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Title 3—THE PRESIDENT

Proclamation 3333

PAN AMERICAN DAY AND PAN AMERICAN WEEK, 1960

By the President of the United States
of America

A Proclamation

WHEREAS on April 14, 1960, the peoples of the twenty-one American Republics will honor the seventieth anniversary of the founding of an organization for peace, friendship, and cooperation in the Americas, now known as the Organization of American States; and

WHEREAS the people of the United States view with warm and sympathetic interest the establishment and growth in this Hemisphere of democratic, representative governments, dedicated to serve both the desires and interests of their own peoples as well as those of the inter-American community; and

WHEREAS the American Republics have joined together in programs to increase hemispheric economic progress in this new decade and to meet the rising expectations of their citizens for a better life; and

WHEREAS the spiritual, social, political, cultural, and economic progress of the peoples of the Hemisphere is necessary for the continuing vitality of the inter-American system, and the United States of America is proud to be a part of this progress:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby proclaim Thursday, April 14, 1960, as Pan American Day, and the period from April 10 to April 16, 1960, as Pan American Week; and I invite the Governors of the States, the Commonwealth of Puerto Rico, the Canal Zone, and other areas subject to the jurisdiction of the United States to issue similar proclamations.

I also urge our citizens and all interested organizations to share in the celebration of Pan American Day and Pan American Week, as evidence of the friendly interdependence which unites the people of this country with the other peoples of the Americas.

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 fifth day of February in the year of our Lord nineteen hundred and [SEAL] sixty, and of the Independence of the United States of America the one hundred and eighty-fourth.

DWIGHT D. EISENHOWER

By the President:

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 60-1409; Filed, Feb. 10, 1960; 2:26 p.m.]

Proclamation 3334

RED CROSS MONTH, 1960

By the President of the United States
of America

A Proclamation

WHEREAS the American National Red Cross, acting under congressional charter, provides welfare services to the armed forces, veterans, and their families, and ministers to the needs of disaster victims both at home and abroad; and

WHEREAS, through its first aid and safety services, blood program, nursing program, youth programs, and other community services, the Red Cross contributes to the general health and welfare of the American people; and

WHEREAS, by helping to promote cooperative action among the eighty-four national Red Cross societies comprising the League of Red Cross Societies, the American Red Cross is a major instrument for strengthening the bonds of humanitarian service among the peoples of the world; and

WHEREAS, throughout its years of generous and effective work in our land, the Red Cross has relied solely on the voluntary support of our citizens in carrying out its many responsibilities:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America and Honorary Chairman of the American National Red Cross, do hereby designate March 1960 as Red Cross Month; and I urge all Ameri-

(Continued on p. 1239)

CONTENTS

THE PRESIDENT

Proclamations	Page
National Safe Boating Week, 1960	1239
Pan American Day and Pan American Week, 1960	1237
Red Cross Month, 1960	1237

EXECUTIVE AGENCIES

Agricultural Marketing Service	
Proposed rule making:	
Milk in Louisville-Lexington, Ky., marketing area; decision on proposed amendments to tentative agreement and order	1269
Agriculture Department	
See Agricultural Marketing Service; Commodity Stabilization Service.	
Alien Property Office	
Notices:	
Vesting orders on property indirectly owned by:	
Hungarian Discount and Exchange Bank	1296
Hungarian General Creditbank	1297
Ungarische A. G. fuer Bauunternehmungen	1297
Ungarische Filiale Creditanstalt Bankverein	1298
Army Department	
See Engineers Corps.	
Commerce Department	
See also Federal Maritime Board; Maritime Administration.	
Notices:	
Changes in financial interests:	
Adamson, Wallace H.	1295
Schlueter, Louis A.	1295
Smith, Luther L.	1295
Winston, Arthur W.	1295
Commodity Stabilization Service	
Rules and regulations:	
Wheat marketing quota for 1958 and subsequent crop years; excess acreage utilization dates and normal harvest completion dates	1246
Engineers Corps	
Rules and regulations:	
Bridge and navigation regulations; miscellaneous amendments	1246



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CFR SUPPLEMENTS

(As of January 1, 1960)

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CONTENTS—Continued

Federal Aviation Agency	Page
Proposed rule making:	
Airworthiness directive; Wright engines.....	1285
Federal airways and control areas; modification of proposed designation.....	1285
Rules and regulations:	
Coded jet routes:	
Establishment.....	1241
Revocations (2 documents) ..	1241
Control zone; modification.....	1240
Federal airway segment and associated control areas; revocation.....	1240
Reporting points; revocation....	1240
Standard instrument approach procedures; miscellaneous amendments.....	1242

CONTENTS—Continued

Federal Communications Commission	Page
Notices:	
Hearings, etc.:	
Alvarado Television Co., Inc. (KVOA-TV), and Old Pueblo Broadcasting Co. (KOLD-TV).....	1291
Antennavision Service Co., Inc.....	1288
General Telephone Company of the Northwest.....	1290
Follmer, Walter L., et al.....	1286
Fredericksburg Broadcasting Corp. (WFVA) et al. (2 documents).....	1286, 1287
Federal Maritime Board	
Proposed rule making:	
Filing of tariffs by terminal operators; denial of time extension for filing of comments....	1285
Federal Power Commission	
Notices:	
Hearings, etc.:	
Lynchburg Gas Co. et al.....	1292
McAlester Fuel Co. et al.....	1293
United Natural Gas Co. et al.....	1294
Federal Trade Commission	
Rules and regulations:	
Prohibited trade practices:	
Gershman, Morris, and Getsos & Gershman, Inc.....	1239
Sherman, George, and G. Sherman Corp.....	1239
Food and Drug Administration	
Rules and regulations:	
Pesticide chemicals in or on raw agricultural commodities; tolerance for residues of maneb.....	1246
Foreign Assets Control	
Notices:	
Camel hair; importation from countries not in authorized trade territory; applications for licenses.....	1286
General Services Administration	
Notices:	
Seeds held in national stockpile; proposed disposition:	
Guayule.....	1292
Opium poppy.....	1292
Health, Education, and Welfare Department	
See Food and Drug Administration; Public Health Service.	
Internal Revenue Service	
Proposed rule making:	
Tobacco materials, products, and cigarette papers and tubes; exportation without payment of tax, or with tax drawback.....	1253
Interstate Commerce Commission	
Notices:	
Fourth section applications for relief.....	1296
Motor carrier transfer proceedings.....	1295
Rules and regulations:	
General rules of practice; procedure.....	1250

CONTENTS—Continued

Interstate Commerce Commission—Continued	Page
Rules and regulations—Continued	
Uniform system of accounts, common and contract motor carriers:	
Class I; passengers.....	1251
Class I and II; property.....	1251
Justice Department	
See Alien Property Office.	
Maritime Administration	
Notices:	
Trade route No. 10; U.S. North Atlantic/Mediterranean; tentative conclusions and determinations regarding essentiality and U.S. flag passenger service requirements.....	1295
Public Health Service	
Rules and regulations:	
Biologic products; miscellaneous amendments.....	1247
Treasury Department	
See also Foreign Assets Control; Internal Revenue Service.	
Notices:	
Folic acid from Japan; determination of no sales at less than fair value.....	1286

CODIFICATION GUIDE

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

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

3 CFR	Page
Proclamations:	
3333.....	1237
3334.....	1237
3335.....	1239
7 CFR	
728.....	1246
Proposed rules:	
946.....	1269
14 CFR	
600.....	1240
601 (3 documents).....	1240
602 (3 documents).....	1241
609.....	1242
Proposed rules:	
507.....	1285
600.....	1285
601.....	1285
16 CFR	
13 (2 documents).....	1239
21 CFR	
120.....	1246
26 (1954) CFR	
Proposed rules:	
290.....	1253
33 CFR	
203.....	1246
207.....	1246
42 CFR	
73.....	1247

CODIFICATION GUIDE—Con.

46 CFR	Page
<i>Proposed rules:</i>	
201—380	1285
49 CFR	
1	1250
181	1251
182	1251

cans to support the Red Cross as an instrument of their charitable concern for their neighbors in need.

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 fifth day of February in the year of our Lord nineteen hundred and [SEAL] sixty, and of the Independence of the United States of America the one hundred and eighty-fourth.

DWIGHT D. EISENHOWER

By the President:

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 60-1410; Filed, Feb. 10, 1960; 2:26 p.m.]

Proclamation 3335

NATIONAL SAFE BOATING WEEK, 1960

By the President of the United States of America
A Proclamation

WHEREAS many millions of our citizens enjoy the sport of boating for recreation and relaxation; and

WHEREAS safety on the waterways is as important as safety on the highways; and

WHEREAS the Congress of the United States, in seeking to focus national attention on the importance of safe boating practices, by a joint resolution approved June 4, 1958 (72 Stat. 179), has authorized and requested the President to proclaim annually the week which includes July 4 as National Safe Boating Week:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby designate the week beginning July 3, 1960, as National Safe Boating Week.

I invite all the people of this Nation interested in boating, including boating organizations, the boating industry, Government agencies and other groups, to observe National Safe Boating Week. I urge them during this week and throughout the entire year to follow safe boating practices and to exercise courtesy on the waterways.

I also invite the Governors of the States, the Commonwealth of Puerto Rico, and the areas subject to the jurisdiction of the United States to provide for the observance of this week.

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 fifth day of February in the year of our Lord nineteen hundred and [SEAL] sixty, and of the Independence of the United States of America the one hundred and eighty-fourth.

DWIGHT D. EISENHOWER

By the President:

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 60-1411; Filed, Feb. 10, 1960; 2:26 p.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission
[Docket 7470]

PART 13—PROHIBITED TRADE PRACTICES

Getsos & Gershman, Inc., and Morris Gershman

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices*: 13.155-40 Exaggerated as regular and customary; 13.155-45 Fictitious marking. Subpart—Furnishing means and instrumentalities of misrepresentation or deception: Sec. 13.1055-50 Preticketing merchandise misleadingly. Subpart—Misrepresenting oneself and goods—Prices: § 13.1805 Exaggerated as regular and customary; § 13.1811 Fictitious preticketing.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Getsos & Gershman, Inc., et al., New York, N.Y., Docket 7470, January 23, 1960]

In the Matter of Getsos & Gershman, Inc., a Corporation, and Morris Gershman, Individually and as an Officer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging furriers in New York City with violating the Fur Products Labeling Act by fictitious pricing of fur products effected by setting out on consignment memoranda two prices, one a "regular cost" price and the other a lower price at which the garments were offered, and by failing to maintain records disclosing the facts upon which the two sets of prices were determined.

After trial of the issues, the hearing examiner made his initial decision and order to cease and desist which became on January 23 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Getsos & Gershman, Inc., a corporation, and its officers, and Morris Gershman, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or the manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation, or distribution in commerce, of fur products,

or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur", and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Representing, directly or by implication, on invoices that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such product in the recent regular course of their business;

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

C. Making pricing claims or representations in advertisements respecting comparative prices, percentage savings claims, or claims that prices are reduced from regular or usual prices, unless respondents maintain full and adequate records disclosing the facts upon which such claims or representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Getsos & Gershman, Inc., a corporation, and Morris Gershman, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: January 22, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-1364; Filed, Feb. 11, 1960; 8:46 a.m.]

[Docket 7515]

PART 13—PROHIBITED TRADE PRACTICES

G. Sherman Corp. and George Sherman

Subpart—Misbranding or mislabeling: § 13.1185 *Composition*: 13.1185-90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition*: 13.1845-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68-68(c)) [Cease and desist order, G. Sherman Corporation et al., New York, N.Y., Docket 7515, January 23, 1960]

In the Matter of G. Sherman Corporation, a Corporation, and George Sherman, Individually and as an Officer of Said Corporation

The complaint in this case charged a New York City seller of men's suitings, the selling agent for a Plymouth, Mass., fabric manufacturer, with violating the Wool Products Labeling Act by misbranding as to wool content, swatches of various patterns it showed its customers and by failing to attach to such products labels showing fiber content, as required.

Having heard the matter, the hearing examiner made his initial decision including findings, conclusions, and order to cease and desist, which became on January 23 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered. That respondent G. Sherman Corporation, a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, of fabrics or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to affix labels to such products showing each element of the information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939;

3. Failing to stamp, tag or label samples, swatches or specimens of wool products, which are used to promote or effect sales of such wool products in commerce, with the information required under paragraph 2 hereof, as provided by Rule 22 of the rules and regulations promulgated under the Wool Products Labeling Act of 1939.

It is further ordered. That respondent G. Sherman Corporation, a corporation, and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale or distribution of fabrics or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, misrepresenting the constituent fibers of which their products are composed or the percentages thereof orally, on order forms, in correspondence, or in any other manner.

It is further ordered. That the complaint herein, insofar as it relates to individual respondent George Sherman, be, and the same hereby is, dismissed.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered. That respondent G. Sherman Corporation, a corporation, shall, within sixty (60) days after service upon

it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: January 22, 1960.

By the Commission.

ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-1365; Filed, Feb. 11, 1960;
8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59-WA-152]

[Amdt. 216]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

[Amdt. 250]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEGMENTS

Revocation

On October 22, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 8553) stating that the Federal Aviation Agency proposed to revoke the segment of VOR Federal airway No. 57 and its associated control areas between Bowling Green, Ky., and Lexington, Ky.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons set forth in the Notice, the proposed amendment is hereby adopted without change and set forth below:

1. Section 600.6057 *VOR Federal airway No. 57 (Evergreen, Ala., to Hamilton, Ohio)*:

a. In the caption delete "*Evergreen, Ala., to Hamilton, Ohio*" and substitute therefor "*Evergreen, Ala., to Bowling Green, Ky., and Lexington, Ky., to Hamilton, Ohio*".

b. In the text delete "Bowling Green, Ky., VOR; point of INT of the Bowling Green VOR 063° and the Louisville, Ky., VOR 168° radials; Lexington, Ky., VOR; Falmouth, Ky., VOR;" and substitute therefor "to the Bowling Green, Ky., VOR. From the Lexington, Ky., VOR via the Falmouth, Ky., VOR."

2. In the caption of § 601.6057 *VOR Federal airway No. 57 control areas (Evergreen, Ala., to Hamilton, Ohio)*, delete "*Evergreen, Ala., to Hamilton, Ohio*" and substitute therefor "*Evergreen, Ala., to Bowling Green, Ky., and Lexington, Ky., to Hamilton, Ohio*".

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

These amendments shall become effective 0001 e.s.t. April 7, 1960.

Issued in Washington, D.C., on February 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-1359; Filed, Feb. 11, 1960;
8:46 a.m.]

[Airspace Docket No. 59-WA-272]

[Amdt. 249]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEGMENTS

Modification

On November 10, 1959, a Notice of Proposed Rule-Making was published in the FEDERAL REGISTER (24 F.R. 9170) stating that the Federal Aviation Agency was proposing to modify the Fargo, N. Dak., control zone.

No comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons set forth in the Notice, the proposed amendment is hereby adopted without change and set forth below:

§ 601.2097 Fargo, N. Dak., control zone.

Within a 5-mile radius of the Fargo-Hector Airport, within 2 miles either side of the E. course of the Fargo R.R. from the 5-mile radius zone to a point 12 miles E. of the R.R., and within 2 miles either side of the Fargo ILS localizer S. course from the 5-mile radius zone to a point 12 miles S. of the OM.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

This amendment shall become effective 0001 e.s.t. April 7, 1960.

Issued in Washington, D.C. on February 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-1358; Filed, Feb. 11, 1960;
8:46 a.m.]

[Airspace Docket No. 60-WA-6]

[Amdt. 238]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, AND POSITIVE CONTROL ROUTE SEGMENTS

Revocation

The purpose of this amendment to §§ 601.4107, 601.4213, 601.4221 and

601.4604 of the regulations of the Administrator is to revoke the Portland, Maine, R.R. and the East Dover, Maine, the Franklin, Mass., the New London, Conn., the Wyoming, R.I., and the Northfield, Vt., intersections as reporting points.

The Federal Aviation Agency has determined that these reporting points are no longer required for air traffic management purposes. Action is, therefore, being taken herein to revoke this facility and these intersections as reporting points.

Since this amendment eliminates a burden on the public, compliance with the notice, public procedure, and effective date requirements of 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 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) Section 601.4107 (24 F.R. 10593), §§ 601.4213, 601.4221 (24 F.R. 10594) and § 601.4604 (24 F.R. 10596) are amended as follows:

§ 601.4107 [Amendment]

1. In the text of § 601.4107 *Amber Federal airway No. 7 (Miami, Fla., to United States-Canadian Border)*, delete: "Portland, Maine, radio range station;" and "the intersection of the southwest course of the Millinocket, Maine, radio range and the northwest course of the Bangor, Maine, radio range;"

§ 601.4213 [Amendment]

2. In the text of § 601.4213 *Red Federal airway No. 13 (Wilkes-Barre, Pa., to Boston, Mass.)*, delete: "Poughkeepsie, N.Y., RR; the INT of the north course of the Providence, R.I., RR and the southwest course of the Boston, Mass., RR." and substitute therefor "Poughkeepsie, N.Y., RR."

3. Section 601.4221 is amended to read: § 601.4221 *Red Federal airway No. 21 (New York, N.Y., to Bridgeport, Conn., and New London, Conn., to Boston, Mass.)*.

No reporting point designation.

§ 601.4604 [Amendment]

4. In the text of § 601.4604 *Blue Federal airway No. 4 (Boston, Mass., to United States-Canadian Border)*, delete: "the intersection of the southeast course of the Burlington, Vt., radio range and the southwest course of the Montpelier, Vt., radio range;"

This amendment shall become effective 0001 e.s.t. April 7, 1960.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C., on February 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-1357; Filed, Feb. 11, 1960; 8:45 a.m.]

[Airspace Docket No. 59-WA-76]

[Amdt. 39]

PART 602 — ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Revocation

On October 31, 1959, a notice of proposed rule making was published in the FEDERAL REGISTER (24 F.R. 8907) stating that the Federal Aviation Agency proposed to revoke L/MF jet route No. 40 which extends from Montgomery, Ala., to Charleston, S.C.

No comment was received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for reasons set forth in the Notice, the proposed amendment is hereby adopted without change and set forth below:

Section 602.140 *L/MF jet route No. 40 (Montgomery, Ala., to Charleston, S.C.)* is revoked.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

This amendment shall become effective 0001 e.s.t. April 7, 1960.

Issued in Washington, D.C., on February 8, 1960.

GEORGE S. CASSADY,
Acting Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-1354; Filed, Feb. 11, 1960; 8:45 a.m.]

[Airspace Docket No. 59-WA-130]

[Amdt. 38]

PART 602 — ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Establishment

On September 5, 1959, a notice of proposed rule-making was published in the FEDERAL REGISTER (24 F.R. 7206) stating that the Federal Aviation Agency was proposing to establish VOR/VORTAC jet route No. 71 from Appleton, Ohio, to Front Royal, Va.

American Airlines, Inc., has requested that Jet Route No. 71-V be extended from Appleton to Northbrook, Ill., to provide a jet route between Chicago, Ill., and Baltimore, Md. While this request has merit, it would not be compatible with a planned dual jet route structure between the Chicago and Baltimore areas, to be implemented in the near future. VOR/VORTAC Jet Route No. 26, presently established between Joliet, Ill., and Appleton, together with Jet Route No. 71-V, will provide a route between the Chicago and Baltimore areas until the planned dual jet route structure can be established.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons set forth in the Notice, the proposed amendment is hereby adopted without change and set forth below:

§ 602.571 *VOR/VORTAC jet route No. 71 (Appleton, Ohio, to Front Royal, Va.)*.

From the Appleton, Ohio, VOR to the Front Royal, Va., VOR.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

This amendment shall become effective 0001 e.s.t., April 7, 1960.

Issued in Washington, D.C., on February 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-1356; Filed, Feb. 11, 1960; 8:45 a.m.]

[Airspace Docket No. 59-WA-107]

[Amdt. 41]

PART 602 — ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Revocation

On October 24, 1959, a Notice of Proposed Rule-Making was published in the FEDERAL REGISTER (24 F.R. 8657) stating that the Federal Aviation Agency was proposing to revoke TACAN jet route No. 1 between Oceana, Va., and Brunswick, Maine.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons set forth in the Notice, the proposed amendment is hereby adopted without change and set forth below:

Section 602.801 *TACAN jet route No. 1 (Oceana, Va., to Brunswick, Maine)* is revoked.

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

This amendment shall become effective 0001 e.s.t. April 7, 1960.

Issued in Washington, D.C., on February 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-1355; Filed, Feb. 11, 1960; 8:45 a.m.]

RULES AND REGULATIONS

[Reg. Docket No. 269; Amdt. 154]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Alterations

The new and revised standard instrument approach procedures appearing hereinafter are adopted to become effective and/or canceled when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures. Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), I find that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days' notice.

Part 609 (14 CFR Part 609) is amended as follows:

1. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From--	To--	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
FNO-LFR.....	LOM.....	Direct.....	2000	T-dn.....	300-1	300-1	200-1/2
FNO-VOR.....	LOM.....	Direct.....	2000	C-dn.....	500-1	500-1	500-1 1/2
Bowles Int (LFR).....	LOM.....	Direct.....	2000	S-dn-29.....	400-1	400-1	400-1
Fowler Int (VHF).....	LOM.....	Direct.....	2000	A-dn.....	800-2	800-2	800-2

Procedure turn *South side of crs, 109° Outbnd, 289° Inbnd, 2000' within 7 miles of LOM. NA beyond 7 miles.

Minimum altitude over facility on final approach crs, 1500'.

Crs and distance, facility to airport, 289°-4.0 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.0 miles of LOM, climb to 1500' on crs of 289°, turn left and climb to 2000' on W crs of Fresno LFR within 20 miles or, when directed by ATC, climb Northwest bound on R-130 to FNO VOR. Continue climb to 1700' on R-310 within 20 miles.

*Procedure turn South side of crs, high terrain to North.

City, Fresno; State, Calif.; Airport Name, Fresno Air Terminal; Elev., 331'; Fac. Class., LOM; Ident., FN; Procedure No. 1, Amdt. 9; Eff. Date, 10 Mar. 60; Sup. Amdt. No. 8 (ADF portion of Comb. ILS-ADF); Dated, 28 Dec. 57

PROCEDURE CANCELED, EFFECTIVE UPON PUBLICATION IN THE FEDERAL REGISTER. FACILITY DECOMMISSIONED JANUARY 14, 1960.

City, McComb; State, Miss.; Airport Name, McComb-Pike County; Elev., 460'; Fac. Class., BMH; Ident., MCB; Procedure No. 1, Amdt. 1; Eff. Date, 1 Nov. 58; Sup. Amdt. No. Orig.; Dated, 19 May 58

Scotland RBn.....	IDL RBn.....	Direct.....	1000	T-dn.....	300-1	300-1	200-1/2
Radar Terminal Area Transitions: All directions.	E of NE-SW crs of LGA-LFR.....	Within 15 miles...	1500	C-dn.....	500-1	500-1	500-1 1/2
				S-dn-4R, 4L.....	500-1	500-1	500-1
				A-dn.....	800-2	800-2	800-2

Procedure turn South side of crs 223° Outbnd, 043° Inbnd, 1200' within 10 miles of OM/RBn.

Minimum altitude over facility on final approach crs, 700'.

Crs and distance, facility to Runway 4R, 043°-2.6 mi; to Runway 4L, 032°-2.7 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.6 miles after passing OM/RBn, climb to 500' on crs of 043° from OM/RBn, then make a right climbing turn to 1500' and proceed to Lido RBn and hold SW. Contact Idlowild approach control for further instructions.

CAUTION: Circling landing minimums do not provide standard clearance over stack 278' MSL 1.7 mi SSE of airport.

City, New York; State, N. Y.; Airport Name, International; Elev., 12'; Fac. Class., MHW; Ident., IDL; Procedure No. 1, Amdt. 18; Eff. Date, 5 Mar. 60; Sup. Amdt. No. 17; Dated, 20 June 59

2. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From--	To--	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
FNO-LFR.....	FNO-VOR.....	Direct.....	1700'	T-dn.....	300-1	300-1	200-1/2
				C-dn.....	500-1	500-1	500-1 1/2
				S-dn-11.....	400-1	400-1	400-1
				A-dn.....	800-2	800-2	800-2

Procedure turn West side of crs, 313° Outbnd, 133° Inbnd, 1700' within 10 miles.

Minimum altitude over facility on final approach crs, 1200'.

Crs and distance, facility to airport, 133°-5.2 miles.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.2 miles, climb to 2000' on R-128 FNO-VOR within 20 miles.

City, Fresno; State, Calif.; Airport Name, Fresno Air Terminal; Elev., 331'; Fac. Class., BVOR; Ident., FNO; Procedure No. 1, Amdt. Orig.; Eff. Date, 10 Mar. 60

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn.....	300-1	300-1	
				C-dn.....	600-1½	600-1½	
				A-dn.....	1000-2	1000-2	

Procedure turn West side of crs, 203° Outbnd, 023° Inbnd, 2500' within 10 miles.
 Minimum altitude over facility on final approach crs, 2000'.
 Crs and distance, facility to airport, 023°—11 miles.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 11 miles of DAY-VOR, climb to 2500' and proceed to the SLE-VOR.

City, Piqua; State, Ohio; Airport Name, Piqua; Elev., 1,000'; Fac. Class., VOR; Ident., DAY; Procedure No. 1, Admt. Orig.; Eff. Date, 5 Mar. 60

3. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
 If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	

PROCEDURE CANCELED, EFFECTIVE 10 MARCH 1960.

City, Fresno; State, Calif.; Airport Name, Air Terminal; Elev., 331'; Fac. Class., BVOR; Ident., FNO; Procedure No. TerVOR-11, Amdt. 1; Eff. Date, 2 June 56; Sup. Amdt. No. Orig.; Dated, 5 May 56

PROCEDURE CANCELED, EFFECTIVE 10 MARCH 1960.

City, Fresno; State, Calif.; Airport Name, Air Terminal; Elev., 331'; Fac. Class., BVOR; Ident., FNO; Procedure No. TerVOR-29, Amdt. 2; Eff. Date, 2 June 56; Sup. Amdt. No. 1; Dated, 5 May 56

PROCEDURE CANCELED, EFFECTIVE MARCH 1, 1960, DATE OF COMMISSIONING OF TERVOR/DMET FACILITY.

City, Rochester; State, N.Y.; Airport Name, Monroe County; Elev., 560'; Fac. Class., VOR; Ident., ROC; Procedure No. TerVOR-1, Amdt. 3; Eff. Date, 18 Feb. 56; Sup. Amdt. No. 2; Dated, 28 Jan. 56

Rush Int.....	3 mi fix on R-177.....	Direct.....	1200	T-dn.....	300-1	300-1	200-½
3 mile fix on R-177.....	Rnwy 1 (Final).....	Via R-177.....	*1000	C-dn.....	500-1	600-1	600-1½
Rush Int.....	ROC-VOR (Final).....	Direct.....	1200	S-dn*-1.....	400-1	400-1	400-1
				A-dn.....	800-2	800-2	800-2

Procedure turn East side of crs, 177° Outbnd, 357° Inbnd, 2000' within 10 miles. Procedure turn not required with DMET.
 Facility on airport.
 Minimum altitude over facility on final approach crs, 1000'.
 Crs and distance, break-off point to approach end of Rnwy 1, 097°—0.4 mi.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile, climb to 2000' on R-357 within 10 miles or, when directed by ATC, make a left climbing turn, return to Rush Int at 2000'.
 AIR CARRIER NOTE: Takeoff on Rnwy 12 and landing on Rnwy 30 NA.
 *Ceiling minimums of 600' applicable without DMET (1160' MSL).

City, Rochester; State, N.Y.; Airport Name, Rochester-Monroe County; Elev., 560'; Fac. Class., VOR; Ident., ROC; Procedure No. TerVOR-1, Amdt. Orig.; Eff. Date, 5 Mar. 60

Rochester LFR.....	ROC-VOR.....	Direct.....	1900	T-dn.....	300-1	300-1	200-½
10 mile fix R-289.....	5 mi fix R-289.....	Direct.....	1100	C-dn.....	500-1	600-1	600-1½
5 mi fix R-289.....	Rnwy 10.....	Via R-289.....	1000	S-dn-10*.....	400-1	400-1	400-1
				A-dn.....	800-2	800-2	800-2

Procedure turn South side of crs, 289° Outbnd, 109° Inbnd, 1900' within 10 mi. Procedure turn not required with DMET.
 Facility on airport.
 Minimum altitude over facility on final approach crs, 1000'.
 Crs and distance, break-off point to approach end Rnwy 10, 097°—0.5 mi.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile, climb to 2000' on R-109 within 10 miles.
 AIR CARRIER NOTE: Takeoff on Rnwy 12 and landing on Rnwy 30 not authorized.
 *Ceiling minimum of 500' applicable without DMET (1060' MSL).

City, Rochester; State, N.Y.; Airport Name, Rochester-Monroe County; Elev., 560'; Fac. Class., VOR; Ident., ROC; Procedure No. TerVOR-10, Amdt. Orig.; Eff. Date, 5 Mar. 60

4. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From--	To--	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
BHM LFR.....	LOM.....	Direct.....	2800	T-dn.....	300-1	300-1	**200-1/2
BHM VOR.....	LOM.....	Direct.....	2800	C-dn.....	800-1	900-1	900-1 1/2
Chelsea Int.....	LOM.....	Direct.....	2800	S-dn-5*	200-1/2	200-1/2	200-1/2
Bessmer Int.....	LOM (Final).....	Direct.....	2000	A-dn.....	1000-2	1000-2	1000-2
Leeds Int.....	LOM.....	Direct.....	2800				

Radar Terminal Area Transition Altitudes: 0-360° within 15 miles, 2500'; 0°-360° within 15-25 miles, 3500'. Radar control must provide 3 miles separation from tower 1802' MSL located 4 miles SW of airport or maintain 2800'.

Procedure turn N side of SW crs, 232° Outbnd, 052° Inbnd, 2000' within 10 mi. (Nonstandard to avoid obstructions.)
 Minimum altitude at G.S. int inbnd, 2000'.
 Altitude of G.S. and distance to approach end of rwy at OM, 2000'-4.5 mi; at MM, 815'-0.6 mi.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 3000', turn right and proceed to Leeds Int via BHM VOR R-115 or, when directed by ATC, turn left, climb to 2000' and proceed to BHM VOR or climb to 2500' on crs of 052° from LOM within 15 mi.
 AIR CARRIER NOTE: Sliding scale NA.
 *400-3/4 required when Glide Slope inoperative.
 **Runway 5/23 only.

City, Birmingham; State, Ala.; Airport Name, Municipal; Elev., 643'; Fac. Class., ILS; Ident., I-BHM; Procedure No. ILS-5, Amdt. 14; Eff. Date, 5 Mar. 60; Sup. Amdt. No. 13; Dated, 30 Oct. 59

FNO LFR.....	LOM.....	Direct.....	2000	T-dn.....	300-1	300-1	200-1/2
FNO VOR.....	LOM.....	Direct.....	2000	C-dn.....	500-1	500-1	500-1 1/2
Bowles Int (LFR).....	LOM.....	Direct.....	2000	S-dn-29#.....	200-1/2	200-1/2	200-1/2
Powder Int (VHF).....	LOM.....	Direct.....	2000	A-dn.....	600-2	600-2	600-2

Procedure turn *S side of crs, 109° Outbnd, 289° Inbnd, 2000' within 7 miles of LOM. Beyond 7 mi NA.
 Minimum altitude at G.S. int inbnd, 1500'.
 Altitude of G.S. and distance to approach end of rwy at OM 1440-4.0, at MM 566-0.8.
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb Northwestbound on FNO-VOR R-130 to FNO-VOR. Continue climb to 1700' on R-310 within 20 miles or, when directed by ATC, climb to 1500' on NW crs ILS, turn left and climb to 2000' on W crs of FNO LFR within 20 mi.
 #400-3/4 required with glide slope inoperative. 400-1 required when only localizer and either the outer marker or outer compass locator operative.
 *Procedure turn S side of crs; high terrain to North.

City, Fresno; State, Calif.; Airport Name, Fresno Air Terminal; Elev., 331'; Fac. Class., ILS; Ident., FNO; Procedure No. ILS-20, Amdt. 9; Eff. Date, 10 Mar. 60; Sup. Amdt. No. 8 (ILS portion Comb. ILS-ADF); Dated, 28 Dec. 57

LAX RBn.....	LOM.....	Direct.....	2000	T-dn.....	300-1	300-1	200-1/2
La Habra Int.....	Downy FM-RBn.....	Direct.....	3000	C-dn.....	500-1	600-1	600-1 1/2
LGB LFR.....	Downy FM-RBn.....	Direct.....	3000	S-dn-25R*.....	200-1/2	200-1/2	300-3/4
LGB VOR.....	Downy FM-RBn.....	Direct.....	3000	A-dn.....	600-2	600-2	600-2
LGB LFR.....	LOM.....	Direct.....	2000				
LGB VOR.....	LOM.....	Direct.....	2000				
Hollywood Hills FM.....	LOM.....	Direct.....	3000				
LAX VOR.....	LOM.....	Direct.....	2000				

Radar vectoring to final approach crs authorized.
 Procedure turn S side E crs, 068° Outbnd, 248° Inbnd, 2000' within 7.8 mi. of OM (E of Downy FM-RBn NA).
 Minimum altitude at glide slope int inbnd, 2000'. (Aircraft will maintain 3,000' until intercepting glide slope unless otherwise advised by ATC.)
 Altitude of glide slope and distance to approach end of runway at OM, 1830'-3.2 mi.; at MM, 335'-0.6 mi. (OM and MM located 750' to left of runway centerline).
 If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 2000' on W crs LAX ILS within 20 mi.
 Note: Narrow localizer course 4 degrees.
 *Crs and distance, OM to Rwy 25R, 249°-5.2 mi.

City, Los Angeles; State, Calif.; Airport Name, International; Elev., 126'; Fac. Class., ILS; Ident., LAX; Procedure No. ILS-25R, Amdt. 21; Eff. Date, 5 Mar. 60; Sup. Amdt. No. 20; Dated, 6 Feb. 60

5. The radar procedures prescribed in § 609.500 are amended to read in part:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				Precision approach			
				T-dn-14.....	300-1	300-1	200-1 1/2
				C-d-14, 32.....	400-1	500-1	500-1 1/2
				C-u-14, 32.....	400-2	500-2	500-2
				S-dn-32.....	300-3/4	300-3/4	300-3/4
				A-dn-14, 32.....	600-2	600-2	600-2

No terminal area maneuvering altitudes. Aircraft will be vectored to Gray Field radar final approach area by McChord RAPCON. 2000' minimum transition altitude to Gray Field PAR within 15 mi. north or south of Gray Field.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished:

Runway 32. Turn left, climb to 2000' on 275° crs to Shelton RBN.
Runway 14. Turn right, climb to 2000' on 270° crs to Shelton RBN.

Alternate missed approach. Climb to 3000' on 270° crs, intercept R-020 Olympia VOR. Proceed to Olympia VOR via R-020, maintain 3000'.

NOTE: Aircraft executing missed approach may, after being identified, be radar controlled by McChord RAPCON. Prior arrangement for landing required for civil aircraft not on official business.

City, Ft. Lewis; State, Wash.; Airport Name, Gray AAF; Elev., 301'; Fac. Class., Gray AAF; Ident., Radar; Procedure No. 1, Amdt. Orig.; Eff. Date, 5 Mar. 60

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Radar terminal area maneuvering sectors and altitudes														Ceiling and visibility minimums			
From	To	Dist.	Alt.	Condition	2-engine or less		More than 2-engine, more than 65 knots										
															65 knots or less	More than 65 knots	
														Surveillance approach			
270	220	15	#3000	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	T-dn.....	300-1	300-1	200-1 1/2
220	270	10	#3000	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	C-dn.....	400-1	500-1	500-1 1/2
240	220	-----	-----	25	3000	-----	-----	-----	-----	-----	-----	-----	-----	S-dn-2L, 20R*, 23.....	400-1	400-1	400-1
220	240	-----	-----	25	4000	-----	-----	-----	-----	-----	-----	-----	-----	A-dn.....	800-2	800-2	800-2

Radar terminal area transition altitudes—all bearings are from radar site with sector azimuths progressing clockwise.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished:

Runway 2L. Climb to 2000' on N crs ILS or on crs of 015 from LOM within 20 mi., or when directed by ATC, turn right, climb to 3000' on NE crs LFR within 20 mi.
Runways 20 or 23. Climb to 2500' on S crs ILS within 20 mi. or when directed by ATC, climb to 3000' on SW crs LFR within 20 mi.

AIR CARRIER NOTE: Takeoff with less than 200-1/2 on Runway 15, NA.

#2000' when radar provides 3 mi separation from radar and TV towers 8 mi SW, 5 mi W and 9 mi NW of airport.

*Maintain at least 1400' until 2.5 mi of runway end.

City, Nashville; State, Tenn.; Airport Name, Berry Field; Elev., 606'; Fac. Class., Nashville; Ident., Radar; Procedure No. 1, Amdt. 2; Eff. Date, 5 Mar. 60; Sup. Amdt. No. 1; Dated, 21 Sept. 57

These procedures shall become effective on the dates indicated on the procedures.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on February 5, 1960.

OSCAR BAKKE,
Director, Bureau of Flight Standards.

[F.R. Doc. 60-1360; Filed, Feb. 11, 1960; 8:46 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 14]

PART 728—WHEAT

Subpart—Wheat Marketing Quota Regulations for 1958 and Subsequent Crop Years

EXCESS ACREAGE UTILIZATION DATES AND NORMAL HARVEST COMPLETION DATES

Basis and purpose. The amendment herein is issued pursuant to and in accordance with the Agriculture Adjustment Act of 1938, as amended, and is issued for the purpose of (1) providing final dates for the disposal of excess wheat acreage and providing dates on which wheat harvest is normally substantially completed in Arizona, and (2) changing the final dates for the disposal of excess wheat acreage in Mississippi, Texas and Wyoming, and changing the normal harvest completion dates in Wyoming. Since the determination of 1960 wheat acreage is now being made in many counties, it is important that State and county committees be notified of the amendment herein as soon as possible so that producers with 1960 excess wheat acreage may be notified of the final date for utilization of such excess acreage as wheat cover crop. Accordingly it is hereby found that compliance with the public notice and procedure provisions of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest.

1. Section 728.855(b) is amended as follows:

a. Insert between the list of disposition dates for the States of Alabama and Arkansas the following:

ARIZONA

(Winter Wheat)

April 15: Cochise, Graham, Maricopa, Pima, Pinal, Santa Cruz, Yuma.

May 15: Gila, Greenlee, Mohave, Yavapai.

June 1: Apache, Coconino, Navajo.

(Spring Wheat)

August 1: Coconino, Navajo.

b. Under Mississippi, delete "April 20" and insert "May 20".

c. Under Texas, delete the date of May 20 and the counties of Dallam, Hansford, Hartley, Hutchinson, Lipscomb, Moore, Ochiltree, Sherman.

d. Under Wyoming, delete the date of "June 20" and insert "June 30".

2. Section 728.862(a) (3) is amended as follows:

a. Insert between the list of dates for Alabama and Arkansas the following:

ARIZONA

(Winter Wheat)

June 15: Cochise, Graham, Maricopa, Pima, Pinal, Santa Cruz, Yuma.

July 1: Gila, Greenlee, Mohave, Navajo.

August 1: Apache, Coconino, Navajo.

(Spring Wheat)

September 15: Coconino, Navajo.

b. Under Wyoming (Winter Wheat), delete the date of "July 20" and insert "July 30".

(Secs. 374, 375, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1374, 1375)

Issued at Washington, D.C., this 9th day of February 1960.

CLARENCE D. PALMBY,
Associate Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-1389; Filed, Feb. 11, 1960;
8:52 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 Maneb

A petition was filed with the Food and Drug Administration by E. I. du Pont de Nemours and Company, Inc., Wilmington, Delaware, requesting the establishment of a tolerance for residues of maneb (manganous ethylenebisdithiocarbamate), expressed as zinc ethylenebisdithiocarbamate, in or on rhubarb.

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

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 (21 CFR, 1958 Supp., 120.7(g)), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR, 1958 Supp., 120.110) are amended by adding to the list of raw agricultural commodities for which tolerances have been established in § 120.110(a) the item rhubarb.

As amended, § 120.110(a) reads as follows:

§ 120.110 Tolerances for residues of maneb.

(a) 10 parts per million in or on apricots, beans (succulent form), broccoli, Brussels sprouts, cabbage, cauliflower, celery, Chinese cabbage, collards, endive (escarole), kale, kohlrabi, lettuce, mustard greens, nectarines, peaches, rhubarb, spinach, turnip tops.

