmental purposes.

⁵ It is the Board's conclusion that no useful purpose would be served by limiting

No weight break is to be offered above 1,000 kilograms, except in the case of an eastbound break at 7,500 kilograms which may well be of only limited practical use to the forwarders in view of the narrow rate spread it provides. To this extent, maximum development of large volume business in scheduled service may be impeded. On the other hand, the structure provides a number of break points up to the 1,000-kilogram level which should afford the forwarders a considerable degree of flexibility for profitable consolidation within this span of volume and, in our opinion, an economic opportunity to develop new traffic.

It would appear that the agreement does, in fact, retain specific commodity rates which may well encompass a greater proportion of the total market than the Board envisaged. However, we do not believe that primary reliance upon the general cargo rate scale will be undermined to a critical extent since in a number of instances the rates for specific commodity items which are retained are set at levels exceeding the higher volume general cargo rates. Moreover, in several instances, high volume rates are provided within the specific commodity rate structure itself. Thus, rate spreads conducive to consolidation will be available for a considerable portion of the cargo for which commodity rates are provided, although the size of the rate spreads is more limited than would be the case were there no such specific commodity rates.

The question of whether or not the agreement provides a basis upon which to remove condition (d) from Resolution 045 and thereby to permit the prohibition of charters to forwarders is a close one. However, while we believe the forwarders' contentions are not without merit, the Board is of the opinion that the opportunities afforded under the agreed rate structure are of sufficient potential to lessen materially their need for charter availability. Accordingly, we are herein removing condition (d) from our approval of Resolution 045 insofar as it applies in westbound transportation from markets not primary to the United States. However, the Board intends to maintain continuing surveillance of westbound cargo transportation both as to the effectiveness and efficiency with which the rate structure serves the market and the particular circumstances which have given rise to the problems encountered in this area. With respect to eastbound transportation, the Board finds no basis upon which to change its previously expressed view that the different circumstances here encountered, particularly the absence of possible dislocations in established markets, do not support the appropriateness of comparable action as regards charter availability in this direction.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. The Board does not find the following resolutions, contained in Agreement C.A.B. 15384, to be adverse to the public interest or in violation of the Act:

approval as urged by the forwarders to a period short of that agreed to by the carriers.

CAB IATA		Title
No.	No.	
R-1	001c	Special effectiveness resolution—Cargo.
R-3	002	Standard revalidation resolution.
R-4	023b	Rounding off cargo rates—Revalidating and amending.
R-5	501	Minimum charges for cargo.
R-9	554a	North Atlantic general cargo rates.
R-10	554b	Mid-Atlantic general cargo rates.
R-11	554c	South Atlantic general cargo rates.
R-12	570	Quantity discount (definition of "consignment").

2. The Board does not find the following resolutions, contained in Agreement C.A.B. 15384, to be adverse to the public interest or in violation of the Act, provided that approval thereof shall be subject to the conditions specified with respect to each:

CAB IATA		Title
No.	No.	
R-2	011h	2-year effectiveness escape.

Provided that copies of all notices received and sent pursuant to said resolution and copies of Minutes and/or Report of any meeting which may be held shall be submitted to the Board at the time of their circulation to the carriers.

CAB IATA		Title
No.	No.	
R-13	590	Commodity Rates Board—North Atlantic.

(1) Provided that copies of all minutes of the Commodity Rates Board meetings shall be submitted to the Civil Aeronautics Board at the time of their circulation to the members.

(2) Provided that approval of said resolution does not constitute approval of the rates adopted pursuant thereto, and

(a) Rates established pursuant to said resolution which are applicable in air transportation as defined by the Federal Aviation Act of 1958, or which are combinable with rates in air transportation, shall be filed with the Board under section 412 of the Act and approved by it prior to being placed in effect;

(b) The Board will not exercise jurisdiction with respect to rates adopted pursuant to said resolution except as provided in (a) above.

CAB IATA		Title
No.	No.	
R-14	590j	Specific commodity descriptions.
R-15	590k	Specific commodity rates—North Atlantic.
R-16	590m	Specific commodity rates—Mid-Atlantic.

Provided that approval of said resolutions shall not necessarily constitute approval of any specific commodity descriptions contained therein for purposes of tariff publication.

CAB IATA		Title
No.	No.	
R-6	508	Charges for stalls.
R-7	511a	Live animals.
R-8	514	Charges for attendants accompanying consignments.
R-19	594	Special rates for carriage of aircraft.
R-20	595	Special rates for valuable cargo—Revalidating and amending.
R-21	596	Newspapers and periodicals.
R-22	597	Carriage of human remains.

Provided that to the extent rates are published in the tariffs implementing these reso-

lutions, the method of publishing such rates shall conform to Part 221 of the Board's Economic Regulations.

3. The Board finds that, on the basis of all facts presently known and the policy set forth in Order E-12304 of March 31, 1958, the following resolutions do not affect air transportation within the meaning of the Act:

CAB IATA	No. No.	Title
R-17	590n	Specific commodity rates—South Atlantic.
R-18	590q	Commodity Rates Board—Continuation of rates—South Atlantic.

4. The Board finds that its outstanding approval of Agreement C.A.B. 14684, R-25 (IATA Resolution 045), as contained in Order E-16295 of January 23, 1961, should be modified so as to remove condition (d) insofar as westbound transatlantic transportation is concerned.

5. The Board finds that the application for approval of Agreement C.A.B. 15057, Docket 12197, should be dismissed as moot.

Accordingly, it is ordered:

1. That portion of Agreement C.A.B. 15384 as set forth in finding paragraph 1 is approved.

2. That portion of Agreement C.A.B. 15384 as set forth in finding paragraph 2 is approved subject to the conditions stated therein.

3. That jurisdiction is disclaimed with respect to that portion of Agreement C.A.B. 15384 set forth in finding paragraph 3.

4. That the Board's approval of Agreement C.A.B. 14684, R-25, as set forth in Order E-16295 of January 23, 1961, is modified by amending condition (d) to read as follows:

(d) For charters in air transportation, as defined in the Act, Resolution 045 shall not prohibit the charter of aircraft to the United States international air freight forwarders, except insofar as westbound transportation on the North Atlantic is concerned.

5. That application for approval of Agreement C.A.B. 15057, Docket 12197, is dismissed.

6. That any air carrier party to the agreements, or any interested person, may, within 15 days from the date of service, submit statements in writing containing reasons deemed appropriate together with supporting data, in support of or in opposition to the Board's action herein. An original and nineteen copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statement filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL]

MABEL MCCART,
Acting Secretary.

[F.R. Doc. 61-8355; Filed, Aug. 30, 1961; 8:52 a.m.]

FEDERAL POWER COMMISSION

[Project No. 2246]

CALIFORNIA

Notice of Land Withdrawal; Correction

AUGUST 25, 1961.

Notice of land withdrawal appearing in the FEDERAL REGISTER (24 F.R. 5198-9), issued June 25, 1959, is corrected to include under T. 15 N., R. 6 E., Mount Diablo Meridian, the SW ¼ section 26.

JOSEPH GUTRIDE,
Secretary.

[F.R. Doc. 61-8321; Filed, Aug. 30, 1961; 8:46 a.m.]

[Docket No. E-7008]

GULF STATES UTILITIES CO.

Notice of Application; Correction

AUGUST 24, 1961.

In F.R. Doc. 61-8046, appearing at page 7845 of the issue for Wednesday, August 23, 1961, change the third sentence to read: "Said New Debentures will be sold pursuant to Applicant's proposed Indenture between Applicant and The American National Bank of Beaumont, Trustee, to be dated as of the first day of the month in which the New Debentures are issued."

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-8322; Filed, Aug. 30, 1961; 8:46 a.m.]

[Docket No. E-7003]

SABINE RIVER AUTHORITY OF TEXAS AND SABINE RIVER AUTHORITY, STATE OF LOUISIANA

Notice of Declaration of Intention

AUGUST 24, 1961.

Public notice is hereby given that the Sabine River Authority of Texas, Orange, Texas, and the Sabine River Authority, State of Louisiana, Baton Rouge, Louisiana (Declarants), have filed a joint declaration of intention for an investigation under section 23(b) of the Federal Power Act (16 U.S.C. 817) with respect to the proposed construction by Declarants of a hydroelectric project (Docket No. E-7003), near Leesville, Louisiana, and Wiergate, Texas, about 156.5 river miles above the mouth of Sabine River to be known as the Toledo Bend project consisting of: an earthen dam with top of dam at elevation 182.5 feet above mean sea level and about 8,600 feet long with a maximum height about 110 feet; a gated concrete spillway 440 feet long with crest elevation 145 feet above mean sea level; intake structure integral with powerhouse; outdoor type power station with three 34,500-horsepower turbines operating for maximum design discharge of 16,000 cubic feet per second, average head 67.1 feet, and three 32,000-KVA

generators with total installed capacity 86,500 kilowatts; reservoir with usable storage 1,554,000 acre-feet between elevations 162.2 and 172.0; and switchyard and appurtenant, mechanical and electrical facilities.

According to the declaration of intention, the proposed project will be constructed in the interest of water supply, hydroelectric power development, navigation and recreation.

The Commission will investigate the proposed construction and determine whether a license is required under the Federal Power Act. Any communication from persons interested in this matter may be submitted on or before October 16, 1961, to the Federal Power Commission, Washington 25, D.C. The declaration of intention is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 61-8323; Filed, Aug. 30, 1961; 8:46 a.m.]

PRESIDENT'S TASK FORCE ON EMPLOYEE-MANAGEMENT RE- LATIONS IN THE FEDERAL SERVICE

NOTICE OF HEARINGS

On June 22, 1961, the President designated a special task force to review and advise him on employee-management relations in the Federal service. The President asked the task force to study a "broad range of issues relating to federal employee-management relations, including but not limited to definition of appropriate employee organizations, standards for recognition of such organizations, matters upon which employee organizations may be appropriately consulted, and the participation of employees and employee-representatives in grievances and appeals."

The President specifically provided that in the course of this study employees and employee organization representatives, along with department and agency officials and other interested groups and citizens shall be given an opportunity to present their views for the consideration of the task force. Questionnaires on existing practices have been distributed to government agencies and departments and to employees organizations. As a further measure the task force will hold public hearings in Washington and six other cities.

As the task force is required to report to the President on November 30, 1961, it will be necessary to restrict the period of the hearings, but arrangements will be made to receive written statements from any persons or organizations that cannot be scheduled during the actual hearings.