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

Any person who will be adversely affected by the foregoing order may, at any time prior to the thirtieth day from the

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

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

Dated: February 4, 1960.

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

[F.R. Doc. 60-1368; Filed, Feb. 11, 1960;
8:47 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

PART 207—NAVIGATION REGULATIONS

Miscellaneous Amendments

1. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), paragraph (g) of § 203.560 governing the operation of bridges across the Mississippi River and its tributaries and outlets is hereby amended redesignating subparagraphs (13)-(15) as (15)-(17) and prescribing new subparagraphs (13) and (14) to govern the operation of bridges across the upper Mississippi River between Lock and Dam No. 10 and Lock and Dam No. 1, and the St. Croix River, Wisconsin and Minnesota, between the mouth and Bayport, Minnesota; § 203.641 is hereby prescribed to govern the operation of bridges across certain tributaries of the Great Lakes; and § 203.642 is hereby amended to govern the operation of the highway bridge across Keweenaw Waterway, Michigan, during the winter months, to become effective on and after publication in the FEDERAL REGISTER, as follows:

§ 203.560 Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

(g) Ohio River and Upper Mississippi River. * * *

(13) Upper Mississippi River; During the winter months from December 15 to March 1, at least 24 hours' advance notice required for opening all drawbridges between Lock and Dam No. 10 (Mile 615.1) and Lock and Dam No. 2 (Mile 815.2). During the above period, at least 12 hours' advance notice required for opening all drawbridges be-

tween Lock and Dam No. 2 and Lock and Dam No. 1 (Mile 847.6).

NOTE: Mileage is above the mouth of the Ohio River.

(14) St. Croix River, Wis. and Minn.; During the winter months from December 15 to March 1, at least 24 hours' advance notice required for opening all drawbridges between the mouth and Bayport, Minn.

(15) St. Croix River, Wis. and Minn.; States of Wisconsin and Minnesota highway bridge at Stillwater, Minn. (Redesignated.)

(16) St. Croix River, Wis. and Minn.; Minneapolis, St. Paul and Sault Ste. Marie Railroad Company bridge near Otisville, Minn., and Village of Osceola highway bridge at Osceola, Wis. (Redesignated.)

(17) Minnesota River, Minn. (Redesignated.)

§ 203.641 Great Lakes tributaries; bridges where constant attendance of draw tenders is not required.

(a) The owners of or agencies controlling certain bridges will not be required to keep draw tenders in constant attendance. The bridges to which this section applies are listed, and the special regulations applicable in each case are set forth in paragraph (f) of this section.

(b) Whenever a vessel, unable to pass under a closed bridge, desires to pass through the draw, advance notice, as specified, of the time when the opening is required shall be given by telephone or other means to the authorized representative of the owner of or agency controlling the bridge.

(c) Upon receipt of such notice, the authorized representative of the owner of or agency controlling the bridge, in compliance therewith, shall arrange for the prompt opening of the draw at the time specified in the notice for the passage of the vessel.

(d) The owners of or agencies controlling the bridges shall, if no draw tender is in attendance, keep conspicuously posted on both the upstream and downstream sides of the bridges, in a manner that it can be easily read at any time, a copy of the regulations in this section together with a notice stating exactly how the representative specified in paragraph (b) of this section may be reached.

(e) The operating machinery of the draws shall be maintained in a serviceable condition and the draw opened and closed at least once about the midpoint of the period specified in paragraph (f) of this section for each bridge to assure that the machinery is in proper order for satisfactory operation: *Provided*, That the operation of a drawspan for the passage of a vessel shall be deemed to constitute such test operation.

(f) The bridges to which this section applies, and the special regulations applicable in each case, are as follows:

(1) Ontonagon Harbor, Mich.; Michigan State Highway Department bridge at Ontonagon. During the winter months from January 1 to March 15, at least 24 hours' advance notice required.

(2) Black River at Port Huron, Mich.; All drawbridges across Black River from

its mouth at the St. Clair River to the upper limits of the Turning Basin. During the winter months from January 1 to March 1, at least 3 hours' advance notice required.

§ 203.642 Keweenaw Waterway, Mich.; Michigan State Highway Department bridge between Houghton and Hancock.

(d) The draw shall be opened promptly on signal for the passage of vessels of 30 net registered tons and upward except as provided in paragraph (f) of this section. The draw shall be opened as soon as convenient for the passage of vessels of less than 30 tons, but no such vessel shall be delayed for more than 10 minutes except as provided in paragraph (f) of this section.

(e) The owner of or agency controlling the drawbridge will not be required to keep a draw tender in constant attendance during the winter months from January 1 to March 15.

(f) Whenever a vessel, unable to pass under the closed bridge, desires to pass through the draw during the winter months from January 1 to March 15, at least 24 hours' advance notice of the time when the opening is required shall be given by telephone or other means to the authorized representative of the owner of or agency controlling the bridge.

(g) Upon receipt of such notice, the authorized representative of the owner of or agency controlling the bridge, in compliance therewith, shall arrange for the prompt opening of the draw at the time specified in the notice for the passage of the vessel.

(h) The owner of or agency controlling the bridge shall, if no draw tender is in attendance as above provided, keep conspicuously posted on both the upstream and downstream sides of the bridge, in a manner that it can be easily read at any time, a copy of the regulations of this section together with a notice stating exactly how the representative specified in paragraph (f) of this section may be reached.

(i) The operating machinery of the draw shall be maintained in a serviceable condition and the draw opened and closed at least once on or about March 15 to assure that the machinery is in proper order for satisfactory operation: *Provided*, that the operation of the drawspan for the passage of a vessel shall be deemed to constitute such test operation.

2. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), paragraph (b) of § 207.400 is hereby amended to govern the operation of all drawbridges across Duluth-Superior Harbor, Minn. and Wis., during the winter months, to become effective on and after publication in the FEDERAL REGISTER, as follows:

§ 207.400 Duluth-Superior Harbor, Minn. and Wis.; use, administration, and navigation, bridge, and dumping regulations.

(b) Bridge regulations—(1) All drawbridges across Duluth-Superior Harbor. (i) The owners of or agencies control-

ling these bridges will not be required to keep draw tenders in constant attendance during the winter months from January 1 to March 15. Constant attendance of draw tenders is also not required from March 16 to December 31 for the Duluth, Missabe and Iron Railway Company (Transfer Bridge) between Oliver, Wis., and New Duluth, Minn.

(ii) Whenever a vessel, unable to pass under a closed bridge desires to pass during the winter months from January 1 to March 15, at least 24 hours' advance notice of the time when the opening is required shall be given by telephone or other means to the authorized representative of the owner of or agency controlling the bridge. From March 16 to December 31, at least 3 hours' advance notice is required for opening the Transfer Bridge listed in subdivision (i) of this subparagraph.

[Regs., January 28, 1960, 285/91-ENGWO] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 60-1316; Filed, Feb. 11, 1960; 8:45 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 73—BIOLOGIC PRODUCTS

Miscellaneous Amendments

On September 29, 1959, a notice of proposed rule making with respect to the licensing of biological products was published in the FEDERAL REGISTER (24 F.R. 7835) inviting any interested parties to present written views or arguments respecting the proposed amendments there published.

Several comments and suggestions have been received from representatives of drug manufacturers relating particularly to the proposed revision of the prescribed sterility test. All the views expressed have been carefully considered. On the basis of these and other considerations, it is deemed necessary, in order to assure the continued safety, purity and potency of biological products, to issue at this time the following amendments to Part 73, and in the public interest for the protection of the public health, to make such amendments effective upon their publication in the FEDERAL REGISTER, except § 73.73 which shall be effective 60 days after publication in the FEDERAL REGISTER.

1. Redesignate paragraphs (b), (c), (d) and (e) of § 73.70 and §§ 73.71, 73.72, 73.73, 73.74, 73.75, 73.76, 73.77, 73.78, and 73.79 as §§ 73.71, 73.72, 73.73, 73.74, 73.75, 73.76, 73.77, 73.78, 73.79, 73.80, 73.81, 73.82, and 73.83, respectively.

2. Amend § 73.70 to read as follows:

§ 73.70 Tests prior to release required for each lot.

No lot of any licensed product shall be released by the manufacturer prior to the

completion of tests for conformity with standards applicable to such product. Each applicable test shall be made on each lot after completion of all processes of manufacture which may affect compliance with the standard to which the test applies.

3. Amend § 73.71, as redesignated, to read as follows:

§ 73.71 Potency.

Tests for potency shall consist of either in vitro or in vivo tests, or both, which have been specifically designed for each product so as to indicate its potency in a manner adequate to satisfy the interpretation of potency given by the definition in § 73.1(s).

4. Amend § 73.73, as redesignated, to read as follows:

§ 73.73 Sterility.

Except as provided in paragraph (f), the sterility of each lot of each product shall be demonstrated by the performance of the tests prescribed in paragraphs (a) and (b) of this section for both bulk and final container material. Bulk material shall be tested separately from final container material and material from each final container shall be tested in individual test vessels.

(a) *The test*—(1) *Using Fluid Thioglycollate Medium.* The volume of product, as required by paragraph (d) of this section (hereinafter referred to also as the "inoculum"), from samples of both bulk and final container material, shall be inoculated into test vessels of Fluid Thioglycollate Medium. The inoculum and medium shall be mixed thoroughly and incubated at a temperature of 30° to 32° C. for a test period of no less than seven days and examined visually for evidence of growth on the third, fourth or fifth day and on the seventh or eighth day. If incubation is continued beyond eight days, an additional examination shall be made on the last day of the test period. If the inoculum renders the medium turbid so that the absence of growth cannot be determined reliably by visual examination, portions of this turbid medium in amounts of no less than 1.0 ml. shall be transferred on the third, fourth or fifth day of incubation, from each of the test vessels and inoculated into additional vessels of medium. The material in the additional vessels shall be incubated at a temperature of 30° to 32° C. for no less than seven days. Notwithstanding such transfer of material, examination of the original vessels shall be continued as prescribed above. The additional test vessels shall be examined visually for evidence of growth on the third, fourth or fifth day of incubation and on the seventh or eighth day and if incubation is continued beyond a period of eight days, an additional examination shall be made on the last day of the incubation period. If growth appears, repeat tests may be performed as prescribed in paragraph (b) of this section and interpreted as specified in paragraph (c) of this section.

(2) *Using Fluid Sabouraud Medium.* Except for dried products, a test for fungi and yeast shall be made on final con-

tainer material, following the procedures prescribed in subparagraph (1) of this paragraph except that (i) the medium shall be Fluid Sabouraud Medium; (ii) the incubation shall be at a temperature of 20° to 25° C.; (iii) the period of incubation shall be no less than 10 days and an examination shall be made on the tenth or eleventh day in lieu of an examination on the seventh or eighth day.

(b) *Repeat tests*—(1) *Repeat bulk tests.* If growth appears in the test of the bulk material, the test may be repeated to rule out faulty test procedures by testing at least the same volume of material.

(2) *First repeat final container test.* If growth appears in any test (thioglycollate or Sabouraud) of final container material, that test may be repeated to rule out faulty test procedures by testing material from a sample of at least the same number of final containers.

(3) *Second repeat final container test.* If growth appears in any first repeat final container test (thioglycollate or Sabouraud), that test may be repeated provided there was no evidence of growth in any test of the bulk material and material from a sample of twice the number of final containers used in the first test is tested by the same method used in the first test.

(c) *Interpretation of test results.* The results of all tests performed on a lot shall be considered in determining whether or not the lot meets the requirements for sterility, except that tests may be excluded when demonstrated by adequate controls to be invalid. The lot meets the test requirements if no growth appears in the tests prescribed in paragraph (a) of this section. If repeat tests are performed, the lot meets the test requirements if no such growth appears in the tests prescribed in paragraph (b) of this section.

(d) *Test samples and volumes*—(1) *Bulk.* Each sample for the bulk sterility test shall be representative of the bulk container material and the volume tested shall be no less than 10 ml. (Note exception in paragraph (f)(9)) of this section.

(2) *Final containers.* The sample for the final container and first repeat final container tests shall be no less than 20 final containers from each filling of each lot, selected to represent all stages of filling from the bulk container. If the amount of material in the final container is 1.0 ml. or less, the entire contents shall be tested. If the amount of material in the final container is more than 1.0 ml., the volume tested shall be the largest single dose recommended by the manufacturer or 1.0 ml., whichever is larger, but no more than 10 ml. of material or the entire contents from a single final container need be tested. (Note exceptions in paragraph (f)(6), (7), (8) and (9)) of this section.

(e) *Culture medium*—(1) *Formulae.* (i) The formula for Fluid Thioglycollate Medium is as follows:

Fluid Thioglycollate Medium

1-cystine.....	0.5 gm.
Sodium chloride.....	2.5 gm.
Dextrose (C ₆ H ₁₂ O ₆ ·H ₂ O).....	5.5 gm.

Fluid Thioglycollate Medium—Continued

Granular agar (less than 15% moisture by weight).....	0.75 gm.
Yeast extract (water-soluble)....	5.0 gm.
Pancreatic digest of casein.....	15.0 gm.
Purified Water.....	1,000.0 ml.
Sodium thioglycollate (or thioglycollic acid—0.3 ml.).....	0.5 gm.
Resazurin (0.10% solution, freshly prepared).....	1.0 ml.
Final pH	7.1±0.1.

(ii) The formula for Fluid Sabouraud Medium is as follows:

Fluid Sabouraud Medium

Dextrose.....	20 gm.
Pancreatic digest of casein.....	5 gm.
Peptic digest of animal tissue.....	5 gm.
Purified water.....	1,000 ml.
Final pH	5.7±0.1.

(2) *Culture medium requirements*—

(i) *Quality and condition of medium and design of container.* The growth promoting qualities and conditions of the culture medium, and the design of the test container, shall be such as are shown to provide conditions favorable to aerobic and anaerobic growth of microorganisms throughout the test period.

(ii) *Ratio in inoculum to culture medium.* The ratio of the volume of the inoculum to the volume of culture medium shall be such as will dilute the preservative in the inoculum to a level that does not inhibit growth of contaminating microorganisms. Inhibitors or neutralizers of preservative may be considered in determining the proper ratio.

(f) *Exceptions.* Bulk and final container material shall be tested for sterility as described above in this section except as follows:

(1) *Different sterility tests prescribed.* When different sterility tests are prescribed for a product in this part.

(2) *Alternate incubation temperatures.* Two tests may be performed, in all respects as prescribed in paragraph (a)(1) of this section, one test using an incubation temperature of 18° to 22° C., the other test using an incubation temperature of 35° to 37° C., in lieu of performing one test using an incubation temperature of 30° to 32° C.

(3) *Different tests equal or superior.* A different test may be performed provided that prior to the performance of such test a manufacturer submits data which the Surgeon General finds adequate to establish that the different test is equal or superior to the tests described in paragraphs (a) and (b) of this section in detecting contamination and makes the finding a matter of official record.

(4) *Test precluded or not required.* The tests prescribed in this section need not be performed for Whole Blood (Human), Packed Red Blood Cells (Human), Single Donor Plasma (Human), Smallpox Vaccine and other similar products concerning which the Surgeon General finds that the mode of administration, the method of preparation or the special nature of the product precludes or does not require a sterility test.

(5) *Viscous biological products.* Thioglycollate Broth Medium may be used in lieu of fluid thioglycollate medium to test viscous biological products. The

formula for Thioglycollate Broth Medium is as follows:

Thioglycollate Broth Medium. Certain biological products are turbid or otherwise do not lend themselves readily to culturing in Fluid Thioglycollate Medium because of its viscosity. In such instances, the following broth is acceptable in place of the Fluid Thioglycollate Medium, provided it is used in Smith fermentation tubes which have been heated within four hours in a boiling water bath or in free-flowing steam so as to drive the dissolved oxygen out of the medium in the closed arm:

1-cystine.....	0.5 gm.
Sodium chloride.....	2.5 gm.
Dextrose (C ₆ H ₁₂ O ₆ ·H ₂ O).....	5.5 gm.
Yeast extract (water-soluble)....	5.0 gm.
Pancreatic digest of casein.....	15.0 gm.
Purified Water.....	1,000.0 ml.
Sodium Thioglycollate (or thio- glycollic acid—0.3 ml.).	0.5 gm.
Final pH 7.1±0.1.	

(6) *Number of final containers more than 20, less than 200.* If the number of final containers in the filling is more than 20 or less than 200, the sample shall be no less than 10 percent of the containers.

(7) *Number of final containers—20 or less.* If the number of final containers in a filling is 20 or less, the sample shall be no more than one final container, provided (i) the bulk material met the sterility test requirements and (ii) after filling, it is demonstrated by testing a simulated sample that all surfaces to which the product was exposed were free of contaminating microorganisms. The simulated sample shall be prepared by rinsing the filling equipment with sterile 1.0 percent peptone solution, pH 7.1±0.1, which shall be discharged into a final container by the same method used for filling the final containers with the product.

(8) *Samples—large volume of product in final containers.* For Normal Serum Albumin (Human), Normal Human Plasma, Antihemophilic Plasma (Human) and Plasma Protein Solution (Human), when the volume of product in the final container is 50 ml. or more, the final containers selected as the test sample may contain less than the full volume of product in the final containers of the filling from which the sample is taken: *Provided*, That the containers and closures of the sample are identical with those used for the filling to which the test applies and the sample represents all stages of that filling.

(9) *Diagnostic products not intended for injection.* For diagnostic products not intended for injection, (i) only the Thioglycollate Medium test is required, (ii) the volume of material for the bulk test shall be no less than 2.0 ml., and (iii) the sample for the final container test shall be no less than three final containers if the total number filled is 100 or less, and, if greater, one additional container for each additional 50 containers or fraction thereof, but the sample need be no more than 10 containers.

5. Amend § 73.75, as redesignated, to read as follows:

§ 73.75 Requests for samples and protocols.

Samples of any lot of any licensed product, together with protocols showing the results of applicable tests, may at any time be required to be sent to the Director, Division of Biologics Standards.

§ 73.1 [Amendment]

6. Amend § 73.1 as follows:

a. Redesignate paragraphs (e) to (o) as (f) to (p), respectively.

b. Insert a new paragraph (e) to read as follows:

(e) "Division of Biologics Standards" means the Division of Biologics Standards of the National Institutes of Health.

c. Redesignate paragraphs (p), (q) and (r) as (r), (s) and (t), respectively.

d. Insert a new paragraph (q) to read as follows:

(q) The word "sterility" is interpreted to mean freedom from viable contaminating microorganisms, as determined by the tests prescribed in § 73.73.

e. Revise paragraph (t), as redesignated, to read as follows:

(t) "Manufacturer" means any legal person or entity engaged in the manufacture of a product subject to license under the Act.

f. Redesignate paragraphs (s) and (t) as (w) and (y), respectively.

g. Insert a new paragraph (u) to read as follows:

(u) "Manufacture" means all steps in propagation or manufacture and preparation of products and includes but is not limited to filling, testing, labeling, packaging, and storage by the manufacturer.

h. Insert a new paragraph (v) to read as follows:

(v) "Location" includes all buildings, appurtenances, equipment and animals used, and personnel engaged by a manufacturer within a particular area designated by an address adequate for identification.

i. Revise paragraph (w), as redesignated, to read as follows:

(w) "Establishment" includes all locations.

j. Insert a new paragraph (x) to read as follows:

(x) "Lot" means that quantity of uniform material identified by the manufacturer as having been thoroughly mixed in a single container.

7. Insert a new § 73.2 to read as follows:

§ 73.2 Two forms of licenses.

There shall be two forms of licenses: establishment and product.

8. Renumber present § 73.2 as § 73.3 and as thus renumbered amend such section to read as follows:

§ 73.3 Application for establishment and product licenses; procedure for filing.

To obtain a license for any establishment or product, the manufacturer shall

make application to the Director, Division of Biologics Standards, on forms prescribed for such purpose, and in the case of an application for a product license, shall submit data derived from laboratory and clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity and potency, a full description of manufacturing methods, data establishing stability of the product through the dating period, sample(s) representative of the product to be sold, bartered or exchanged or offered, sent, carried or brought for sale, barter or exchange, summaries of results of tests performed on the lot(s) represented by the submitted sample(s), and specimens of the labels, enclosures and containers proposed to be used for the product. An application for license shall not be considered as filed until all pertinent information and data shall have been received from the manufacturer by the Division of Biologics Standards.

9. Delete present § 73.4, renumber present § 73.3 as § 73.4 and as thus renumbered amend such section to read as follows:

§ 73.4 Establishment licenses; issuance and conditions.

(a) *Inspection—compliance with standards.* An establishment license shall be issued only after inspection of the establishment and upon a determination that the establishment complies with the applicable standards prescribed in the regulations in this part.

(b) *Availability of product; simultaneous request for and issuance of product license.* No establishment license shall be issued unless (1) a product intended for sale, barter or exchange or intended to be offered, sent, carried or brought for sale, barter or exchange is available for examination, (2) such product is available for inspection during all phases of manufacture and (3) a product license is requested and issued simultaneously with the establishment license.

(c) *One establishment license to cover all locations.* One establishment license shall be issued to cover all locations meeting the establishment standards.

10. Insert a new § 73.5 to read as follows:

§ 73.5 Product licenses; issuance and conditions.

(a) *Examination—compliance with standards.* A product license shall be issued only upon examination of the product and upon a determination that the product complies with the standards prescribed in the regulations in this part: *Provided*, That no product license shall be issued except upon a determination that the establishment complies with the establishment standards prescribed in the regulations contained in this part, applicable to the manufacture of such product.

(b) *Manufacturing process—impairment of assurances.* No product shall be licensed if any part of the process of or relating to the manufacture of such product, in the judgment of the Surgeon General, would impair the assurances of continued safety, purity and potency as

provided by the regulations contained in this Part.

11. Renumber present § 73.5 as § 73.6 and as thus renumbered amend such section to read as follows:

§ 73.6 License forms.

(a) *Establishment license.* The establishment license form shall be prescribed by the Surgeon General and shall include:

(1) The name and address of the manufacturer.

(2) The name and address of the establishment.

(3) The names and addresses of all locations of the establishment.

(4) The license number.

(5) The date of issuance.

(b) *Product license.* The product license form shall be prescribed by the Surgeon General and shall include:

(1) The name and address of the manufacturer.

(2) The name and address of the establishment.

(3) The name and address of each location at which the product is manufactured.

(4) The license number of the establishment.

(5) The proper name of the product, with additional specifications, if any, which may be approved or required for additional labeling purposes.

12. Renumber present §§ 73.6 to 73.15 as §§ 73.7 to 73.16, respectively.

13. Amend the new § 73.9 (present § 73.8) to read as follows:

§ 73.9 Licenses; issuance, revocation and suspension.

A license shall be issued by the Secretary upon the recommendation of the Surgeon General and upon the determination by the Surgeon General that the establishment or the product, as the case may be, meets the standards established by the regulations in this Part as herein prescribed or hereafter amended. Licenses shall be valid until suspended or revoked. An establishment or product license shall be revoked upon application of the manufacturer giving notice of intention to discontinue the manufacture of all products or of intention to discontinue the manufacture of a particular product for which a license is held. The Surgeon General shall recommend to the Secretary that a license be suspended or revoked whenever he finds, after notice and opportunity for hearing, that the establishment or any location thereof, or the product for which the license has been issued, fails to conform to the standards in the regulations in this part, as herein prescribed or as hereafter amended, designed to insure the continued safety, purity and potency of the manufactured product. In case of suspension, if the faulty condition is not corrected within 60 days or within such other period as may be specified in the notice of suspension, he shall recommend that the license be revoked. Except as provided in § 73.11, prior to the suspension or revocation of a license and to the institution of proceedings looking to the suspension or revocation of a license the licensee shall be advised in writing of

the facts or conduct which may warrant such action and shall be accorded opportunity within a reasonable period prescribed by the Surgeon General to demonstrate or achieve compliance with the regulations in this part.

14. Amend the new § 73.15 (present § 73.14) to read as follows:

§ 73.15 Licenses; reissuance.

(a) *Compliance with standards.* An establishment or product license, previously suspended or revoked, whether upon application, or for failure to comply with standards or changes in standards prescribed in the regulations in this part, may be reissued or reinstated upon a showing of compliance with required standards and upon such inspection and examination as may be considered necessary by the Director of the Division of Biologics Standards.

(b) *Exclusion of noncomplying location.* An establishment or product license, excluding a location or locations that fail to comply with prescribed standards, may be issued without further application and concurrently with the suspension or revocation of the license for noncompliance at the excluded location or locations.

§ 73.36 [Amendment]

15. Amend the first sentence of § 73.36(a) to read as follows: "Records shall be made, concurrently with the performance, of the various steps in the manufacture, disposition and distribution of each lot, so that at any time these steps as regards any lot number may be traced by an inspector."

16. Substitute "Director, Division of Biologics Standards" for "Institute", "Institutes" or "National Institutes of Health" wherever the latter terms may appear in §§ 73.7 (as redesignated), 73.23, 73.24, 73.32(e), 73.36(b), (e), 73.38(d), 73.72 (as redesignated), 73.82(c) (as redesignated), 73.91, 73.92, 73.101(c), 73.103 (first paragraph), and 73.113.

17. Amend the first paragraph of § 73.104(f) and § 73.114(i) by inserting "Director," immediately preceding "Division".

18. Amend §§ 73.37(f), 73.101(e)(3), 73.102, 73.110(a) (last sentence), (b), (c), and 73.112 by deleting the word "preparation" and by inserting in lieu thereof the word "manufacture".

19. Amend § 73.38(c) by deleting the words "production or testing" in the first and second sentences and by inserting in lieu thereof in both sentences the word "manufacturing".

20. Amend §§ 73.101(a) and 73.111(a) by deleting the word "preparing" and by inserting in lieu thereof the word "manufacturing".

21. Amend the new §§ 73.7 (present § 73.6), 73.16 (present § 73.15) and § 73.32(c), (f), (h), 73.37(f) (title), and 73.112(a)(3) by deleting the word "production" and by inserting in lieu thereof the word "manufacture".

23. Amend § 73.37(b) by deleting the word "production" wherever it may appear and by inserting in lieu thereof the word "manufacture" where it first appears and the word "manufacturing" where it subsequently appears.

24. Amend § 73.38(a) by deleting the word "production" in the first and second sentences and by inserting in lieu thereof in the first sentence the words "the manufacture" and in the second sentence the word "manufacturing".

25. Amend the last two sentences of the new § 73.16 (present § 73.15) by deleting the reference to "§§ 73.2 to 73.14" and inserting "§ 73.2 to 73.15" in lieu thereof and by deleting the references to "§§ 73.10, 73.12 and 73.13" and by inserting "§§ 73.11, 73.13, and 73.14" in lieu thereof.

(Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216. Interpret or apply Sec. 351, 58 Stat. 702; 42 U.S.C. 262)

Dated: January 26, 1960.

[SEAL] L. E. BURNEY,
Surgeon General.

Approved: February 8, 1960.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 60-1388; Filed, Feb. 11, 1960; 8:52 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1—GENERAL RULES OF PRACTICE

Procedure

At a general session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 1st day of February A.D. in 1960.

There being under consideration § 1.200 of the special rules of practice:

It is ordered, That the title of § 1.200 be amended to read as follows: *Special rules of practice governing procedure in certain suspension and fourth-section matters.*

It is further ordered, That paragraph (b) of § 1.200 be amended to read as follows:

(b) Petitions for reconsideration of orders of the following may be filed by any interested person within 20 days after the date of the service of the order:

- (1) Board of Suspension,
- (2) Fourth Section Board,
- (3) Appellate Division 2 reversing, changing, or modifying a previous determination of an employee board, and
- (4) Division 2 suspending schedules or granting or denying fourth-section relief prior to hearing in proceedings not subject to a prior determination by an employee board.

Except as to said subparagraph (4) of this paragraph, respecting which an original and 14 copies are required, the original and six copies of every pleading, document or paper filed under this section shall be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commis-

sion but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the Commission's general rules of practice.

It is further ordered, That this order shall become effective on March 15, 1960.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy with the Director, Division of the Federal Register.

(Secs. 12, 17, 24 Stat. 383, as amended, 385, as amended, 49 Stat. 546, as amended, 548, as amended, sec. 201, 54 Stat. 933, sec. 1, 56 Stat. 285; 49 U.S.C. 12, 17, 304, 305, 904, 1003)

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 60-1371; Filed, Feb. 11, 1960;
8:48 a.m.]

SUBCHAPTER B—CARRIERS BY MOTOR VEHICLES

PART 181—COMMON AND CONTRACT CARRIERS OF PASSENGERS

[No. 32156]

Uniform System of Accounts for Class I Common and Contract Motor Carriers of Passengers

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 2d day of February A.D. 1960.

Having under consideration certain modifications of the accounting regulations for motor carriers of passengers, pursuant to the provisions of section 220 of the Interstate Commerce Act, as amended, and the notice of proposed rule making published in the FEDERAL REGISTER October 17, 1959 (24 F.R. 8448), with all responses thereto given due consideration;

It is ordered, That the modifications of the regulations (49 CFR Part 181) which are attached hereto and made a part hereof shall become effective April 1, 1960, unless otherwise ordered after consideration of written statements which may be filed with the Commission on or before March 14, 1960 giving reasons why said modifications should not become effective or for good cause otherwise shown; and,

It is further ordered, That this order be served on each Class I common and contract motor carrier of passengers subject to its provisions, and on every trustee, receiver, executor, administrator, or assignee of such motor carrier, and notice shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

(Sec. 204, 49 Stat. 546, as amended; 49 U.S.C. 304. Interpret or apply sec. 220, 49 Stat. 583, as amended; 49 U.S.C. 320)

By the Commission, division 2.

[SEAL]

HAROLD D. McCoy,
Secretary.

1. The present § 181.02-20 *Instruction 20, property purchased*, is revoked; and a new § 181.02-20 *Instruction 20, acquisition of a distinct operating unit*, is inserted to read as follows:

§ 181.02-20 Instruction 20, acquisition of a distinct operating unit.

(a) When a motor carrier system or portion thereof constituting a distinct operating unit (see definition 24) is acquired by purchase or merger or consolidation in a pooling of equity interests of stockholders the accounting therefor shall be as follows:

(1) *Purchase.* (i) When purchase is made from a non-affiliated company the assets acquired, other than carrier operating property, non-carrier operating property and other non-operating property includible in accounts 1200, 1300, 1400 and 1450, and the liabilities assumed shall be recorded in the appropriate accounts at the amounts carried on the books of the transferor at date of consummation of the transaction. Such amounts shall be adjusted, as may be necessary, to conform with the rules in this system of accounts. The carrier operating property, non-carrier operating property and other non-operating property acquired shall be recorded in the appropriate subaccounts under accounts 1200, 1300, 1400 and 1450 based upon the fair market value or the cost specified in the purchase agreement if the latter does not exceed the fair market value of such property acquired. When the properties are recorded at cost specified in the purchase agreement or fair market value such amounts must be supported by report of a disinterested qualified appraiser and such additional evidence as the Commission may require. When an appraisal has not been obtained the original cost of carrier operating property, non-carrier operating property and other non-operating property together with the related depreciation reserves as shown in the books of seller shall be recorded in the accounts in lieu of market value.

(ii) When purchase is made from an affiliated company the assets acquired including carrier operating property, noncarrier operating property and non-operating property, together with the related depreciation reserves and the liabilities assumed shall be recorded in the appropriate accounts at the amounts carried on the books of the affiliated transferor, adjusted, as may be necessary to conform with the rules in this system of accounts.

(iii) The amount of the consideration paid in excess of the net assets acquired shall be included in account 1550, Other Intangible Property.

Where the consideration paid is less than the net assets acquired recorded in accordance with the foregoing provisions the difference shall be credited to account 2720, Premiums and Assessments on Capital Stock, where the consideration is paid in capital stock, and to account 2900, Unearned Surplus, where the consideration is paid in other than capital stock.

(2) *Merger or consolidation in a pooling of equity interests of stockholders.* (i) When a distinct operating unit is ac-

quired by merger or consolidation in a pooling of equity interests of stockholders, in which all or substantially all of such equity interests in the predecessor company continue, as such, in a surviving company (which may be the transferee or a new company, created for the purpose) the assets, liabilities and the earned surplus or deficit, if any, of the predecessor company shall be recorded in the accounts of the transferee at amounts carried on the books of the predecessor company at date of consummation of the transaction. Such amounts shall be adjusted, if necessary, to conform with the rules in this system of accounts. Where one of the constituent corporations is clearly dominant and its stockholders obtain 90 percent or more of the voting interest in the combined enterprise there is a presumption that the transaction is a purchase rather than a pooling of interests and the transaction shall be so accounted for unless otherwise directed or authorized by the Commission.

(ii) When the total par value or stated value of no par capital stock of the surviving company is more than the aggregate total of the capital stock of the separate companies before merger or consolidation the excess shall be charged to account 2900, Unearned Surplus, or to account 2930, Earned Surplus, if unrestricted unearned surplus is not available for such purpose.

When the total par value or stated value of no par capital stock of the surviving company is less than the aggregate total of the capital stock of the separate companies before merger or consolidation, the difference shall be credited to account 2900, Unearned Surplus.

(3) *Records.* Detailed records, including copy of appraisal reports, shall be maintained showing the basis used for computing amounts included in accounts 1200, 1300, 1400, 1450, 1550, 2900, 2930, and other accounts. Full supporting details showing the purchase price, the principals from whom the property was acquired, and agents who represented such principals shall be stated in the journal entries recording the acquisition of the property.

2. In § 181.01-6 *Definition 6, associated companies and control*, after the words "Associated Companies" and before the word "means", add "or affiliated companies:"

[F.R. Doc. 60-1373; Filed, Feb. 11, 1960;
8:48 a.m.]

[No. 32155]

PART 182—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS I COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

Uniform System of Accounts for Class I and Class II Common and Contract Motor Carriers of Property

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 2d day of February A.D. 1960.

Having under consideration certain modifications of the accounting regulations for motor carriers of property, pursuant to the provisions of section 220 of the Interstate Commerce Act, as amended, and the Notice of Proposed Rule Making published in the FEDERAL REGISTER October 17, 1959 (24 F.R. 8448), with all responses thereto given due consideration;

It is ordered, That the modifications of the regulations (49 CFR Part 182) which are attached hereto and made a part hereof shall become effective April 1, 1960, unless otherwise ordered after consideration of written statements which may be filed with the Commission on or before March 14, 1960 giving reasons why said modifications should not become effective or for good cause otherwise shown; and,

It is further ordered, That this order be served on each Class I and Class II common and contract motor carrier of property subject to its provisions, and on every trustee, receiver, executor, administrator, or assignee of such motor carrier, and notice shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

(Sec. 204, 49 Stat. 546, as amended; 49 U.S.C. 304. Interpret or apply Sec. 220, 49 Stat. 563, as amended; 49 U.S.C. 320)

By the Commission, Division 2.

[SEAL] HAROLD D. McCoy,
Secretary.

§ 182.01-19 [Amendment]

I. Section 182.01-19 *Carrier operating property* is amended as follows:

1. In paragraph (a) (1) in this section after the words "distinct operating unit" delete "(see paragraph (f) of this section)" and insert in lieu thereof "(see § 182.01-20)".

2. Cancel the entire paragraph (f) including subparagraphs (1), (2), (3) and (4).

3. Insert the following as paragraph (f):

(f) (1) When property is transferred from account 1200—Carrier Operating Property, or account 1300—Carrier Operating Property Leased to Others, to account 1400—Non-Carrier Property, the book cost of the property shall be charged to account 1400 and the related depreciation reserve on the property shall be transferred from account 2500—Reserve for Depreciation—Carrier Operating Property, to account 2610—Reserve for Depreciation and Amortization—Other Property.

(2) When property is transferred from account 1400—Non-Carrier Property, to account 1200—Carrier Operating Property, or account 1300—Carrier Op-

erating Property Leased to Others, the book cost of the property shall be charged to accounts 1200 or 1300 and the related depreciation on the property shall be transferred from account 2610—Reserve for Depreciation and Amortization—Other Property, to account 2500—Reserve for Depreciation—Carrier Operating Property.

II. Cancel the title and text of § 182.01-20 *Transfer of Property*. A new § 182.01-20 is added to read as follows:

§ 182.01-20 Acquisition of a distinct operating unit.

(a) When a motor carrier system or portion thereof constituting a distinct operating unit (see paragraph (v) of § 182.01-1) is acquired by purchase or merger or consolidation in a pooling of equity interests of stockholders the accounting shall be as follows:

(1) *Purchase*. (i) When purchase is made from a non-affiliated company the assets acquired, other than carrier operating property and non-carrier property includible in accounts 1200, 1300, and 1400, and the liabilities assumed shall be recorded in the appropriate accounts at the amounts carried on the books of the transferor at date of consummation of the transaction. Such amounts shall be adjusted, as may be necessary, to conform with the rules in this system of accounts. The carrier operating property and non-carrier property acquired shall be recorded in the appropriate sub-accounts under accounts 1200, 1300 or 1400 based upon the fair market value or the cost specified in the purchase agreement if the latter does not exceed the fair market value of such property acquired. When the properties are recorded at cost specified in the purchase agreement or fair market value such amounts must be supported by report of a disinterested qualified appraiser and such additional evidence as the Commission may require. When an appraisal has not been obtained the original cost of carrier operating property and non-carrier property together with the related depreciation reserves as shown in the books of seller shall be recorded in the accounts in lieu of market value.

(ii) When purchase is made from an affiliated company the assets acquired, including carrier operating property and nonoperating property, together with the related depreciation reserves and the liabilities assumed shall be recorded in the appropriate accounts at the amounts carried on the books of the affiliated transferor, adjusted, as may be necessary, to conform with the rules in this system of accounts.

(iii) The amount of the consideration paid in excess of the net assets acquired shall be included in account 1550, Other Intangible Property.

Where the consideration paid is less than the net assets recorded in accordance with the foregoing provisions the difference shall be credited to account 2720, Premiums and Assessments on Capital Stock, where the consideration is paid in capital stock, and to account 2900, Unearned Surplus, where the consideration is paid in other than capital stock.

(2) *Merger or consolidation in a pooling of equity interests of stockholders*.

(i) When a distinct operating unit is acquired by merger or consolidation in a pooling of equity interests of stockholders, in which all or substantially all of such equity interests in the predecessor company continue, as such, in a surviving company (which may be the transferee or a new company, created for the purpose) the assets, liabilities and the earned surplus or deficit, if any, of the predecessor company shall be recorded in the accounts of the transferee at amounts carried on the books of the predecessor company at date of consummation of the transaction. Such amounts shall be adjusted, if necessary, to conform with the rules in this system of accounts. Where one of the constituent corporations is clearly dominant and its stockholders obtain 90% or more of the voting interest in the combined enterprise there is a presumption that the transaction is a purchase rather than a pooling of interests and the transaction shall be so accounted for unless otherwise directed or authorized by the Commission.

(ii) When the total par value or stated value of no par capital stock of the surviving company is more than the aggregate total of the capital stock of the separate companies before merger or consolidation the excess shall be charged to account 2900, Unearned Surplus or to account 2930, Earned Surplus, if unrestricted unearned surplus is not available for such purpose.

When the total par value or stated value of no par capital stock of the surviving company is less than the aggregate total of the capital stock of the separate companies before merger or consolidation, the difference shall be credited to account 2900, Unearned Surplus.

(3) *Records*. Detailed records, including copy of appraisal reports, shall be maintained showing the basis used for computing amounts included in accounts 1200, 1300, 1400, 1550, 2900, 2930, and other accounts. Full supporting details showing the purchase price, the principals from whom the property was acquired, and agents who represented such principals shall be stated in the journal entries recording the acquisition of the property.

[F.R. Doc. 60-1372; Filed, Feb. 11, 1960; 8:48 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 290]

EXPORTATION OF TOBACCO MATERIALS, TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Notice of Proposed Rulemaking

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate, in lieu of the proposed regulations, 26 CFR Part 290, published in the FEDERAL REGISTER on May 22, 1956, as a Notice of Proposed Rulemaking. Prior to final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director, Alcohol and Tobacco Tax Division, within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] **DANA LATHAM,**
Commissioner of Internal Revenue.

Preamble. 1. These regulations, 26 CFR Part 290, "Exportation of Tobacco Materials, Tobacco Products, and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax," supersede 26 CFR (1939) Part 140, insofar as it relates to the exportation of tobacco materials, tobacco products, and cigarette papers and tubes; 26 CFR (1939) Part 141; 26 CFR (1939) Part 142; 26 CFR (1939) Part 451, insofar as it relates to tobacco products; and Subpart D of 26 CFR Part 296; and are promulgated in order 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).

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.