1. *Place and date of hearings.**City and Dates*

Washington, D.C., Sept. 13 and 14, 1961.
 New York City, Sept. 19, 1961.
 Dallas, Sept. 19, 1961.
 Chicago, Sept. 21, 1961.
 Denver, Sept. 21, 1961.
 Atlanta, Sept. 25, 1961.
 San Francisco, Sept. 25, 1961.

2. *Purpose of hearings.* The hearings have been set up to obtain the views of interested individuals or groups on employee-management relations within the Federal civil service. Those appearing at the hearings may wish to speak, in accordance with their interests, on one or more of the following topics:

(a) The employee's right to join or not to join an employee organization, including protection against discrimination in the exercise of this right.

(b) Ways in which the Federal government should recognize and deal with employee organizations; type of organizations that should be recognized for this purpose; forms of recognition, e.g., exclusive, multiple, members-only.

(c) Ways in which the representative status of an employee organization may be established, e.g., by check of designations or authorizations, by an election, by other methods; the question as to whether an agency, prior to recognizing and dealing with an employee organization, should or may require the organization to establish that it represents a majority or a substantial number of employees.

(d) Criteria for determining an appropriate employee unit or grouping for dealing with employee organizations, e.g., government-wide, agency-wide, individual bureau, division, installation, craft or class, or other criteria.

(e) The use of government space or time for meetings of employee organizations, or for meetings between employees and management; other services to employee organizations.

(f) Matters which should come within the scope of dealings between employee organization and management officials; matters which should be excluded; matters which are or should be covered by statute as against matters which are or should be within the discretion of the Federal executive.

(g) Procedures to be adopted when agreement is not reached on conditions of employment or on grievances, e.g. third party intervention, mediation, arbitration, fact finding; permanent as against temporary panels.

(h) Ways in which understandings reached should be recorded, e.g., memo of understanding, exchange of letters, written agreement, executive order.

(i) The organization and representation of employee groups with special problems, such as guards, police, and security personnel; membership and participation in employee organizations by supervisory and policy making employees and officials.

(j) Safeguards to assure that the special consideration of the public service are met in employee-management relations in the Federal service; recognition

of the limitations on officials of the executive branch to determine or modify policy formulated by the executive branch, matters bearing on the correlation of the interest of employee organizations with the public interest.

3. *Who may appear.* The views of citizens and organizations with an interest in the subject described above will be welcomed by the task force. The limitations on hearing time require that appearances be scheduled in advance. Any person or organization wishing to appear should write the Secretary of Labor, Washington, D.C., giving their name and address, stating their interest in this matter, the city in which they wish to appear, and the amount of time desired. Applications for appearance must be post-marked not later than September 1, 1961. Persons and organizations to be scheduled will be notified of the exact time and place of their appearance.

In the event it is not possible to allocate time to all who wish it, written statements will be solicited from all those who cannot be scheduled to appear. Any individual or organization may submit a written statement, without necessarily requesting permission to appear at the hearings.

4. *Written statements.* The task force wishes to encourage the submission of written statements in advance of the hearings. Such statement should be submitted in duplicate to the Secretary of Labor not later than September 8, 1961.

5. *Transcript.* A verbatim transcript of the hearings will be made. Persons may make arrangements with the official reporter to purchase copies of the transcript. A copy will also be available for inspection at the offices of the President's Task Force on Employee-Management Relations in the Federal Service, Veterans of Foreign Wars Building, 200 Maryland Avenue NE., Washington, D.C.

6. *Conduct of hearings.* The Secretary of Labor, chairman of the task force, will preside at the opening hearings in Washington, in the company of other members of the task force which is composed of the following officials: The Secretary of Defense, the Postmaster General, the Secretary of Labor, the Director of the Bureau of the Budget, the Chairman of the Civil Service Commission (task force vice-chairman), and the Special Counsel to the President. A member of the task force, or his alternate, will preside as chairman at each of the additional hearings.

7. *Who may attend.* All hearings scheduled by this announcement will be open to any member of the public.

8. *Further information.* Any requests for further information should be addressed to the Secretary of Labor, Washington, D.C.

Signed at Washington, D.C., this 25th day of August 1961.

ARTHUR J. GOLDBERG,
Chairman.

[F.R. Doc. 61-8334; Filed, Aug. 30, 1961;
 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3983]

CENTRAL OPERATING CO.

Notice of Filing Regarding Charter Amendment, Reduction of Par Value of Common Stock, and Pay- ment of Dividend Out of Capital Surplus

AUGUST 24, 1961.

Notice is hereby given that Central Operating Company ("Central") New Haven, W. Va., a public-utility subsidiary company of American Electric Power Company, Inc. ("American"), a registered holding company, has filed a declaration and an amendment thereto, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(a) thereof and Rule 46(a) thereunder as applicable to the proposed transactions. Appalachian Power Company ("Appalachian") and Ohio Power Company ("Ohio Power"), also public-utility subsidiary companies of American, each own 50 percent of Central's outstanding \$100 par value common stock and each purchased such stock for cash at \$100 per share. All interested persons are referred to the declaration on file at the office of this Commission for a statement of the transactions therein proposed, which are summarized as follows:

Central has on hand approximately \$270,000 for which it has no foreseeable need and proposes to distribute this amount to its owner companies as a partial liquidating dividend payable out of capital surplus. In order to accomplish this, Central proposes to amend its Certificate of Incorporation to change the par value of its 80,000 authorized shares of common stock from \$100 to \$94 per share. This will result in transferring to capital surplus an aggregate of \$270,000 applicable to the 45,000 outstanding shares of common stock. All legal fees and expenses in connection with the proposed transactions are estimated to aggregate not in excess of \$250 and will be paid by Central. The declaration states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than September 11, 1961, request this Commission in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon declarant, and proof of service (by affidavit, or in the case of an attorney-at-law by certificate)

filed or dispatched contemporaneously with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 61-8336; Filed, Aug. 30, 1961;
8:49 a.m.]

[File No. 812-1241]

ROSENDALE FUND, INC.

Notice of Filing of Application for an Order of Exemption of Small Closed-End Investment Company

AUGUST 24, 1961.

Notice is hereby given that Rosendale Fund, Inc. Ulster County, N.Y. ("Applicant"), a corporation organized under the laws of the State of New York, has filed an application and amendments thereto pursuant to section 6(d) of the Investment Company Act of 1940 ("Act") and Rule 6d-1 promulgated thereunder, for an order of the Commission exempting it from the following provisions of the Act:

Section 7; section 8(b), except the requirement to file the information required by Items 3, 4, and 5 of Form N-8B-1 and to report to the Commission any changes thereafter in respect thereof; section 14; section 20(a); section 23(c); section 24(d) insofar as such section makes inapplicable the provisions of section 3(a) (11) of the Securities Act of 1933 to any securities of a registered investment company; section 30(a); section 30(b), except that Applicant shall, pursuant to section 30(b) (2), file with the Commission copies of all reports sent to stockholders pursuant to section 30(d) of which the annual reports to stockholders shall be accompanied by a certificate of independent public accountants pursuant to section 30(e); section 30(f), to the extent that the subject persons shall not be required to file reports more than once each six months; and section 32(a); provided, that the Applicant shall continue to comply with the provisions of section 6(d) (1) and 6(d) (2) of the Act and shall at all times maintain its classification as a closed-end company as defined in section 5(a) (2) of the Act.

The application makes the following representations:

Applicant, a closed-end, non-diversified management investment company, was organized on February 18, 1959. It has no operating or financial history. No securities of the company have been issued. Its authorized capital stock consists of 20,000 shares of \$5.00 par value common stock. The company has issued no shares and has no securities outstanding. The company proposes to offer 18,000 shares of common stock solely to

residents of the State of New York at a public offering price of \$5.00 per share, aggregating \$90,000. The company proposes to issue 580 shares to directors at \$5.00 per share and has subscriptions for 1146 shares at the same price.

The company proposes to invest the proceeds from the sale of its stock in securities listed on the major stock exchanges throughout the United States and Canada and also in commodity contracts. The company does not propose to diversify its investments within the meaning of the Investment Company Act of 1940. Its fundamental investment policy will be to invest its funds primarily for short and long term capital appreciation rather than for income.

Section 6(d) of the Act provides that the Commission shall exempt a closed-end investment company from any or all provisions of the Act, but subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, if the aggregate sums received from the sale of all its securities, outstanding and proposed to be offered, do not exceed \$100,000 and if the sale of its securities is restricted to the residents of the state of its organization.

Section 6(e) of the Act provides that if, in connection with any order exempting any investment company from any provision of section 7, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of the Act pertaining to registered investment companies shall be applicable in respect to such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

The Division of Corporate Regulation has recommended that exemptions be granted Applicant from the aforementioned provisions of the Act and the respective rules and regulations promulgated under each of such provisions with the exception of section 24(d) from which the Division recommends that no exemption be granted, and that Applicant shall be subject to all other provisions of the Act and rules and regulations thereunder as though Applicant were a registered investment company.

Notice is further given that any interested person may, not later than September 6, 1961 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 reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission 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.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 61-8337; Filed, Aug. 30, 1961;
8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 10-9d, Amdt. 1]

OFFICE OF THE DEPUTY ADMINISTRATOR FOR FINANCIAL ASSISTANCE DEPUTY DIRECTOR, OFFICE OF LOAN PROCESSING

Delegation Relating to Financial Assistance

Delegation of Authority No. 10-9d (26 F.R. 3846), is hereby amended by:

1. Deleting subsection I.A. 2 in its entirety and substituting the following in lieu thereof:

2. To decline business and disaster loan applications, except when either the Regional Financial Assistance Division Chief or the Regional Director has recommended approval.

Effective date: August 10, 1961.

PIERRON R. LEEF,
Acting Director,
Office of Loan Processing.

[F.R. Doc. 61-8338; Filed, Aug. 30, 1961;
8:49 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

EWALD WESTPHAL

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property, and Location

Ewald Westphal Kamp-Lintfort, Germany;
Claim No. 58102; Vesting Order No. 559;
\$2,121.57 in the Treasury of the United States.

Executed at Washington, D.C., on August 25, 1961.

For the Attorney General.

[SEAL]

PAUL V. MYRON,
Acting Director,
Office of Alien Property.

[F.R. Doc. 61-8353; Filed, Aug. 30, 1961;
8:51 a.m.]

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FEDERAL REGISTER
OF THE UNITED STATES
VOLUME 26 1934 NUMBER 168

Washington, Thursday, August 31, 1961

Regulations Governing Small Business
Investment Companies

Rules and Regulations

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter II—Small Business Administration

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

On July 8, 1961, notice of proposed rule making regarding the regulations governing the establishment and operation of small business investment companies under the Small Business Investment Act of 1958, as amended, was published in the FEDERAL REGISTER (26 F.R. 6155-6188). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so proposed with changes resulting from said consideration are hereby adopted as set forth below.

The subject regulations shall be effective upon publication in the FEDERAL REGISTER.

Dated: August 29, 1961.

JOHN E. HORNE,
Administrator.

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107.0106	Employment of funds provided small business concerns by Licensees (interpreting § 107.715 (a)).

AUTHORITY: §§ 107.11 to 107.0106 issued under sec. 308, Pub. Law 85-699, 72 Stat. 694; 15 U.S.C. 687.

§ 107.11 Scope of part.

(a) The Small Business Investment Act of 1958 became law August 21, 1958. Such Act has been amended by the Small Business Investment Act Amendments of 1960, which became effective June 11, 1960.

(b) The purpose of the Act is to improve and stimulate the national economy in general and the small business segment thereof in particular.

(c) This purpose is to be accomplished by the establishment of a program designed to stimulate and supplement the flow of private equity capital and long-term loan funds necessary for the sound financing of the business operations of small-business concerns and for their growth, expansion and modernization.

(d) Under the program:

(1) SBA will select and approve (license) private corporations (chartered

under State law to conduct the activities described in subparagraph (2) of this paragraph) which shall thereupon become eligible for (i) financial assistance from SBA under the Act, (ii) discretionary exemptions under the Securities Act of 1933 and the Trust Indenture Act of 1939, as well as a specified exemption under the Investment Company Act of 1940, (iii) such further benefits and privileges as may ever be provided by Federal or State laws for corporations licensed by SBA under the Act, and (iv) tax benefits specified under the Technical Amendments Act of 1958, as amended in 1959. The stockholders of such corporations are eligible also for tax benefits specified under the Technical Amendments Act of 1958.

References:

1. Securities Act of 1933, 15 U.S.C.A. secs. 77a-77aa.
2. Trust Indenture Act of 1939, 15 U.S.C.A. secs. 77aaa-77bbbb.
3. Investment Company Act of 1940, 15 U.S.C.A. secs. 80a-1-80a-52.
4. Securities and Exchange Commission Regulations issued pursuant to the above Acts relating to small business investment companies.
5. Section 57, Technical Amendments Act of 1958, Public Law 85-866, as amended by Public Law 86-376, 73 Stat. 700.
6. Personal Holding Company Tax Section 541, Internal Revenue Code of 1954, 26 U.S.C.A. secs. 541-547.
7. Sections 1.541-1-1.547-7 of the Income Tax Regulations of the Treasury Department (26 CFR 1.541-1 to 1.547-7) as amended.
8. State incorporation laws.
9. Bank Holding Company Act of 1956, 12 U.S.C.A. secs. 1841-1848.
10. Regulations of the Federal Reserve Board under Bank Holding Company Act, 12 CFR 222.1-222.108, and in particular, Regulation 222.107.

(2) Private corporations are to be chartered under State law for the specific purpose of providing funds to small business concerns (as defined by SBA) through the purchase of Equity Securities (as defined in § 107.501) of such concerns and through the disbursement of long-term loans to such concerns. Such corporations will be authorized to provide consulting and advisory services to small business concerns on a fee basis for such services actually rendered. All of said activities will be subject to regulations prescribed by SBA. The corporations will be examined by SBA and will make reports as and when required by SBA.

(e) The program will be administered in such a manner as to insure the maximum participation of private financing sources.

(f) Any financial assistance provided under the Act cannot result in a substantial increase of unemployment in any area of the country.

(g) The program will be administered by SBA through its Small Business Investment Division.

(h) The provisions of section 16 of the Small Business Act are extended speci-

cally to the functions under the Small Business Investment Act of 1958. That section requires that whoever makes a statement knowing it to be false, or willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of SBA, or for the purpose of obtaining money, property, or anything of value, shall be punished by fine or imprisonment or both.

§ 107.12 Definitions.

Act. "Act" means the Small Business Investment Act of 1958, as amended.

Administrator. "Administrator" means the Administrator of SBA.

License. "License" means the grant (evidenced by a certificate issued to the Licensee and registered in the Washington office of SBA) by SBA to a Proposed Operator, in consideration of the representations and offers contained in the License Application, of authority to conduct its business, in the territory described in the License, in accordance with and subject to the provisions and purpose of the Act and regulations of SBA prescribed thereunder; and includes the privilege of receiving financial assistance under the Act and qualifies such Licensee and its stockholders for any and all other rights, privileges and benefits available to a Licensee and its stockholders under the provisions of the Act or any other Federal or State laws.

License Application. "License Application" means the request to SBA for a License, by the Proposed Operator, executed and submitted on SBA Form No. 415, which shall incorporate by reference the Proposal as a part of said request.

Licensee. "Licensee" means a corporation which: Is enfranchised and chartered under State law, to conduct (in accordance with and subject to the provisions and purpose of the Act and in accordance with and subject to regulations prescribed by SBA under the Act) in the territory in which its operations are to be carried on, only the activities described under Title III of the Act; has executed and submitted a License Application; and, has been granted a License.

Operating territory or area. "Operating territory," "area in which operations are to be carried on," "areas in which Licensee operates," and similar terms, mean the territorial area or areas in which a Licensee is authorized by the terms of its License to purchase Equity Securities (as defined in § 107.501) from, to make loans to, and to provide consulting and advisory services to any small business concern (regardless of the residence, domicile, place of business, or location of the property of such small business concern) so long as such purchase, loan or service does not constitute or involve doing business in any State not included in said territorial area or areas so as to require the Licensee to register or otherwise comply with the laws of such State as a foreign corporation.

Proponents. "Proponents" means individuals or other entities which execute and submit a Proposal.

Proposal. "Proposal" means the information and representations contained in SBA Form No. 414, submitted by Proponents with the request that SBA consider the same and issue an approval for the Proponents to proceed with all action (including the incorporation of the Proposed Operator) necessary to qualify the Proposed Operator for execution and submission of a License Application. A Proposal is in effect a preliminary License Application (see definition of "License Application").

Proposed Operator. "Proposed Operator" means the company identified and described in a particular Proposal and recommended therein as a prospective Licensee.

SBA. "SBA" means the Small Business Administration.

SBID. "SBID" means the Small Business Investment Division of SBA.

Small business concern. For the purpose of size, a "small business concern" is one which meets the applicable standards and criteria set forth under Part 121 of this chapter.

PROPOSAL

§ 107.101 Information, instructions and forms.

Detailed printed information, instructions and SBID Forms covering the procedure and basic requirements in the grant of a License, may be obtained from SBID through the Washington or any Regional or Field Office of SBA.

§ 107.102 Proposal.

(a) A Proposal shall be submitted on SBA Form No. 414¹ to SBID through a Regional Office of SBA.

(b) Such proposal shall include such further matters, in addition to those matters required by SBA Form 414, as SBA may require by regulation or otherwise or which may be submitted by the Proponents as part of the Proposal.

(c) In considering whether to issue a License to a Proposed Operator, due regard will be given, among other things, to the need for financing of small business concerns of the type intended to be assisted by the Proposed Operator, provided the License shall not grant to the Licensee any exclusive right in any area or areas set forth therein.

(d) Counsel for the Proponents or Proposed Operator shall submit as a part of the Proposal his opinion that, among other things, the Proposed Operator is or can be chartered under State law to conduct (in the territory in which its

¹ Filed with the Federal Register Office as part of the original document. Copies of SBA Form 414, Proposal To Operate a Small Business Investment Company, together with instructions, are available at the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C.

operations are to be carried on) only the activities described under Title III of the Act, in accordance with and subject to the provisions and purpose of the Act and in accordance with and subject to regulations prescribed by SBA under the Act.

(e) Immediately upon receipt by SBID of each Proposal, SBID shall register, assign an identification number thereto, and acknowledge receipt of the same.

(f) The submission of a Proposal shall constitute an authority to SBA to proceed with the consideration thereof and to conduct without liability to SBA or anyone acting for or on behalf of SBA, any investigations and inquiries with respect to any or all matters, individuals or other entities referred to in the Proposal, as may be determined by SBA.

(g) After consideration of a Proposal SBA shall notify the Proponents, either:

(1) That the Proponents may proceed with all action necessary to qualify the Proposed Operator for execution and submission of a License Application; which action shall be completed and a License Application submitted by the Proposed Operator within 90 days from the date of said notice from SBA, unless such period is extended by SBA; and SBA shall be committed by said approval to issue a license if the terms and conditions of the approved proposal are completed; or

(2) That such Proposal is insufficient.

(i) If, in the opinion of SBA, the sufficiency of such Proposal cannot be established through further information or action, SBA shall close the same and so notify the Proponents.

(ii) If, in the opinion of SBA, the sufficiency of such Proposal may be established through further information or action, SBA shall simultaneously with such notice allot a period of time within which the Proponents may endeavor to establish the sufficiency of such Proposal and resubmit the same.

(iii) A resubmitted Proposal which is again determined by SBA to be insufficient or a rejected Proposal which is not resubmitted within any such allotted period, shall be closed permanently by SBA and the Proponents so notified.

§ 107.103 Preliminary approval of corporate instruments and proceedings.

Unless and until SBA gives written notice to the Proponents that it does not object to the instruments and proceedings contemplated for use in the organization or qualification of the Proposed Operator as a Licensee, said Proponents should not take any final action to conclude any such organization and qualification.

§ 107.104 Charter requirements.

The charter of a Licensee shall constitute a grant of being or continued existence as a corporate entity, by a State, in the form of a permit or certificate of incorporation or amendment or otherwise, with the specific and sole powers and authority recited below. Such powers and authority can be expressed and granted in any manner consistent with the laws of such State and

requirements of the State officials charged with such responsibilities, provided that each such charter shall contain the following provision:

This corporation is organized and chartered expressly for the purpose of operating under the Small Business Investment Act of 1958, as amended, and will operate in the manner and shall have the powers, responsibilities and be subject to the limitations provided by said Act and the regulations issued by the Small Business Administration thereunder.