No. 30—3

Sec:	Subpart A—Scope of Regulations	Subpart D—Qualification Requirements for Export Warehouse Proprietors
290.1	Exportation of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax.	Sec. 290.81 Persons required to qualify. 290.82 Application for permit. 290.83 Corporate documents. 290.84 Articles of partnership or association.
290.2	Forms prescribed.	290.85 Trade name certificate. 290.86 Bond. 290.87 Power of attorney. 290.88 Description and diagram of premises. 290.89 Separation of premises. 290.90 Restrictions relating to export warehouse premises. 290.91 Additional information. 290.92 Investigation of applicant. 290.93 Issuance of permit.
	Subpart B—Definitions	
290.11	Meaning of terms.	
290.12	Assistant regional commissioner.	
290.13	Black Fat.	
290.14	Cigar.	
290.15	Cigarette.	
290.16	Cigarette paper.	
290.17	Cigarette papers.	
290.18	Cigarette tube.	
290.19	Clippings.	
290.20	Collector of customs.	
290.21	Commissioner.	
290.22	Customs warehouse.	
290.23	Cuttings.	
290.24	Dealer in tobacco materials.	
290.25	Director, Alcohol and Tobacco Tax Division.	
290.26	Establishment.	
290.27	Exportation or export.	
290.28	Export warehouse.	
290.29	Export warehouse proprietor.	
290.30	Factory.	
290.31	Inclusive language.	
290.32	I.R.C.	
290.33	Internal revenue officer.	
290.34	Leaf tobacco.	
290.35	Manufactured tobacco.	
290.36	Manufacturer of cigarette papers and tubes.	
290.37	Manufacturer of tobacco products.	
290.38	Package.	
290.39	Perique.	
290.40	Person.	
290.41	Region.	
290.42	Regional commissioner.	
290.43	Removal or remove.	
290.44	Scraps.	
290.45	Siftings.	
290.46	State.	
290.47	Stems.	
290.48	Tobacco in process.	
290.49	Tobacco materials.	
290.50	Tobacco products.	
290.51	United States.	
290.52	U.S.C.	
290.53	Waste.	
	Subpart C—General	
290.61	Removals, withdrawals, and shipments authorized.	
290.62	Restrictions on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft, as supplies.	
290.63	Restrictions on disposal of tobacco products and cigarette papers and tubes on vessels and aircraft.	
290.64	Responsibility for delivery or exportation of tobacco materials, tobacco products, and cigarette papers and tubes.	
290.65	Liability for tax on tobacco products and cigarette papers and tubes.	
290.66	Relief from liability for tax.	
290.67	Payment of tax.	
290.68	Liability for tax on tobacco materials.	
290.69	Assessment.	
290.70	Authority of internal revenue officers to enter premises.	
290.71	Interference with administration.	
	VARIATIONS FROM REQUIREMENTS	
290.72	Construction and separation of export warehouse premises.	
290.73	Methods of operation.	
290.74	Application.	
		Subpart E—Changes Subsequent to Original Qualification of Export Warehouse Proprietors
		CHANGES IN NAME
290.101		Change in individual name.
290.102		Change in trade name.
290.103		Change in corporate name.
		CHANGES IN OWNERSHIP AND CONTROL
290.104		Fiduciary successor.
290.105		Transfer of ownership.
290.106		Change in officers or directors of a corporation.
290.107		Change in stockholders of a corporation.
		CHANGES IN LOCATION AND PREMISES
290.108		Change in location within same region.
290.109		Change in address.
290.110		Change in location to another region.
290.111		Change in export warehouse premises.
290.112		Emergency premises.
		Subpart F—Bonds and Extensions of Coverage of Bonds
290.121		Corporate surety.
290.122		Deposit of bonds, notes, or obligations in lieu of corporate surety.
290.123		Amount of bond.
290.124		Strengthening bond.
290.125		Superseding bond.
290.126		Extension of coverage of bond.
290.127		Approval of bond and extension of coverage of bond.
290.128		Termination of liability of surety under bond.
290.129		Release of bonds, notes, and obligations.
		Subpart G—Operations by Export Warehouse Proprietors
290.141		Sign.
290.142		Records.
		INVENTORIES
290.143		General.
290.144		Opening.
290.145		Special.
290.146		Closing.
		REPORTS
290.147		General.
290.148		Opening.
290.149		Monthly.
290.150		Special.
290.151		Closing.
		CLAIMS
290.152		Claim for remission of tax liability.
290.153		Claim for abatement of assessment.
290.154		Claim for refund of tax.

Subpart H—Suspension and Discontinuance of Operations

- Sec.
290.161 Discontinuance of operations.
290.162 Suspension and revocation of permit.

Subpart I—Shipments of Tobacco Materials by Dealers in Tobacco Materials

- 290.171 Shipment for export other than by parcel post.
290.172 Shipment for export by parcel post.

Subpart J—Removal of Shipments of Tobacco Materials by Manufacturers and Removal of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors**PACKAGING REQUIREMENTS**

- 290.181 Packages.
290.182 Lottery features.
290.183 Indecent or immoral material.
290.184 Mark.
290.185 Label or notice.
290.186 Class designation for large cigars.
290.187 Shipping containers.

CONSIGNMENT OF SHIPMENT

- 290.188 General.
290.189 Transfers between factories and export warehouses.
290.190 Return of shipment to a manufacturer or customs warehouse proprietor.
290.191 To officers of the armed forces for subsequent exportation.
290.192 To vessels and aircraft for shipment to noncontiguous foreign countries and possessions of the United States.
290.193 To a Federal department or agency.
290.194 To collector of customs for shipment to contiguous foreign countries.
290.195 To Government vessels and aircraft for consumption as supplies.
290.196 To collector of customs for consumption as supplies on commercial vessels and aircraft.
290.197 For export by parcel post.

NOTICE OF REMOVAL OF SHIPMENT

- 290.198 Preparation.
290.199 Disposition.
290.200 Transfers between factories and export warehouses.
290.201 Return to manufacturer or customs warehouse proprietor.
290.202 To officers of the armed forces for subsequent exportation.
290.203 To noncontiguous foreign countries and possessions of the United States.
290.204 To a Federal department or agency.
290.205 To contiguous foreign countries.
290.206 To Government vessels and aircraft for consumption as supplies.
290.207 To commercial vessels and aircraft for consumption as supplies.
290.208 For export by parcel post.

MISCELLANEOUS PROVISIONS

- 290.209 Diversion of shipment to another consignee.
290.210 Return of shipment to factory or export warehouse.
290.211 Shipments to foreign-trade zones.
290.212 Delay in lading at port of exportation.
290.213 Destruction of tobacco products and cigarette papers and tubes.

Subpart K—Drawback of Tax

- 290.221 Application of drawback of tax.
290.222 Claim.
290.223 Drawback bond.
290.224 Inspection by an internal revenue officer.

Sec.

- 290.225 Delivery of tobacco products and cigarette papers and tubes for export other than by parcel post.
290.226 Delivery of tobacco products and cigarette papers and tubes for export by parcel post.
290.227 Customs procedure.
290.228 Landing certificate.
290.229 Collateral evidence as to landing.
290.230 Proof of loss.
290.231 Extension of time.
290.232 Allowance of claim.

Subpart L—Withdrawal of Cigars From Customs Warehouses

- 290.241 Shipment restricted.
290.242 Responsibility for tax on cigars.

BONDS

- 290.243 Bond required.
290.244 Amount of bond.
290.245 Strengthening bond.
290.246 Superseding bond.
290.247 Termination of liability of surety under bond.

PACKAGING REQUIREMENTS

- 290.248 Packages.
290.249 Lottery features.
290.250 Indecent or immoral material.
290.251 Mark.
290.252 Label or notice.
290.253 Class designation for large cigars.
290.254 Shipping containers.

CONSIGNMENT OF SHIPMENT

- 290.255 Consignment of Cigars.
- NOTICE OF REMOVAL OF SHIPMENT**
- 290.256 Preparation.
290.257 Disposition.
290.258 To officers of the armed forces for subsequent exportation.
290.259 To noncontiguous foreign countries and possessions of the United States.
290.260 To a Federal department or agency.
290.261 To contiguous foreign countries.
290.262 To Government vessels and aircraft for consumption as supplies.
290.263 To commercial vessels and aircraft for consumption as supplies.
290.264 To internal revenue export warehouses.
290.265 For export by parcel post.

RETURN OF SHIPMENT

- 290.266 Return of cigars from internal revenue export warehouses.
290.267 Return of cigars from other sources.

AUTHORITY: §§ 290.1 to 290.267 are issued under authority of section 7805, I.R.C. (68A Stat. 917; 26 U.S.C. 7805). Statutory provisions interpreted or applied are cited to text in parentheses.

Subpart A—Scope of Regulations

§ 290.1 Exportation of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax.

This part contains the regulations relating to the exportation (including supplies for vessels and aircraft) of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax; the qualification of, and operations by, export warehouse proprietors; and the allowance of drawback of tax paid on tobacco products and cigarette papers and tubes exported.

§ 290.2 Forms prescribed.

The Director, Alcohol and Tobacco Tax Division, 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.

Subpart B—Definitions

§ 290.11 Meaning of terms.

The terms used in this part shall have the meanings ascribed in this subpart, unless the context otherwise indicates.

§ 290.12 Assistant regional commissioner.

“Assistant regional commissioner” shall mean the Assistant Regional Commissioner, Alcohol and Tobacco Tax, who is responsible to and functions under the direction and supervision of the Regional Commissioner.

§ 290.13 Black Fat.

“Black Fat” shall mean tobacco which is normally treated with oil under pressure and results in black tobacco, and shall include all tobacco similarly treated and referred to by such other terms as Black Horse, etc.

§ 290.14 Cigar.

“Cigar” shall mean any roll of tobacco wrapped in tobacco.

§ 290.15 Cigarette.

“Cigarette” shall mean any roll of tobacco, wrapped in paper or any substance other than tobacco.

§ 290.16 Cigarette paper.

“Cigarette paper” shall mean paper, or other material except tobacco, prepared for use as a cigarette wrapper.

§ 290.17 Cigarette papers.

“Cigarette papers” shall mean taxable books or sets of cigarette papers.

§ 290.18 Cigarette tube.

“Cigarette tube” shall mean cigarette paper made into a hollow cylinder for use in making cigarettes.

§ 290.19 Clippings.

“Clippings” shall mean the tobacco which is clipped or cut off the ends of cigars in the manufacture thereof.

§ 290.20 Collector of customs.

“Collector of customs” shall mean the person having charge of a customs collection district and shall also include 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.

§ 290.21 Commissioner.

“Commissioner” shall mean the Commissioner of Internal Revenue.

§ 290.22 Customs warehouse.

“Customs warehouse” shall mean a customs bonded manufacturing warehouse, class 6, where cigars are manufactured of imported tobacco.

§ 290.23 Cuttings.

"Cuttings" shall mean the tobacco remaining after the binders and wrappers for cigars are cut out of the leaf.

§ 290.24 Dealer in tobacco materials.

"Dealer in tobacco materials" shall mean 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 subchapter; (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.

§ 290.25 Director, Alcohol and Tobacco Tax Division.

"Director, Alcohol and Tobacco Tax Division" shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department, Washington, D.C.

§ 290.26 Establishment.

"Establishment" shall mean those premises of a dealer in tobacco materials in which he carries on such business.

§ 290.27 Exportation or export.

"Exportation" or "export" shall mean a severance of tobacco materials, tobacco products, or cigarette papers or tubes from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country. For the purposes of this part, shipment from the United States to Puerto Rico, the Virgin Islands, or a possession of the United States, shall be deemed exportation, as will the clearance from the United States of tobacco products and cigarette papers and tubes for consumption beyond the jurisdiction of the internal revenue laws of the United States, i.e., beyond the 3-

mile limit or international boundary, as the case may be.

§ 290.28 Export warehouse.

"Export warehouse" shall mean 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.

§ 290.29 Export warehouse proprietor.

"Export warehouse proprietor" shall mean any person who operates an export warehouse.

§ 290.30 Factory.

"Factory" shall mean the premises of a manufacturer of tobacco products or cigarette papers and tubes in which he carries on such business.

§ 290.31 Inclusive language.

Words in the plural form shall include the singular, and vice versa, and words in the masculine gender shall include the feminine, partnerships, associations, companies, corporations, estates, and trusts.

§ 290.32 I.R.C.

"I.R.C." shall mean the Internal Revenue Code of 1954.

§ 290.33 Internal revenue officer.

"Internal revenue officer" shall mean an officer or employee of the Treasury Department duly authorized to perform any function relating to the administration or enforcement of this part.

§ 290.34 Leaf tobacco.

"Leaf tobacco" shall mean:

(a) *Unstemmed*. Tobacco from which the stem or mid-rib has not been removed, and

(b) *Stemmed*. Tobacco from which the stem or mid-rib has been removed, also known as "strips."

§ 290.35 Manufactured tobacco.

"Manufactured tobacco" shall mean 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.

§ 290.36 Manufacturer of cigarette papers and tubes.

"Manufacturer of cigarette papers and tubes" shall mean 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.

§ 290.37 Manufacturer of tobacco products.

"Manufacturer of tobacco products" shall mean any person who manufactures cigars or cigarettes, or who pre-

pares, 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 subchapter.

§ 290.38 Package.

"Package" shall mean the container in which tobacco products or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the consumer.

§ 290.39 Perique.

"Perique" shall mean tobacco, such as that produced in Louisiana, cured in its own juices and given other treatment peculiar to this type of tobacco.

§ 290.40 Person.

"Person" shall mean and include an individual, partnership, association, company, corporation, estate, or trust.

§ 290.41 Region.

"Region" shall mean the area, designated by the Secretary or his delegate, comprising the geographical jurisdiction of a regional commissioner of internal revenue.

§ 290.42 Regional commissioner.

"Regional commissioner" shall mean the Regional Commissioner of Internal Revenue of an internal revenue region.

§ 290.43 Removal or remove.

"Removal" or "remove" shall mean the removal of tobacco products or cigarette papers or tubes from either the factory or the export warehouse covered by the bond of the manufacturer or proprietor.

§ 290.44 Scraps.

"Scraps" shall mean portions of leaf tobacco.

§ 290.45 Siftings.

"Siftings" shall mean the particles of tobacco salvaged in the process of sifting or screening the residue of tobacco.

§ 290.46 State.

"State" shall, for the purposes of this part, be construed to include the District of Columbia.

§ 290.47 Stems.

"Stems" shall mean the stems or mid-ribs of tobacco.

§ 290.48 Tobacco in process.

"Tobacco in process" shall mean tobacco which has been, or is being, manipulated or processed, but is to undergo further manipulation, processing, or handling, prior to removal for consumption by smoking or for use in the mouth or nose.

§ 290.49 Tobacco materials.

"Tobacco materials" shall mean tobacco other than manufactured tobacco, cigars, and cigarettes and shall include tobacco in process, Perique, Black Fat, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, stems, and waste.

§ 290.50 Tobacco products.

"Tobacco products" shall mean manufactured tobacco, cigars, and cigarettes.

§ 290.51 United States.

"United States" when used in a geographical sense shall include only the States and the District of Columbia.

§ 290.52 U.S.C.

"U.S.C." shall mean the United States Code.

§ 290.53 Waste.

"Waste" shall mean tobacco, 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**§ 290.61 Removals, withdrawals, and shipments authorized.**

Tobacco products and cigarette papers and tubes may be removed from a factory or an export warehouse, and cigars may be withdrawn from a customs warehouse, without payment of tax, for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part. Tobacco materials may be shipped from a factory or establishment, without payment of tax, for exportation to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, in accordance with the provisions of this part.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.62 Restrictions on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft, as supplies.

Tobacco products and cigarette papers and tubes may be removed from a factory or an export warehouse and cigars may be withdrawn from a customs warehouse, without payment of tax, for delivery to vessels and aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States, subject to the applicable provisions of this part. Deliveries may be made to vessels actually engaged in foreign, intercoastal, or noncontiguous territory trade (i.e., vessels operating on a

regular schedule in trade or actually transporting passengers and/or cargo

(a) between a port in the United States and a foreign port; (b) between the Atlantic and Pacific ports of the United States; or (c) between a port on the mainland of the United States and a port in Alaska, Hawaii, Puerto Rico, the Virgin Islands, or a possession of the United States; between a port in Alaska and a port in Hawaii; or between a port in Alaska or Hawaii and a port in Puerto Rico, the Virgin Islands, or a possession of the United States); to vessels clearing through customs for a port beyond the jurisdiction of the internal revenue laws of the United States; to vessels of war or other governmental activity; or to vessels of the United States documented to engage in the fishing business (including the whaling business), and foreign fishing (including whaling) vessels of 5 net tons or over. Such deliveries to vessels shall be subject to lading under customs supervision as provided in §§ 290.207 and 290.263. As a condition to the lading of the tobacco products and cigarette papers and tubes, the customs authorities at the port of lading may, if they deem it necessary in order to protect the revenue, require assurances, satisfactory to them, from the master of the receiving vessel that the quantities to be laden are reasonable, considering the number of persons to be carried, the vessel's itinerary, the duration of its intended voyage, etc., and that such articles are to be used exclusively as supplies on the voyage. For this purpose, the customs authorities may require the master of the receiving vessel to submit for their approval, prior to lading, an application on Customs Form 5127 for permission to lade the articles. Where the customs authorities allow only a portion of a shipment to be laden, the remainder of the shipment shall be returned to the bonded premises of the manufacturer, export warehouse proprietor, or customs warehouse proprietor making the shipment, or otherwise disposed of as approved by the assistant regional commissioner for the region from which the articles were shipped. Deliveries may be made to aircraft clearing through customs en route to a place or places beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between United States customs areas (as defined in the Air Commerce Regulations (19 CFR Part 6) of the Bureau of Customs). Deliveries may not be made to a vessel or aircraft stationed in the United States for an indefinite period and where its schedule does not include operations outside such jurisdiction.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.63 Restrictions on disposal of tobacco products and cigarette papers and tubes on vessels and aircraft.

Tobacco products and cigarette papers and tubes delivered to a vessel or aircraft, without payment of tax, pursuant to § 290.62, shall not be sold, offered for sale, or otherwise disposed of until the vessel or aircraft is outside the jurisdiction of the internal revenue laws of the

United States, i.e., outside the 3-mile limit or international boundary, as the case may be, of the United States. Where the vessel or aircraft returns within the jurisdiction of the internal revenue laws with such articles on board, the articles shall be subject to treatment under the tariff laws of the United States.

(72 Stat. 1418; 26 U.S.C. 5704; 19 U.S.C. 1317)

§ 290.64 Responsibility for delivery or exportation of tobacco materials, tobacco products, and cigarette papers and tubes.

Responsibility for compliance with the provisions of this part with respect to the removal under bond of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax, for export, and for the proper delivery or exportation of such materials and articles, and with respect to the exportation of tobacco products and cigarette papers and tubes with benefit of drawback of tax, shall rest upon the manufacturer of such articles, dealer in tobacco materials, or the proprietor of an export warehouse or customs warehouse from whose premises such materials and articles are removed for export, and upon the exporter who exports tobacco products and cigarette papers and tubes with benefit of drawback of tax.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.65 Liability for tax on tobacco products and cigarette papers and tubes.

The manufacturer of the tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by section 5701, I.R.C.: *Provided*, That when tobacco products and cigarette papers and tubes are transferred, without payment of tax, pursuant to section 5704, I.R.C., between the bonded premises of manufacturers and/or export warehouse proprietors, the transferee shall become liable for the tax upon receipt by him of such articles. Any person who possesses tobacco products and 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)

§ 290.66 Relief from liability for tax.

A manufacturer of tobacco products or cigarette papers and tubes or an export warehouse proprietor shall be relieved of the liability for tax on tobacco products or cigarette papers and tubes when he furnishes the assistant regional commissioner, for the region in which the factory or warehouse is located, evidence satisfactory to the assistant regional commissioner of exportation or proper delivery, as required by this part, or satisfactory evidence of such other disposition as may be used as the lawful basis for such relief. Such evidence shall be furnished within 90 days of the date of removal of the tobacco products or cigarette papers or tubes: *Provided*, That this period may be extended for good cause shown.

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

§ 290.67 Payment of tax.

The taxes on tobacco products and cigarette papers and tubes with respect to which the evidence contemplated by § 290.66 is not timely furnished shall become immediately due and payable. Such taxes shall be paid to the district director, for the district in which the factory or export warehouse is located, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment.

§ 290.68 Liability for tax on tobacco materials.

A manufacturer of tobacco products or dealer in tobacco materials who ships tobacco materials from his factory or establishment, under this part, shall be liable for the payment of tax on tobacco materials equal to the tax imposed by law on manufactured tobacco until the evidence of exportation or delivery required by Subpart I is secured, or the evidence of exportation or delivery required by § 290.203, § 290.205, or § 290.208 is furnished the assistant regional commissioner.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.69 Assessment.

Whenever any person required by law to pay tax on tobacco products and cigarette papers and tubes fails to pay such tax in accordance with the provisions of this part, the tax shall be determined and assessed, subject to the limitations prescribed in section 6501, I.R.C., against such person. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax at the time due. 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)

§ 290.70 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, 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)

§ 290.71 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.

(72 Stat. 1425, 68A Stat. 855; 26 U.S.C. 5762, 7212)

VARIATIONS FROM REQUIREMENTS**§ 290.72 Construction and separation of export warehouse premises.**

The Director, Alcohol and Tobacco Tax Division, may approve a manner of construction and separation of export warehouse premises in lieu of that specified in this part, where it is shown that it is impracticable to conform to the requirements, and the proposed construction and separation will afford as much or more security and protection to the revenue as is intended by the requirements in this part, and where such variation is not contrary to any provision of law. Where it is proposed to employ a manner of construction and separation of premises other than that provided for by this part, prior approval shall be obtained in accordance with the provisions of § 290.74.

§ 290.73 Methods of operation.

The Director, Alcohol and Tobacco Tax Division, may in case of emergency approve methods of operation other than those provided for by this part, where it is shown that variations from the requirements are necessary, will not hinder the effective administration of this part, will not jeopardize the revenue, and where such variations are not contrary to any provision of law. Where it is proposed to employ methods of operation other than those provided for by this part, prior approval shall be obtained in accordance with the provisions of § 290.74.

§ 290.74 Application.

Any person, subject to the provisions of this part, who proposes to employ methods of operation, or of construction and separation of export warehouse premises, other than as provided in this part, shall submit an application so to do, in triplicate, to the assistant regional commissioner. Such application shall describe the proposed variations and state the necessity therefor. With respect to variations in construction and separation of export warehouse premises, where they cannot be adequately described in the application, drawings or photographs thereof shall also be submitted. The assistant regional commissioner shall make such inquiry as is necessary to ascertain the necessity for the variations and whether approval thereof will hinder the effective administration of this part or result in jeopardy to the revenue. On completion of the inquiry, the assistant regional commissioner will forward two copies of the application to the Director, Alcohol and Tobacco Tax Division, together with a report of his findings and his recommendation. Variations from requirements granted under this section are

conditioned on compliance with the procedures, conditions, and limitations with respect thereto 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 person granted the variations shall thereupon fully comply with the prescribed requirements of the regulations from which the variations were authorized.

Subpart D—Qualification Requirements for Export Warehouse Proprietors**§ 290.81 Persons required to qualify.**

Every person who intends to engage in business as an export warehouse proprietor, as defined in this part, shall qualify as such in accordance with the provisions of this part.

(72 Stat. 1415; 26 U.S.C. 5702)

§ 290.82 Application for permit.

Every person, before commencing business as an export warehouse proprietor, shall make application, on Form 2093, to the assistant regional commissioner for, and obtain, the permit provided for in § 290.93. All documents required under this part to be furnished with such application shall be made a part thereof.

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

§ 290.83 Corporate documents.

Every corporation, before commencing business as an export warehouse proprietor, shall furnish with its application for permit required by § 290.82, 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, in duplicate, evidence which will establish the authority of the officer or other person who executes the application for permit to execute the same; the authority of persons to sign other documents, required by this part, for the corporation; and the identity of the officers and directors, and each person who holds more than ten percent of the stock of such corporation. Where a corporation has previously filed such documents or evidence with the same assistant regional commissioner, a written statement by the corporation, in duplicate, to that effect will be sufficient for the purpose of this section.

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

§ 290.84 Articles of partnership or association.

Every partnership or association, before commencing business as an export warehouse proprietor, shall furnish with its application for permit, required by § 290.82, 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, a written statement by the partnership or associa-

tion, in duplicate, to that effect will be sufficient for the purpose of this section.

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

§ 290.85 Trade name certificate.

Every person, before commencing business under a trade name as an export warehouse proprietor, shall furnish with his application for permit, required by § 290.82, true copies, in duplicate, 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 by such person, in duplicate, to that effect will be sufficient for the purpose of this section.

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

§ 290.86 Bond.

Every person, before commencing business as an export warehouse proprietor, shall file, in connection with his application for permit, a bond, Form 2103, in accordance with the applicable provisions of § 290.88 and Subpart F, 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.

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

§ 290.87 Power of attorney.

If the application for permit or other qualifying documents are 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 an officer of an association or company, or, in the case of a corporation, by an officer or other person not authorized to sign by the corporate documents described in § 290.83, power of attorney conferring authority upon the person signing the documents shall be manifested on Form 1534 and furnished to the assistant regional commissioner.

§ 290.88 Description and diagram of premises.

The premises to be used by an export warehouse proprietor as his warehouse shall be described, in the application for permit required by § 290.82, and bond required by § 290.86, by number, street, and city, town, or village, and State. Such premises may consist of more than one building, which need not be contiguous: *Provided*, That such premises are located in the same city, town, or village and each location is described in the application for permit and the bond by number and street. Where such premises consist of less than an entire building, a diagram, in duplicate, shall also be furnished showing the particular floor or floors, or room or rooms, comprising the warehouse.

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

§ 290.89 Separation of premises.

Where the export warehouse premises consist of less than an entire building,

the premises shall be completely separated from adjoining portions of the building, which separation shall be constructed of materials generally used in the construction of buildings and may include any necessary doors or other openings.

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

§ 290.90 Restrictions relating to export warehouse premises.

Export warehouse premises shall be used exclusively for the storage of tobacco products and cigarette papers and tubes for subsequent removal under this part.

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

§ 290.91 Additional information.

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

§ 290.92 Investigation of applicant.

The assistant regional commissioner shall promptly cause such inquiry or investigation to be made, as he deems necessary, 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 export warehouse 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 26 CFR (1954) Part 200, which part (including the provisions relating to the recommended decision and to appeals) is made 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)

§ 290.93 Issuance of permit.

If the application for permit, bond, and supporting documents, required under this part, are approved by him, the assistant regional commissioner shall issue a permit, Form 2096, to the export warehouse proprietor. The permit shall bear a number and shall fully set forth where the business of the export warehouse proprietor is to be conducted. The

proprietor shall retain such permit at all times within his export warehouse and it shall be readily available for inspection by any internal revenue officer upon his request. Where the warehouse consists of more than one building, the permit shall be retained in the building in which the records, required by § 290.142, are kept.

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

Subpart E—Changes Subsequent to Original Qualification of Export Warehouse Proprietors

CHANGES IN NAME

§ 290.101 Change in individual name.

Where there is merely a change in the name of an individual operating as an export warehouse proprietor, the proprietor shall, within 30 days of such change, make application on Form 2098 for an amended permit, which shall be supported by an extension of coverage of bond, in accordance with the provisions of § 290.126.

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

§ 290.102 Change in trade name.

Where there is merely a change in the trade name of an export warehouse proprietor, the proprietor shall, within 30 days of the adoption of the new trade name, make application on Form 2098 for an amended permit, which shall be supported by an extension of coverage of bond, in accordance with the provisions of § 290.126. The proprietor shall also furnish true copies, in duplicate, of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 290.85.

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

§ 290.103 Change in corporate name.

Where there is merely a change in the name of a corporate export warehouse proprietor, the proprietor shall, within 30 days of such change, make application on Form 2098 for an amended permit, which shall be supported by an extension of coverage of bond, in accordance with the provisions of § 290.126. The proprietor shall also furnish such documents as may be reasonably necessary to establish that the corporate name has been changed.

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

CHANGES IN OWNERSHIP AND CONTROL

§ 290.104 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of an export warehouse proprietor, as a continuing operation, such fiduciary shall, before commencing operations, make application for permit and file bond as required by Subpart D 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 an opening inventory, in accordance with the provision of § 290.144: *Provided*, That where a diagram has been furnished by the predecessor, in accordance with the provisions of § 290.88, the successor may adopt such diagram. How-

ever, where a fiduciary intends merely to liquidate the business, qualification as an export warehouse proprietor will not be required if he promptly files with the assistant regional commissioner a statement to that effect, together with an extension of coverage of the predecessor's bond, executed by the fiduciary, also by the surety on such bond, in accordance with the provisions of § 290.126.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5721)

§ 290.105 Transfer of ownership.

If a transfer is to be made in ownership of the business of an export warehouse proprietor (including a change in the identity of the members of a partnership or association), such proprietor 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 proprietor, in accordance with the applicable provisions of Subpart D of this part: *Provided*, That where a diagram has been furnished by the proprietor in accordance with the provisions of § 290.88, the proposed successor may adopt such diagram. The proprietor 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 closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, respectively, and surrender, with such inventory and report, his permit, and the successor shall make an opening inventory, in accordance with the provisions of § 290.144.

(72 Stat. 1421, 1422; 26 U.S.C. 5712, 5713, 5721, 5722)

§ 290.106 Change in officers or directors of a corporation.

Where there is any change in the officers or directors of a corporation operating the business of an export warehouse proprietor, the proprietor shall furnish to the assistant regional commissioner notice, in writing, of the election of the new officers or directors within 30 days after such election.

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

§ 290.107 Change in stockholders of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation, operating as an export warehouse proprietor, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate proprietor shall, within 30 days after the change occurs, make application for a new permit; otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the proprietor shall dispose of all tobacco products and cigarette papers and tubes on hand, in accordance with this part, make a closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, 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 PREMISES

§ 290.108 Change in location within same region.

Whenever an export warehouse proprietor contemplates changing the location of his warehouse within the same region, the proprietor shall, before commencing operations at the new location, make an application, to the assistant regional commissioner, on Form 2098 for an amended permit. The application shall be supported by an extension of coverage of the bond filed under this part, in accordance with the provisions of § 290.126.

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

§ 290.109 Change in address.

Whenever any change occurs in the address, but not the location, of the warehouse of an export warehouse proprietor, as a result of action of local authorities, the proprietor shall, within 30 days of such change, make application, to the assistant regional commissioner, on Form 2098 for an amended permit, which shall be supported by an extension of coverage of the bond filed under this part, in accordance with the provisions of § 290.126.

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

§ 290.110 Change in location to another region.

Whenever an export warehouse proprietor contemplates changing the location of his warehouse to another region, he shall, before commencing operations at the new location, qualify as such a proprietor in the new region, in accordance with the applicable provisions of Subpart D. The proprietor shall notify the assistant regional commissioner of the region from which he is removing of his qualification in the new region, giving the address of the new location of his warehouse and the number of the permit issued to him in the new region, make a closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, respectively, and surrender, with such inventory and report, the permit for his old location.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 290.111 Change in export warehouse premises.

Where the premises of an export warehouse are to be changed to an extent which will make inaccurate the description of such premises as set forth in the last application by the proprietor for permit, or the diagram, if any, furnished with such application, the proprietor shall first make an application, Form 2098, for an amended permit, to the assistant regional commissioner, describing the proposed change in such premises, and furnish a diagram thereof, if required under the provisions of § 290.88.

The application shall be supported by an extension of coverage of bond, in accordance with the provisions of § 290.126.

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

§ 290.112 Emergency premises.

In cases of emergency, the assistant regional commissioner may authorize, for a stated period, the temporary use of a place for the temporary storage of tobacco products and cigarette papers and tubes, without making the application or furnishing the extension of coverage of bond required under §§ 290.111 and 290.126, or the temporary separation of warehouse premises by means other than those specified in § 290.89, where such action will not hinder the effective administration of this part, is not contrary to law, and will not jeopardize the revenue.

Subpart F—Bonds and Extensions of Coverage of Bonds

§ 290.121 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.

(72 Stat. 1421, 61 Stat. 646; 26 U.S.C. 5711, 6 U.S.C. 6)

§ 290.122 Deposit of bonds, notes, or obligations in lieu of corporate surety.

Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by the export warehouse proprietor as security in connection with bond to cover his operations, in lieu of the corporate surety, in accordance with the provisions of Treasury Department Circular No. 154, revised (31 CFR Part 225). Such bonds or notes which are nontransferable, or the pledging of which will not be recognized by the Treasury Department, are not acceptable as security in lieu of corporate surety.

(72 Stat. 1421, 61 Stat. 646; 26 U.S.C. 5711, 6 U.S.C. 15)

§ 290.123 Amount of bond.

The amount of the bond filed by the export warehouse proprietor, as required by § 290.86, shall be not less than the estimated amount of tax which may at any time constitute a charge against the bond: *Provided*, That the amount of any such bond (or the total amount where original and strengthening bonds are filed) shall not exceed \$200,000 nor be less than \$1,000. The charge against such bond shall be subject to increase

upon receipt of tobacco products and cigarette papers and tubes into the export warehouse and to decrease as satisfactory evidence of exportation, or satisfactory evidence of such other disposition as may be used as the lawful basis for crediting such bond, is received by the assistant regional commissioner with respect to such articles transferred or removed. When the limit of liability under a bond given in less than the maximum amount has been reached, no additional shipments shall be received into the warehouse until a strengthening or superseding bond is filed, as required by § 290.124 or 290.125.

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

§ 290.124 Strengthening bond.

Where the assistant regional commissioner determines that the amount of the bond, under which an export warehouse proprietor is currently carrying on business, no longer adequately protects the revenue, and such bond is in an amount of less than \$200,000, the assistant regional commissioner may require the proprietor to file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 290.123. The assistant regional commissioner shall refuse to approve any strengthening bond 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. Such strengthening bonds shall have placed thereon, by the obligors at the time of execution, the notation "Strengthening Bond."

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

§ 290.125 Superseding bond.

An export warehouse proprietor shall file a new bond to supersede his current bond, immediately 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, or (d) the assistant regional commissioner considers such a superseding bond necessary for the protection of the revenue.

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

§ 290.126 Extension of coverage of bond.

An extension of the coverage of any bond filed under this part shall be manifested on Form 2105 by the export warehouse proprietor 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)

§ 290.127 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)

§ 290.128 Termination of liability of surety under bond.

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 approval of the discontinuance of operations by the export warehouse proprietor, 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 proprietor while the bond is in force.

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

§ 290.129 Release of bonds, notes, and obligations.

Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part, shall be released only in accordance with the provisions of Treasury Department Circular No. 154, revised (31 CFR Part 225). When the assistant regional commissioner is satisfied that it is no longer necessary to hold such security, he shall fix the date or dates on which a part or all of such security may be released. At any time prior to the release of such security, the assistant regional commissioner may, for proper cause, extend the date of release of such security for such additional length of time as in his judgment may be appropriate.

(72 Stat. 1421, 61 Stat. 646; 26 U.S.C. 5711, 6 U.S.C. 15)

Subpart G—Operations by Export Warehouse Proprietors

§ 290.141 Sign.

Every export warehouse proprietor shall place and keep, on the outside of the building in which his warehouse is located, or at the entrance of his warehouse, where it can be plainly seen, a sign, in plain and legible letters, exhibiting the name under which he operates and (a) the type of business ("Export Warehouse Proprietor") or (b) the number of the permit issued to the export warehouse proprietor under this part.

§ 290.142 Records.

Every export warehouse proprietor shall keep at his warehouse complete and adequate records of the date, kind, and quantity of tobacco products and cigarette papers and tubes received, removed, transferred, destroyed, lost, or returned to manufacturers or to customs warehouse proprietors. In addition to such records, the export warehouse proprietor shall retain a copy of each notice, Form 2149 or 2150, received from a manufacturer, another export warehouse proprietor, or customs warehouse proprietor from whom tobacco products and cigarette papers and tubes are received, and a copy of each notice, Form 2150, covering the tobacco products and cig-

arette papers and tubes removed from his warehouse. The entries for each day in the records maintained or kept under this section shall be made by the close of the business day following that on which the transactions occur. An export warehouse proprietor who maintains commercial records which reflect his operations and transactions required to be recorded by this section may utilize such records for this purpose. No particular form of commercial records is prescribed, but the information required shall be readily ascertainable from the commercial records. Such records and copies of the notices, Forms 2149 and 2150, shall be retained for two years following the close of the calendar year in which the shipments were received or removed and shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

INVENTORIES

§ 290.143 General.

Every export warehouse proprietor shall make a true and accurate inventory, to the assistant regional commissioner, of the quantity of tobacco products and cigarette papers and tubes (large cigars by taxable class), held by him at the times specified in this subpart, which inventory shall be subject to verification by an internal revenue officer. A copy of each inventory shall be retained by the export warehouse proprietor for two years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 290.144 Opening.

An opening inventory shall be made by the export warehouse proprietor at the time of commencing business. The date of commencing business under this part shall be the effective date indicated on the permit issued under § 290.93. A similar inventory shall be made by the export warehouse proprietor when he files a superseding bond. The date of such inventory shall be the effective date of such superseding bond as indicated thereon by the assistant regional commissioner.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 290.145 Special.

A special inventory shall be made by the export warehouse proprietor whenever required by any internal revenue officer.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 290.146 Closing.

A closing inventory shall be made by the export warehouse proprietor when he transfers ownership, changes his location to another region, or concludes business. Where the proprietor transfers ownership the closing inventory shall be made as of the day preceding the date of the opening inventory of the successor.

(72 Stat. 1422; 26 U.S.C. 5721)

REPORTS

§ 290.147 General.

Every export warehouse proprietor shall make a report on Form 2140, to the assistant regional commissioner, of all tobacco products and cigarette papers and tubes on hand, received, removed, transferred, and lost or destroyed. Such report shall be made at the times specified in this subpart and shall be made whether or not any operations or transactions occurred during the period covered by the report. A copy of each report shall be retained by the export warehouse proprietor at his warehouse for two years following the close of the calendar year covered in such reports, and made available for inspection by any internal revenue officer upon his request. (72 Stat. 1422; 26 U.S.C. 5722).

§ 290.148 Opening.

An opening report, covering the period from the date of the opening inventory, or inventory made in connection with a superseding bond, to the end of the month, shall be made on or before the 20th day following the end of the month in which the business was commenced. (72 Stat. 1422; 26 U.S.C. 5722).

§ 290.149 Monthly.

A report for each full month shall be made on or before the 20th day following the end of the month covered in the report. (72 Stat. 1422; 26 U.S.C. 5722).

§ 290.150 Special.

A special report, covering the unreported period to the day preceding the date of any special inventory required by an internal revenue officer, shall be made with such inventory. Another report, covering the period from the date of such inventory to the end of the month, shall be made on or before the 20th day following the end of the month in which the inventory was made. (72 Stat. 1422; 26 U.S.C. 5722).

§ 290.151 Closing.

A closing report, covering the period from the first of the month to the date of the closing inventory, or the day preceding the date of an inventory made in connection with a superseding bond, shall be made with such inventory. (72 Stat. 1422; 26 U.S.C. 5722).

CLAIMS

§ 290.152 Claim for remission of tax liability.

Every loss (otherwise than by theft) or destruction, by fire, casualty, or Act of God, of tobacco products and cigarette papers and tubes, before removal from the export warehouse, or after removal for tax-exempt purposes, and which are in the possession or ownership of the export warehouse proprietor shall be reported by the proprietor to the assistant regional commissioner, and the facts of such loss or destruction shall be established to his satisfaction. Claim for remission of tax liability may be filed with the assistant regional commissioner. Such claim shall be in letter form show-

ing the nature, date, and extent of such loss or destruction, shall set forth the reasons why such tax liability should be remitted, and shall be supported 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)

§ 290.153 Claim for abatement of assessment.

Claim for abatement of the unpaid portion of the assessment of any tax on tobacco products and cigarette papers and tubes, or any liability in respect of such tax, alleged to be excessive in amount, assessed after the expiration of the period of limitation applicable thereto, or erroneously or illegally assessed, shall be filed on Form 843 with the assistant regional commissioner. Such claim shall set forth the reasons relied upon for the allowance of the claim and shall be supported by such evidence as is necessary to establish to the satisfaction of the assistant regional commissioner that the claim is valid. (68A Stat. 792; 26 U.S.C. 6404)

§ 290.154 Claim for refund of tax.