Said powers and authority shall be as follows:

- (a) To act under a particular name;
- (b) To issue a maximum number of shares of one or more types of its stock;
- (c) To borrow money and issue its debenture bonds, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as SBA may prescribe;
- (d) To provide equity capital to small-business concerns (as defined by SBA) under the conditions authorized by section 304 of the Act and regulations, with the right to sell or dispose of securities so acquired in such manner and under such terms and conditions as the Licensee shall determine.
- (e) To make long-term loans (as defined by SBA) to small-business concerns (as defined by SBA) for the purposes and in the manner and subject to the conditions described in section 305 of the Act; with the right to sell or dispose of such loans in such manner and under such terms and conditions as the Licensee shall determine;
- (f) To acquire and make commitments for obligations and securities of a single enterprise only within the limitations established by section 306 of the Act, unless such limitations are waived by SBA;
- (g) To undertake its operations in cooperation with banks or other financial institutions, as contemplated under section 308(a) of the Act;
- (h) To provide consulting and advisory services to small business concerns on a fee basis;
- (i) To invest funds not reasonably needed for its current operations only in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;
- (j) To conduct its operations in accordance with and subject to regulations prescribed by SBA;
- (k) To submit to and pay for examinations made by direction of SBA by examiners selected, employed or approved by SBA;
- (l) To make reports to SBA at such times and in such form as SBA may require;
- (m) To conduct its operations in a specified area or areas, without limitation, however, as to the residence, domicile, or place of business of parties with which it transacts its business or otherwise deals;
- (n) To regulate its business and conduct its affairs in a manner not inconsistent with the Act and regulations prescribed by SBA thereunder;
- (o) To adopt and use a corporate seal;

(p) To have succession for a period of at least thirty years, subject to dissolution in accordance with State law; and subject to forfeiture of its License for violation of law or of regulation issued under the Act;

(q) To make contracts;

(r) To sue and be sued, complain, and defend in any court of law or equity;

(s) By its board of directors, to appoint such officers and employees as may be deemed proper, define their authority and duties, fix their compensation, require bonds of such of them as it deems advisable and fix the penalty thereof, dismiss such officers or employees, or any thereof, at pleasure, and appoint others to fill their places;

(t) To adopt bylaws regulating the manner in which its stock shall be transferred, its officers and employees appointed, its property transferred, and the privileges granted to it by law exercised and enjoyed;

(u) To maintain a principal office (which shall be designated in its Articles) and to establish branch offices or agencies within its operating territory, subject to the approval of SBA: *Provided, however*, That, whether to obtain a grant of power and authority from the State to establish branch offices or agencies shall be optional with the incorporators;

(v) To acquire, hold, operate, and dispose of any property (real, personal, or mixed) whenever necessary or appropriate to the carrying out of its lawful functions;

(w) To exercise such incidental powers as may reasonably be necessary to carry out the business for which the corporation is established.

§ 107.105 Waiver of paragraph required by § 107.104.

In the event SBA, for cause satisfactory to SBA, waives the inclusion in a Licensee's State charter of that portion of the general provision (set forth in the second sentence of § 107.104) which identifies the manner of operation, powers, responsibilities, and limitations of the Licensee by specific reference to the Act and regulations issued thereunder: The charter of such a Licensee, in lieu of such identification by reference, shall set forth specifically and in detail the manner of operation, powers, responsibilities, and limitations of the Licensee which are required of a Licensee as specified in and contemplated by the Act and regulations and to the extent and in a manner satisfactory to SBA. Further, any such Licensee shall, from time to time, amend its charter in order to conform its charter purpose, manner of operation, powers, responsibilities, and limitations with those contained in and contemplated by the Act and the regulations issued by SBA thereunder from time to time.

§ 107.106 Source of charter.

(a) The charter of a Licensee shall be obtained from the State in which the Licensee operates or if the Licensee operates in more than one State said charter shall be obtained from any State within the entire area or areas in which the Licensee operates.

(b) A Licensee conducting operations beyond the jurisdiction of the State from which it receives its charter, shall obtain authority or otherwise be entitled to conduct its activities in such other State or States in accordance with the provisions of its charter, the Act and regulations prescribed thereunder.

§ 107.107 Organization of a Licensee.

A Proposed Operator shall conform to the laws of the State of its incorporation with respect to the number and qualification of incorporators and directors.

LICENSE

§ 107.201 License Application.

(a) A License Application may be submitted upon SBA Form No. 415^{*} by the Proposed Operator only after issuance by SBA of the notice referred to under § 107.102(g)(1) and in accordance with instructions contained in such notice. Such License Application shall be submitted within 90 days after issuance of said notice.

(b) After submission of a License Application SBA will issue a License to the Proposed Operator if the representations, terms and conditions of the Proposal and any additional matters set forth in the notification by SBA to proceed are fully and exactly complied with.

§ 107.202 Prerequisites for issuance of License.

Prior to the issuance of a License, each Proposed Operator shall have:

(a) Executed and submitted a License Application.

(b) Received a corporate charter or franchise under State laws to operate as a Licensee.

(c) Submitted evidence satisfactory to SBA that it has a paid-in capital and paid-in surplus equal to at least \$300,000 in cash or eligible Government securities as provided in § 107.302(a) (exclusive of organizational expenses) on hand or in escrow contingent solely on the issuance of a License, as required by section 302(a) of the Act (including any commitment of SBA as described under § 107.301).

§ 107.203 Necessity for and nature of License.

Only upon issuance by SBA of a License to a Proposed Operator, shall such corporation be authorized to operate under the Act. A License is not transferable in any manner.

§ 107.204 Fees for License.

A License fee of \$100 shall be tendered to SBA by a Licensee, simultaneously with the filing of SBA Form 415.

^{*} Filed with the Federal Register Office as part of the original document. Copies of SBA Form 415, License Application, together with instructions, are available at the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C.

§ 107.205 Surrender of License.

A Licensee may apply to SBA for surrender of its License. Such surrender may be authorized under such conditions as may be required by SBA in connection therewith.

CAPITAL REQUIREMENTS**§ 107.301 Initial capital and surplus of Licensee.**

(a) As a condition to the issuance of a License, the Proposed Operator shall have a paid-in capital and paid-in surplus, as required under § 107.202(c).

(b) The management of a Licensee shall encourage the maximum investment therein of private funds.

(c) To the extent that cash funds are not available to a Licensee from private sources to provide any amount of said initial minimum capital and surplus in excess of \$150,000, SBA, upon request contained in the License Application, may purchase or agree to purchase debentures of such Licensee in an amount equal to such deficiency but not in excess of \$150,000. Any such debentures (which may be prepaid by Licensee without penalty) so purchased by SBA under the provisions of section 302(a) of the Act shall be subordinate to any other debenture bonds, promissory notes, or other obligations which may be issued by such Licensee as determined by SBA, and while treated and accounted for as a debt transaction, shall be deemed a part of the paid-in capital and paid-in surplus of such Licensee for the statutory purposes of sections 302(a), 303(b), and 306 of the Act.

(d) The unavailability of such cash funds from private sources shall be deemed to exist upon submission by the Proposed Operator of a certificate that such funds are not available for the subject venture.

(e) Any such subordinated debentures of a Licensee purchased under section 302(a) of the Act shall contain such terms and conditions, including provisions with respect to subordination, as shall be determined by SBA. Such debentures shall be purchased from only one Licensee among Licensees having substantially the same beneficial ownership. Interest upon the amount of such debentures shall be at the rate of 5 percent per annum, and amortization shall commence no later than the beginning of the second half of the term thereof. Maturities shall not exceed twenty years.

(f) The agreement of SBA to purchase any such subordinated debentures of a Licensee to provide funds to satisfy the initial minimum capital and surplus requirements of a Licensee, under and in accordance with the provisions of section 302(a) of the Act, shall constitute the equivalent of cash in an amount equal to the amount of such SBA commitment, which amount shall thereupon be deemed to be paid in as a part of the initial minimum capital and surplus of such Licensee for the statutory purposes of sections 302(a), 303(b) and 306 of the Act. A commitment charge at the rate of one-twelfth of one percent of the principal amount of the commitment outstanding for each thirty-day period shall be paid to SBA by such Licensee

beginning with the first day after the first thirty days following such commitment. Disbursement of such commitment shall be requested by the Licensee at any time prior to the end of one year but such commitment shall be reduced to the extent private equity funds are acquired for such purpose prior to any disbursement by SBA on account of such commitment.

(g) The proceeds derived from the sale of any such subordinated debentures of a Licensee under section 302(a) of the Act shall be used to provide equity capital and make long-term loans to small business concerns: *Provided, however*, That Licensee cannot use such proceeds for investments and loans involving enterprises which derive a substantial portion of their gross income from the sale of alcoholic beverages and accordingly within 30 days after the disbursement of any funds to Licensee under authority of section 302(a) of the Act, and thereafter during period in which any such subordinated debentures remain unpaid, the Licensee shall maintain assets consisting of cash, eligible Government obligations, and portfolio investments and loans involving enterprises which do not derive a substantial portion of their gross income from the sale of alcoholic beverages (exclusive of all investments and loans already in the Licensee's portfolio at the time that the proceeds of such subordinated debentures were disbursed), equal in face value to no less than the unpaid principal of such subordinated debentures.

§ 107.302 Consideration for stock of Licensee.

(a) Shares of stock of any class in a Licensee which represent the initial minimum capital required by § 107.202(c) shall be issued by Licensee only in consideration for the simultaneous payment of cash or upon the simultaneous transfer to the Licensee of direct obligations of, or obligations guaranteed as to principal and interest by, the United States. Shares of stock of any class in a Licensee which represent no part of the initial minimum capital and surplus required by § 107.202(c) may be issued in consideration for the simultaneous payment of cash; upon the simultaneous transfer to the Licensee of direct obligations of, or obligations guaranteed as to principal and interest by, the United States; as stock dividends; in connection with the reclassification of the stock of the Licensee; for services previously rendered to the Licensee; or for physical assets to be employed currently in the operation of the Licensee.

(b) Options upon the stock of a Licensee may be granted to an individual only upon approval of at least a majority of such Licensee's stockholders and only in lieu of salary or in payment for services actually rendered such Licensee, and only if:

(1) At the time such option is granted the option price is at least 85 percent of the fair market value at such time of the stock subject to the option;

(2) Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him;

(3) Such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of such Licensee. This subparagraph shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option by its terms is not exercisable after the expiration of five years from the date such option is granted. For purposes of this subparagraph—

(i) Such individual shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(ii) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and

(4) Such option by its terms is not exercisable after the expiration of ten years from the date such option is granted.

§ 107.303 Maintenance of unimpaired capital.

(a) Each Licensee shall maintain at all times an unimpaired capital.

(b) An impairment shall be deemed to exist when the retained earnings deficit exceeds fifty percent (50%) of the combined fully paid capital stock issued and outstanding and paid-in surplus. For the purpose of this determination, subordinated debentures issued to SBA pursuant to section 302(a) of the Act will not be considered a part of capital and surplus.

BORROWING BY SBIC**§ 107.401 Conditions and limitations upon borrowing power of Licensee.**

(a) Without the prior consent of SBA, the ratio of the total amount of outstanding indebtedness of a Licensee to the paid-in capital and paid-in surplus (including the unpaid balance due SBA under any debentures acquired under section 302(a) of the Act) of such Licensee shall not exceed four to one.

(b) The Proposal shall set forth in detail the policy, plans, and all other information with respect to prospective borrowings, if any, to be made by a Proposed Operator as a Licensee from any source other than SBA.

§ 107.402 SBA operating loans to Licensees under section 303 of the Act.

(a) To the extent that a Licensee is unable to borrow or otherwise secure operating funds from private sources, SBA may lend or agree to lend to such Licensee funds for such purpose up to a total amount outstanding at any one time not in excess of fifty percent of the paid-in capital and paid-in surplus of such Licensee, including as a part of such capital and surplus any outstanding balance due SBA under subordinated debentures purchased by SBA under the provisions of section 302(a) of the Act.

(b) The unavailability of such funds from private sources shall be deemed to exist upon submission to SBA by the

Licensee of a certificate that the same are not available for such purpose.

(c) Such loans may be prepaid at any time without penalty. Interest upon such loans shall be at the rate of five percent per annum and the maturities thereof shall not exceed twenty years: *Provided, however, That* SBA in its discretion, may renew or extend the maturity thereof. In the absence of an amortization plan by the borrower satisfactory to SBA, said loans shall begin amortization during the final half of the term thereof; for example, if the maturity of such loan is ten years, then amortization shall begin in the sixth year of such loan at an amortization rate of not less than twenty percent per annum. Any such loan or loans made by SBA under the authority of section 303(b) of the Act shall contain such further terms and conditions as shall be determined by SBA.

§ 107.403 Purpose and loan requirements.

(a) The management of a Licensee should plan to use loan funds available under section 303(b) as a source of funds which may be obtained, repaid and obtained again as needed to protect its interest in its investments and loans until paid-in capital is available from private sources, thus obviating the necessity which would otherwise exist of maintaining substantial amounts of uninvested cash for such purposes. Loans under this section may be obtained by a Licensee in furtherance of its stated investment and loan policy. Disbursement of any such loans will be subject to the execution and delivery of the certificate required by § 107.709.

(b) The proceeds of any loan obtained by Licensee under the provisions of section 303(b) of the Act shall be used to provide equity capital and make long-term loans to small business concerns: *Provided, however, That* Licensee cannot use such proceeds for investments and loans involving enterprises which derive a substantial portion of their gross income from the sale of alcoholic beverages and accordingly within 30 days after the disbursement of any loan funds to Licensee under authority of section 303(b) of the Act, and thereafter during the period in which any such loan, or any part thereof remains unpaid, the Licensee shall maintain assets consisting of cash, eligible Government obligations, and portfolio investments and loans involving enterprises which do not derive a substantial portion of their gross income from the sale of alcoholic beverages (exclusive of all investments and loans already in the Licensee's portfolio at the time that the proceeds of such loans were disbursed), equal in face value to no less than the unpaid principal of such loan.

EQUITY CAPITAL

§ 107.501 Equity capital for incorporated small business concerns.

(a) Each Licensee shall constitute a source of Equity Capital for incorporated small business concerns; which capital shall be supplied in a manner and under terms consistent with regulations of the Administration.

(b) "Equity Capital" means funds received by an incorporated small business concern from a Licensee as the consideration for the issuance of Equity Securities by such concern to such Licensee.

(c) "Equity Securities" means:

(1) Certificates of stock of any class; *Provided, however, That* whenever any such stock contains a right to convert to another class of stock or contains rights or privileges therein in the nature of stock warrants or options, no further stock purchase warrants, options or conversion rights shall be issued in connection therewith; and

(2) Instruments which evidence a debt and which provide a right or privilege to convert all or any portion of the debt instruments into stock of the small business concern, or provide nondetachable or detachable stock purchase warrants or options, or provide both a right or privilege to convert all or any part of the debt instruments into stock and also detachable stock purchase warrants or options: *Provided, however, That* no further stock purchase warrants, options or conversion rights shall be issued in connection therewith.

(d) Equity Securities which evidence a debt may be secured by collateral.

(e) A Licensee shall not purchase or acquire any type of Equity Securities if the purpose of such purchase or acquisition is to furnish the small business concern with financing for a period of less than five years' duration. Equity Securities shall not require repayments during the first five years at a rate exceeding an average of twenty percent of principal per annum.

(f) Equity Securities which evidence a debt shall have stated maturities of not less than five years and must be callable but on such terms as may be negotiated at the time of issuance of such Equity Securities, in whole or in part, by the issuer: *Provided, That* any right to convert the debt may be exercised prior to the effective date of such call. Such securities shall be acquired by a Licensee simultaneously with the disbursement of Equity Capital and shall evidence the total principal amount, and the interest rate, required to be paid by the small business concern in consideration for the amount of Equity Capital disbursed. Equity Securities which evidence a debt may comprise an instrument or instruments in such form and substance as may be negotiated between the Licensee and said concern consistent with the Act and regulations thereunder, provided that the maturity or maturities set forth in such instrument or instruments shall not require repayment of the total principal amount evidenced by such instrument or instruments during the first five years at a rate in excess of an average of twenty percent of the total principal thereof per annum. Whenever more than one instrument is employed, each instrument shall state on the face thereof the maturity date of the particular instrument and make reference to the maturity date(s) of the other instrument(s) involved in the disbursement.

(g) Any redemption provisions of certificates of stock shall be on such terms as may be negotiated at the time

of issuance thereof, provided the redemption provisions are exercisable, in whole or in part, upon three months' notice, and provided further that any such stock which contains conversion rights may be converted prior to the effective date of such redemption.

(h) Equity Securities with maturities of less than five years may be purchased or acquired by a Licensee when necessary to protect the interests of the Licensee in previously issued long-term Equity Securities provided that similar conditions and privileges covering the long-term Equity Securities shall otherwise apply thereto. Equity Securities with maturities of less than five years' duration will not be construed "to protect the interests of the Licensee in previously issued Equity Securities" if the purpose of such short-term Equity Securities is to take care of normal short-term requirements of the small business concern.

(i) Equity Securities which are converted into stock shall be converted at a price or series of prices per share not less than the sound book value of such stock as determined at the time of the issuance of said securities: *Provided, however, That* the total purchase price of such stock which may be purchased at said price or series of prices per share shall not exceed the amount of Equity Capital provided by said securities plus the accrual of earned interest and charges on said Equity Capital to the date of conversion of said securities. "Sound book value," for the purposes hereof, shall be determined through consideration of all pertinent factors including the actual value of the assets of the small business concern and the relationship of the earnings of such concern to its invested capital.

(j) Stock purchase warrants or options issued in connection with Equity Securities shall expire not later than two years after the stated maturity date of such Equity Securities but in no event more than ten years from the date of the issuance of such Equity Securities.

(k) The purchase price per share of shares available under warrants or options acquired in connection with the purchase of Equity Securities shall be at no less than the sound book value of such shares, as defined herein, at the time the warrant or option is issued, and the total cost of such shares shall not exceed the total amount of Equity Capital provided by the Licensee at the same time as the warrant or option was issued, except as the warrant or option may provide for successive increases in the price per share of optioned shares.

(l) The purchase price per share of shares available under certificates of stock acquired as Equity Securities shall be at no less than the sound book value of such shares, as defined herein, at the time the certificates of stock are issued.

(m) Wherever Equity Securities involve debt, any Licensee may require small business concerns to refinance any or all of its outstanding indebtedness so that the Licensee is the only holder of any indebtedness of such concern.

(n) Wherever Equity Securities involve debt, any Licensee may require a small business concern to agree not to

incur any additional indebtedness without first securing the approval of the Licensee and giving the Licensee the first opportunity to finance such additional indebtedness; *Provided, however, That the Licensee shall allow appropriate exceptions for open account or other short-term credit.*

(o) Whenever a Licensee purchases or acquires Equity Securities of a small business concern, such concern shall have the right, exercisable in whole or in such part as such concern may elect, at the time of the issuance of such Equity Securities, to become a stockholder-proprietor by investing in the capital stock of the Licensee in an amount not more than five per centum of the Equity Securities purchased or acquired by the Licensee. The price of such stock sold by the Licensee to the small business concern under this section shall not be more than the higher of (1) the book value determined in conformity with generally accepted accounting principles, or (2) the fair market value. Factors which may be taken into consideration in determining fair market value may include, among others, market quotations, recent public or private sales, and the liquidating value, earnings, and dividend record of the Licensee's stock.

(p) The maximum annual cost to the issuer of Equity Securities evidencing a debt charged by any Licensee for average outstanding unpaid net funds advanced shall not exceed the lesser of (1) such maximum annual cost to issuer as may be prescribed by applicable State or local law, or (2) such maximum annual cost to issuer as may be specified in the Licensee's Proposal and License Application. Cost to issuer includes all interest and discount, as well as all fees, commissions, charges, etc., against the issuer by the Licensee at the time the Equity Securities evidencing a debt are purchased, and such fees, charges, etc., shall be treated as additional discount for this purpose.

LONG-TERM LOANS

§ 107.601 Long-term loans by Licensee to small-business concerns.

(a) Each Licensee shall constitute also a source of funds for long-term loans for the sound financing of the operations, expansion and modernization of small business concerns. Such loans shall not provide any right in a Licensee to acquire any stock or other proprietary interest in the borrower, except through the medium of collateral security.

(b) A Licensee shall not make any such loan if the purpose of such loan is to furnish the small business concern with financing for a period of less than five years' duration.

(c) Any such loan shall have a stated maturity of not less than five years and all or any part of any such loan may be anticipated by the borrower on any interest payment date upon such terms as may be negotiated at the time of disbursement of the loan. The instrument or instruments evidencing any such loan shall be acquired by a Licensee simultaneously with the disbursement of the loan funds and shall evidence the total principal amount, and the interest rate,

required to be paid by the small business concern, in consideration for the amount of loan funds disbursed. Any such loan may be evidenced by an instrument or instruments in such form and substance as may be negotiated between the Licensee and said concern consistent with the Act and regulations thereunder, provided that the maturity or maturities set forth in such instrument or instruments shall not require repayment of the total principal amount evidenced by such instrument or instruments during the first five years at a rate in excess of an average of twenty percent of the total principal thereof per annum. Whenever more than one instrument is employed, each instrument shall state on the face thereof the maturity date of the particular instrument and make reference to the maturity date(s) of the other instrument(s) involved in the disbursement.

(d) Loans with maturities of less than five years may be made by a Licensee to a borrower when necessary to protect the interests of the Licensee in previously issued long-term loans or Equity Securities. Loans with maturities of less than five years' duration will not be construed "to protect the interests of the Licensee" if the purpose of such short-term loan is to take care of normal short-term requirements of the small business concern.