The taxes paid on tobacco products and cigarette papers and tubes may be refunded (without interest) to the export warehouse proprietor on satisfactory proof that he has paid the tax on such articles lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the export warehouse proprietor. To obtain refund of tax under this section, claim for refund, Form 843, shall be filed with the assistant regional commissioner for the region in which the tax was paid within six months after the loss or destruction of the tobacco products and cigarette papers and tubes to which the claim relates and shall be supported 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)

Subpart H—Suspension and Discontinuance of Operations

§ 290.161 Discontinuance of operations.

Every export warehouse proprietor who desires to discontinue operations and close out his warehouse shall dispose of all tobacco products and cigarette papers and tubes on hand, in accordance with this part, make a closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, respectively, and surrender, with such inventory and report, his permit to the assistant regional commissioner as notice of such discontinuance, in order that the assistant regional commissioner may terminate the liability of the surety on the bond of the export warehouse proprietor. (72 Stat. 1422; 26 U.S.C. 5721, 5722)

§ 290.162 Suspension and revocation of permit.

Where the assistant regional commissioner has reason to believe that an export warehouse proprietor 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 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 export warehouse proprietor to show cause why his permit should not be suspended or revoked after hearing thereon in accordance with 26 CFR (1954) Part 200, which part (including the provisions relating to appeals) is made applicable to such proceedings. If the hearing examiner, or the Director, Alcohol and Tobacco Tax Division, on appeal, decides the permit should be suspended, for such time as to him seems proper, or be revoked, the assistant regional commissioner shall by order give effect to such decision. (72 Stat. 1421; 26 U.S.C. 5718)

Subpart I—Shipments of Tobacco Materials by Dealers in Tobacco Materials

§ 290.171 Shipment for export other than by parcel post.

Where a dealer in tobacco materials removes a shipment of tobacco materials, under his bond and this subpart, and forwards it directly to the port for lading and exportation, the dealer, or his forwarding or export agent at the port, shall prepare an extra copy of the shipper's export declaration, Commerce Form 7525-V, marked "For internal revenue purposes," which shall show the quantity of each kind of tobacco materials included in the shipment. This copy of the shipper's export declaration, after it has been completed by the customs authorities at the port to indicate exportation of the tobacco materials described thereon, shall be retained by the dealer as a part of the records of his establishment for two years following the close of the calendar year in which the tobacco materials are removed and shall be made available for inspection by any internal revenue officer upon his request. (72 Stat. 1418; 26 U.S.C. 5704)

§ 290.172 Shipment for export by parcel post.

Tobacco materials removed by a dealer in tobacco materials, under his bond and this subpart, for export by parcel post to a person in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, shall be addressed and consigned to such person when the tobacco materials are deposited in the mails. Waiver of his right to withdraw the shipment from the mails shall be stamped or written on each shipping container and signed by the dealer in tobacco materials making the shipment. In any case where a shipper's export declaration, Commerce Form 7525-V, is not required to be executed by the dealer in connection with a shipment of tobacco materials for export by parcel post, he shall obtain from the

postmaster or his agent a receipt on Post Office Department Form 3817. Such receipt shall be retained by the dealer at his establishment, as a part of the records thereof, for two years following the close of the calendar year in which the shipment is deposited in the mails and shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1418; 26 U.S.C. 5704)

Subpart J—Removal of Shipments of Tobacco Materials by Manufacturers and Removal of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

PACKAGING REQUIREMENTS

§ 290.181 Packages.

All tobacco products and cigarette papers and tubes shall, before removal, be put up by the manufacturer in packages which shall bear the label or notice, class designation, and mark, as required by this subpart.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.182 Lottery features.

No 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 shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products or cigarette papers or tubes.

(72 Stat. 1422; 26 U.S.C. 5723, 18 U.S.C. 1301)

§ 290.183 Indecent or immoral material.

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products or cigarette papers or tubes.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.184 Mark.

Every package of tobacco products and cigarette papers and tubes shall, before removal from the factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the name and location of the manufacturer, or his permit number. There shall also be adequately stated on each such package the quantity, by weight, of manufactured tobacco or the number of cigars, cigarettes, or cigarette tubes and the number of books or sets of cigarette papers of each different numerical content contained in the package.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.185 Label or notice.

Every package of tobacco products and cigarette papers and tubes shall, before removal from the factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the words "Tax-exempt. For use outside U.S." or the words "U.S. Tax-exempt. For use outside U.S.," except where a stamp, sticker, or notice, required by a foreign country or a possession

of the United States, which identifies such country or possession, is so imprinted or affixed.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.186 Class designation for large cigars.

Every package of large cigars shall, before removal from the factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, a class designation corresponding with the rate of tax under section 5701(b)(2), I.R.C., applicable to similar cigars removed for taxable purposes. The appropriate class designation shall be stated in the following manner:

Class A. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be not more than 2½ cents each;

Class 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;

Class 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;

Class 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;

Class 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;

Class 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

Class G. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be more than 20 cents each.

§ 290.187 Shipping containers.

Each shipping case, crate, or other container in which tobacco materials, tobacco products, or cigarette papers or tubes are to be shipped or removed, under this part, shall bear a distinguishing number, such number to be assigned by the manufacturer or export warehouse proprietor. Removals of tobacco products and cigarette papers and tubes from an export warehouse shall be made, insofar as practicable, in the same containers in which they were received from the factory.

(72 Stat. 1418; 26 U.S.C. 5704)

CONSIGNMENT OF SHIPMENT

§ 290.188 General.

Tobacco materials, tobacco products, and cigarette papers and tubes transferred or removed from a factory, or tobacco products and cigarette papers and tubes removed from an export warehouse, under this part, without payment of tax, shall be consigned as required by this subpart.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.189 Transfers between factories and export warehouses.

Where tobacco products and cigarette papers and tubes are transferred, without payment of tax, from a factory to an export warehouse or between export

warehouses, such articles shall be consigned to the export warehouse proprietor to whom such articles are to be delivered.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.190 Return of shipment to a manufacturer or customs warehouse proprietor.

Where tobacco products and cigarette papers and tubes are returned by an export warehouse proprietor to a manufacturer or where cigars are so returned to a customs warehouse proprietor, such articles shall be consigned to the manufacturer or customs warehouse proprietor to whom the shipment is to be returned.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.191 To officers of the armed forces for subsequent exportation.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to officers of the armed forces of the United States in this country for subsequent shipment to, and use by, the armed forces outside the United States, the manufacturer or export warehouse proprietor shall consign such articles to the receiving officer at the armed forces base or installation, in this country, to which they are to be delivered.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.192 To vessels and aircraft for shipment to noncontiguous foreign countries and possessions of the United States.

Where tobacco materials, tobacco products, and cigarette papers and tubes are removed from a factory, or tobacco products and cigarette papers and tubes are removed from an export warehouse, for direct delivery to a vessel or aircraft for transportation to a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, the manufacturer or export warehouse proprietor shall consign the shipment directly to the vessel or aircraft, or to his agent at the port for delivery to the vessel or aircraft.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.193 To a Federal department or agency.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse and are destined for ultimate delivery in a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, but the shipment is to be delivered in the United States to a Federal department or agency, or to an authorized dispatch agent, transportation officer, or port director of such a department or agency for forwarding on to the place of destination of the shipment, the manufacturer or export warehouse proprietor shall consign the shipment to the Federal department or agency, or to the proper dispatch agent, transportation officer, or port director of such department or agency.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.194 To collector of customs for shipment to contiguous foreign countries.

Where tobacco materials, tobacco products, and cigarette papers and tubes are removed from a factory, or tobacco products and cigarette papers and tubes are removed from an export warehouse, for export to a person in a contiguous foreign country, the manufacturer or export warehouse proprietor shall consign the shipment to the collector of customs at the border or other port of exit.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.195 To Government vessels and aircraft for consumption as supplies.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to a vessel or aircraft engaged in an activity for the Government of the United States or a foreign government, for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor shall consign the shipment to the proper officer on board the vessel or aircraft to which the shipment is to be delivered.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.196 To collector of customs for consumption as supplies on commercial vessels and aircraft.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor shall consign the shipment to the collector of customs at the port at which the shipment is to be laden.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.197 For export by parcel post.

Tobacco materials, tobacco products, and cigarette papers and tubes removed from a factory, or tobacco products and cigarette papers and tubes removed from an export warehouse, for export by parcel post to a person in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, shall be addressed and consigned to such person when the materials or articles are deposited in the mails. Waiver of his right to withdraw such materials or articles from the mails shall be stamped or written on each shipping container and be signed by the manufacturer or export warehouse proprietor making the shipment.

(72 Stat. 1418; 26 U.S.C. 5704)

NOTICE OF REMOVAL OF SHIPMENT

§ 290.198 Preparation.

For each shipment of tobacco materials, tobacco products, and cigarette papers and tubes transferred or removed from his factory, under bond and this part, the manufacturer shall prepare a notice of removal, Form 2149, and for each shipment of tobacco products and cigarette papers and tubes transferred or removed from his export warehouse, under bond and this part, the export

warehouse proprietor shall prepare a notice of removal, Form 2150. Each such notice shall be given a serial number by the manufacturer or export warehouse proprietor in a series beginning with number 1, with respect to the first shipment removed from the factory or export warehouse under this part and commencing again with number 1 on January 1 of each year thereafter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.199 Disposition.

After actual removal from his factory or export warehouse of the shipment described on the notice of removal, Form 2149 or 2150, the manufacturer or export warehouse proprietor shall, except where the shipment is to be exported by parcel post, promptly forward one copy of the notice of removal to the assistant regional commissioner for the region in which is located the factory or warehouse from which the shipment is removed. A copy of each such notice shall be retained by the manufacturer or export warehouse proprietor as a part of his records, for two years following the close of the calendar year in which the shipment was removed and shall be made available for inspection by any internal revenue officer upon his request. The manufacturer or export warehouse proprietor shall dispose of the other copies of each notice of removal as required by this subpart.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.200 Transfers between factories and export warehouses.

Where tobacco products and cigarette papers and tubes are transferred from a factory to an export warehouse or between export warehouses, the manufacturer or export warehouse proprietor making the shipment shall forward three copies of the notice of removal, Form 2149 or 2150, as the case may be, to the export warehouse proprietor to whom the shipment is consigned. Immediately upon receipt of the shipment at his warehouse, the export warehouse proprietor shall properly execute the certificate of receipt on each copy of the notice of removal, noting thereon any discrepancy; return one copy to the manufacturer or export warehouse proprietor making the shipment for filing with his assistant regional commissioner; retain one copy at his warehouse as a part of his records; and file the remaining copy with his report, required by § 290.147.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.201 Return to manufacturer or customs warehouse proprietor.

Where tobacco products and cigarette papers and tubes are removed from an export warehouse for return to the factory, or cigars are removed from such a warehouse for return to a customs warehouse, the export warehouse proprietor making the shipment shall forward two copies of the notice of removal, Form 2150, to the manufacturer or customs warehouse proprietor to whom the shipment is consigned. Immediately upon receipt of the shipment at his factory or warehouse, the manufacturer

or customs warehouse proprietor shall properly execute the certificate of receipt on both copies of the notice of removal, noting thereon any discrepancy, and return one copy to the export warehouse proprietor making the shipment for filing with his assistant regional commissioner. The other copy of the notice of removal shall be retained by the manufacturer or customs warehouse proprietor, as a part of his records, for two years following the close of the calendar year in which the shipment was received and shall be made available for inspection by any internal revenue officer upon his request.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.202 To officers of the armed forces for subsequent exportation.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to officers of the armed forces of the United States in this country for subsequent shipment to, and use by, the armed forces outside the United States, the manufacturer or export warehouse proprietor making the removal shall forward a copy of the notice of removal, Form 2149 or 2150, to the officer at such base or installation authorized to receive the articles described on the notice of removal. Upon execution by the armed forces receiving officer of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the manufacturer or export warehouse proprietor making the shipment for filing with his assistant regional commissioner.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.203 To noncontiguous foreign countries and possessions of the United States.

Where tobacco materials, tobacco products, and cigarette papers and tubes are removed from a factory, or tobacco products and cigarette papers and tubes are removed from an export warehouse, for direct delivery to a vessel or aircraft for transportation to a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, the manufacturer or export warehouse proprietor making the shipment shall file two copies of the notice of removal, Form 2149 or 2150, with the office of the collector of customs at the port where the shipment is to be laden. Such copies of the notice of removal should be filed with the related shipper's export declaration, Commerce Form 7525-V. In the event the copies of the notice of removal are not filed with the shipper's export declaration, when the copies of the notice of removal are filed with the collector of customs they shall show all particulars necessary to enable the collector to identify the shipment with the related shipper's export declaration and any other documents filed with his office in connection with the shipment. After the vessel or aircraft on which the shipment has been laden clears or departs from his port, the collector of customs shall execute the certificate of exportation on each copy of the notice of removal, retain one copy

for his records, and deliver or transmit the other copy to the manufacturer or export warehouse proprietor making the shipment for filing with his assistant regional commissioner.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.204 To a Federal department or agency.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse and are destined for ultimate delivery in a non-contiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, but the shipment is to be delivered to a Federal department or agency, or to an authorized dispatch agent, transportation officer, or port director of such a department or agency for forwarding on to the place of destination of the shipment, the manufacturer or export warehouse proprietor making the shipment shall furnish a copy of the notice of removal, Form 2149 or 2150, to the Federal department or agency, or an officer thereof at the port, receiving the shipment for ultimate transmittal to the place of destination, in order that such department, agency, or officer can properly execute the certificate of receipt on such notice to evidence receipt of the shipment for transmittal to a place beyond the jurisdiction of the Internal Revenue laws of the United States. After completing such certificate, the Federal department, agency, or officer shall return the copy of the notice of removal, so executed, to the manufacturer or export warehouse proprietor making the shipment for filing with his assistant regional commissioner.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.205 To contiguous foreign countries.

Where tobacco materials, tobacco products, and cigarette papers and tubes are removed from a factory, or tobacco products and cigarette papers and tubes are removed from an export warehouse, and consigned to a person in a contiguous foreign country, the manufacturer or export warehouse proprietor making the shipment shall furnish to the collector of customs at the border or other port of exit of the shipment from the United States, through which the shipment will be routed, two copies of the notice of removal, Form 2149 or 2150, together with the related shipper's export declaration, Commerce Form 7525-V. In the event the copies of the notice of removal are not filed with the shipper's export declaration or, in the case of a shipment for the armed forces of the United States in the contiguous foreign country, where no shipper's export declaration is required, the copies of the notice of removal when filed with the collector of customs shall show all particulars necessary to enable the collector to identify the shipment with the related shipper's export declaration, if any, and any other documents filed with his office in connection with the shipment. After the shipment has been cleared by customs from the United States, the customs authorities at the

port of exit will complete the certificate of exportation on each copy of the Form 2149 or 2150, retain one copy thereof, and transmit the other copy to the manufacturer or export warehouse proprietor making the shipment for filing with his assistant regional commissioner.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.206 To Government vessels and aircraft for consumption as supplies.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse for direct delivery to a vessel or aircraft, engaged in an activity for the Government of the United States or a foreign government, for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor making the shipment shall forward a copy of the notice of removal, Form 2149 or 2150, to the officer of the vessel or aircraft authorized to receive the shipment. Upon execution by the receiving officer of the vessel or aircraft of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the manufacturer or export warehouse proprietor making the shipment for filing with his assistant regional commissioner.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.207 To commercial vessels and aircraft for consumption as supplies.

Where tobacco products and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to a vessel or aircraft entitled to receive such articles for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor making the shipment shall file two copies of the notice of removal, Form 2149 or 2150, with the collector of customs at the port where the shipment is to be laden in sufficient time to permit delivery of the two copies of the notice of removal to the inspector of customs who will inspect the shipment and supervise its lading. After inspection and lading of the shipment the inspector of customs shall note on the copies of the notice of removal any discrepancy between the shipment inspected and laden under his supervision and that described on the notice of removal or any limitation on the quantity to be laden; complete and sign the certificate of inspection and lading; and return both copies of the notice of removal to the collector of customs. The collector of customs shall execute the certificate of clearance on the copies of the notice of removal, retain one copy for his records, and forward the other copy to the manufacturer or export warehouse proprietor making the shipment for filing with his assistant regional commissioner. Where the vessel or aircraft does not clear from the port at which the shipment is laden, the customs inspector supervising the lading of the shipment shall require the person on board the vessel or aircraft authorized to receive the shipment to execute the certificate of receipt on both

copies of the notice of removal to indicate the trade or activity in which the vessel or aircraft is engaged.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.208 For export by parcel post.

Where tobacco materials, tobacco products, and cigarette papers and tubes are removed from a factory, or tobacco products and cigarette papers and tubes are removed from an export warehouse, for export by parcel post, the manufacturer or export warehouse proprietor shall present one copy of the notice of removal, Form 2149 or 2150, together with the shipping containers, to the postal authorities with the request that the postmaster or his agent execute the certificate of mailing on the form. Where the manufacturer or export warehouse proprietor so desires, he may cover under one notice of removal all the merchandise removed under this part for export by parcel post which is delivered at one time to the postal service for that purpose. The manufacturer or export warehouse proprietor shall immediately file the receipted copy of the notice of removal with his assistant regional commissioner.

(72 Stat. 1418; 26 U.S.C. 5704)

MISCELLANEOUS PROVISIONS

§ 290.209 Diversion of shipment to another consignee.

If, after removal of a shipment from a factory or an export warehouse, the manufacturer or export warehouse proprietor desires to divert the shipment to another consignee, he shall so notify his assistant regional commissioner. The manufacturer or export warehouse proprietor shall describe the shipment, set forth the serial number and date of the notice of removal under which the shipment was removed from his factory or export warehouse, and furnish the name and address of the new consignee, who shall comply with all applicable provisions of this part.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.210 Return of shipment to factory or export warehouse.

A manufacturer or export warehouse proprietor may return to his factory or export warehouse tobacco materials, tobacco products, and cigarette papers and tubes previously removed therefrom, under this part, without internal revenue supervision when so authorized by the assistant regional commissioner. The manufacturer or export warehouse proprietor shall, prior to returning the materials or articles to the bonded premises of his factory or export warehouse, make application to the assistant regional commissioner for permission so to do, which application shall be accompanied by two copies of the notice of removal, Form 2149 or 2150, under which the materials or articles were originally removed. If less than the entire shipment is intended to be returned to the factory or export warehouse, the application shall set forth accurately the materials or articles to be returned and shall show what disposition was made of the remainder of the original shipment and any other facts per-

ment to such shipment. Where the assistant regional commissioner approves the application, he shall so indicate by endorsement to that effect on each of the copies of the notice of removal, set forth the materials or articles for which return is approved, and return both copies of the notice of removal to the manufacturer or export warehouse proprietor concerned. Upon receipt of the copies of the notice of removal bearing the endorsement of the assistant regional commissioner, the manufacturer or export warehouse proprietor shall proceed at once to take the materials or articles back into his bonded premises, properly modify and execute the certificate of receipt on each copy of the notice of removal, return one such copy to the assistant regional commissioner, and retain the other copy as a part of his records.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.211 Shipments to foreign-trade zones.

A manufacturer or export warehouse proprietor may remove tobacco products and cigarette papers and tubes, under his bond, without payment of tax, for shipment to a foreign-trade zone, in accordance with the applicable provisions of Part 253 of this subchapter.

(72 Stat. 1418; 26 U.S.C. 5704)

§ 290.212 Delay in lading at port of exportation.

If, on arrival of tobacco materials, tobacco products, and cigarette papers and tubes at the port of exportation, the vessel or aircraft for which they are intended is not prepared to receive the materials or articles, they may be properly stored at the port for not more than 30 days. In the event of any further delay, the facts shall be reported by the manufacturer or export warehouse proprietor to his assistant regional commissioner and unless he approves an extension of time in which to effect lading and clearance of the shipment it must be returned to the factory or export warehouse.

§ 290.213 Destruction of tobacco products and cigarette papers and tubes.

Where an export warehouse proprietor desires to destroy any of the tobacco products or cigarette papers or tubes stored in his warehouse, he shall notify the assistant regional commissioner of the kind and quantity of such articles to be destroyed and the date on which he desires the destruction to take place in order that the assistant regional commissioner may assign an internal revenue officer to inspect the articles and supervise their destruction. The export warehouse proprietor shall prepare a notice of removal, Form 2150, describing the articles to be destroyed. After witnessing the destruction of the articles, the internal revenue officer shall certify to their destruction on two copies of the notice of removal and return them to the export warehouse proprietor, who shall retain one copy for his records and file the other copy with his assistant regional commissioner.

Subpart K—Drawback of Tax

§ 290.221 Application of drawback of tax.

Allowance of drawback of tax shall apply only to tobacco products and cigarette papers and tubes, on which tax has been paid, when such articles are shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States. Such drawback shall be allowed only to the person who paid the tax on such articles and who files claim and otherwise complies with the provisions of this subpart.

(72 Stat. 1419, 68A Stat. 908; 26 U.S.C. 5706, 7653)

§ 290.222 Claim.

Claim for allowance of drawback of tax, under this subpart, shall be filed on Form 2147 with the assistant regional commissioner for the region in which the tobacco products and cigarette papers and tubes covered by the claim are held by the claimant. Such claim shall be so filed in sufficient time to permit the assistant regional commissioner to detail an internal revenue officer to inspect the articles and supervise destruction of the stamps thereon denoting payment of tax or, where the tax has been paid by return, to supervise the affixture of a label or notice bearing the legend "For Export With Drawback of Tax." Upon receipt of a claim supported by satisfactory bond, as required by this subpart, the assistant regional commissioner shall assign an internal revenue officer to proceed to the place where the articles involved are held and there perform the functions required in § 290.224.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.223 Drawback bond.

Each claim for allowance of drawback of tax, under this subpart, shall be accompanied by a bond, Form 2148, satisfactory to the assistant regional commissioner with whom the claim is filed. Such bond shall be in an amount not less than the amount of tax for which drawback is claimed, conditioned that the claimant shall furnish, within a reasonable time, evidence satisfactory to the assistant regional commissioner that the tobacco products and cigarette papers and tubes have been landed at some port beyond the jurisdiction of the internal revenue laws of the United States, or that after clearance from the United States the articles were lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and have not been relanded within the limits of the United States. The provisions of §§ 290.121 and 290.122 are applicable with respect to any drawback bond required under this section.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.224 Inspection by an internal revenue officer.

The internal revenue officer assigned in connection with a claim for drawback of tax, under this subpart, shall, at the place where the tobacco products and cigarette papers and tubes covered by the claim are held by the claimant, ex-

amine such articles and satisfy himself as to the accuracy of the schedule of such articles appearing in the claim, Form 2147. Where the tax has been paid by stamp, the internal revenue officer will supervise destruction of the stamps on the packages. No particular mode of destruction of such stamps is prescribed, but the use of any indelible preparation which will render them illegible is approved. Where the tax on such articles has been paid by return, the internal revenue officer will satisfy himself that the articles have in fact been taxpaid and each package bears the label or notice required by § 290.222. When the stamps have been properly destroyed, or the packages bear the required label or notice, the internal revenue officer will supervise the packing of such articles in shipping containers, the numbering of each such container, and the affixture thereto of the following:

Drawback of tax claimed on contents:

Sale, consumption, or use in U.S. prohibited.

Thereafter, the internal revenue officer will execute his report on each copy of the claim, return two copies to the claimant, deliver one copy to the assistant regional commissioner, and release the shipment to the claimant for delivery to the port of exportation.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.225 Delivery of tobacco products and cigarette papers and tubes for export other than by parcel post.

The claimant, upon release of the tobacco products and cigarette papers and tubes by the internal revenue officer for exportation with benefit of drawback of tax, under this subpart, shall be responsible for delivery of such articles to the port of exportation for customs inspection, supervision of lading, and clearance of the articles. The claimant, or his agent at said port, shall file with the collector of customs at the port of exportation in sufficient time, prior to lading, to permit his inspection and supervision of lading of the tobacco products and cigarette papers and tubes, the two copies of the Form 2147 returned to the claimant by the internal revenue officer, in accordance with § 290.224.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.226 Delivery of tobacco products and cigarette papers and tubes for export by parcel post.

Where the tobacco products and cigarette papers and tubes are to be shipped by parcel post to a destination in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, a waiver of his right to withdraw such articles from the mails shall be stamped or written on each shipping container and be signed by the claimant, after which the claimant shall present the shipment to the post office. The claimant shall request the postmaster or his agent to execute the certificate of mailing on the copy of the claim, Form 2147, returned to the claimant by the internal revenue officer in accordance with § 290.224. When so executed by

the postal authorities, the Form 2147 shall be transmitted at once to the assistant regional commissioner with whom the form was previously filed.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.227 Customs procedure.

The inspector of customs shall satisfy himself that the tobacco products and cigarette papers and tubes described on the Form 2147 and those inspected by him are the same, and shall note on the form any discrepancy. After having inspected the articles and supervised the lading thereof on the export carrier, the inspector shall complete and sign the certificate of inspection and lading on each copy of the Form 2147, and then deliver or transmit such copies of the form to the office of his collector of customs for further processing. After clearance from the port of the export carrier on which the articles are laden, the collector of customs shall execute the certificate of exportation on both copies of Form 2147. The collector shall retain one copy of the form for his record and transmit the other copy to the assistant regional commissioner of the region from which the articles were shipped.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.228 Landing certificate.

Each claimant for drawback under this subpart agrees in the bond filed by him that he will furnish, within a reasonable time, evidence satisfactory to the assistant regional commissioner that the tobacco products and cigarette papers and tubes covered by his claim have been landed at some port beyond the jurisdiction of the internal revenue laws of the United States, or that after shipment from the United States the articles were lost, and have not been relanded within the limits of the United States. The landing certificate shall accurately describe the articles involved, so as to readily identify the drawback claim to which it relates. The landing certificate shall be signed by a revenue officer at the place of destination, unless it is shown that no such officer can furnish such landing certificate, in which case the certificate of landing shall be signed by the consignee, or by the vessel's agent at the place of landing, and shall be sworn to before a notary public or other officer authorized to administer oaths and having an official seal. The landing certificate shall be filed with the assistant regional commissioner, with whom the drawback claim was filed, within six months from the date of clearance of the tobacco products and cigarette papers and tubes from the United States. A landing certificate prepared in a foreign language shall be accompanied by an accurate translation thereof in English.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.229 Collateral evidence as to landing.

In case of inability to furnish the prescribed evidence of landing, application for relief shall be promptly made by the claimant to the assistant regional commissioner with whom the drawback claim and bond were filed. Such appli-

cation shall set forth the facts connected with the alleged exportation, and indicate the date of shipment, the kind, quantity, and value of tobacco products and cigarette papers and tubes shipped, the name of the consignee, the name of the vessel, the port or place of destination to which the shipment was made, and the date and amount of the bond covering such shipment. The application shall also state in what particular the provisions of this subpart, respecting the proofs of landing, have not been complied with, and the cause of failure to furnish such proofs; that such failure was not occasioned by any lack of diligence on the part of the claimant, or that of his agents; and that he is unable to furnish any other or better evidence than that furnished with his application. Each such application shall be supported by the best collateral evidence the claimant may be able to submit. The evidence may consist of the original or verified copies of letters from the consignee advising the claimant of the arrival or sale of the tobacco products and cigarette papers and tubes, with such other statements respecting the failure to furnish the prescribed evidence of landing as may be obtained from the consignee or other persons having knowledge thereof. Such letters and other documents in a foreign language shall be accompanied by accurate translations thereof in English, and, when the letters fail to identify sufficiently the tobacco products and cigarette papers and tubes, the original sales account must be produced.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.230 Proof of loss.

When the claimant is unable to procure a certificate of landing, in accordance with the provisions of § 290.228, in consequence of loss of the tobacco products and cigarette papers and tubes, his application for relief shall set forth the extent of the loss and, if possible, the location and manner of shipwreck or other casualty and the time of its occurrence. When obtainable, affidavits of the vessel's owners should be furnished detailing the manner and extent of the loss and the time and location of the disaster. If the tobacco products and cigarette papers and tubes were insured, the claimant shall furnish certificates by officers of the insurance companies that the insurance has been paid, and that, to the best of their knowledge and belief, the tobacco products and cigarette papers and tubes were actually destroyed. The aforesaid proof shall be furnished to the assistant regional commissioner within six months from the date of clearance of the tobacco products and cigarette papers and tubes from the United States.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.231 Extension of time.

In case the claimant, from causes beyond his control, is unable to furnish the landing certificate or proof of loss, within the time prescribed therefor, he may make an application to the assistant regional commissioner for an extension of time in which to do so. Such applica-

tion must state specifically the cause of failure to furnish the evidence. Two extensions of three months each may be granted by the assistant regional commissioner, provided the surety on the drawback bond of the claimant assents in writing thereto.

(72 Stat. 1419; 26 U.S.C. 5706)

§ 290.232 Allowance of claim.

On receipt of the executed Form 2147 from the collector of customs the assistant regional commissioner will allow or disallow the claim in accordance with existing law and regulations. If the claim is not allowed in full the assistant regional commissioner will notify the claimant, in writing, of the reasons for any disallowance.

(72 Stat. 1419; 26 U.S.C. 5706)

Subpart L—Withdrawal of Cigars From Customs Warehouses

§ 290.241 Shipment restricted.

Cigars produced in a customs warehouse in accordance with customs laws and regulations may be withdrawn under this subpart, without payment of tax, for export or for delivery for subsequent exportation. Duties paid on the tobacco used in the manufacture of such cigars may not be recovered on the exportation of the cigars under this subpart.

§ 290.242 Responsibility for tax on cigars.

A customs warehouse proprietor who withdraws cigars for export under his bond, without payment of tax, in accordance with the provisions of this part, shall be responsible for payment of such tax until he is relieved of such responsibility by furnishing the assistant regional commissioner, for the region in which is located the customs warehouse from which the cigars were withdrawn, evidence satisfactory to the assistant regional commissioner of exportation or proper delivery, as required by this subpart, or satisfactory evidence of such other disposition as may be used as the lawful basis for such relief. Such evidence shall be furnished within 90 days of the date of withdrawal of the cigars: *Provided*, That this period may be extended for good cause shown.

BONDS

§ 290.243 Bond required.

Where the customs warehouse proprietor desires to withdraw cigars from his warehouse, without payment of tax, under this subpart, he shall, prior to making the first withdrawal, file with the assistant regional commissioner a bond, Form 2104, 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, for which he may be responsible to the United States, and penalties and interest in connection therewith. The provisions of §§ 290.121 and 290.122 are applicable to the bond required under this section. However, such bond shall not be required where the customs warehouse proprietor has in effect a bond, Form 2100, pursuant to regulations 26 CFR Part 270.199

conditioned upon compliance with Chapter 52, I.R.C., and regulations thereunder.

§ 290.244 Amount of bond.

The amount of the bond filed by the customs warehouse proprietor, as required by § 290.243, shall be not less than the estimated amount of tax which may at any time constitute a charge against the bond: *Provided*, That the amount of any such bond (or the total amount where original and strengthening bonds are filed) shall not exceed \$25,000 nor be less than \$1,000. The charges against such bond shall be subject to increase as withdrawals are made and decrease as required evidence of exportation is received by the assistant regional commissioner with respect to cigars withdrawn. When the limit of liability under a bond given in less than the maximum amount has been reached, further withdrawals shall not be made thereunder until a strengthening or superseding bond is filed as required by § 290.245 or 290.246.

§ 290.245 Strengthening bond.

Where the assistant regional commissioner determines that the amount of the bond, under which the customs warehouse proprietor is withdrawing cigars for shipment under this subpart, no longer adequately protects the revenue, and such bond is in an amount of less than \$25,000, the assistant regional commissioner may require the proprietor to file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 290.244. The assistant regional commissioner shall refuse to approve any strengthening bond 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. Such strengthening bond shall have placed thereon, by the obligors at the time of execution, the notation "Strengthening Bond."

§ 290.246 Superseding bond.

The customs warehouse proprietor shall file a new bond to supersede his current bond, immediately 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, or (d) the assistant regional commissioner considers such a superseding bond necessary for the protection of the revenue.

§ 290.247 Termination of liability of surety under bond.

The liability of a surety on any bond required by this subpart shall be terminated only as to operations on and after the effective date of a superseding bond, or the date of approval of the customs warehouse proprietor's request for termination, 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 ex-

cess of the amount of the bond, incurred by the proprietor while the bond is in force.

PACKAGING REQUIREMENTS

§ 290.248 Packages.

Cigars shall, before withdrawal under this part, be put up by the customs warehouse proprietor in packages which shall bear the label or notice, class designation, and mark, as required by this subpart.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.249 Lottery features.

No 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 shall be contained in, attached to, or stamped, marked, written, or printed on any package of cigars withdrawn under this subpart.

(72 Stat. 1422; 26 U.S.C. 5723; 18 U.S.C. 1301)

§ 290.250 Indecent or immoral material.

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of cigars withdrawn under this subpart.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.251 Mark.

Every package of cigars shall, before withdrawal from the customs warehouse under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the name and location of the manufacturer. There shall also be adequately stated on each such package the number of cigars contained in the package.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.252 Label or notice.

Every package of cigars shall, before withdrawal from the customs warehouse under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the words "Tax-exempt. For use outside U.S." or the words "U.S. Tax-exempt. For use outside U.S.", except where a stamp, sticker, or notice, required by a foreign country or a possession of the United States, which identifies such country or possession, is so imprinted or affixed.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 290.253 Class designation for large cigars.

Every package of large cigars shall, before withdrawal from the customs warehouse under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, a class designation corresponding with the rate of tax under section 5701(b)(2), I.R.C., applicable to similar cigars withdrawn for taxable purposes. The appropriate class designation shall be stated in the following manner:

Class A. The ordinary retail price of the cigars herein contained is intended by the manufacturer to be not more than 2½ cents each;

Class 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;

Class 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;

Class 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;

Class 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;

Class 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

Class 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)

§ 290.254 Shipping containers.

Each shipping case, crate, or other container, in which cigars are to be withdrawn, under this subpart, shall bear a distinguishing number, such number to be assigned by the customs warehouse proprietor.

CONSIGNMENT OF SHIPMENT

§ 290.255 Consignment of cigars.

Cigars withdrawn from a customs warehouse, without payment of tax, under internal revenue bond and this part, shall be consigned in the same manner as provided by Subpart J of this part with respect to the removal of tobacco products and cigarette papers and tubes from a factory or an export warehouse.

NOTICE OF REMOVAL OF SHIPMENT

§ 290.256 Preparation.

For each shipment to be withdrawn under this subpart, the customs warehouse proprietor shall prepare a notice of removal, Form 2149. Each such notice shall be given a serial number by the proprietor in a series beginning with number 1, with respect to the first shipment withdrawn under this subpart and commencing again with number 1 on January 1 of each year thereafter.

§ 290.257 Disposition.

After actual withdrawal from his warehouse of the shipment described on the notice of removal, Form 2149, the customs warehouse proprietor shall, except where the shipment is to be exported by parcel post, promptly forward one copy of the notice of removal to the assistant regional commissioner for the region in which is located the customs warehouse from which the shipment is withdrawn. A copy of each such notice shall be retained by the customs warehouse proprietor as a part of his records, for two years following the close of the calendar year in which the shipment was withdrawn, and shall be made available for inspection by any internal revenue officer upon his request. The proprietor shall dispose of the other copies of each notice of removal as required by this subpart.

§ 290.258 To officers of the armed forces for subsequent exportation.

Where cigars are withdrawn from a customs warehouse for delivery to officers of the armed forces of the United States

PROPOSED RULE MAKING

in this country for subsequent shipment to, and use by, the armed forces outside the United States, the customs warehouse proprietor making the shipment shall forward a copy of the notice of removal, Form 2149, to the officer at such base or installation authorized to receive the cigars described on the notice of removal. Upon execution by the armed forces receiving officer of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the customs warehouse proprietor making the shipment for filing with the appropriate assistant regional commissioner.

§ 290.259 To noncontiguous foreign countries and possessions of the United States.

Where cigars are withdrawn from a customs warehouse for direct delivery to a vessel or aircraft for transportation to a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, the customs warehouse proprietor making the withdrawal shall file two copies of the notice of removal, Form 2149, with the office of the collector of customs at the port where the shipment is to be laden. Such copies of the notice of removal should be filed with the related shipper's export declaration, Commerce Form 7525-V. In the event the copies of the notice of removal are not filed with the shipper's export declaration, when the copies of the notice of removal are filed with the collector of customs they shall show all particulars necessary to enable the collector to identify the shipment with the related shipper's export declaration and any other documents filed with his office in connection with the shipment. After the vessel or aircraft on which the shipment has been laden clears or departs from his port, the collector of customs shall execute the certificate of exportation on each copy of the notice of removal, retain one copy for his records, and deliver or transmit the other copy to the customs warehouse proprietor making the shipment for filing with the appropriate assistant regional commissioner.

§ 290.260 To a Federal department or agency.

Where cigars are withdrawn from a customs warehouse and are destined for ultimate delivery in a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, but the shipment is to be delivered to a Federal department or agency, or to an authorized dispatch agent, transportation officer, or port director of such a department or agency for forwarding on to the place of destination of the shipment, the customs warehouse proprietor making the shipment shall furnish a copy of the notice of removal, Form 2149, to the Federal department or agency, or an officer thereof at the port, receiving the shipment for ultimate transmittal to the place of destination, in order that such department, agency, or officer, can properly execute the certificate of receipt on such notice to evidence receipt of the shipment for transmittal to a place beyond the jurisdiction of the in-

ternal revenue laws of the United States. After completing such certificate, the Federal department, agency, or officer, shall return the copy of the notice of removal, so executed, to the customs warehouse proprietor making the shipment for filing with the appropriate assistant regional commissioner.

§ 290.261 To contiguous foreign countries.

Where cigars are withdrawn from a customs warehouse and consigned to a person in a contiguous foreign country, the customs warehouse proprietor making the shipment shall furnish to the collector of customs at the border or other port of exit of the shipment from the United States, through which the shipment will be routed, two copies of the notice of removal, Form 2149, together with the related shipper's export declaration, Commerce Form 7525-V. In the event the copies of the notice of removal are not filed with the shipper's export declaration or, in the case of a shipment for the armed forces of the United States in the contiguous foreign country, where no shipper's export declaration is required, the copies of the notice of removal when filed with the collector of customs shall show all particulars necessary to enable the collector to identify the shipment with the related shipper's export declaration, if any, and any other documents filed with his office in connection with the shipment. After the shipment has been cleared by customs from the United States, the customs authorities at the port of exit will complete the certificate of exportation on each copy of the Form 2149, retain one copy thereof, and transmit the other copy to the customs warehouse proprietor making the shipment for filing with the appropriate assistant regional commissioner.

§ 290.262 To Government vessels and aircraft for consumption as supplies.

Where cigars are withdrawn from a customs warehouse for direct delivery to a vessel or aircraft, engaged in an activity for the Government of the United States or a foreign government, for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the customs warehouse proprietor making the shipment shall forward a copy of the notice of removal, Form 2149, to the officer of the vessel or aircraft authorized to receive the shipment. Upon execution by the receiving officer of the vessel or aircraft of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the customs warehouse proprietor making the shipment for filing with the appropriate assistant regional commissioner.

§ 290.263 To commercial vessels and aircraft for consumption as supplies.

Where cigars are withdrawn from a customs warehouse for delivery to a vessel or aircraft entitled to receive such articles for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the customs warehouse proprietor making the

shipment shall file two copies of the notice of removal, Form 2149, with the collector of customs at the port where the shipment is to be laden in sufficient time to permit delivery of the two copies of the notice of removal to the inspector of customs who will inspect the shipment and supervise its lading. After inspection and lading of the shipment the inspector of customs shall note on the copies of the notice of removal any discrepancy between the shipment inspected and laden under his supervision and that described on the notice of removal or any limitation on the quantity to be laden; complete and sign the certificate of inspection and lading; and return both copies of the notice of removal to the collector of customs. The collector of customs shall execute the certificate of clearance on the copies of the notice of removal, retain one copy for his records, and forward the other copy to the customs warehouse proprietor making the shipment for filing with the appropriate assistant regional commissioner. Where the vessel or aircraft does not clear from the port at which the shipment is laden, the customs inspector supervising the lading of the shipment shall require the person on board the vessel or aircraft authorized to receive the shipment to execute the certificate of receipt on both copies of the notice of removal to indicate the trade or activity in which the vessel or aircraft is engaged.

§ 290.264 To internal revenue export warehouses.

Where cigars are withdrawn from a customs warehouse for delivery to an internal revenue export warehouse, the proprietor of the customs warehouse shall forward to the proprietor of the internal revenue export warehouse three copies of the notice of removal, Form 2149, covering the shipment, for execution and disposition in accordance with procedure similar to that set forth in § 290.200 in connection with a shipment of tobacco products and cigarette papers and tubes from a factory to an export warehouse. The executed copy of the notice of removal, Form 2149, returned to the customs warehouse proprietor by the internal revenue export warehouse proprietor shall be filed with the appropriate assistant regional commissioner.