(e) Any such loan shall have a maturity of not exceeding twenty years; and such loans shall be of such sound value, or so secured, as reasonably to assure repayment. The Licensee may extend the maturity of or renew any such loan for additional periods, not exceeding ten years, if the Licensee finds that such extension or renewal will aid in the orderly liquidation of such loan.

(f) The maximum annual cost to the borrower charged by any Licensee for average outstanding unpaid net funds advanced shall not exceed the lesser of (1) such maximum annual cost to borrower as may be prescribed by applicable State or local law, or (2) such maximum annual cost to borrower as may be specified in the Licensee's Proposal and License Application. Cost to borrower includes all interest and discount, as well as all fees, commissions, charges, etc., against the borrower by the Licensee at the time the loan is granted, and such fees, charges, etc., shall be treated as additional discount for this purpose.

(g) All loans shall be based upon negotiations between Licensees and small business concerns.

GENERAL PROVISIONS

§ 107.701 Amendments to Act and regulations.

A Licensee shall be subject to all existing and future provisions of the Act and regulations issued thereunder.

§ 107.702 Applicability of other laws, including disclosure to investors and stockholders.

Each Licensee shall comply with all applicable State or Federal law affecting its operation, including, but not limited to, any and all State or Federal law requiring Licensee to furnish its investors and shareholders with financial reports containing full and complete disclosure

of all matters significant to their interests.

§ 107.703 Government liability.

(a) Nothing in the act or in any regulations issued thereunder or in any other provision of law shall be deemed to impose any obligation or liability on the United States Government or any agency thereof, including SBA, with respect to any obligations entered into, or stocks issued, or commitments made, by any Licensee, or with respect to any other matter involving a Licensee.

(b) No Licensee, in issuing or selling any security shall represent or imply in any manner whatsoever that such security has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof, and a statement to such effect shall be included in any solicitations to investors.

§ 107.704 Activities of Licensee.

(a) A Licensee shall engage in and conduct only the activities set forth in and contemplated under the Act and shall not engage in or conduct any other activities.

(b) A Licensee shall not amend its franchise authority to permit the conduct of any activities other than as recited above.

(c) (1) A Licensee shall not voluntarily at any time reduce or increase its paid-in capital and paid-in surplus without the prior written consent of SBA, and a Licensee shall not change its investment policy, plans to raise additional capital, borrowing or other plans, previously submitted to SBA in its Proposal or in any other document at any other time, without the prior written consent of SBA. Any change in the officers, directors, or owners of ten or more percent of its stock, as set forth in its Proposal or otherwise previously submitted to SBA, shall be reported immediately to SBA. All such changes shall be filed in the form of a post licensing amendment and subject to the approval of SBA as a condition for the continuance of the License of such Licensee. Any conditions imposed by SBA in connection with the matters shall be complied with by the Licensee.

(2) Without the prior written consent of SBA, a Licensee shall not have an officer or a director who at the same time is either an officer or director in any other Licensee, nor shall ten or more percent of the stock of any Licensee be owned or controlled, directly or indirectly, by any person owning or controlling, directly or indirectly, ten or more percent of the stock of any other Licensee: *Provided, however, That an attorney performing legal services for Licensees may serve as secretary or clerk for more than one Licensee.*

(d) Every Licensee which obtains investment advisory services or management services on a continuing basis, performed for, or supplied to such Licensee by any person or other entity other than the directors, officers or employees in their capacities as such shall contract in writing for such services and such written contract shall specifically:

(1) Describe such services;

(2) Describe all compensation to be paid thereunder;

(3) State the duration of the contract;

(4) Provide for its termination by the Licensee, without penalty, on not more than 60 days' written notice;

(5) Provide for its automatic termination in the event of its assignment by the person performing the service;

(6) Provide for full disclosure to all interested parties whenever the person performing such services performs services for small business concerns doing business with the Licensee;

(7) Be approved by a vote of a majority of the outstanding voting securities of the Licensee prior to such contract becoming effective; and

(8) Be approved annually by a vote of a majority of the outstanding voting securities of the Licensee or by the vote of a majority of its Board of Directors, including the approval vote of a majority of those members of the Board of Directors who are not parties to, or do not have a pecuniary interest, direct or indirect, in such contract.

Every Licensee shall furnish SBA, for informational and record purposes, with a copy of each contract to which the foregoing applies, on or before the effective date thereof. Contracts for appraisal, custodial, collection, bookkeeping, accounting and legal services shall not be considered advisory or management services for purposes of this part.

(e) No financing or consulting or advisory services may be provided by a Licensee to a business concern unless the Licensee and such concern have executed SBA Form 480,³ Size Status Declaration, and, based upon the information contained therein and otherwise, the Licensee has determined that the business concern is a small business within the meaning of the definition of "small business concern" set forth in § 107.12, or at the request of the Licensee or the concern, SBA has determined that the subject business concern is a small business concern within the meaning of § 107.12. In the event financing or services are approved by a Licensee for a small business concern, the Licensee shall retain the completed SBA Form 480, as a permanent part of the concern's record with the Licensee.

§ 107.705 Consulting and advisory services.

(a) Consulting and advisory services shall consist only of advice with respect to the financial, management and operating activities of a small business concern; and shall not include performance by the Licensee of any financial,

management or operating activity of the small business concern.

(b) Consulting and advisory services may be provided by a Licensee to only (1) those small business concerns which meet the eligibility requirements under the Act and the regulations thereunder; and (2) another Licensee in connection with the financing of a small business concern with which the latter Licensee proposes to negotiate forthwith or is then in process of negotiation for financing.

(c) A Licensee may render consulting and advisory services to small business concerns for whom the Licensee does not provide financing: *Provided, however*, That such services shall not constitute a major source of the income of a Licensee (including as part of Licensee's income the net income, before Federal income taxes, of said Licensee's subsidiary corporation under § 107.706).

§ 107.706 Subsidiary corporation for consulting and advisory services.

(a) A Licensee may organize and establish a corporation which shall be, and remain, chartered for the sole and express purpose of providing consulting and advisory services to small business concerns subject to the provisions of the Act and the regulations thereunder, including § 107.705, and including in addition thereto:

(1) All of the stock of the subsidiary corporation shall be owned and totally held by the individual Licensee that shall organize such subsidiary corporation; the parent-Licensee shall never sell, transfer or otherwise divest itself of any part of the stock of its subsidiary corporation, except that the parent-Licensee may transfer back part of the stock of its subsidiary corporation to the treasury of the subsidiary corporation and such stock shall be forthwith retired and cancelled. In the event of the liquidation of the subsidiary corporation, the charter of such corporation shall be surrendered and terminated.

(2) Each officer or director of the subsidiary corporation must be at the same time either an officer or a director of the parent-Licensee.

(3) The financial investment by the parent-Licensee in its subsidiary corporation shall not exceed one percent of the Licensee's paid-in capital and paid-in surplus. Advances and other receivables due the parent-Licensee by its subsidiary corporation shall not exceed one percent of the Licensee's paid-in capital and paid-in surplus.

(b) The parent-Licensee shall be responsible for compliance by its subsidiary corporation with the Act and the regulations. Reports submitted to SBA by the parent-Licensee shall reflect consolidated figures covering the activities of both the parent-Licensee and its subsidiary corporation, and the subsidiary corporation shall make such separate reports covering its activities to SBA as shall be required by SBA. The subsidiary corporation shall be subject to examinations by examiners selected or approved by SBA, and in the event of the failure by the subsidiary corporation to make reports or to submit to examina-

tions as required by SBA, such failure by the subsidiary corporation may be acted upon by SBA as the failure of the parent-Licensee and shall subject the latter to any penalty provided in the Act or the regulations thereunder.

§ 107.707 Services to banks or other financial institutions.

A Licensee may render services for and receive compensation from banks or other financial institutions only in connection with the financing of, or the providing of consulting and advisory services to, a small business concern by the Licensee in participation or cooperation with such bank or other financial institution.

§ 107.708 Aggregate limitation on investments and loans.

Without the prior written approval of SBA, the aggregate amount of funds loaned to or invested in Equity Securities of any single small business concern, or for which commitments may be made, shall not exceed twenty percent of the combined paid-in capital and paid-in surplus of any Licensee (including in such Licensee's capital and surplus the outstanding amount of its SBA loan under section 302(a) of the Act).

§ 107.709 Conditions governing disbursement of SBA funds.

(a) Prior to the disbursement of any funds to a Licensee under the authority of section 302(a) or section 303(b) of the Act, the Licensee, by and through its duly authorized officer, shall execute and deliver to SBA the written certification and statement on SBA Form No. 420.⁴

(b) Such certificate and statement may be qualified with such information, explanation, and data as the parties thereto may determine and establish as a part thereof; *Provided, however*, That upon the inclusion in any such certificate and statement of any such qualifying material SBA may withhold disbursement of all or any portion of the funds involved pending consideration thereof by SBA, and after such consideration SBA may thereupon or subsequently cancel any commitment or other obligation to disburse all or any portion of the funds involved. If SBA shall determine, by examination or otherwise, that there is an impairment of capital, or that there has been a violation by the Licensee of any other provision of the regulations, SBA may withhold disbursement of all or any portion of the funds involved and may thereupon or subsequently cancel any commitment or obligation to disburse all or any part of the funds involved.

³ Filed with the Federal Register Office as part of the original document. Copies of SBA Form 480, Size Status Declaration, together with instructions, are available at the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C.

⁴ Filed with the Federal Register Office as part of the original document. Copies of SBA Form 420, Certification and Statement and Request for Funds, together with instructions, are available at the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C.

(c) The loan application for SBA funds under section 302(a) of the Act shall be submitted as Part II of SBA Form 415. The loan application for SBA funds under section 303(b) of the Act shall be submitted on SBA Form 416.⁵

§ 107.710 Idle operating funds.

(a) A Licensee may invest funds not reasonably needed for current operations, only in direct obligations of, or obligations guaranteed as to principal and interest by, the United States.

(b) Funds of a Licensee not employed in accordance with the provisions of sections 304 and 305 of the Act and the regulations thereunder, and not invested in accordance with paragraph (a) of this section, shall be retained in cash by the Licensee or placed on demand deposit with a commercial bank which is a member of the Federal Deposit Insurance Corporation.

§ 107.711 Insurance.

(a) A Licensee shall maintain fidelity or such other types of bonds or insurance as shall be required by SBA.

(b) Each Licensee shall provide and maintain a fidelity bond in form acceptable to SBA covering each officer or employee who has control over or access to cash, securities, or other property of the Licensee. Such bond shall cover all such persons and shall be approved by the board of directors of the Licensee for the protection of the Licensee. Brokers Blanket Bond, Standard Form No. 14, or other bond containing equivalent surety provisions, will be acceptable to SBA. Each such bond must be executed by a surety holding a certificate of authority from the Secretary of the Treasury under the Act of Congress approved July 30, 1947 (6 U.S.C., secs. 6-13) as an acceptable surety on Federal bonds in the State or jurisdiction concerned. In lieu of the foregoing, a Licensee which submits evidence satisfactory to SBA that it has suitable fidelity bond coverage in form and substance acceptable to SBA in an amount at least equal to the minimum coverage required for such company in the table set forth below may be considered as having met the requirements of this section upon written approval by SBA. The minimum amount of fidelity bond for each Licensee acceptable to SBA shall be based upon the total amount of the assets of the Licensee plus the unpaid balance of loans and investments which the Licensee has contracted to service for others, as follows:

Assets	Minimum coverage
Up to \$300,000	\$20,000
\$300,001 to \$400,000	25,000
\$400,001 to \$500,000	30,000

⁵ Filed with the Federal Register Office as part of the original document. Copies of SBA Form 416, Loan Application, together with instructions, are available at the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C.

Assets—Continued	Minimum coverage
\$500,001 to \$750,000	40,000
\$750,001 to \$1,000,000	50,000
\$1,000,001 to \$2,000,000	75,000
\$2,000,001 to \$3,000,000	100,000
\$3,000,001 to \$4,000,000	125,000
\$4,000,001 to \$5,000,000	150,000
\$5,000,001 to \$7,500,000	175,000
\$7,500,001 to \$10,000,000	200,000
\$10,000,001 and over	(*)

* \$225,000 plus \$10,000 for each \$1,000,000 or fraction thereof over \$15,000,000, except that no Licensee shall be required to provide and maintain a fidelity bond in an amount greater than \$1,000,000.

§ 107.712 Identification of Licensee.

(a) The corporate name shall be such as not to misinform or mislead interested parties and the public of the purpose and function of said company. Such corporate name shall not include the words "United States", "National", "Federal", "Reserve" or "Government." The name shall not be so similar to that of another organization as to imply association with any other organization without prior approval from such organization.

(b) Each Licensee shall display its original License in a prominent place in or about its principal office; and a copy thereof shall be displayed likewise in or about any branch office or agency. If the offices of the Licensee are within the offices of any other person, firm or entity, the name of the Licensee must appear on or at the entrance leading into such offices.

(c) Advertisements, annual statements, display signs, solicitations to investors, any communication made by or at the behest of a Licensee intended as a public statement by said Licensee, or any printed matter, including stationery imprinted with the name of the Licensee, shall identify that Licensee as "a Federal Licensee under the Small Business Investment Act of 1958."

§ 107.713 Common tenancy.

A Licensee shall not establish or maintain an office or place of doing business which is located in the same physical premises or place of business of any other Licensee. A Licensee shall not have a common private entrance or a private connecting door or entrance with any other Licensee.

§ 107.714 Branch offices and agencies.

A Licensee shall not establish any branches or agencies except with the prior approval of SBA. If the establishment of such branch or agency does not occur within 60 days of such approval, such approval will be withdrawn.

§ 107.715 Prohibited uses.

No funds may be provided by a Licensee for:

(a) Re-lending by the small business concern; nor may funds be provided to a small business concern if the business activity of such concern involves the investing, lending, or other providing of funds to others in exchange for an equity interest or monetary obligation.

(b) Purposes not contemplated by the Act;

(c) Purposes contrary to the public interest, including but not limited to

gambling enterprises and activities, and any purpose which would encourage monopoly or be inconsistent with accepted standards of free competitive enterprise; or

(d) Use outside the States: *Provided, however,* That a Licensee may provide funds to a small business concern which is subject to State or Federal jurisdiction, (1) for use in the domestic production of products for distribution abroad, or to acquire abroad materials for such operation or (2) for use in its branch operations abroad or for transfer to its controlled foreign subsidiary in exchange for further equity interest in or the monetary obligation of such foreign subsidiary; so long as the major portion of the assets and activities of such concern, after funds are so employed, remains within the territorial jurisdiction of the States.

(e) Financing land speculations of small business concerns: *Provided, however,* That small business concerns may use funds for the acquisition and prompt development of land.

(f) Any corporation, individual, partnership, or any other entity, that is not engaged in a business operation conducted as a regular and continuous activity. The mere ownership of property, and the collection of rents, income or profits therefrom, shall not constitute a business operation. Buying and selling property on a regular and continuous basis may constitute operation of a business; but leasing of property shall not constitute a business operation unless the lessor is regularly and continuously engaged in performing services in connection with the operation or maintenance of such leased property.

(g) A small business concern which is a customer of a vendor, which vendor or any controlling person or group thereof controls the Licensee, if 50 percent or more of the funds (or funds of the small business concern released by such financing) are used by the small business concern to purchase items or services sold to the small business concern by such vendor. As used hereunder the term "controls" or "controlling" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a vendor or the Licensee, whether through the ownership of voting securities, by contract, or otherwise. Any person, corporation, or any other entity which owns beneficially, either directly or indirectly, 25 percentum or more of the voting securities of a vendor or Licensee shall be presumed to control such company.

§ 107.716 Self-dealing limitation.

(a) Self-dealing to the prejudice of SBA or the Licensee's shareholders is prohibited.

(b) Without the prior written approval of SBA, a Licensee shall not purchase Equity Securities of, or make a loan to, an officer or a director of the Licensee, or any person owning or controlling, directly or indirectly ten or more percent of the stock of said Licensee, or any close relative of such officer, director, or stock owner or controller, nor shall the Licen-

see purchase Equity Securities of or make a loan to any company in which such officer or director or such owner or controller of the Licensee's stock, or his close relative is an officer or director or owns or controls ten or more percent of the stock of such company: *Provided, further*, That without the prior written approval of SBA a Licensee shall not make such purchase of such securities or make such loan within six months after the termination of such officership or directorship in the Licensee, or within six months after the termination of such ownership or control of ten or more percent of the Licensee's stock. Nothing herein contained is intended to preclude a Licensee from permitting an officer, employee or representative from serving as a director, officer, or in any other capacity in the management of a small business concern for the purpose of protecting its investment in or loan to such concern.

EXAMINATIONS AND REPORTS

§ 107.801 Examinations.

(a) Each Licensee shall be subject to examination by SBA.

(b) Such examinations shall cover any and all matters as determined by SBA, and shall be conducted by SBA examiners or by any examiners selected or approved by SBA.

(c) The cost of each examination made by other than SBA examiners shall be paid by the Licensee involved; and the cost of any examination made by SBA examiners, including the compensation of such examiners, may, in the discretion of SBA, be assessed against the company examined and when so assessed shall be paid by such company.

(d) The time and manner of conducting any such examination shall be determined by SBA in each case.

(e) As such examination, SBA may accept an audit and examination⁶ conducted by an independent certified public accountant; independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States; or, in States or other political subdivisions of the United States which do not license public accountants, an independent public accountant of recognized standing with ten or more years of public accounting experience; selected or approved by SBA, and a report of

such audit and examination containing the accountant's certificate required by § 107.802 with such additional information as may be requested by SBA.

§ 107.802 Reports.

(a) Each Licensee shall keep current financial records in accordance with generally accepted accounting principles. All such financial records and minutes of meetings of stockholders, directors, executive committees or other officials; and all files containing pertinent documents and supporting material employed by a Licensee with respect to any and all transactions of the Licensee shall be kept at its principal place of business: *Provided, however*, That there shall be excepted from the foregoing all portfolio items held by a custodian for Licensee pursuant to written custodian agreement. All financial reports furnished to SBA by Licensees shall make full and complete disclosure of all matters relevant to the Act and regulations.

(b) At the time any financial report (including any prospectus) is furnished to investors and shareholders of a Licensee, such Licensee shall submit to the Investment Administration Division, Small Business Administration, Washington 25, D.C., three (3) copies of such report.

(c) Each Licensee shall submit to SBA, at the end of the first six months period of each fiscal year, a report containing financial statements covering such six months period; at the end of each fiscal year a report containing financial statements for the fiscal year; and, when requested by SBA, interim financial reports. The fiscal year to which such reports shall relate shall be for SBA purposes the period beginning April 1 and ending March 31.

(1) The report as of the end of each fiscal year shall contain, or be accompanied by, an independent accountant's opinion on the financial statements for the fiscal year included therein, unless a different twelve-month period to be covered by the annual audit is expressly given prior approval in writing by SBA. Such opinion shall be based on an audit conducted in accordance with generally accepted auditing standards and shall be rendered by an independent certified public accountant; independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States; or, in States or political subdivisions of the United States which do not license public accountants, an independent public accountant of recognized standing with ten or more years of public accounting experience; selected or approved by SBA.

(2) The accountant's certificate shall be dated, shall be signed manually, and shall identify without detailed enumeration the financial statements covered by the certificate. The accountant's certificate shall state whether the audit was made in accordance with generally accepted auditing standards; and shall designate any auditing procedures generally recognized as normal, or deemed necessary by the accountant under the circumstances of the particular case,

which have been omitted, and the reasons for their omission. Nothing in this section shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinion required as stated hereinafter. The accountant's certificate shall state clearly: (i) The opinion of the accountant in respect of the accounting principles and practices reflected in the financial statements and as to the fairness with which the financial statements present the financial position of the Licensee at the audit date and the results of its operations for the period; (ii) the opinion of the accountant as to any material changes in accounting principles or practices or method of applying the accounting principles or practices, or adjustments of the accounts, which affect comparability of such financial statements with those of prior or future periods; and (iii) the nature of, and the opinion of the accountant as to, any material differences between the accounting principles and practices reflected in the financial statements and those reflected in the accounts after the entry of adjustments for the period under review. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

(d) The financial reports required by this section to be submitted to SBA by Licensees shall be on the prescribed form constituting the Financial Report, SBA Form 468,⁷ which is designed for submission in part or in its entirety. Part I requires statement of financial condition, statement of statutory capital and surplus, statement of income and expense, and statement of realized gain or loss on investments. Part II requires supporting Schedules 1 through 7, and Part III requires supporting Schedules 8 through 20. Part I, together with any schedule(s) of Parts II and III that may be specified, comprises the interim report required to be submitted, upon request by SBA, for any period of one month or more. Parts I and II comprise the report required to be submitted to SBA covering the first six months period of each fiscal year. Parts I, II, and III comprise the annual report required to be submitted to SBA covering the entire fiscal year. With the exception of the annual report, the Financial Report shall be submitted in triplicate to the Investment Administration Division, Small Business Administration, Washington 25, D.C., on or before the last day of the month immediately following the close of the period covered by the report.