§ 290.265 For export by parcel post.

Where cigars are withdrawn from a customs warehouse for export by parcel post, the customs warehouse proprietor shall present one copy of the notice of removal, Form 2149, together with the shipping containers, to the postal authorities with the request that the postmaster or his agent execute the certificate of mailing on the form. Where a customs warehouse proprietor so desires, he may cover under one notice of removal all the cigars removed under this part for export by parcel post which are delivered at one time to the postal service for that purpose. The customs warehouse proprietor shall immediately file the receipted copy of the notice of removal with the appropriate assistant regional commissioner.

RETURN OF SHIPMENT

§ 290.266 Return of cigars from internal revenue export warehouses.

Where cigars are returned to a customs warehouse from an internal revenue export warehouse, the officer in charge of the customs warehouse shall execute the certificate of receipt on each of the copies of the related Form 2150 received from the export warehouse proprietor, after checking the containers to determine whether all the cigars described on the notice have been received. Thereafter, both copies of the Form 2150 shall be turned over to the proprietor of the customs warehouse who shall return one copy to the export warehouse proprietor for disposition as provided in § 290.201. The customs warehouse proprietor shall retain the other copy of the notice of removal, as a part of his records, for two years following the close of the calendar year in which the shipment was received. Such copy shall be made available for inspection by any internal revenue officer upon his request.

§ 290.267 Return of cigars from other sources.

A customs warehouse proprietor may return to his warehouse cigars previously withdrawn therefrom, under this subpart, provided he promptly files with the appropriate assistant regional commissioner a copy of the Form 2149 under which the cigars were originally withdrawn, with the certificate of receipt properly modified and executed by the customs officer in charge of the warehouse to show return of the shipment. If less than the entire shipment is returned to the warehouse, the form shall state what disposition was made of the remainder of the original shipment and any other facts pertinent to such shipment. The customs warehouse proprietor shall retain a copy of such form as a part of his records for two years after the close of the calendar year in which the shipment was returned. Such copy shall be made available for inspection by any internal revenue officer upon request.

[F.R. Doc. 60-1383; Filed, Feb. 11, 1960; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service**

[7 CFR Part 946]

[Docket No. AO-123-A22]

MILK IN LOUISVILLE-LEXINGTON, KY., MARKETING AREA**Decision on Proposed Amendments to Tentative Marketing Agreement and to Order**

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing

was held at Frankfort and Louisville, Kentucky, on August 4-13, 1959, pursuant to notice thereof issued on July 15, 1959 (24 F.R. 5758).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Deputy Administrator, Agricultural Marketing Service, on December 30, 1959 (25 F.R. 44) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. Whether the handling of all milk in the area proposed to be regulated is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce.

2. Whether marketing conditions show the need to regulate the handling of milk in proposed territory outside the presently defined Louisville marketing area, and if so:

(a) Whether such regulation should be by means of (1) expanding the Louisville marketing area to include all or part of such proposed territory in the State of Indiana and in the Louisville-Lexington-Frankfort, Kentucky area, or (2) a separate marketing agreement and order to regulate the handling of milk in the Lexington-Frankfort area with other terms and provisions of a separate order identical with those contained in Order No. 46 as proposed to be amended or with other appropriate modifications thereof.

3. What the terms and provisions of the regulation should be, including consideration of the following proposed changes of Order No. 46.

(a) The scope of regulation;

(b) The Class I price differential;

(c) The price for Class III milk;

(d) The area in which location differentials are applicable;

(e) Distribution of payments under the fall incentive payment plan; and

(f) Such other amendments incidental to those related to specific issues, or for administrative purposes, as are necessary to properly co-ordinate provisions of the regulation in its entirety.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

(1) *Character of commerce.* The handling of all milk to be regulated is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

Fluid milk is regularly received from farms located in Kentucky and Indiana at plants of regulated handlers located in the present Louisville, Kentucky marketing area. Milk from both States is intermingled in such plants and is distributed to consumers in Kentucky and in Indiana in the presently defined Louisville marketing area. Such milk and milk products are also distributed from such plants to consumers outside the present Louisville marketing area in Indiana and Kentucky in the territory

hereinafter decided upon for the inclusion in the marketing area under Order No. 46. Such milk is sold by Louisville handlers in Frankfort and Lexington, Kentucky and in surrounding counties in competition with milk from plants of distributors located in Frankfort and Lexington.

To supply presently regulated handlers with supplemental milk to meet their fluid milk requirements, the Falls Cities Cooperative Milk Producers Association operates a plant to assemble and cool milk received from producer-members located in Indiana and Kentucky and when necessary from other markets. The association has imported milk from time to time from plants located in Wisconsin, Illinois, and Indiana. Supplemental supplies of milk are furnished by the association also from their Louisville plant to plants in Lexington. The association also supplies milk on a regular basis from a number of its producer-member farms directly to a Lexington distributing plant. A number of Lexington distributors procure a substantial portion of their milk supplies from farms located in the same area as the farms of producers supplying Louisville plants. A portion of the supply for Lexington handlers is procured also from areas in Kentucky in competition with milk procured by and moved to plants located in West Virginia, Cincinnati, Ohio and Newport, Kentucky. During 1959 Lexington handlers imported milk from outside the State from plants located at Union City and Fort Wayne, Indiana.

Falls Cities Cooperative Milk Producers Association disposes of milk in excess of the requirements of the handlers supplied by them in the Louisville-Lexington area to other fluid milk plants and to manufacturing outlets in Arkansas, West Virginia, Indiana, Illinois and various points in the State of Kentucky.

(2) *Need for regulation.* Marketing conditions in the Lexington-Frankfort, Kentucky area warrant (a) the regulation of the handling of milk in such area, (b) the accomplishment of such regulation by including territory in and surrounding the cities of Lexington-Frankfort in the marketing area of Order No. 46 regulating the handling of milk in the Louisville, Kentucky marketing area. Order No. 46 should be redesignated as the Louisville-Lexington, Kentucky marketing area.

The Falls Cities Cooperative Milk Producers Association representing producers under the present Order No. 46 and dairy farmers delivering milk to plants in Lexington and Frankfort, Kentucky, proposed that the marketing area of Order No. 46 be expanded to include Fayette and Franklin Counties (principal cities—Lexington and Frankfort). As an alternative, the association proposed that a separate marketing agreement and order be issued for a Lexington-Frankfort marketing area with other terms and provisions identical with those contained in the Louisville order, as proposed to be amended. Proposals by certain handlers regulated under the Louisville order were the same as the

association's proposals except that they would include additional territory in the marketing area(s). Other Louisville handlers also supported regulation of territory embracing their primary fluid milk distribution areas. Lexington distributors and others who sell milk in the proposed area opposed regulation either by expansion of the Louisville marketing area or by a separate order. Lexington handlers, except for one, favored regulation by expansion of the Louisville order, if it were determined that regulation should be promulgated for the Lexington and Frankfort areas.

Dairy farmers in the Lexington-Frankfort area have made a number of attempts to organize a milk bargaining association in order to gain a more effective voice in the establishment of prices and the marketing of their milk. In the early 50's there was considerable effort by dairy farm leaders, assisted by County Agricultural Agents, to organize farmers supplying the Lexington market. A substantial number of dairy farmers signed for membership in the contemplated organization. At the same time, Lexington milk distributors increased the price paid dairy farmers in sections of the milkshed where procurement competition for milk is most extensive between Louisville and Lexington plants by 50 cents per hundredweight, effective in the flush production season. This increase in price took away the immediate incentive for an organization and the movement failed.

In the years that followed there were occasions of dissatisfaction and unrest among producers as evidenced by meetings held by various county groups from time to time. In the fall of 1957 a more extensive movement was started by the Anderson County Extension Council Dairy Committee to explore courses of action to improve conditions in the marketing of milk for Anderson County producers. Following a survey of conditions in Anderson County and in a number of other counties supplying the Lexington market, including Fayette, Franklin, Boyle, Mercer, Woodford, Bourbon, Harrison, Shelby, Spencer, Washington and Lincoln, a program was outlined which centered around the services which could be performed by a collective bargaining association and the regulation of the handling of their milk under a Federal order. A series of educational meetings was held of dairy farmer representatives from the various counties, extension people and representatives from cooperative associations from several other markets. As a result of these meetings and because of the relatively small number of producers supplying the Lexington market (240), it was decided that the interest of producers could be served best by joining with the Falls Cities Cooperative Milk Producers Association of Louisville and seeking the extension of Order No. 46 to the Lexington market. The objectives of producers in seeking regulation for the Lexington market are to establish a sound and fair basis of establishing prices on which production plans may be formulated, the establishment of a uniform method of pricing milk used for

the same purpose, and auditing and checking procedures to guarantee accurate reporting of the utilization, butterfat tests and weights of producer milk by milk distributors. Although some distributors took active measures to discourage producers from joining the association and from seeking regulation for the Lexington market, by the time of the hearing at least 60 percent of Lexington producers had become members of the association.

One of the main causes for dissatisfaction and unrest among the majority of dairy farmers supplying the Lexington market and one of the underlying needs for regulation has been the variety of pricing plans used by operators of fluid milk distributing plants in the procurement of their milk supply. Prices paid dairy farmers for milk of comparable quality and butterfat content delivered to the same plant have varied considerably. At times such differences have amounted to as much as 50 cents per hundredweight. A large proportion of the dairy farmers are paid on some type of a base plan. There is a lack of uniformity in the application of such plans by the various distributors and in some instances among dairy farmers who deliver milk to the same plant. Some producers are paid on a base-excess-bonus plan. All farmers, however, are not paid in accordance with a base plan. At some plants part of the dairy farmers are paid a flat price per hundredweight adjusted for butterfat content.

In general, the different pricing plans in the Lexington market have resulted in most of the dairy farmers receiving prices per hundredweight equal to the uniform or blend prices paid producers under Order No. 46 less from 5 to 8 cents per hundredweight. These differences are equal to the marketing services assessment under the order and the membership dues of the cooperative association. Certain producers, however, are accorded special favorable consideration while at the same time some dairy farmers have no way of knowing the basis on which their milk is priced or what other dairy farmers are receiving for their milk.

Most of the plants in the Lexington-Frankfort area are engaged primarily in the distribution of fluid milk. Prices paid producers are not determined on the basis of a classified pricing plan. Dairy farmers have no assurance that they are receiving full utilization value of their milk. Without a classified pricing plan dairy farmers may be paid surplus or near manufacturing price levels for a portion of their milk which is disposed of for fluid consumption. At times milk was imported from outside sources by plants at the same time that local dairy farmers were paid surplus prices for a portion of their milk. All of these factors breed unrest, create doubt and contribute to disorderly marketing conditions. The accumulation and dissemination of marketwide information as is made possible under an order is needed in the Lexington market.

The issuance of an order to regulate the handling of milk in the Lexington-

Frankfort area would tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937 by assuring stable and orderly marketing conditions for all milk produced for sale in the area and will assure an adequate and dependable supply of pure and wholesome milk to consumers. This would be achieved basically through the establishment of a classified and uniform system of pricing and a uniform method of payment to producers for their milk. An order is necessary to provide the means of accomplishing many of the objectives sought by producers including the following:

(a) A predetermined and dependable method for establishing prices to producers at levels contemplated under the Agricultural Marketing Agreement Act, as amended;

(b) The establishment of uniform pricing to all handlers for milk received from producers according to a classified pricing plan based upon the utilization made of the milk;

(c) An impartial audit of handlers' records of receipts and utilization to further insure uniform prices for milk purchased;

(d) A means for assuring accurate weights and tests of milk;

(e) Uniform minimum returns to producers supplying the market and an equitable sharing by all producers of the lower returns from the sale of the necessary reserve supply; and

(f) Marketwide information for producers, handlers and consumers on receipts, sales and other data relating to the marketing of their milk.

Several of these objectives can be achieved more effectively and efficiently for the Lexington-Frankfort area by regulating the handling of milk under a single marketing order for the Louisville-Lexington-Frankfort area than by two separate orders. The territory proposed to be regulated in the Lexington-Frankfort area and the territory now regulated under the Louisville order has the essential characteristics of a single milk marketing area. General economic conditions and conditions relative to the production, delivery and distribution of milk in this territory are integrated and interdependent to such an extent that the area constitutes a contiguous fluid milk marketing area. Historically there has been some overlapping of wholesale and retail distribution routes from plants regulated under the Louisville order and such routes from unregulated plants in Lexington and Frankfort. During the past two years, in particular, the competition in the sale of fluid milk has increased significantly among distributors in these markets as wholesale and retail routes radiating from plants in these cities have been extended to serve additional territory. Such competition is most pronounced in the territory lying between the metropolitan centers of Louisville and Lexington. During the past twelve months, furthermore, routes have been extended by Louisville handlers to serve the City of Lexington and surrounding territory. Health regulations relative to the production and sale of milk are applied sim-

larly throughout the entire area and permit the free movement of milk.

Louisville handlers and Lexington-Frankfort distributors also compete in the procurement of their fluid milk supply from dairy farmers in common production areas. The farms of producers whose milk is delivered to Louisville plants are located in the same communities as farms of farmers whose milk is delivered to plants in Lexington and Frankfort. Some dairy farmers whose milk is regularly delivered to Lexington-Frankfort plants formerly were associated with Louisville plants. One Lexington distributor does not procure sufficient milk from dairy farmers regularly associated with his plant to provide an adequate reserve necessary to supply at all times the full demand for fluid milk. The additional milk needed is supplied by the association from producer-member farms directly to this plant. When milk from such producers is not needed at this plant it is moved to the association's "equalization plant" or direct to other handlers. Supplemental supplies of milk are also moved to Lexington handlers from the association's plant in Louisville which is regulated under Order No. 46. Under such conditions producers under the Louisville order have carried to some extent the necessary reserve supply associated with the unregulated Lexington area.

The plant of the cooperative association has been operated primarily as an equalization plant for the Louisville market. This assists the cooperative association in performing the function of promoting the highest practical utilization value for producer milk by the most efficient allocation of the available supplies to Louisville handlers. The association has indicated its intention to perform this same service for their producer-members and handlers in the Lexington area who procure their milk supply primarily from association members. A single milk marketing order for the Louisville-Lexington-Frankfort area will enable the association to use its facilities to achieve the most efficient allocation and utilization of milk for all of its members. It will promote equal sharing among all producers of the cost of carrying the reserve supplies associated with the fluid milk business in the area.

The regulation of Lexington-Frankfort area by means of a separate order could create incentives for uneconomical handling of milk to the ultimate disadvantage to producers and consumers and could result in the creation of artificial intermarket problems which may be avoided by a single order. Administrative problems would be reduced by a single order for the entire area.

A number of amendments to Order No. 46 are discussed later in this decision. Such amendments have been decided upon on the basis of conditions existing throughout the entire expanded marketing area. All other terms and provisions of the present Order No. 46 are appropriate for application in the extended area decided upon. To more accurately describe the area under regulation, however, the Order No. 46 marketing area

should be redesignated as the Louisville-Lexington marketing area and the title of the order changed accordingly.

(3) (a) *Scope of regulation.* The order contains a number of definitions which assists in setting forth clearly what milk and what persons are subject to regulation. These definitions and other provisions of the order relating to the scope of the regulation were reviewed at the hearing. Specific proposals were made for changing the definitions of the marketing area and a "pool plant".

Marketing area. The Order No. 46 marketing area should be expanded to include Clark, Floyd and Harrison Counties in Indiana and Jefferson, Bullitt, Meade, Hardin, Larue, Nelson, Spencer, Shelby, Oldham, Henry, Franklin, Anderson, Woodford, Scott, Fayette, Jessamine, Madison, Montgomery, Clark and Bourbon Counties in Kentucky.

The present marketing area consists of Jefferson County and the Fort Knox military reservation in Kentucky and Floyd County and a portion of Clark County in Indiana. The current population of the present marketing area is approximately 700,000 and that of the proposed expanded marketing area approximately 1.6 million. The main centers of population are in Jefferson, Fayette, Franklin and Hardin Counties. The population of Jefferson County, including the City of Louisville, is approximately 585,000. The City of Lexington is located in Fayette County which has a population of 124,000. Elizabethtown is the principal City in Hardin County and this county has a population of 55,000. The City of Frankfort, the capital of the State of Kentucky, is located in Franklin County which has a population of approximately 30,000. Frankfort is 49 miles East of Louisville and approximately 24 miles West of Lexington. Elizabethtown is located 40 miles South of Louisville.

There are 23 processors of fluid milk with plants located in the present marketing area which are regulated by the present order. The handling of milk would be regulated at 15 additional plants located in the proposed expanded area. Six of these plants are located in Fayette County and three in Franklin County. There are no Grade A processing plants located in Hardin County.

The major portion of the fluid milk distributed in the counties in Indiana and Kentucky, herein proposed to be included in the marketing area, which are adjacent to the presently defined Louisville marketing area, is distributed on wholesale and retail routes from regulated Louisville plants. More than 50 percent, and in some instances as much as 90 percent, of the total fluid milk distributed in each of the counties of Oldham, Shelby, Spencer, Bullitt, Meade, Hardin, Nelson, Henry and Larue in Kentucky and Harrison and Clark Counties in Indiana is distributed from presently regulated Louisville plants. Regulation of this territory, which embraces the primary fluid milk sales area of Louisville handlers, will not subject to full regulation plans of handlers from which the major portion of the total fluid milk is distributed in other areas and markets.

Wholesale and retail fluid milk routes from Louisville plants extend into Franklin County and overlap routes from plants in Frankfort-Lexington and Lawrenceburg in Anderson County. Routes from the plant in Lawrenceburg also extend into Shelby and Woodford Counties where they overlap with routes from Louisville and Lexington plants. Fayette County, in which Lexington is located, and the six surrounding counties of Bourbon, Scott, Woodford, Jessamine, Madison and Clark constitute the primary fluid milk distribution area of Lexington plants. Eighty-eight percent of the total fluid milk distributed in these counties is from plants in Lexington. In addition, the majority of the fluid milk distributed in Montgomery County is from plants in Lexington and Louisville. The primary competition with milk from Lexington in these counties is with milk from Louisville plants and unregulated plants outside of Lexington from which the majority of the fluid milk is distributed in the territory herein proposed to be regulated. Consumer packaged milk from the plant of one Louisville handler is shipped to a distributing point in Lexington and is distributed in competition with milk from Lexington plants in the immediately surrounding counties. Milk from other Louisville plants is distributed in this territory in varying amounts. Fluid milk is distributed from one or more Louisville plants in 9 of the 14 counties proposed by Lexington handlers to be included in the marketing area.

Washington, Mercer, Boyle and Garrard Counties in Kentucky should not be included in the marketing area. These counties are on the fringe of the primary fluid milk distribution area of Louisville-Frankfort and Lexington plants and of other plants in this area to be fully regulated. A relatively small percentage of the total fluid milk sales from such plants is distributed in these counties. Excluding these counties from the marketing area will result in a marketing area boundary to the south which will exclude from regulation certain plants whose sales areas are confined to these counties and keep to a minimum the competition and overlapping of wholesale and retail fluid milk routes between fully regulated plants and other plants whose sales areas are composed primarily of these counties and territory lying to the south of them.

Owen and Harrison Counties, proposed to be included in the marketing area by Lexington handlers, should not be included in the marketing area. Owen County is a sparsely populated area and only 10 percent of the total fluid milk distributed in Owen County is from Lexington plants. None of the Louisville handlers distributes milk in Owen County. The major portion of the fluid milk in Owen and in Harrison County is distributed from unregulated plants which serve markets in the northern Kentucky area near Cincinnati.

Operators of plants at Madison, Seymour and Union City, Indiana opposed including that portion of Clark County, Indiana, presently not included in the Louisville marketing area, and Oldham

and Henry Counties, Kentucky in the marketing area. Fluid milk from these plants is distributed in this territory. As previously stated, Oldham and Henry Counties are a part of the primary fluid milk distribution area of Louisville handlers and only a small percentage of the total fluid milk distributed here is distributed from unregulated plants. The unregulated handlers distributing fluid milk in the presently unregulated portion of Clark County procure their milk supplies from dairy farmers on the basis of blend prices resulting under the Louisville and Cincinnati orders. These plants have a relatively high proportion of their receipts of Grade A milk used in fluid disposition. Because regulated handlers are required to pay the Class I price for milk distributed in this territory they are at a competitive disadvantage in the procurement of such milk. Furthermore, the plants of these unregulated handlers are located so that they may reasonably, and do, depend upon the Louisville market for their supplemental milk supplies. Under the compensatory payment provisions of the order (discussed later herein) these nonpool plants are not required to make payments on milk disposed of in the marketing area, if an equivalent amount of milk is purchased as Class I milk from pool plants during the month.

It is not possible to determine from the record the proportion of the total sales distributed by various distributors in the unregulated portion of Clark County. One Order No. 46 handler, whose plant is located in Jeffersonville, Indiana, however, distributes 98 percent of his total sales in Clark County and approximately 17 percent of the total in the presently unregulated portion. It is necessary, therefore, to include all of Clark County in the marketing area to maintain the effectiveness of the regulation and prevent disruptive influences to the orderly marketing of producer milk for the present marketing area. Including all of Clark County in the marketing area will not fully regulate additional handlers who are primarily associated with other markets.

Pool plants. The requirement that a "city" or distributing type plant dispose of 30 percent of the receipts of Grade A milk from dairy farmers and country plants as Class I milk in order to qualify as a pool plant should be changed by increasing this requirement to 50 percent for the months of September through February. Provisions should be made also for a plant packaging milk in consumer packages and transferring such milk to other pool plants to receive credit for such Class I milk for the purpose of this determination.

The minimum class prices of the order and the pooling of the proceeds for milk apply to that milk eligible for distribution as Grade A milk in the marketing area which is received from dairy farmers at pool plants. Currently, to qualify as a pool plant a "city plant" must be approved for distribution of Grade A milk by a duly constituted health authority, dispose of not less than 30 percent of its Grade A receipts as Class I (during the two preceding months) and

dispose of 10 percent or more of such receipts in the marketing area through retail or wholesale routes. Provision is made also for pool status of plants which serve as "country" or supply plants for a distributing plant.

Producers proposed that the present 30 percent (average of two preceding months) Class I disposition requirement be increased to 45 percent. Certain handlers claimed that because of custom bottling operations at some plants and of seasonal variation in the relationship of receipts of producer milk to Class I sales, a 45 percent requirement during the months of highest milk production would have excluded at least one plant from pool plant status during some months of 1958. The utilization experience in other plants that would become subject to regulation as a result of expansion in the marketing area was not made available for the record. If the utilization percentage requirements were to be revised, certain handlers supported seasonal adjustment in the utilization percentage and provision for including transfers of packaged milk to other plants. The purpose of the Class I utilization requirement is to preclude full regulation and the pooling of milk at plants which are not primarily engaged in processing and distributing milk for fluid consumption.

Under the present order, Class I utilization credit for packaged milk which is bottled by a plant and is transferred to a pool plant, accrues to the plant disposing of such milk through routes. It would be unreasonable to give Class I utilization credit for such sales to both plants for determining pool plant status. The effectiveness of the provision would not be changed materially by crediting the transferred packaged milk to the plant which packages the milk and deducting such Class I transfers from the Class I sales of the plant to which it is transferred. A city plant from which less than 50 percent of its Grade A receipts are disposed of as Class I milk, particularly during the fall and winter months, in this market is not considered as being primarily in the business of fluid milk distribution and the pooling of milk received at such a plant would dissipate the marketwide proceeds from the sale of Class I milk.

The present 30 percent Class I utilization requirement should be retained for the months of seasonally high production and a 50 percent Class I utilization requirement should be adopted for other months of the year. On the basis of the marketwide relationship of receipts to Class I sales the 50 percent requirement (based on the immediately two preceding months) should apply for pool plant status in each of the months of November through April. The use of the average of the two months immediately preceding each of such months is desirable to minimize short time abnormal fluctuations and to afford handlers the opportunity to determine the status of their plants at the beginning of each month.

The present order provides for payments to the producer-settlement fund with respect to unpriced milk (not priced under a Federal order) which is allocated

to Class I at a pool plant and similar payments by partially regulated nonpool plants on Class I sales in the marketing area. The rate of payment on such milk is the difference between the Class I and Class III prices during the months of January through September and the difference between the Class I price and the uniform price during the months of October through December.

With the expansion of the marketing area as decided herein several additional plants which sell less than 10 percent of their receipts of Grade A milk on routes in the marketing area will become subject to partial regulation. Operators of some of these plants objected to extending the regulation to the counties in which they dispose of milk primarily because of the above stated compensatory payment provisions of the order. Some claimed they pay their producers on the basis of a classified price plan and that such Class I prices were equal to or higher than the prices provided by the order.

Compensatory payments are essential features of Order No. 46. If unregulated plant operators were allowed to dispose of surplus milk in the regulated marketing area, either through pool plants or directly to consumers, without some compensating or neutralizing provision in the order, the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress as contemplated under the Agricultural Marketing Agreement Act of 1937, as amended, of returning a reasonable level of prices to the producers of milk for the regulated marketing area would be defeated. Inefficiency in the marketing of milk would be encouraged because there would be incentive for the regulated handlers to obtain milk for Class I uses not from the regular and normal sources of supply but from sources of supply generated solely as a result of the price advantage created for unregulated milk by the regulation itself. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk is therefore a necessary provision of this order.

There may be other situations in which plant operators may find it economical or desirable to make shipments of small quantities of milk to the marketing area and yet it would be neither necessary nor desirable in terms of effective regulation to bring the plants fully under regulation. This may be true with respect to shipments of milk to pool plants for the purpose of converting it into manufactured products. Also, milk may be disposed of in the regulated marketing area as Class I milk from plants which are not primarily or even regularly engaged in supplying the marketing area. If relatively small, incidental or accidental shipments of milk into the marketing area would bring under total regulation all the milk at the plant from which such shipments are made, undue hardship might result to the operator of such plant and for the farmers delivering the milk involved. Compensatory payments are necessary

to provide a means by which full regulation of the handling of milk at such plants may be avoided and, at the same time, maintain the integrity of classified pricing and marketwide equalization which are necessary to insure orderly marketing in this area.

The integrity of the regulation can be maintained by providing an alternative method of determining compensatory payments at a distributing plant which has sales of fluid milk products in the marketing area and fails to qualify as a pool plant. Subject to proper reporting and the maintenance of adequate records, the operator of such plant should be given an opportunity to choose between payment into the producer-settlement fund of: (1) An amount computed by multiplying the Class I milk disposed of in the marketing area by the same rates as apply to unpriced milk allocated to Class I milk at pool plants, or (2) the amount by which total payments to dairy farmers for such plant are less than the total amount of the plant's obligation to producers if such obligation is computed as if such plant were a pool plant. This alternative method of determining compensatory payments would eliminate such payments at those plants at which dairy farmers are paid the utilization value of their milk under the terms and provisions of the order.

If the partially regulated handler elects to make payments under the option now contained in the order, the regulation would be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk at pool plants. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers or by combination of payments to his farmers and to the producer-settlement fund, he would not have any advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area. His total minimum obligation for milk would be determined in exactly the same manner as if he were a fully regulated handler.

Affording this additional option to partially regulated nonpool plants would adequately protect the regulatory plan in this market. None of the operators to which this option may apply regularly obtains milk for such plants from dairy farmers located in a supply area that overlaps to any significant extent the supply area of plants that would be fully regulated under the order. The option to pay directly to dairy farmers who regularly supply such nonpool plants with milk the full utilization value of such milk in accordance with the order, therefore, would not place the operators of pool plants at a competitive disadvantage in the procurement of their milk supplies. Also, under the present organization of the market there would be no significant diversion of the revenue derived from the Class I sales in the marketing area to farmers only incidentally associated with the market at the expense of producers of milk for whom minimum class prices are established and who are relied upon to produce an adequate and dependable sup-

ply of approved milk for the marketing area.

Under the second option set forth above, the operator of the nonpool plant would be required to file a complete report of receipts and utilization. From such reports, subject to audit, the value of milk would be computed at the class prices, adjusted for location and butterfat content, in the same manner as for a pool plant. From this utilization value the market administrator would subtract the payments to the Grade A dairy farmers who constitute the regular supply of milk for the nonpool plant as verified from the producer payroll and 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. With respect to the payments to the Grade A dairy farmers, only such payments would be allowed as had been made to such farmers by the 17th day following the end of the month—the date by which producers are required to be paid under the order. The payment would be the gross amount paid to such farmers for milk at the nonpool plant. Bona fide deductions for supplies and services, such as hauling, would be allowed as authorized by the dairy farmer.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects the first option of payment on his Class I sales in the marketing area he should be required to pay administrative expense only on such quantities of milk so disposed of in the marketing area. If he elects the payment based on the utilization value of his milk he should pay administrative expense on his entire receipts of milk from Grade A dairy farmers and any other receipts allocated to Class I milk the same as is required of pool plants. Obviously, the second option necessitates as much verification of the receipts and utilization by the market administrator as at a pool plant. Accordingly, the provisions of the order relative to reporting by handlers operating nonpool plants and payments to the producer-settlement fund and for administrative assessments by such handlers should be revised.

The present maximum administrative assessment rate of 3.0 cents per hundredweight on producer milk and other source milk allocated to Class I at pool plants and on Class I sales disposed of in the marketing area by nonpool plants has been sufficient to meet the expense of administering Order No. 46. From time to time when income exceeded necessary expenses, the rate has been reduced below the maximum by the Secretary as provided by the order. The current rate is 2.5 cents per hundredweight. The expansion of the marketing area will bring under regulation, either fully or partially, a number of additional plants. These plants are more widely scattered than the presently regulated plants and the relative cost of administering the order may be increased. However, in view of the fact that the currently effective rate is less than 3.0 cents,

it is concluded that the maximum rate of 3.0 cents will be appropriate for the marketing area, as expanded, and should not be changed at this time.

(b) *Class I price.* The Class I price differential should be increased from \$1.25 to \$1.30 for the first 14 months after the effective date of this amendment and provision should be made for a supply-demand adjuster to become operative after the end of such 14-month period.

The Class I price differential of \$1.25 was first incorporated in the order in 1951. This differential has been in effect since that date except for short-term amendments effective October 1952 through February 1953 and May through July 1956. Producers proposed the Class I price differential be increased to \$1.45.

Class I sales under the order have increased in each year since 1940—the first year for which data are available from the record. During the 12 months immediately preceding the hearing Class I sales reached a level of 50 percent above the 1951 level. Producer receipts on the other hand reached an all-time high in 1957. From 1951 through 1957 producer receipts increased about 58 percent but in 1958 and the first six months of 1959 producer receipts declined from the 1957 level.

During the 12 months immediately preceding the hearing (July 1958 through June 1959) producer receipts were 137 percent of Class I sales as compared with 141 percent for the corresponding period of 1957–58 and 150 percent for the corresponding period of 1956–57. During the four months of October through January, when receipts are normally lowest in relation to Class I sales, the ratios of receipts to sales were 140 in 1956–57, 133 in 1957–58 and 124 in 1958–59. The 124 relationship prevailed in each month of this four-month period in 1958–59. A relationship of 124 percent does not indicate a shortage of producer milk to supply the Class I needs of this market. Although it was necessary for the cooperative association to import some milk from outside sources in each month of this period to supply handlers with their day-to-day requirements of Grade A milk, sales of Class I milk by the cooperative were made also to nonpool plants outside the market. Such sales, of course, could be made from the reserve supplies accumulated over weekends and represent milk not needed by the market at that particular time of the week. The association assumes the responsibility for balancing supply among handlers by procuring milk from outside sources. The supply of producer milk, therefore is allocated among plants in accordance with their needs in an effective manner. In spite of this fact, it was necessary for the association to import limited quantities of milk from outside sources in several months of 1958–59.

An annual average relationship of producer milk receipts to Class I sales of 137 percent which prevailed in the Louisville market during the 12-month period ending with June 1959 is reasonable and necessary to provide an adequate supply

of Grade A milk to meet the requirements of this market.

To arrest the apparent trend toward decreasing producer receipts in relation to Class I sales and to promote stabilization of the market at about the present supply sales relationships, provision should be made to temporarily increase the Class I price differential to \$1.30 and to provide for any further adjustment in the present method of establishing the Class I price through a supply-demand adjuster to become effective at the termination of the increase in the Class I differential.

Sufficient time should be allowed for the proposed increase in the Class I differential to assert its influence before further adjustments are made in the Class I price. The effective date for the supply-demand adjuster and the resumption of the present \$1.25 differential should be delayed, therefore, until 15 months after the effective date of this increase. Because of the similarity and to a considerable extent the overlapping of the procurement and sales areas of handlers located in the present and the added portion of the marketing area, the seasonal pattern of receipts and the utilization of milk should be very similar. Although any differences in the overall utilization percentages caused by including additional milk in the pool would be negligible, the delaying of the effective date of the supply-demand adjuster for 15 months will make it possible to have data for the enlarged marketing area for a full year to incorporate in the standard utilization percentages of the supply-demand adjuster when it becomes effective.

The purpose of a supply-demand adjuster is to change the Class I price in response to an indicated trend away from the "normal or desired" relationship of producer receipts to Class I sales. A supply-demand adjuster provides automatic and prompt changes in the Class I price and tends to avoid the necessity for hearings and the delay necessarily associated with the order amendment process. The automatic supply-demand adjustment of prices, permits the maintenance of intermarket alignment of Class I prices based on a long-term and general economic considerations, and at the same time provides a method for reflecting relative differences in local supply-demand conditions in the individual marketing areas. A supply-demand adjuster also will tend to reflect differences between nationwide conditions affecting basic or manufacturing milk prices (on which Class I prices are based) and conditions existing in a particular milkshed.

It is important to announce supply-demand adjustments at the beginning of each month as is customary in the Louisville market for the announcement of the Class I price. Experience has shown that supply-demand adjustments based on supply and sales relationships for the most recent two-month period (for which data are available at the time prices are announced) in relation to the "desired or normal relationship" are reliable indicators of changes in market

conditions. In order to apply this method of adjustment, "standard utilization ratios" must be developed for each two-month period which will reflect the seasonal variation in supply-sales relationships. Because there has been a gradual shift in the seasonal pattern of this relationship in the Louisville market, it is desirable that a method be provided whereby the seasonal pattern of the standard utilization ratios will be changed automatically in accordance with such shifts. The seasonality index which is used to convert the annual level relationship (137) to a monthly basis should be determined, therefore, on the basis of the average seasonal relationship which prevailed during the most recent three years.

In addition to seasonal influences, the utilization percentage (relationship of producer receipts to Class I sales) for any given two-month period may be affected also by an upward or downward trend in these relationships over a period of time. It is this trend that the supply-demand arrangement is intended to measure. Therefore, compensating measures must be taken to eliminate the effects of such trends on the standard utilization percentages. This should be accomplished in two ways: (1) The average utilization percentage for the two months in each year should be expressed as a ratio of the moving average for the most recent 24 months, ending with the third preceding month, and (2) to the extent, if any, that the standard utilization percentages applied during the most recent 12-month period is above or below the annual level of 137, the standard utilization percentage for the current months should be adjusted accordingly. In other words, the trend adjustments are for the purpose of maintaining the standard utilization percentages at an annual level of 137.

Stability in the supply-demand adjustments should be promoted by providing (1) that the Class I price will not be adjusted unless the utilization percentage applicable for the current month deviates significantly (two points or more) from the standard utilization percentage, (2) an arrangement of brackets to eliminate changes in the adjustment on the basis of minor changes in the utilization percentages from month-to-month, and (3) a maximum supply-demand adjustment beyond which no further changes will be made in the price without the reappraisal of marketing conditions at a public hearing. An average rate of adjustment of approximately 3 cents per point of variation between the "current utilization percentage" and the "standard utilization percentage" with a maximum adjustment of 50 cents, would be appropriate for adjustment of Class I price in this market. The provision of the attached order provides the necessary mechanics for applying a supply-demand adjuster in accordance with the objectives heretofore set forth.

(c) *Class III price.* The months of January through March should be included in the period for which the Class III price is the same as the basic formula price.

At present the Class III price for the months of January through August is the higher of the average of prices announced by seven local manufacturing milk plants or a butter-nonfat dry milk (roller process) formula. During other months the basic formula price is used. The basic formula price is the higher of a butter-nonfat dry milk (roller and spray) formula, the seven local manufacturing plant price, a butter-cheese formula and the average of the prices paid by 12 Midwest condenseries. Producers proposed that the basic formula price be used also for the months of January through March.

During January through February 1959, the seven local manufacturing plant price determined the Class III price. In March, the butter-dry milk formula was higher than the manufacturing plant price by two cents. During the months of January through March of 1958 and 1959 the basic formula price exceeded the Class III price on the average of 26 and 21 cents, respectively. The butter-dry milk formula was the basic formula price in five of the six months in these periods.

Several of the seven local manufacturing plants afford an outlet for reserve supplies of milk from this market. These plants pay premiums above their announced prices to farmers for milk purchased from dairy farmers who are equipped to cool their milk on the farm. Premiums are also paid for delivery of certain minimum average daily volumes. These premiums range from 15 to 25 cents per hundredweight. Producers supplying the fluid market would meet the qualifications for these premiums.

As previously mentioned herein, the producers' association handles and markets a substantial portion of the reserve supplies of milk from this market. The association has announced its willingness to handle the reserve supplies from all handlers who purchase their milk supply primarily from the association. The association has been able to dispose of reserve supplies of milk to manufacturing plants at prices above the prices established by the order for Class III milk. Such sales of milk and other offers to buy milk by manufacturing plants have been made on the basis of the order Class III price plus amounts about equal to the difference between the basic formula and the Class III price. The basic formula price, therefore, reflects the competitive price for manufacturing milk during the months of January through March.

Certain handlers objected to the application of the basic formula price for manufacturing milk during the months of January through March on the basis that their costs would be increased and that certain Class III operations were conducted at a loss at present prices. It is essential, however, particularly under a marketwide pool, that Class III prices be at least equal to the competitive price for manufacturing milk in the area. This is important to assist in the allocation of milk supplies among plants in accordance with their needs for milk in the higher price utilization classes and thus maximize returns to producers for milk.

During the period of September through March there frequently is also a demand for fluid milk for Class I disposition by distributors located in other markets. Such sales are made by the cooperative association on the basis of the Class I price established by the order. An increase in the Class III price will remove any undue advantage to handlers of using or diverting reserve supplies of milk in manufacturing uses. It may tend to encourage its disposal in fluid markets with returns to producers at the higher Class I price.

In order to maintain the established relationship between the price for skim milk and butterfat in Class III uses, the Class III butterfat differential of .12 times the price of butter which is now applicable during the months of September through December should be extended to apply to the months of September through March.

Provision should be made in the order for the use of equivalent prices. If for some reason a price quotation is not announced or published as required for use by the market administrator for the determination of prices, provisions should be made for the market administrator to use a price as determined by the Secretary to be equivalent to the price which is required. The provision incorporated in the attached order is the same as the corresponding provision contained in other Federal orders.

(d) *Location adjustments.* The schedule of location adjustment rates should be revised and Lexington, Kentucky should be added as a basing point for applying such adjustments.

Under the present order location adjustments of the Class I price and of the uniform price to producers are applicable to milk at plants located more than 25 miles from the City Hall in Louisville. Producers propose that Lexington be added as a basing point and that no location adjustments apply at plants located less than 85 miles from the closest of the two basing points. At present all pool plants are located within a radius of 25 miles from Louisville and thus no location adjustments are applicable to producer milk under the order. All of the milk for the proposed expanded marketing area moves directly from farmers to distributing plants, or to the equalization plant operated by the Falls Cities Cooperative Milk Producer's Association located within the City of Louisville. The present location adjustment provisions of the order would not be appropriate for the marketing area as proposed to be expanded. As previously concluded in this decision, the economic conditions surrounding the procurement and sale of milk are similar throughout the expanded marketing area and the level of Class I prices should be uniform throughout this area. The present location adjustment arrangement would provide for different prices at different locations within this area. The radius within which no adjustment applies, therefore, should be extended. Because the marketing area contains two major centers of consumption—Louisville and Lexington—it is economically sound to provide for location adjust-

ments at distant plants based on the location of such plants in relation to the nearer of these two cities. Because the proposed marketing area is relatively large, all producer milk is moved directly from farms mostly in bulk farm pickup tanks to the marketing area; and, there is need to provide a level of Class I price differentials under this order at distant plants in close alignment with that in neighboring Federal order markets, no location adjustments should apply at plants located less than 85 miles from the nearer of the two basing points. Presently there are no country plants serving the market. Milk within the 85-mile radius can be moved to this market directly from farms more efficiently than by assembling at country plants and then trucking such milk to city distributing plants.