⁶ See the Audit and Examination Guide for Small Business Investment Companies filed with the Federal Register Office as part of the original document.

The Audit and Examination Guide for Small Business Investment Companies has been prepared by SBA to inform Licensees and independent accountants engaged by them as to SBA's requirements concerning audits and examinations of SBICs. Copies of such Audit and Examination Guide are made available to Licensees and their independent accountants through the Office of the Chief, Investment Administration Division of the Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, of the Small Business Administration.

⁷ Form filed as a part of the original document. Licensees required to file a registration statement under the Investment Company Act of 1940 should refer to the rules and forms promulgated by the Securities and Exchange Commission, Washington 25, D.C., concerning the applicability of this report in fulfilling the Commission's requirements for financial reports.

Such annual report shall be submitted in triplicate to the Investment Administration Division, Small Business Administration, Washington 25, D.C., on or before the last day of the third month following the close of the fiscal year to which such annual report relates. When the Licensee has one or more branch offices, the data contained in the basic financial statements and all supporting schedules shall comprise a consolidation of the figures for the principal office and all branches. All money amounts required to be shown in the financial statements and schedules may be expressed in even dollars, at the option of the Licensee. If the financial data are expressed in even dollars, appropriate adjustments of individual amounts shall be made for the fractional parts of a dollar so that the items will add to the totals shown. The Financial Report prepared by each Licensee shall present fairly the financial position of the Licensee as of the close of the period covered by the report and the results of the Licensee's operations for such period, and shall be prepared in accordance with the detailed instructions accompanying SBA Form 468.

(e) The verification of the Financial Report shall bear the signature of the chief financial officer, or other officer authorized by the board of directors to sign in the event the chief financial officer is unavailable. The date on which the signature is affixed shall be shown. When only Part I of the Financial Report is submitted, with or without any specified schedule(s) from Parts II and III, the signature shall be affixed in the space provided therefor in Part I; when Parts I and II of the Financial Report are submitted, the signature shall be placed in the space provided therefor in Part II and need not be affixed in Part I; and when Parts I, II, and III of the Financial Report are submitted, the signature shall be entered in the space provided therefor in Part III and need not be affixed in either Part I or Part II. When Parts I, II, and III are submitted, a secretarial officer of the Licensee shall attest by signature to the fact that the minutes of a meeting of the board of directors of the Licensee show that the Financial Report comprising Parts I, II, and III has been reviewed and approved by the board of directors. All three copies of the Financial Report to be furnished to the Small Business Administration shall bear the original signature(s) of the verifying officer(s) in ink.

(f) Whenever any assets are pledged as collateral or are earmarked for segregation under a negative pledge or similar agreement, the word "pledged" or the word "earmarked," as appropriate, together with the amount involved, shall be shown in parentheses immediately following the appropriate asset title in the statement of financial condition, and the identity of the assets pledged or earmarked shall be indicated in the supporting schedules. Whenever amounts are classified as "current" and "noncurrent," "current" shall refer to the amount maturing within one year and "noncurrent" shall refer to the amount maturing after one year. If, however, an amount will

mature within one year but is not reasonably expected to be paid when due, it shall be classified as "noncurrent."

(g) Copies of the Financial Report, SBA Form 468, together with instructions, are available at the office of the Deputy Administrator, Investment Division, of the Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, of the Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C.

(h) The Financial Report, SBA Form 468, required to be used by all Licensees in making financial reports to SBA is designed to furnish the companies and SBA with the information needed for their respective purposes. The Financial Report, SBA Form 468,⁸ and the instructions pertaining thereto are incorporated in and expressly made a part of this section.

(i) Each Licensee shall submit in triplicate to the Investment Division, Small Business Administration, Washington 25, D.C., at the end of the first six months' period of each fiscal year, and at the end of the second six months' period of each fiscal year, an activity report, showing by significant categories the amounts of the Licensee's loan and equity financing transactions for the period covered by the report, in accordance with the instructions thereto, for preparation of the Activity Report, SBA Form 477,⁹ which form and instructions are incorporated in and expressly made a part of this section. The fiscal year to which such reports shall relate shall be for SBA purposes the period beginning April 1 and ending March 31. Such Activity Report shall be submitted on or before the last day of the month immediately following the close of the six months' period covered by such report.

(j) In addition to the reports required elsewhere in this section each Licensee shall, upon request by SBA, submit to the Investment Division, Small Business Administration, Washington 25, D.C., such other reports at such times and in such forms as SBA shall require.

⁸ Form, as amended, filed with the Federal Register Office as part of the original document. Copies of SBA Form 468, Financial Report, as amended, together with amended instructions, are available at the office of the Deputy Administrator, Investment Division, of the Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, Small Business Administration.

⁹ Filed with the Federal Register Office as part of the original document. Copies of the Activity Report, SBA Form 477, together with instructions, are available at the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C., and at all Regional Offices of the Small Business Administration, the addresses of which offices may be obtained from the office of the Deputy Administrator, Investment Division, Small Business Administration, 811 Vermont Avenue NW., Washington 25, D.C.

COMPLIANCE AND ENFORCEMENT

§ 107.901 Enjoiner of violations.

Whenever in the judgment of SBA any person, including a Licensee, has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provisions of the act or of any regulation thereunder, SBA may apply to a proper court for an order enjoining such act or practices or for an order enforcing compliance with such provision or regulation.

§ 107.902 Forfeiture of License.

Final determination by a court of the United States that a Licensee has violated or failed to comply with any of the provisions of the Act or regulations prescribed thereunder, shall thereupon effect a forfeiture of the License of such Licensee.

INTERPRETATIONS

§ 107.0100 Capital structure of licensees (interpreting section 302 of the Act).

Whenever capitalization of Licensee is to consist of more than one class of stock the voting rights and other rights and remedies may not be inequitable or discriminatory, and may not unduly concentrate control or management of the Licensee through pyramiding, inequitable methods, or inequitable distribution. Full disclosure of all voting rights and other rights and remedies of all classes of stock must be made to all shareholders prior to their purchase of stock.

§ 107.0101 Repayment of subordinated debentures (interpreting section 302 (a) of the Act).

(a) Repayment of subordinated debentures must be made in such manner as not to reduce paid-in capital and paid-in surplus below the statutory minimum. This minimum is set by section 302(a) of the Act at \$300,000, and subordinated debentures are deemed to be a part of capital and surplus for the purpose (among other things) of providing this minimum.

(b) At the same time, the obligation of a Licensee to repay a subordinated debenture is absolute and binding, and is not limited to the availability of particular funds. For example, although subordinated debentures may be repaid from borrowed funds, such repayment may not be made unless paid-in capital and paid-in surplus is simultaneously maintained at or above the \$300,000 level.

(c) Thus, Licensees should be aware of their obligations under the terms of the debenture, and these obligations should be provided for in a manner which will insure compliance with the minimum capital requirements imposed by section 302 of the Act.

§ 107.0102 Participation by SBA with a Licensee under section 7(a) of the Small Business Act in an SBIC loan (interpreting sections 302 and 303 of the Act).

Sections 302 and 303 of the Small Business Investment Act of 1958 limit the nature and degree of financial assistance which SBA is authorized to provide Licensees in conjunction with the financing which Licensees are empowered to render small business concerns. Under

these limitations SBA cannot participate with a Licensee under section 7(a) of the Small Business Act or otherwise in loans made by Licensee to small business concerns.

§ 107.0103 Aid for agriculture (interpreting sections 304 and 305 of the Act).

The program established by the Investment Act is to aid business concerns, and the assistance available through such program cannot provide financial or other assistance to concerns engaged in agricultural activities, namely, those involving the production of crops and livestock. In cooperation with the Department of Agriculture, SBA has established certain basic guidelines to aid in the determination whether an operation is a business or agricultural enterprise.

(a) Concerns engaged solely or primarily in the purchase and resale of commodities, the manufacture, processing or marketing of commodities, or the sale of services to the public are considered to be engaged in a business enterprise. This includes the purchase of fruits, vegetables and flowers for resale, the packaging, freezing, or processing by other means, of meats, fruits, and vegetables, the slaughter of livestock and poultry, the operation of warehouses and cold storage plants, feed mills, and the operation of a feed yard for cattle where income is derived from the service operation of housing and feeding the animals.

(b) Concerns engaged solely or primarily in the production of agricultural

commodities are considered to be engaged in an agricultural enterprise, which normally involves the cultivation of the land for the production of food and fiber. This would include concerns producing field crops, livestock, and nursery crops.

(c) A concern which is engaged in an agricultural enterprise as well as a business enterprise will be classified according to the predominant part of its operations, considering the time devoted to agriculture and business and the income derived from each.

§ 107.0104 Short-term loans by a Licensee (interpreting § 107.601(d)).

The question has arisen as to whether a Licensee may purchase Equity Securities from a real estate developer-builder and follow up with a less than five-year maturity construction loan to such builder. Such a short-term loan would not be within the exception of § 107.601(d), permitting loans for terms of less than five years when necessary to protect the interest of a Licensee in an existing long-term loan, or Equity Securities. The exception for short-term loans is an emergency privilege which is available only if funds are otherwise unavailable and if necessary for the protection of a prior loan or investment.

§ 107.0105 Eligible investments for idle operating funds of SBICs (interpreting § 107.710).

Under the provisions of § 107.710 a Licensee may invest funds not reason-

ably needed for current operations in U.S. Treasury bonds, notes, certificates, and bills; U.S. Savings bonds, Series E and Series H; and Federal Housing Administration debentures. Investment is not permitted in securities of the Federal Intermediate Credit Banks, Federal National Mortgage Association, Federal Home Loan Banks, Federal Land Banks, Banks for Cooperatives, or International Bank for Reconstruction and Development (World Bank).

§ 107.0106 Employment of funds provided small business concerns by Licensees (interpreting § 107.715(a)).

(a) The question has been raised as to whether Licensee may provide loans to concerns known as professional associations. Such associations would transfer the proceeds of loans from Licensee to institutions and professional people in exchange for interest-bearing time notes.

(b) Section 107.715(a) is interpreted to provide that funds supplied small business concerns by Licensee may not be invested, loaned, or otherwise transferred by such small business concerns for use by others in exchange for an equity interest or promise to repay. Therefore, the type of financing described above is not permitted. Similarly, such funds may not be used for financing factoring operations, or for the purchase of commercial paper.

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