A 15-cent per hundredweight adjustment should apply at plants located more than 85 miles but less than 95 miles from the nearer of the basing points and 1.5 cents per hundredweight should be added for each additional 10 miles. These rates approximate the cost of moving milk by efficient means from distant plants to the marketing area and conform closely to the rates applied under other Federal orders. This schedule of adjustments will provide the same Class I price at all plants located within the marketing area. The resulting Class I price differentials under this order at locations in or near other Federal order markets to the west and north, from which some milk is disposed of in the proposed marketing area, will be in close alignment with the Class I price differentials in such other areas.

(e) The method of determining the amount of money added to the pool during the month of December under the fall incentive plan should be changed.

Presently the order provides that the funds set aside from the pool during the months of April through July shall be added to the pool in four equal amounts for the months of September through December. This set-aside is handled separately in the producer-settlement fund. It is possible that minor debits or credits may result in the fund at the end of December because of errors in reporting producer milk receipts during this period. Provision should be made, therefore, for adding for the month of December the balance remaining in such fund at that time.

(4) The entire order should be republished to incorporate the amendments decided upon herein together with necessary conforming and clarifying changes.

With the change in the name of the marketing area and the adoption of other amendments decided upon it will be necessary to make a number of conforming changes in other order provisions.

There is a need for clarification of the provisions for reclassification charges on beginning inventory which is allocated to Class I milk. Beginning inventory is considered as a current receipt. In the classification of current receipts of producer milk, under the allocation provisions, beginning inventory is subtracted,

in series, starting with Class II milk. Because ending inventory is classified as Class II milk, a reclassification charge is necessary on inventory subtracted from Class I milk in the following month to promote equal cost of milk among handlers and to return to producers the utilization value for their milk. To the extent that there was producer milk classified as Class II in the preceding month, a reclassification charge is applied to price such milk identical with current receipts of producer milk. To the extent that additional milk from inventory is allocated to Class I, a reclassification charge equal to the compensatory payment rate on other source milk is applied. It is possible, however, that other source milk which is in inventory may have come from sources regulated by another Federal order and has been priced as Class I milk under such order. It is not the intent of this order to place a compensatory payment on milk subject to the Class I pricing and pooling provisions of another order. Provision should be made, therefore, to exclude from reclassification charges an amount of other source milk in inventory equal to the other source milk subject to the Class I pricing and pooling provisions of another order which is allocated to Class II milk in the preceding month.

The provisions for excluding from regulation under this order any plant which is subject to the pooling and pricing provisions of another Federal milk marketing order (§ 946.62) should be clarified. This should be accomplished by exempting from the provisions of this order such plants from which a greater volume of fluid milk products is disposed of on routes in the marketing area and to plants subject to full regulation under such other order than is disposed of in the Louisville-Lexington marketing area on routes and to pool plants during the current and each of the three immediately preceding months. Such a provision would clarify under which order a plant which sells milk in more than one marketing area is to be regulated, and thereby avoid the possibility of dual regulation. Use of the four-month period as a criterion would reduce the possibility that plants which supply nearly equal amounts of milk to this market and to other markets would be subject to different orders from month-to-month.

The expansion of the marketing area would subject a number of additional handlers to either partial or full regulation. Full regulation would be extended to the milk of approximately 300 additional dairy farmers. The publication of the entire order as proposed to be amended will facilitate a review of such amendments in relation to all other provisions and should be of benefit to those persons who become interested parties for the first time.

It is hereby ordered, therefore, that the order, as amended, and as hereby proposed to be further amended, be published in the FEDERAL REGISTER.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of

certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Louisville-Lexington, Kentucky, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Louisville-Lexington, Kentucky, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of

said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order amending the order regulating the handling of milk in the Louisville-Lexington, Kentucky, marketing area, is approved or favored by the producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of December 1959 is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C., this 8th day of February 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Milk in the Louisville-Lexington, Kentucky, Marketing Area

Sec. 946.0 Findings and determinations.

DEFINITIONS

946.1 Act.
946.2 Secretary.
946.3 Department.
946.4 Person.
946.5 Cooperative association.
946.6 Louisville-Lexington marketing area.
946.7 City plant.
946.8 Country plant.
946.9 Pool plant.
946.10 Nonpool plant.
946.11 Handler.
946.12 Producer.
946.13 Producer milk.
946.14 Other source milk.
946.15 Producer-handler.
946.16 Chicago butter price.
946.17 Fluid product.
946.18 Route.

MARKET ADMINISTRATOR

946.20 Designation.
946.21 Powers.
946.22 Duties.

REPORTS, RECORDS, AND FACILITIES

946.30 Reports of receipts and utilization.
946.31 Payroll reports.
946.32 Other reports.
946.33 Records and facilities.
946.34 Retention of records.

CLASSIFICATION

946.40 Skim milk and butterfat to be classified.

¹This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Sec. 946.41 Classes of utilization.
946.42 Unaccounted for skim milk and butterfat and plant shrinkage.
946.43 Responsibility for classification of milk.
946.44 Transfers.
946.45 Computation of the skim milk and butterfat in each class.
946.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

946.50 Basic formula price.
946.51 Class prices.
946.52 Price adjustments to handlers.
946.53 Transportation differential.
946.54 Use of equivalent prices.

APPLICATION OF PROVISIONS

946.60 Producer-handlers.
946.61 Handlers operating nonpool plants.
946.62 Plants subject to other orders.

DETERMINATION OF UNIFORM PRICE

946.70 Net obligation of each handler.
946.71 Computation of uniform price.

PAYMENTS

946.80 Time and method of payment for producer milk.
946.81 Producer butterfat differential.
946.82 Location differential.
946.83 Producer-settlement fund.
946.84 Payments to the producer settlement fund.
946.85 Payments out of the producer-settlement fund.
946.86 Adjustment of accounts.
946.87 Marketing services.
946.88 Expense of administration.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

946.89 Termination of obligations.
946.90 Effective time.
946.91 Suspension or termination.
946.92 Continuing power and duty.
946.93 Liquidation after suspension or termination.

MISCELLANEOUS PROVISIONS

946.100 Agents.
946.101 Separability of provisions.

AUTHORITY: §§ 946.0 to 946.101 issued under sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 946.0 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 Louisville-Lexington, Kentucky, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions

thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk, as determined pursuant to section 2 of the act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3.0 cents per hundredweight or such amount not to exceed 3.0 cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts at a pool plant of milk from producers and other source milk classified as Class I milk pursuant to § 946.46; and (b) to milk at a nonpool plant in accordance with § 946.61.

Order relative to handling. It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Louisville-Lexington, Kentucky, 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:

DEFINITIONS

§ 946.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 946.2 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the United States authorized to exercise the powers or to perform the duties pursuant to the act of the said Secretary of Agriculture.

§ 946.3 Department.

"Department" means the United States Department of Agriculture or other Federal agency authorized to perform the price reporting functions specified in this part.

§ 946.4 Person.

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

§ 946.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

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

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 946.6 Louisville-Lexington marketing area.

"Louisville-Lexington marketing area" hereinafter called the "marketing area" means all territory geographically located within the perimeter boundaries of Clark, Floyd, and Harrison Counties, Indiana and Jefferson, Bullitt, Meade, Hardin, Larue, Nelson, Spencer, Shelby, Oldham, Henry, Franklin, Anderson, Woodford, Scott, Fayette, Jessamine, Madison, Montgomery, Clark and Bourbon in the State of Kentucky including all municipal corporations and institutions, lying wholly or partially within such area, owned or operated by the Federal, State or local Governments.

§ 946.7 City plant.

"City plant" means a plant or other facilities, where milk is processed or packaged and from which a fluid milk product(s) which is permitted to be labeled as "Grade A" by health authority having jurisdiction in the marketing area is disposed of through a route(s).

§ 946.8 Country plant.

"Country plant" means a milk plant, other than a city plant, which is approved by the appropriate health authority in the marketing area to supply milk, skim milk or cream to a city plant(s) for disposition as "Grade A" milk in the marketing area and at which milk is received from persons described in § 946.12(a) during the month.

§ 946.9 Pool plant.

"Pool plant" means:

(a) A city plant, other than a plant operated by a producer-handler, which meets the following requirements:

(1) For each of the months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products received during the two months immediately preceding from dairy farmers described in § 946.12(a), from country plants, and from pool plants in containers not larger than a gallon are disposed of as Class I milk from such plant during such two-month period to all outlets except such disposition to pool plants in containers larger than a gallon: *Provided*, That, if such utilization percentage for the two preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) An amount of Class I milk equal to not less than 10 percent of the milk described in § 946.12(a) received directly from dairy farmers and country plants during the current month is distributed through routes in the marketing area.

(b) A country plant during any of the months of October through March in which not less than 10 percent of the receipts of milk at such plant from persons described in § 946.12(a) are delivered to a city plant in the form of milk, skim milk or cream;

(c) A country plant during the months of April through September from which more than 50 percent of the combined receipts of milk from persons described in § 946.12(a) during the preceding period of October through February were delivered to a city plant(s) in the form of milk, skim milk or cream, unless the operator of such plant notifies the market administrator in writing on or before March 15 of withdrawal of the plant from the pool for the months of April through September next following; and

(d) A country plant which is operated by a cooperative association and (1) 75 percent or more of the milk from persons described in § 946.12(a) who are members of such association is delivered during the month directly to the pool plant(s) of other handlers or transferred by such association to the pool plant(s) of other handlers or (2) such plant qualified as a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding consecutive months of October through February.

§ 946.10 Nonpool plant.

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

§ 946.11 Handler.

"Handler" means (a) any person who operates a city plant or a country plant, and (b) any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 946.13.

§ 946.12 Producer.

"Producer" means any person, except a producer-handler, who produces milk which is:

(a) Approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is permitted by the appropriate health authority in the marketing area to be labeled and disposed of as Grade A milk in the marketing area (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the U.S. Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases): *Provided*, That this definition shall not include any person whose milk is permitted on a temporary or emergency basis by such health authority in the marketing area to be labeled and disposed of as Grade A milk; and

(b) Received at a pool plant or diverted in accordance with the conditions set forth in paragraph (b) or (c) of § 946.13.

§ 946.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers which is:

(a) Received directly from producers at a pool plant: *Provided*, That when withdrawals of milk are made at more than one pool plant from the same load delivered by farm tank pick-up truck and in the absence of agreement between the operators of such pool plants as to the reporting of and payment for such milk, the entire load shall be deemed to have been received at the first pool plant at which any of such milk was withdrawn;

(b) Diverted from a pool plant to another pool plant or to a nonpool plant: *Provided*, That such milk so diverted shall be deemed to have been received at the pool plant from which it is diverted: *Provided further*, That this definition shall not include the milk of any person during any of the months of October, November, January, and February in which the milk of such person is diverted by a handler, except a cooperative association, to a nonpool plant for more than one-half of the days of delivery during the month; or

(c) Diverted by a cooperative association to a nonpool plant for the account of the cooperative association: *Provided*, That any milk so diverted shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant from which it is diverted.

§ 946.14 Other source milk.

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

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) except Class II products from pool plants, which are repackaged, reprocessed or converted to another product in the plant during the month.

§ 946.15 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributing any portion of such milk within the marketing area as Class I milk and who receives no milk from producers.

§ 946.16 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department of Agriculture during the month.

§ 946.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream, or any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

§ 946.18 Route.

"Route" means the operation of a plant store or a vehicle (including that operated by a vendor) through the means

of which fluid milk products are disposed of to retail or wholesale stops in the marketing area other than to a milk plant.

MARKET ADMINISTRATOR

§ 946.20 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 at the discretion of, the Secretary.

§ 946.21 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.

§ 946.22 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 the funds provided by § 946.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 946.87) 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) Submit his books and records to examination and furnish such information and reports as may be requested by the Secretary;

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

(h) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(i) 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 5 days after the date upon which he is required to perform such acts has not made reports pursuant to §§ 946.30 through 946.32, or payments pursuant to §§ 946.80 through 946.86;

(j) On or before the 15th day after the end of each month, report to each cooperative association, which so requests, with respect to producer milk caused to be delivered by such association or by its members to each handler during the month: (1) The percentage of such receipts classified in each class; and (2) the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports, the milk received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month;

(k) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and notify each handler in writing the prices and butterfat differentials determined for each month as follows:

(1) On or before the 12th day after the end of each month, the minimum prices for each class of milk computed pursuant to § 946.51, and the butterfat differentials for each class computed pursuant to § 946.52; and

(2) On or before the 12th day after the end of each month, the uniform price computed pursuant to § 946.71, and the butterfat differential computed pursuant to § 946.81;

(l) On or before the 13th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(1) The net obligation computed for such handler pursuant to § 946.70; and

(2) The amounts to be paid by such handler pursuant to §§ 946.61, 946.84, 946.87, and 946.88.

REPORTS, RECORDS, AND FACILITIES

§ 946.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a producer handler, shall report for such month to the market administrator for each of his pool plants in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk (including such handler's own farm production);

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

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

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk other than on routes operated wholly or partially within the marketing area; and

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

§ 946.31 Payroll reports.

On or before the 20th day after the end of each month, each handler shall submit to the market administrator his producer payroll for deliveries during the month which shall show (a) the total pounds of milk received from each producer and cooperative association and the average butterfat content of such milk, (b) the prices paid and the amount of payment to each producer and cooperative association, and (c) the nature and amount of any credits, deductions, or charges involved in such payments.

§ 946.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received: *Provided*, That milk diverted to a pool plant as described in § 946.13(b) need not be reported pursuant to this paragraph.

(c) On or before the 10th day after the request of the market administrator, such handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of rates and the effective dates thereof shall be reported to the market administrator within 10 days.

§ 946.33 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, records, and reports of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

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

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

(c) Payments to producers, including supporting records of all deductions and written authorization from each producer of the rate per hundredweight or other method for computing hauling charges on such producer milk; and

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

§ 946.34 Retention of records.

All books and records required under this part to be 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 records and books 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

§ 946.40 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to §§ 946.30 and 946.61 shall be classified by the market administrator pursuant to the provisions of §§ 946.41 to 946.46.

§ 946.41 Classes of utilization.

Subject to the conditions set forth in §§ 946.42 through 946.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated or reconstituted skim milk solids) and butterfat (1) disposed of in fluid form as milk, skim milk, cream (including sour cream), buttermilk, milk drinks (plain or flavored), except skim milk and butterfat disposed of in fluid form for livestock feed; (2) disposed of as any fluid milk product which is required by the appropriate health authority in the marketing area to be made from milk, skim milk, or cream from sources approved by such authority; and (3) not accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat the utilization of which is established as used to produce (1) cottage cheese, ice cream, ice cream mix, eggnog, frozen desserts, and milk (or skim milk) and cream mixtures containing 8.0 percent or more butterfat disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product, and (2) in inventories of fluid milk products.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat, the utilization of which is established: (1) As used to produce any product other than those specified in paragraphs (a) or (b) of this section, (2) as disposed of for livestock feed, (3) as disposed of in bulk to bakeries, candy or soup manufacturers, and other commercial food manufacturing establishments which do not dispose of fluid milk products, and (4) in plant shrinkage of skim milk and butterfat in receipts of producer milk and in other source milk computed pursuant to § 946.42.

§ 946.42 Unaccounted for skim milk and butterfat and plant shrinkage.

Skim milk and butterfat received at a handler's pool plant(s) in excess of such handler's established utilization of skim milk and butterfat pursuant to § 946.41, except paragraphs (a)(3) and (c)(4) shall be known as unaccounted for skim milk and butterfat and classified as follows:

(a) Adjust such handler's receipts of producer milk by (1) deducting the pounds of skim milk and butterfat in producer milk diverted by such handler to a nonpool plant or to the pool plant of another handler without having been received for purposes of weighing and testing in the diverting handler's plant, (2) adding the skim milk and butterfat in producer milk received at the pool plant of such handler which was diverted from the pool plant of another handler;

(b) Prorate the quantities of unaccounted for skim milk and butterfat respectively, between such handler's receipts of skim milk and butterfat, respectively, in producer milk as computed pursuant to paragraph (a) of this section and in other source milk received in the form of fluid milk products in bulk;

(c) That portion of the quantities of unaccounted skim milk not to exceed five percent during the months of April through July and two percent during other months, and the quantities of butterfat not to exceed two percent in each month, of the skim milk and butterfat, respectively, in receipts of producer milk and other source milk applied pursuant to paragraph (b) of this section shall be known as "shrinkage" and classified as Class III milk: *Provided*, That if the quantities of skim milk and butterfat utilized and disposed of in milk and all milk products are not established by such handler all unaccounted for skim milk and butterfat prorated to receipts of producer milk pursuant to paragraph (b) of this section shall be classified as Class I milk;

(d) That portion of the quantities of unaccounted for skim milk and butterfat which is in excess of the quantities of skim milk and butterfat, respectively, classified pursuant to paragraph (c) of this section shall be classified as Class I milk.

§ 946.43 Responsibility for classification 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 prove to 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.

§ 946.44 Transfers.

Skim milk or butterfat disposed of by a handler from a pool plant either by transfer or diversion shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to a pool plant of another handler, unless utilization in another class

is mutually indicated in the reports submitted to the market administrator by both handlers pursuant to § 946.30 on or before the 7th day after the end of the month: *Provided*, That if upon inspection of the records of the transferee-handler it is found that an equivalent amount of skim milk or butterfat, respectively, was not actually used in such indicated use, the remaining quantity shall be classified as Class I milk: *And provided further*, That if either or both handlers received other source milk the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the highest-priced possible class utilization to the producer milk of both handlers;

(b) As Class I milk if transferred or diverted to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream in bulk to a nonpool plant located less than 250 airline miles from the City Hall in Louisville, Kentucky, unless:

(1) The handler claims classification in another class in his report submitted to the market administrator pursuant to § 946.30;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for verification;

(3) An amount of skim milk and butterfat, respectively, of not less than that so claimed by the handler was used in products included in Class II and Class III milk;

(4) The classification reported by the handler results in an amount of skim milk and butterfat in Class I and Class II milk claimed by all handlers transferring or diverting milk to such nonpool plant of not less than the amount of assignable Class I milk and Class II milk remaining after the following computation:

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk and used to produce products in Class II milk, pursuant to the classification provisions of this order applied to such nonpool plant, subtract, in series beginning with Class I milk, the skim milk and butterfat received at such plant directly from dairy farmers who hold permits to supply "Grade A" milk and who the market administrator determines constitute the regular source of supply for such nonpool plant;

(ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk products received from another market and which is classified and priced as Class I milk pursuant to another order issued pursuant to the act: *Provided*, That the amount subtracted pursuant to this subdivision shall be limited to such markets' pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the act;

(5) If the skim milk and butterfat, respectively, transferred by all handlers to such a nonpool plant and reported as Class I milk pursuant to this paragraph is less than the skim milk and butterfat assignable to Class I milk, pursuant to subparagraph (4) of this paragraph, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk pro rata in accordance with the total of the lower priced classifications reported by each of such handlers;

(6) If the skim milk and butterfat, transferred by all handlers to such nonpool plant and reported as Class II milk pursuant to this paragraph is less than the skim milk and butterfat assignable to Class II milk pursuant to subparagraph (4) of this paragraph, less the amount of skim milk and butterfat received directly from "ungraded" dairy farmers at such nonpool plant, respectively, an equivalent amount of skim milk and butterfat shall be reclassified as Class II milk pro rata in accordance with the claimed Class III classification reported by each of such handlers;

(d) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream in bulk to a nonpool plant located 250 airline miles or more from the City Hall in Louisville, Kentucky.

§ 946.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the report of receipts and utilization submitted by each handler and shall compute the pounds of skim milk and butterfat in each class for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before such product is disposed of by a handler, the hundredweight of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat solids contained in such product, plus all of the water originally associated with such solids.

§ 946.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 946.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

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

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk assigned to producer milk shrinkage pursuant to § 946.42(c);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class III milk, the pounds of skim milk in other source milk which are not subject to the Class I pricing provisions of an order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in Class III milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(4) Subtract from the remaining pounds of skim milk in each class, in

series beginning with Class III milk, the pounds of skim milk in other source milk which are subject to the Class I pricing provisions of another order issued pursuant to the act;

(5) Add to the pounds of skim milk remaining in Class III milk the pounds of skim milk subtracted pursuant to subparagraphs (1) and (3) of this paragraph;

(6) Subtract from the remaining pounds of skim milk in Class II and Class I milk, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 946.44(a);

(8) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk received in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class III. Any amount of excess so subtracted shall be called "overage."

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

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 946.50 Basic formula price.

The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the highest of the prices computed pursuant to paragraphs (a), (b), and (c) of this section and subparagraph (1) of § 946.51(c).

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

(1) Add 20 percent to the Chicago butter price for the month and multiply by 3.8.

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, 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 8.2.

(b) The price per hundredweight resulting from the following formula:

(1) Multiply by 8.53 the average of the daily prices per pound of cheese at Wisconsin Primary Markets ("cheddars," f.o.b. Wisconsin assembling points, cars or truckloads) as reported by the Department during the month;

(2) Add 0.902 times the Chicago butter price for the month;

(3) Subtract 34.3 cents; and

(4) Add an amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 3.

(c) To 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:

Companies and Location

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

Add an amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 3.

§ 946.51 Class prices.

Subject to the provisions of §§ 946.52 and 946.53, the minimum prices per hundredweight to be paid by each handler for milk of 3.8 percent butterfat content received at his pool plant(s) from producers during the month shall be as follows:

(a) *Class I milk.* The price of Class I milk shall be the basic formula price for the preceding month, rounded to the nearest tenth of a cent, plus \$1.30: *Provided*, That starting with the 15th month after the effective date of this amendment the Class I price shall be such basic formula price plus \$1.25, subject to a supply-demand adjustment computed as follows:

(1) Calculate the percentage that total receipts of producer milk was of total Class I milk at all pool plants for each of the following periods:

(i) The 24-month period ending with the third preceding month, and

(ii) The two-month period ending with the second preceding month and the corresponding two-month period of each of the two preceding years;

(2) Determine the simple average of the percentages for the three two-month periods computed pursuant to subparagraph (1) (ii) of this paragraph and divide by the percentage for the 24-month period determined pursuant to subparagraph (1) (i) of this paragraph;

(3) Add to the quotient obtained pursuant to subparagraph (2) of this paragraph the corresponding ratios for each of the 11 months immediately preceding and divide by 12;

(4) Multiply 137 percent by the result obtained by dividing the ratio computed pursuant to subparagraph (2) of this paragraph by the ratio computed pursuant to subparagraph (3) of this paragraph;

(5) Determine the net deviation percentage by subtracting the percentage determined pursuant to subparagraph (4) of this paragraph from the percentage determined pursuant to subpara-

graph (1) (ii) of this paragraph for the second and third preceding months; and

(6) Determine the amount of the supply-demand adjustment from the following schedule:

Net deviation percentage:	Supply-demand adjustment (cents)
+16 or over-----	-50
+13 or +14-----	-40
+10 or +11-----	-30
+7 or +8-----	-20
+4 or +5-----	-10
+2 or -2-----	0
-4 or -5-----	+10
-7 or -8-----	+20
-10 or -11-----	+30
-13 or -14-----	+40
-16 or more-----	+50

When the net deviation percentage does not fall within the tabulated brackets, the adjustment shall be determined by the adjacent bracket which is the same as or nearest to the bracket applicable for the previous month.

(b) *Class II milk.* The price for Class II milk shall be the higher of the basic formula price pursuant to § 946.50 or that computed pursuant to subparagraphs (1) and (2) of this paragraph, rounded to the nearest tenth of a cent:

(1) Multiply the Chicago butter price by 4.56;

(2) Add an amount computed as follows: from the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray process 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 8.2.

(c) *Class III milk.* The price of Class III milk for the months of September through March shall be the higher of the prices computed pursuant to § 946.50 (a) or subparagraph (1) of this paragraph and for the months of April through August the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph, rounded to the nearest tenth of a cent.

(1) From the average of the basic or field prices per hundredweight reported to the market administrator to have been paid or to be paid for ungraded milk of 4.0 percent butterfat content received from farmers during the month at plants at the following locations:

Operator and Location

- Armour Creameries, Elizabethtown, Ky.
- Armour Creameries, Springfield, Ky.
- Kraft Foods Co., Lawrenceburg, Ky.
- Kraft Foods Co., Paoli, Ind.
- Salem Cheese and Milk Co., Salem, Ind.
- Red 73 Creameries, Madison, Ind.
- Producers Dairy Marketing Association, Orleans, Ind.

Subtract the amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 2.

(2) The price per hundredweight computed by adding together the plus values pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) Add 15 percent to the Chicago butter price for the month and multiply by 3.8.

(ii) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, roller process, for human consumption f.o.b. manufacturing plants in 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 6.5 cents and multiply by 8.2.

§ 946.52 Price adjustments to handlers.

(a) *Butter differentials.* If the weighted average butterfat content of milk received from producers allocated to Class I, Class II, or Class III, respectively, pursuant to § 946.46, for a handler is more or less than 3.8 percent, there shall be added to or subtracted from, as the case may be, the price for such class, for each one-tenth of one percent that such weighted average butterfat test is above or below 3.8 percent, a butterfat differential (computed to the nearest tenth of a cent), calculated for each class as follows:

(1) *Class I milk.* Multiply by 0.125 the Chicago butter price for the preceding month.

(2) *Class II milk.* For the months of September through December, multiply the Chicago butter price by 0.120, and for the months of January through August, multiply by 0.118.

(3) *Class III milk.* For the months of September through March multiply the Chicago butter price by 0.12 and for the months of April through August multiply the Chicago butter price by 0.115.

§ 946.53 Transportation differentials to handlers.

For producer milk which is received at a pool plant located 85 miles or more from the City Hall in Louisville or Lexington, Kentucky, whichever is nearer, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 946.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from City Hall (miles):	Rate per hundred weight (cents)
85 but less than 95-----	15.0
For each additional 10 miles or fraction thereof an additional-----	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II and Class III milk in the transferee plant after making the calculations prescribed in § 946.46(a) (6), and the comparable steps in § 946.46(b) for such plant, such assignment to transferrer plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 946.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not avail-

able in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 946.60 Producer-handlers.

Sections 946.40 through 946.46, 946.50 through 946.53, 946.61, 946.70, 946.71, and 946.80 through 946.89 shall not apply to a producer-handler.

§ 946.61 Obligation of handlers operating a nonpool plant which is a city plant.

Each handler, except a producer-handler, in his capacity as the operator of a nonpool plant which is a city plant shall:

(a) On or before the 7th day after the end of the month make reports to the market administrator with respect to the disposition of Class I milk in the marketing area and such other information on the total receipts and utilization of skim milk and butterfat at such plant as the market administrator may require, except that a handler selecting the option provided in paragraph (c) of this section at the time his report is filed shall report in accordance with §§ 946.30 and 946.31 as though a pool plant;

(b) On or before the 15th day after the end of the month pay to the market administrator, unless such handler elects at the time of reporting pursuant to paragraph (a) of this section the option provided pursuant to paragraph (c) of this section, an amount (1) for deposit in the producer-settlement fund, equal to the rate of payment on unpriced milk pursuant to § 946.70(e) multiplied by the hundredweight of skim milk and butterfat disposed of from such plant as Class I milk (computed in accordance with § 946.45) in the marketing area on routes during such month, less the skim milk and butterfat received from a pool plant during the month and classified as Class I milk under this part; and (2) for administrative assessment, equal to the rate specified in § 946.88 with respect to Class I milk and all milk, skim milk and cream used to produce Class II and Class III products disposed of during the month on routes in the marketing area less the quantity of skim milk and butterfat received during such month from a pool plant; and

(c) On or before the 18th day after the end of the month pay an amount (1) for deposit into the producer-settlement fund, equal to any plus amount remaining after deducting from the obligation that would have been computed pursuant to § 946.70 for such nonpool plant and for any country plant (meeting the requirements equivalent to § 946.9 (b) or (c)) which serves as a source of milk for such nonpool plant, if such plant(s) were a pool plant(s), (i) the gross payments made on or before the 17th day after the end of the month for milk received at such plant(s) during the month from dairy farmers meeting the conditions in § 946.12(a), 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: *Provided*, That in the application of § 946.44 for the purpose of this subparagraph, transfers or diversions of milk from such nonpool plant(s) to a pool plant shall be classified as Class I, Class II and Class III milk in the same ratio as other source milk is allocated to each class in such pool plant pursuant to § 946.46(a) (2) and the corresponding step of § 946.46(b): *And provided further*, in the application of § 946.46(a) (7) and the corresponding step of § 946.46(b), receipts of fluid milk products at such nonpool plant from a pool plant(s) shall be allocated from the class in which such products are classified at the pool plant pursuant to § 946.44 (c) or (d); and (2) for administrative assessment, equal to the amount which would have been computed pursuant to § 946.88, if such nonpool plant had been a pool plant during the month: *Provided*, That such amount shall be reduced by any amounts paid for the month as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in other marketing areas pursuant to the terms under such other order issued pursuant to the Act: *And provided further*, That (i) if less Class I milk is disposed of from such plant on routes in the Louisville-Lexington marketing area than is disposed of during the month on routes in another marketing area(s) as defined in an order(s) issued pursuant to the Act, and (ii) if an administrative expense assessment is applied at such plant as if a fully regulated (pool) plant under such order pursuant to the order for the marketing area where the volume of Class I milk disposed of from such plant is greatest, no administrative expense assessment shall be applied under this order.

§ 946.62 Plants subject to other Federal orders.

The provisions of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 946.9 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Louisville-Lexington marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided*, That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

DETERMINATION OF UNIFORM PRICE

§ 946.70 Net obligation of each handler.

The net obligation of each handler for milk received during each month from

producers shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 946.46 by the applicable class price;

(b) Add together the resulting amounts;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 946.46 by the applicable class prices;

(d) Add the amount computed 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 producer milk classified as Class II milk during the preceding month or the hundredweight of milk subtracted from Class I milk pursuant to § 946.46(a) (6) and the corresponding step of § 946.46 (b), whichever is less; and

(e) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 946.46(a) (2) and the corresponding step of § 946.46(b) by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and transportation differentials;

(1) For the months of January through September, the Class III price adjusted by the Class III butterfat differential; and

(2) For the months of October through December the uniform price computed pursuant to § 946.71 adjusted by the Class I transportation differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butterfat differential for each class, dividing the resultant figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-tenth cent; and

(f) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 946.46(a) (6) and the corresponding step of § 946.46(b) which is in excess of the skim milk and butterfat applied pursuant to paragraph (d) of this section and the skim milk and butterfat subtracted from Class II milk pursuant to § 946.46(a) (4) and the corresponding step of § 946.46(b) in the preceding month by the applicable rate determined pursuant to paragraph (e) (1) or (2) of this section for the month.

§ 946.71 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.8 percent butterfat content received from producers as follows:

(a) Combine into one total the net obligations computed for all handlers who made the reports prescribed in § 946.30 for the month and who are not in default of payments pursuant to § 946.84 for the preceding month;

(b) Subtract, if the average butterfat content of the producer milk included in these computations is greater than 3.8 percent, or add, if such average butterfat content is less than 3.8 percent an amount computed by multiplying the

amount by which the average butterfat content of such milk varies from 3.8 percent by the butterfat differential computed pursuant to § 946.81 and multiply the resulting figure by the total hundredweight of such milk;

(c) Add an amount computed by multiplying the hundredweight of milk received from producers at each country plan by the appropriate zone differential provided in § 946.53.

(d) Subtract for each of the months of April, May, June, and July an amount computed by multiplying the total hundredweight of producer milk included in these computations by 12 percent of the simple average of the basic formula prices, computed to the nearest cent, for the 12 months of the preceding calendar year;

(e) Add an amount representing one-half of the cash balance on hand in the producer-settlement fund after deducting the total amount of contingent obligations to handlers pursuant to § 946.85 (a) and the balance held pursuant to paragraph (d) of this section for payment pursuant to § 946.85 (b);

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

(g) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (f) of this section. The resulting figure shall be the uniform price for milk of 3.8 percent butterfat content received from producers at a handler's pool plant.

PAYMENTS

§ 946.80 Time and method of payment for producer milk.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, at not less than the Class III price for 3.8 percent milk for the preceeding month without deduction for hauling;

(b) On or before the 17th day after the end of each month for milk received from such producer during such month, an amount computed at not less than the uniform price per hundredweight plus the per hundredweight payment provided by § 946.85(b) for the month, subject to the butterfat differential computed pursuant to § 946.81, and, plus or minus, adjustments for errors made in previous payments to such producer; and less (1) the payment made pursuant to paragraph (a) of this section, (2) the location differential pursuant to § 946.82, (3) marketing service deductions pursuant to § 946.87 and (4) proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association;

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator deter-

mines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b) (3) and (4) of this section: *Provided*, That deductions for supplies authorized by such producer may be made. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the month next following receipt of such certification through the last day of the month next preceeding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show for each month the following:

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

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall furnish to such cooperative association a statement which shall show:

(1) The identity of the handler and of the producer, (2) the total pounds and the average butterfat content of milk received from such producer, and (3) the amount of deductions claimed by such handler.

§ 946.81 Producer butterfat differential.

In making payment to producers pursuant to § 946.80(b) each handler shall add to the uniform price not less than, or

subtract from the uniform price not more than, as the case may be, for each one-tenth of one percent that the average butterfat content of the milk received from the producer is above or below 3.8 percent, the amount set forth in the following schedule for the price range in which falls the Chicago butter price for the month during which such milk was received.

Butter price range (cents) :	Butterfat differential (cents)
17.499 or less.....	2
17.50 to 22.499.....	2½
22.50 to 27.499.....	3
27.50 to 32.499.....	3½
32.50 to 37.499.....	4
37.50 to 42.499.....	4½
42.50 to 47.499.....	5
47.50 to 52.499.....	5½
52.50 to 57.499.....	6
57.50 to 62.499.....	6½
62.50 to 67.499.....	7
67.50 to 72.499.....	7½
72.50 to 77.499.....	8
77.50 to 82.499.....	8½
82.50 to 87.499.....	9
87.50 to 92.499.....	9½
92.50 and over.....	10

§ 946.82 Location differential.

In making payments to producers pursuant to § 946.80(b) a handler shall deduct from the uniform price, with respect to all milk received from producers at a pool plant, not more than the appropriate zone differential provided in § 946.53.

§ 946.83 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 §§ 946.61, 946.84, and 946.86 and out of which he shall make all payments pursuant to §§ 946.85 and 946.86: *Provided*, That payments due any handler shall be offset by payments due from such handler.

§ 946.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator any amount by which the net obligation of such handler for the month is greater than an amount computed by multiplying the hundredweight of milk received by him from producers during the month by the uniform price adjusted for the producer butterfat and location differentials.

§ 946.85 Payments out of the producer-settlement fund.

(a) On or before the 16th day after the end of each month, the market administrator shall pay to each handler for payment to producers any amount by which the net obligation of such handler for the month is less than an amount computed by multiplying the hundredweight of milk received by him from producers during the month by the uniform price adjusted for the producer butterfat differential: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such

payments as soon as the necessary funds are available.

(b) On or before the 16th day after the end of each of the months of September, October, November and December, the market administrator shall pay out of the producer-settlement fund to (1) each handler on all milk for which payment is to be made to producers pursuant to § 946.80(b) for such month, and (2) to each cooperative association on all producer milk for which such association is receiving payments pursuant to § 946.80(c) for such month at the following rate per hundredweight: For the months of September through November, divide one-fourth of the aggregate amount set aside in the producer-settlement fund pursuant to § 946.71(d) during the immediately preceding period of April through July, and for the month of December, divide the balance remaining in such fund by the hundredweight of producer milk received by all handlers during the month (computed to the nearest cent per hundredweight).

§ 946.86 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever such verification discloses that payment is due from the market administrator to any handler, pursuant to § 946.85, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by § 946.80, the handler shall pay any amount so due not later than the time of making payment to producers next following such disclosure.

(b) Overdue accounts: Any unpaid obligation of a handler or of the market administrator pursuant to §§ 946.80, 946.84, 946.85, 946.86(a), 946.87 or 946.88 shall be increased one-half of one percent each month or fraction thereof, compounded monthly, until such obligation is paid.

§ 946.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 946.80(b), shall deduct 5 cents per hundredweight, or such amount not in excess thereof as the Secretary may prescribe with respect to all milk received by such handler from producers (other than such handler's own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unexpired membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, deductions in accordance with the association's claim and shall pay the amount deducted to the association within 15 days after the end of the month.

§ 946.88 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 15th day after the end of the month, 3.0 cents per hundredweight, or such amount to be not in excess thereof as the Secretary may prescribe with respect to all receipts by such handler during the month of (a) milk from producers (including such handler's own farm production), and (b) other source milk classified as Class I milk pursuant to § 946.46. Each cooperative association which is a handler shall pay such pro rata share of expense on only that milk of producers caused to be diverted by such cooperative association to a nonpool plant and milk received from producers at a pool plant of such cooperative association.

§ 946.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose.

(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 calendar month during which the market administrator receives the handler's utilization report of 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 a cooperative association, the name of such producer(s) or cooperative association, 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 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.

(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 deductions 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

§ 946.90 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 § 946.91.

§ 946.91 Suspension or termination.

Any or all provisions of this part, or any amendment to this part, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give and shall in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 946.92 Continuing power and duty.

(a) If upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or

agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate, shall (1) continue in such capacity until discharged, (2) from time to time account for all receipts and disbursements and, if so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

§ 946.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, except §§ 946.34, 946.89, 946.91 through 946.93, 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 and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 946.100 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.

§ 946.101 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.

[F.R. Doc. 60-1374; Filed, Feb. 11, 1960; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[46 CFR Ch. II]

[Docket No. 875]

FILING OF TARIFFS BY TERMINAL OPERATORS

Denial of Time Extension for Filing Comment

Notice of proposed rule making in the above cited matter appeared in the FEDERAL REGISTER, issue of December 18,

No. 30—7

1959, wherein interested persons were invited to file written data, views, or arguments thereon, for consideration by the Board, within sixty (60) days from publication.

Notice is hereby given that at a session held at its office in Washington, D.C., on February 8, 1960, the Federal Maritime Board entered the following order:

Upon consideration of applications of Mississippi Valley Association, American Warehousemen's Association, and The National Industrial Traffic League, for extension of time for filing written data, views, or arguments in this proceeding beyond February 16, 1960:

It is ordered, That the said applications be, and they are hereby, denied.

By order of the Federal Maritime Board.

Dated: February 9, 1960.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-1375; Filed, Feb. 11, 1960; 8:49 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 268]

AIRWORTHINESS DIRECTIVES

Wright Engines

Pursuant to the authority delegated to me by the Administrator, (§ 405.27, 24 F.R. 2196), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring modification of Wright R-1820-103 engine master rod assemblies. To overcome failures experienced with the master rods, it is proposed to install a strengthened master rod which would also require changes in articulating rods with associated parts.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section, of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before March 8, 1960, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a), (14

CFR Part 507), by adding the following airworthiness directive:

WRIGHT ENGINES. Applies to all Wright R-1820-103 engines installed in helicopters.

Compliance required at first engine overhaul after June 1, 1960, but not later than December 31, 1960.

To alleviate failures of the master rod assemblies, strengthened master and articulating rods with associated parts must be installed in accordance with the instructions contained in Wright Aeronautical Division Service Bulletin No. C9-353.

Issued in Washington, D.C., on February 5, 1960.

B. PUTNAM,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-1352; Filed, Feb. 11, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 59-WA-337]

FEDERAL AIRWAYS AND CONTROL AREAS

Modification of Proposed Designation

In a notice of proposed rule making published in the FEDERAL REGISTER on December 29, 1959 (24 F.R. 10920), it was stated that the Federal Aviation Agency proposed to designate a new airway, VOR Federal airway No. 1524 with associated control areas from Los Angeles, Calif., to Joliet, Ill. Notice is hereby given that in the description of the proposed airway, "Moline, Ill.," is substituted for "Nodine, Ill.," and "Moline VOR" is substituted for "Nodine VOR" where these place names appear. In addition, the proposed route between the Moline VOR and the Joliet VOR is now proposed as a direct station to station airway replacing the routing via the Moline VOR 082° and the Joliet VOR 263° as stated in the notice. This modification would simplify the route structure on this segment of the proposed Victor 1524.

In order to provide interested persons time to adequately evaluate this proposal, as modified herein, and an opportunity to submit additional written data, views or arguments, the date for filing such material will be extended to February 29, 1960.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), I hereby give notice that the time within which comments will be received for consideration on Airspace Docket 59-WA-337 is extended to February 29, 1960. Communications should be submitted in triplicate to the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C.

Sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on February 5, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-1353; Filed, Feb. 11, 1960; 8:45 a.m.]

NOTICES

DEPARTMENT OF THE TREASURY

Foreign Assets Control

CAMEL HAIR; IMPORTATION FROM COUNTRIES NOT IN AUTHORIZED TRADE TERRITORY

Applications for Licenses

Under the program announced on December 23, 1958, licenses were issued early in 1959 under the Foreign Assets Control Regulations (31 CFR 500.101 to 500.808) authorizing the importation of approximately 560,000 pounds of camel hair from the U.S.S.R. Approximately 55,000 pounds, or about 10 percent of the total amount licensed, has not been imported or purchased for importation, and the Treasury Department has decided it will consider applications for licenses to import this balance. To receive consideration, applications must be filed prior to February 29, 1960, by or on behalf of persons who have previously (1959 or earlier) received licenses to import camel hair or who are engaged in the business of processing camel hair. Each application should state the quantity of camel hair for which a license is being requested and the names and addresses of all persons who it is contemplated will be involved as suppliers, agents or shippers. Each application should also set forth the quantity of camel hair purchased by the applicant in each of the years 1954 through 1959, and the portion thereof resold without processing. Licenses issued on the basis of these applications will require that the camel hair be imported within the first five months of 1960.

Additional information and license application forms may be obtained from the Foreign Assets Control, Treasury Department, Washington 25, D.C., or the Federal Reserve Bank of New York, 33 Liberty Street, New York 45, New York.

[SEAL]

EDWIN F. RAINS,
Acting Director,
Foreign Assets Control.

[F.R. Doc. 60-1382; Filed, Feb. 11, 1960;
8:50 a.m.]

Office of the Secretary

[AA 643.3]

FOLIC ACID FROM JAPAN

Determination of No Sales at Less Than Fair Value

FEBRUARY 8, 1960.

A complaint was received that folic acid from Japan was being sold to the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that folic acid from Japan is not being, nor is likely to be, sold in the United States at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. Folic acid is sold for home consumption in Japan and to third countries. The quantity sold for home consumption was too small in relation to the quantity sold otherwise than for exportation to the United States to form an adequate basis for comparison. Consequently, for fair value purposes, purchase price was compared to third country price.

In calculating third country price, deductions were made for shipping charges, inland and ocean freight, insurance, commission, and finance charges. Adjustment was also made for the difference in cost of packing.

In calculating purchase price, allowance was made for shipping charges, inland and ocean freight, and insurance.

On the basis of the foregoing, it was found, with the exception of one sale, that the purchase price was not less than the third country price for the period under review. The quantity involved in the one sale was considered to be not more than insignificant.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL]

A. GILMORE FLUES,

Acting Secretary of the Treasury.

[F.R. Doc. 60-1381; Filed, Feb. 11, 1960;
8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12787 etc.; FCC 60M-254]

WALTER L. FOLLMER, ET AL.

Order Scheduling Hearing

In re applications of Walter L. Follmer, Hamilton, Ohio, Docket No. 12787, File No. BP-11323; Interstate Broadcasting Company, Inc. (WQXR), New York, New York, Docket No. 12790, File No. BP-11707; Booth Broadcasting Company (WTOB), Toledo, Ohio, Docket No. 12793, File No. BP-12035; for construction permits.

The Hearing Examiner having under consideration a petition for continuance filed jointly by the three applicants on February 5, 1960;

It appearing that the hearing is currently scheduled for February 9, 1960, and that the purpose of the petition is to obtain an indefinite continuance; and

It further appearing that the parties are engaged in conversations with the object of removing certain engineering difficulties and that additional time is needed for such conversations; and

It further appearing that should the present objectives not be realized, the parties will promptly request a hearing date or such date will be set on the Examiner's own motion;

It is ordered, This 8th day of February 1960, that the petition for continuance

is granted and the hearing is continued indefinitely from February 9, 1960.

Released: February 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-1390; Filed, Feb. 11, 1960;
8:52 a.m.]

[Docket No. 13090 etc.; FCC 60-99]

FREDERICKSBURG BROADCASTING CORP. (WFVA) ET AL.

Memorandum Opinion and Order Amending Issues

In re applications of Fredericksburg Broadcasting Corporation (WFVA), Fredericksburg, Virginia, et al., Docket No. 13090, File No. BP-11550, etc., for construction permits.

1. WSBC Broadcasting Co. (licensee of Station WSBC, 1240 kc, Chicago, Illinois), Bloomington Broadcasting Corporation (licensee of Station WJBC, 1230 kc, Bloomington, Illinois), and Southern Wisconsin Radio, Inc. (licensee of Station WCLO, 1230 kc, Janesville, Wisconsin) are applicants for construction permits to increase the power of their respective stations from 250 w to 1 kw-LS. These applications, together with a large number of other applications, were consolidated for hearing by Commission Order released August 14, 1959 (FCC 59-861). Included among the issues specified for hearing are issues relating to the interference which each of the proposed operations might cause to existing stations. WBOW, Incorporated (WBOW), licensee of Station WBOW, 1230 kc, Terre Haute, Indiana, was made a party respondent to these proceedings because of interference which it might receive from the proposal of WJBC. William C. Forrest (WIBU), licensee of Station WIBU, 1240 kc, Poynette, Wisconsin, was named a party respondent because of interference which might be caused to Station WIBU by the proposals of WSBC and WCLO. Jerrel A. Shepherd, tr/as Moberly Broadcasting Company (KNCM), licensee of Station KNCM, 1230 kc, Moberly, Missouri, was named a party respondent because of possible interference which might be caused to Station KNCM by the proposal of WJBC.

2. On September 3, 1959, petitioners WIBU and WBOW filed substantially identical petitions requesting the addition of programming issues in this proceeding. The requested issues, and the petitions filed in support thereof, are in substance the same as those which we considered in Mid-America Broadcasting System, Inc., adopted February 3, 1960, (FCC 60-94). The Commission's Broadcast Bureau and WJBC oppose the petitioners' request, and KNCM filed comments in support of the requests made in the petitions.

3. Neither of the petitioners alleges the extent of the interference which it would receive from any of the three proposals herein involved. The comments filed by KNCM, though alleging generally that it would receive interference from the WJBC proposal, contain no allegations as to the extent of the interference which it might receive, and the engineering exhibits filed by WPBC with its application do not show that its proposal would cause any interference to Station KNCM. There is therefore no occasion to consider, for present purposes, any problems of interference involving Station KNCM.

4. The engineering exhibits filed by WCLO with its application show that the interference which it would cause to Station WIBU is relatively slight, approximately 5 percent of Station WIBU's normally protected service area. In view of the absence of any threshold showing in WIBU's petition as to the decisional significance of programming evidence insofar as the interference which would be caused to it by the WCLO proposal is concerned, WIBU's request for programming issues as to the WCLO proposal will be denied. See our Memorandum Opinion and Order in Mid-America Broadcasting System, Inc., supra.

5. Neither of the petitions contains any allegations as to the extent of the interference which Stations WIBU and WBOW would receive from the WSBC and WJBC proposals. The engineering data submitted with the WSBC and WJBC applications indicates that the WSBC proposal would cause co-channel interference in 15-20 percent of Station WIBU's normally protected service area, and that the WJBC proposal would cause such interference in approximately 50 percent of Station WBOW's normally protected service area.¹ In Mid-America Broadcasting System, Inc., supra, we stated that a petition requesting the addition of programming issues will be denied if it does not contain allegations, based upon appropriate engineering data, as to the percentage of population that would be affected by the interference. Only because the instant petitions were filed before the release of our Memorandum Opinion and Order in Mid-America Broadcasting System, Inc., will an exception be made in this case.

6. In view of the extent of the interference which would be received by Stations WIBU and WBOW, respectively, from the proposals of WSBC and WJBC, programming issues will be added. See Mid-America Broadcasting System, Inc., supra. The first of the two added issues relates to the programming of the peti-

¹ A population count by the Commission shows that a total of 23 percent of the population in Station WIBU's normally protected service area would be affected by interference which would be caused by the WSBC proposal. For present purposes, it is assumed that more than 10 percent of the population within WBOW's normally protected service area would be affected by the interference which Station WBOW would receive from the WJBC proposal.

tioners and of existing stations now serving the proposed interference areas. The second of the two added issues relates to the programming proposed by the applicants and to the programming of existing stations now serving the proposed new service areas. Since the matters encompassed by the first of the added issues are of primary concern to the petitioners, the burden of proof and burden of proceeding with the introduction of evidence under that issue will be placed upon the petitioners. These burdens under the second of the added issues will be placed upon the applicants, since it is they who are primarily concerned with the matters encompassed by that issue.

Accordingly, it is ordered, This 3rd day of February, 1960, That the petitions to enlarge issues, filed September 3, 1959, by WBOW, Incorporated, and William C. Forrest, are granted to the extent indicated herein and are in all other respects denied; that the request made in the Comments filed September 15, 1959, by Moberly Broadcasting Company, is denied; that the designation Order (FCC 59-861) in this proceeding is amended by renumbering Issues 6 to 18, inclusive, as Issues 8 to 20, inclusive, and that the following issues 6 and 7 are adopted:

6. To determine the type and character of program service rendered by Stations WIBU and WBOW, respectively; whether such program service of each of them meets the requirements of the population and area which would lose such service as a result of the grant of the modification applications of WSBC Broadcasting Co. (File No. BP-12503), and Bloomington Broadcasting Corporation (File No. BP-12835), respectively; and the extent to which the programming of other existing standard broadcast stations meets the requirements of these interference areas.

7. To determine the type and character of the program service to be rendered by WSBC Broadcasting Co. and by Bloomington Broadcasting Corporation, respectively; whether the program service of each of them would meet the requirements of the populations and areas which would gain service upon grant of their respective modification applications; and the extent to which the programming of other existing standard broadcast stations meets the requirements of the areas thus gained.

It is further ordered, That WBOW, Incorporated, and William C. Forrest, respectively, shall have the burden of proof and the burden of proceeding with the introduction of evidence under Issue 6; and that WSBC Broadcasting Co. and Bloomington Broadcasting Corporation, respectively, shall have the burden of proof and the burden of proceeding with the introduction of evidence under Issue 7.

Released: February 9, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-1391; Filed, Feb. 11, 1960;
8:52 a.m.]

[Docket No. 13090 etc.; FCC 60-102]

**FREDERICKSBURG BROADCASTING
CORP. (WFVA) ET AL.**

**Memorandum Opinion and Order
Amending Issues**

In re applications of Fredericksburg Broadcasting Corporation (WFVA), Fredericksburg, Virginia, et al. Docket No. 13090, File No. BP-11550, etc.; for construction permits.

1. By Order released August 14, 1959 (FCC 59-861), the Commission designated for hearing a number of applications for construction permits for new standard broadcast stations, including the following: (a) the application of Nicholas J. Zaccagnino, tr/as Radio Toms River (Radio Toms); (b) Ocean County Broadcasters (Ocean County); (c) WFPG, Inc. (WFPG); and (d) Harlan Murrelle and Associates (Murrelle). The first three of these applicants propose new standard broadcast stations at Toms River, New Jersey, and Murrelle proposes a new standard broadcast station at Lakewood, New Jersey. Each of the proposed stations would operate on 1230 kc. Included in the issues specified by the designation Order is the standard 307(b) issue and a standard comparative issue applicable to the competing applicants for the community selected under the standard 307(b) issue.

2. Petitioner Radio Toms requests that the present issues be amended and enlarged to permit a determination to be made with respect to the relative need of Lakewood for the programming service proposed by Murrelle as against the need of Toms River for the programming service proposed by each of the Toms River applicants. We have on numerous occasions stated that such comparative consideration is not appropriate in determining relative community needs under section 307(b) of the Act, and this portion of Radio Toms' petition will therefore be denied. See our Memorandum Opinion and Order in Cookeville Broadcasting Company, adopted February 3, 1960 (FCC 60-101), and the cases cited in paragraph 5 thereof.

3. Radio Toms also requests the addition of a trafficking issue. In support of its request for this issue, Radio Toms alleges that since 1955 Murrelle, together with various associates, acquired interests in five separate broadcast stations or authorizations, and retransferred three of such interests, one at allegedly five times the purchase price, one at twice the purchase price, and one for expenses. Murrelle and the Commission's Broadcast Bureau oppose the requested trafficking issue on the ground that each of these sales may be explained in terms other than trafficking. In view of the allegations made by Radio Toms, a trafficking issue will be added.

Accordingly, it is ordered, This 3d day of February 1960, That the petition to enlarge and revise issues, filed September 3, 1959, by Nicholas J. Zaccagnino, tr/as Radio Toms River, is granted to the extent indicated herein and is in all other respects denied; That the designa-

tion Order (FCC 59-861) in this proceeding is amended by renumbering Issue 20 as Issue 21, and that the following Issue 20 is adopted:

20. To determine whether there was trafficking in broadcast authorizations by Harlan Murrelle and Associates, and, if so, whether Harlan Murrelle and Associates is disqualified to receive the construction permit which it seeks in this proceeding.

Released: February 9, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-1392; Filed, Feb. 11, 1960;
8:53 a.m.]

[Docket No. 13385; FCC 60-87]

ANTENNAVISION SERVICE CO., INC.

Memorandum Opinion and Order Designating Applications for Con- solidated Hearing on Stated Issues

In re applications of Antennavision Service Company, Inc., Phoenix, Arizona, Docket No. 13385; for construction permit for new fixed radio station at Oatman Mountain, Arizona, File No. 2984-C1-P-59 (KPK30); for construction permit for new fixed radio station at Telegraph Pass, Arizona, File No. 2985-C1-P-59 (KPK31).

1. The Commission has before it a document, filed January 4, 1960, by Valley Telecasting Company (hereinafter called Protestant or Valley) requesting that the Commission reconsider and set aside, pursuant to sections 5(d) (2) and 405 of the Communications Act, and section 0.202 of its rules, the grant without hearing made by the Chief, Common Carrier Bureau, on December 3, 1959, of the above indicated applications of Antennavision Service Company, Inc. (hereinafter called Applicant or Antennavision) for two fixed radio stations to carry the signals of four Phoenix television stations to Yuma, Arizona for delivery to a CATV system there. Valley also protests the grants, pursuant to section 309(c) of the Communications Act. Public notice of these grants was released on December 7, 1959 (Report No. 505, Public Notice C 81449) and the pleading of Valley was timely filed. On January 14, 1960, Applicant filed a timely opposition to the foregoing pleading.¹

On January 19, 1960, Valley filed a timely reply.

2. Valley requests first that the Commission set aside the foregoing grants on the ground that the applications are fatally defective and do not contain the necessary facts to show that the Applicant is legally, financially, technically and otherwise qualified, or that the public interest would be served by a grant of the applications. Valley further urges, if its first request is denied, that the

Commission designate the applications for hearing and follow the procedures specified in sections 309 and 405 of the Act.

*The protest.*² 3. Valley shows that it is the licensee of television station KIVA, operating on channel 11 at Yuma, Arizona. It is affiliated with, and carrying programs of, NBC, CBS and ABC and originates a substantial amount of programming in its own studios. KIVA serves Yuma and Imperial Counties in California and portions of San Diego and Riverside County. It is the only United States television station serving Yuma, most of Yuma County, El Centro, other nearby cities, and most of Imperial County. The predecessors of the present owner of KIVA were forced to undergo an arrangement for the benefit of creditors under Chapter XI of the Bankruptcy Act in 1957, and the station ownership was subsequently transferred. The present ownership alleges that it has made great effort, at great expense, to improve its operations, but that it is still operating in the red. Valley notes that Applicant will bring in signals to its commonly owned CATV customer from Phoenix stations KTVK (ABC), KPHO (Independent), KOOL (CBS) and KVAR (NBC), and that this will duplicate most of KIVA's present network programming and a substantial share of its syndicated and feature film programming; that, due to the network program sources and the time zone differences, most of the network programs imported from Phoenix will be received in Yuma for transmission by the CATV one to three hours earlier than the same programs can be telecast by KIVA.

4. Under these circumstances, Valley urges that the economic impact on its television station will be disastrous and probably fatal because its value as an advertising medium will be substantially diminished. Thus, Valley asserts that the direct, substantial and probably fatal competitive injury from a grant of the instant applications establishes Valley's status as a "party in interest" who would be "adversely affected".

5. Valley further alleges that the economic injury to it, which may result in its demise, will result in injury to the public because the cessation of service by KIVA will leave areas in Yuma and Imperial Counties without television service, and that such consequence would not be in the public interest.

6. Valley asserts that the Applicant made a crucial misrepresentation of facts in Exhibit 5 to its applications, wherein it stated: "At present, there is a single independent television station now operating in Yuma, and its citizens are desirous of obtaining a wider variety of coverage, including network programming, which is currently not available except by microwave". This statement, in the light of the description of KIVA's operations above, says Valley is false and the Applicant must have been aware of the facts. It is contended by Valley

that this statement misled the Commission with respect to the necessity for establishing the Applicant's service.

7. Valley further claims that Applicant did not establish its financial qualifications, because it did not disclose full particulars of its proposed credit arrangements and because it has not accurately estimated its construction costs, or adequately demonstrated how it will obtain sufficient cash to meet required construction expenses.

8. Valley alleges that Applicant's determination of ground elevation at its terminal receiver site at Yuma is incorrect and that, in the light of the true facts, the quality of service to be provided by Applicant may be unsatisfactory.

9. Valley contends that, because of the interrelationship and identity of ownership between Applicant and the Yuma CATV customer, which is the only customer initially proposing to take service, Applicant is not a communication common carrier and cannot qualify as such.

10. Finally, Valley urges that microwave grants of this character should be withheld or frozen by the Commission pending a re-examination of the problem of the impact of CATV on television broadcasting and pending Congressional action on proposed CATV legislation.

11. Valley proposes, if this matter is designated for hearing at this time, that the following issues be prescribed, that the burden of proof on all issues be placed on the Applicant, and that the effective date of grant of the applications be postponed to the date of final decision herein:

a. To determine whether the applicant is legally, financially, technically and otherwise qualified to construct the station as proposed.

b. To determine the applicant's plans for construction and operation of the proposed station.

c. To determine whether applicant's proposed sites at Oatman Mountain, Telegraph Pass and in Yuma will be available to it and under what terms.

d. To determine the elevation of applicant's proposed receiver site at Yuma.

e. To determine whether applicant's proposed microwave service can provide satisfactory, uninterrupted service to its proposed customers, and whether it will be subject to objectionable fading.

f. To determine the programming which will be obtained from the four Phoenix stations and the extent to which this programming will duplicate the existing programming of KIVA.

g. To determine the existing American television broadcast service available to the residents of Yuma and Imperial Counties.

h. To determine the nature and extent of any adverse effect which the grant of the subject applications will have upon the operation of KIVA, and the resulting injury, if any, to the public in Yuma and Imperial Counties.

i. To determine the effect which the grant of the applications will have upon the continuation and development of local television broadcasting in the area afforded access to the instant microwave

¹Supplemented by an engineering exhibit referred to in the Opposition, but tendered later under circumstances which we deem to be good cause in excuse thereof.

²For convenience, we summarize all of the aspects of the pleading under this heading. Our disposition of the requests for reconsideration will be indicated hereinafter.

relay service, and in Yuma and Imperial Counties.

j. To determine whether applicant is a communication common carrier within the meaning of the Communications Act of 1934, as amended.

k. To determine the nature and extent of the relationships between the applicant, its stockholders and directors, and its present and proposed customers, and the officers, stockholders and directors of such customers.

l. To determine whether the conclusions set forth in paragraphs 45 through 51 and 58 through 79 of the Report and Order in Docket No. 12443, as applied in this case, are in error.

m. To determine whether the grant of the applications is consistent with the provisions of the Communications Act of 1934, as amended, in the light of the determinations made on the foregoing issues.

n. To determine whether, in the light of the determinations made upon the foregoing issues, the public interest, convenience or necessity would be served by a grant of these applications.

The opposition to the protest. 12. The Applicant alleges that the so-called "misrepresentation" relative to the status of KIVA as an "independent" station, and the nature of its service in Yuma, is a matter of semantics because the main studio and transmitter of KIVA are located in Winterhaven, California; and KIVA is actually a California operation, the programming of which is geared to serve the Imperial Valley rather than the town of Yuma. Applicant urges that most of the residents of Yuma do not consider KIVA as an outlet of local expression either for the State of Arizona or for the town of Yuma. It is further alleged that KIVA was described as an "independent" station because it was not directly affiliated with a specific single network but, rather, brings in programs of all three major networks on a selective (one at a time) basis. Thus, it is stated, in excess of two-thirds of the available network programs are not actually available in Yuma via KIVA. Applicant asserts that its statements in its applications, in this regard, were not made for the purpose of misleading the Commission and that, if the Applicant was in error, the error was both honest and harmless since the Commission would have granted the applications despite the existence of any program duplication (cf. Report and Order in Docket No. 12443).

13. With respect to its financial qualifications, the Applicant notes that it is currently licensed to operate, and is operating, six point-to-point video microwave stations which provide common carrier television transmission service to 8 different customers, and that the files of the Commission adequately reflect, independently of the instant applications, the established financial qualifications of the Applicant. The Applicant, by supplementary showings in its Opposition, purports further to demonstrate its financial qualifications and to explain the purport of the financial mathematics set forth in the applications.

14. With respect to the alleged discrepancy in the height of the ground

elevation of its terminal receiver at Yuma, the Applicant confesses that an erroneous height was set out in its applications but states that this discrepancy is not material and that the service will, in fact, be satisfactory.

15. On the question of the common carrier status of the Applicant, Applicant relies substantially upon the decision of the United States Supreme Court in *The Tap Line Cases*, 234 U.S. 1, and notes that Valley makes no claim that Applicant would not, in fact, serve persons other than its affiliated CATV initial customer, if so requested.

16. Applicant alleges that no freeze of applications of this type should be undertaken, pending the enactment of any proposed legislation by the Congress, for the reason given by the Commission in a letter of December 23, 1959, to Southern Idaho Broadcasting and Television Company, licensee of KLIK-TV, in response to a similar request (see File Nos. 2672/73/74-C1-P-58, stations KPL-24, KPL25 and KPL26).

17. Finally, Applicant urges that the Commission's decision in Docket No. 12443 is determinative of all the issues herein relative to the impact of CATV service on the broadcaster and the question of propriety of regulation of communication common carrier to suppress the CATV service and that, accordingly, the proper disposition of the protest necessitates only its designation for oral argument on demurrer. Additionally, Applicant urges that the subject grants should not be stayed pending final determination of this matter because it is unlikely that the grants will ultimately be set aside and because there is a present need for the service. In this connection, Applicant relies upon our decision in *re Applications of Orchards Community Television Association, Inc.*, 16 RR 944. (Valley's Reply to the Opposition requires no separate discussion.)

Disposition of Valley's protest. 18. It is clear that Valley has standing to protest and request reconsideration of the action herein. To the extent that we hereinafter dispose of the protest, it is evident that we contemporaneously dispose of the requests for reconsideration and we so intend. Because of our views, as expressed in our Report and Order in Docket No. 12443 (26 FCC 403), and wholly apart from the explanation afforded by Applicant with regard to its alleged misrepresentation of facts relative to the character of television service available in Yuma when it filed its applications, the facts originally alleged by Applicant had no material bearing upon the action taken in granting these applications. Absent a showing of willful and deliberate misrepresentation (even though not material) designed to deceive the Commission (and this is not apparent at this time), the applications would have been granted even in the face of a statement from Applicant, or Valley, indicating that network programming was available in Yuma and that the CATV would duplicate such programming. Assuming also, for the sake of discussion, that Applicant has not cured, or cannot now cure, any alleged defects in its applications relative to its financial

and technical qualifications, since we hereinafter provide for a setting aside of the instant grants and a designation of the applications for hearing upon the issues proposed by Valley relative to these questions, no useful purpose would be served by following the procedure suggested by Valley and supported by its citation of *Holiday Isles Broadcasting Co.* (15 RR 847); i.e., setting aside the instant grants and rendering the protest moot. Such procedure, in this case, would only serve to encumber the parties and the Commission with additional work and delay, to no useful end. Obviously, the Applicant would, if necessary, amend its applications and, in keeping with the policies indicated herein, the applications would probably again be granted and Valley would once more protest. Thus, it is clear that we will be confronted with the ultimate necessity for entertaining a protest in this matter and it would best conduce the dispatch of our business that we undertake that task at the earliest possible moment. Since Valley's suggested issues, designed to expose and explore these matters, are specified herein, it would appear that Valley will not be, in any manner, prejudiced.*

19. As indicated in our resume of its pleading, Valley alleges various reasons and grounds (other than those related in the preceding paragraph) purporting to show that the grants herein were improperly made and would otherwise not be in the public interest. In our Report and Order in Docket No. 12443, we undertook an extensive and careful review of all the questions brought to our attention and bearing upon the alleged interrelationships between provision of common carrier microwave relay communication services to CATVs generally, and the impact of the operation of CATVs on television broadcasters. In that Report and Order, we arrived at various considered conclusions, some of which have a direct bearing on this situation. We refer particularly to the conclusions set forth in paragraphs 45 through 51 and paragraphs 58 through 79 of that Report and Order. While we do not yet perceive any reason for concluding that our determinations in Docket No. 12443 are erroneous, or require modification, we propose to afford Protestants herein an opportunity to develop an evidentiary record in support of its protest and its inferences that our decision in Docket No. 12443 should be modified.

20. We cannot agree with Valley in the suggestion that we freeze the processing of applications of this type pending the enactment of legislation by the Congress since, in the light of our determinations in Docket No. 12443, it is apparent that the freezing of such applications would not be in accord with the proper exercise of our present statutory obligations and duties. Obviously, there is no assurance that the Congress will

* The assertion of facts and issues relating to the alleged "misrepresentations" of Applicant, as well as its alleged lack of qualifications, raise matters which do not appear to be demurrable. Hence, it is evident that we cannot, even were we so inclined, dispose of the entire protest on oral argument.

enact any legislation, nor can be anticipate, if legislation is enacted, exactly what it may provide or when such enactment may be achieved. Thus, to embrace a policy of non-action pending possible resolution of the problem by the Congress would, in this case and in other similar controversial circumstances, deprive the public of whatever rights or benefits it is entitled to under our laws as presently written. (See also paragraph 15 of Memorandum Opinion and Order adopted June 24, 1959, in re Applications of Mesa Microwave, Inc., Docket Nos. 12928/29/30; FCC-59-616; Mimeo No. 74341).

21. In considering the question of whether to stay the subject grants pending final determination of this matter, it is evident that the grants are not necessary to the continuance of an existing service. Thus, we must consider whether the public interest requires that the grants remain in effect. In the circumstances of this case, we are unable to conclude that the public interest requires that the contested grants remain in effect and we shall, accordingly, stay such grants pending the final determination of this case (compare in re Montana Microwave, 18 RR 819).

22. While affording the Protestant the opportunity to make an evidentiary record in this matter, we do not adopt all of the issues proposed by it. We do adopt its proposed issues a, b, c, d, e, j, k, and n, and the burden of proof on those issues will be placed on the Applicant. We eliminate Valley's issue m, since the determination therein suggested is implicit in issue n, rendering issue m redundant. The burden of proof on the balance of the issues will be placed on Valley.

Conclusion. 23. In view of the foregoing: *It is ordered*, That the Protest and Petition of Valley Telecasting Company is granted to the extent herein provided, and denied in all other respects; and that, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, a hearing be held herein in the offices of the Commission in Washington, D.C. at a time and date to be hereafter announced, on the following issues:

a. To determine whether the applicant is legally, financially, technically and otherwise qualified to construct the stations as proposed.

b. To determine the applicant's plans for construction and operation of the proposed stations.

c. To determine whether applicant's proposed sites at Oatman Mountain, Telegraph Pass and in Yuma will be available to it and under what terms.

d. To determine the elevation of applicant's proposed receiver site at Yuma.

e. To determine whether applicant's proposed microwave service can provide satisfactory, uninterrupted service to its proposed customers, and whether it will be subject to objectionable fading.

f. To determine the programming which will be obtained from the four Phoenix stations and the extent to which this programming will duplicate the existing programming of KIVA.

g. To determine the existing television broadcast service available to the residents of Yuma and Imperial Counties.

h. To determine the nature and extent of any adverse effect which the grant of the subject applications will have upon the operation of KIVA, and the resulting injury, if any, to the public in Yuma and Imperial Counties.

i. To determine the effect which the grant of the applications will have upon the continuation and development of local television broadcasting in the area afforded access to the instant microwave relay service, and in Yuma and Imperial Counties.

j. To determine whether applicant is a communication common carrier within the meaning of the Communications Act of 1934, as amended.

k. To determine the nature and extent of the relationships between the applicant, its stockholders and directors, and its present and proposed customers, and the officers, stockholders and directors of such customers.

l. To determine whether the conclusions set forth in paragraphs 45 through 51 and 58 through 79 of the Report and Order in Docket No. 12443, as applied in this case, are in error.

m. To determine whether, in the light of the determinations made upon the foregoing issues, the public interest, convenience or necessity would be served by a grant of these applications.

24. *It is further ordered*, That Valley Telecasting Company shall have the burden of proof on issues f, g, h, i, and l and the Applicant shall have the burden of proof on issues a, b, c, d, e, j, k, and m.

25. *It is further ordered*, That the grants of the foregoing applications, effected December 3, 1959, are hereby stayed pending the Commission's final decision in this matter after hearing.

26. *It is further ordered*, That the Protestant and the Applicant herein, the Chief, Common Carrier Bureau, and Chief, Broadcast Bureau, are hereby made parties to the proceeding and that each party intending to participate in the hearing shall file a notice of appearance not later than February 23, 1960.

Adopted: February 3, 1960.

Released: February 9, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-1393; Filed, Feb. 11, 1960;
8:53 a.m.]

[Docket No. 13386; FCC 60-89]

GENERAL TELEPHONE COMPANY OF THE NORTHWEST

Order Instituting Investigation

In the matter of General Telephone Company of the Northwest, Docket No. 13386; regulations and charges for supplemental equipment in connection with pulse data-in (slowed down video) transmission.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 3d day of February 1960;

The Commission having under consideration a new tariff schedule filed by General Telephone Company of the Northwest under Transmittal No. 68, to become effective February 9, 1960, and establishing regulations and charges for supplemental equipment in connection with pulse data-in (slowed down video) transmission, which schedule is enumerated below.

It appearing, that the Commission is unable to determine that the regulations and charges contained in the above-mentioned tariff schedule are or will be just and reasonable or otherwise lawful under the provisions of section 201(b) or 202(a) of the Communications Act of 1934, as amended;

It is ordered, That, pursuant to the provisions of sections 201, 202, 205 and 403 of the Communications Act of 1934, as amended, an investigation is hereby instituted into the lawfulness of the above-mentioned tariff schedule;

It is further ordered, That without in any way limiting the scope of the investigation, it shall include consideration of the following:

1. Whether any of the classifications, regulations, and practices contained in the above-mentioned tariff schedule are or will be unjust and unreasonable within the meaning of section 201(b) of the Communications Act of 1934, as amended;

2. Whether the above-mentioned tariff schedule will subject any person or class of persons to unjust or unreasonable discrimination, or give any undue or unreasonable preference or advantage to any person, class of persons, or locality, or subject any person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage within the meaning of section 202(a) of the Communications Act of 1934, as amended;

3. Whether the Commission should prescribe just and reasonable classifications, regulations, and practices to be hereafter followed with respect to the service governed by the aforementioned tariff schedule, and, if so, what classifications, regulations, and practices should be prescribed;

It is further ordered, That a hearing be held in this proceeding at the Commission's offices in Washington, D.C., at a time to be hereafter specified; and that the examiner hereafter to be designated to preside at such hearing shall certify the record to the Commission for decision without preparing either an Initial Decision or Recommended Decision;

It is further ordered, That General Telephone Company of the Northwest is hereby made party respondent in the proceedings herein.

Released: February 9, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

Tariff F.C.C. No. 7

1st Revision Page 2.
1st Revision Page 9.

[F.R. Doc. 60-1394; Filed, Feb. 11, 1960;
8:53 a.m.]

[Docket Nos. 13387, 13388; FCC 60-91]

**ALVARADO TELEVISION CO., INC.
(KVOA-TV) AND OLD PUEBLO
BROADCASTING CO. (KOLD-TV)**

**Memorandum Opinion and Order
Designating Applications for Con-
solidated Hearing on Stated Issues**

In re applications of Alvarado Television Co., Inc., (KVOA-TV), Tucson, Arizona, Docket No. 13387, File No. BPCT-2685; Old Pueblo Broadcasting Company, (KOLD-TV), Tucson, Arizona, Docket No. 13388, File No. BPCT-2686; for construction permits to change existing facilities.

1. The Commission has before it for consideration (1) a "Protest and Petition for Reconsideration" filed on January 4, 1960, pursuant to sections 309(c) and 405 of the Communications Act of 1934, as amended, by Tucson Television Company, Inc. (protestant), licensee of Television Broadcast Station KGUN-TV, Channel 9, Tucson, Arizona, directed against the Commission's action of December 2, 1959, granting without hearing the above-captioned application of Alvarado Television Co., Inc.; (2) a "Protest and Petition for Reconsideration" filed on January 4, 1960, pursuant to sections 309(c) and 405 of the Communications Act of 1934, as amended, by protestant, directed against the Commission's action of December 2, 1959, granting without hearing the above-captioned application of Old Pueblo Broadcasting Company; (3) an "Opposition to Protest and Petition for Reconsideration" filed on January 14, 1960, by Alvarado Television Co., Inc., licensee of Television Broadcast Station KVOA-TV, Channel 4, Tucson, Arizona (KVOA-TV); (4) an "Opposition of Old Pueblo Broadcasting Company to 'Protest and Petition for Reconsideration' filed by Tucson Television Company, Inc." filed on January 14, 1960, by Old Pueblo Broadcasting Company, licensee of Television Broadcast Station KOLD-TV, Channel 13, Tucson, Arizona (KOLD-TV); (5) a "Reply to Opposition to 'Protest and Petition for Reconsideration'" filed on January 21, 1960, by the protestant and directed against both (3) and (4) above.

2. On August 13, 1959, KVOA-TV filed its application (BPCT-2685) for a construction permit to increase visual effective radiated power, change studio location, change transmitter location, type of transmitter, type of antenna and increase antenna height above average terrain. On August 14, 1959, KOLD-TV filed its application (BPCT-2686) for a construction permit to increase visual effective radiated power, change transmitter location, install new transmitter, change type of antenna, make equipment changes and increase antenna height above average terrain. The applicants propose to share a common antenna site atop Mt. Bigelow in the Coronado National Forest about 18 miles northeast of Tucson, a few hundred feet from the KGUN-TV antenna site; both transmitters are presently located in Tucson. On September 29, 1959, protestant filed a "Petition to Dismiss Ap-

plications or, In the Alternative, To Designate Them for Hearing" directed against a grant of the subject applications. This petition was denied on the same date the subject applications were granted. Use of the new site with the proposed facilities will substantially enlarge the applicants' coverage of the Tucson area. Due to the basic interdependence of these proposals, we will consider them together to the extent possible.

3. The protestant claims standing by virtue of sections 309(c) and 405 of the Communications Act of 1934, as amended, as the licensee of Television Broadcast Station KGUN-TV, Channel 9, Tucson, Arizona. Protestant justifies its claim to standing by alleging that grant of the subject applications will result in a significant improvement in the competitive position of KVOA-TV and KOLD-TV, thus causing KGUN-TV substantial economic injury. Protestant further alleges that it will lose its ABC network programming as a result of the grant of KVOA-TV's application, because it obtains its network programs by means of direct off-the-air pickup, at its transmitter site, of the signal of Television Broadcast Station KTVK, Channel 3, Phoenix, Arizona (KTVK), and operation of KVOA-TV's Channel 4 transmitter at its proposed site will render it impossible for protestant to continue to employ its off-the-air pickup. Finally, KGUN-TV claims standing to petition for reconsideration, pursuant to section 405 of the Act, of the Commission's action denying its petition against the subject applications. In view of the protestant's status as licensee of KGUN-TV, and its allegations of economic injury set forth above, we find the protestant to be a "party in interest" within the meaning of section 309(c) of the Communications Act of 1934, as amended, and a "person aggrieved or whose interests are adversely affected" within the meaning of section 405 of said Act. *Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U.S. 470.

4. Protestant makes a variety of factual allegations in support of its protest. These are, in brief: that neither KVOA-TV or KOLD-TV will furnish a minimum principal city signal to Tucson, from the proposed site, as required by § 3.685 of the Commission's rules; that more than 7,100 persons will lose all television service as a result of a grant of the subject applications; that there are several alternative sites available to KVOA-TV and KOLD-TV which would neither cause loss of existing service, nor interfere with KGUN-TV's off-the-air pickup; that as a result of a grant of KOLD-TV's application, there will be a substantial overlap of Grade B field intensity contours with Television Broadcast Station KOOL-TV, Channel 10, Phoenix, Arizona, a station under common ownership with KOLD-TV, and that this is inconsistent with the terms and/or spirit of § 3.636(a)(1) of the Commission's rules; that KVOA-TV states in its application that it will expand its program content to serve the special needs and interests of its new

audience, but fails to show how it proposes to do so; that KOLD-TV states incorrectly in its application that the Department of Agriculture has issued a use permit for the proposed transmitter site; and that both applicants have made incorrect statements regarding the availability of a road to be used by them for access to the proposed antenna site.

5. On the basis of the allegations made in support of the contentions listed above, protestant asserts that the Commission erred in granting the above-captioned applications and that a grant of such applications is not in the public interest. Therefore, the protestant requests that the Commission either reconsider its actions, set aside the grants, designate the applications for hearing on nine specified issues and name protestant as a party, or grant the protests, designate the applications for hearing on nine specified issues, place the burden of proceeding with the introduction of evidence and the burden of proof on the appropriate applicant, name protestant as a party, and postpone the effective date of the grants to the effective date of the Commission's decision after hearing.

6. Proposed issue 3 raises the question of whether other suitable antenna sites are available which would avoid the alleged loss of service in the Tucson area. We do not believe that this is an appropriate or relevant issue. The ultimate question for decision is whether the grant of the subject applications was erroneous, not whether the applicants might have filed applications for some other facilities. Accordingly, we are not designating proposed issue 3 for hearing.

7. Proposed issue 6 raises the question of whether KGUN-TV, and hence the public, would be deprived of its source of ABC network programs as a result of the grant of KVOA-TV's application. There is no true factual issue presented in this instance, since we believe it is conceded by KVOA-TV that its proposal would prevent KGUN-TV from continuing its off-the-air pickup of KTVK without change. KGUN-TV has not, however, alleged that it will be unable to replace its off-the-air pickup, and we are unaware of any reason why protestant could not obtain its ABC network programming in some other manner. This being the case, we do not believe that protestant's allegations of fact justify the inclusion of an issue as to whether the public will be deprived of ABC programs as a result of the grant of KVOA-TV's application. We believe it appropriate to note that protestant should have ample time, during the pendency of the hearing ordered below, to establish a satisfactory alternate method for obtaining its network programming.

8. Protestant's remaining proposed issues all present questions which call for factual determinations. Consequently, except as discussed above, we find that the protestant has specified with particularity, within the meaning of section 309(c) of the Communications Act of 1934, as amended, the facts upon which it relies and which it contends show that the grants by the Commission were improperly made or otherwise would not be in the public interest. Accordingly,

the above-captioned applications will be designated for an evidentiary hearing on the remaining issues. However, we are not adopting any of said issues, and the burden of proof thereon, both in proving the facts alleged and in demonstrating their materiality and relevancy, will be on the protestant.

9. There remains for our consideration the question whether the proposed grants should remain in effect. Section 309(c) of the Communications Act of 1934, as amended, provides that pending hearing and decision, the effective date of the Commission's action shall be postponed,

* * * unless the authorization involved is necessary to the maintenance or conduct of an existing service, or unless the Commission affirmatively finds for reasons set forth in the decision that the public interest requires that the grant remain in effect, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.

It is clear that it is the intent of this portion of the Act that a protested grant be stayed unless there is an exceptional situation which concerns the public interest. It is apparent that the authorizations involved are not essential to the conduct of an existing service. Further, the applicants have failed to show public interest considerations which require that the grants remain in effect. Consequently, the effective date of the Commission's actions here in question will be postponed pending a final decision in the hearing hereinafter ordered.

10. In view of the foregoing: *It is ordered*, That, effective immediately, the effective dates of the grants of the above-captioned applications are postponed pending a final determination by the Commission in the evidentiary hearing described below; that the protests and petitions for reconsideration filed herein are granted to the extent provided for below and are denied in all other respects; and that pursuant to section 309(c) of the Communications Act of 1934, as amended, the above-captioned applications are designated for evidentiary hearing in a consolidated proceeding on the following issues:

1. To determine the extent and nature of the areas that will lose all television service, including the population thereof, as a consequence of the grants.

2. To determine whether the proposed antenna location would be inconsistent with or in violation of the terms of spirit of section 3.685 of the rules.

3. To determine whether the applicants or their representatives made misleading or grossly careless statements in their application concerning the issuance of a permit by the Department of Agriculture to KOLD-TV for a transmitter site on Mt. Bigelow, and whether such statements reflect upon the character qualifications of the applicants and particularly their reliability.

4. To determine whether the applicants or their representatives made misleading or grossly careless statements in their applications and other papers filed with the Commission concerning the road to be utilized by them for access to their proposed antenna site, and whether

such statements reflect upon the character qualifications of the applicant and particularly their reliability.

5. To determine what plans, if any, KVOA-TV has for meeting the needs and interests of the residents in the additional area it would serve, and whether such plans would be in the public interest.

6. To determine the nature and extent of the overlap between KOLD-TV, Tucson, and KOOL-TV, Phoenix, that would result from the grant to KOLD-TV, and whether such overlap would entail a violation of the terms or spirit of § 3.636(a) (1) of the rules.

7. To determine, on the basis of the record made in connection with the foregoing issues, whether a grant of the above entitled applications would serve the public interest, convenience, and necessity.

It is further ordered, That the burden of proceeding with the introduction of evidence and the burden of proof as to each of the foregoing issues shall be on the protestant.

It is further ordered, That the protestant is hereby made a party to the above-captioned proceedings and that;

(a) The hearing on the above issues shall commence at a time and place and before an Examiner to be specified in a subsequent order;

(b) The parties to the proceedings herein shall have fifteen (15) days after the issuance of the Examiner's decision to file exceptions thereto and seven (7) days thereafter to file replies to any such exceptions; and

(c) The appearances by the parties intending to participate in the above hearing shall be filed not later than February 17, 1960.

Adopted: February 3, 1960.

Released: February 9, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-1395; Filed, Feb. 11, 1960;
8:53 a.m.]

GENERAL SERVICES ADMINISTRATION

OPIUM POPPY SEEDS HELD IN THE NATIONAL STOCKPILE

Proposed Disposition

Pursuant to the provisions of section 3(e) of the Strategic and Critical Materials Stock Piling Act, 53 Stat. 811, as amended, 50 U.S.C. 98b(e), notice is hereby given of a proposed disposition of approximately 51,646 pounds of opium poppy seeds now held in the national stockpile.

The Office of Civil and Defense Mobilization has made a revised determination, pursuant to section 2(a) of the Strategic and Critical Materials Stock Piling Act, that there is no longer any need for stockpiling said opium poppy seeds. The revised determination was based upon the finding of the Office of Civil and De-

fense Mobilization that said opium poppy seeds are obsolescent for use in time of war.

General Services Administration proposes to transfer the opium poppy seeds or to offer them for sale on a competitive basis, beginning six months after the date of publication of this notice in the FEDERAL REGISTER. The disposal will be subject to Section 7 of the Opium Poppy Control Act of 1942, 21 U.S.C. 188f.

This plan and the date of disposition have been fixed with due regard to the protection of producers, processors, and consumers against avoidable disruption of their usual markets as well as the protection of the United States against avoidable loss on disposal.

Dated: February 5, 1960.

FRANKLIN FLOETE,
Administrator.

[F.R. Doc. 60-1366; Filed, Feb. 11, 1960;
8:47 a.m.]

GUAYULE SEEDS HELD IN THE NATIONAL STOCKPILE

Proposed Disposition

Pursuant to the provisions of section 3(e) of the Strategic and Critical Materials Stock Piling Act, 53 Stat. 811, as amended, 50 U.S.C. 98b(e), notice is hereby given of a proposed disposition of approximately 17,426 pounds of guayule seeds now held in the national stockpile.

The Office of Civil and Defense Mobilization has made a revised determination, pursuant to section 2(a) of the Strategic and Critical Materials Stock Piling Act, that there is no longer any need for stockpiling said guayule seeds. The revised determination was based upon the finding of the Office of Civil and Defense Mobilization that said guayule seeds are obsolescent for use in time of war.

General Services Administration proposes to transfer the guayule seeds, or to offer them for sale on a competitive basis, beginning six months after the date of publication of this notice in the FEDERAL REGISTER.

This plan and the date of disposition have been fixed with due regard to the protection of producers, processors, and consumers against avoidable disruption of their usual markets as well as the protection of the United States against avoidable loss on disposal.

Dated: February 5, 1960.

FRANKLIN FLOETE,
Administrator.

[F.R. Doc. 60-1367; Filed, Feb. 11, 1960;
8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-18322]

LYNCHBURG GAS CO.

Order Reopening Proceedings

FEBRUARY 5, 1960.

These proceedings involve the application of the Lynchburg Gas Company

(Lynchburg) for an order directing the Transcontinental Gas Pipe Line Corporation (Transco) to establish physical connection with the facilities of the Lynchburg Pipeline Company (Lynchburg's wholly owned subsidiary) and render service as follows: 1,500 Mcf per day in the first two years, 2,000 Mcf per day in the third and fourth year, and 3,000 Mcf per day in the fifth year. This application has been opposed on numerous grounds by the Atlantic Seaboard Corporation (Seaboard), which at present supplies all of Lynchburg's requirements.

On October 23, 1959, the presiding examiner issued his initial decision dismissing the application for Lynchburg's failure to establish that Transco could render the requested service without impairing its deliveries to its other customers. The decision did not discuss any of the other issues raised in these proceedings. The only "evidence" offered at the hearing of any relevance to Transco's present ability to render this service consisted of certain remarks by counsel for Transco to the effect that Transco, as a matter of policy, would oppose anything more than Lynchburg's third-year request of 2,000 Mcf per day and that Transco would provide this service only in the event that the "1959" facilities applied for by Transco in Docket No. G-16603 were ultimately certificated. At that time, the issues in Docket No. G-16603 were undecided, and the examiner's conclusion herein that Lynchburg's case was incomplete appears to have been fully warranted.

On November 17, 1959, however, Transco's "1959" construction in Docket No. G-16603 was certificated. This provided Transco with an estimated 155,107 Mcf per day of new capacity, of which 9,118 Mcf per day remained unallocated

in those proceedings. Since then, Transco has filed applications, in Docket Nos. G-18777, G-19096, G-20031 and G-20120, which would allocate all but 618 Mcf per day of this capacity to customers other than Lynchburg. In addition, Transco has stated, in a letter filed December 16, 1959, in Docket Nos. G-20031 and G-20120, that it is now willing and able to supply Lynchburg's third-year requirements. Whatever the merits of Transco's present position, this letter is not a matter of record in the instant proceedings.

Although a single hearing is normally all that a particular application is entitled to, we have concluded that in the present circumstances the public interest in the orderly administration of the Natural Gas Act will be best served by reopening these proceedings for the limited purpose of allowing Transco and Lynchburg to clarify their positions as to Transco's ability to serve and Lynchburg's willingness to accept the third-year volumes requested. This course of action will have the additional advantage of giving us the benefit of the views of staff and the presiding examiner on the other issues raised by Lynchburg's application.

The Commission finds: The public interest requires that the proceedings herein be reopened for the limited purpose of taking additional evidence on the issue of Transco's ability to supply the volumes requested by Lynchburg.

The Commission orders:

(A) The proceedings in Docket No. G-18322 are hereby reopened for the limited purpose of taking additional evidence on the issue of Transco's ability to supply the volumes requested by Lynchburg.

(B) Further hearings before the presiding examiner upon the reopening

herein ordered is hereby set for May 10, 1960, at 10:00 a.m. in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C. for the purpose of taking this additional evidence.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-1361; Filed, Feb. 11, 1960; 8:46 a.m.]

[Docket No. G-19324 etc.]

McALESTER FUEL CO. ET AL.

Order Permitting Superseding Rate Filings and Providing for Hearing on and Suspension of Proposed Changes in Rates¹

FEBRUARY 5, 1960.

In the matter of McAlester Fuel Company, Docket No. G-19324; Phillips Petroleum Company, Docket No. G-20523; Midhurst Oil Corporation, Docket No. RI60-103; J. E. Connally d/b/a Connally Oil Company (Operator), et al., Docket No. RI60-104; Henry Black Drilling Company, Inc. (Operator), et al., Docket No. RI60-105; Jake L. Hamon, Docket No. RI60-106; Forest Oil Corporation, Docket No. RI60-107; Paul P. Scott Trust, et al., Docket No. RI60-108; Barron Kidd, Docket No. RI60-109; H. L. Hunt, et al., Docket No. RI60-110.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for their sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Notice of change dated--	Date tendered	Effective date unless suspended ²	Date suspended until--	Cents per Mcf ³		Rate in effect subject to refund in docket No.
									Rate in effect	Proposed rate	
G-19324	McAlester Fuel Co.	2	4	El Paso Natural Gas Co. (Denton Gasoline Plant, Lea County, N. Mex.)	1-7-60	1-11-60	2-11-60	7-11-60	11.0	17.0	G-14417
G-20523	Phillips Petroleum Co.	309	6	El Paso Natural Gas Co. and Hunt Oil Co. (Jack Herbert Field, Upton County, Tex.).	1-8-60	1-11-60	2-11-60	6-7-60	10.30716	13.68225	G-18207
RI60-103	Midhurst Oil Corp.	2	4 ¹⁰	do ⁴	Undated	1-8-60	2-8-60	7-8-60	10.6008	15.70925	G-14063
		2	11 ⁵	do	do	1-8-60	2-8-60	7-8-60	8.1080	13.68225	
		4	3	El Paso Natural Gas Co. (Jack Herbert Field, Upton County, Tex.).	do	1-8-60	2-8-60	7-8-60	9.5	15.70925	
		5	3	do	do	1-8-60	2-8-60	7-8-60	7.0945	13.68225	
RI60-104	J. E. Connally d/b/a Connally Oil Co. (Operator), et al.	1	18	El Paso Natural Gas Co. (Spraberry Trend Field, Midland County, Tex.).	12-28-59	1-8-60	2-8-60	7-8-60	10.0	17.2295	
RI60-104	do	2	2	El Paso Natural Gas Co. (Spraberry Trend Field, Reagan Midland Counties, Tex.).	12-28-59	1-8-60	2-8-60	7-8-60	11.0	17.2295	
RI60-105	Henry Black Drilling Co., Inc. (Operator), et al.	1	28	El Paso Natural Gas Co. (Spraberry Field, Midland County, Tex.).	1-6-60	1-11-60	2-11-60	7-11-60	11.1485	17.2295	
RI60-106	Jake L. Hamon	10	3	El Paso Natural Gas Co. (Headlee Field, Ector County, Tex.).	Undated	1-8-60	2-8-60	7-8-60	10.0855	17.1632	
RI60-107	Forest Oil Corp.	5	2	El Paso Natural Gas Co. (Denton Gasoline Plant, Lea County, N. Mex.).	1-7-60	1-11-60	2-11-60	7-11-60	10.0	17.0	
RI60-108	Paul P. Scott Trust, et al.	3	1	El Paso Natural Gas Co. (Jalmat Field, Lea County, N. Mex.).	12-31-59	1-11-60	2-11-60	7-11-60	10.5	15.5	
RI60-109	Barron Kidd	5	1	El Paso Natural Gas Co. (Noelke Field, Crockett County, Tex.).	1-5-60	1-11-60	2-11-60	7-11-60	9.5	14.5	
RI60-110	H. L. Hunt, et al.	21	1	El Paso Natural Gas Co. (Pecos Valley Field, Pecos County, Tex.).	Undated	1-14-60	2-14-60	7-14-60	10.6418	15.70925	

¹ The stated effective dates are those requested by respondents or the first day after expiration of the required thirty days' notice, whichever is later.

² Relates to casinghead gas.

³ At 14.65 psia pressure base.

⁴ Relates to high pressure gas.

⁵ Hunt Oil Company has acquired an interest in the purchase contract.

⁶ Subject to reduction of 0.4467 cent per Mcf for low pressure gas.

¹ This order does not provide for the consolidation for hearing or disposition of the separately docketed matters covered herein, nor should it be so construed.

McAlester Fuel Company (McAlester) requests that its new filing supersede Supplement No. 3 to McAlester's FPC Gas Rate Schedule No. 2. Supplement No. 3, containing a proposed increased rate of 16 cents per Mcf, was suspended until February 10, 1960, by Commission order issued September 4, 1959, in the proceeding in Docket No. G-19324. Because Supplement No. 3 is now being superseded and will therefore never become effective, that proceeding will henceforth be concerned with Supplement No. 4 rather than No. 3 to McAlester's FPC Gas Rate Schedule No. 2.

Phillips Petroleum Company (Phillips) requests its new filing supersede Supplement No. 5 to Phillips' FPC Gas Rate Schedule No. 309. The filing reflects the fact that Hunt Oil Company, as well as El Paso Natural Gas Company, is a purchaser under the contract involved. Supplement No. 5 was suspended until June 7, 1960, by Commission order issued January 6, 1960, in the proceeding in Docket No. G-20523. Because Supplement No. 5 is now being superseded and will therefore never become effective, that proceeding will henceforth be concerned with Supplement No. 6 rather than No. 5 to Phillips FPC Gas Rate Schedule No. 309.

In support of the proposed rates, the producers state that increased revenues are needed to meet increasing costs of exploration, drilling, and production and to furnish incentive for further exploration and development. The producers also state that the proposed prices are in line with current gas prices in the area. Some of the producers state that, incident to price renegotiations, favored-nations provisions were eliminated from their contracts and the contract terms were extended; the producers cite these benefits in support of their proposed rates.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Permission should be granted for the filing of Supplement No. 4 to McAlester's FPC Gas Rate Schedule No. 2 to supersede Supplement No. 3 and for the filing of Supplement No. 6 to Phillips' FPC Gas Rate Schedule No. 309 to supersede Supplement No. 5.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Permission is hereby granted for the filing of Supplement No. 4 to McAlester's FPC Gas Rate Schedule No. 2 to supersede Supplement No. 3 and for the filing of Supplement No. 6 to Phillips' FPC Gas Rate Schedule No. 309 to supersede Supplement No. 5.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regu-

lations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(C) Pending hearing and decision thereon, each of the aforementioned supplements is suspended and the use thereof deferred until the date specified in the above-designated "Rate Suspended Until" column and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.37(f)) on or before March 21, 1960.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-1362; Filed, Feb. 11, 1960;
8:46 a.m.]

[Docket No. G-19529 etc.]

UNITED NATURAL GAS CO. ET AL. Notice of Applications, Consolidation of Proceedings, and Date of Hearing

FEBRUARY 5, 1960.

In the matter of United Natural Gas Company, Docket No. G-19529; Penn-York Natural Gas Corporation, Docket No. G-19527; The Sylvania Corporation, Docket No. G-19839.

Pursuant to the authority conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and in accord with the rules of practice and procedure, the proceedings in the above-designated dockets are hereby consolidated for hearing.

The above-named applicants are affiliates and wholly-owned subsidiary corporations of the National Fuel Gas Company, and each said applicant is a natural gas company under the Natural Gas Act and subject to the jurisdiction of the Federal Power Commission.

United Natural Gas Company (United Natural), by its application filed on September 22, 1959 and as supplemented on October 19 and December 10, 1959, seeks a certificate of public convenience and necessity authorizing it to acquire from Penn-York Natural Gas Company (Penn-York) certain gas transmission facilities consisting of approximately 14,826 feet of 10-inch pipeline in place extending from the southerly terminus of Harrison Township northerly to a point approximately six-tenths of a mile west of the northwest corner of Bingham Township on the boundary line of the States of New York and Pennsylvania

together with rights-of-way and 29 and seven-eighths acres of land, all in Potter County, Pennsylvania. United Natural also seeks authorization to construct approximately 1,965 feet of 8 and five-eighths inch pipeline and a regulating station connected thereto. This proposed pipeline would extend from a connection point on the Z-20 (s) line of The Sylvania Corporation (Sylvania) to a point where a segment of abandonment pipeline of the New York State Natural Gas Corporation terminates, all in Harrison Township, Potter County, Pennsylvania. United Natural also proposes to acquire the segment of abandoned pipeline just mentioned from New York State Natural Gas Corporation consisting of approximately 1,350 feet in length and 10 and three-fourths inches in diameter together with the right of way and appurtenances including a measuring station, a meter house, and connected accessories, at a cost of \$7,000.

The estimated cost of construction of the facilities proposed to be constructed by United Gas, as above described, is \$22,350, and the purchase price of the facilities to be acquired from Penn-York, above described, is \$11,021.

Penn-York filed an application in Docket No. G-19527 on September 22, 1959 seeking permission and approval of the Commission under section 7(b) of the Natural Gas Act to abandon the facilities first above described as the subject of proposed purchase by United Natural. These facilities just referred to constitute all of the natural gas pipeline facilities owned and operated by Penn-York in the State of Pennsylvania, and they will be continued in operation by United Natural to transport natural gas to Iroquois Gas Corporation (Iroquois) as an integrated part of United Natural's transportation system. Physically such gas will be delivered by United Natural to Penn-York who will transport it for Iroquois along with other gas that Penn-York transports for Iroquois.

The Sylvania Corporation, filed an application in Docket No. G-19839 on October 19, 1959 seeking a certificate authorizing it to operate a connection for delivery of natural gas from it to United Natural from a point located on its Line Z-20(s) in Harrison Township, Potter County, Pennsylvania. The said connection is to be an additional point of delivery by Sylvania to United Natural, and the connection facilities are to be constructed by United Natural.

The foregoing proposals of United Natural to acquire, construct, and operate the facilities described are for the purpose of enabling it to better serve, maintain, and deliver natural gas to Iroquois for ultimate distribution and sale to the consumers served by Iroquois in the City of Buffalo and surrounding territory.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under applicable rules and regulations, and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and pro-

cedure, a hearing will be held on March 9, 1960, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however*, That the Commission may after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for either Applicant to appear or be represented at the hearing.

Protests, petitions to intervene, or notices of intervention may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 29, 1960.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-1363; Filed, Feb. 11, 1960;
8:46 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

TRADE ROUTE NO. 10; U.S. NORTH ATLANTIC/MEDITERRANEAN

Notice of Tentative Conclusions and Determinations Regarding the Essentiality and United States Flag Passenger Service Requirements

Notice is hereby given that on February 4, 1960, the Maritime Administrator, acting pursuant to section 211 of the Merchant Marine Act, 1936, as amended, found and determined the essentiality and United States flag passenger service requirements of United States foreign Trade Route No. 10 and in accordance with his action of July 27, 1956 ordered that the following tentative conclusions and determinations reached by the Maritime Administrator with respect to said trade route be published in the FEDERAL REGISTER:

1. Trade Route No. 10 as described below is reaffirmed as an essential foreign trade route of the United States: *Trade Route No. 10; U.S. North Atlantic/Mediterranean* Between U.S. North Atlantic ports (Maine-Virginia, inclusive) and ports in the Mediterranean Sea and Black Sea, Portugal, Spain south of Portugal and Morocco (Tangier to southern border of Morocco).

2. Requirements for United States flag passenger service are approximately 6 sailings per month of passenger and combination ships serving the route exclusively or predominantly with some additional service by other regularly scheduled sailings of U.S. flag combination ships serving the route in part only.

Any person, firm or corporation having any interest in the foregoing who desires to offer comments and views or request a hearing thereon, should submit same in writing to the Chief, Office of Government Aid, Maritime Administration, Department of Commerce,

Washington 25, D.C., by close of business on February 29, 1960. In the event a hearing is requested, a statement must be included giving the reasons therefor. Any hearing thereby afforded will be before an Examiner on an informal basis only. The Maritime Administrator will consider these comments and views and take such action with respect thereto as in his discretion he deems warranted.

Dated: February 9, 1960.

By order of the Maritime Administrator.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-1376; Filed, Feb. 11, 1960;
8:49 a.m.]

Office of the Secretary

WALLACE H. ADAMSON

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of January 30, 1960.

Dated January 30, 1960.

WALLACE H. ADAMSON.

[F.R. Doc. 60-1378; Filed, Feb. 11, 1960;
8:49 a.m.]

LOUIS A. SCHLUETER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: None.
B. Additions: None.

Dated: February 1, 1960.

This statement is made as of February 1, 1960.

LOUIS A. SCHLUETER.

[F.R. Doc. 60-1380; Filed, Feb. 11, 1960;
8:49 a.m.]

LUTHER L. SMITH

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and

Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: None.
B. Additions: None.

This statement is made as of January 27, 1960.

Dated: January 27, 1960.

LUTHER L. SMITH.

[F.R. Doc. 60-1377; Filed, Feb. 11, 1960;
8:49 a.m.]

ARTHUR W. WINSTON

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of January 29, 1960.

Dated: January 29, 1960.

ARTHUR W. WINSTON.

[F.R. Doc. 60-1379; Filed, Feb. 11, 1960;
8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 263]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 9, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 62636. By order of February 5, 1960, the Transfer Board approved the transfer to G. & H. Truck Line, Inc., Pueblo, Colo., of Certificate No. MC 110483, issued May 13, 1949, to J. Myron Harrington, doing business as G & H Truck Line, Pueblo, Colo., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Denver, Colo., and

Pueblo, Colo., serving the intermediate point of Colorado Springs, Colo. Julius I. Ginsberg, 818 Majestic Building, Denver, Colo., for applicants.

No. MC-FC 62806. By order of February 5, 1960, the Transfer Board approved the transfer to Rhoda Keenan, doing business as Keenan Bros., Steubenville, Ohio, of Permit in No. MC 14458, issued April 6, 1949, to James L. Keenan, doing business as Keenan Bros., Steubenville, Ohio; authorizing the transportation of: Petroleum products, gasoline filling-station equipment, coal mining machinery, road construction materials, contractors' supplies and equipment, and such commodities as are usually transported in dump trucks, from, to, or between, specified points in Ohio, Pennsylvania, and West Virginia. Harry B. Chalfant, First Natl. Bank Building, Steubenville, Ohio; and Noel George, 44 East Broad Street, Columbus 15, Ohio; for applicants.

No. MC-FC 62817. By order of February 5, 1960, the Transfer Board approved the transfer to Hasting Truck Company, Inc., 738 East Walnut Street, Kalamazoo, Mich., of Certificates in Nos. MC 58956 and MC 58956 Sub 4, issued October 11, 1949 and May 1, 1950, to T. William Hastings, Doing Business as Hastings Truck Company, Kalamazoo, Mich., authorizing the transportation of: General commodities, over regular routes, excluding household goods, commodities in bulk and other specified commodities, between Kalamazoo, Mich., and Marshall, Mich.; between Niles, Mich., and Sodus, Mich.; between Grand Beach, Mich., and junction Michigan Highways 140 and 62; between Marshall, Mich., and Parma, Mich.; over irregular routes between points within 3 miles of Kalamazoo, Mich., including Kalamazoo, and over regular routes between Parma, Mich., and Ypsilanti, Mich., with restrictions. Albert J. Allgaier, Hastings Truck Company, Inc., 738 East Walnut Street, Kalamazoo, Mich.

No. MC-FC 62825. By order of February 5, 1960, the Transfer Board approved the transfer to W. M. Kersting, Martinsburg, Mo., of Certificate No. MC 90847 issued April 1, 1949, in the name of J. T. Willis, Auxvasse, Mo., authorizing the transportation of coal, from Belleville, Ill., to Auxvasse, Mo.; washing machines, coffins, and stoves, from St. Louis, Mo., to Auxvasse, Mo.; and livestock and hay, wire fence and fence materials, shingles, livestock, feed and fertilizer, between Auxvasse, Mo., and East St. Louis, Ill. Herman W. Huber, 101 East High Street, Jefferson City, Mo., for applicants.

No. MC-FC 62831. By order of February 5, 1960, the Transfer Board approved the transfer to Harry B. Hall Co., Inc., Methuen, Mass., of Certificate No. MC 50929 issued July 2, 1954, in the name of Harry B. Hall, doing business as Harry B. Hall, Methuen, Mass., authorizing the transportation of such commodities as are dealt in by wholesale, retail, or chain grocery and food business houses, from Lawrence, Haverhill and Newburyport, Mass., to Gloucester, Lynn, Marblehead, Rockport, and Swampscott, Mass.; and from Lynn, and Salem, Mass., to Beverly, Danvers, Gloucester, Ipswich, Lynn-

field, Marblehead, Melrose, Middleton, Peabody, Revere, Rockport, Swampscott and Wakefield, Mass., empty containers on return. Food products and grocery supplies, from Lawrence, Haverhill and Newburyport, Mass., to points within 15 miles of Haverhill, and to Salem, Plaistow, Hampston, Manchester, Goffstown, and Derry, N.H.; and household goods, camp supplies, and office furniture, between Lawrence, Mass., and points within 15 miles of Lawrence, on the one hand and points in New Hampshire, on the other. Harry B. Hall, 219 Hampshire Street, Methuen, Mass., for applicants.

No. MC-FC 62874. By order of February 5, 1960, the Transfer Board approved the transfer to Louis H. Raab, East Brunswick, N.J. of a portion of Certificate No. MC 9100, issued June 9, 1941, to Edwin W. Greenlee, doing business as Greenlee & Son, Morrisville, Pa., authorizing the transportation of: Such commodities as are transported in dump trucks, from Morrisville, Pa., to points in Middlesex, Monmouth and Somerset Counties, N.J. Herman B. J. Weckstein, 1060 Broad Street, Newark 2, N.J., for applicants.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-1370; Filed, Feb. 11, 1960;
8:48 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 9, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36002: *Soda—Louisiana and Tennessee to Florida points.* Filed by O. W. South, Jr., Agent (SFA No. A3908), for interested rail carriers. Rates on liquid caustic soda, in tank-car loads, from Baton Rouge, North Baton Rouge, Geismar, La., and Memphis, Tenn., to Jacksonville, South Jacksonville, and Palatka, Fla.

Grounds for relief: Market competition.

Tariffs: Supplement 127 to Southern Freight Association tariff I.C.C. 1526, and supplement 181 to Southern Freight Association tariff I.C.C. 1548.

FSA No. 36003: *Brick between points in WTL, IFA, and SFA territories.* Filed by Western Trunk Line Committee, Agent (No. A-2109), for interested rail carriers. Rates on brick and related articles, in carloads, between (1) points in Western Trunk Line Territory, also between points in Illinois Freight Association Territory, (2) points in Western Trunk Line Territory, and Illinois Freight Association Territory, on the one hand, and points in Southern Freight Association Territory, on the other.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 55 to Western Trunk Line Committee tariff I.C.C.

A-4240, and 3 other schedules named in the application.

FSA No. 36004: *Asphalt from southern points to southwestern territory.* Filed by Southwestern Freight Bureau, Agent (No. B-7731), for interested rail carriers. Rates on asphalt (asphaltum), in tank-car loads, as described in the application, from specified points in southern territory to points in southwestern territory.

Grounds for relief: Market competition.

Tariff: Supplement 32 to Southwestern Freight Bureau tariff I.C.C. 4333.

FSA No. 36005: *Chemicals, returned, from, to and between points in southwestern territory.* Filed by Southwestern Freight Bureau, Agent (No. B-7733), for interested rail carriers. Rates on glue, and synthetic plastics, in tank-car loads, returned to original point of shipment, from, to and between points in southwestern territory.

Grounds for relief: Carrier competition.

Tariff: Supplement 359 to Southwestern Freight Bureau tariff I.C.C. 4020.

FSA No. 36006: *Gravel—Dickason Pit, Ind., to Craigs, Ill.* Filed by Illinois Freight Association, Agent (No. 88), for the Chicago & Eastern Illinois Railroad Company. Rates on gravel, screened, in carloads, from Dickason Pit, Ind., to Craigs, Ill.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 125 to Chicago & Eastern Illinois Railroad Company's tariff I.C.C. 144.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-1369; Filed, Feb. 11, 1960;
8:47 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

[Vesting Order SA-285]

HUNGARIAN DISCOUNT AND EXCHANGE BANK

In re: Property indirectly owned by Hungarian Discount and Exchange Bank, also known as Ungarische Escompto und Wechsler Bank; F-34-226.

Under the authority of Title II of the International Claims Settlement Act of 1949, as amended (69 Stat. 562), Executive Order 10644, November 7, 1955 (20 F.R. 8363), Department of Justice Order No. 106-55, November 23, 1955 (20 F.R. 8993), and pursuant to law, after investigation, it is hereby found and determined:

1. That the property described as follows: That certain debt or other obligation of The First National City Bank of New York, 55 Wall Street, New York 15, New York, in the sum of \$2,548.43 arising out of a blocked account maintained by said bank in the name of "Nederlandsche Handel Maatschappij, N. V. Sub-Account Ungarische Escompto und Wechsler Bank Budapest, Hungary" together with any and all rights to demand, enforce and collect the same.

is property within the United States which was blocked in accordance with Executive Order 8389, as amended, and remained blocked on August 9, 1955, and which is, and as of September 15, 1947, was owned indirectly by Hungarian Discount and Exchange Bank, also known as Ungarische Escompto und Wechsler Bank, Budapest, Hungary, a national of Hungary as defined in said Executive Order 8389, as amended.

2. That the property described herein is not owned directly by a natural person.

There is hereby vested in the Attorney General of the United States the property described above, to be administered, sold, or otherwise liquidated, in accordance with the provisions of Title II of the International Claims Settlement Act of 1949, as amended.

It is hereby required that the property described above be paid, conveyed, transferred, assigned and delivered to or for the account of the Attorney General of the United States in accordance with directions and instructions issued by or for the Assistant Attorney General, Director, Office of Alien Property, Department of Justice.

The foregoing requirement and any supplement thereto shall be deemed instructions or directions issued under Title II of the International Claims Settlement Act of 1949, as amended. Attention is directed to section 205 of said Title II (69 Stat. 562) which provides that:

Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Executed at Washington, D.C., on February 8, 1960.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F.R. Doc. 60-1384; Filed, Feb. 11, 1960;
8:51 a.m.]

[Vesting Order SA-286]

HUNGARIAN GENERAL CREDITBANK

In re: Property indirectly owned by Hungarian General Creditbank, also known as Ungarische Allgemeine Kreditbank, Banque Generale de Credit Hongrois, and as Magyar Altalanos Hitelbank, Budapest, Hungary; F-34-228.

Under the authority of Title II of the International Claims Settlement Act of 1949, as amended (69 Stat. 562), Executive Order 10644, November 7, 1955 (20

F.R. 8363), Department of Justice Order No. 106-55, November 23, 1955 (20 F.R. 8993), and pursuant to law, after investigation, it is hereby found and determined:

1. That the property described as follows: That certain debt or other obligation of The First National City Bank of New York, 55 Wall Street, New York 15, New York, in the sum of \$2,379.82 arising out of a blocked account maintained by said bank in the name of "Nederlandsche Handel Maatschappij, N. V. Sub-Account Ungarische Allgemeine Kreditbank Budapest, Hungary" together with any and all rights to demand, enforce and collect the same,

is property within the United States which was blocked in accordance with Executive Order 8389, as amended, and remained blocked on August 9, 1955, and which is, and as of September 15, 1947, was owned indirectly by Hungarian General Creditbank, also known as Ungarische Allgemeine Kreditbank, Banque Generale de Credit Hongrois, and as Magyar Altalanos Hitelbank, Budapest, Hungary, a national of Hungary as defined in said Executive Order 8389, as amended.

2. That the property described herein is not owned directly by a natural person.

There is hereby vested in the Attorney General of the United States the property described above, to be administered, sold, or otherwise liquidated, in accordance with the provisions of Title II of the International Claims Settlement Act of 1949, as amended.

It is hereby required that the property described above be paid, conveyed, transferred, assigned and delivered to or for the account of the Attorney General of the United States in accordance with directions and instructions issued by or for the Assistant Attorney General, Director, Office of Alien Property, Department of Justice.

The foregoing requirement and any supplement thereto shall be deemed instructions or directions issued under Title II of the International Claims Settlement Act of 1949, as amended. Attention is directed to section 205 of said Title II (69 Stat. 562) which provides that:

Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Executed at Washington, D.C., on February 8, 1960.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F.R. Doc. 60-1385; Filed, Feb. 11, 1960;
8:51 a.m.]

[Vesting Order SA-287]

UNGARISCHE A. G. FUER BAUUNTERNEHMUNGEN

In re: Property indirectly owned by Ungarische A. G. fuer Bauunternehmungen; F-34-1708.

Under the authority of Title II of the International Claims Settlement Act of 1949, as amended (69 Stat. 562), Executive Order 10644, November 7, 1955 (20 F.R. 8363), Department of Justice Order No. 106-55, November 23, 1955 (20 F.R. 8993), and pursuant to law, after investigation, it is hereby found and determined:

1. That the property described as follows: That certain debt or other obligation of Brown Brothers Harriman & Co., 59 Wall Street, New York 5, New York, in the sum of \$2,108.18, arising out of a blocked account maintained by said Company in the name of "Nederlandsche Maatschappij voor ondernemingen in de Machine Industrie, for account of Ungarische A. G. fuer Bauunternehmungen" together with any and all rights to demand, enforce and collect the same

is property within the United States which was blocked in accordance with Executive Order 8389, as amended, and remained blocked on August 9, 1955, and which is, and as of September 15, 1947, was owned indirectly by Ungarische A. G. fuer Bauunternehmungen, Hungary, a national of Hungary as defined in said Executive Order 8389, as amended.

2. That the property described herein is not owned directly by a natural person.

There is hereby vested in the Attorney General of the United States the property described above, to be administered, sold, or otherwise liquidated, in accordance with the provisions of Title II of the International Claims Settlement Act of 1949, as amended.

It is hereby required that the property described above be paid, conveyed, transferred, assigned and delivered to or for the account of the Attorney General of the United States in accordance with directions and instructions issued by or for the Assistant Attorney General, Director, Office of Alien Property, Department of Justice.

The foregoing requirement and any supplement thereto shall be deemed instructions or directions issued under Title II of the International Claims Settlement Act of 1949, as amended. Attention is directed to section 205 of said Title II (69 Stat. 562) which provides that:

Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Executed at Washington, D.C., on February 8, 1960.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F.R. Doc. 60-1386; Filed, Feb. 11, 1960;
8:51 a.m.]

[Vesting Order SA-288]

**UNGARISCHE FILALE CREDITANSTALT
BANKVEREIN**

In re: Property indirectly owned by Ungarische Filale Creditanstalt Bankverein; F-28-3366.

Under the authority of Title II of the International Claims Settlement Act of 1949, as amended (69 Stat. 562), Executive Order 10644, November 7, 1955 (20 F.R. 8363), Department of Justice Order No. 106-55, November 23, 1955 (20 F.R. 8993), and pursuant to law, after investigation, it is hereby found and determined:

1. That the property described as follows: That certain debt or other obligation of The First National City Bank of New York, 55 Wall Street, New York 15,

New York, in the sum of \$3,673.55 arising out of a blocked account maintained by said bank in the name of "Nederlandsche Handel Maatschappij, N. V. Sub-Account Ungarische Filale Creditanstalt Bankverein" together with any and all rights to demand, enforce and collect the same

is property within the United States which was blocked in accordance with Executive Order 8389, as amended, and remained blocked on August 9, 1955, and which is, and as of September 15, 1947, was owned indirectly by Ungarische Filale Creditanstalt Bankverein, Hungary, a national of Hungary as defined in said Executive Order 8389, as amended.

2. That the property described herein is not owned directly by a natural person.

There is hereby vested in the Attorney General of the United States the property described above, to be administered, sold, or otherwise liquidated, in accordance with the provisions of Title II of the International Claims Settlement Act of 1949, as amended.

It is hereby required that the property described above be paid, conveyed, transferred, assigned and delivered to or for the account of the Attorney General of the United States in accordance with directions and instructions issued by or for the Assistant Attorney General,

Director, Office of Alien Property, Department of Justice.

The foregoing requirement and any supplement thereto shall be deemed instructions or directions issued under Title II of the International Claims Settlement Act of 1949, as amended. Attention is directed to section 205 of said Title II (69 Stat. 562) which provides that:

Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

Executed at Washington, D.C., on February 8, 1960.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F.R. Doc. 60-1387; Filed, Feb. 11, 1960;
8:51 a.m.]

CUMULATIVE CODIFICATION GUIDE—FEBRUARY

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

3 CFR	Page
<i>Proclamations:</i>	
1844.....	917
2306.....	917
3332.....	1001
3333.....	1237
3334.....	1237
3335.....	1239
<i>Executive orders:</i>	
5339.....	1166
10758.....	1089
10777.....	1089
10823.....	1089
10859.....	1089
10860.....	1089
5 CFR	
6.....	853, 854, 899, 1001
201.....	1199
208.....	1199
325.....	1153
<i>Proposed rules:</i>	
89.....	875
6 CFR	
332.....	1199
371.....	853
421.....	900, 1092, 1093
477.....	1001
485.....	1072
502.....	900
7 CFR	
301.....	945
319.....	895
719.....	1065
725.....	947
728.....	897, 1246
729.....	897
900.....	835
914.....	899, 1070
927.....	947
933.....	1070, 1071
953.....	1071
1002.....	835
1009.....	845
<i>Proposed rules:</i>	
28.....	871
730.....	1077
815.....	987
900—1070.....	1127, 1132
904.....	872
905.....	1161
906.....	977, 1210
911.....	1211
918.....	1212
946.....	1269
947.....	977
949.....	977
987.....	1161
990.....	872
996.....	872
999.....	872
1014.....	1161
1019.....	872
10 CFR	
50.....	1072
<i>Proposed rules:</i>	
20.....	990
50.....	1224, 1225
14 CFR	
263.....	900
297.....	901
415.....	901

14 CFR—Continued	Page
507.....	854, 902, 1093
600.....	854-861, 1207, 1240
601.....	857-862, 1093, 1094, 1207, 1240
602.....	862, 863, 1094, 1241
609.....	1242
<i>Proposed rules:</i>	
507.....	879, 1285
600.....	879, 880, 914, 1162-1164, 1285
601.....	880, 914, 915, 1162-1164, 1285
602.....	1054
608.....	1054, 1136, 1164
15 CFR	
371.....	951
399.....	953
16 CFR	
13.....	863, 948, 1006, 1007, 1072, 1073, 1153, 1155, 1206, 1239
19 CFR	
8.....	864, 1017
10.....	1017
12.....	1017
16.....	1156
18.....	1017
32.....	1017
20 CFR	
210.....	864
214.....	864
216.....	864
217.....	1073
222.....	1073
237.....	1073
21 CFR	
9.....	903
15.....	903
19.....	1016
120.....	1246
121.....	865, 866, 1074
141c.....	903
146b.....	1074
146c.....	903
<i>Proposed rules:</i>	
29.....	990
120.....	1078
121.....	880, 916
25 CFR	
<i>Proposed rules:</i>	
221.....	976
26 (1954) CFR	
1.....	955, 956
301.....	958
<i>Proposed rules:</i>	
1.....	963
46.....	964
211.....	1017
212.....	1037
213.....	1043
290.....	1253
29 CFR	
2.....	1075
402.....	1075
<i>Proposed rules:</i>	
405.....	1053
31 CFR	
405.....	1007
32 CFR	
726.....	1156
765.....	1075
1101.....	866

32A CFR	Page
<i>HHFA (Ch. XVII):</i>	
CR 1.....	1076
CR 2.....	1076
CR 3.....	1076
33 CFR	
203.....	961, 1205, 1246
207.....	1246
36 CFR	
311.....	904
38 CFR	
1.....	870
3.....	961
6.....	1126
8.....	1136
21.....	1207
39 CFR	
17.....	905
21.....	905
24.....	905
43.....	905
46.....	905
48.....	905
49.....	905
100-176.....	1095
168.....	1076
42 CFR	
73.....	1247
43 CFR	
115.....	1092
<i>Proposed rules:</i>	
160.....	914
161.....	914
<i>Public land orders:</i>	
1711.....	1076
2048.....	951
2049.....	1076
45 CFR	
12.....	908
13.....	908
14.....	909
301.....	963
46 CFR	
206.....	1017
221.....	871
<i>Proposed rules:</i>	
201-380.....	1052, 1285
47 CFR	
2.....	1156
3.....	909
9.....	1156, 1208
12.....	913
13.....	1208
<i>Proposed rules:</i>	
3.....	1055, 1056, 1164, 1226
10.....	1078
17.....	1165
49 CFR	
1.....	1250
120.....	1159, 1160
172.....	914
174a.....	1160
181.....	1251
182.....	1251
192.....	1008
193.....	1008
205.....	1209
301.....	914

